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# Law and Governance Toolkit for Sustainable Small-Scale Fisheries

BEST REGULATORY PRACTICES

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*Small-Scale Fisheries Toolkit. A PDF file of this report may be obtained for no cost from the Environmental Law Institute website at [www.eli.org](http://www.eli.org). Please contact [ocean-program@eli.org](mailto:ocean-program@eli.org) for more information.*

*Cover Image: repaired fishing nets at Curuxeiras port, Ferrol. Inma Gutierrez, for ELI's SSF Law Initiative.*

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## ABSTRACT

The future of the ocean, and that of the planet, depends on sustained, effective changes to natural resources governance. Over the last couple of decades, ocean stewardship efforts have turned to focus on several key approaches, such as the creation and enforcement of marine protected areas (MPAs) and the implementation of sustainable fisheries practices, including small-scale fisheries (SSF) co-management.

The implementation of these ocean governance<sup>1</sup> approaches *always requires the enactment of a legal mechanism*. In practice, a legal instrument (an act, a regulation) functions as a “blueprint” of how to implement a policy instrument or idea. The quality of the final “product,” whether it is a vessel, an MPA, or an SSF co-management scheme, greatly depends on the accuracy of the blueprint: its fine-tuning, resilience during testing, and level of detail. However, when fishers’ associations complain about the inefficiency of fisheries regulations and demand action to, e.g. combat illegality, this central issue is often overlooked.

For the most part, ocean governance decisions, such as fisheries management schemes and MPA networks, have been enacted with no detailed regulatory guidance on how to ensure implementation. In the case of SSF collaborative management, regulatory clarity on the management procedures and on the rights and responsibilities of the parties involved is directly related to the effectiveness of the management system.

This Toolkit presents a **methodology for assessing the reform needs to strengthen SSF governance**, along with examples of model regulatory language for the core governance elements. Given the central role of co-management in sustainable SSF governance, the legal language in this Toolkit focuses on **creating and implementing co-management systems** ([Part 3](#)), along with two basic governance elements that strengthen co-management: **exclusive fishing rights** for SSF communities ([Part 1](#)), and the creation of **exclusive zones for SSF** ([Part 2](#)). The three remaining Parts address fundamental elements for enhancing the likelihood of the success of a sustainable SSF co-management scheme: strengthening **compliance** ([Part 4](#)), overcoming the conceptual **opposition between fisheries and marine protected areas** ([Part 5](#)), and making SSF governance **compatible with other area-based ocean management approaches** ([Part 6](#)).

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<sup>1</sup> In this document, “ocean governance” and “ocean law” refer, respectively, to the policy and legal frameworks for the management of ocean and coastal resources, in a broad sense.

## ABBREVIATIONS

COFI – FAO Committee on Fisheries

FAO – Food and Agriculture Organization of the United Nations

IUU – Illegal, Unreported, and Unregulated [fishing]

LFA – Legal Framework Assessment

MPA – Marine Protected Area

MSP – Marine Spatial Planning

NGO – Non-governmental Organization

SDG – Sustainable Development Goal

SSF – Small-Scale Fisheries

TURF – Territorial Use Rights for Fisheries

## INTRODUCTION

Whether you are a seasoned fisheries governance expert or are just now starting to delve into the field of Small-Scale Fisheries (SSF) governance, this document will probably not answer every question you may have about regulatory infrastructure for a sustainable SSF sector and for the long-term welfare of coastal communities who depend on the sector. The world of SSF regulatory governance is so complex and so full of nuances and disparities, while at the same time so often overlooked by detailed legal studies, that completing a fully comprehensive regulatory guide for SSF management would be an impossible task.

There is a significant amount of information available regarding SSF governance, but for the most part this information is dispersed, not systematized. In public policy articles, scholars and nongovernmental organizations (NGOs) describe successful, promising examples of SSF governance, but those analyses do not usually include a detailed account of the regulatory framework put in place to enable those examples, or to remove the regulatory barriers that were impeding their progress. This Toolkit aims to shed some light on that knowledge gap.

This Toolkit is a starting point. It focuses on fisheries co-management as a fundamental approach to SSF sustainability, while recognizing that there are many other critical topics of sustainable SSF governance that are beyond the scope of this document and, consequently, should be prioritized for future research. In preparation for this project, we have identified many of the most often-cited examples of successful SSF governance and analyzed in a systematic way the legal sources that facilitate (or, at the very least, do not hinder) that success. We then summarized and presented that information together here for ease of reference, guidance, and review by others. This project is also trying to raise public awareness about a fundamental yet mostly overlooked reality: **SSF are a major component of the world's food system, and improved governance of the SSF sector can considerably contribute to the sustainable future of our planet.**

This project is the result of a partnership between the **Environmental Law Institute (ELI)** and **Parliamentarians for Global Action (PGA)**, a worldwide network of democratically elected leaders joined together by their common interest in the protection of fundamental human and environmental rights. As such, the Toolkit has been written with parliamentarians and their legal drafting staff in mind, although its contents can be equally useful for government officials, NGO personnel, and most SSF stakeholders. This project is indebted to the generous support of the **Oak Foundation**, whose leadership is seminal to securing the advancement of SSF sustainability. ELI's Ocean Program is also grateful for the support of the Tinker Foundation.

If you are reading these lines, it is probably because you too have been moved by the uniqueness of the SSF sector, which connects the immemorial relationship between humankind and the sea with the promise of a prosperous future based on responsible stewardship of the wealth of our ocean and inland water resources. Much work is still needed to bring that promise to reality. We hope that you find the reading useful and enjoyable, and that the information contained in this Toolkit will help in your professional endeavors and in your work with SSF communities. Should you have questions or comments, please feel free to contact the authors at [ocean-program@eli.org](mailto:ocean-program@eli.org).



## BACKGROUND INFORMATION ON THE SSF SECTOR

According to the Food and Agriculture Organization of the United Nations (FAO), SSF contributed over half of the capture fisheries harvest in developing countries.<sup>2</sup> Of the catch from SSF, upwards of 90 percent of landings are destined for local human consumption. About 90 percent of the world's 120 million capture fishers and fish workers – men and women along the value chain – are involved in SSF.

The SSF sector is critical to food security and nutrition, and to alleviating poverty. Fish protein is increasingly important in sustaining a growing global population. Since 1961, global food fish consumption on average has increased at twice the annual rate of population growth, increasing at 3.2 percent annually compared to a 1.6 percent annual population increase. SSF play an important role in making this protein source available and in bolstering nutritional security more broadly. In addition to high value proteins, fish also contains essential fatty acids, vitamins and minerals, which have important impacts for nutrition and human development. Small-scale fishers often directly consume their protein- and nutrient-rich catch and can use fishing profits to purchase other nutritious food at the same time as supplying consumers with healthy food.

Supplemental income from small-scale fishing and associated activities off the water can provide a safety net for occasional fishers with limited access to means of production. Compared to industrial fishing, small-scale fishing also has fewer barriers to entry and offers more mobility and a more flexible livelihood. For example, some artisanal fishers from Galicia, India, and Mexico engage in seasonal fishing for supplementing their other incomes. Similarly, workers in Antigua and Barbuda's tourism industries turned to fishing after tourism infrastructure was damaged during Hurricane Luis in 1995. The sustainable livelihoods approach to fisheries management, which considers fishing activity as one possible household-level adaptive strategy to optimize livelihood, centers on these characteristics of SSF.

### Sustainable Development Goals and SSF

SSF play an important role in achieving the Sustainable Development Goals (SDGs), announced in 2015 as part of the United Nations 2030 Agenda for Sustainable Development. SDG 14, Life Below Water, aims to conserve and sustainably use the oceans, seas, and marine resources. Target 14.B specifies that small-scale fishers shall be provided access to marine resources and markets. Most relevant to this Toolkit, the indicator for this target is “progress by countries in the degree of application of a legal/regulatory/policy/institutional framework which recognizes and protects access rights for small-scale fisheries.” Achieving targets 14.2, which concerns sustainable management of marine and coastal ecosystems, and 14.4, regarding effective regulation of fishing to restore fish stocks to sustainable levels, will also require the involvement of and benefit SSF.

The importance of SSF to global food security links the sector to SDG 2, which sets out to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture. Target 2.3 specifically mentions small-scale fishers in laying out the goal of

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<sup>2</sup> World Bank, [Hidden Harvest: The Global Contribution of Capture Fisheries](#) (2012).

doubling productivity and incomes for small-scale food producers by 2030. SSF's economic potential also ties to SDG 1, aiming to eradicate poverty, and SDG 8, concerning sustained, inclusive, and sustainable economic growth through decent work.

In addition to the fisheries and livelihoods-related SDGs, this toolkit furthers SDG 16 on promoting the rule of law and accountable and inclusive institutions. Strengthening SSF management through legal and regulatory structures advances targets 16.3, which aims to promote the rule of law at the national and international levels; 16.6, focusing on developing effective, accountable, and transparent institutions at all levels; and 16.7, oriented towards ensuring responsive, inclusive, participatory, and representative decision-making.

### The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries

Between 2010 and 2013, FAO conducted consultations with over 4,000 fishers, fish workers, and others to learn more about how to make livelihoods in the SSF sector sustainable. Based on this outreach, the FAO and partners developed the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication<sup>3</sup> (hereinafter referred to as the SSF Guidelines), which were endorsed by the FAO Committee on Fisheries (COFI) in 2014. The Guidelines are global in scope but focus specifically on the needs of developing countries and communities. The document takes a holistic perspective on SSF, addressing the entire fishing production chain and integrating a human rights-based approach throughout.

The SSF Guidelines have become a keystone on the global efforts to support SSF sustainability. Since COFI endorsed the Guidelines in 2014, the FAO Fisheries and Aquaculture Department has worked to implement them through targeted projects and knowledge products. The SSF Guidelines call for preferential treatment for the SSF sector. Of particular relevance to this toolkit is the FAO's legislative guide, entitled *Legislating for Sustainable Small-Scale Fisheries – A guide and considerations for implementing aspects of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication in National Legislation*<sup>4</sup>, which focuses on legal pathways to strengthen responsible governance of tenure and sustainable resource management. This Toolkit supports the implementation of the SSF Guidelines and complements the FAO legislative guide by focusing on the key policy approaches suggested by them, and on streamlining their implementation through specific, targeted model legal language for co-management and related approaches.

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<sup>3</sup> FAO, [Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication](#) (2015).

<sup>4</sup> FAO, [Legislating for Sustainable Small-Scale Fisheries – A guide and considerations for implementing aspects of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication in National Legislation](#) (2020).

## WHAT THE SSF REGULATORY TOOLKIT IS ABOUT. LIMITATIONS OF THIS PROJECT

This document provides a **methodology for legal drafting specifically oriented towards implementing sustainable SSF governance**, along with examples of model regulatory language ready to be adapted to achieve reforms. The document is broadly divided into the **five steps of the SSF legal drafting method**: The first chapter of the document presents an overview of the methodology, along with an example of its implementation. The second chapter provides a more detailed description of the five steps of the methodology.

Step Three of Chapter II includes **various examples of model legal language**, with a specific focus on establishing fisheries co-management schemes. This third step is divided into six parts, with model legal language for each: 1) tenure rights for small-scale fishing; 2) creation and enforcement of exclusive zones for SSF; 3) participatory fisheries management and co-management; 4) measures to combat illegal, unreported, and unregulated (IUU) fishing; 5) promoting long-term conservation and sustainable use, and links to other effective area-based conservation measures; and 6) area-based management and implementation of marine spatial planning (MSP). The model legal language is based on an analysis of legal sources from 24 different countries.

### Limitations

As noted above, this Toolkit provides samples of legal language oriented towards implementing targeted regulatory reforms. The Toolkit itself is not a model law. The examples are aimed at fitting most common SSF management situations, but not all. They have been selected following a comparative law analysis and should not be interpreted as the *only* way of implementing the suggested governance approaches. Consequently, they should not be considered a full SSF management model, and should not be used to evaluate the performance of a current regulatory system. Instead, the methodology and model language in this Toolkit can help identify and fill governance gaps. Most often, the language will be useful for developing governance concepts at the regulation/bylaw level.

This Toolkit is based on a desktop analysis of legal sources, as well as research articles, case study compilations, and other secondary sources. Research was complemented by interviews with representatives of NGOs, governments, and international organizations. Country-specific legal assessments were conducted without site visits, which limits the capacity of understanding the level of actual implementation of some regulatory measures.

In addition, this Toolkit does not constitute a comprehensive overview of the legal implementation of policy approaches in support of sustainable SSF. It focuses only on six specific policy approaches, which constitute a small fraction of the governance instruments to strengthen sustainability in SSF, as suggested by the FAO's SSF Guidelines<sup>5</sup> and other specialized literature. The project team selected these six policies given its relevance in specialized literature focused on community-level fisheries co-management.

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<sup>5</sup> FAO, Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (2015).

In the current ocean governance context, economic development decision-making overlooks SSF. However, SSF have a key economic role to play for hundreds of thousands of coastal and inland rural communities across the globe. A true sustainability framework for SSF fisheries still needs to be developed and implemented. The current challenges affecting the ocean and inland water resources are the result of economic decisions translated into law, and must be countered by an alternative vision of economic development, also translated into law. This is especially relevant for the development of a sustainable blue economy.

## CHAPTER I. DEVELOPING A SPECIFIC LEGAL INFRASTRUCTURE FOR SSF

### Importance of a regulatory framework specific to SSF

The implementation of sustainable SSF management confronts several unique challenges. Most fisheries management decisions have their basis in economic interests and factors. Today's ocean is a reflection of those economic priorities, and the ocean is a living snapshot of coastal countries' decision-making processes. How do these processes take place? Countries have one way of making binding decisions about how to profit from, conserve, and manage natural resources: **lawmaking**.

Law reflects political decisions, such as creating areas of environmental protection, defining acceptable uses of the seas, banning certain types of fishing gear, and imposing fines on those who violate fisheries laws. These political decisions (and omissions) are the main factors defining the use of fishing resources. Sustainability aims to advance social, economic, and environmental goals, and consequently, sustainable SSF law should too. However, in SSF regulation, the environmental and social components are often neglected, while the economic component is significantly skewed towards large, industrial fishing practices.<sup>6</sup>

Lawmakers and legal drafters in the SSF context also face the difficult task of turning science into real policy change. Ocean sciences helped develop concepts like fisheries sustainability and adaptive management, which have been inserted into some legal texts – but without further development on how to translate those concepts into governance institutions and regulatory procedures. Most of current governance reforms have formalized sustainability in statutes and general fisheries laws, but with a few exceptions, sustainability procedures and processes have not yet reached the level of specificity required for detailed fisheries governance regulations.

Many factors help explain these shortcomings. Traditional approaches to fisheries management do not follow (and often conflict with) ecological boundaries. The mismatch is both geographical — marine eco-regions are often divided between many different international, national, regional, local, and Indigenous jurisdictions — and thematic — a fisheries act or regulation is supposed to provide management responses, but in truth fisheries are affected by many governance decisions on activities, both at sea and inland, that are out of the scope of fisheries governance frameworks. Besides, fundamental data on SSF is missing, and most regulations still do not enable and systematize data collection mechanisms. In sum, the SSF sector is an issue especially challenging to manage by following conventional regulatory approaches. As the marine environment in coastal areas keeps degrading, poverty and ecological imbalance both progress. In this sense, law needs to evolve to stand up to the challenge of building an SSF sector that acts as an ecological, economic, and cultural safety net for coastal communities across the world,

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<sup>6</sup> For example, it is estimated that of the 35.4 billion USD in fisheries subsidies provided globally in 2018, just 19% went to the small-scale fishing sector. See, Schuhbauer et al., *The Global Fisheries Subsidies Divide Between Small- and Large-Scale Fisheries*, 7 Front. Mar. Sci. 29 (2020).

allowing SSF fishers to act as stewards of the resources on which they depend. Key to this process is making governments accountable and putting the tools in place to do so, ensuring adequate participation of the regulated communities in managing natural resources and monitoring their sustainable use.

There is generally a lack of understanding among decision-makers about the relevance of fisheries. In law and more generally, there is also a dearth of knowledge on the nature of and activities in the SSF sector globally. Decision-makers familiar with fisheries governance often focus on industrial fishing, which is supposed to have a more direct economic benefit, but overlook the regulation of coastal, small-scale fisheries. Mirroring this approach, most subsidies and economic incentives benefit industrial fisheries.<sup>7</sup>

Sustainable SSF management is essentially a socio-legal issue. Ocean law addresses the stewardship of the elements (subsoil, seabed, water and living beings in the water column, air) that we need to fulfill basic human needs and actions like eating food, transporting goods, sharing data, and feeling secure and certain about the enjoyment of nature by generations to come. Without the identification of adequate and realistic regulatory structures, and the involvement of the communities that depend on the fishing resources, policy reform efforts can fail.

The damaging effects of fisheries policy failure are well known: the regulated community often complains that the policy approach suggested was flawed, that laws do more bad than good, and that laws were inadequate and unnecessary when, in reality, the problem was elsewhere. Maybe the legislator was trying to repeat a failed approach because, absent a standardized process to assess regulatory performance or even capture the relevant regulatory history, she did not have the tools needed to understand the peculiarities of the legal framework. Maybe the legal drafter did not pay adequate attention to the objectives of the policy reform, and instead focused on performing a more-or-less accurate “legal transplant,” copying and pasting text from an international organization’s document or other source. In the process, what could have been a good policy reform ended up “lost in translation.”

SSF governance is complicated further by the fact that the SSF sub-sector is in itself a highly diverse reality. Despite their relevance, SSF have been fundamentally overlooked by environmental and natural resources governance. There is a gap between what we need to achieve and where we are now. An example of the work ahead is the difficulty of developing a legal definition of SSF.

## **Legal definitions of SSF and related concepts**

There is no standard legal definition of “small-scale fisheries” or related concepts across national legal and regulatory frameworks. However, for implementing certain key aspects of SSF governance reform, such as the creation of exclusive rights, privileges, and responsibilities, a clear legal definition of what constitutes SSF is paramount.

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<sup>7</sup> Id.

The FAO, for its part, does not provide a single definition of SSF,<sup>8</sup> opting instead to describe the sector's common characteristics. The FAO's Working Party on SSF in 2004 devoted a full page to defining the subsector, describing it in part "as a dynamic and evolving sector employing labour intensive harvesting, processing and distribution technologies."<sup>9</sup> In 2018, the FAO introduced a matrix to characterize fishing activities, including based on size and motorization of vessel, mechanization and type of fishing gear, on-board refrigeration and storage, crew, fishing unit ownership, time commitment and fishing trip duration, distance from shore, use of catch, and integration into formal economies and management systems.<sup>10</sup> These characteristics focus only on the fishing activity, and not on the pre-and-post harvesting processes and actors. This matrix may help countries to better characterize their SSF sector, but due to the sector's diversity, a global definition of SSF is unlikely. The issue of definition or characterization is further complicated by the application of varied terminology to the small scale sector (small-scale, artisanal, subsistence, aboriginal, coastal, nearshore, municipal) and the large-scale sectors (large-scale, commercial, semi-industrial, industrial).

Of the 26 countries<sup>11</sup> reviewed for this report, only five specifically defined SSF. Those definitions are based on a variety of metrics, from vessel size and power to distance from the coastline. Philippine and Malagasy law use vessel parameters to define SSF. The Philippines, for instance, considers "fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to twenty (20) GT" as small-scale commercial fishing.<sup>12</sup> In Madagascar, "petite pêche" (small fishing) is defined as fishing activity using boats with total engine power of "less than 15 HP, non-motorized craft or walk." Artisanal fishing, the next category in size, uses vessels with engine power "between 15 HP and 50 HP maximum."<sup>13</sup>

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<sup>8</sup> This is acknowledged, for example, in the SSF Guidelines. FAO, Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (2015), at 2.4.

<sup>9</sup> FAO, Increasing the Contribution of Small-Scale Fisheries to Poverty Alleviation and Food Security (2005), at 4. The full definition reads as follows: "Small-scale fisheries can be broadly characterized as a dynamic and evolving sector employing labour intensive harvesting, processing and distribution technologies to exploit marine and inland water fishery resources. The activities of this subsector, conducted fulltime or part-time, or just seasonally, are often targeted on supplying fish and fishery products to local and domestic markets, and for subsistence consumption. Export-oriented production, however, has increased in many small-scale fisheries during the last one to two decades because of greater market integration and globalization. While typically men are engaged in fishing and women in fish processing and marketing, women are also known to engage in near shore harvesting activities and men are known to engage in fish marketing and distribution. Other ancillary activities such as netmaking, boatbuilding, engine repair and maintenance, etc. can provide additional fishery-related employment and income opportunities in marine and inland fishing communities. Small-scale fisheries operate at widely differing organizational levels ranging from self-employed single operators through informal microenterprises to formal sector businesses. This subsector, therefore, is not homogenous within and across countries and regions and attention to this fact is warranted when formulating strategies and policies for enhancing its contribution to food security and poverty alleviation."

<sup>10</sup> Stephanie Savoré, Matrix for the characterization of fishing activities (Food and Agriculture Organization of the United Nations 2018), at 5. See also Simon Funge-Smith, Towards Statistical Definition of Small-Scale Fisheries: A matrix scoring approach to characterization of the scale of fishing units.

<sup>11</sup> Bahamas, Bangladesh, Barbados, Belize, Brazil, Canada, Chile, China, Costa Rica, Ecuador, Fiji, Indonesia, Kenya, Japan, Madagascar, Mexico, New Zealand, Niue, Norway, Philippines, St Lucia, South Africa, South Korea, Spain, United Kingdom, United States.

<sup>12</sup> Philippines Republic Act No. 8550 §4.10.1.

<sup>13</sup> Madagascar LOI n° 2015 – 053, portant Code de la pêche et de l'aquaculture (Law n° 2015 – 053, Code for Fisheries and Aquaculture) Art. 1, General Provisions Definitions.

Costa Rica, in contrast, uses proximity to land as the defining metric, defining fishing undertaken “without the use of a boat, in continental waters or coastal zones, or those practiced on board a vessel with the ability to fish up to three nautical miles in Costa Rican territorial waters” as small-scale.<sup>14</sup> Artisanal fishing, which in Costa Rica’s framing is the next increment in size, uses vessels “with the ability to fish up to five nautical miles of the littoral zone.”<sup>15</sup> Both fall into the broader umbrella of coastal fishing, which is defined as being performed “in the territorial sea up to 5 miles to the sea, perpendicular to the coast.”<sup>16</sup>

In several countries, one term is nested within the definition of another, undercutting their clear delineations in other national legal frameworks. For example, Mozambique defines small-scale fishing as “artisanal fishing and semi-industrial fishing,” without defining what constitutes artisanal or semi-industrial activity.<sup>17</sup> Kenya’s definition of artisanal fisheries includes “small scale traditional fisheries that may be carried out for subsistence or commercial purposes.”<sup>18</sup> The lack of conceptual clarity in SSF laws and regulations presents challenges in ascertaining upon which actors the laws and regulations act.

South Africa combines several factors, including distance from shore, vessel and gear characteristics, and use of catch, in defining SSF. The legal definition sets out four traits of small-scale fishers, namely that they “(a) traditionally operate in near-shore fishing grounds; (b) predominantly employ traditional low technology or passive fishing gear; (c) undertake single day fishing trips; and (d) [are] engaged in consumption, barter or sale of fish or otherwise involved in commercial activity, all within the small-scale fisheries sector.”<sup>19</sup>

The South African definition’s consideration of SSF’s multiple facets and interaction with the onshore economy distinguishes the subsector more completely than other legal definitions. Still, another aspect that is missing from the available definitions of SSF is the close interconnectedness with coastal populations’ economies: SSF communities mostly reinvest the economic benefit of their work in the same regions where they live and work, and in many regions, the outcomes of SSF activities help strengthen other local businesses, such as tourism and small-scale aquaculture.

Given the diversity of SSF realities, generating a standardized legal definition of SSF is not feasible. However, for purposes of assigning sustainable governance benefits and responsibilities, the lawmaker/legal drafter should focus on groups of fisherfolk that, overall, meet a series of common characteristics of SSF, including:<sup>20</sup>

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<sup>14</sup> Costa Rica Ley N° 8436 - Ley de pesca y acuicultura (2005) Art. 2(27)(a).

<sup>15</sup> Costa Rica Ley N° 8436 - Ley de pesca y acuicultura (2005) Art. 2(26).

<sup>16</sup> Costa Rica Decreto No. 36782-MINAET-MAG-MOPT-TUR-SP-S-MTSS, Reglamento de la Ley N° 8436, Ley de pesca y acuicultura (2011) Art. 3.

<sup>17</sup> Mozambique Fisheries Law 22/2013, Glossary.

<sup>18</sup> Kenya Fisheries Management and Development Act, 2016 (No. 35 of 2016), Part I – Preliminary §2.

<sup>19</sup> South Africa Marine Living Resources Amendment Act, 2014: Amendment of section 1 of Act 18 of 1998, §1(a).

<sup>20</sup> Elements summarized from the FAO account of characteristics of the SSF sector (FN1) and specialized literature.



- Labor-intensive harvesting, processing and distribution technologies to exploit marine and inland water fishery resources;
- Fishing conducted by relatively small boats, usually not fit for open water navigation;
- Fishing activities conducted in near-shore fishing grounds;
- Fishing mostly conducted in one or two days;
- Seafood landings mainly oriented to direct human consumption;
- Fishing closely connected to poverty alleviation and/or food and economic security;
- Fishing for subsistence or for commercialization;
- Related jobs and resulting economic benefits mostly stay within the community and are reinvested in the community;
- More direct involvement of women;
- Operators are individuals or associations, which may include formal sector businesses.

Another important consideration is assessing the usefulness of tracing a line between subsistence fishing with a main purpose of food security or poverty alleviation, and other forms of coastal fisheries that encompass small commercial operations. The policymaker must assess which approach makes the most sense according to the country's circumstances, needs, and priorities for regulatory reform. Legal definitions of SSF will be most useful if they fulfill a specific purpose and fit within the broader, already-existing legal context, like a cog of a machine. For example, if the purpose of engaging in SSF regulatory reforms is promoting a sustainable blue economy, the lawmaker may want to ensure that the legal definition of SSF is not too closely related to subsistence, or too limiting of the commercialization of SSF seafood products.

An alternative to creating specific legal definitions of SSF is developing legal guidance on what will *not* be considered SSF, thus enabling a degree of regulatory interpretation while helping trace a dividing line in management between large, offshore, industrialized fishing and other for profit fishing activities.

## **The importance of a legal definition of SSF**

Clarity on the legal definition of SSF is especially relevant because sustainable SSF governance rests in large part on the issuance of preferential rights to SSF communities. SSF-focused law has, as one of its primary objectives, to build a legal space that is unique for SSF communities and provides a set of advantages for them. Consequently, it is important that the laws provide a clear idea of which fisheries can benefit from this regulatory approach.

Although a generally applicable definition of small-scale fishing can be challenging to identify, achieving consensus on an international set of principles of what SSF means for fisheries regulation will help identify avenues for effective implementation of the Guidelines. The ways different jurisdictions define SSF influences key governance issues, including the relevance that SSF are given in the domestic political agenda and the issuance of commerce and tax law incentives to these economic activities.

International recommendations, such as those presented by the SSF Guidelines, will be interpreted in different ways by local legislatures who, when engaging in regulatory implementation of suggested reforms, will naturally follow their own understanding of what SSF are. This can limit the clarity of the legal framework and, overall, frustrate efforts towards SSF governance reform. For example, legislation that limits SSF to near-shore artisanal, subsistence, and/or Indigenous fishing will label all other activities as non-small scale. Small commercial enterprises that are locally based, provide local jobs, and reinvest income in local communities will receive the same legal treatment as corporate industrial fishing, despite the fact that these are clearly two very different kinds of natural resource exploitation activities.

An interesting example is the Philippines Fisheries Act, which specifically defines “small-scale commercial fishing,” thus creating a legal concept for describing commercial harvesting activities that are not focused on subsistence but are not large-scale industrial fishing either. The South African legal framework described above is another relevant effort, because it lists a series of specific characteristics such as types of fishing gear and single-day fishing trips. Still, the Philippine and South African examples do not include in their legal definitions two key characteristics of often relevant for the SSF sector: the end use of economic benefits and the role of women. The prime justification for the issuance of preferential fishing rights and other preferential governance elements for SSF actors is to make sure that the fishing activity contributes to the sustainable development of coastal communities at large, and not only to fishers and their families.

The fundamental role of SSF law in the process of implementing the SSF Guidelines is to create a legal space that is unique for SSF communities and provides a set of advantages for them within a clear, long-term framework of sustainable use. Known benefits that the SSF Guidelines promote include the ban of industrial fishing in certain near-shore sea areas, the granting of rights of exclusive use of natural resources belonging to the nation, and the privilege of actively participating in management decisions along with government representatives. If SSF governance is going to provide those privileges to SSF communities, it should convey a clear idea of what SSF communities are and are not.

From a legal definition standpoint, SSF should have the elements of sustainable development (e.g., local redistribution of wealth to provide economic certainty, transparency, well-defined governance structure for legal certainty, environmentally responsible management, equitable gender involvement and participation in management) embedded in them. In seeking to promote the sustainable development of coastal communities, legislators may introduce instruments like co-management mechanisms and exclusive fishing rights. When the time comes to analyze applications for those benefits and approve concessions and other fishing rights, the managers and government fisheries agency officers will turn to the definitions of SSF to make sure an applicant complies with the legal requirements. Clarity in the definition of SSF will help avoid undesired outcomes of policy reform. In a context of changing circumstances and political agendas, the existence of clear legal protections that involve community participation is a key factor to long-term, sustainable fisheries management.

Lastly, advancement of legal development in SSF governance is fundamental because this is an issue for which policy development is still at a very early stage. Despite the fact that many countries formally recognize the significant role SSF have for economic, human, environmental, and sociocultural development, in practice national policies and

legal frameworks are still heavily skewed toward the management of large-scale, industrial fishing. Even in fisheries-dependent developing countries, fishing access agreements and consortiums with long-distance fishing fleets still capture much of the attention of policymakers.

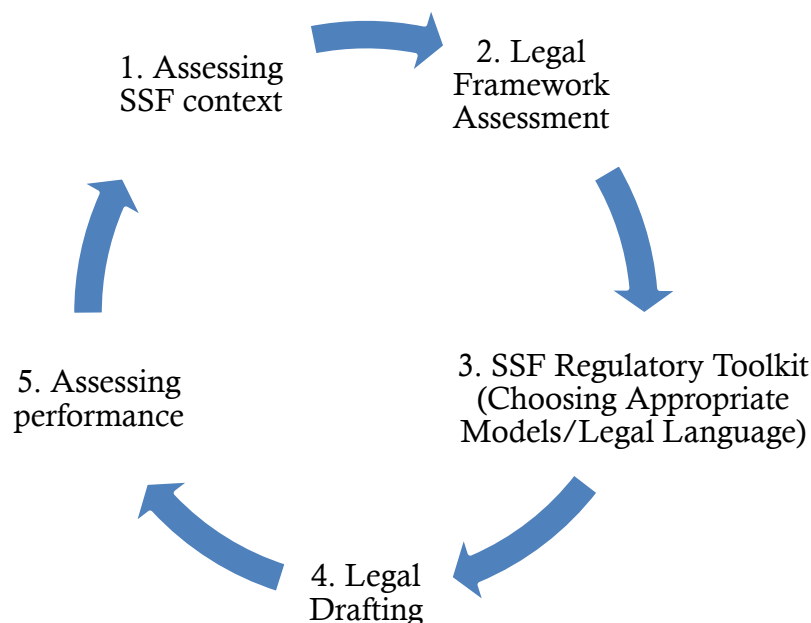
The complex reality of SSF demands a specific, distinct implementation focus, one that helps highlight the specific circumstances and needs of fisheries-dependent coastal communities. A regulatory process for SSF must strengthen the governance channels that enable stakeholder engagement, help insert stakeholder input in the regulatory decision-making cycle, and galvanize community participation in governance. This Toolkit summarizes this specific approach in the form of a proposed SSF Legal Drafting Cycle.

## CHAPTER II. THE SSF LEGAL DRAFTING CYCLE

As an overarching principle, this Toolkit should be used to complement a continuous process of regulatory innovation and improvement. A basic premise of the Toolkit is that regulations for sustainable SSF governance policies must enable the introduction of all the basic elements each of those policies needs to succeed.

For example, the specialized literature explains that fisheries co-management needs to be based on four pillars: 1. Enabling policy/law, 2. Empowering communities, 3. Linkages and institutions, and 4. Human and financial resources.<sup>21</sup> **In reality, the first pillar encompasses the other three. Laws for co-management must not only clarify procedures for permits and administrative approvals, but also include requirements that empower local actors, define co-management institutions, and implement financing instruments that galvanize sustainable governance.**

### Steps for effective SSF regulatory reform: When and how to use the Toolkit



*Figure 1. Steps for effective SSF regulatory reform*

<sup>21</sup> Brown, D., Staples, D., & Funge-Smith, S. (2005, 9-12 August). Mainstreaming fisheries co-management in the Asia-Pacific. Paper presented at the APFIC Regional Workshop on Mainstreaming Fisheries Co-management in Asia-Pacific, Siem Reap, Cambodia.

**Step One. Assessing SSF context.**

**Step Two. Conducting a country-specific Legal Framework Assessment (LFA).**

**Step Three. Using the SSF Regulatory Toolkit (this document).**

**Step Four. Drafting adequate regulatory reforms.**

**Step Five. Assessing regulatory performance and correcting mistakes.**

## Example: How to use the Toolkit

The following paragraphs provide an example of how to follow the steps of the regulatory reform process and use the different types of legal provisions described in this Toolkit. Following the steps is relevant to understanding whether introducing a legal reform is necessary, and when to use the model legal language presented in this document.

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### STEP ONE: Assessing the context of the SSF Sector

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**A. Initial assessment:** The policymaker and legal drafter should start by conducting an initial assessment of the status of SSF governance in the country. The main objective of this process is to understand the reality and identify the governance challenges from the perspective of the regulator and the users (SSF communities). Some key activities that might be conducted in this step include:

- Connecting with main stakeholders (fish workers, fisherfolk associations, government agents, researchers and academics, NGO experts) through calls, meetings, interviews, open forums and/or other ways of public participation.
- Gathering SSF-specific data (estimated number of registered fishers/fishing vessels, number of coastal communities, key economic data, gender balance<sup>22</sup> in the targeted fishery).
- Identifying and compiling the governance gaps through an analysis of existing literature and cooperation with the main stakeholders.
- Identification of potential policy responses to the main challenges using the same range of sources. Requests for ideas and proposals for community-led solutions to solve the governance gaps.

**B. Identification of main governance challenges:** The activities described above will lead to a list of SSF governance problems. These may include, for example, illegal and/or unregulated fishing activities; confusion between legal and illegal actors, and regulated versus informal actors; unsustainable fishing practices in near-shore areas; lack of trust on the side of fishers with respect to the actions of government agents; and a generalized lack of compliance with the regulatory framework due to lack of clarity, or because fishers believe their needs and opinions are not been taken into account when drafting and implementing fisheries management rules.

**C. Suggested policy responses:** In parallel to the identification of governance challenges, the literature review and stakeholder engagement will also produce a list of suggested

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<sup>22</sup> Gender-disaggregated data is often unavailable, but estimating the representation of women in various roles in the SSF sector is crucial for sound policy development.

solutions, a “landscape” of big-picture policy reform concepts that policymakers can identify and prioritize. This Toolkit provides a summary of some of the most common SSF policy approaches, based on a general review of specialized literature and the SSF Guidelines, but each legal drafter or policymaker should aim to identify the solutions most adequate to the SSF “reality” she is encountering. In this process, it is fundamental to ensure that proposed solutions include the perspective of local experts, local communities, and traditional or customary/Indigenous knowledge.

In this example, the drafter may select implementing SSF *co-management* as the desired solution. As explained in the Toolkit’s Part 3 on participatory management and co-management, some expected benefits of co-management schemes are:

- Bringing management closer to home
- Tailoring management to the appropriate scale
- Enabling stakeholder empowerment
- Increasing buy-in of fisheries management rules
- Improving compliance and rule-of-law

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## STEP TWO: Conducting a country-specific legal framework assessment

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**D. Legal assessment of the SSF sector:** What does the current legal framework look like? Are there any references to the proposed solution (co-management) in legal and regulatory sources?

Following the same example, the country’s Fisheries Act might have included provisions on participatory fisheries governance with broad legal language like this:

FISHERIES ACT, ARTICLE XXX.

The [Fisheries] Secretary will promote the creation of Fishing Councils [...]. The Secretary may request the Fishing Council’s [...] opinions and technical observations regarding issuance of permits and rights for use of fishing and aquaculture resources.

**E. Analyze and plan a response:** How does the current legal language enable the fulfillment of the expected benefits of co-management? Is the current legal language responsive to the list of SSF challenges identified? How can the legal framework provide more detailed guidance for the fulfillment of those benefits in the context of *my* country/region/jurisdiction?

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## STEP THREE: Using the SSF Regulatory Toolkit (this document)

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**F. Research potential examples by using the SSF Law Toolkit and other legal sources:** Identify the model language that best fits the reality of SSF governance in each case (what does *my* fishery look like?). Consider these two examples:

Option A)

In a context of many small, highly dispersed fishing communities along the coast, specialized in capturing a few species, with low levels of population and low enforcement capacity, it might make sense to explore options for the creation of area-specific co-management agreements between the government and co-management entities (local governments, fishing cooperatives, etc.).

Example of model legal text:

“(1) The [Fisheries] Secretary may [...] enter into a co-management agreement and delegate in the manner provided in subsection (2), co-management responsibility in whole or in part, with a locally registered non-governmental organization, local community or other [party[] for any area to which this Act applies; however, the co-manager shall –

a) have capacity to co-manage [...]

b) implement the management plan that exists for the fishery or area;

[other requirements, as necessary]

(2) The Minister may delegate co-management responsibility under subsection (1), by the execution of **a legally-binding agreement that details the duration, terms and conditions for the co-management of the fishery or area** between the Government and the body to whom the delegation of management responsibility is intended.”<sup>23</sup>

The example above, based on the 2020 Belize Fisheries Resources Act, presents only one possible approach to refining the procedural requirements for stakeholder engagement. The reform could be reinforced further by, for example, describing in detail the required characteristics to be considered as an institution with “capacity to co-manage,” including, for example, the possibility of giving certain groups, such as fisheries cooperatives, the capacity to fulfill a set of requirements to self-identify as institutions having such capacity.

E.g.

the fishing association/cooperative must represent at least 60 percent of registered fisherfolk in the municipality.

The reform can also include a template of the co-management agreements to ensure that all co-managers are governed by the same principles, entitled to the same rights, and bound by the same obligations.

<sup>23</sup> Adapted in part from § 13, Belize Fisheries Resources Act 2020.

Option B)

In the context of larger fishing populations with diversified target species and potential conflicts of ocean space use with other users, it might be desirable to focus on broader, fishery-wide co-management models.

Example of model legal text:

ARTICLE XXX. Fisheries Co-management Committees

Co-management Committees are the collegiate bodies responsible for the drafting of the management plan, and once said management plan has been approved by resolution by the [Secretary] responsible for fishing, they are also responsible for its application and monitoring and the adaptive readjustment of the governance measures contained within it. [...]

The [decree/government resolution] that starts the procedure for the approval of the management plan shall appoint the members of the Co-management Committee from among the public and private entities that belong to the following areas [...]:

- a) The fishing sector [...].
- b) Fishers' guilds and federations [...].
- c) The scientific community.
- d) Entities linked to the protection of the environment.

Each entity shall appoint their own representatives. The [government entity] for professional fishing is the fifth area represented in the Co-management Committee. The [government entity] will have a maximum of two representatives in the Co-management Committee [...]."<sup>24</sup>

Both approaches are of course compatible: a legal framework may enable collaborative design of fisheries management plans for whole fisheries and also create specific co-management zones with exclusive fishing rights assigned to specific institutions, such as fishing cooperatives.

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#### STEP FOUR. Drafting adequate regulatory reforms

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**G. Drafting the desired regulatory reform:** Engage in several rounds of drafting; get input from colleagues, stakeholders, and the regulated community (meaningful consultation with the SSF communities is critical to ensure that all the key elements are considered during drafting). Take from the SSF Toolkit only what works (avoid “bulk” copying-and-pasting). Be as clear and detailed as possible when describing processes.

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<sup>24</sup> Adapted in part from Decree 118/2018 on the governance model for professional fishing in Catalonia, Article 11.



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## STEP FIVE. Assessing regulatory performance and correcting mistakes

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**H. Recalibrating governance (back to Step 1):** Once the reform has been passed, the last step of the cycle concerns assessing the regulatory implementation again, to ensure the reform is contributing to meeting the desired objectives and updating the regulator’s knowledge about the circumstances and challenges of the SSF sector. This step “closes the circle” (Step 1, Listening and Understanding) and allows for the continuous monitoring of sustainable SSF implementation. Implementing assessment methodologies can help strengthen further the SSF management structure.<sup>25</sup>

### Step One. Assessing the reality of the SSF sector

An initial assessment of needs must first and foremost involve hearing the voices of the coastal communities whose fishing activities the new policy aims to govern. Lack of adequate community involvement on one side, and lack of trust in the government’s actions on the other, are the two main drivers of fisheries policy failure. While cooperation with governments, NGOs, and parliamentarians is paramount for successfully passing a fisheries legal reform, securing adequate input from local communities is the most effective way of ensuring those regulatory reforms are implemented and complied with. Stakeholder input must be adequately captured.

*The process must begin with a preliminary understanding of the SSF sector in the country. SSF are a concept that encompasses many different realities. Good SSF governance will only stem from a comprehensive understanding of the characteristics of the near-shore fishing sector in each country. A few questions include: Is the SSF sector mostly artisanal? Are there Indigenous communities that depend on the fishing activity? Is fishing organized around cooperatives or other users’ associations? Is fishing mostly conducted by using motorized boats? What is the status of the pre-and-post harvesting sectors?*

*NOTE: In gathering this information, it is crucial to engage with stakeholders and to partner with fisheries-focused organizations. The legal drafter can quickly learn about the conditions and needs of the SSF communities by directly engaging with SSF associations, local governments, NGOs, and specialized research centers.*

SSF are an extraordinarily diverse economic sector. Therefore, regulatory response and interpretation will also greatly vary depending on the context and key features of the sector in any given country. In this Toolkit, the reader will find menus of options of model legal text that aim to cover a varied array of contexts and priorities.<sup>26</sup> Implementing a methodology for capturing stakeholder input is key for developing a meaningful

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<sup>25</sup> The FAO is currently developing (as of September 2020) a methodology for assessing the effectiveness of fisheries co-management mechanisms.

<sup>26</sup> For example, when working with cooperatives and fisheries associations to develop fisheries management mechanisms, ELI and its partners follow a collaborative decision-making methodology of continuous engagement with the regulated community, assisted by the use of geospatial analysis and computer modeling. For further reference, see Bojorquez-Tapia et al., *A continual engagement framework to tackle wicked problems: Curtailing loggerhead sea turtle fishing bycatch in Gulf of Ulloa, Mexico*, 12 *Sustain. Sci.* 535–548 (2017). This methodology is currently implemented as part of the ELI project “Enabling sustainable small-scale fisheries in Yucatan and Quintana Roo to thrive through innovative ocean governance.”

framework for adaptive regulatory management: a well-structured information-gathering methodology, once in place, can be periodically used to ensure the decision-making process reflects an adequate balance between local needs and government priorities.

**A. Initial assessment:** The policymaker and/or legal drafter should start by conducting an initial assessment of the status of SSF governance in the country. The main objective of this process is to understand the reality and identify the governance challenges from the perspective of the regulator and the users (SSF communities). Some key activities that might be conducted in this step include:

- Connecting with main stakeholders (fish workers; fisherfolk associations, government agents, researchers and academics, NGOs) through calls, meetings, interviews, open forums and/or other ways of public participation, making sure to engage with groups that represent women who often operate in the processing and trading components of the sector.
- Gathering SSF-specific data (number of registered fishers/fishing vessels, number of coastal communities, key economic data, gender balance in the targeted fishery).
- Identifying and compiling the governance gaps through an analysis of existing fisheries governance literature and cooperation with the main stakeholders.
- Identification of potential policy responses to the main challenges using the same range of sources. Request ideas and proposals for community-led solutions to solve the governance gaps.

**B. Identification of main governance challenges:** The activities described above will lead to a list of SSF governance problems. These may include, for example, illegal and/or unregulated fishing activities (often by larger domestic commercial vessels or incursions by foreign fleets); confusion between legal and illegal actors, and regulated versus informal actors; unsustainable fishing practices in near-shore areas, lack of trust on the side of fishers with respect to the actions of government agents; and a generalized lack of compliance with the regulatory framework due to lack of clarity, or because fishers believe their needs and opinions are not been taken into account when drafting and implementing fisheries management rules.

**C. Suggested policy responses:** In parallel with the identification of governance challenges, the literature review and stakeholder engagement will also produce a list of suggested solutions. This Toolkit provides a summary of some of the most common approaches, based on a general review of specialized literature and the SSF Guidelines, but each legal drafter or policymaker should aim to identify the solutions most adequate to the SSF “reality” he or she is encountering. In this process, it is fundamental to ensure that proposed solutions include the perspective of local experts, local communities, and traditional or customary/Indigenous knowledge.

## Step Two. Conducting a detailed legal framework assessment

ELI's methodology for LFA involves a comprehensive overview of laws, policies and institutions that are most relevant for any given natural resources management issue, in this case, SSF governance. The assessment includes summaries of key statutes, regulations, and case law (in cases when particularly relevant). The assessment builds on both laws and policies "on-the-books" and realities on the ground/practice. Understanding how laws, policies, and institutions operate in practice includes talking with government officials and other experts.

### ELI's Legal Framework Assessment

Legal framework assessment begins with in-depth consultation with policymakers and other key stakeholders about policy goals. These meetings are intended to help legal analysts understand what the policymaker hopes to accomplish and understand key issues of concern and known limitations and barriers that may present challenges. With an initial understanding of the scope and needs for the legal assessment, the legal team identifies sources and obtains copies of existing law, which may be online, or require a trip to the local law library or collaboration with legal departments.

A comprehensive legal review follows, during which the legal team works to understand how laws work together and drafts a report describing the law for each sector, as well as initial thoughts on policy options for achieving project goals.

The LFA focus areas often include an analysis of the legal framework (formal and customary) for:

- fishing;
- protected areas;
- planning and land use;
- capture fishery/aquaculture interactions;
- Local and regional governance institutions/frameworks;
- cooperatives and professional associations;
- relevant tax code provisions/incentives;
- navigation;
- water pollution control;
- mangrove/wetland/seagrass protection;
- waste management/pollution;
- safety at sea;
- wildlife;
- trade; and
- tourism.

The LFA is a necessary step to any policy reform process, providing a basis for identification of policy options and recommendations. LFA can highlight where important existing laws have been enacted, but not implemented, and identify opportunities to use these laws more effectively. Alternatively, it can identify where new legislation is needed and provide important context, so that such legislation builds on and operates effectively within existing governance system. In addition to providing a snapshot of the legal framework for fisheries management, LFAs should also provide an understanding of the country's regulatory history.

**Below is a list of key inquiries that should be addressed during the Legal Framework Assessment for each country that aims to create or revise its SSF laws:**

Basic legislative considerations: understanding the regulatory landscape before engaging in drafting.

A) Initial considerations to identify relevant fisheries management authorities and definitions (these inquiries are important regardless of the type of provisions – area-based rights, co-management, etc. – the legal drafter seeks to create for SSF)

- Who has the authority: which agency has the authority to manage coastal fisheries in general and SSF in particular, and whether management is done at the national and/or local level (this will help identify most relevant legal authorities, such as laws, regulations, orders, etc.)
- Relevant legal instruments: legal authorities that address coastal fisheries generally and small-scale fishing in particular (it's good to keep in mind that a country may not yet have any legal provisions for small-scale fishing specifically, but may want to introduce such provisions, and for that it will need to understand its regulatory framework related to coastal fisheries)
- SSF definition: whether small-scale, artisanal, subsistence, industrial, commercial, or non-commercial fishing is defined in the country's laws (if there is no definition of SSF, a country should keep existing related definitions in mind, as well as the list of factors relevant to SSF contained in this Toolkit on pages 11-12, as it defines SSF for itself).

B) Considerations particularly relevant to fishing rights, area-based regulation of fishing activities, and co-management<sup>27</sup>

*Ownership of ocean/coastal space*

- Whether the country's constitution or other laws state that fishery resources belong to all the people of the country / are held in trust by the government / or that only the government can manage fisheries (this would preclude creation of zones where only certain groups can fish and would also prevent private citizens or groups from managing fisheries)
  - o Even if there is a constitutional provision determining public trust (public ownership), is there a mechanism for issuing rights that provides long-term legal certainty to individuals? E.g., a series of regulatory provisions, or an MoU or other type of provisions that specify the conditions to maintain ownership or exclusive use rights for a period of time. Are there any time limits on the distribution of exclusive rights (e.g. 20-year, renewable fishing concessions)?
- Who has authority to issue/modify ocean ownership rights, and what relevant legal provisions are there?

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<sup>27</sup> The results of these related inquiries will help the drafter apply drafting recommendations suggested in Parts 1, 2, and 3 of Step Three of this Toolkit.

- In cases where there are provisions granting ownership rights, how are boundaries defined (especially in cases where there are legal provisions granting community ownership of mangroves/wetlands)? What is the procedure for integrating ownership of coastal and marine areas and resources?

*Rights to use ocean resources*

- Whether there are legal authorities that address fishing permits and licensing, and whether there are any restrictions on the types of gear, types of vessels, total amount of fish to be caught (total allowable catch) or the amount an individual vessel or fisherman may catch (quota), location, who can fish, etc. (this will help determine whether there are already provisions related to SSF even though the term SSF is not used – and might help develop the definition for SSF)
  - If there are limitations on total catch in the SSF context, whether allocations are made based on scientific evidence and/or with community input or participation.
- Whether there are legal authorities to issue other types of ocean use rights (such as aquaculture, recreational fishing, tourism, carbon credits) in fishing areas (information about whether the government has authority to grant these types of rights and where such rights are granted would help the drafter consider whether to create zones for exclusive use of SSF).
- Whether there are legal authorities enabling the creation of exclusive zones for SSF, and if such zones have already been created (if the term SSF is not used, there might still be zones that only allow fishing of certain types of vessels, vessel ownership, types of gear, etc. that the country might consider would qualify as SSF).
  - If management zones can be created or have been designated in the context of SSF, whether they account for adaptation to climate change and/or fish movement.
- Whether there are any other legal provisions that separate where large/industrial and small/non-industrial/SSF vessels can fish; these may not create exclusive zones for SSF per se, but might be a starting point for that. (Please note that there are many ways to separate industrial fishing from SSF. For example, a legal provision can require operating remote positioning devices on all vessels, setting coordinates associated to fishing permit/activity, thus excluding any industrial activities beyond the permit areas, and setting automatic fines to anyone who fishes outside the designated zones.)
- Whether there are legal authorities that address creation of fishing concessions, which provide specific entities or groups of people an exclusive right to fish in a designated fishing zone (depending on the legal language, these provisions might be used to create exclusive zones for SSF).
- Whether there are legal authorities that address customary fishing rights, exclusive fishing rights/tenure rights, and/or Indigenous fishing rights (please note that there might be practices in place that are not codified, but should still be kept in mind, may be enjoying high levels of compliance, and may serve as regulatory models).

*Co-management*

- Whether the agency that manages coastal fisheries and SSF has the authority to enter co-management agreements (can these be entered at the national or local level; with whom; if with certain entities, such as cooperatives, are there requirements on who can be part of the cooperative, how often they have meetings, etc.; note that if there is only a general authority for entering co-management agreements, a standardized, detailed procedure may need to be created to streamline the process).
  - Whether there are any co-management agreements already created in the SSF or fisheries context (existing agreements might describe duties, rights, and other aspects of co-management that help understand the co-management context, including, e.g. Indigenous user treaties).
  - Whether there are legal authorities that address the creation of professional associations (such as fishing cooperatives and associations of producers), paying special attention to the role and competences of those institutions, including whether they can make management decisions, whether they are considered public entities under domestic law, and whether they require putting a fraction of the benefits to purposes of social/environmental protection.
    - Whether the country has a law of social enterprises, and whether fishing associations are considered social enterprises.
- Whether there are legal mechanisms other than co-management agreements that allow fishing communities, including fishing cooperatives, to participate in the management of fisheries.
- Whether the legal authorities setting forth participation mechanisms describe how the fishing community can have a meaningful impact on decision-making, including how exactly community members can participate, how their opinions and feedback are included, how often meetings are held, how voting occurs, and how minority votes and interests (including the interests of women) are protected.
  - Whether there are dispute resolution procedures in place that grant SSF stakeholders access to justice.
- Whether there are legal provisions that create social protection schemes to support members of the SSF community that are especially in need.

C) Considerations particularly relevant to effective monitoring and enforcement<sup>28</sup>

- Whether there are legal authorities setting forth monitoring and enforcement requirements that would apply to coastal fisheries and SSF, particularly analyzing whether existing mechanisms are sufficient for successful monitoring and enforcement in SSF or whether additional mechanisms should be created (noting here usefulness of participatory mechanisms).
- Whether there are specific legal provisions that address monitoring and enforcement in co-managed SSF.

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<sup>28</sup> The results of these inquiries will help the drafter apply drafting recommendations suggested in Part 4 of Step Three of this Toolkit.

D) Considerations particularly relevant to creation of measures that would promote sustainability of SSF<sup>29</sup>

- Whether there are legal mechanisms in the law that specifically address the long-term sustainable use of natural resources in spatially defined areas. Analyze whether those legal mechanisms are already being implemented for SSF management, whether they are being used in other sectors (such as forestry and mining), or whether the instrument is in the legal framework, but has not yet been implemented in practice. The legal language used in those instruments (especially those that guarantee collective land rights/ownership) might be useful in the fisheries context.
- Whether there are any legal authorities that enable the creation of no-fishing zones in coastal or SSF areas, and whether any such zones have already been created.
- Whether there are any legal authorities that enable the creation of MPAs and are specific to coastal or SSF areas (this will require an analysis of the definitions, procedures for the creation of MPAs, and the different types of protected areas under the law), whether any such zones have already been created, and what types of uses are authorized within those MPAs (whether small-scale fishing is allowed).

E) Considerations particularly relevant to marine spatial planning (MSP)<sup>30</sup>

- Whether a country has legal instruments addressing MSP, and whether the MSP legislation identifies SSF as a permitted use/activity (important to consider whether SSF is addressed separately from other types of fishing, such as industrial fishing).
  - o If small-scale fishing is mentioned as a permitted activity in any zones of the marine spatial plan, whether other activities allowed in those zones are compatible with SSF (for example, aquaculture activities, low impact recreational fishing, and activities generally allowed in areas of increased environmental protection are compatible with SSF, while industrial fishing and high impact activities, such as seabed mining or large scale tourism infrastructure, should be separated from SSF).
- Whether principles, objectives and/or criteria for the development of a marine spatial plan contained in the MSP legislation articulate the importance of SSF to communities who rely on it for their livelihoods, describe support for SSF, and instruct protection of SSF from other activities that might be damaging to SSF.
- Whether the MSP legislation states that the governmental body responsible for SSF is involved in the MSP process, including creation and amendment of the marine spatial plan.
- Whether representatives of the SSF community are included in the body (e.g., advisory committee) that is involved in MSP process, including creation and amendment of a marine spatial plan.

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<sup>29</sup> The results of these inquiries will help the drafter apply drafting recommendations suggested in Part 5 of Step Three of this Toolkit.

<sup>30</sup> The results of these inquiries will help the drafter apply drafting recommendations suggested in Part 6 of Step Three of this Toolkit.

- Whether the MSP process allows for SSF stakeholder participation, and if so, how (it's important that the MSP process recognizes industrial fishing and SSF as two separate stakeholders and takes into account that SSF communities will be more affected by MSP decision-making, as they operate near the coast, where the uses and potential conflicts are more varied and frequent. Fishing activities require access to land such as fish-landing areas and near-shore processing facilities).
- Whether MSP provisions include a dispute resolution process, allowing for members of the SSF community to address their conflicts.
- Whether there are procedures in place to routinely reevaluate and adapt marine spatial plans to address climate change and other impacts on fisheries (this is particularly important for SSF, as fish migrate due to climate change, and zones of the marine spatial plan may need to be adjusted).

In addition to the specific issues described above, many other elements of a country's legal framework can influence fisheries governance, even though they may not be formally part of a fisheries or ocean management statute. These elements and the ability of the country's regulatory landscape to confront key threats to the long-term sustainability of small-scale fishing communities should be analyzed at the end of the LFA, after which a roadmap of necessary governance reforms can be created. The list of topics indirectly affecting fisheries governance is broad, but some common elements to assess include:

- Regulation of coastal and land-based sources of pollution, including massive tourism, mining operations, and agricultural runoff.
- Climate change impacts, such as acidification, ocean warming, and changes in migratory patterns of species.
- Competition from large-scale fishing fleets and investors, including the leasing of fishing rights to distant water foreign fleets and subsidies that disproportionately promote domestic industrial fisheries.
- Seafood market regulations that overlook small actors and benefit a few well-established stakeholders.
- Lack of adequate social policies, especially those oriented to providing job opportunities to the youth, protecting the rights of women, and combating forced migration to and from fisheries-dependent communities.

All the topics described above often present outdated, underdeveloped, or conflicting legal frameworks and management policies that negatively impact SSF sustainability. These areas demand their own regulatory development, but are beyond the scope of this Toolkit.<sup>31</sup>

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<sup>31</sup> For more information on gender-equitable fisheries, see, e.g., FAO Handbook, "[Towards gender-equitable small scale fisheries governance and development](#)."



## Step Three. Using the SSF Regulatory Toolkit

The creation of exclusive fishing rights ([Part 1](#) of this Toolkit) will not appropriately function without being integrated in a fisheries management scheme that combines marine tenure with the establishment and enforcement of exclusive zones for near-shore fishing ([Part 2](#) of this Toolkit), and with the devolution of fisheries management authority to local communities in the form of co-management mechanisms ([Part 3](#) of this Toolkit).

While the regulatory reforms included in Parts 4 through 6 of this document could be considered independently, they also introduce key elements in support of the legal implementation of marine tenure rights. Parts 1 through 3 should be considered as the three core facets of the legal and institutional implementation of marine tenure in SSF.

### PART 1. IMPLEMENTING TENURE RIGHTS FOR SMALL-SCALE FISHING

#### *Objective and Explanation*

As explained in the introduction, the SSF sector has unique importance in strengthening economic and food security, promoting conservation of key natural habitats, species, and resources and, broadly speaking, in the implementation of sustainable development. Small-scale fishing communities are often underrepresented, poor, and vulnerable. Although they are highly dependent on the use of maritime spaces, they rarely receive any kind of legal guarantee of the use of those maritime spaces or resources, a situation that puts these communities at a disadvantage with respect to competition on the use of the sea and adjacent shoreline by other sectors, such as industrial fishing, mining, tourism or aquaculture.

Some countries have attempted to respond to this challenge by enabling the creation of marine tenure: specific legal instruments that guarantee exclusive or preferential legal rights over some fishing resources to specific groups of small-scale fishers.<sup>32</sup>

Broadly speaking, the legal recognition of exclusive fishing rights can generally follow three main implementation avenues:

- a) Constitutional recognition of exclusive rights, as an exception to the general rule of “common trust” of a country’s natural resources;
- b) Supporting or codifying previously existing, customary rights; or
- c) Creating a new exclusive rights system based on the implementation of sustainable development policy approaches.

The best approach will depend on the specific circumstances of each country. As a general rule, the lawmaker must first make sure any constitutional issues are addressed.

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<sup>32</sup> “Natural resource tenure [...] establishes a set of rights and responsibilities as to who is allowed to use which resources, in what way, for how long, and under what conditions, as well as who is entitled to transfer rights to others and how.” USAID Marine tenure Sourcebook 2017, at ii.

Additionally, to facilitate compliance, the lawmaker should focus on codifying existing informal rights and governance structures, before creating *ex novo* ones.

### *Rationale*

Marine tenure rights raise the economic and legal certainty of coastal communities by ensuring these communities have a preferential or exclusive right to fishing resources that they can exercise and impose on others.<sup>33</sup>

Coastal communities that obtain legal security on their rights to use fishing resources (either for certain species, or in a given geographical zone) develop a stronger sense of duty to sustainably use that resource and ensure compliance with the fisheries governance framework.<sup>34</sup>

This Toolkit focuses on the creation of area-based exclusive fishing rights, such as fishing concessions and Territorial Use Rights for Fisheries (TURFs), given their close connection to the implementation of other area-based SSF management measures that constitute the main focus of this document. Although the last example in this Part offers language on how to ensure SSF communities' participation in the distribution of catch shares, the development of more detailed guidelines on the regulatory design of catch shares should be a matter of additional research.

### *Relevant Model Provisions*

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#### **Constitutional recognition of exclusive rights**

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In some countries, exclusive fishing rights are protected by the countries' constitutions.

#### **Draft Provision XXX. Marine tenure**

The State shall protect the rights of fisherfolk, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fisherfolk through the issuance of exclusive fishing rights as well as appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishers against foreign intrusion. Fish workers shall receive a just share from their labor in the utilization of marine and fishing resources.<sup>35</sup>

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<sup>33</sup> This concept is likely familiar to those who have dealt with land tenure issues for small holders in agriculture and forestry. The [FAO Voluntary Guidelines on the Responsible Governance of Tenure](#) offer additional background for all three: agriculture, forestry and fisheries.

<sup>34</sup> To learn more about how this process works in practice, see, for example USAID, *Marine Tenure and Small-Scale Fisheries: Learning from the Indonesia Experience* (2017).

<sup>35</sup> Philippines Constitution

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## Supporting and codifying customary fishing rights<sup>36</sup>

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### **Draft Provision XXX. Establishing a definition of fishing concession/tenure right**

Concession: The [marine tenure right] that [Fisheries Agency/Commission] grants, to [cooperatives/ fishers associations]<sup>37</sup> to carry out commercial fishing of aquatic flora and fauna resources in waters under national jurisdiction, as well as for aquaculture, during a time period determined by technological, economic, and social studies submitted by the applicant.

The granting of the concessions is subject to the public interest and the availability of the nation's fishing resources. The [Fisheries Agency/Commission] will base its decisions on criteria of social equity and scientific information available about the fishing resource.

### **Draft Provision XXX. Protection of [native/traditional/customary] fishing rights**

- (1) Notwithstanding anything contained in the [Fisheries Act and regulations], it shall be an offense for any person to take fish on any [reef/marine area] with respect to which the rights of any [traditional/customary/Indigenous] community have been registered by the [Fisheries Authority Officer/ Customary Fishing Rights Commission].

It is useful to establish the procedures and entities responsible for determining and registering existing customary rights. Related provisions are provided below.

### **Draft Provision XXX. [Fisheries Authority Customary Fishing Rights Officer/ Customary Fishing Rights Commission]**

- (1) The [Fisheries Minister/Commissioner] may appoint a [Fisheries Authority Customary Fishing Rights Officer/ Customary Fishing Rights Commission], consisting of one or more commissioners, each of whom shall have the powers of the [Commission/Officer], who shall be charged with the duty of ascertaining what customary fishing rights in each [country area/region] are the rightful property of native owners and registering those rights with the [designated authority].

### **Draft Provision XXX. Inquiry by Commission/Officer**

- (1) The [Commission/Officer] shall institute inquiries into the title of all customary fishing rights claimed by [localities/communities] or other groups of people, and shall record in writing the boundaries and situation of such rights together with the names of the respective communities claiming to be owners thereof.
- (2) The [Commission/Officer] shall, with the approval of the [Minister] make rules for regulating the procedure to be followed and prescribe forms to be adopted in any such inquiry.

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<sup>36</sup> Adapted from Fiji Fisheries Act, 13-20.

<sup>37</sup> The Mexican law (and a few others) enable both physical or legal entities (including individuals and corporations) to request a concession. We would suggest limiting the capacity to request fishing concessions only to associations of fishers that meet certain requirements re organizational structure, internal management rules, transparency measures. For details on the characteristics of associations entitled to request fishing concessions, see Part 3 [on co-management](#).

**Draft Provision XXX. Announcement of decision**

- (1) On the conclusion of the proceedings recording the ownership of any customary fishing rights the [Commission/Officer] shall announce its decision to the parties concerned.

**Draft Provision XXX. Appeal**

- (1) There is hereby constituted an Appeals Tribunal consisting of a chairman and two other members all to be appointed by the [Fisheries Minister/Commissioner]. It shall be the duty of the Appeals Tribunal to hear and determine appeals from decisions of the [Commission/Officer], and any such determination by the Appeals Tribunal shall be final.
- (2) Any person aggrieved by any such decision of the [Commission/Officer] shall within ninety days of the announcement thereof give notice of his desire to appeal, which shall be signed by the appellant or his duly authorized agent, to the [Commission/Officer]. The notice shall contain the grounds of the appeal.
- (3) For the purpose of determining an appeal, the Appeals Tribunal shall have the power to hear further evidence, but only if all of the three following conditions are satisfied:-
  - (a) it is shown that the evidence could not have been obtained with reasonable diligence for use at the inquiry before the [Commission/Officer];
  - (b) if the further evidence is such that, if given, it would probably have an important influence on the decision;
  - (c) if the evidence is such as is presumably to be believed.
- (4) If no notice of appeal is given, the record of the Commission shall be conclusive and final.

**Draft Provision XXX. Power to summon witnesses**

- (1) For the purpose of any inquiry, the [Commission/Officer] shall have the powers to summon and examine under oath any person who they think is able to provide relevant evidence, and to require the attendance of all claimants to any customary fishing rights, the title of which is being inquired into, and of all persons likely to be interested in the title to such rights.

**Draft Provision XXX. Registration**

- (1) The [Commission/Officer] shall enter the description of the boundaries and situation of fishing rights recorded and settled in the manner described above in a register called the [Register of Customary Fishing Rights].
- (2) The volumes of such register according to the provinces shall from time to time be transmitted to the [Registrar of Titles] who shall preserve the [Register of Customary Fishing Rights] in the same manner as the [Land title/ Registry] and shall be available for public inspection.

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**Codifying traditional/customary fishing rights; and assigning preferential rights to coastal communities<sup>38</sup>**

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In some cases, it is also proper to codify preferential customary fishing rights of fisherfolk in certain coastal communities or municipalities.

**Draft Provision XXX. Priority of local/municipal fisherfolk**

Resident municipal fisherfolk of the municipality concerned and their organizations/cooperatives shall have priority to request exclusive fishing rights to [municipal/local] fishery areas of the said municipality. For this purpose, a specific regulatory process can be established.

**Draft Provision XXX. Customary rights claims, zoning and dispute resolution process**

- (1) A [local community/municipal authority/Indigenous people's council] may, in accordance with these regulations, manage customary fisheries within the area for which they are management authority.
- (2) Before [local community/municipal authority/Indigenous people's council] begin the management of customary fisheries under these regulations, they must notify the [Fisheries authority] of the proposed [local customary name] area to be managed.

**Draft Provision XXX. Public notice**

On being notified of a proposed [local customary name] area, the [Fisheries authority] must, as soon as practicable but no later than [20] working days after the receipt of such a notification, publish the details of that notification at least twice, with an interval of not less than [5] working days between each publication, in a [newspaper/other news source] circulating in the locality of the proposed [local customary name] area.

**Draft Provision XXX. Submissions**

- (1) Within 20 working days after the date of the second publication of a notification any person referred to in subclause (2) may make a submission concerning the notification to the office of the [fisheries authority] closest to the locality of the proposed [local customary name] area.
- (2) A person may make a submission under subclause (1) if the person is an authorized representative of—
  - (a) the [local community/municipal authority/Indigenous people's council] on whose behalf the notification is made; or
  - (b) other organization representing the relevant local/customary/traditional/Indigenous interest; or
  - (c) any other entity claiming rights in respect of customary fishing in any part of the proposed [local customary name] area.
- (3) The [fisheries authority] must provide to every person that makes a notification, a copy of every submission received and must make such submissions publicly available.

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<sup>38</sup> Adapted in part from Philippines Republic Act No. 8550.

**Draft Provision XXX. Dispute resolution**

- (1) This regulation applies if the [fisheries authority] considers that any submission referred to in the previous section indicates a dispute regarding—
  - (a) who has the customary right to that fishing area; or
  - (b) who should be representative of the [local community/municipal authority/Indigenous people’s council]; or
  - (c) the boundaries for the proposed [local customary name] area.
- (2) If this regulation applies, the [fisheries authority] must, as soon as practicable,—
  - (a) notify the representative of the [local community/municipal authority/Indigenous people’s council] on whose behalf the notification is made, and any person who has made a submission, and;
  - (b) recommend that they agree on a dispute resolution process consistent with their custom in respect of the proposed [local customary name] area.
- (3) Without limiting subclause (2), in resolving any dispute under that subclause, the parties may agree—
  - (a) to notify a [community representative/customary fisheries manager] not previously notified in any notification of a proposed [local customary name] area;
  - (b) to boundaries for the proposed [local customary name] area that differ from those contained in any notification of a proposed [local customary name] area.
- (4) If a dispute resolution process has been concluded and no agreement is reached on the notification in accordance with this regulation, the parties must refer the dispute to an authority agreed to between the parties for settlement of the dispute.
- (5) As soon as practicable after the conclusion of the resolution process established under subclause (2)(b) or subclause (4), the [local community/municipal authority/Indigenous peoples] who made the notification must advise the [fisheries authority] in writing of—
  - (a) who are [local community/municipal authority/Indigenous peoples] concerned; and
  - (b) the name of the [community representative/customary fisheries manager]; and
  - (c) the boundaries for the proposed [local customary name] area; and
  - (d) the resolution of any other dispute concerning the proposed [local customary name] area.

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**Creating a new exclusive fishing rights system<sup>39</sup>**

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While the provisions offered above recorded existing customary fishing rights, the examples below relate to the creation of new systems of exclusive fishing rights, based more on needs and other criteria than on custom. Such provisions are particularly useful to consider when the legal framework assessment does not reveal any existing customary rights. These provisions focus on assigning fishing rights to organizations of fisherfolk (associations, cooperatives). Part 5 provides alternative model legal language for the

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<sup>39</sup> Adapted in part from Mexico, Regulation to the Fisheries Act 1999 as amended, Arts. 40-5, (in Spanish).

creation of fishing rights assigned to other groups (local communities, Indigenous groups), or by opening a process for the identification of interested individual stakeholders.

### **Draft Provision XXX. Fishing Concessions**

(1) The [Fisheries Agency/Commission] may grant [cooperatives/fishers associations/legal entities]<sup>40</sup> of [Country Name] nationality an exclusive fishing concession, in compliance with the requirements established by this [Act/Regulation].

*NOTE: This provision can be established broadly or may add specific, additional criteria for limiting which entities may receive exclusive fishing rights, such as:*

- *Concessions shall be granted based on the evaluation of the results of a technical and/or economic assessment;*
- *Compatibility with the country's Marine Spatial Planning Act/legal instrument;*
- *An assessment of the expected benefits of the sustainable fishing activity to be conducted.*

The criteria for assigning exclusive fishing rights to specific entities or groups of people should focus on promoting the social, environmental, and economic stability of the local communities that depend on fishing resources as the main source of their food and economic security. Entities entitled to request exclusive fishing rights should also be adequate for the implementation of participatory management systems, and specifically fisheries co-management. In this context, some already-existing institutional arrangements, such as the creation of fishing cooperatives and other social economy entities, seem to be better positioned.

Regulatory language for the creation of these entities can offer guidance on how to translate general sustainable development principles into specific, procedural principles and rules. Depending on a country's legal framework and needs, these provisions will be added to secondary fisheries laws or regulations, or bylaws. In addition, please also refer to [Part 3](#) for model legal language on the creation of fishing cooperatives.

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### **Securing the sustainable development nature of exclusive fishing rights management entities<sup>41</sup>**

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### **Draft Provision XXX. Guiding principles for exclusive fishing right systems**

- (1) The purpose of an [exclusive fishing rights] system is pursuing collective social, economic, and environmental wellbeing.
- (2) The [exclusive fishing right] system is based on the following principles:

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<sup>40</sup> When deciding to use this provision, the legal drafter should consider whether cooperatives, fisher associations, or other similar entities are defined in the law (this would be determined during the legal framework assessment) and what legal provisions exist about how such entities are created and operate. If there is no legal definition for such entities, the legal drafter should consider introducing such a definition. The definition should contain elements of a social enterprise and requirements that the entity complies with social and environmental objectives.

<sup>41</sup> Adapted in part from Spain, Law 5/2011, of Social Economy, March 29, 2011, Art. 4.

- (a) Transparent, independent, democratic, and participatory management of exclusive fishing resources.
- (b) Decision-making shall be based on the system's purpose, prioritizing the achievement of social, economic, and environmental objectives.
- (c) The results obtained from the economic activity will be distributed according to the labor and services contributed or activities carried out by the members of the [fishing rights management entity], and to the fulfilment of the purpose of the [fishing rights management entity].
- (d) Promotion of local development, equal opportunities between men and women, social and economic equity, environmental sustainability, the participation in the fishing activities of people at risk of social exclusion, local job creation, and the achievement of an adequate personal, family and work life balance.
- (e) Participatory management of fishing resources and co-management.

**Draft Provision XXX. Entities entitled to request [exclusive fishing rights/concessions]<sup>42</sup>**

- (1) Local [cooperatives/organizations/communities]<sup>43</sup> shall always be given preference in the granting of [exclusive fishing rights/concessions].
- (2) When two or more [cooperatives/organizations/communities] share the same marine space, the following procedure will apply:

In the event that two or more [cooperatives/organizations] request a [exclusive fishing rights/concessions] to the same management area, and at least two of them meet the requirements of this act [related to co-management institutions and organizations with social and environmental objectives, please see the legal language example above, "Securing the sustainable development nature of exclusive fishing rights management entities"], the [exclusive fishing rights/concession] may be allocated jointly, with the voluntary agreement of the interested organizations.

If no such agreement exists, the organization that currently owns/operates a related fisheries management right or area will be preferred.

If the [exclusive fishing rights/concession] cannot be assigned in accordance with the previous paragraph, preference will be given to the organization that obtains the highest score according to the following criteria:

- (a) Requested area per member ratio;
- (b) Proximity to the requested area;
- (c) Number of members duly registered in the [Fisheries Registry], who have been in the organization for at least one year;
- (d) Length of time of the legally constituted [fishers' organization/association/cooperative] and its registration in the [Fisheries Registry/ Cooperatives Registry].

*NOTE: As previously stated, other criteria might be selected, as appropriate. Please see additional examples in [Part 2](#) and [Part 5](#) of this Toolkit.*

- (3) All other things being equal, the requests of Indigenous communities will have preference. When the [exclusive fishing rights/concession] may affect the habitat

<sup>42</sup> Adapted in part from Chile, 1991 General Fisheries and Aquaculture Act, as amended, Art. 55 E.

<sup>43</sup> See FN 28 about definition of cooperatives, fishing associations, and other similar entities.



of an Indigenous community, the authority must seek the authorization of the representatives of that community.

**Draft Provision XXX. Application documents**

- (1) [Organizations/Cooperatives/Associations] interested in obtaining [exclusive fishing rights/concessions] shall comply with the following requirements:
- (a) Submit a written application, which shall contain the following information:
- (i) Name of the species to be included in the [exclusive fishing rights/concession],

*NOTE: This provision should allow cooperatives to include a broad array of species, shellfish, rockfish, benthic and non-migratory (or low migration) finfish, mollusks, or other species that may be captured in the area under an exclusive fishing rights scheme. For an additional example on including species-specific exclusive management zones, please see model language for Indigenous/customary fishing areas in [Part 5](#).*

- (ii) Fishing area, base port and landing sites,
- (iii) The area to be included in the concession, delimited by geographical coordinates, using official maps or charts indicated by the [Fisheries Agency/Commission]
- (iv) Name, characteristics and dimensions of the vessels, equipment and fishing gear to be used,
- (v) Proposed duration of the [exclusive fishing right/concession];
- (b) Certificate of registration of any vessel operating within the [exclusive fishing rights/concession] area<sup>44</sup>;
- (c) Proposed management plan.
- (2) The [Fisheries Agency/Commission] shall resolve the [exclusive fishing rights/concessions] request within a term of [XXX calendar/working days].

**Draft Provision XXX. Granting of [exclusive fishing rights/concessions]**

- (1) Upon approval of the request, the [Fisheries Agency/Commission] shall grant the [exclusive fishing rights/concessions] for a term of [XXX years].

**Draft Provision XXX. Renewal of [exclusive fishing rights/concessions]**

- (1) [Exclusive fishing rights/concession] may be renewed provided that:
- (a) The request is submitted at least 30 days prior to the end of the term. The request shall contain, if applicable, the following information:
- (i) The additional invested capital that the improvement and conservation of the facilities have required;
- (ii) Additional species to be included in the concession;
- (iii) New objectives, activities, and/or capital investments to be made, according to the following criteria:

*NOTE: The legal drafter may include here a set of requirements or priorities to help guide SSF management policy. Examples include: 1) gender balance issues, 2) social outcomes (labor rights, health/work insurance, reinvestments in other local economic activities), 3) environmental outcomes*

<sup>44</sup> Related to this provision, we recommend including in the fisheries act/regulation specific sanctions to any individual/vessel owner that operates within the limits of a concession without being part of the concession's owner cooperative/association.

*(no-take zones, replenishment zones, measures for the protection of keystone species (e.g. parrotfish), measures for the enhanced protection of endangered species).*

- (A) The availability of the fishing resource allows for it, based on scientific studies;
- (B) The number of fishing [units/boats/vessels] and their capacity are compatible with the current conditions of the resource; and
- (C) The quantity and characteristics of the assets needed for the [exclusive fishing right/concession] are similar to those originally authorized.

**Draft Provision XXX. Duties of the [exclusive fishing right/concession] holder**

- (1) Extract exclusively the authorized species; work in the areas determined by the [Fisheries Agency/Commission]; and only with the authorized boats and fishing gear;

*NOTE: This provision may include additional reporting and information-sharing requirements, such as those detailed below, or simply reference to the appropriate section of the fisheries act/regulations detailing those provisions.*

- (2) Submit to the [Fisheries Agency/Commission], within the first two months of each year, a report containing the progress of the [exclusive fishing rights/concessions] economic, social, and environmental objectives during the previous year, as well as expected catch volumes and, at the end of each fishing cycle, the actual volumes achieved;
- (3) Inform the corresponding office, on a quarterly basis, of the volume and type of products landed, processed, and/or transshipped in accordance with the [Fisheries Agency/Commission] reporting requirements;
- (4) Follow the technical and economic conditions for the sustainable exploitation of each species, group of species or demarcated fishing area;
- (5) Contribute to the preservation of the ecological environment and the conservation of species, as well as support replenishment programs, under the terms and conditions set by the [Fisheries Agency/Commission];
- (6) Fill out and sign the [harvester logbook/landing reporting form/electronic log] at landing of the products caught, noting all the data requested therein, and submit it to the nearest office of the [Fisheries Agency/Commission] within [seventy-two hours];
- (7) Provide the [Fisheries Agency/Commission] with information on the methods and fishing gear used, the research, findings of studies and new research projects related to fishing activity, as well as any other relevant information, without prejudice to the intellectual property rights that may arise. The Secretariat may not disclose by any means the information referred to in this section, relating to matters protected by commercial or industrial secrecy, without the prior authorization of its owner;
- (8) Allow and facilitate fisheries inspections by authorized personnel of the [Fisheries Agency/Commission];
- (9) Collaborate with the [Fisheries Agency/Commission] in collecting scientific and/or technological information relevant to improve the management of fishing resources.

**Draft Provision XXX. Prohibitions on the exercise of ownership of [exclusive fishing rights/concessions]**

The [exclusive fishing rights/concessions] are not transferable and may not be subject, in whole or in part, to lease or mortgage.

**Draft Provision XXX. Registry of fishing [exclusive fishing rights/concessions]**

The [Fisheries Agency/Commission] shall register in the [National Fishing Registry/ National Registry of Marine Tenure] all [exclusive fishing rights/concessions] and [exclusive fishing rights/concessions] holders authorized to carry out fishing activities, and shall keep the Registry updated. The interested parties may request a registration certificate from the [Fisheries Agency/Commission].

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**Integrating ownership of coastal and marine areas and resources**


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Often land, marine, and natural resources governance frameworks are developed in a fragmented manner that overlooks their close linkages and the need for careful policy integration. This fragmentation often leads to an uneven distribution of competences and responsibilities, complexity, and lack of clarity on regulatory requirements. In many instances, collective marine tenure rights will be allocated in areas where communities already hold ownership to coastal natural resources, such as wetlands and mangroves. These resources are probably managed under a country's forestry act, an agriculture act, or a dedicated mangroves act.

In other cases, laws might declare the exclusive ownership of the State over land, foreshore, and marine spaces. The policymaker should take this into account and consider options for integrating ownership of coastal and marine areas and resources. Relevant laws should establish clear rights and responsibilities of the governmental authorities and exclusive rights or tenure rights holders in both foreshore and marine areas, especially in relation to the integration of fisheries co-management arrangements. The policymaker may consider adding to the forestry/land regulations a provision safeguarding the rights of SSF communities to the exercise of exclusive fishing/marine tenure rights.

**Draft Provision XXX. Preservation of [exclusive fishing rights/concessions/marine tenure]<sup>45</sup>**

(1) Nothing in these Regulations shall be deemed to affect any [exclusive fishing rights/concessions/marine tenure] established in accordance with [fisheries regulations/ exclusive fishing rights regulations] or to prohibit the cutting and removal of ant timber, reeds or other forest produce, which may be necessary for the upkeep of [fishing spots/ traditional fishing gear].

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<sup>45</sup> Adapted in part from Fiji, Native Land Trust Act [Ch. 134], Section 17.-(1).

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## Allocating catch shares

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### **Draft Provision XXX. Allocating catch shares to small-scale fishers<sup>46</sup>**

- (1) Certain resource users may be allocated a percentage of the harvestable stock in a specific fishery that they are allowed to catch, in total, in a particular season.
- (2) The amount of fish that may be caught under a particular catch share shall be recalculated each season based on an individual's particular catch share allocation and the total amount of fish that can be harvested from the specific fishery while still allowing the population to be sustained, or grow, in the long term. The total amount of fish to be harvested in a given season shall be determined based on the best available science and established by the designated authority.<sup>47</sup>
- (3) Small-scale fishers shall be allowed to transfer catch shares through sale or inheritance, exclusively to other small-scale fishers.<sup>48</sup>

*NOTE: Catch shares may lead to better stewardship of marine resources because as fish populations grow, so do the harvestable quantities of fish, thus increasing the number of fish that can be caught per share. As such, healthy fish populations make shares more valuable.<sup>49</sup>*

## PART 2. CREATION/ENFORCEMENT OF EXCLUSIVE ZONES FOR SMALL-SCALE FISHERIES

### *Objective and Explanation*

This mechanism entails granting preferential exclusive access for SSF to fish in waters under national jurisdiction. This means that, in a given area or strip of sea in near-shore zones (which can be from just a few miles to the full 12 nautical miles of the territorial sea), only small-scale fishers making use of small-scale fishing methods can fish. This is especially important for securing food and economic security for vulnerable, fisheries-dependent populations. Moreover, recent studies suggest that eliminating industrial fishing activities, such as trawling in near-shore areas, can contribute to increasing overall fisheries productivity and to reducing the release of carbon stored in the seabed.<sup>50</sup>

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<sup>46</sup> EDF, [How to reverse the overfishing crisis](#); NOAA Fisheries, [Tribal and treaty-reserved fishing rights](#); EDF, [Fishing rights helped curb overfishing in Belize](#) (Aug. 21, 2019).

<sup>47</sup> Kendra A. Karr, et al., [Integrating Science-Based Co-management, Partnerships, Participatory Processes and Stewardship Incentives to Improve the Performance of Small-Scale Fisheries](#), FRONT. MAR. SCI. (Oct. 30, 2017).

<sup>48</sup> Sustainable Fisheries, [Catch Shares versus Sharing Catch](#) (Nov. 24, 2015).

<sup>49</sup> *Id.*

<sup>50</sup> See, e.g. Gaël Mariani et al., [Let more big fish sink: Fisheries prevent blue carbon sequestration—half in unprofitable areas](#)

Exclusive access can take the form of a direct declaration in the constitution, a law, or regulation. It can also be inserted into the general conditions of fishing permits, or through the implementation of bans on near-shore industrial fishing.

### Rationale

Creating an actual physical space for SSF to thrive can help build and strengthen an active SSF sector that contributes to the national economy without exhausting a country's living resources.<sup>51</sup> With adequate legal instruments in place, and the use of already available monitoring technologies, this transition can be achieved in a short period of time.

A major challenge for the long-term sustainability of small-scale fishing communities is unfair competition from big industrial vessels. In some jurisdictions, IUU vessels illegally harvest marine areas where they do not have authorization to fish, relying in low enforcement capacity, but in most cases, countries have no legal limitations on industrial fishing in near-shore areas, and this has deep implications for food and human security in coastal populations.<sup>52</sup> This issue is caused by the activities of both domestic and international fishing fleets.

According to UNCLOS, international fishing access agreements are based on the availability of 'surplus' fishing resources that are not being caught by the domestic fishing sector. However, the actual availability of 'surplus' biomass is challenging to estimate if the country does not have standardized rules for measuring its catch and categorizing the impact of SSF on commercially valuable species (as is often the case). Country-level analyses conducted in Mexico and Honduras estimate that roughly 50% of annual catch is not reported and, as such, is not accounted for when determining annual biomass availability for leasing to other countries.<sup>53</sup>

UNCLOS has several provisions relevant to the SSF sector. Although the overall fisheries management structure under UNCLOS focuses more on industrial fishing, there are a series of measures coastal states can use to ensure the protection of coastal fishing resources. Some have been developed through domestic legislation.

Separation of industrial and small-scale fishing uses can be achieved in different ways. This Toolkit suggests using the method that might be simplest in any given country/jurisdiction, in terms of monitoring and enforcement. For example, as a general rule, a ban on all industrial fishing activities up to 5 nautical miles from the coast is easier to monitor than a measure that limits fishing by engine type, net mesh size, maximum fishing depth, or storage capacity. Some fishing zones can promote certain types of sustainable fishing, such as pole and line, one-by-one tuna fishing. Still, each legal drafter should assess what could be the most effective method given the specific circumstances of each case.

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<sup>51</sup> SSF Voluntary Guidelines 5.7

<sup>52</sup> See, e.g. *saiko* fishing in Ghana. In 2017, 76 industrial trawlers caught the same amount of fish as 12,000 artisanal canoes, [according to the EJF](#).

<sup>53</sup> See, e.g. Cisneros-Montemayor et al.; Extent and implications of IUU catch in Mexico's marine fisheries, 39 *Marine Policy* 283–288 (2013); see also Nelson Avdalov, Project CFC/FAO/INFOPECSA, FSCFT 23, *Improvement of Artisanal Fisheries in Central America, Mexico, and the Caribbean* (2009) (in Spanish).

*Relevant Model Provisions***Constitutional Provision****Draft Provision XXX. Preferential access established as a constitutional right**<sup>54</sup>

The State shall protect the rights of [small-scale/artisanal/subsistence] fisherfolk, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishers through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of [small-scale/artisanal/subsistence] fisherfolk against foreign intrusion. Fish workers shall receive a just share from their labor in the utilization of marine and fishing resources.

**Devolution of fisheries management authority to local/coastal/municipal entities**<sup>55</sup>**Draft Provision XXX. Definitions**

[Municipal/Coastal/Local waters]: include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under [protected areas law/act], but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and [XXX nautical miles/kilometers] from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than [XXX nautical miles/kilometers] of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

**Draft Provision XXX. Users of [municipal/coastal/local] waters**

All fishery related activities in [municipal/coastal/local] waters, as defined in this Code, shall be utilized by [municipal] fisherfolk and/or their [cooperatives/organizations/associations] who are listed as such in the [fisheries associations registry/registry of municipal fisherfolk].

<sup>54</sup> Adapted in part from Philippines Constitution Art. 7

<sup>55</sup> Adapted in part from [Philippines Republic Act No. 8550](#) and based on [Philippines Implementing Rules/Regulations of Republic Act. No. 8550](#). Please note that the Philippines legal framework includes exceptions to authorize certain industrial activities. The complexity of monitoring and enforcing this kind of provision is a challenge.

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**Exclusive zones based on the creation of fisheries tenure assigned to local/coastal/municipal entities and/or cooperatives of fishers<sup>56</sup>**

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**Draft Provision XXX. Exclusive fishing rights**

- (1) A license for [small-scale] fishing shall be granted only to a [fisheries cooperative/association/fisher] located in each [municipality/locality/district] in order to promote the common interests of fishers who reside in a certain locality.
- (2) Preference of local [cooperatives/associations] to obtaining aquaculture [licenses/concessions]: If a certain area of waters for which a fish and/or seaweed aquaculture [license/concession] is to be granted:
  - (a) The area of waters is located within the boundaries of a fishing ground for communal fishing business;
  - (b) The area of waters is located within the area covering up to [xxx meters/nautical miles] from the coastline at full tide, previous favorable assessment by the [fisheries commission/intergovernmental SSF management committee/other governmental entity].

**Draft Provision XXX. Co-management of exclusive fishing rights**

- (1) Every [fisheries cooperative/association] that has acquired a fishery right shall adopt a [fisheries management plan/covenant/agreement] on the management of a fishing ground that shall stipulate the qualifications for those eligible for conducting fishery activities in the fishing ground, the means of conducting fishery activities, the timing and methods for fishery business, the charges for conducting fishery activities, and other necessary matters for the management of the fishing ground, as prescribed by [Please see Part 3 of this Regulatory Toolkit].
- (2) If a [fisheries management plan/covenant/agreement] referred to in paragraph (1) contravenes this [Act/other fisheries regulations], the head of the [Fisheries Department/Ministry] may issue a [ministerial decree/order] to take measures necessary for correcting such contravention by amending the [fisheries management plan/covenant/agreement].

**Draft Provision XXX. Exclusive access to fishing grounds**

- (1) A [fishery/exclusive fishing right] owned by each [fisheries cooperative/association] shall be exercised by its members in accordance with the [fisheries management plan/covenant/agreement]. *[regulations could include exceptions to this rule to allow non-members of a cooperative to fish, if they comply with a series of sustainable use/management rules]*.
- (2) Except as otherwise expressly prescribed by [Law/regulation], a [fishery/exclusive fishing right] owned by each [fishers association/cooperative] shall be exercised by members of each such [fishers association/cooperative], whose domicile are within the territory of a [municipality/county/village] adjacent to the relevant fishing ground, and in compliance with the management measures prescribed by the [fisheries management plan/covenant/agreement] described above.

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<sup>56</sup> Adapted in part from Republic of Korea Fisheries Act, arts. 37-8.

- (3) The [fisheries management plan/covenant/agreement] will prescribe the means of exercising fishery rights, any issues of order of priority, adjustment of the area managed, rules of participation in the fishery, and other necessary matters for the management of fishing grounds. Any conflicts of interest between members of the [fishers association/cooperative] shall be settled through internal mediation procedures. When mediation is not successful, management decisions will be prescribed by the head of the [Fisheries Department/Ministry].

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### Exclusive zones using baselines of the territorial sea

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#### **Draft Provision XXX. [Artisanal/Small Scale] fisheries**

- (1) The exercise of extractive fishing activities is reserved to [artisanal/small-scale] fishing in an area of the territorial sea of [five/xxx] nautical miles measured from normal baselines. Fishing in these areas must be oriented to direct human consumption.

*NOTE: This legal provision may include a reference to the relevant statute establishing maritime sovereignty and definitions of areas of ocean governance.<sup>57</sup>*

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### Exclusive zones using baselines of the territorial sea and bans on types of fishing gear<sup>58</sup>

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#### **Draft Provision XXX. [Artisanal/Small scale] fisheries**

- (1) Fishing activities are reserved to artisanal and small-scale fishers in the following areas, and others as determined by the [Fisheries Ministry/Commission/Marine Spatial Planning Commission].
- (2) Without prejudice to the development of [mariculture, open-water aquaculture, other human uses of the sea], the area adjacent to the coast between zero and [three/five/xxx] nautical miles measured from the baseline of the territorial sea is reserved for the development of small-scale and artisanal fishing activities for direct human consumption. In said reserved area, the [Fisheries Ministry/Commission/Marine Spatial Planning Commission] will only authorize the use of types of fishing gear that are:
- a) Highly selective of sizes and species subject to fishing, with minimal direct or indirect impact on sizes, habitats and species not subject to fishing;
  - b) Quality oriented, producing high quality captures;
  - c) Other fishing methods as recommended by the 1995 FAO Code of Conduct for Responsible Fisheries, previous assessment of the [Fisheries Ministry/Commission/Marine Spatial Planning Commission].

<sup>57</sup> Adapted in part from Chile Ley 19079 art. 29.

<sup>58</sup> Adapted in part from Arts. 32-3 of Peru Ley General de Pesca, Decreto Ley N 25977, and arts. 63.1-2 of Peru Decreto Supremo N° 012-2001-PE, Reglamento de la Ley General de Pesca (2001).



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**Exclusive zones using baselines of the territorial sea and determining categories of fishing by vessel storage capacity and/or size<sup>59</sup>**

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**Draft Provision XXX. [Artisanal/Small-scale] fisheries zones for direct human consumption**

- (1) Reserved areas for direct human consumption are established as follows:
  - (a) The area between 0 and 5 nautical miles is reserved for direct human consumption, being exclusive for the realization of [artisanal/small-scale] fishing activity, defined according to this [law / decree / regulation] as vessels of up to [10 cubic meters] of hold capacity.
  - (b) The area between 5 and 10 nautical miles is reserved for direct human consumption, being exclusive for the realization of small-scale fishing activity, defined according to this [law / decree / regulation] as vessels of between [10 and 32.5 cubic meters] of hold capacity and up to 15 meters length.

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**Exclusive zones for determining [tuna] fishing pole and line zones<sup>60</sup>**

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**Draft Provision XXX. Reserved areas for one-by-one pole and line fishing**

- (1) The area located between [0 and 5 nautical miles from the coast / add specific geographical coordinates] is reserved exclusively for small-scale pole and line and one-by-one [tuna] fishing activities.

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**Enforcing exclusive zones for SSF by establishing bans on industrial vessel access**

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**Draft Provision XXX. Special measures for the preservation of [artisanal/small scale] fisheries zones<sup>61</sup>**

- (1) In the marine area reserved for small-scale fishing, industrial fishing activities are strictly forbidden.
- (2) For the purposes of this [law], industrial vessels are those with [a storage capacity of X / an engine capacity of X/ other criteria] or more.
- (3) Industrial fishing vessels transitioning in this area shall, at all times:
  - (a) Use mandatory shipping routes to access to/from designated landing ports.
  - (b) Keep their fishing gear stowed and unavailable for use.
- (4) Any industrial vessel located in this area:
  - (a) with its fishing gear displayed

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<sup>59</sup> Adapted in part from Peru, *Decreto Supremo 005-2012-PRODUCE art. 2.*

<sup>60</sup> Adapted in part from Peru, *Decreto Supremo 005-2012-PRODUCE art. 2.*

<sup>61</sup> Adapted in part from Environmental Law Institute, *Legal Tools for Strengthening Marine Protected Area Enforcement: A Handbook* (2016) and U.S. Fed. R. of Evid. 301.

- (b) outside any of the mandatory port access routes is presumed to be acting in contravention of this [law], and is liable to a fine not exceeding [max. penalty] and the cancellation of its fishing permit.
- (5) Any form of admissible evidence may be used to prove a violation or to assert an affirmative defense in proceedings brought under the [law]. Such evidence may include, without limitation: witness testimony, photographs and video recordings (including those obtained from mobile phones), GPS tracking and position information and other electronic data, satellite imagery, and other information resulting from emerging technologies.
  - (6) Proof of violations at sea may include both direct and circumstantial evidence.
  - (7) Nothing in this section or elsewhere in the law shall be construed as limiting the types of evidence that are admissible in legal proceedings concerning violations at sea, nor does the mere fact that evidence was obtained from a third party (such as a fisherman or a passerby) affect the admissibility or weight of such evidence.
  - (8) Any person subject to a presumption arising under this section may rebut the presumption by producing admissible evidence that the activities conducted were not in violation of the [law].
  - (9) This section does not shift the burden of proof, which remains on the party who had it originally.

*NOTE: This provision aims to simplify monitoring and enforcement by restricting access of industrial fishing vessels to areas reserved to SSF. This sample provision can apply regardless of the method selected to create exclusive zones for SSF.*

For examples of legal language to establish small-scale fishing zones through the larger implementation of marine spatial planning, please see [Part 6](#) of this Toolkit.

## PART 3. PARTICIPATORY MANAGEMENT SYSTEMS AND CO-MANAGEMENT

### *Objective and Explanation*

Participatory management and co-management systems enable the participation of small-scale fishing communities, often organized into fishing cooperatives, associations, guilds, or other legal entities, in fisheries management. The concept of co-management involves a wide range of experiences that, in general terms, support a combination of economic, sociocultural, and environmental objectives through some form of collaborative decision-making.

Co-management mechanisms allow for the shifting of fisheries management from one or a few governmental agencies (centralized approach) to several entities, including representatives from the fishing community (decentralized approach). In its more decentralized form, co-management creates a system where associations of fisheries make management decisions on equal footing with government representatives. According to this version of co-management, some legal frameworks recognize fishing associations and cooperatives as public entities.

Broadly speaking, SSF co-management can be classified into two categories:

- Co-management affecting whole fisheries or multiple fisheries v. area-specific co-management arrangements;
- Government-centered v. community-based co-management approaches.

Co-management can involve the management of whole per-species fisheries or several fisheries at once. However, these cases are usually examples of government-led participatory management, such as the management schemes in the United States’ (Fisheries Management Councils) or the European Union (Regional Advisory Councils). This Toolkit focuses more on area-specific and species-specific management schemes, as these present the most abundant examples in the SSF context.

Likewise, interpretation of the term “co-management” has followed different approaches (see Table 1 below), from more government-based options, where government consults with stakeholders but makes all the decisions, to the more community-based approaches, where qualified communities of users are granted decision-making authority.

<i>Government officials and decision-makers have the most control</i>	<b>Consultative co-management</b> Government interacts often but makes all the decisions	<b>Collaborative co-management</b> Government and the stakeholders work closely and share decisions	<b>Delegated co-management</b> Government lets formally organised users/stakeholders make decisions	<i>Citizens and community representatives have the most control</i>

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Table 1. Approaches for Co-management.

The most appropriate approach for co-management will always depend on the specific characteristics of each country, region, and/or SSF sector. However, it is important to note that both the SSF Guidelines and much of the specialized literature highlight the advantages of self-management and community-based co-management approaches.

### Rationale

Involving fishers in management contributes to sharing responsibilities with stakeholders, who depend on SSF for their livelihoods and often have best information about what is happening in those fisheries and how to manage them. Small-scale fishing communities are also often the same communities who have tenure rights to the fisheries

<sup>62</sup> Sen & Nielsen, Fisheries co-management: a comparative analysis, 20 Marine Policy 5, 405-418 (1996).

in question. At the time when fisheries are often overexploited, polluted, and facing the effects of climate change, increasing participation of small-scale fishing communities in governance offers the best chance of improving sustainable management techniques. According to the specialized literature, the successful implementation of co-management mechanisms is closely related to the existence of national legislation that establishes clear co-management procedures.<sup>63</sup>

States should create mechanisms through which members of the small-scale fishing community can participate in the management of fisheries resources. They should also encourage formation of fisheries associations, and train and otherwise engage members of the fishing community in the management planning and implementation. These new participatory and co-management mechanisms should be included into states' laws.

There is a range of institutional arrangements that can be created to engage the small-scale fishing community in the management of fisheries resources, including a co-management agreement, a co-management committee or council, and a co-management plan. A state might find that one mechanism suits it better than the others, or it might use several, but in all cases, it is best to create legal provisions to set forth the chosen co-management mechanisms. Codification of these mechanisms will allow specification of roles and responsibilities of the relevant governmental bodies and committees, ensure proper participation of the community members both in the creation and operation of the co-management mechanisms, and assist with implementation and enforcement.

Also, in order to ensure that the small-scale community is well-represented, a state should try to engage all of its members, with particular emphasis on marginalized groups. Regardless of the chosen mechanism, a state should take steps to ensure that members of the fishing community are knowledgeable about how they can engage and actively participate in the decision-making processes and co-management activities. A state can specify how members of the community are informed and can participate, including methods of public outreach, notices of action, forums where stakeholders can express themselves, and provisions on how feedback is considered and incorporated.

One way in which a fisheries association can participate in the management of a small-scale fishery is through the creation of a co-management agreement with the government. Such an agreement can specify all the arrangements, including which aspects of management are shared or given to the fisheries association, how the decisions are made, who can be part of the association, and what role the government plays. It is important that the roles and responsibilities of all the relevant parties are explained in the agreement, and that all the details about how the agreement can be created are clearly stated in the law.

Co-management agreements should be created keeping in mind existing tenure rights and customary Indigenous use of the fisheries areas in question. Also, the governmental body, national or local, that will be making co-management agreements with the fisheries associations needs to have the proper authority to do so. If the current range of powers of such a body does not include competency to enter co-management agreements with the fisheries association, a simple provision can be added.

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<sup>63</sup> See, e.g., d'Armengol et al., A systematic review of co-managed small-scale fisheries: Social diversity and adaptive management improve outcomes, 52 *Global Environmental Change* 212-225, (2018).

A co-management committee or council, which can include members of the small-scale fishing community, can perform a number of duties to facilitate sustainable use of fisheries' resources. Legal provisions related to this co-management mechanism can provide information about the committee's goals, size, members (with potential inclusion of elected officials, fishers, scientists, and NGOs), duties of its members, frequency of meetings, voting powers, and procedures to resolve conflicts.

Lastly, the small-scale fishing community can participate in management through co-management plans. Specifically, members of the fishing community, organized into management units, can help create and implement co-management plans. Relevant legal provisions should describe creation and composition of the management units, creation of co-management areas that will be covered by the plans, and creation, implementation, and revocation of co-management plans.

One barrier to the inclusion of members of the fishing community (private citizens) in the management of fisheries is if a state's law, including its Constitution, states that only the government can manage fisheries resources. If such a barrier exists, a country might consider entering into management agreements or amend the law to allow small-scale fishing communities to participate in the management of fisheries resources.

Summary of some strategic benefits of community-centered fisheries co-management:

- Bring management closer to the key stakeholders
- Adapt management to the appropriate scale
- Galvanize stakeholder empowerment
- Incentivize compliance through peer pressure
- Increase buy-in of fisheries management rules
- Improve rule-of-law

The model legal language that follows provides examples for four different types of regulatory instruments: a) laws and/or regulations that establish general principles of co-management and set authority for entering into co-management arrangements; b) general structure of a co-management agreement; c) provisions that establish co-management plans, which will be generally created by representatives of the fishing communities involved in implementing the co-management scheme, in coordination with the governmental authorities; and d) provisions creating co-management committees or councils.

The reader may select the legal provisions that might be most relevant given specific country needs, and combine several examples provided in this Toolkit with existing legal language.

*Relevant Model Provisions***General model legal language on participatory management**

First, it is useful to set general principles or objectives of participatory management. Here, the goals of participatory management can be established, and all the various advantages of having members of the small-scale fishing communities participate in the management of fisheries can be listed.

**Draft Provision XXX. Objectives of the participatory management<sup>64</sup>**

- (1) The participatory management has the following main objectives:
  - (a) ensure responsible and sustainable management of fisheries;
  - (b) ensure the rights of small-scale fishing communities to promote their welfare and protection of fishery resources;
  - (c) promote the participation of small-scale fishing communities in the planning and implementation of management measures;
  - (d) promote and support organizations that involve small-scale fishing communities;
  - (e) promote adaptive management, food and economic security.
- (2) [The Fisheries Co-Management [Committee/Council] shall be the forum for the participatory management system where all interest groups are represented.]

**Draft Provision XXX. Participation of the fishing community in the management processes**

- (1) The [Minister, agency official] shall ensure that the following principles of participatory management are followed with regard to small-scale fisheries:
  - (a) fishers, fish workers, including women and marginalized groups, fishing organizations, such as cooperatives, and other fisheries interest groups that operate on small-scale fisheries shall be involved in decision-making processes and management of small-scale fisheries, so as to ensure responsible fishing practices and sustainable use of fishing resources;
  - (b) government shall promote creation of and support fishing organizations, such as fishing cooperatives, including providing information about how community members can create and join such organizations;
  - (c) members of small-scale fishing communities shall be informed about how they can express their opinions and participate in the management of small-scale fisheries, including methods of public outreach, forums where they can express themselves, and ways they can provide their feedback.
- (2) Appropriate methods of public outreach include [insert methods, such as regularly scheduled meetings, radio broadcasts, a local newspaper, government website, etc.], and members of small-scale fishing communities are able to submit their feedback through [insert appropriate methods, including government website, regularly scheduled meetings, etc.], which is reviewed by [include who reviews the feedback that is submitted].

<sup>64</sup> Based, in part, on Mozambique's Decree 57/2008, art. 17(1).

*NOTE: For more details on issues like how to ensure participation, representativeness, and accountability, through the creation of co-management institutions, please see [Part 3](#) (co-management). See also elements of transparency and accountability in [Part 3](#).*

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### Delegation of authority to local/municipal level

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In cases where authority to regulate fishing, including small-scale fishing, lies with the national government, but it would make sense to delegate such authority to local authorities such as municipalities, the legal drafter should consider drafting relevant legal provisions. Once local governments have authority to manage local fishing resources, a duty can be assigned to them to engage in co-management by entering co-management agreements,<sup>65</sup> working with co-management committees,<sup>66</sup> and participating in creation of co-management plans.<sup>67</sup> This type of delegation of authority is quite common.

#### **Draft Provision XXX. Jurisdiction of [local/municipal] government**

The [local/municipal] government shall have jurisdiction over municipal waters as defined in this [act/regulation]. The [local/municipal] government, [in consultation with the Local Fisheries Co-management Council]<sup>68</sup> shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fishery resources within their respective municipal waters.

The [local/municipal] government may, [in consultation with the Local Fisheries Co-management Council]<sup>69</sup>, enact appropriate [bylaws/ordinances/orders] for this purpose and in accordance with the [Country's Fisheries Act/ Fisheries Policy]. The [bylaws/ordinances/orders] enacted by the [local/municipal] government shall be reviewed by the [state/national-level fisheries authority] which has jurisdiction over the same. The [local/municipal] government shall also enforce all fishery laws, rules and regulations.

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### Authority for creating co-management agreements

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As a preliminary step, it might be necessary to establish initial authority enabling the government to enter into collaborative management agreements with other entities.

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<sup>65</sup> See provisions below [on co-management agreements](#) at page 51.

<sup>66</sup> See provisions [on co-management committees/council](#) at page 65.

<sup>67</sup> See provisions [on co-management plans](#) at page 54.

<sup>68</sup> This part is optional, as the power can be delegated to local/municipal governments themselves or shared between local/municipal governments and another body, such as a co-management committee/council. A local co-management council is useful to have when resources are shared, as described, for example in the Fisheries Code of the Philippines. [Part 5](#) of this Toolkit provides a few additional examples.

<sup>69</sup> Again, this part is optional, used if the local/municipal government's power is shared with another body.

**Draft Provision XXX. Authority to enter into a co-management agreement**

- (1) The [Minister, agency official, official at the local level<sup>70</sup>], in consultation with [proper fisheries consulting body, such as a committee, if appropriate], for the purposes of promoting sustainability of small-scale fisheries may:
- (a) enter into agreements with registered associations or institutions, such as fishing cooperatives, for the management and administration of small-scale fisheries;
  - (b) create basic requirements that a registered association or institution with which an agreement is created must follow with regard to the management of small-scale fisheries, such as the minimum number of meetings it must have each year, who can become a member, composition, inclusion of marginalized groups, and division of duties between the government and the registered association or institution;
  - (c) withdraw from agreements mentioned in paragraph (a).

**Draft Provision XXX. Co-management agreements<sup>71</sup>**

- (1) The [Minister] may [...] enter into a co-management agreement and delegate in the manner provided in subsection (2), co-management responsibility in whole or in part, with a locally registered non-governmental organization, local community or other [party] for any area to which this Act applies; however, the co-manager shall –
- (a) have capacity to co-manage, according to the criteria established by this Act or its Regulations;
  - (b) implement the management plan that exists for the fishery or area;
  - (c) prepare or periodically update, under the guidance of the [Fisheries Authority], the management plan for the fishery or area.
- (2) The [Minister] may delegate co-management responsibility under subsection (1), by the execution of **a legally-binding agreement that details the duration, terms and conditions for the co-management of the fishery or area** between the Government and the body to whom the delegation of management responsibility is intended.

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### General model language for co-management agreements

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The legal drafter may decide to facilitate the creation of co-management agreements and the standardization of the description of rights and duties in them, by providing a general model for co-management arrangements:<sup>72</sup>

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<sup>70</sup> If the official at the local level has the power to regulate fishery resources, as described in the Delegation of authority to local/municipal level.

<sup>71</sup> Provision based in part on § 13 of the Belize Fisheries Resources Act 2020.

<sup>72</sup> The model legal language for this agreement has been adapted from Honduras, Acuerdo-036-A-2013. Instituto Nacional de Conservación y Desarrollo Forestal, Areas Protegidas y Vida Silvestre (ICF). “Oficialización del Formato Modelo para la Suscripción de Convenios de Comanejo en Áreas Protegidas de Honduras” (in Spanish); and from, New Zealand, Fisheries (Kaimoana Customary Fishing) Regulations 1998 and Fisheries (South Island Customary Fishing) Regulations 1999.



Agreement for the Co-Management of the [proposed co-management area name], signed between the [Governmental Authority/ Country Fisheries Authority] and the [name of co-manager/s: municipality/ies, cooperative/s, association/s]

[city of signature], at [date]. We, [name of government officer], representing [Governmental Authority/ Country Fisheries Authority], [name of local community / local government / cooperative representative], have agreed to enter into this AGREEMENT OF CO-MANAGEMENT FOR THE [name of the co-managed area], which will be governed by the following clauses:

- (1) Purpose. Promote the conservation and sustainable management of the [name of the co-managed area] through the collaborative management of the [co-managed area], the Municipalities of [name], [and] the [name of co-manager/s: municipality/ies, cooperative/s, association/s], which allows the protection of the ecosystems existing in the area and the rational and sustainable use of natural resources through organized local communities in a way that improves the quality of life of the inhabitants of the area, particularly peasant organizations and Indigenous peoples.
- (2) Responsibilities of the Parties. The parties agree to:

*NOTE: The list below provides a range of general language options the parties might choose from as adequate in each case.*

[Government Authority]

- (a) Avoid the authorization of activities that may be incompatible with the sustainable use of fishing resources in the [co-managed area], control other permitted activities and ensure that they have the corresponding environmental and administrative permits.
- (b) Support the efforts carried out by the co-managers to secure the responsible management of the area that is the object of co-management.
- (c) In the event that the corresponding [co-manager/s] does not adhere to the agreement as co-manager, coordinate with the municipality or municipalities in whose jurisdiction the protected area object of the co-management is located, seeking their direct involvement in the co-management, or to maintain a fluid information that allows the municipalities to issue ordinances, local policies or actions that contribute to the effective management of the area in co-management.

[Co-manager entity]

- (a) Efficiently manage the co-managed area, in accordance with the objectives of the management plan, assuming the responsibilities that are derived from the [Fisheries Act] and other pertinent legal norms.
- (b) Create and integrate Consultative Committees as needed at the level corresponding to the presence of the municipalities.
- (c) Issue agreements, ordinances and resolutions that contribute to the effective and efficient management of the co-managed area, and monitor their implementation.

- (d) Identify and manage national or external resources to allocate them to the management of the protected area, in accordance with this co-management agreement, the management plan and operational plans approved for it.
- (e) Prepare and present to the signatory parties of this agreement, an Annual Report, presenting the results of the implementation of the co-management agreement.

[Joint Responsibilities]

- (a) Assign a representative of each institution that will constitute the [Co-management Monitoring Committee/ name of committee providing general oversight to the implementation of the agreement].
- (b) Develop the Management Plan for the co-management area.
- (c) Carry out the actions derived from this Agreement, presenting proposals for actions framed in compliance with the programs and rules of use established in the management plan.
- (d) Coordinate with the [national/local/Indigenous authorities] in the jurisdiction the area object of the co-management is located.
- (e) Ensuring that the boundaries of the co-managed area are clear and remain intact.
- (f) Prepare specific program plans for topics like research, environmental education, ecotourism, sustainable finance and other issues of relevance.
- (g) Prepare and implement a financial plan for the long-term sustainability of the area, according to the management plan.
- (h) Support the negotiation of payments for ecosystem services generated by the co-managed area.
- (i) Support the resolution of conflicts generated in the area.
- (j) Ensure adequate transparency and access to information related to the fishing activity in the co-managed area.
- (k) Annually review the agreement to verify its effective application according to the protected area management plan, in order to take measures to improve its compliance.

- (3) Duration: This Agreement will enter into force at the time of its signature, having a validity of [five] years that may be renewed automatically, by mutual agreement of the Parties.

Signed in the city of XXXX, on the XXX day of the month of XXX of the year two thousand XXX.

[Title and name of government representative]

[Title and name of co-management entity representative]

The agreement might also integrate other provisions related to its implementation, including financing mechanisms, transparency and access to information, and dispute resolution. The policymaker/legal drafter might also consider leaving broader flexibility and allowing those provisions to be included in the **co-management plan**. See the provisions below for more information. See also [Part 5](#) of this Toolkit for additional model legal language.

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### Creation of a co-management plan

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In addition to co-management agreements, a policymaker should also consider the creation of co-management plans. Co-management plans can be created once co-management entities (such as organizations of fishers, fish workers and other SSF stakeholders), as well as co-management areas have been identified. Co-management plans can be useful with or without co-management agreements. If the co-management entities have not been identified in the co-operative agreements, they should be identified in a separate legal provision. So should the co-management areas.

Sample examples are provided below. If the co-management entities and areas are already established in the co-management agreement, the drafter can scroll past the next two provisions until the provision about the creation of a co-management plan.

#### **Draft Provision XXX. Creation of fisheries management [entities/units]<sup>73</sup>**

- (1) The [Minister, agency official], in consultation with [proper fisheries body, if appropriate], for the purposes of promoting sustainability of small-scale fisheries may facilitate the establishment of fisheries management [entities/units].
- (2) A fisheries management [entity/unit] is an organization of fishers, fish workers, [fish traders, boat owners,] and other small-scale fisheries stakeholders who traditionally depend on fisheries activities for their livelihoods.
- (3) The [Minister, agency official] may with the purpose of ensuring community participation in the management of small-scale fisheries, make regulations setting forth standards for the management of fisheries management [entities/units], including:
  - (a) objectives, structure, areas of jurisdiction, and mandate in co-management;
  - (b) minimum standards in the general administration of the fisheries management [entities/units];
  - (c) standards to follow by fisheries management [entities/units] in imposing fees and charges and the management and utilization of such funds;
  - (d) the protection of vulnerable groups, especially youth and women; and
  - (e) processes necessary to ensure that not more than [two thirds of members] of fisheries management [entities/units] are of the same gender and to ensure the inclusion of youth and persons with disability in leadership;
  - (f) such other standards which the [Minister, agency official] may consider necessary for the effective administration and management of the fisheries management [entity/unit].

#### **Draft Provision XXX. Creation of co-management areas<sup>74</sup>**

- (1) The [authorized fisheries officer] shall, following a consultative process, designate for each fisheries management [entity/unit] a co-management area, which the fisheries management [entity/unit] shall manage jointly with the [Minister, agency official].
- (2) In the case of fisheries in which fishing is undertaken by the members of more than one fisheries management [entity/unit], the [authorized fisheries officer]

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<sup>73</sup> Adopted from Kenya's Fisheries Management and Development Act, 2016.

<sup>74</sup> Adopted from Kenya's Fisheries (Beach Management Unit) Regulations, 2007.

shall, following a consultation with [proper fisheries body, if appropriate], designate a joint co-management area, in which several fisheries management [entities/units] shall share management responsibilities with the [Minister, agency official].

- (3) The [Minister, agency official] shall in the circumstances specified in paragraph (2) designate areas in which each participating fisheries management [entity/unit] shall have specific responsibilities.

**Draft Provision XXX. Creation of co-management plans<sup>75</sup>**

- (1) [Following the designation of a co-management area and in consultation with relevant fisheries entities/units OR Following the creation of a co-management agreement] the [authorized fisheries officer] shall develop a draft co-management plan for the designated co-management area, specifying fisheries management measures that are to be taken to ensure the sustainable use of fisheries in that area, including, but not limited to:
- (a) restrictions on the types and sizes of vessels allowed in the co-management area;
  - (b) restrictions on the types of fishing gears that may be used in the co-management area;
  - (c) the designation of zones, in which all fishing activities or specified fishing activities are prohibited;
  - (d) the designation of closed seasons either in the entire co-management area or in specified areas;
  - (e) the marking of fishing vessels;
  - (f) restrictions on the number of fishing vessel licenses or fishing licenses that may be issued;
  - (g) restrictions on the number of fishing vessel licenses or fishing licenses that may be issued.
- (2) Each co-management plan shall be agreed upon between the [authorized fisheries officer] and the [co-management entity/unit] and shall—
- (a) give effect to applicable national and regional policies and plans,
  - (b) comply with existing fisheries legislation, and
  - (c) specify the roles and responsibilities of the relevant fisheries management [entity/unit] and the [Minister, agency official] with regard to the plan's implementation and enforcement.
- (3) The [authorized fisheries officer] shall forward the co-management plan to the [Minister, agency official] for approval.
- (4) A fisheries [co-management entity/unit] shall give effect to the approved co-management plan through its bylaws.<sup>76</sup>
- (5) A fisheries [co-management entity/unit] shall in collaboration with the [Minister, agency official] regularly monitor the co-management area, or a designated area in the case of a joint co-management area, in order to ensure compliance with the Act, all applicable co-management plans, and applicable bylaws.
- (6) The [authorized fisheries officer] and fisheries management [entities/units] shall supervise the implementation of the co-management plan and shall periodically review its contents and revise it as necessary.

<sup>75</sup> Adapted from Kenya's Fisheries (Beach Management Unit) Regulations, 2007.

<sup>76</sup> In the context of a co-management agreement, a co-management entity (cooperative, for example) could have bylaws, in which it would acknowledge the existence of the plan.

**Draft Provision XXX. Revocation of co-management plans**

- (1) If the [authorized fisheries officer] suspects that a fisheries management unit is not taking sufficient steps to implement the approved co-management plan, such officer shall consult with that fisheries management [entity/unit] about the reasons for the lack of implementation.
- (2) If, following consultations, the [authorized fisheries officer] is of the opinion that the relevant fisheries management [entity/unit] is still failing to take sufficient steps to implement the approved co-management plan, such officer may serve a notice on the relevant fisheries management [entity/unit] to show cause why that co-management plan should not be revoked.
- (3) If, having received a notice to show cause described in paragraph (2), the relevant fisheries management [entity/unit] fails to show cause within [14 days] of the date of receiving the notice, or the [authorized fisheries officer] is not persuaded by the response of the fisheries management [entity/unit], the [authorized fisheries officer] may suspend or revoke the co-management plan, and consequently shall notify the relevant fisheries management [entity/unit] in writing and forward his decision to the [Minister, agency official] who shall within [14 days] approve or revise the decision.
- (4) A fisheries management [entity/unit] that is aggrieved by a decision to suspend or revoke a co-management plan pursuant to paragraph (2) may within [14 days] of the date of notification appeal to the [Minister, agency official], whose decision shall be final.

A determination of whom to involve as co-managers might depend on the specific circumstances of each country. In some instances, community-level co-management schemes might prove more adequate than broader, fishery-level co-management agreements, and vice versa. The policymaker should seek to involve a broad range of stakeholders in co-management mechanisms (to incorporate a variety of views), even if they still want to keep a preminent role for the fisheries agency in drafting and approving fisheries management plans.

Laws and regulations for fisheries co-management should include provisions enabling local authorities to enforce restrictions against domestic or foreign larger vessels into co-managed areas and/or call for the assistance of national law enforcement authorities. These laws should also include conflict resolution provisions in the case where two or more local authorities, populations, or representatives of fishing communities demand co-management privileges over the same, or overlapping, marine zones. This is particularly important to provide legal certainty to the SSF communities involved, as well as to ensure that the co-management scheme is implemented with broad community support.

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**Shared management zones designated by the Fisheries Authority**

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**Draft Provision XXX. Co-management of shared zones/areas and/or fishing resources**

- (1) In the case of fisheries or areas in which fishing is undertaken by the members of more than one [municipality/community/cooperative], the [Fisheries Authority] shall, following a consultative process, designate a joint co-management area in which more than one

[municipality/community/cooperative] shall share responsibilities for fisheries management.

- (2) The [Fisheries Authority] shall in the circumstances specified in paragraph (1) designate areas in which each individual participating [municipality/community/cooperative] shall have specific responsibilities particularly in regard to monitoring and enforcement.

Once there is authority for entering into co-management agreements and/or a co-management plan, and an agreement has been put in place between the fisheries agency and specific groups of stakeholders (cooperatives, fishers' associations, Indigenous communities), the co-management plan/bylaws/ordinance helps bring the co-management scheme to life, setting the basic functioning elements of the co-management scheme, and clarifying competences, procedures, and management priorities.

Some of the elements discussed below may be inserted into the co-management plan or be part of the co-management agreement itself. In some instances, the agreement is a simple document that formally creates a spatially-defined co-management zone, leaving all the governance details to the co-management plan. Conversely, some agreements include the formalization of the institutional structure of the co-management scheme, focusing the plan on the more procedural details (e.g. no-fishing zones, types of fishing gear, reporting). Whichever the path pursued, the policymaker should make sure there is consistency across co-management agreements and plans.

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### **General structure of co-management implementation plans/ bylaws/ordinances**

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The specifics of co-management mechanisms may vary from one country or region to another, depending on the specific circumstances and needs and the regulatory infrastructure already in place. The most common sections of a co-management plan/bylaw/ordinance include:<sup>77</sup>

- Administrative structure
  - Designation of co-manager
  - Powers of co-manager
  - Executive committees
  - Powers of committees
- Co-management areas/zones
- Registry of authorized fisherfolk/vessels
- Gear/vessel rules
- Funding and fees
- Transparency and accountability
- Conflict resolution
- Termination

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<sup>77</sup> In addition, most of these regulations and bylaws usually begin with a section explaining their purpose (General considerations) and another that provides an explanation of key terms used in the document (Definitions).

**Draft Provision XXX. Administrative structure**

A [co-management area] shall be governed by the following administrative structure: (a) an assembly; (b) an executive committee; and (c) such sub-committees as may be specified in the management plan or the bylaws of the [co-management area].

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**Co-management Director/Executive Committee**

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**Draft Provision XXX. Confirmation of [community representative/customary fisheries manager]**

- (1) The [fisheries authority] must confirm the appointment of the person or persons notified as [community representative/customary fisheries manager]; of the proposed [local customary name] area if the [fisheries authority] is satisfied that—
  - (a) no submission in opposition to a notification or a competing notification for a [local customary name] area has been received; or
  - (b) a dispute resolution process has been concluded and all disputes have been resolved through that process.
- (2) As soon as reasonably practicable and in any case no later than [20] working days after the appointment of any [community representative/customary fisheries manager] under subclause (1), the [fisheries authority] must cause to be published in a newspaper circulating in the locality of the [local customary name] area; and in the [official government newspaper], a notice—
  - (a) confirming the appointment of the [community representative/customary fisheries manager]; and
  - (b) describing the boundaries of the [local customary name] area for which the [community representative/customary fisheries manager] is to exercise any function under these [regulations]; and
  - (c) confirming who are [local community/municipal authority/Indigenous peoples] to which the appointment of the [community representative/customary fisheries manager] relates.

*NOTE: Other notes or requirements may be included here, such as recognizing any relevant specific Indigenous language terms that might be used for fisheries management purposes.*

- (3) At any time during the illness or absence of any [community representative/customary fisheries manager] or for any other temporary purpose, the [community representative/customary fisheries manager] may, with the approval of, and for such period of time as agreed to by the [local community/municipal authority/Indigenous peoples] that notified the [community representative/customary fisheries manager] and with prior notification to the [fisheries authority], delegate his or her powers under these regulations to any member of the [local community/municipal authority/Indigenous peoples] of that particular [local customary name] area.

**Draft Provision XXX. Cancellation of appointment**

- (1) The [fisheries authority] must cancel the appointment of any [community representative/customary fisheries manager] appointed under the previous [section] on receipt of a request in writing from—
  - (a) the [local community/municipal authority/Indigenous peoples] who notified the [community representative/customary fisheries manager] who was confirmed in accordance with this [regulation/act]; or
  - (b) the [community representative/customary fisheries manager] of the [local customary name] area concerned.
- (2) If the appointment of a [community representative/customary fisheries manager] is cancelled in accordance with subclause (1), the [fisheries authority] must appoint another [community representative/customary fisheries manager] notified by the [local community/municipal authority/Indigenous peoples].
- (3) The [fisheries authority] must cause to be published in a newspaper circulating in the locality of the relevant [local customary name] area, and must notify in the [official government newspaper] —
  - (a) the cancellation of any appointment of a [community representative/customary fisheries manager] under subclause (1); and
  - (b) the appointment of any new [community representative/customary fisheries manager] under subclause (2).
- (4) A cancellation of an appointment notified under subclause (3) takes effect from a date to be specified in the [official government newspaper] notice.

**Draft Provision XXX. Powers of the [community representative/customary fisheries manager] in respect of [customary/traditional] fishing in the [local customary name] area**

- (1) The [community representative/customary fisheries manager] of a [local customary name] area may make bylaws restricting or prohibiting the taking of fisheries resources from within the whole or any part of a [local customary name] area for any purpose that the [community representative/customary fisheries manager] considers necessary for the sustainable use of the fisheries resources in that [local customary name] area.
- (2) Bylaws made under this regulation may impose restrictions or prohibitions relating to all or any of the following matters:
  - (a) the species of fish, aquatic life, or seaweed that may be taken:
  - (b) the quantity of each species that may be taken:
  - (c) size limits relating to each species to be taken:
  - (d) the method by which each species may be taken:
  - (e) the area or areas in which each species may be taken:
  - (f) any other matters the [community representative/customary fisheries manager] considers necessary for the sustainable use of fisheries resources in that [local customary name] area.
- (3) Bylaws made under this regulation apply generally to all persons fishing in the [local customary name] area.
- (4) Bylaws made under this regulation must be deposited with the office of the [fisheries authority] nearest the [local customary name] area and also at a place designated by the [fisheries authority/officer], that must be open during office hours for the inspection of, and for the purposes of receiving submissions from, the public for at least [15] working days immediately before the date on which the restriction or prohibition is notified to the [fisheries authority].



- (5) The [fisheries authority/officer] must notify in a newspaper circulating in the locality of the [local customary name] area the fact that a bylaw has been deposited and the place where that bylaw may be inspected.
- (6) Any submissions made by the public must be sent to the [community representative/customary fisheries manager].
- (7) The [community representative/customary fisheries manager] may amend any bylaw deposited with the [fisheries authority], in light of any submission received.

**Draft Provision XXX. Co-management Executive Committees and designation of members<sup>78</sup>**

Co-management committee

- (1) The co-management committee shall have not less than [number], nor more than [number] members, who shall be elected by the members of the [co-management entity].
- (2) The composition of a co-management committee may provide—
  - (a) that the membership shall be distributed as follows—  
*[add specific criteria or preferences on representation of crew, boat owners, traders, pre and/or post-harvesting sector representatives (e.g. bait gatherers)].*
  - (b) that notwithstanding subparagraph (a), at least [number] of the co-management committee members should be women.
- (3) It shall be the duty of each member of the co-management committee to seek to represent the best interests of the [co-management entity] as a whole in the fulfilment of his duties rather than the interests of the membership category to which he/she belongs.
- (4) The co-management committee shall consist of a chairperson, a deputy chairperson, a secretary, a treasurer and committee members.

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**Area zoning (designation of specific fishing areas, no-take zones, protected areas, ...)**

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**Draft Provision XXX. Boundaries of the [co-management] area**

- (1) The [fisheries co-management/ specific area under co-management] is defined as follows [include list of names of territories/jurisdictions/municipalities part of the sustainable development area, and/or geographical coordinates].

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**Registry of fisherfolk and vessels (including local registries, color-coding of vessels, ...)**

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**Draft Provision XXX. Color-coding of boats<sup>79</sup>**

- (1) To provide a visual reference to efficiently manage fishing resources and facilitate enforcement measures, the [co-management authority] shall design a color-

<sup>78</sup> Legal language adapted from Kenya, Fisheries (Beach Management Unit) Regulations 2007, Section 14.

<sup>79</sup> Based on Philippines Republic Act No. 8550 Fisheries Code 1998, Implementing Rules and Regulations, Rule 16

coding system for [waters under its jurisdiction], such color code system to include identifiable markings to be carried by the [co-management area] fishing boats;

**Draft Provision XXX. Registry of [local/municipal/cooperative] fishers / Fisherfolk registry**

- (1) The [co-management authority] shall maintain a registry of fisherfolk, who are fishing in the [co-managed] waters for the purpose of determining priorities among fishers, regulation of entry within [co-managed] waters and monitoring fishing activities.
- (2) The [co-management authority], in coordination with the [country's government / general fisheries agency] shall facilitate the registration process by implementing a one-stop shop registration campaign, or equivalent streamlined registration process. The [country's government / general fisheries agency] shall support the registration process through specific budget allocation and/or deployment of personnel.

**Draft Provision XXX. Registry of fishing vessels**

- (1) The [co-management authority] shall maintain and periodically update a registry of [local/municipal/ co-management area] fishing vessels by type of gear and other boat particulars with the assistance of the [country's government / general fisheries agency].

**Draft Provision XXX. Closed census of vessels for the co-managed area / limiting fishing effort<sup>80</sup>**

- (1) Only [fishers/fishing vessels] duly registered according to the procedures in this [subparagraph/bylaws/ordinance/regulation] are authorized to fish in the [co-managed area].
- (2) The deadline for submitting registration applications will be one month from the day following the publication of this resolution in the [village ordinance/official government newspaper].
- (3) Applications will be addressed to the [Fisheries Authority/ Co-management Committee] and must be submitted through the standardized form that appears as Annex I of this resolution.
- (4) Applications will be submitted through the [form]. Applications may also be submitted electronically via [domain].
- (5) The vessels requesting registration in the co-managed area must meet the following requirements:
  - (a) The vessels must be in compliance with [general vessel registration requirements according to fisheries act].
  - (b) The vessel must have a base port in the [local jurisdiction/municipality/state] in which the [co-managed area] is located and must be registered in the [National Register of Fishing Vessels].
- (6) The census of registered vessels shall be updated at least every three years.

<sup>80</sup> Based on Xunta de Galicia, RESOLUCIÓN de 28 de febrero de 2018, de la Dirección General de Pesca, Acuicultura e Innovación Tecnológica, por la que se abre el plazo de presentación de solicitudes para la inscripción de embarcaciones en el censo de la reserva marina de interés pesquero Os Miñarzos (in Spanish).

- (7) Communication of catches. Vessel operators or licensed fishers must promptly report their catches in accordance with the catch reporting rules established by the management body. Catch data can be aggregated and used for appropriate scientific and management purposes, while individual catch reports are not made publicly available.
- (8) Limits to fishing effort. To ensure the sustainability of the fisheries in the [co-managed area]:
  - (a) The [Co-management entity] in collaboration with the [Fisheries Authority] will set a maximum annual/seasonal fishing effort, or maximum annual/seasonal catch limit for the co-managed area, based on the results of scientific monitoring and local knowledge.
  - (b) For each fishing campaign, the fishing effort made is distributed among all registered vessels according to the following criteria:

*NOTE: Criteria might be based on number of tons per species, fishing hours per vessel, or other criteria that may be considered adequate. Distribution may also be based on vessel size, crew members, specific species, ....*

- (9) The maximum annual fishing effort for [co-managed area] will be [XXX fishing hours/tons/other criteria].

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## Funding and fees

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### **Draft Provision XXX. Co-managed area funding**

- (1) A [co-managed area/local name of co-managed area] may in accordance with the [Fisheries Authority], levy fees and charges against its members and other users of the [co-managed area] in respect of services that it provides in connection with the management of the [co-managed area].
- (2) Fees and charges of the type referred in subparagraph 1 may include—
  - (a) membership fee payable by all members;
  - (b) an annual registration fee for fishing vessels;
  - (c) a joining fee for new members;
  - (d) landing fees payable by fishing vessels that land fish or fishery products at the fish landing station;
  - (e) charges for the use of facilities and services provided;
  - (f) a rental fee in respect of buildings and constructions located on the [co-managed area]; and
  - (g) a marketing fee payable by persons involved in the trading of fish.
- (3) Other sources of income of a [co-managed area] may include grants or donations from the Government, private persons, non-governmental organizations or other donor bodies.

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### Specific fishing gear requirements

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#### **Draft Provision XXX. Fishing gear requirements**

- (1) Within the [co-managed area/local name area], fishing can continue provided fishers are equipped with [add specific type/s of fishing gear, e.g., seine, trammel nets, hook and line, long-lining, pots, traps, and pond nets/pound nets].

*Specific types of fishing gear may be required for certain fisheries/species.*

- (2) Lobster fishing is limited to harvesting by hand directly on the reef, or by using small shelters.

*Provisions may also include general bans of certain types of fishing gear.*

- (3) The use of any techniques that disturb the seabed is hereby prohibited.

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### Transparency and accountability measures<sup>81</sup>

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#### **Draft Provision XXX. Annual report**

- (1) The [co-management entity] shall submit to the [Fisheries Authority] an Annual Report on the implementation of the [co-management plan].
- (2) The Annual Report shall contain the following information:
- (a) Fishing activities, including total catch conducted during the [fishing season / calendar year]
  - (b) Income and expenditures of the [co-management entity]
  - (c) Other relevant non-fishing activities in the [co-managed area]
  - (d) Fees and duties
  - (e) Issues affecting the normal operation of the co-management mechanism, including but not limited to unauthorized activities, management conflicts, infrastructure and logistical challenges.
- (3) The Annual Report shall be reviewed and approved by the [Fisheries Authority]. The report shall be published in [online source] and publicly displayed in the [locality/co-managed area]. The [Fisheries Authority] shall communicate any deficiencies and observations to the [co-management entity] in [xxx calendar days]. The [co-management entity] shall attend any observations in [xxx calendar days/months]. The [co-management entity] may request in a written communication to the [Fisheries Authority] that this term be extended for an additional [xxx calendar days/months]. Failure to attend the required observations will constitute the rejection of the Annual Report.
- (4) Failure to present the Annual Report for [two] consecutive years will lead to the cancellation of the co-management agreement.

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<sup>81</sup> Adapted from Chile, Reglamento que Regula los Titulos I y III de la Ley N° 21.027 sobre el Desarrollo Integral y Armonico de Caletas Pesqueras a nivel Nacional y fija Normas para su Declaracion y Asignacion (2018).

**Draft Provision XXX. [Monitoring/Oversight] Commission**<sup>82</sup>

- (1) The [co-management entity] shall create a [Monitoring/Oversight] Commission of no less than three members. The duration of their mandate will not coincide with that of the [co-management officer]. For [co-management entities] of less than one hundred members, the creation of a [Monitoring/Oversight] Commission is not mandatory.
- (2) Only members of the [co-manager entity/community] may be members of the [Monitoring/Oversight] Commission.
- (3) The members of the Commission will be elected always by secret ballot, by the highest number of votes validly cast in the [co-management entity / assembly]. Members are eligible for reelection.

**Draft Provision XXX. Oversight powers**

- (1) The [co-manager] must inform the [Monitoring/Oversight] Commission, at least once per quarter, of the activities and foreseeable evolution of the [co-managed area].
- (2) The Commission has the right to carry out all the necessary actions to fulfill its functions and can entrust this task to one or more of its members, or request expert assistance.
- (3) Each member of the Commission will have access to all the information received, but shall not reveal it outside the Commission to other members of the [co-management entity].

**Draft Provision XXX. Functions of the [Monitoring/Oversight Commission]**

- (1) The [Monitoring/Oversight Commission] shall exercise the functions indicated in this [management plan/ bylaws/ ordinance], but may not intervene directly in the management of the [co-managed area] or represent the [co-management entity] before third parties.
- (2) The [Monitoring/Oversight Commission] shall have the following functions:
  - (a) Review financial statements and issue recommendations.
  - (b) Call an [assembly/meeting] of all members when deemed necessary in the interest of the [co-management entity], in case the [co-manager] disregards any of the accountability requirements in this [section/ordinance/plan/bylaws].
  - (c) Oversee the process of election and appointment by of the members of the [co-management entity governance bodies].
  - (d) Other functions expressly entrusted to it by this [ordinance/plan/bylaws].

**Draft Provision XXX. Dispute resolution**

- (1) The [co-management entity] shall have authority to resolve disputes arising between its members on the management and use of fishing resources.
- (2) The [co-management entity] shall agree on a dispute resolution process consistent with their applicable [regulations/ordinances/ association bylaws/ local custom].

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<sup>82</sup> Adapted from Euskadi, Law on Cooperatives 2019, arts. 53-56.

**Draft Provision XXX. Penalties<sup>83</sup>**

- (1) The [co-management authority] shall inform the [Fisheries Authority] of any activities that involve a breach of the rules governing the [co-managed area].
- (2) The violations to the provisions of this [co-management plan] constitute a contravention of [administrative law/ fisheries regulations] and will be sanctioned in accordance with the applicable regulations.

**Enforcement measures**

*NOTE: For examples of legal language enabling the participation of SSF communities in fisheries enforcement, please see [Part 4](#) of this Toolkit.*

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### Co-management committees

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In addition to co-management agreements and co-management plans, co-management committees or councils are another co-management mechanism that can be used. They allow the gathering of representatives of different governmental bodies, members of SSF communities, fisheries associations, and other stakeholders together to solve SSF issues.

Co-management committees can work with national and local management authorities, as well as with co-management entities, such as fishing cooperatives, including in the creation of a co-management plan. Also, local co-management committees are particularly useful to serve as advisory/consultative bodies for areas where resources are shared and managed by different localities or entities/units.

**Draft Provision XXX. Creation of the Fisheries Co-management [Committee/Council]<sup>84</sup>**

- (1) The Fisheries Co-Management [Committee/Council] is hereby created to:
  - (a) ensure responsible management of fisheries;
  - (b) promote and support organizations that involve small-scale fishing communities;
  - (c) promote outreach to fishing communities.
- (2) The Fisheries Co-Management [Committee/Council] is composed of:
  - (a) [Local Fishery Administrative Authority / Minister/agency official] – Chairman
  - (b) Representatives of the [community fisheries councils / community executive committees];
  - (c) Representatives of the [local governmental bodies];
  - (d) Representatives of fishers, fish workers, and fishing vessel owners;
  - (e) Representatives of fishing organizations, such as fishing cooperatives;
  - (f) Representatives of traders of fishery products;
  - (g) Representatives of fish processors;
  - (h) Representatives of the [Environmental Agency / Fisheries Agency / Maritime Authority];

<sup>83</sup> Adapted from Xunta de Galicia, [Decreto 87/2007, do 12 de Abril, polo que se crea a reserva mariña de interese pesqueiro Os Miñarzos](#). (2007).

<sup>84</sup> Adapted from Mozambique's Ministerial Order 49/2007.

- (i) Representatives of the [oceanic research organization].
- (j) Other representatives from relevant [governmental bodies/ Ministries] and non-governmental organizations as the [Committee/Council] deems appropriate to assist in the management of small-scale fisheries, including women's associations and marginalized groups.
- (3) All members of the Co-Management [Committee/Council] have equal voice and voting power.
- (4) All points of disagreement among members shall be solved by the majority vote, with the requirement that at least [2/3] of the members are in attendance.<sup>85</sup>
- (5) The [Minister, agency official] is responsible for convening and directing meetings of the Fisheries Co-Management [Committee/Council].
- (6) The Fisheries Co-Management [Committee/Council] shall meet once every [six] months and whenever convened by the [Minister, agency official] or at the request of at least [1/2] of its members.

*NOTE: The policymaker might decide to reinforce co-management power further by determining that the governmental agencies shall not have a majority of votes in the co-management committees.*

#### **Draft Provision XXX. Fisheries co-management committees**

- (1) Co-management committees are the collegiate bodies responsible for the drafting of the management plan for the fishery or area, and once said management plan has been approved by [resolution/governmental decision], they are also responsible for its implementation and monitoring, and for periodically updating and adapting the technical measures contained within it.
- (2) The members of the Fisheries Co-Management [Committee/Council] shall be appointed among the public or private entities that belong to the following areas [...]:
  - (a) The fishing sector [...].
  - (b) Fishers' guilds and federations [...].
  - (c) The scientific community.
  - (d) Entities linked to the protection of the environment.

The [ fisheries agency/governmental entity] for fishing constitutes the fifth area of the co-management committee and will be present in all committees. A maximum of two people who represent it in the co-management committee.

To ensure adequate use and implementation of the co-management scheme, the fisheries act, or the regulations that implement it, should specify duties and responsibilities, and voting criteria and conditions for appointment and removal of representatives.

#### **Draft Provision XXX. Responsibilities of the Fisheries Co-management [Committee/Council]**

- (1) The Fisheries Co-management [Committee/Council] is responsible for issuing opinions and recommendations on fisheries management matters, including:
  - (a) proposed fisheries legislation and regulations;
  - (b) the fishing gear used;
  - (c) the size of fishing boats that are allowed in the fisheries;

<sup>85</sup> In light of potential health risks (e.g. COVID-19) and other challenges for personally attending meetings (e.g. childcare), alternatives to in person attendance should also be acceptable.

- (d) activities allowed in small-scale fisheries;
  - (e) sustainable use of fisheries' resources;
  - (f) protection of endangered species and marine environment;
  - (g) registration of fisheries organization, such as fishing cooperatives;
  - (h) proposals for projects for the development of fisheries;
  - (i) fishing conflicts;
  - (j) monitoring of activities taking place in the fisheries;
  - (k) catch limits and reporting of catch;
  - (l) proposals for planning and development of fisheries' plans.
- (2) The Fisheries Co-management [Committee/Council] may restrict issuance and use of fishing licenses when new scientific data or information about fisheries management so require, taking into account the precautionary principle, in particular, in the case of:
- (a) the possibility of overfishing in a particular fishing area;
  - (b) a serious danger of pollution arising from the conduct of the fishing activity for human health or the environment.

## APPLIED REGULATORY EXAMPLE: INTEGRATING CO-MANAGEMENT AND STEWARDSHIP OF EXCLUSIVE FISHING RIGHTS: THE FISHING GUILDS/COOPERATIVES

As mentioned in this Part and in [Part 1](#), there is a close connection between the organization of fisheries co-management structures and the allocation of exclusive fishing rights to specific groups of people. Some legal instruments, such as those for the creation of fishing guilds, enable fishers to organize within a governance structure adequate both for engaging in co-management and on the stewardship of exclusive fishing rights.

This applied regulatory example provides general model legal language for a law/regulation on fishing cooperatives. The legal drafter might consider using this language fully or in part to create a regulatory system for associations of fishers, or build on existing national laws on associations and/or cooperatives.<sup>86</sup> Sections of this model language can also be combined or complemented with other general model language on co-management institutions in this Part, as well as with examples on the creation of customary/traditional management entities in [Part 5](#).

### **Draft Provision XXX. Rationale**

- (1) [Fishing cooperatives/guilds/associations] are public entities with legal personality, established as an instrument for the cooperation between the [small-scale] fishing sector and the [government/fisheries agency] for the management of sustainable fishing [and aquaculture], and the marketing of [small-scale] fisheries products.

### **Draft Provision XXX. Responsibilities**

The responsibilities of the [fishing cooperatives/guilds/associations] are:

<sup>86</sup> The model legal language used in this example has been adapted from Basque Country, Law 16/1998 of June 25th on Fishing Cooperatives [[LEY 16/1998, de 25 de junio, de Cofradías de Pescadores](#)] (in Euskara and Spanish).



- (1) Act as entities for consultation and collaboration with the [government/fisheries agency] for the managing and marketing of fishing, shellfish and aquaculture products.
- (2) Defend the interests of its members in their fishing and marketing activities.
- (3) Inform and guide its members on the legal provisions and policies regulating the fishing activities.
- (4) Prepare and submit reports and recommendations to the [government/fisheries agency] on the legal provisions, policies and measures for the environmental, social, and economic sustainability of the fishing activity.
- (5) Promote agreements with other public or private entities to obtain the best use of sustainable financial instruments for the development of the fishing activity.
- (6) Promote the association with other fishing [cooperatives/guilds/associations] and collaboration agreements with other organizations and corporations in order to achieve the efficiency and profitability of the fishing activity and the commercialization of seafood products, within a sustainable development framework.
- (7) Exercise any management functions delegated to them by the [government/fisheries agency].
- (8) Enter into cooperation agreements with the [government/fisheries agency] in order to implement fisheries co-management and/or the stewardship of exclusive fishing rights.
- (9) Enter into cooperation agreements with the [government/fisheries agency] to carry out campaigns to identify markets and to promote [small-scale/locally harvested] fishing products.
- (10) Promote and develop training, recreational, cultural and social activities for its members.
- (11) Adopt the necessary measures to ensure that the landing and sale of the fishing products are carried out in accordance with the law.

**Draft Provision XXX. Requirements for incorporation of [Fishing cooperatives/guilds/associations]**

- (1) The constitution of a new [fishing cooperative/guild/association] will require the agreement of the [2/3] majority of the shipowners and of the fishing [crew/personnel] that develop the fishing activity in the boats with base port in the [define territorial area/municipality] where the [fishing cooperative/guild/association] is to be constituted, as well as a previous, non-binding report, of the relevant federation of fishing cooperatives, if any.
- (2) The initial assembly integrated by all members will approve the statutes of the [fishing cooperative/guild/association] and will adopt any other agreements that are necessary for its creation.
- (3) The members shall choose among them the President and the Board of Directors.
- (4) The minutes of the assembly shall include, at least, the place and date of the meeting, the list of attendees, a summary of the deliberations, the result of the vote and the agreements adopted.
- (5) The minutes shall be certified by a member provisionally exercising the functions of Secretary of the assembly, with the approval of the President.

**Draft Provision XXX. Modification and merger**

- (1) The modification of the territorial scope and the merger of several [fishing cooperatives/guilds/associations] will require the agreement by [2/3 majority]

of the members of the General Assembly of each [fishing cooperative/guild/association].

**Draft Provision XXX. Collaboration agreements between [fishing cooperatives/guilds/associations]**

- (1) The [fishing cooperatives/guilds/associations] may agree on the joint management of exclusive fishing rights, fishing services or other elements of their general interest.
- (2) These collaboration agreements shall be adopted by simple majority of the members of the Assembly of each [fishing cooperative/guild/association].

**Draft Provision XXX. Termination**

- (1) The termination of a [fishing cooperative/guild/association] will require the agreement of two-thirds of the members of the General Assembly.

**Draft Provision XXX. Governing bodies**

- (1) The governing bodies of the [fishing cooperative/guild/association] are the General Assembly, the Board of Directors and the President.
- (2) The governing bodies shall be elected for a period of four years, without prejudice to the early termination of their mandate in the event of termination, resignation, loss of membership, merger, dissolution or suppression of the guild.
- (3) The General Assembly is the body that represents all the members and controls the other governing bodies.
  - (a) The General Assembly shall be made up of the representatives of the boatowners and the [crew/labor personnel], according to the criterion of equal representation between both sectors. However, the statutes may establish that the General Assembly of the [fishing cooperative/guild/association] shall be formed by all the members, without prejudice to the equal.
  - (b) The General Assembly shall have the following responsibilities:
    - (i) Approve the statutes of the guild.
    - (ii) Elect the Board of Directors, the President, the Vice President and the substitute members from among its members. Appoint and dismiss them.
    - (iii) Approve the income and expense budgets and set the criteria for hiring personnel, if appropriate.
    - (iv) Approve any membership fees.
    - (v) Approve the budget and the financial statements for the budget year.
    - (vi) Approve the termination, modification and merger of the [fishing cooperative/guild/association].
    - (vii) Approve the participation of the [fishing cooperative/guild/association], by themselves or through their federations, in other companies or organizations.
    - (viii) Control the performance of the other governing bodies.
    - (ix) Approve the annual report and any projects and programs of action of the [fishing cooperative/guild/association].
    - (x) Any other functions attributed to it by the [national fisheries act and regulations].
- (4) The Board of Directors is the governing body of the [fishing cooperative/guild/association].

- (a) The Board of Directors shall be made up of the President, the Vice President and a number of members of the General Assembly, following the criterion of equal representation.
- (b) The Board shall have the following responsibilities:
  - (i) Execute the agreements of the General Assembly.
  - (ii) Direct and coordinate the activities of the [fishing cooperative/guild/association].
  - (iii) Present to the General Assembly, for its approval, the annual report, the projects and programs of the [fishing cooperative/guild/association], the balance sheet, profit and loss account, and the budget.
  - (iv) Propose fees.
  - (v) Hire or fire the personnel.
  - (vi) Appoint commissions and delegations.
  - (vii) Adopt agreements on the acquisition and selling of goods and services.
  - (viii) Control incomes and expenses of the [fishing cooperative/guild/association].
  - (ix) Any other functions attributed to it by the respective statutes or by the law.
- (5) Powers of the President. The President shall:
  - (a) Direct the Board of Directors.
  - (b) Represent the [fishing cooperative/guild/association], before the [government/fisheries agency] and courts and before any public or private, state, community or international organization or company, and authorize the granting of general powers of representation in lawsuits and general matters,
  - (c) Call, preside, suspend and adjourn the sessions of the governing bodies and direct their deliberations.
  - (d) Formalize on behalf of the [fishing cooperative/guild/association], the agreements of cooperation with public or private entities.
  - (e) Formalize the contracts for the acquisition or disposition of goods and services.
  - (f) Authorize expenses and payments.
  - (g) Formalize the hiring of personnel,
  - (h) Decide with their vote the ties in the votes.
  - (i) Authorize the minutes with their signature.
  - (j) Any other functions attributed by the statutes.
- (6) Powers of the Vice President. The Vice President shall perform the functions of the President due to his/her resignation, death, absence or illness. Should any of these circumstances occur, the Vice President, within a minimum period of three months and a maximum of eight months, shall call a General Assembly to elect a new President. The General Assembly shall elect as President the member of the Board of Directors who has obtained the greatest number of votes. A President or Vice-president who resigns may not stand for a new election until the end of the term in which he or she resigned.
- (7) Election Procedures
  - (a) Electors shall be members of the [fishing cooperative/guild/association] not disqualified for the exercise of voting rights.
  - (b) To be a member of the General Assembly, it shall be necessary to belong to the [fishing cooperative/guild/association].

- (c) To be part of the Board of Directors, in addition to what is stated in the first paragraph, candidates shall also have been members of the [fishing cooperative/guild/association] for two years, not exceeded 65 years of age at the time of the election, and not be incapacitated or disqualified to hold this position. The requirement of two years of membership will not be required in the constitution of a new [fishing cooperative/guild/association].
  - (d) The members of the Board of Directors who reach the age of 65 during their mandate may continue until the end of their mandate.
- (8) The Electoral Commission.
- (a) An Electoral Commission shall be set up for the election of the General Assembly. The Electoral Commission shall prepare an electoral plan and calendar.
  - (b) The Electoral Commission will be presided over by the President, with the Board of Directors and the Secretary of the guild also forming part of it.
  - (c) Within the [month] prior to the end of the mandate of the governing bodies, the President of the Commission will display the provisional lists of the members of the [fishing cooperative/guild/association] on the [fishing cooperative/guild/association] notice board, and a period of [days] will be granted for claims and appeals.
  - (d) The claims or appeals shall be resolved by the Election Commission within [days] from their presentation.
  - (e) The definitive lists shall be published immediately, and a period of [days] shall be established for the presentation of candidates, and the time, date and place shall be set for the election of these as members of the General Assembly.
  - (f) All members may present candidates to represent them at the General Assembly. If the [fishing cooperative/guild/association] has less than [50] members, all members will be automatically considered General Assembly representatives.
  - (g) The candidates with the highest number of votes shall be proclaimed.
  - (h) The Electoral Commission shall be responsible for overseeing the voting, maintaining order, counting the votes and ensuring the legality of the vote, with its President presiding over the voting.
  - (i) The Electoral Commission shall publish the provisional results and shall grant a period of [days] from the publication to file complaints and appeals, having to resolve them within the same period of time.
  - (j) Appeals against the agreement of the Commission may be made to the [government/fisheries agency] within a period of [days].
  - (k) Once the period of time has elapsed without any complaints or appeals having been made or having been resolved, the definitive list of the members that are going to form part of the General Assembly shall be published. Within [days] of the publication of the list, the General Assembly shall be called for the inauguration of the elected members and for the election of the remaining governing bodies.
- (9) Constitution of the General Assembly. The General Assembly shall be chaired by the acting President of the guild, assisted by the Secretary, who shall read the result of the votes and sign the minutes.
- (a) Any member of the General Assembly may present the acting President with a list of candidates for the Board of Directors, the Presidency and the Vice-

Presidency, with the signature of at least 20% of the members of the Assembly.

- (b) Notwithstanding the above, the statutes may establish any other system of presentation of candidates.
- (c) Secret ballots shall be taken for the election of the candidates and those with the greatest number of votes in favor shall be elected. In the event of a tie, if there are no other provisions, the oldest member shall be elected. In the same act, the General Assembly shall elect the substitutes to the Board of Directors.
- (d) Equal representation shall be maintained on the Board of Directors, and if the President belongs to the boatowner's sector, the Vice President shall be elected from the crew/labor personnel sector, or vice versa, acting in the same way with the rest of the members of the Board.
- (e) During the electoral process, the governing bodies and the Vice President shall be in office, may only carry out acts of management, and shall conclude their mandates with the inauguration of the new governing bodies.
- (f) The termination of the post of the President or Vice President shall require the call of a General Assembly, which shall be requested by at least [one third] of its members. At the Assembly, the applicants shall present the reasons and the President or Vice President shall be given the floor to explain his or her reasons in defense of his or her rights. Once the parties have spoken, an individual, direct vote by secret ballot shall be taken, and if this resolution is adopted by a majority of the votes, the position shall be terminated or separated.

## PART 4. EFFECTIVE MONITORING/ENFORCEMENT MECHANISMS TO DETER, PREVENT, AND ELIMINATE ILLEGAL AND/OR DESTRUCTIVE FISHING PRACTICES

### *Objective and Explanation*

Effective monitoring and enforcement mechanisms can help deter, prevent, and eliminate illegal and destructive fishing practices in SSF. Illegal fishing activities can include fishing without permission (for example by those who do not qualify as small-scale fishers), use of gear and other methods that are not allowed in a specified area, prohibited taking of fish and other species, and activities harmful to the marine environment. Not only can such practices put some fishers at a disadvantage compared to others (potentially resulting in insufficient fish available), they can also cause overfishing and harm fish, fish habitat, and other marine life.

Monitoring of fishing activities in SSF allows for the tracking of which activities are taking place, by whom, how much fish is caught, and by which methods. Once a certain area is designated as a small-scale fishery, it is important to be able to tell who is not allowed to be there (e.g., foreign boats, boats over a certain size, etc.). This can be achieved, for example, by using the same color for vessels that are allowed in the fishery. Catch reports, logbooks, and low-cost vessel monitoring systems (in places where that is an option) can help states maintain allowed catch limits and use of appropriate fishing practices, ensuring that fishing is done in a safe and sustainable manner.

The very existence of monitoring mechanisms and general awareness of them among fishers will also encourage fishers to comply with existing rules, thus decreasing the number of violations. However, rules should be clear and known to all who operate in the fishery. Fishers can then monitor each other and activities conducted in the fishery, ensuring that no illegal or unregulated fishing is done either by those who should not be fishing in a certain area, or those attempting to use illegal practices.

Enforcement mechanisms will help stop identified illegal and destructive fishing activities in SSF. Relevant provisions can designate an appropriate authority to investigate, catch and arrest wrongdoers, allow pursuit of violators beyond the fishery where the violation occurred, deputize authority to local government units, and appoint properly trained members of the small-scale fishing community to assist with monitoring and enforcement. Penalties outlined in the law will also serve as a deterrent to potential violators.

To the extent possible, states should involve those engaged in a co-management system to help monitor fishing activities and enforce the law. Small-scale fishers might be best suited to notice suspicious activity in their vicinity, observe and record the use of illegal fishing methods, and alert proper authorities. Reliance on established cultural, participatory, and co-management structures can also help build monitoring and enforcement mechanisms that will work for a particular area. For example, a community or association of small-scale fishers can help identify monitoring techniques that would work best and create a group of volunteers to monitor fishing activities. States should exercise governmental enforcement authority over vessels that are outside the legal control of local governments, such as foreign fleets or domestic industrial vessels, who fish in violation of exclusive area protections or with prohibited gear. Cooperation between local and national authorities to identify and take action against such violations can be critical to effective SSF management.

### Rationale

Monitoring and enforcement provisions are often part of fishing and maritime laws, and while some of them apply to fishing generally (including small-scale fishing), others can specifically target small-scale fishing. Enforcement provisions should include designation of the enforcement authority. In assigning responsibility to enforce fishing activities, states should be cognizant of existing co-management or participatory arrangements that relate to areas where small-scale fishing occurs. Enforcement powers of the designated agency should include powers to search and inspect boats, investigate, detain, and arrest suspects, and seize boats and catch. It is important to keep in mind that enforcement authorities need to collect, preserve, and present evidence that will be admissible in court.

Deputization of authority and appointment of additional personnel deserve particular attention, as such provisions can be tailored to the needs of SSF. Deputization and cross-deputization of authority can help involve relevant local authorities in the monitoring and enforcement of laws in SSF. Appointment provisions allow members of small-scale fishing communities and associations to receive proper training and serve as members of designated groups (such as enforcement officers, honorary fish wardens, and observers) that perform certain monitoring and enforcement tasks. Joint enforcement agreements

related to co-management can be used to help monitor and enforce activities in SSF. Other community-based enforcement and citizen collaboration provisions can similarly help, by specifying how members of civil society and fishing associations can engage in monitoring and enforcement.

Provisions related to monitoring can address various ways in which information about fishing activities is captured to detect illegal activity. Such provisions can include, for example, duty to report catch and logbook requirements. Modern technology should be used when possible to improve accuracy and availability of monitored data; however, it is not always available or affordable to small-scale fishers.

The contents of this Part draw heavily from previous ELI research on fisheries and MPA monitoring and enforcement, including development of the *Handbook of Legal Tools for Strengthening Marine Protected Area Enforcement*,<sup>87</sup> published in late 2016.

### Relevant Model Provisions

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#### Clarification of fisheries enforcement powers

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##### **Draft Provision XXX. Designation of lead enforcement authority**

- (1) Pursuant to this law, the following [ministries, agency officials] have authority to enforce the requirements of this law: [list ministries, agency officials].
- (2) The [ministries, agencies, or institutions] identified in subsection (a) shall use best efforts to coordinate their enforcement activities pursuant to this law to avoid gaps in enforcement and unnecessary redundancies.
- (3) [Specified ministry, agency, or institution] possesses lead enforcement authority with respect to the [law].

##### **Draft Provision XXX. Exercise of enforcement powers**

- (1) Where an enforcement officer has reasonable grounds for believing a person has violated a material requirement of this law or committed an offense under this law, the officer may, with or without a warrant:
  - (a) Stop, detain, and search the person, and stop, detain, board, and search any vehicle, vessel, boat, underwater craft, land craft, aircraft, or other mechanical or non-mechanical conveyance connected with the person that reasonably appears to have been used in the commission of a violation or offense under this law, and search any other person, cargo, catch, gear, and other articles or equipment aboard the vehicle, vessel, or conveyance;
  - (b) Seize any—
    - (i) Vehicle, vessel, or conveyance referred to in paragraph (1)(a), together with any stores, cargo, and other articles or substances thereon—such articles including, without limitation, fishing gear and equipment;
    - (ii) Weapon, equipment, or device of any kind that reasonably appears to have been used in the commission of the material violation or offense;

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<sup>87</sup> Environmental Law Institute, [Handbook of Legal Tools for Strengthening Marine Protected Area Enforcement](#).

- (iii) Cargo or catch that reasonably appears to have been transported, harvested, or otherwise obtained in connection with the commission of the material violation or offense;
- (c) Request—
  - (i) The name, address, and other identifying information of the person;
  - (ii) In the case of a vehicle, vessel, or conveyance—
    - (A) The name, address, and other identifying information of the master, crew members, charterer, insurer, and vessel owner;
    - (B) Access to the vessel’s [catch/landing reports, logbook];
    - (C) Registration for the vessel;
    - (D) Licenses, permits, and any other documentation pertaining to the lawful operation of the vessel and the activities of its master and crew;
    - (E) Access to any GPS or other electronic tracking information;

*NOTE: Although VMS and GPS devices are usually costly and often only required for large, industrial-scale vessels, recent examples of the use of low-cost positioning devices in SSF fleets – many of which also function as safety beacons and foul weather warning systems - have showed the advantages of their use for both labor safety and monitoring and enforcement.*

- (d) [If it appears to the enforcement officer to be necessary to arrest the person immediately to ensure that the purposes of this law are not defeated] / [If the enforcement officer has probable cause to believe a material violation or offense occurred and that this person committed it], arrest such person without a warrant, and the provisions of the [country’s criminal code] shall otherwise apply.
- (2) Any person, including a master, crew member, charterer, or vessel owner, who fails to comply with the provisions of this section, including by failure to respond to a lawful request for information made by an enforcement officer under paragraph (1)(c), commits a separate offense and is subject to a fine not exceeding [amount], or to imprisonment for a term not exceeding [X months], or both.
- (3) This section does not confer powers of search, seizure, or arrest on enforcement officers who otherwise lack such powers.

*NOTE 1: It is important that the legal drafter ensures that this provision is consistent with his or her country’s law governing warrantless arrest and seizure.*

*NOTE 2: This sample provision may be modified to further tailor the powers of search, seizure, or arrest in the SSF enforcement context, and to clarify the various standards that apply in certain circumstances (e.g., reasonable suspicion, probable cause). For example, circumstances justifying seizure or arrest could be spelled out in greater detail, though there is a benefit to allowing enforcement officers to retain some flexibility.*

*NOTE 3: This sample provision does not include authority to search premises on land in connection with SSF enforcement. However, the ability to carry out law enforcement powers on land can be a valuable tool for the SSF enforcement officer.*

In some cases, enforcement powers may be granted to local authorities.



**Draft Provision XXX. Deputization of local authorities**

- (1) Pursuant to the provisions of [environmental protection / SSF law], the [local authorities/ government officials] are hereby deputized as [Enforcement Officers], to take effect immediately.
- (2) By virtue of this deputation, the above deputized [Enforcement Officers] are hereby authorized to enforce laws and regulations [related to SSF] as administered by the [environmental ministry], specifically by way of the following:
  - (a) To detect violations of such laws and regulations [related to SSF] and to arrest, even without warrant, any person who has committed or is committing in their presence any of the offenses indicated in the [list of relevant laws/orders].
  - (b) To seize/confiscate the boats, gear, tools, equipment, and other paraphernalia used in the commission of the offenses, as instruments of the crime, including the catch thereof as proceeds of the crime, pursuant to [relevant Criminal Code provisions].
- (3) In all instances of detention, arrest, apprehension, or seizure, aforesaid officers, observing the period prescribed by law from the time of arrest and seizure, shall file the proper complaint with the appropriate officials designated by law to conduct preliminary investigation and cause the filing of the proper information in court.

**Draft Provision XXX. Cross-deputization**

- (1) Cross-deputization. Subject to the following limitations, the [ministries, agency officials] responsible for enforcing the requirements of this law are authorized to develop and implement written, interagency agreements between or among themselves and such other persons as the [minister] may designate.

## Limitations.

- (a) This subsection creates no new enforcement powers. It expands, by written agreement, the availability of existing enforcement powers of one [ministry, agency, or institution] to law enforcement officers at another [ministry, agency, or institution] for purposes of enforcing [SSF] requirements.
- (b) Cross-deputized enforcement officers are subject to oversight, training, and education requirements at least as stringent as those of the [ministries, agencies, or institutions] with statutory responsibility for enforcing this law.
- (c) An interagency agreement implemented under this subsection creates no new enforceable rights in third parties.

Members of the fishing community and other private citizens can be appointed to assist with monitoring and enforcement of the law.

**Draft Provision XXX. Appointment of [Honorary Fish Wardens/ Honorary Fishery Officers]<sup>88</sup>**

- (1) Appointment of [Honorary Fish Wardens / Honorary Fishery Officer]. Pursuant to this section, the [Minister] may appoint, in writing, persons to serve as [honorary fish wardens/ honorary fishery officer] whose duties shall be to prevent and detect offences [taking place in SSF areas], and enforce provisions outlined in this Act.

<sup>88</sup> Adapted from Fiji's Fisheries Act, 1992.

- (a) Power of examination and detention. Any police officer, customs officer, [honorary fish warden / honorary fishery officer] and any other officer empowered in that behalf by the [Minister] may, for the purpose of enforcing the provisions of this Act:
- (i) require any person engaged in fishing to exhibit his license, apparatus and catch;
  - (ii) go on board any vessel reasonably believed to be engaged in fishing and search and examine any fishing apparatus therein;
  - (iii) where there is reasonable suspicion that any offence has been committed, take the alleged offender, the vessel, apparatus and catch, without summons, warrant or other process, to the nearest police station or port. The vessel and apparatus may be detained pending trial of the offender, the catch may be sold, and the proceeds of the sale may be detained pending such trial; and after the trial, any vessel, apparatus or money detained shall, unless forfeited, be returned to the person from whom they were taken.
- (b) Any person who refuses to permit any officer or person mentioned in subsection (a) to board a vessel or obstructs or hinders him or her in the course of boarding a vessel or in the course of otherwise executing his or her duties shall be liable to a fine not exceeding [amount] or to imprisonment for a term not exceeding [length].
- (c) In making appointments under this section, the [Minister] shall:
- (i) Be satisfied that persons so appointed have fully and successfully completed all proper training necessary for carrying out the enforcement powers identified in subsection (a); or
  - (ii) Make the appointments contingent on the full and successful completion of such training.
- (2) Any [fisheries manager/customary fisheries manager] may nominate any person to the [Minister] to be appointed as an [honorary fishery officer / honorary fish warden].

In cases where illegal or unreported fishing is common, particularly by larger vessels, vessels that are not part of the small-scale fishery, or vessels that utilize harmful fishing practices and engage in other activity that can be harmful for fish and the environment in SSF, the legal drafter should consider creating observer provisions. These provisions will allow members of the public to participate in the monitoring and enforcement.

**Draft Provision XXX. Designation of observers<sup>89</sup>**

- (1) The [agency official / Minister] may, by notice published in [the Gazette], designate persons to act as observers on vessels issued with valid licenses or authorizations pursuant to this [law] or any regulation made under it.
- (2) Observers shall be permitted to board [any / certain criteria] vessel issued with a valid license or authorization pursuant to this [law] and remain on such vessel for the purpose of exercising the observers' functions, set forth in section (4).
- (3) The operator, master, and each member of the crew of such vessel shall allow and assist an observer to:

<sup>89</sup> Adapted from Fiji's Fisheries Act, 1992.

- (a) board and remain on such vessel for the purpose of carrying out his or her duties and functions at such time and place as the [agency official / Minister] may require;
  - (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine necessary to carry out his or her duties, including:
    - (i) full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;
    - (ii) full access to the vessel's records including its log and documentation for the purpose of records inspection and copying;
    - (iii) full access to fishing gear on board;
    - (iv) full access to navigation equipment and radios;
    - (v) take and remove from the vessel reasonable samples for the purpose of scientific investigation and other relevant information;
    - (vi) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;
    - (vii) send or receive messages by means of the vessel's communications equipment; and
    - (viii) gather any other information relating to small-scale fisheries;
  - (c) carry out the observers' duties safely;
  - (d) disembark at such time and place as may be determined by the [agency official / Minister].
- (4) Any observer may, for the purpose of enforcing the provisions of this [law], record, collect, and report reliable and accurate information about:
- (a) the quantity, size, species, and condition of fish taken;
  - (b) areas and depths at which fish was taken, the methods used to take fish, and the effects fishing methods had on the fish and the environment;
  - (c) all aspects of the operation of any vessel;
  - (d) processing, transportation, storage, and disposal of any fish;
  - (e) any other information that may help to analyze or verify information regarding small-scale fisheries for scientific, management, environmental, and compliance purposes.
- (5) In making designation under this section, the [agency official / Minister] shall:
- (a) Be satisfied that persons so appointed have fully and successfully completed all proper training necessary for carrying out the duties identified in the instrument of designation; or
  - (b) Make the designation contingent on the full and successful completion of such training.

**Draft Provision XXX. Use of agreements**

The [Minister/Administrator] may, in his discretion, enter into an agreement with a [State / sub-national entity / agency / association] to use the resources, personnel, services, or facilities of that [State / sub-national entity / agency / association] on a reimbursable or non-reimbursable basis to assist in enforcing this law and otherwise carrying out its purposes and policies.

**Draft Provision XXX. Community-based enforcement**

- (1) Each [local community] shall, after consultation with [the SSF management agency / environmental protection agency], draft and implement the rules that set forth the conservation and management measures that will govern the [specified SSF].
- (2) The set of [SSF management measures] shall be adopted as required in [regulation describing the basic requirements of community-based management rules].

**Draft Provision XXX. Citizen collaboration in monitoring and enforcement**

- (1) Collaboration in monitoring and enforcement. The [managing agency] shall:
  - (a) educate communities in villages in or near [SSF areas] about ways in which they can assist with monitoring and enforcement; and
  - (b) promote the participation of private citizens and organized civil society groups, including fishing associations, in actions to improve monitoring and enforcement [in SSF], such as:
    - (i) taking pictures of suspected illegal activities and reporting them to [enforcement officer];
    - (ii) creating volunteer monitoring groups.
- (2) Upon receiving reports of a suspected illegal activity, the [enforcement officer] shall investigate the reported activity in a timely manner [to stop the occurrence of the illegal activity and prevent it from happening in the future].
- (3) Information sessions on SSF enforcement regulations. The [managing agency] shall promote efforts by private citizens and organized civil society groups, including fishing associations, to conduct briefings in villages in or near [SSF areas] on ecological awareness and prevention of illegal activities, including sharing information about illegal activities that occur and their consequences for the fisheries and communities.

**Draft Provision XXX. Duty to report catch**

The owner or operator of a vessel shall complete a daily [information form] on catch, bycatch, and discard data. Reporting shall be conducted in accordance to the [standardized logbook / form]. The owner or operator shall ensure that such form is submitted to the [specified ministry, agency, or institution] on or before [specific date / time of arrival to port].

**Draft Provision XXX. Logbook requirements**

- (1) The master, owner, operator, or other person responsible for the operation of a licensed vessel [in a small-scale fishery] shall keep a fishing logbook and submit landing declarations to the [SSF and/or fisheries authority].
- (2) The responsible person identified in subsection (1) shall ensure that the logbook contains the following information:
  - (a) The external identification number and the name of the fishing vessel;
  - (b) The relevant geographical area in which the catches were taken;
  - (c) The date of catches;
  - (d) The type of gear, mesh size, and dimension;
  - (e) The type and estimated quantities of each species of fish in kilograms live weight; and
  - (f) The number of fishing operations.

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## Incorporating small-scale fishers and their associations in the implementation and enforcement of conservation measures

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Small-scale fishers or associations may be involved in the implementation and enforcement of fisheries management regulations to varying degrees. For example, they may be represented on the governing boards or councils that are tasked with conservation zone management, they may enter into co-management agreements with relevant government agencies to assist with enforcement in a particular area, or they may be delegated management authority over a particular zone.

### **Draft Provision XXX. Incorporating fisheries representatives in management bodies overseeing marine reserve management<sup>90</sup>**

- (1) In order to verify the evolution of the marine reserve and to ensure compliance with the objectives established in this decree, the management, monitoring and control body is created.
- (2) The management, monitoring and control body shall consist of eight members appointed by the [relevant government fisheries authority]:
  - (a) Three on behalf of the [relevant government fisheries authority].
  - (b) One on behalf of the [relevant government environmental authority].
  - (c) Four representing the entities of the fishing sector, including at least three representatives of the small-scale fishing sector.
- (3) The [relevant government fisheries authority] will designate the president and the secretary of the management, monitoring and control body.
- (4) The management body may invite technical personnel to its meetings to report and debate matters deemed appropriate.

### **Draft Provision XXX. Community participation in surveillance**

- (1) The [Fisheries Agency] shall designate local surveillance committees as organized groups of civil society to participate in community surveillance actions.
- (2) Upon their creation, the [Fisheries Agency] shall equip and provide training to the local surveillance committee.
- (3) The [Fisheries Agency] shall carry out annual review meetings to evaluate the functioning of the local surveillance committees.

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<sup>90</sup> Excerpted/adapted from Spain's Decreto 85/2007, de 12 de abril, por el que se crea la reserva marina de interés pesquero Os Miñarzos [Decree 85/2007, of April 12<sup>th</sup>, which creates the marine reserve of fishing interest Os Miñarzos], Art. 5 (based on English translation); see also Lucia Perez de Oliveira, *Fishers as advocates of marine protected areas: a case study from Galicia (NW Spain)*, MARINE POLICY (2012), at 4 ("The creation of this mixed group, which is jointly represented by members of the regional government and the fishing sector in equal numbers, set a precedent of co-management with a participatory approach"); see also Madagascar's Arrêté n° 11907/2017 du 17 mai 2017 portant modification de l'arrêté n°37069/2014 portant définition du plan d'aménagement concerté des pêcheries de la baie d'Antongil [Order No. 11907/2017 of May 17, 2017 amending Order No. 37069/2014 defining the concerted management plan for the fisheries of Antongil Bay], Art. 10 (co-management is also discussed more generally in Chapter IV) (based on English translation); see also Saint Lucia's Fisheries Act, 2001, §§ 18-19 (allowing the fisheries minister to delegate management authority for certain areas to local fishing authorities, referred to as the local fisheries management authorities, but not discussing their authority in relation to marine reserves or other conservation measures).

- (4) The local surveillance committees, with the support of the [Fisheries Agency], shall carry out outreach activities on environmental conservation and the prevention of illegal fishing practices.
- (5) The local surveillance committee may act as mediator on the resolution of conflicts between community members on the use of fishing rights and resources.

**Draft Provision XXX. Record of permit to be shown to fishery officer**

If a fishery officer has reasonable cause to suspect an offense has been committed against these regulations, on request by that fishery officer, every record of a permit granted under [section xxx] must be shown by the [community representative/customary fisheries manager] who granted it to that officer.

*NOTE: Depending on the preferences and priorities for fisheries management in a given area, the policymaker/legal drafter may decide to limit the commercial nature of fishing in traditional/customary fishing areas. This might be the case if the fisheries authority wishes to limit traditional fishing to a set of customary purposes, including subsistence fishing, thus tracing a divide between customary purposes and commercial purposes of fishing. In other instances, it might be in the best interest of fisheries governance to consider traditional fishing simply as another form of a fisheries management instrument, thus allowing the communities that manage those areas to freely trade the seafood products harvested. This second option might be more feasible, especially in areas where actual monitoring and enforcement is difficult.*

## PART 5. PROMOTING LONG-TERM CONSERVATION AND SUSTAINABLE USE, AND LINKS TO “OTHER EFFECTIVE AREA-BASED CONSERVATION MEASURES”

### Objective and Explanation

A main policy instrument for ocean protection is the creation of Marine Protected Areas (MPAs). Among many other benefits, MPAs can help ensure the availability of critical marine and coastal habitats and provide safe haven for threatened and endangered species. However, fisheries-dependent coastal communities often regard the establishment of an MPA as a threat. Some near-shore MPAs have achieved success in integrating protection and sustainable use, but for the most part these are still anecdotal examples.

Perhaps aware of the challenges of near-shore MPA implementation, in recent years most efforts on the creation of new MPAs have focused on the enactment of remote MPAs in the exclusive economic zone (EEZ). This has been a positive development, but focusing on large, remote MPAs has risks; in particular, it overlooks the importance of creating and implementing near-shore MPAs that promote the sustainable use of marine living resources closer to coastal communities.

In addition to involving local communities and MPA managers, it is necessary to engage with local legislators when designating and managing near-shore MPAs, since they, as the democratically-elected representatives of the people, can represent the concerns of local coastal communities, and take any necessary legislative action. Further, the integration and promotion of aspects of sustainable use in conservation planning can

help avoid separating MPA management from SSF management, which can have the undesirable effect of deepening the fragmentation of ocean governance.

Given their close interdependence, efforts to protect marine species, create MPAs, and promote SSF sustainability must be fundamentally integrated into the same policies, legal instruments, and governance approaches.

Along the same lines, Parties to the Convention on Biological Diversity (CBD) recognized early in the implementation of CBD's Strategic Plan (2011-2020) that there are a number of governance instruments, broadly referred to as 'other effective area-based conservation measures' (OECMs) that can help protect ocean spaces even if they do not fit the commonly-accepted definition of MPAs.<sup>91</sup> Discussions in the research and decision-making communities emphasize the importance of having legal and regulatory systems define and encourage the use of OECMs.

A scoping paper on Aichi Target 11 from the IUCN and the International Development Law Organization specifies that "greater consideration should be given to non-conservation legal tools that need to integrate biodiversity conservation and connectivity objectives into their frameworks," including sustainable use laws in fisheries.<sup>92</sup> The FAO, following a 2019 expert meeting focused on the intersection of OECMs and marine capture fisheries, issued the recommendation that countries "[a]dapt protected area policy and legislation for [the] establishment, governance, planning, management and reporting" of effective and equitable fisheries-relevant OECMs.<sup>93</sup>

As a result, the CBD COP adopted its own definition of "other effective area-based conservation measures": "a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values."<sup>94</sup>

The concept of OECMs is particularly relevant for the implementation of SSF governance instruments, since it opens the door to overcoming conflicts between fisheries areas and MPAs by adopting a framework of sustainable use that allows for certain types of fishing areas to be accounted for as zones that contribute to the overall health and conservation of the marine environment.

The CBD "Voluntary Guidance on the Integration of Protected Areas and Other Effective Area-Based Conservation Measures into Wider Land and Seascapes and Mainstreaming Across Sectors to Contribute, inter alia, to the Sustainable Development

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<sup>91</sup> IUCN, World Commission on Protected Areas Task Force on OECMs, Recognising and reporting other effective area-based conservation measures (2019).

<sup>92</sup> International Development Law Organization, Legal Aspects of the Aichi Biodiversity Target 11: A Scoping Study (accessed May 15, 2020).

<sup>93</sup> FAO, Report of the Expert Meeting on Other Effective Area-Based Conservation Measures in the Marine Capture Fishery Sector (accessed May 15, 2020).

<sup>94</sup> Secretariat of the Convention on Biological Diversity. Conference of the Parties. Decision COP XIV/8 (accessed November 4, 2020).

Goals”<sup>95</sup> provides additional details surrounding the use of OECMs in SSF governance. The Guidance promotes the consideration of numerous sectors and uses of ocean resources, as well as economic and social considerations related to coastal communities, when planning protected areas. As such, it encourages protecting ecosystems that serve essential purposes for food production and poverty alleviation, among other interests.

SSF often fulfill each of these roles because fishers provide food for themselves and their families, as well as their communities, and in doing so, make a living and support themselves. Their ability to do so, however, depends on the sustainability of fish stocks. The SSF Guidance outlines the following:

“B. Suggested steps for enhancing and supporting the mainstreaming of protected areas and other effective area-based conservation measures across sectors

- (a) Identify, map and prioritize areas important for essential ecosystem functions and services, including ecosystems that are important for food (e.g., mangroves for fisheries), for climate mitigation (e.g., carbon-dense ecosystems, such as forests, peatlands, mangroves), for water security (e.g., mountains, forests, wetlands and grasses that provide both surface and groundwater), for poverty alleviation (e.g., ecosystems that provide subsistence, livelihoods and employment), and for disaster risk reduction (e.g., ecosystems that buffer impacts from coastal storms, such as reefs, seagrass beds, floodplains);”

And more specifically, the Voluntary Guidance describes that OECMs are an area ripe for the “(d) Review[ing] and revis[ing] [of] existing policy and finance frameworks” and “(e) Encourag[ing] [of] innovative finance, including [from] investors, insurance companies and others, to identify and finance new and existing protected areas, and other effective area-based measures.”

These references clearly point towards the recognition of the key role of SSF communities in ocean conservation, and can be interpreted as supporting the development of spatially-defined areas of sustainable fishing. In fact, areas where industrial fishing is allowed are specifically excluded from being considered OECMs.<sup>96</sup>

While Part 3 of this Toolkit focuses on legal language for building a co-management scheme/institution, and Part 6 focuses on avoiding conflicts and enhancing the role of the SSF sector in the MSP process, this Part focuses on overcoming the disconnect between MPAs and fisheries zones by delivering examples of areas for which the main purpose is not conservation — fisheries — but that can still be used to achieve “sustained long-term”<sup>97</sup> conservation benefits. In addition, using fisheries resources sustainably can minimize negative environmental impacts and provide ecosystem benefits. Although co-management is a well-known element of this type of sustainable fisheries management zone, this Part will focus on examples of other instruments besides those that implement co-management.

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<sup>95</sup> Voluntary Guidance on the Integration of Protected Areas and Other Effective Area-Based Conservation Measures into Wider Land and Seascapes and Mainstreaming Across Sectors to Contribute, inter alia, to the Sustainable Development Goals.

<sup>96</sup> See IUCN Recommendation 102 (WCC-2016-Rec-102-EN), adopted at the World Conservation Congress 2016 in Hawai’i.

<sup>97</sup> As per the IUCN definition of OECMs



When designing new fisheries management systems and choosing between the various approaches commonly used to promote sustainable use, governments should foster the participation of and incorporate ideas from small-scale fishing communities in the decision-making and design process. As key resource users, small-scale fishers have a wealth of knowledge to bring to discussions about the status of and trends in fish populations, movement, and more, and can help shape regulations to better protect existing fish stocks.<sup>98</sup>

Since small-scale fishers rely upon these resources as a source of food and income, it is crucial to consider their interests when designing regulatory measures and ensure that they can continue to harvest enough fish to feed their communities and to make a living.<sup>99</sup> Further, given that small-scale fishers spend time in and around the fisheries themselves, they are uniquely qualified to aid in the implementation and enforcement of management regulations.

*NOTE: Although this Part builds on the concept of OECMs, it does so solely for purposes of highlighting the benefits of well-managed SSF areas, and not with the intention of ensuring that all SSF areas are categorized, evaluated and/or reported as OECMs.*

### Rationale

Regulations that conserve fisheries resources and allow for long-term sustainable use protect small-scale fishers who operate in specific areas, or have rights that allow them to use certain resources, by ensuring that overfishing, conflicting uses, and other threats do not interfere with their ability to exercise those rights and fish in those areas.<sup>100</sup> Ultimately, fisheries management regulations focused on conservation of resources and long-term sustainable use assist fisheries by protecting, and potentially enhancing, fish stocks.<sup>101</sup> Further, involving small-scale fishers in design and implementation of regulations ensures that controls are created based on a comprehensive understanding of the current state of the relevant fisheries, that they allow small-scale fishers to continue to contribute to the food supply and make an income doing so, and that they have community support for their implementation and enforcement.<sup>102</sup>

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<sup>98</sup> Kendra A. Karr, et al., Integrating Science-Based Co-management, Partnerships, Participatory Processes and Stewardship Incentives to Improve the Performance of Small-Scale Fisheries, FRONT. MAR. SCI. (Oct. 30, 2017).

<sup>99</sup> *Id.*

<sup>100</sup> Jose Maria Orensanz & Juan Carlos Seijo, Rights-based management in Latin American fisheries (Food and Agriculture Organization of the United Nations 2013), at 109.

<sup>101</sup> Steven D. Gaines et al., Designing marine reserve networks for both conservation and fisheries management (Proceedings of the National Academy of Sciences 2010), at 18288 (“Individual [marine] reserves can enhance population growth outside their borders...However, a more powerful source of network benefits derives from the demographic coupling of populations in separate reserves. If each reserve can enhance the rate of population growth in the other reserve, then this population synergy potentially can result in increased numbers both within reserves and outside”).

<sup>102</sup> Sustainable Fisheries, Catch Shares versus Sharing Catch (Nov. 24, 2015) (discussing the importance of stakeholder participation and “dexterity” when designing fisheries management tools: “The key to fostering dexterity is to focus first on how the management approach is decided and who participates.”).

Fisheries management mechanisms that promote sustainable use may limit or prohibit fishing, for example, by restricting how and by whom certain fish are caught, the quantity of fish that can be harvested, the seasons during which they can be harvested, and the geographic areas in which fishing can occur. They range from allocating exclusive fishing rights or designating closed seasons, to declaring reserves, marine protected areas, and other area-based management structures.

Adopting such regulations to promote sustainable use also allows countries to comply with existing obligations under international law and work towards a variety of sustainable development goals. Under the United Nations Convention on the Law of the Sea (UNCLOS), countries have both an obligation to protect the marine environment and the right to actively preserve natural resources that are found within their exclusive economic zones.<sup>103</sup> In addition, under the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP), countries must recognize and protect the rights of Indigenous peoples to use their traditional lands, territories, and resources.<sup>104</sup> Fisheries regulations that allow for certain marine areas to be designated and managed with the goal of conserving fish stocks, designed in conjunction with relevant stakeholders, will protect natural resources and the rights of the individuals and communities who use and rely on them.

Adopting fisheries management regulations that allow for long-term conservation and sustainable use can also benefit small-scale fishers and those who rely on fish caught by small-scale fishers as a food source. Countries can respect and protect tenure rights to specific marine and fishing areas by ensuring those fisheries are sustainably managed, and consequently, in accordance with human rights law, protecting local practices and allowing special access to fisheries to continue.<sup>105</sup> In addition to respecting tenure rights, sustainably managing fisheries resources can help ensure that members of small-scale fishing communities and other fishers have an opportunity to earn a sufficient living, and provide greater food security by preventing the depletion of an important food source.<sup>106</sup>

Bringing about protections for specific marine natural resources and the fishers who harvest them can also help limit the use of fishing practices that threaten the longevity of certain fisheries and marine resources more generally.<sup>107</sup> Further, allowing for the local designation and management of conservation areas can provide an opportunity for small-scale fishing communities to be involved in managing resources to which they have rights and upon which they rely for food and work, and for traditional fisheries knowledge to be incorporated into ongoing resource management.<sup>108</sup> Finally, when adequately implemented, legal instruments that promote and enforce sustainable use help overcome the dichotomy between conservation and exploitation of marine resources.

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<sup>103</sup> United Nations, Convention on the Law of the Sea, Arts. 56, 192.

<sup>104</sup> United Nations, Declaration on the Rights of Indigenous Peoples, Art. 26.

<sup>105</sup> FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, VOLUNTARY GUIDELINES FOR SECURING SUSTAINABLE SMALL-SCALE FISHERIES IN THE CONTEXT OF FOOD SECURITY AND POVERTY ERADICATION (2015), Guideline 5.4.

<sup>106</sup> *Id.* at Guidelines 5.13, 6.7.

<sup>107</sup> *Id.* at Guideline 5.14.

<sup>108</sup> *Id.* at Guidelines 5.15, 11.6.

*Institutional innovation and the implementation of area-based, integrated sustainable development governance*

The recognition that certain areas or regions (whether within the boundaries of one country or across two or more country jurisdictions) have distinct cultural, environmental, and ecological characteristics and values has at times led to the creation of innovative governance structures with those natural resources at the center. There is still much work to do on the creation of regulatory processes that integrate economic, environmental, and sociocultural policies.

The approach to securing advancement of the three pillars of sustainable development is still fragmented. While the term “sustainable development” has permeated many countries’ legal frameworks, the legislator is still given regulatory tools that only allow them to approach one angle of a multi-faceted issue. We need to protect the environment? Let’s create an MPA. We need to promote job creation and economic development? Let’s institute a tax-free ocean economy zone. We need to promote one specific kind of industry? Let’s create one-stop-shops and streamline regulatory processes. We need to preserve cultural values? Let’s issue ordinances that protect cultural rights, places, and immaterial cultural heritage. We need to sustainably manage fisheries? Let’s initiate the issuance of exclusive fishing rights. We need to provide better labor conditions for workers? Let’s promote social economy institutions and local networks of cooperatives...

All the examples above reflect different facets of the same objective: building a sustainable governance future. Most laws and regulations focusing on these topics include duties to collaborate and the creation of coordination mechanisms. With its connections missing, though, the ultimate goal (sustainable management) becomes more elusive. This reality is the condensed result of a long process of thematic and geographic fragmentation of governance: for each topic a different law; for each territory a different management institution, if not several concurrent ones.

Examples of governance failures and shortcomings abound. Too often, the narrative for the creation of an MPA is presented not as a way of securing long-term use, but as a struggle between fishing communities that need to harvest seafood for subsistence and profit versus the survival of fragile, unique marine species and ecosystems. Free industrial economic zones are often created to spur strategic foreign industrial investments, but not for targeted small, local businesses. Ideally, a legal framework for sustainable natural resources management should be able to connect the dots between all these policy objectives and instruments, and create new ones.

Following this example then, a “Sustainable small-scale fisheries” act or regulation should, at least: institutionalize co-management and devolution of governance; assign co-management to groups that represent local interests and values; issue specific processes for the creation of those groups, making sure that they seek not only economic, but also social and environmental objectives; secure the economic and cultural rights of those human groups through the recognition of marine tenure rights, while imposing specific marine conservation duties (and zones) to those same human groups; and securing access to a fair share of the seafood market through targeted economic, financial, and tax incentives.

A “Framework” act, convention, or agreement could enable the creation of a specific governance structure for the area, in this case a coastal zone of similar economic,

sociocultural, and environmental characteristics. The framework act would specify a few issues, including the exact location of the area to be managed, the governance and institutional structure (Commission, local/regional body), the recognition of its legal entity, a description of its management authority, and monitoring/accountability provisions. Marine spatial planning aims at achieving most of these same objectives (for examples on how to include an SSF focus in MSP, see [Part 6](#) of this Toolkit), but still, it does so in a manner that could be improved through enhanced inland-coastal-ocean management integration and implementation in parallel with other areas of regulation beyond ocean governance. This approach could be equally valid for the creation of both domestic and transboundary sustainable development areas.

In practice, the legal instruments discussed in this Part allow for creation of SSF management zones (with the exception of vessel type/fishing gear restrictions, which are not necessarily linked to specific areas) that adopt many elements of MPAs, but would likely not be considered MPAs under a country's law on protected areas. These types of instruments can provide fisheries managers with more tools to promote sustainable use in a way that expands the "protected area" concept beyond the limits of environmental protection to incorporate other aspects of sustainable development, with a special focus on protecting the threatened sociocultural and economic rights of small-scale fishing communities. In this way, the concept of a "protected" area goes beyond environmental governance to enable the designation of areas that are "protected" for sustainable development purposes: ensuring the protection of economic and sociocultural rights, while still maintaining a commitment to adequate conservation of the marine environment.

### *Relevant Model Provisions*

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#### **Creating zones of conservation to benefit fisheries productivity**

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As part of their general authority for fisheries stewardship, fisheries management agencies/ministries can create areas where fishing is limited or prohibited for purposes of long-term productivity. Fishing activities in those areas can be limited to specific uses, gear, or to use by one or a limited number of fishing communities or associations. Reasons that justify the implementation of areas of protection under the jurisdiction of the fisheries department include:

- a) fisheries management agencies often have more capacity and influence than environmental conservation agencies, and thus areas under their management are less likely to be disturbed by other agencies/interests; and
- b) this approach alters the usual power struggle between exploitation and conservation by putting the fisheries agency at the forefront of a detailed resource conservation measure.<sup>109</sup>

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<sup>109</sup> Ideally though, given the interconnectedness between exploitation and conservation of marine living resources, fisheries and environmental conservation authorities should be placed under the same governmental agency.

The protection of traditional or customary values is another policy principle that can be translated into fisheries management regulations and processes that promote sustainable SSF practices. Customary or traditional fishing zones recognize and protect the relationship between certain coastal communities and their traditional fishing grounds, usually for purposes of local consumption and trade. These types of fishing zones often authorize customary fishing practices (e.g. using certain types of fishing gear, methods and/or craft) and recreational fishing, while restricting industrial fishing and landing. They usually ban certain exploitation activities (aquaculture, sand dredging), but do not restrict other uses such as beach access. Specific management is often assigned to community representatives, which can issue additional measures through bylaws.<sup>110</sup>

**Draft Provision XXX. Creation of fisheries conservation marine zones**

- (1) The [Fisheries Management Agency] might declare areas that, due to their special characteristics, are considered adequate for the regeneration of fishery resources, as [fisheries conservation marine zones].
  - (a) The [declaration instrument (ministerial decree, order...)] will determine the limitations of the fishing activity, as well as of any other activity that may affect the natural balance.
- (2) In the [fisheries conservation marine zone], areas with different levels of protection may be delimited.<sup>111</sup>

## APPLIED EXAMPLE: CREATING TRADITIONAL/CUSTOMARY FISHING AREAS.<sup>112</sup>

As described above, a potential approach for strengthening community participation in SSF management and ensuring the involvement of underrepresented communities in ocean governance is the creation of Indigenous/traditional fishing zones, including the assigning of specific access privileges or exclusive fishing rights to the members of those communities. The model text below provides one example of how to establish a procedure for the establishment of Indigenous/traditional fishing zones.

<sup>110</sup> For example, the Honduras Fisheries Act enables the declaration of sustainable fisheries management zones that give management powers to municipalities. Declarations of these fishing zones can be specifically linked to the devolution of fisheries authority to municipalities, and to the establishment of co-management schemes. Thus, Honduras' General Law on Fisheries and Aquaculture authorizes the fisheries management agency to create Areas of Responsible Fishing and Aquaculture (APARs). APARs are subject to a specific Fisheries Management Plan and co-management must be facilitated in the area through case-by-case agreements with organizations of duly registered artisanal fish workers. Each area must have a Vigilance Committee, which conducts monitoring and evaluation, together with the co-manager, under the supervision of the Fisheries Department (DIGEPESCA), which provides technical assistance for the Plans. The law enables municipal governments to become the co-management entities. Failure to comply with the Management Plan results in the suspension of the declaration of the APAR, including any marine tenure rights granted under the Plan. See Honduras, General Law on Fisheries and Aquaculture, Art 23.

<sup>111</sup> Adapted in part from Spain, State Maritime Fisheries Law, Article 14.

<sup>112</sup> Legal text adapted from New Zealand Fisheries (Kaimoana Customary Fishing) Regulations 1998 and Fisheries (South Island Customary Fishing) Regulations 1999. Legal language has been adapted to combine procedures for the creation of protected areas and special Indigenous fisheries management zones.

**Draft Provision XXX. Relationship between these and other regulations**

- (1) In the event of any inconsistency between these regulations and any other regulations made under the [Country Fisheries Act], these regulations prevail over such other regulations, with the exception of regulations for emergency measures.

**Draft Provision XXX. Application for [local customary name] areas**

- (1) The representative of a [local community/municipal authority/Indigenous people's territory] may apply to the [fisheries management authority] for a [local customary name] area in respect of any part of the area for which they are the [area/municipal area/Indigenous people's territory] under its jurisdiction.
- (2) The application must include the name of the person or persons being notified as representative of the [local community/municipal authority/Indigenous people's territory].

Local community means those persons—

- (a) who own any land on or in the proximity of a proposed [local customary name]; or
- (b) who—
  - (i) have a place of residence in the proximity of the proposed [local customary name]; and
  - (ii) have been in occupation for a cumulative period of no less than 3 months in the 3 consecutive years immediately preceding the date of the application for that [local customary name]

**Draft Provision XXX. Notification**

- (1) A [local community/municipal authority/Indigenous people's council] may, in accordance with these regulations, manage customary fisheries within the area for which they are management authority.
- (2) Before [local community/municipal authority/Indigenous people's council] begin the management of customary fisheries under these regulations, they must notify the [Fisheries authority] of the proposed [local customary name] area to be managed.

**Draft Provision XXX. Public notice**

On being notified of a proposed [local customary name] area, the [Fisheries authority] must, as soon as practicable but no later than [20] working days after the receipt of such a notification, publish the details of that notification at least twice, with an interval of not less than [5] working days between each publication, in a newspaper circulating in the locality of the proposed [local customary name] area.

**Draft Provision XXX. Submissions**

- (1) Within 20 working days after the date of the second publication of a notification any person referred to in subclause (2) may make a submission concerning the notification to the office of the [fisheries authority] closest to the locality of the proposed [local customary name] area.
- (2) A person may make a submission under subclause (1) if the person is an authorized representative of—
  - (a) the [local community/municipal authority/Indigenous people's council] on whose behalf the notification is made; or

- (b) other organization representing the relevant local/customary/traditional/Indigenous interest; or
  - (c) any other entity claiming rights in respect of customary fishing in any part of the proposed [local customary name] area.
- (3) The [fisheries authority] must provide to every person that makes a notification, a copy of every submission received and must make such submissions publicly available.

**Draft Provision XXX. Dispute resolution**

- (1) This regulation applies if the [fisheries authority] considers that any submission referred to in the previous section indicates a dispute regarding—
- (a) who has the customary right to that fishing area; or
  - (b) who should be representative of the [local community/municipal authority/Indigenous people’s council]; or
  - (c) the boundaries for the proposed [local customary name] area.
- (2) If this regulation applies, the [fisheries authority] must, as soon as practicable,—
- (a) notify the representative of the [local community/municipal authority/Indigenous people’s council] on whose behalf the notification is made, and any person who has made a submission, and;
  - (b) recommend that they agree on a dispute resolution process consistent with their custom in respect of the proposed [local customary name] area.
- (3) Without limiting subclause (2), in resolving any dispute under that subclause, the parties may agree—
- (a) to notify a [community representative/customary fisheries manager] not previously notified in any notification of a proposed [local customary name] area;
  - (b) to boundaries for the proposed [local customary name] area that differ from those contained in any notification of a proposed [local customary name] area.
- (4) If a dispute resolution process has been concluded and no agreement is reached on the notification in accordance with this regulation, the parties must refer the dispute to an authority agreed to between the parties for settlement of the dispute.
- (5) As soon as practicable after the conclusion of the resolution process established under subclause (2)(b) or subclause (4), the [local community/municipal authority/Indigenous peoples] who made the notification must advise the [fisheries authority] in writing of—
- (a) who are [local community/municipal authority/Indigenous peoples] concerned; and
  - (b) the name of the [community representative/customary fisheries manager]; and
  - (c) the boundaries for the proposed [local customary name] area; and
  - (d) the resolution of any other dispute concerning the proposed [local customary name] area.

**Draft Provision XXX. Declaration of a [local customary name] area**

- (1) Subject to regulations [this Regulations/this Act], the [fisheries authority] must, by notice in the [official government newspaper], declare an area to be a [local customary name] area if satisfied that—

- (a) there is a special relationship between [local community/municipal authority/Indigenous peoples] making the application and the proposed [local customary name] area; and
- (b) the general aims of management specified on the application under [this Regulation] are consistent with the sustainable utilization of the fishery; and
- (c) the proposed [local customary name] area is an identified traditional fishing ground and is of a size appropriate to effective management; and
- (d) the [fisheries authority] and the [community representative/customary fisheries manager] are able to agree on suitable conditions (if any) to address issues raised by submissions, for the proposed [local customary name] area;

*NOTE: Depending on the specific needs of the managed area and/or the community, and on the compliance requirements of other fisheries regulations, the legal drafter may consider including other conditions for the approval of a customary fishing area. This might include, e.g., the recognition of the rights of other persons with a commercial interest in a species to take their quota entitlement or annual catch entitlement (where applicable), or allowing fishing of persons with a commercial fishing permit for a non-quota species within the customary fishing area.*

*The regulation may also specifically declare that the customary/traditional fishing zones are not to be considered marine protected areas for purposes of implementation of the country's law on protected areas. The legislator may decide to make this clear in the regulation to secure that the procedures, characteristics, and management authorities for the customary areas remains separated from the country's MPA network.*

- (2) If the [fisheries authority] considers that an application for a [local customary name] area does not meet 1 or more of the criteria in subclause (1), the [fisheries authority] must decline the application as soon as reasonably practicable, and in any case no later than [30] working days after the date of the [fisheries authority]'s decision to decline the application, the [fisheries authority] must notify the applicant in writing of the decision and the reasons for the decision.
- (3) If the [fisheries authority] declares a [local customary name] area under subclause (1), the [fisheries authority] must cause an appropriate notice to be published in the [official government newspaper] as soon as possible.
- (4) Non-compliance with any time period [in the previous subparagraphs] does not prevent the [fisheries authority] declaring a [local customary name] area in accordance with this regulation.

### **Draft Provision XXX. Creation of a sustainable development area<sup>113</sup>**

#### **Section XXX. Objectives**

The purpose of this [act/decreet/treaty] is the creation of the [local name area/sustainable development area], the creation of its governing bodies and the description of its functions for the adequate implementation of the [area/area name].

The management of the [local name area/sustainable development area] includes all programs, subprograms, projects and processes coordinated across the [local name area/sustainable development area] as defined in Section XXX.

<sup>113</sup> Legal text adapted in part from the Treaty between the Republics of El Salvador, Guatemala and Honduras for the execution of the Trifinio Plan, Cape Verde Law n. 94/IX/2020 of July 13<sup>th</sup>, and from Philippines Fisheries Code.



## Section XXX. [local name area/sustainable development area]

- (1) The [local name area/sustainable development area] is an area of special interest of the [name all national/regional/local/Indigenous authorities involved], representing an indivisible ecological unit for the sustainable management of its natural resources.
- (2) The management of contiguous [natural/fishery/ocean resources] which straddle several municipalities, cities or provinces, shall be done in an integrated manner, and shall not be based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The [national/regional/local/Indigenous authorities] which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated [fishery/ocean/natural] resource management.
- (3) For purposes of this [Act/Decree/Treaty], the [local name area/sustainable development area] is defined as follows [include list of names of territories/jurisdictions/municipalities part of the sustainable development area, and/or geographical coordinates].
- (4) The [local name area/sustainable development area] has the following strategic objectives:
  - (a) Convert [local name area/sustainable development area] into a model of social and economic development under a framework of environmental stewardship, ensuring the sustainable management of its natural resources and the human security of its inhabitants.
  - (b) Become a strategic pole in the development of a sustainable [country name] maritime economy.
  - (c) Achieve the integration of environmental, social, and economic policies of [regions/municipalities].
- (5) The [local name area/sustainable development area] has the following strategic focuses:
  - (a) Fisheries
  - (b) Aquaculture
  - (c) Tourism
  - (d) Renewable energy
  - (e) [other]

## Section XXX. Management Commission for the [local name area/sustainable development area]

- (1) The Commission is composed of the following members [list of representatives of jurisdictional entities, government agencies, municipalities and/or Indigenous communities interested].
- (2) The Commission is the implementing institution of the [local name area/sustainable development area], with administrative, financial and technical autonomy and its own legal personality.

## Section XXX. Strategic planning

- (1) The Commission will develop the [local name area/sustainable development area] Strategic Plan and submit to [governmental agency/ president/ central government authority] for approval.
- (2) The [governmental agency/ president/ central government authority] can approve, conditionally approve, or reject the Strategic Plan.

Section XXX. Territorial planning. Special Inland, Coastal, and or Marine activity zones

[This section may include the description of specific land and/or marine zones that are to be dedicated to specific purposes, such as protected areas, tourism development, fisheries, renewable energy, or other relevant purpose].

Section XXX. Single window permitting

- (1) In order to streamline regulatory compliance with the [local name area/sustainable development area] Strategic Plan, avoiding conflicts between uses, and ensuring that cumulative social and environmental impacts and benefits are considered, the Commission will centralize permitting for all development projects and investments, including registries, administrative processes, fees and taxes, industrial and environmental requirements.

*[Additional sections can define the Commission's set of competences, as well as the description of its management institutions]*

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### **Outlining inclusive, participatory approaches for designing sustainable management regulations**

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**Draft Provision XXX. Confirmation of [community representative/customary fisheries manager]**

- (1) The [fisheries authority] must confirm the appointment of the person or persons notified as [community representative/customary fisheries manager]; of the proposed local customary name] area if the [fisheries authority] is satisfied that—
- (a) no submission in opposition to a notification or a competing notification for a [local customary name] area has been received; or
  - (b) a dispute resolution process has been concluded and all disputes have been resolved through that process.
- (2) As soon as reasonably practicable and in any case no later than [20] working days after the appointment of any [community representative/customary fisheries manager] under subclause (1), the [fisheries authority] must cause to be published in a newspaper circulating in the locality of the [local customary name] area; and in the [official government newspaper], a notice—
- (a) confirming the appointment of the [community representative/customary fisheries manager]; and
  - (b) describing the boundaries of the [local customary name] area for which the [community representative/customary fisheries manager] is to exercise any function under these [regulations]; and
  - (c) confirming who are [local community/municipal authority/Indigenous peoples] to which the appointment of the [community representative/customary fisheries manager] relates;

*NOTE: Other notes or requirements may be included here, such as recognizing any relevant specific Indigenous language terms that might be used for fisheries management purposes.*

- (3) At any time during the illness or absence of any [community representative/customary fisheries manager] or for any other temporary purpose,

the [community representative/customary fisheries manager] may, with the approval of, and for such period of time as agreed to by the [local community/municipal authority/Indigenous peoples] that notified the [community representative/customary fisheries manager] and with prior notification to the [fisheries authority], delegate his or her powers under these regulations to any member of the [local community/municipal authority/Indigenous peoples] of that particular [local customary name] area.

**Draft Provision XXX. Cancellation of appointment**

- (1) The [fisheries authority] must cancel the appointment of any [community representative/customary fisheries manager] appointed under the previous [section] on receipt of a request in writing from—
  - (a) the [local community/municipal authority/Indigenous peoples] who notified the [community representative/customary fisheries manager] who was confirmed in accordance with this [regulation/act]; or
  - (b) the [community representative/customary fisheries manager] of the [local customary name] area concerned.
- (2) If the appointment of a [community representative/customary fisheries manager] is cancelled in accordance with subclause (1), the [fisheries authority] must appoint another [community representative/customary fisheries manager] notified by the [local community/municipal authority/Indigenous peoples].
- (3) The [fisheries authority] must cause to be published in a newspaper circulating in the locality of the relevant [local customary name] area, and must notify in the [official government newspaper] —
  - (a) the cancellation of any appointment of a [community representative/customary fisheries manager] under subclause (1); and
  - (b) the appointment of any new [community representative/customary fisheries manager] under subclause (2).
- (4) A cancellation of an appointment notified under subclause (3) takes effect from a date to be specified in the [official government newspaper] notice.

**Draft Provision XXX. Powers of the [community representative/customary fisheries manager] in respect of [customary/traditional] fishing in the [local customary name] area**

- (1) The [community representative/customary fisheries manager] of a [local customary name] area may make bylaws restricting or prohibiting the taking of fisheries resources from within the whole or any part of a [local customary name] area for any purpose that the [community representative/customary fisheries manager] considers necessary for the sustainable use of the fisheries resources in that [local customary name] area.
- (2) Bylaws made under this regulation may impose restrictions or prohibitions relating to all or any of the following matters:
  - (a) the species of fish, aquatic life, or seaweed that may be taken;
  - (b) the quantity of each species that may be taken;
  - (c) size limits relating to each species to be taken;
  - (d) the method by which each species may be taken;
  - (e) the area or areas in which each species may be taken;
  - (f) any other matters the [community representative/customary fisheries manager] considers necessary for the sustainable use of fisheries resources in that [local customary name] area.

- (3) Bylaws made under this regulation apply generally to all persons fishing in the [local customary name] area.
- (4) Bylaws made under this regulation must be deposited with the office of the [fisheries authority] nearest the [local customary name] area and also at a place designated by the [fisheries authority/officer], that must be open during office hours for the inspection of, and for the purposes of receiving submissions from, the public for at least [15] working days immediately before the date on which the restriction or prohibition is notified to the [fisheries authority].
- (5) The [fisheries authority/officer] must notify in a newspaper circulating in the locality of the [local customary name] area the fact that a bylaw has been deposited and the place where that bylaw may be inspected.
- (6) Any submissions made by the public must be sent to the [community representative/customary fisheries manager].
- (7) The [community representative/customary fisheries manager] may amend any bylaw deposited with the [fisheries authority], in light of any submission received.

**Draft Provision XXX. Notification of bylaw**

- (1) On the making of a bylaw, and after amending the bylaw in light of any submission received (if required), the [community representative/customary fisheries manager] must notify the [fisheries authority] of the proposed bylaw by sending to the [fisheries authority] a copy of that bylaw and—
  - (a) a statement of the reasons why the [community representative/customary fisheries manager] considers the proposed bylaws desirable for the sustainable use of fisheries resources in that [local customary name] area; and
  - (b) a statement that the proposed bylaw has been deposited with the [fisheries authority] in accordance with [this regulation/relevant section]; and
  - (c) a statement of the reasons why the proposed bylaw is consistent with the aims of management specified in the application for the creation of the [local customary name] area.
- (2) On receipt of any notification under subclause (1), the [fisheries authority] must decide, as soon as practicable and in any case no later than [40 working days] after the making of the bylaw and after taking into account the statements made in accordance with subclause (1), whether or not to approve the bylaw.
- (3) Non-compliance with any time period specified in [this section/this regulation] does not prevent the [fisheries authority] approving a bylaw in accordance with this regulation.
- (4) On approving a bylaw in a [local customary name] area under subclause (2), the [fisheries authority] must, as soon as practicable after approving such a bylaw, publish the approved bylaw in the [official government newspaper].
- (5) On rejecting the imposition of a bylaw in a [local customary name] area under subclause (2), the Minister must notify the [community representative/customary fisheries manager] of his or her decision.
- (6) Any bylaw approved under this regulation takes effect from a date specified in the approved bylaw published in the [official government newspaper].

**Draft Provision XXX. Enhancement of fisheries resources**

Subject to [regulation], any [community representative/customary fisheries manager] for a [local customary name] area may authorize any person to take fisheries resources from any area within that [local customary name] area and to release those fisheries

resources within another part of that [local customary name] area, for the purpose of enhancing the stocks, despite any bylaw applying under these regulations.

**Draft Provision XXX. Powers of Minister**

Assistance to [community representative/customary fisheries manager].

The [fisheries authority] must provide to any [community representative/customary fisheries manager] such information and assistance as may be necessary for the proper administration of these regulations.

**Draft Provision XXX. Minister's powers concerning management by [community representative/customary fisheries manager]**

- (1) This regulation applies if the [fisheries authority] considers, after consulting with the [local community/municipal authority/Indigenous peoples] and the [community representative/customary fisheries manager], that, for the purposes of these regulations,—
  - (a) the [local customary name] area is not being managed in a manner consistent with sustainable use of the fisheries resources in that area; or
  - (b) the management of any [local customary name] area will adversely affect the sustainable use of fisheries resources in that [local customary name] area; or
  - (c) the management of any [local customary name] area is not in accordance with any conditions agreed by the [fisheries authority] and the [local community/municipal authority/Indigenous peoples] under [this regulation/name specific section/s]; or
  - (d) the management of any [local community/municipal authority/Indigenous peoples] is significantly different from the aims specified in the approved form under [this regulation/name specific section/s] for managing the [local customary name] area; or
  - (e) a [community representative/customary fisheries manager] is acting in contravention of their authority under these regulations.
- (2) If this regulation applies, the [fisheries authority] must provide such advice and assistance as he or she considers necessary to enable the [community representative/customary fisheries manager] to remedy the matters forming the basis of the [fisheries authority]'s concerns.
- (3) If, after consultation with the [local community/municipal authority/Indigenous peoples], the [fisheries authority] considers that a [community representative/customary fisheries manager] is unable or unwilling to implement any advice or assistance provided under subclause (2), the [fisheries authority] and the [local community/municipal authority/Indigenous peoples] must, as soon as reasonably practicable, and in any case no longer than [60 working days] after the commencement of consultation by the [fisheries authority],—
  - (a) develop a management strategy to sustainably manage the [local customary name] area; and
  - (b) assess whether any existing bylaws are inconsistent with the management strategy.
- (4) After developing a management strategy or after assessing whether existing bylaws are consistent with that strategy, the [fisheries authority] may—
  - (a) cancel or amend, by notice in the [official government newspaper], any inconsistent bylaws; and
  - (b) require the [community representative/customary fisheries manager], by notice in writing, to observe the management strategy until such time as the

- [fisheries authority], after consultation with the [local community/municipal authority/Indigenous peoples], is satisfied that any fisheries resources are being managed in accordance with the principles of sustainable use.
- (5) If the Minister requires the [community representative/customary fisheries manager] to observe a management strategy under subclause (3), no restriction or prohibition or bylaws may be made under that are inconsistent with that management strategy.
  - (6) If any [community representative/customary fisheries manager], fails to follow a management strategy provided under subclause (3), the [fisheries authority] must, by notice in the [official government newspaper], notify the [local community/municipal authority/Indigenous peoples], referred to in subclause (3), and may cancel the appointment of that [community representative/customary fisheries manager].
  - (7) If the appointment of a [community representative/customary fisheries manager] is cancelled under subclause (6),—
    - (a) that person is not eligible for reappointment for a period of up to 5 years after the date of cancellation without the [fisheries authority]’s approval; and
    - (b) the [fisheries authority] must, within [60 working days] after the date of the notification in the [official government newspaper] under subclause (6), appoint another [community representative/customary fisheries manager], notified by the [local community/municipal authority/Indigenous peoples] who made the notification of the [community representative/customary fisheries manager].
  - (8) The [fisheries authority/head of fisheries agency] must cause to be published in a newspaper circulating in the locality of the relevant [local customary name] area, and in the [official government newspaper], a notice of—
    - (a) the cancellation of any appointment of a [community representative/customary fisheries manager] under subclause (6); and
    - (b) the appointment of any new [community representative/customary fisheries manager] under subclause (7).
  - (9) A cancellation or appointment notified under subclause (7) takes effect from a date to be specified in the [official government newspaper] notice under that subclause.

**Draft Provision XXX. Planning measures and creation of fisheries management plans**

- (1) Any [community representative/customary fisheries manager] may prepare a management plan for the [local customary name] area for which that [community representative/customary fisheries manager] has authority.
- (2) When a plan is prepared by a [community representative/customary fisheries manager] and that plan is agreed to be authorized by the [local community/municipal authority/Indigenous peoples] of the [local customary name] area for which the [community representative/customary fisheries manager] was appointed, the plan may be treated as a fisheries management document for the purposes of the [Country’s General Fisheries Act], provided it meets the requirements of that Act.

*NOTE: Indigenous, traditional, and local communities should have flexible instruments to enable adequate community participation in monitoring and enforcement. For examples of model legal language in this regard, please see [Part 4](#) of this Toolkit.*

Any [community representative/customary fisheries manager] may provide input to and participate in the process of setting or varying sustainability measures, or developing management measures concerning the whole or any part of the [local customary name] area for which that [community representative/customary fisheries manager] has been appointed.

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### **Regulating the harvesting of fisheries resources to promote long-term sustainable use**

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In order to promote long-term sustainable use of fisheries, fishing activities can be limited in a number of ways, including through restrictions on fishing methods and gear used, on the quantity of fish that can be caught, or on access to certain marine areas or fishing stocks.<sup>114</sup> Different methods may be more or less effective in different settings depending on the nature of a particular fishery, local demand, competing uses of marine resources, and more. In order to determine which approach or approaches will be most beneficial for a specific area or fishery, best available science should be collected and reviewed through a participative decision-making process.<sup>115</sup>

Sample provisions discussing different types of fisheries management restrictions are included below. These provisions can be inserted in the legal framework as general principles of a country's fisheries management, complementing the implementation of other, more detailed measures, such as marine tenure rights and co-management mechanisms, already described in this Toolkit.

#### **Draft Provision XXX. Limiting fishing gear<sup>116</sup>**

(1) Any fishery management plan which is prepared with respect to any fishery, may:

<sup>114</sup> See, e.g., Ley 11/2008, de 3 de diciembre, de pesca de Galicia [Galician Fishing Act 11/2008], Art. 7 (based on English translation); see also Bangladesh's Marine Fisheries Ordinance, 1983, Part VIII, § 55(2) (listing various types of rules that the Government can make to limit fishing); see also Fiji's Fisheries Act, 1992, § 9(g) ("The Minister may make regulations ... regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite"); see also Mexico's Reglamento de la Ley de Pesca [Regulation of the Law of Fisheries], 2004, §§ 3o, 24 (requiring the relevant authority to ensure that fisheries are sustainable by using a variety of regulatory tools, including limiting fishing gear, establishing minimum fish sizes, and designating closed areas) and the Ley General de Pesca y Acuicultura Sustentables [General Law of Aquaculture and Sustainable Fisheries], 2007, § 8 (allowing the regulation of fisheries using catch ceilings, closed areas, and more); see also Canada's Fisheries Act, § 9.1(1) (granting the Minister of Fisheries and Oceans the authority to issue fisheries management orders for conservation purposes); see also Costa Rica's Ley 8436 de Pesca y Acuicultura [Law on Fish and Aquaculture], 2005, Ch. VI (discussing various limitations that can be placed on fishing to conserve marine resources) (based on English translation).

<sup>115</sup> The FISHE Framework, available for free on the EDF Fishery Solutions Center website, provides valuable information on the key elements of fisheries plans and has been incorporated into the legal framework for fishery management in Philippines and is used in Belize and other countries.

<sup>116</sup> Excerpted/adapted from 16 U.S.C. § 1853(b)(2)(A), (b)(4); see also the Barbados Fisheries Act, 1993, § 46(a)-(b) ("The Minister may make regulations generally for the management and development of fisheries in the waters of Barbados and in particular, for any of the following (a) prescribing mesh sizes, gear standards ... (b) prohibiting methods of fishing or types of fishing gear"); see also Saint Lucia's Fisheries Act, 2001, §§ 24-25 (outlining specific fishing methods that are not permitted and prohibiting the possession of certain fishing gear).

- (a) designate zones where, and periods when, fishing shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear; and
- (b) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of this provision.

**Draft Provision XXX. Establishing a catch ceiling**<sup>117</sup>

- (1) The [relevant government fisheries authority] may prescribe limitations or a quota on the total quantity of fish captured, for a specified period of time and specified area based on the best available evidence.
  - (a) Such a catch ceiling may be imposed per species of fish whenever necessary and practicable;
  - (b) Provided, however, that in municipal waters and fishery management areas, and waters under the jurisdiction of special agencies or co-management agreements, catch ceilings may be established for conservation or ecological purposes upon the concurrence and approval or recommendation of such special agency and/or [small-scale fishers association] and other resource users and stakeholders.

**Draft Provision XXX. Designating closed areas**<sup>118</sup>

- (1) The [relevant government fisheries authority] may make regulations generally for the management and development of fisheries in the waters of [country name] and in particular, for closed areas.
- (2) A ‘closed area’ means any area declared by the [relevant government fisheries authority] within which the fishing of designated species of fish or by designated fishing methods is prohibited.

**Draft Provision XXX. Designating marine reserves**<sup>119</sup>

<sup>117</sup> Excerpted/adapted from the Philippines’ Fisheries Code of 1998, § 8; *see also* Mozambique’s Lei no. 22/2013 das Pescas e revoga a Lei no. 3/90 [Fisheries Law], 2013, Art. 15(2)(d) (discussing establishing total allowable catch).

<sup>118</sup> Excerpted/adapted from the Barbados Fisheries Act, 1993, § 46 and Barbados Fisheries (Management) Regulations, 1998, § 2; *see also* 16 U.S.C. § 1853(b)(2)(C) (describing conditions for designating closed areas under the regulations).

<sup>119</sup> Designation of marine reserves can help protect resources that help fisheries replenish themselves. Excerpted/adapted from Bangladesh’s Marine Fisheries Ordinance, 1983, Part VIII; *see also* Belize’s Fisheries Act, 2000, §14 (includes similar language regarding the creation of marine reserves); *see also* Spain’s Ley 3/2001, de 26 de marzo, de Pesca Marítima del Estado [Law 3/2001, of March 26, on State Maritime Fisheries], Art. 14 (based on English translation) (“Marine reserves will be declared those areas that by their special characteristics are considered adequate for the regeneration of fishing resources, contributing to the preservation of the natural wealth of certain areas, the conservation of different marine species or the recovery of ecosystems”); *see also* the Philippines’ Fisheries Code of 1998, § 80; *see also* Decreto 85/2007, de 12 de abril, por el que se crea la reserva marina de interés pesquero Os Miñarzos [Decree 85/2007, of April 12<sup>th</sup>, which creates the marine reserve of fishing interest Os Miñarzos], Art. 5 (based on English translation); *see also* Ley 11/2008, de 3 de diciembre, de pesca de Galicia [Galician Fishing Act 11/2008], Arts. 9-12 (describing three types of fisheries management areas: marine conditioning areas, areas of marine repopulation, and marine reserves) (based on English translation); *see also* Lucia Perez de Oliveira, *Fishers as advocates of marine protected areas: a case study from Galicia (NW Spain)*, MARINE POLICY (2012), at 2 (discussing the creation of the Os Miñarzos Marine Reserve of Fishing Interest (OMMRFI) in Galicia, which “combines both fisheries conservation and biodiversity conservation objectives, though the emphasis is on the former”); *see also* Fiji’s Fisheries (Wakaya Marine Reserve)



- (1) The [relevant government fisheries authority] may declare any area of the [country]’s fisheries waters and, as appropriate, any adjacent or surrounding land, to be a marine reserve where it considers that special measures are necessary:
  - (a) to afford special protection to the aquatic flora and fauna of such areas and to protect and preserve the natural breeding grounds and habitats of aquatic life, with particular regard to flora and fauna in danger of extinction; or
  - (b) to allow for the natural regeneration of aquatic life in areas where such life has been depleted;<sup>120</sup> or
  - (c) to promote scientific study and research in respect of such areas; or
  - (d) to preserve and enhance the natural beauty of such areas.
- (2) Any person who, in any marine reserves declared under section (1), without permission granted under this section, takes any of the following actions, shall be guilty of an offense [in accordance with applicable enforcement mechanisms]-
  - (a) fishes or attempts to fish; or
  - (b) dredges, extracts sand or gravel, discharges or deposits waste or any other polluting matter, or in any other way disturbs, alters or destroys fish or their natural breeding grounds or habitats; or
  - (c) constructs or erects any buildings or other structures on or over any land or waters within such reserve.
- (3) The [relevant government fisheries authority] may give permission to do any of the things prohibited under this section where the doing of such things may be required for the proper management of the reserve or for any of the purposes referred to in section (1).
- (4) The [relevant government fisheries authority] may, in writing and subject to such terms and conditions, if any, as may be specified therein, exempt from all or any of these provisions or the rules made thereunder any vessel or person undertaking research into marine fisheries or other marine living resources in the [country]’s fisheries waters.

*NOTE: Marine reserves can increase fish populations within reserves themselves and in surrounding areas.<sup>121</sup> Granting TURFs or other exclusive fishing rights to small-scale fishers in areas surrounding reserves can increase the conservation benefits of marine reserves by incentivizing those that are holding fishing rights to fish sustainably in order to preserve stocks for future use.<sup>122</sup> TURF-reserves can also benefit small-scale fishing communities by protecting access to reliable fish stocks and*

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Regulations, 2015, § 3(1), 3(5) (designating a marine reserve to advance species conservation and prohibiting all fishing within the reserve); *see also* Niue’s Domestic Fishing Act, 1995, §§ 7-8 (discussing the designation of marine reserves and the prohibition of fishing within them); *see also* Saint Lucia’s Fisheries Act, 2001, § 22 (granting the fisheries minister the authority to designate marine reserves).

<sup>120</sup> *See also* Philippines’ Fisheries Code of 1998, § 23.

<sup>121</sup> Jamie C. Afflerbach et. al, *A global survey of “TURF-reserves”, Territorial Use Rights for Fisheries coupled with marine reserves*, 2 GLOBAL ECOLOGY AND CONSERVATION 97, 98 (2014) (defining “TURF-reserves” as “a marine conservation and fisheries management approach that combines (1) allocation of harvest rights to a defined group of fishers in a designated area (TURF) with the ability to limit access, and (2) a clearly defined marine reserve located within or adjacent to the TURF. The reserve(s) can take many forms and may be permanent, temporary or seasonal, and prohibit take of some or all species within the reserve boundaries”).

<sup>122</sup> *Id.*

reducing competition with other fishers.<sup>123</sup> For further information on exclusive fishing rights, see the Toolkit Parts 1 (on tenure rights) and 2 (on exclusive fishing zones).

**Draft Provision XXX. Designating fish refuges or sanctuaries<sup>124</sup>**

- (1) The [relevant government fisheries authority] may establish fish refuges and sanctuaries. At least twenty-five percent (25%) but not more than forty percent (40%) of bays, foreshore lands, continental shelf or any fishing ground shall be set aside to strengthen the habitat and the spawning grounds of fish.
  - (a) Within these areas no commercial fishing shall be allowed.
  - (b) All marine fishery reserves, fish sanctuaries and reservations already declared or proclaimed shall be continuously administered and supervised by the [relevant government fisheries authority]:
    - (i) Provided, however, that in municipal waters, the concerned [marine resource users, including small-scale fishers and associations] may establish fishery refuge and sanctuaries.
  - (c) The [marine resource users, including small-scale fishers and associations] may also recommend fishery refuge and sanctuaries:
    - (i) Provided, further, that at least fifteen percent (15%) where applicable of the total coastal areas in each municipality shall be identified, based on the best available scientific data and in consultation with the [relevant government fisheries authority], and automatically designated as fish sanctuaries.
  - (d) It shall be unlawful to fish in fishery areas declared as fishery reserves, refuge and sanctuaries.

**Draft Provision XXX. Declaring a network of Marine Protected Areas<sup>125</sup>**

- (1) Objectives of the Marine Protected Areas Network:
  - (a) Ensure the conservation and recovery of natural heritage and marine biodiversity.
  - (b) Protect and conserve the areas that best represent the distribution range of species, habitat and ecological processes in the seas.
  - (c) Promote the participation of coastal communities in the stewardship and conservation of the marine environment.
  - (d) Promote the conservation of ecological corridors and the management of those elements that are essential or of paramount importance for migration, the geographical distribution and genetic exchange between populations of wildlife species and marine flora.
  - (e) Constitute the contribution of [country] to international networks of Marine Protected Areas that, where appropriate, be established.

<sup>123</sup> *Id.*; see also Kendra A. Karr, et al., Integrating Science-Based Co-management, Partnerships, Participatory Processes and Stewardship Incentives to Improve the Performance of Small-Scale Fisheries, FRONT. MAR. SCI. (Oct. 30, 2017).

<sup>124</sup> Excerpted/adapted from the Philippines' Fisheries Code of 1998, § 81.

<sup>125</sup> Excerpted/adapted from Spain's Ley 41/2010, de 29 de diciembre, de protección del medio marino [Law 41/2010, of December 29, on the protection of the marine environment], Title III, Arts. 25 (other Articles describe the types of MPAs to include in the network, and the required contents of the Network's Master Plan) (based on English translation); see also Kenya's Fisheries Management and Development Act, 2016, § 47 for relevant legal language for the designation of MPAs.

**Draft Provision XXX. Power to issue customary/traditional fishing permits**

- (1) A [community representative/customary fisheries manager] appointed under these regulations may authorize any individuals, in accordance with this regulation, to take any fish, aquatic life, or seaweed for customary purposes from within the whole or any part of the [local customary name] area, for which the [community representative/customary fisheries manager] has been appointed.

*NOTE: Depending on the specific priorities or needs for fisheries management and ocean conservation, the legal drafter may include certain exceptions to the powers to authorize the taking of aquatic species for customary fishing purposes (e.g. permit for the subsistence/traditional taking of fishing of species that would otherwise be prohibited, such as marine mammals, sharks.*

- (2) Any permit made under subclause (1) may require that the taking of fisheries resources is consistent with the custom of the [local community/municipal authority/Indigenous peoples] of that [local customary name] area.
- (3) A permit must specify—
- (a) the date or dates that the species may be taken; and
  - (b) the persons who are authorized to take the species; and
  - (c) the species that may be taken; and
  - (d) the quantity of each species that may be taken; and
  - (e) size limits relating to each species to be taken; and
  - (f) the method by which each species may be taken; and
  - (g) the area or areas in which the species may be taken; and
  - (h) the purpose for which the species may be taken;
  - (j) any other matters concerning customary fishing the [community representative/customary fisheries manager] may reasonably specify.

**Draft Provision XXX. Flexibility of traditional fisheries management measures**

- (4) Despite subclause (2), if the [community representative/customary fisheries manager] and the [fisheries authority] agree to a process and form of permit other than that prescribed in subclause (2), that process and form of permit replaces that prescribed in subclause (2).
- (5) Any permit granted under subclause (4) must specify the matters referred to in paragraphs (a) to (j) of subclause (3).
- (6) The holder of a permit granted under subclause (1) must produce it when reasonably requested to do so by a fishery officer.

*NOTE: This provision may also specify a description of fees, or not accept payment of any kind in exchange for a permit.*

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### Including accountability mechanisms

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**Draft Provision XXX. Fisheries information**

- (1) Within [1 month] after the end of [each quarter in each calendar year], a [community representative/customary fisheries manager], or such other person as agreed between the [local community/municipal authority/Indigenous peoples] and the [fisheries authority], must provide, for the sole purpose of setting or varying sustainability measures or developing management controls, a

summary of information collected under [fisheries information requirements and procedures section of this or other legal instrument].

- (2) The information in subclause (1) must be provided to the office of the [fisheries authority] closest to the [local customary name] area for which the [community representative/customary fisheries manager] or agreed person has been appointed.

**Draft Provision XXX. Records of authorizations**

Every [community representative/customary fisheries manager] appointed under these regulations must keep accurate records of every authorization granted, and the records must specify full particulars of that authorization.

**Draft Provision XXX. Records of fisheries resources taken**

Every [community representative/customary fisheries manager] appointed under these regulations must keep accurate records of the species and quantities of fisheries resources taken by those persons authorized under these regulations to take fish, aquatic life, or seaweed.

**Draft Provision XXX. [Authorization/permit] to be held**

- (1) Persons authorized under these regulations to take fish, aquatic life, or seaweed, must hold in their possession proof of the authorization/permit when fishing under the authorization/permit.

**Draft Provision XXX. Reporting**

- (1) Any person authorized under these regulations to take fish, aquatic life, or seaweed must advise the [community representative/customary fisheries manager] of the species and quantity taken under that permit no later than 5 working days after the taking of those species.
- (2) Any person authorized under these regulations to take fish, aquatic life, or seaweed must advise the [community representative/customary fisheries manager] as soon as practicable of any other species and quantities of such species taken as a result of the lawful taking of the fish, aquatic life, or seaweed authorized.

**Draft Provision XXX. Notification**

- (1) On the last day of [January, March, June, and September] in every calendar year, every [community representative/customary fisheries manager] appointed under these regulations must provide to such person, as is agreed between the [local community/municipal authority/Indigenous peoples] and the [fisheries authority] copies of every record kept by the [community representative/customary fisheries manager] under these regulations during the preceding 3 months.
- (2) Fishery officers may have access to the records referred in subclause (1) for general compliance purposes.

**Draft Provision XXX. [Community representative/customary fisheries manager] to meet and inform the [local community/municipal authority/Indigenous peoples]**

- (1) The [community representative/customary fisheries manager] must, no later than 31 March in each year, hold a meeting with the [local community/municipal authority/Indigenous peoples] and must at that meeting report on—

- (a) the administration of these regulations by the [community representative/customary fisheries manager] within the [local customary name] area; and
  - (b) the number of permits granted for the period, and the species and quantities of each species for which permits were granted; and
  - (c) any restrictions or prohibitions in force for that period; and
  - (d) any other matters relevant to the effective management of the [local customary name] area by the [community representative/customary fisheries manager].
- (2) The [community representative/customary fisheries manager] must publicly notify the date of every meeting to be held under subclause (1).

## PART 6. REGULATORY IMPLEMENTATION OF AREA-BASED MANAGEMENT, INCLUDING MARINE SPATIAL PLANNING.

### *Objective and Explanation*

Area-based management mechanisms, like marine spatial planning, allow for the consideration of ecosystem characteristics and functions, as well as the demands and potential impacts of desired uses, to determine where certain uses should and should not be located within a designated marine space in order to optimize desired environmental, economic, and social outcomes.<sup>126</sup> Adopting legislation that outlines marine spatial planning processes prior to developing individual marine spatial plans can ensure that a fair and comprehensive evaluation and design process is followed, input is gathered from interested stakeholders, and the delineation of zones is sustainable, equitable, and enforceable.<sup>127</sup>

Given the key importance of small-scale fishing for ocean and human sustainability in many jurisdictions, it is fundamental that small-scale fishing communities are an integral part of ocean planning processes and resulting plans.<sup>128</sup> When designing area-based ocean planning legislation and developing individual spatial plans, policymakers should ensure that the procedures followed and zoning decisions made respect customary fishing rights and systems, integrate with existing, area-based exclusive use rights such as fishing concessions and other forms of marine tenure, and in general, protect the interests of small-

<sup>126</sup> Robert S. Pomeroy et al., *Marine Spatial Planning in Asia and the Caribbean: Application and Implications for Fisheries and Marine Resource Management*, 32 DESENVOLVIMENTO E MEIO AMBIENTE 151, 155 (2014).

<sup>127</sup> Blue Prosperity Workshop Summary Report, p. 18; Session 1 Presentation. However, area-based planning legislation is not always developed before a policy or plan: “In some cases, creation of a marine spatial plan or policy prior to the enactment of an MSP law can be beneficial. Sometimes an MSP policy gives rise to a law, and the plan is created as a result. A plan can also be drafted in parallel with the law” (p. 4).

<sup>128</sup> FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*, Guideline 10.2, p. 15.

scale fishing communities, which are often in an unequal power relation to other economic sectors in the ocean space.<sup>129</sup>

### *Rationale*

Area-based marine management promotes the optimal use and protection of marine resources based on agreed-upon principles and priorities when multiple ocean-based uses compete for limited resources in a given marine area. Developing area-based plans can result in a variety of benefits, including: fostering the growth of ocean-based economic activities; minimizing conflicts between ocean-based uses; improving environmental protection; clarifying regulatory requirements; and supporting sustainable development.<sup>130</sup> Moreover, small-scale fishing communities are by far the largest human group of beneficiaries of ocean use, and at the same time the sector with higher transaction costs and lowest capacity to influence policymaking. Consequently, the regulatory framework for area-based planning must enable adequate involvement of small-scale fishers in ocean planning and implementation of area-based governance.

By designating specific areas exclusively for small-scale fishing in area-based plans, or for small-scale fishing and compatible uses, jurisdictions may preserve certain fish stocks for small-scale rather than commercial and industrial fishers, thereby supporting small-scale fishers and protecting the longevity of fish stocks. Ensuring small-scale fishers have access to sufficient fish stocks can promote the growth of the ocean-based economy by allowing them to earn an income from selling their catch. Granting exclusive fishing rights to small-scale fishers, or otherwise limiting access to specific fish stocks, can also prevent overfishing and help ensure the sustainability of fishing in the future. Designating areas of special protection, or otherwise limiting the types of fishing and other activities that can take place in specific marine areas, can also help support ecosystem health more broadly, thereby further supporting the health of fish stocks and the long-term viability of fishing, even if fishing is not allowed there.

Considering and protecting the rights and resources of small-scale fishing communities through area-based management is also consistent with and may help countries fulfill their obligations under various provisions of international law. Under the United Nations Convention on the Law of the Sea (UNCLOS), countries have the right to manage the natural resources in their exclusive economic zones, including through their use or conservation.<sup>131</sup> Countries have an obligation to protect the marine environment,<sup>132</sup> and to avoid exploiting natural marine resources by using best available science.<sup>133</sup> Further, they are encouraged to support small-scale fishers by protecting jobs and preserving access to

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<sup>129</sup> SSF Guideline 10.1 also recommends that states comply with applicable national and international laws and policies, including fisheries access arrangements and other fisheries sector policies, plans, actions and investments. Considering small-scale fishers and their existing rights or protections in area-based management practices seems consistent with that Guideline as well. Guideline 10.6, which encourages small-scale fishing groups to work together and stay involved in decision-making processes that will impact their operations, also seems relevant to promoting active participation from stakeholders in area-based planning processes. Participatory management is discussed further in Guideline 5.15.

<sup>130</sup> Blue Prosperity Workshop Summary Report, p. 3.

<sup>131</sup> UNCLOS, Art. 56.

<sup>132</sup> UNCLOS, Art. 192.

<sup>133</sup> UNCLOS, Arts. 61, 193.

certain fishing grounds, and to learn about traditional small-scale fishing knowledge and use it, as appropriate, to manage fisheries sustainably.<sup>134</sup>

By conducting thoughtful area-based planning in marine areas, countries can ensure they exercise their rights to use the natural resources found in their exclusive economic zones without overexploiting them. Further, they can fulfill their obligations to protect small-scale fishers by incorporating their interests when developing area-based plans. In addition to helping small-scale fishers, enacting effective area-based plans for marine areas can also facilitate long-term sustainable harvesting of marine resources by other users, support local economies, and minimize negative economic, environmental, and social impacts associated with overburdened or mismanaged ocean resources.

Although legally binding MSP processes are the most effective way of implementing a long-term vision of sustainable ocean and coastal resource management, non-statutory approaches to ocean planning can also serve as indirect ways of ensuring that local stakeholders participate in fisheries governance.<sup>135</sup> The Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan in New Zealand incorporated a local and Indigenous perspective on the status of fishing resources and how to ensure their sustainable use. Despite not being legally binding, the publication of the Hauraki Gulf plan motivated the government of New Zealand to initiate a process of consideration and implementation of the plan, in cooperation with local stakeholders, including creation of a ministerial advisory committee.<sup>136</sup>

### Relevant Model Provisions

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#### **Incorporating small-scale fishing into area-based planning legislation and plans<sup>137</sup>**

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In most cases, area-based legislation for SSF governance will form part of a broader regulatory effort for implementing marine spatial planning. This Part only focuses on highlighting specific, area-based management considerations that the legal drafter should keep in mind to ensure adequate implementation of area-based planning for supporting a sustainable ocean economy. The provisions below are intended to be adapted as needed, adopted into local area-based planning legislation, and implemented during area-based planning processes.

For a more detailed description of the essential elements of area-based planning legislation, including models of regulatory language, please refer to the Environmental Law Institute’s publication “Designing Marine Spatial Planning Legislation for

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<sup>134</sup> FAO, Code of Conduct for Responsible Fisheries, Arts. 6.18, 12.12.

<sup>135</sup> See Coast & Catchment Ltd., State of our Gulf 2020 Hauraki Gulf/Tikapa Moana/Te Moananui-ā-Toi.

<sup>136</sup> See Fisheries New Zealand, The Sea Change Marine Spatial Plan for the Hauraki Gulf.

<sup>137</sup> The model provisions included in this Part have been excerpted and adapted from existing marine spatial planning legislation and marine spatial plans. References to the original laws and additional examples of provisions addressing various elements of area-based planning are included in the footnotes. Model language for marine spatial planning more generally can be found in Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters.

Implementation: A Guide for Legal Drafters.”<sup>138</sup> This Part supplements that guide by providing additional sample provisions that foster the inclusion, consideration, and protection of small-scale fishers in particular.

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**Consulting small-scale fishers throughout the area-based planning process and allowing for their meaningful participation**

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Small-scale fishers should have a designated role in area-based planning that involves communicating with other stakeholders and decision-makers and having a say in planning processes and decisions.<sup>139</sup> Use data shared by small-scale fishers should inform scoping, mapping, and decision-making. Further, area-based plans should be consistent with existing fishing rights and designations.

**Draft Provision XXX. Inclusion of small-scale fishers in marine spatial planning**

Involve individuals and organizations representing existing uses, including small-scale fishers, in area-based planning processes, such as documenting current and future trends of existing uses, collecting and reviewing traditional knowledge, data and maps of their use, understanding potential impacts, and evaluating scenarios and plan recommendations. Provide opportunities for public engagement and input throughout the planning process, including public education, workshops, and meetings. Identify barriers to participation and work with local stakeholders to address and reduce barriers to public participation. Document comments and provide responses, as appropriate.<sup>140</sup>

**[Alternative provision]** The proposal for a maritime spatial plan shall be drawn up in consultation with the other ministries affected and with the involvement of coastal municipalities and coastal regions, as well as any relevant business and interest

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<sup>138</sup> See Environmental Law Institute & Animals | Environment PLLC, *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters*.

<sup>139</sup> European Commission, *Study on the economic impact of maritime spatial planning* (abridged version), 21 (“In Rhode Island, private sector stakeholders (fisheries, marine traders) appreciated being involved from the outset and that the consultation was maintained throughout the process. That meant that stakeholders got to know each other and their different perspectives. There was an understanding that offshore wind development was going to happen and that Rhode Island would benefit socio-economically from being the first. This created more of a shared purpose to the MSP process, rather than each sector vying for space.”); see also *Marine Spatial Planning Act (South Africa)*, § 8.

<sup>140</sup> *Washington’s Pacific Coast MSP Actions List* (USA); see also *Organic Environmental Law [Ley No. 7554 – Ley Orgánica del Medio Ambiente]* (Costa Rica), Art. 6 (“The State and the municipalities will promote the active and organized participation of the citizens of the Republic in the decision-making and actions aimed at protecting and improving the environment.”); see also *Guidance for Managing Resources in the Maritime Territory (Indonesia)*, Arts. 28-29, 31 (discussing community empowerment, including related to traditional fishers, in determining how coastal and marine resources are managed more broadly); see also *Marae Moana Act (Cook Islands)*, § 5(d) (“The principle of community participation is that all stakeholders should participate in the planning and implementation processes, which means that information exchange, consultation, respect for differing points of view, recognition of culture and traditions, equitable access to opportunities for present and future generations, easily understood and openly justified processes, and the shared ownership of responsibility should be promoted and encouraged in the decision-making processes of the marae moana.”).



organizations, including representatives of small-scale fishers, fishing cooperatives, and co-management institutions.<sup>141</sup>

**[Alternative provision]** The principle of community participation is that all stakeholders should participate in the planning and implementation processes, which means that information exchange, consultation, respect for differing points of view, recognition of culture and traditions, equitable access to opportunities for present and future generations, easily understood and openly justified processes, and the shared ownership of responsibility should be promoted and encouraged in the decision-making processes of the [jurisdiction].<sup>142</sup>

**[Alternative provision]** The [primary planning or advisory authority] shall develop and implement a public outreach and information program to provide information to the public regarding the ocean management planning process.<sup>143</sup>

**Draft Provision XXX. Integrating fisheries management plans into area-based plans**  
Marine fisheries, including small-scale fisheries, shall be managed in compliance with the applicable rules and regulations of the division of marine fisheries [or other relevant authority] and existing fishery management or co-management plans [or other relevant planning documents] issued pursuant to any applicable general or special law and shall be integrated, to the maximum extent practicable, with an [area-based plan].<sup>144</sup>

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**Adopting objectives and guiding principles<sup>145</sup> that ensure the fair and meaningful consideration of small-scale fishing operations and interests in area-based planning efforts**

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The social and cultural value of different marine uses including small-scale fishing should be considered, in addition to or in lieu of their economic values, when determining which uses to prioritize over others in certain areas (i.e., human rights, sustainable development, food security, climate change adaptation, secure livelihoods, etc.).

**Draft Provision XXX. Adopting objectives for area-based planning decision-making**  
The [area-based planning authority] shall, when implementing marine spatial planning, take account of economic, social, and environmental conditions as well as safety aspects to support sustainable development and growth in the maritime sector, applying an

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<sup>141</sup> Act on maritime spatial planning (Denmark), Part 4, §10; One form of representation of small-scale fishing interests may be to appoint a small-scale fisher or the leader of a small-scale fishing cooperative or organization to serve on an area-based planning advisory council, board, or other decision-making body.

<sup>142</sup> Marae Moana Act (Cook Islands), 2017, § 5(d).

<sup>143</sup> An Act Relative to Oceans (USA), § 2; Marine Spatial Planning Act (South Africa), § 8.

<sup>144</sup> An Act Relative to Oceans, 2008 (USA), § 2.

<sup>145</sup> Similar to the 'Objectives' and 'Guiding/Interpretive Principles' discussed in *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters*. One or more objectives of the area-based planning legislation should describe the goals of the law and the values that planners are seeking to optimize. Planners should seek to optimize more than just economic value, otherwise they risk designating zones and prioritizing uses that may deplete marine resources, jeopardize local access to food, and eliminate jobs in coastal communities.

ecosystem-based approach, and to promote the coexistence of various relevant activities and uses, including small-scale fishing.<sup>146</sup>

**Draft Provision XXX. Guiding principles for the designation and delineation of marine uses**

It is the purpose of [this legislation] to establish policies to guide local agencies and governments when exercising jurisdiction over proposed uses and activities in these waters. Specifically, in conducting marine spatial planning, and in augmenting existing marine management plans with marine spatial planning components, authorities must:

- (1) continue to recognize the rights of Indigenous people regarding marine resources;
- (2) base all planning on best available science;
- (3) coordinate with all stakeholders, including marine resource committees and nongovernmental organizations, that are significantly involved in the collection of scientific information, ecosystem protection and restoration, or other activities related to marine spatial planning;
- (4) establish an ocean stewardship policy that takes into account the existing natural, social, cultural, historic, and economic uses;
- (5) recognize that commercial, tribal, recreational, and small-scale fisheries, and shellfish aquaculture, are an integral part of [the jurisdiction's] culture and contribute substantial economic benefits;
- (6) value biodiversity and ecosystem health, and protect special, sensitive, or unique estuarine and marine life and habitats, including important spawning, rearing, and migration areas for finfish, marine mammals, and productive shellfish habitats; and
- (7) fulfill public trust and tribal treaty trust responsibilities in managing [the jurisdiction's] ocean waters in a sustainable manner for current and future generations.<sup>147</sup>

**Draft Provision XXX. Prioritizing sustainable fishing**

The following objectives may help facilitate the prioritization of sustainable fishing:

- (1) Fish stocks are harvested sustainably (both environmentally and economically) and in a way that promotes long-term stability and can contribute reliably to meeting food security, nutritional and livelihood sustainable development goals.
- (2) A fishing fleet that is seen as an exemplar in global sustainable fishing practices, is confident in securing a long-term income from the available sustainable fishing opportunities, and accounts for changes in species distribution and abundance due to climate change.
- (3) The sea fisheries industry can continue to contribute to food security and provision of a healthy food source and optimize the sustainable harvesting of wild fish.

<sup>146</sup> Act on maritime spatial planning (Denmark), Part 3, section 5; *see also* Rhode Island Approved Ocean SAMP (USA), Ch. 1, § 130.5, p. 7 (listing transparency, public participation, protection of existing uses, using best available science, and adaptive management as guiding principles); *see also* Coastal Zone Management Act (Taiwan), Ch. 2, Art. 7; *see also* Great Barrier Reef Marine Park Act 1975 (Australia), section 34.

<sup>147</sup> Washington State Legislature 43.372.005; *see also* Rhode Island Approved Ocean SAMP (USA), Ch. 1, § 130.4, p. 6 (defining the goals of the Ocean Special Area Management Plan as fostering ecological and economic benefits, advancing existing uses, promoting economic growth in line with what local communities are seeking and other social and environmental goals, and fostering improved communication and coordination between state and federal agencies.).

- (4) Communities where fishing is a viable career option and value is added throughout the supply chain maximize the contribution fisheries make to [the country].
- (5) Management of fisheries on a regional sea-basin ecosystem basis with appropriate stakeholders empowered in the decision making process on the basis of participative management with interested stakeholders.
- (6) Fisheries managed in line with international and national environmental priorities.
- (7) An evidence-based approach to fisheries management that is underpinned by a responsible use of sound science and traditional knowledge and is supported by the whole sector, including small-scale fishers.<sup>148</sup>

**Draft Provision XXX. Minimizing negative impacts of competing uses on small-scale fishing**

Any provision of the [area-based plan] that does not have as its primary purpose the management of small-scale fishing but that has an impact on this fishing, must (1) avoid, (2) where avoidance is not possible must minimize, and (3) where minimization is not sufficient must mitigate those negative impacts.<sup>149</sup>

**Draft Provision XXX. Prioritizing environmental protection**

A person who uses or enters the [designated area] must take all reasonable steps to prevent or minimize harm to the environment in the [designated area] that might or will be caused by the person's use or entry. For these purposes, harm includes the following: (a) any adverse effect; (b) direct or indirect harm; (c) harm to which the person's use or entry has contributed, to any extent (whether or not other matters have contributed to the harm).<sup>150</sup>

**Draft Provision XXX. Prioritizing climate adaptation**

Mapping should incorporate predictions of future scenarios based on sea-level rise and other impacts of climate change on marine resource availability and distribution, and other ecosystem services. Area-based plans should designate uses based on these predictions, protecting areas that will be critical habitat in the future from overfishing, resource extraction, or otherwise. If fish stocks are anticipated to move, conditions should be incorporated to address that as well.<sup>151</sup>

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**Balancing demands of competing uses such that small-scale fishers maintain access to sufficient, sustainable fish stocks**

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Area-based plans should distinguish between different types of uses, including different types of fisheries, and consider giving preferential treatment to small-scale fishing requests in areas that are particularly well-suited to their operations. For example, in near-shore areas that are well-suited for or have historically been used for small-scale fishing, area-

<sup>148</sup> [National Marine Plan, 2015 \(Scotland\)](#), Ch. 6 Sea Fisheries, Part 1, Objectives 1-9.

<sup>149</sup> [Washington State Legislature 43.372.040](#).

<sup>150</sup> [Great Barrier Reef Marine Park Act 1975 \(Australia\)](#), section 37AA (see also section 32).

<sup>151</sup> EcoAdapt, [The State of Climate-Informed Coastal and Marine Spatial Planning \(2017\)](#); Reef Resilience Network, [Management Plan of Wakatobi National Park Leads to Increased Stakeholder Engagement Through Monitoring Efforts](#) (Aug. 7, 2014).

based plans should designate zones that give preference to small-scale fishing and prohibit other non-compatible human uses, such as mining and open water aquaculture.

For decades, many SSF have implemented area-based management (both through regulatory and customary frameworks), so planning in near-shore areas may build on past experiences and existing instruments. In some cases, it may include designating zones reserved exclusively for small-scale fishing (for more information on exclusive zones, consult [Part 2](#)). Conflicting uses should be delineated through zoning, moratoriums, or other methods.

The following paragraphs highlight key topics policymakers should assess to secure the adequate consideration of the SSF sector in implementing marine spatial planning.

### **Potential interactions between fishing and other marine uses**

Given its widespread nature, fishing activity has the potential to interact significantly with a number of other sectors. Fishing activity is often seasonal, and given the dynamic and mobile nature of many fisheries, it is often very difficult to accurately predict precisely where activity will take place from year to year. There are some key emerging issues concerning the interactions between the fishing industry and other interests, which should be borne in mind in any proposed marine development and factored into marine planning processes. These include:

(a) **Development**: New developments, such as energy or infrastructure developments, can displace fishing communities. With regard to energy development, the cabling arrays associated with energy and telecom developments, and other physical infrastructure associated with development, have the potential for short and long-term displacement of fishing activity during the installation phase. There is also potential for damage to occur to both infrastructure and fishing equipment as a result of interactions, with obvious safety implications.

New developments should take into account the intensity of fishing activity in the proposed development area and any likely displacement that the development and associated activity could precipitate, with resultant increased pressure on remaining, often adjacent, fishing grounds. There may be potential for some infrastructure or development areas to act as nursery grounds for fish and, if appropriately protected, these may lead to an increase in fish stocks in the surrounding areas. This possibility should be considered on a case-by-case basis.<sup>152</sup>

(b) **Conservation**: Designated areas for nature conservation or culture heritage purposes may impact fishing activity depending on the nature of the designation, the associated management measures, and the type of fishing that takes place in the area concerned.

Conservation areas can also help to underpin sustainable fishing by protecting habitats of value to commercial species' life cycles, supporting the recovery of protected species and serving to enrich the biodiversity of an area. For example, designated areas may act as a nursery or spawning ground for fish, which could improve the state of stocks in the surrounding areas.

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<sup>152</sup> See [FLOWW Best Practice guidance for Offshore Renewables Developments: Recommendations for Fisheries Liaison](#) (Scotland, 2014) for guidance on how to reduce negative impacts from offshore renewables on fishing.

(c) Fisheries: As various fishers may wish to fish in the same waters, there can be competitive interaction between and within different industry sectors. Such conflicts have been known to become heated and longstanding and can be exacerbated where the same species is being targeted by both mobile and static gear operators. To help manage these interactions, local voluntary codes of conduct or legally-binding provisions have been designed in attempts to achieve harmonious co-existence and fair opportunities for both mobile and static gear sectors. Codes also exist in the static gear sector to try to avoid, or enable resolution of, conflict within that sector.

Given the range of these interactions and the vested interests involved, it is essential that all appropriate fishers' associations are consulted by planners and decision makers to ensure decisions are based on the most complete information. Attention should also be paid to the status and verification of all information used to inform decisions.

(d) Recreation and tourism development: Tourism development in coastal areas displaces vessels, ports, landing areas, and processing areas and often renders shoreside real estate unaffordable for fishing communities. Governments should consider reserving public space for fishery use and ensuring access to coastal areas for working waterfronts. There may be difficult interactions between the static gear sector and recreational boat users, as creel gear can snag, disable, and endanger pleasure craft. There can also be competitive interactions between fishing and recreational sea angling, including concerns from anglers that mobile fishing is affecting stock levels and causing a lack of larger specimens of the species targeted by anglers.

(e) Displacement: Displacement of fishing activity can occur as a result of: interactions with other marine activities (whether commercial or conservation based); closing areas to fishing; or restricting fishing vessels' access to areas. Displacement of fishing effort has a number of features that require careful consideration.

Displaced effort may move to areas that are already fished but where the fishing pressure is then greater than otherwise would have been the case. This could be a concern if this results in a greater impact on recovery of fish stocks or increased pressure on fish stocks or damage to the environment.

Displaced effort may also impact grounds that previously have not experienced any fishing effort. These areas can be readily identified in the offshore fisheries by vessel monitoring systems. The displaced activity may have a new and unknown environmental impact on these areas.

There may be socio-economic effects associated with displacement, such as new grounds being less profitable for fishers; beyond the capacity of some vessels; and/or unable to provide the mix of species on which current business models rely. Displacement may also cause crowding of fishing effort in remaining established fishing areas, or increased fuel use and fuel costs arising from having to travel farther, making fishing less economically sustainable.

While it is preferable not to restrict access to individual fishing grounds, displacement may have some positive environmental and socio-economic impacts. For example, closed areas may benefit nursery grounds and protect environmental features.<sup>153</sup>

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<sup>153</sup> National Marine Plan, 2015 (Scotland), Ch. 6 Sea Fisheries, Part 3, Interactions with Other Users (6.20-6.37).

**Assessing the characteristics of different fisheries**

The [jurisdiction]'s fishing fleet can be split into sectors based on characteristics like vessel size, species, and fishing area, and managed according to the needs of each fishery (the following fisheries were considered in drafting a marine plan for Scotland, for example):

(a) The pelagic fleet: which mainly targets herring and mackerel and comprises a relatively small number of large vessels. This fleet fishes seasonally through a wide range of sea areas as they follow the highly migratory patterns of pelagic species, from the central North Sea in the summer months before moving north towards Shetland and then travelling west to follow the continental shelf edge to the south of Ireland.

(b) The demersal or whitefish fleet: (comprising a larger number of smaller vessels) which targets bottom-dwelling fish in two main types of fishery - round fish such as cod, whiting, haddock and saithe and ground fish such as monkfish and megrim. These vessels tend to operate in the more northerly grounds of the North Sea and west coast of Scotland, fishing in deeper water and following the continental shelf edges.

(c) The mixed demersal and shellfish fleet: which is made up of whitefish boats that move between whitefish and Nephrops (also known as langoustine) fisheries. These vessels, whilst in many cases capable of travelling farther afield, tend to concentrate their main efforts in the central North Sea in an area known as the Fladen Ground with little overlap between them and the presence of larger whitefish vessels. There is also a fleet of these vessels that fish a variety of grounds on the west coast of Scotland from the North Minch south towards the Clyde and in offshore areas such as the Stanton Banks.

(d) The shellfish fleet: which specializes in stocks such as scallops, Nephrops and crab and lobster and tends to fish inshore (the Scottish inshore fleet is almost completely dependent on shellfish). These smaller, more numerous vessels, which are generally under 10 meters in length, fish predominately inshore waters inside 6 nautical miles, although some larger vessels and particularly scallop vessels operate to 12 nautical miles and beyond. Activity is spread along the coastline of Scotland but tends to be concentrated more on the west coast where the local geography provides better natural conditions for the safe operation of these small vessels.

(e) There are also seasonal inter-tidal fisheries, such as cockle fisheries, and small-scale hand-diving fisheries in some areas.<sup>154</sup>

**Considering impacts of marine uses on fish stocks and small-scale fishing**

The following key factors should be taken into account when deciding on uses of the marine environment and the potential impact on small-scale fishing:

(a) The cultural and economic importance of small-scale fishing, in particular to vulnerable coastal communities.

(b) The potential impact (positive and negative) of marine developments on the sustainability of fish and shellfish stocks and resultant small-scale fishing opportunities in any given area.

(c) The environmental impact on fishing grounds (such as nursery, spawning areas), commercially fished species, habitats, and species more generally.

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<sup>154</sup> National Marine Plan (Scotland), §§ 6.7-6.8.

(d) The potential effect of displacement on: fish stocks; the wider environment; use of fuel; socio-economic costs to small-scale fishers and their communities and other marine users.<sup>155</sup>

**Draft Provision XXX. Preferential treatment for small-scale fishers**

The [jurisdiction] shall protect the rights of small-scale fishers, especially in local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore, and provide support to such fishers through appropriate permits, technology, research, and other services.<sup>156</sup>

**[Alternative provision]** To allow it to fulfill its potential to contribute to the [ industries promoting the development of the blue economy], it is important that small-scale fishing's interactions with other marine sectors and interests are managed in a transparent way, creating greater certainty in the overall business environment. It is also important that the sustainability of fishing activity is respected in marine development and that the necessary infrastructure to support the fishing industry is protected where possible.<sup>157</sup>

**Draft Provision XXX. Designating marine uses**

Following existing laws:

- (1) Protect and preserve existing uses by avoiding first and then minimizing significant adverse impacts from potential future activities, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;
- (2) Provide recommendations for uses that protect and enhance the aesthetic quality of the marine environment, maritime activities, marine culture, and sense of place; and
- (3) Seek to avoid first, and then minimize, adverse environmental impacts, with special protection provided for the marine life and resources in designated protected areas.<sup>158</sup>

**[Alternative provision]** When there is a conflict between existing uses, developing uses or activities, maximum co-existence of uses or activities should be preferred wherever possible, but where such co-existence is not possible, the principles and criteria in [relevant section of legislation] must be applied to resolve such conflict.<sup>159</sup>

**Draft Provision XXX. Marine zones**

The zones for the [designated area] include:

- (1) a general use zone to provide for the protection of pelagic and benthic habitats of the [designated area], while allowing a range of ecologically sustainable uses, like small-scale fishing;
- (2) a restricted commercial fishing zone to provide for the protection of pelagic and benthic habitats of the [designated area] by restricting most large-scale commercial fishing activities, while allowing other ecologically sustainable uses, like small-scale fishing;

<sup>155</sup> [National Marine Plan, 2015 \(Scotland\)](#), Ch. 6 Sea Fisheries, Part 1, Fisheries 2.

<sup>156</sup> [Executive Order No. 533, 2006 \(Philippines\)](#).

<sup>157</sup> [National Marine Plan, 2015 \(Scotland\)](#), Ch. 6 Sea Fisheries, Part 3, §6.18.

<sup>158</sup> [Washington's Pacific Coast MSP Actions List \(USA\)](#).

<sup>159</sup> [Marine Spatial Planning Act \(South Africa\)](#), § 5(2).

- (3) a seabed minerals activity buffer zone to provide for the protection of pelagic, benthic, coral reef, coastal, and lagoon habitats of the [designated area] by prohibiting all seabed minerals activities, while allowing other ecologically sustainable uses, like small-scale fishing;
- (4) an island protection zone to provide for the protection of the pelagic, benthic, coral reef, coastal, and lagoon habitats of the [designated area] by prohibiting all seabed minerals activities and large-scale commercial fishing, while allowing other ecologically sustainable uses, like small-scale fishing;
- (5) an ocean habitat preservation zone to provide for the protection and management of sensitive and ecologically valuable pelagic and benthic habitats by prohibiting potentially damaging activities, while allowing other ecologically sustainable uses, like small-scale fishing; and
- (6) a national marine park zone to provide for the strict preservation of the natural integrity and ecological values of special coral reef, coastal, and lagoon habitats of the [designated area] that are remote from any permanent human settlement and not within the jurisdiction of any other government.<sup>160</sup>

**Draft Provision XXX. Designating near-shore fishing areas**

- (1) Fishing is not prohibited in any zone, but this [Act/Regulation] creates sub-zones assigned for different fishing techniques, with the purpose of achieving good ecological status:
  - (a) Within zone 1, existing coastal fishing can continue provided they are equipped with seine fishing gear. For shrimp fishing, the separation trawl is compulsory. The existing boats can be replaced and any new vessels can fish in the area only if using techniques that do not disturb the seabed.
  - (b) Within zone 2, only fishing techniques that do not disturb the seabed and the testing of fishing technique alternatives that disrupt the seabed are allowed. There shall be a transitional period of three years during which existing fishing techniques are still authorized in the area.
- (2) In order to guarantee the integrity of the seabed, fishing within the 4.5 nautical mile zone from the coast is prohibited for fishing vessels with a gross tonnage of more than 70. This area is measured from the baseline from which the breadth of the territorial sea is determined.
- (3) Recreational activities are authorized everywhere in [the jurisdiction] marine areas, except recreational fishing at sea using techniques that disturb the seabed in the area, with the exception of techniques disturbing the seabed which are used or pushed by man or by horse; the [primary planning authority] may grant an individual authorization for existing recreational shrimp fishing, provided that the applicant can demonstrate that they have been active for at least three years. This authorization allows the applicant to set sail at maximum ten times a year and the authorization is valid for a maximum of six years.<sup>161</sup>

<sup>160</sup> Marae Moana (Cook Islands), § 23; *see also* Arrêté royal relatif à l'établissement du plan d'aménagement des espaces marins (Royal decree adopting marine spatial planning for the Belgian North Sea) (Belgium), Ch. 2, Sec. 1, Art. 6, §§ 1, 3; *see also* The Barbuda (Coastal Zoning and Management) Regulations, 2014, §§ 10-13 (describing limitations and conditions on fishing in different areas and zones).

<sup>161</sup> Arrêté royal relatif à l'établissement du plan d'aménagement des espaces marins (Royal decree adopting marine spatial planning for the Belgian North Sea) (Belgium), Ch. 2, Sec. 1, Art. 6, §§ 1, 3.



**[Alternative provision]** Different types of fishing activity should be considered and placed in the appropriate zones.<sup>162</sup>

- (1) In near-shore areas that are well suited for or have historically been used for small-scale fishing, designate zones that give preference to small-scale fishing and prohibit other non-compatible human uses, such as mining and open water aquaculture.

**[Alternative provision]** The [area-based planning authority] may, on the recommendation of the [relevant advisory authority], make area-based planning regulations prescribing areas of the sea adjacent to the coast of [jurisdiction name] as small-scale fishing zones.<sup>163</sup>

**Draft Provision XXX. Commercial artisanal fishing zones**<sup>164</sup>

In [specific area], only commercial artisanal fishing is allowed. It shall be governed by the provisions of the regulations issued by the [relevant ministry/department] and will be subject to the guidelines and parameters contained in the corresponding Management Plan.

The aforementioned instruments will describe what qualifies as artisanal fishing, including the transportation and marketing of species, the use of boats and their tonnage, the fishing register, the granting of fishing permits, and restrictions on fishing gear. The [relevant environmental authority] will issue the fishing calendar and determine the species whose fishing is allowed in the [jurisdiction] as well as catch volumes, in coordination with other relevant entities.

To take part in artisanal fishing activities requires: permanent residency in [the jurisdiction], authorization from the [relevant environmental authority], and any other requirements established under the regulations promulgated under this law.<sup>165</sup>

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**Granting small-scale fishers appropriate authority in decision-making procedures**

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Area-based planning voting rights should be context-specific, but should ensure that interested parties, including small-scale fishers, have a voice in planning processes and decision-making. Veto rights may be allocated to specific parties in order to create an equal balance of power.

**Draft Provision XXX. Requiring area-based planning group consensus**

Representatives from all relevant interest and stakeholder groups, including small-scale fishers, will form an area-based planning working group [or other planning body]. The official representing the environmental ministry will serve as the chair of the working group. The working group is tasked with developing a draft marine spatial planning framework that complies with the objects of the [relevant area-based planning

<sup>162</sup> See *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* for more information on establishing zones.

<sup>163</sup> *Oceans Act (Canada)*, §§ 25, 27.

<sup>164</sup> Similar provisions could be included for additional/other types of small-scale fisheries.

<sup>165</sup> *Ley Orgánica de Régimen Especial de la Provincia de Galápagos (LOREG)* [Organic Law of Special Regime of the Province of Galapagos] (Ecuador), Arts. 58-59 (based on English translation).

legislation], and with drafting individual area-based plans. The recommendation contemplated must be made by consensus, and where no consensus is reached, all the proposed options must be presented in the report to the [relevant authority or decision-making body].<sup>166</sup>

*NOTE: Requiring consensus gives small-scale fishers the same authority as other interest groups in terms of their ability to veto, or reject, any plans that would negatively impact them. At the same time, however, requiring consensus also allows other interest groups to reject proposals that are introduced by or beneficial to small-scale fishers.*

**Draft Provision XXX. Requiring a majority vote**

In order to transact business (such as approving an area-based plan), a quorum (more than half) of the area-based planning body's members must be present at the meeting, and the majority of those members present at the time of the vote must vote in favor of the item for it to move forward. The chairperson (elected by the members of the body) of the meeting has a deliberative vote and a casting vote.<sup>167</sup>

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**Designating dispute resolution procedures that allow for concerns of small-scale fishers and other stakeholders to be fully and fairly considered and addressed by other resource users and relevant authorities**

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Promote consultation and negotiation among stakeholders with conflicting uses early in the planning process. To adequately provide solutions to coastal communities as part of the planning process, the area-based plan should include among its principles the duty to establish strategies for providing alternative sources of income to the affected communities.<sup>168</sup>

**Draft Provision XXX. Consultation and negotiation between stakeholders proposing conflicting uses**

Any large-scale offshore development [or other type of development that interferes with small-scale fishing] shall require a meeting between the [small-scale fishing advisory body], the applicant, and the [relevant planning authority] to discuss potential small-scale fishery-related impacts, such as, but not limited to, project location, construction schedules, alternative locations, project minimization, and identification of high fishing activity or habitat edges. This meeting shall occur prior to submission of the permit application, and it is recommended that it occurs before the submission of applications for leases, licenses, or otherwise.<sup>169</sup>

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<sup>166</sup> Act No. 16 of 2018 Marine Spatial Planning Act (South Africa), §§ 9-10 (In South Africa, the National Working Group makes a recommendation to the Directors-General Committee, which makes a recommendation to the Ministerial Committee, which makes the ultimate decision. Both the National Working Group and Directors-General Committee must come to consensus on their recommendation, or all options will be presented to the supervising body.)

<sup>167</sup> Marae Moana (Cook Islands), §§ 10-12; *see also* Marine and Coastal Act No. 26 of 2018 (Australia), § 21.

<sup>168</sup> European Commission, Study on the economic impact of maritime spatial planning (abridged version), 22.

<sup>169</sup> As a model, the process should follow the principles of Free, Prior and Informed Consent.

The [relevant authority] shall prohibit any other uses or activities that would result in significant long-term negative impacts to [the jurisdiction]’s small-scale fisheries. Long-term impacts are defined as those that affect more than one or two seasons.<sup>170</sup>

**[Alternative provision]** The parties seeking to use or rely upon the same resources as small-scale fishers will attempt in good faith to resolve any dispute or claim arising out of or in relation to the [area-based plan] through negotiations between representatives of each of the parties that have authority to settle the relevant dispute. If the dispute cannot be settled amicably within [predetermined amount of time for negotiations] from the date on which negotiations begin, parties may seek alternative forms of resolution, including bringing in an independent mediator.<sup>171</sup>

**Draft Provision XXX. Compensating stakeholders that are negatively impacted by area-based plans**

Mitigation is defined as a process to make whole those fisheries user groups that are adversely affected by proposals to be undertaken, or undertaken projects, in the [area-based planning area]. Mitigation measures shall be in consonance with the purposes of duly adopted fisheries management plans, programs, strategies, and regulations of the agencies and regulatory bodies with jurisdiction over fisheries in the [area-based planning area]. Mitigation shall not be designed or implemented in a manner that substantially diminishes the effectiveness of duly adopted fisheries management programs.

Mitigation measures may include, but are not limited to, compensation, effort reduction, habitat preservation, restoration and construction, marketing, and infrastructure improvements. Where there are potential impacts associated with proposed projects, the need for mitigation shall be presumed. Negotiation of mitigation agreements shall be a necessary condition of any approval or permit of a project by the [relevant authority]. The costs of any subsequent negotiations shall be covered by the applicant.<sup>172</sup>

**Draft Provision XXX. Providing resources to small-scale fishers pursuing alternative livelihoods**

Relevant financial institutions shall formulate and identify loan and financing mechanisms that will be made available to support local area-based planning programs, including alternative livelihood projects for small-scale fishers and cooperatives.<sup>173</sup>

<sup>170</sup> Rhode Island Approved Ocean SAMP (USA), § 560.2.1-2, p. 153; *see also* European Commission, Study on the economic impact of maritime spatial planning (abridged version), 21.

<sup>171</sup> World Bank Group, Example of an Alternative Dispute Resolution Clause (2016).

<sup>172</sup> Rhode Island Approved Ocean SAMP (USA), § 560.2.4, p. 154; *see, e.g.*, ecoRI news, Fishermen Receive Compensation Offer from Vineyard Wind (Jan. 18, 2019) (project developers planning to build the 84-unit Vineyard Wind facility off the coast of Rhode Island offered \$6.2 million to fishers that are anticipated to be negatively impacted by the project throughout its 30-year anticipated life).

<sup>173</sup> Executive Order No. 533, 2006 (Philippines), § 11.

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### **Involving small-scale fishers in routine reviews of area-based plans and authorizing them to propose amendments**

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Area-based plans should be regularly reviewed and amended to ensure they adapt to changing conditions and circumstances. Small-scale fishers should play a role in this process, as they should in the initial planning process, and should have the authority to propose changes to existing plans.

#### **Draft Provision XXX. Routine review and amendments**

The [planning body] should undertake a review of area-based plans at least every five years.<sup>174</sup> Small-scale fishers, among other stakeholder groups, should be involved in the review, and their suggestions for improvement considered for possible amendments.

#### **Draft Provision XXX. Adaptive area-based management process for fisheries**

The [relevant authority]’s policy is to protect commercial and recreational fisheries within the [area-based planning area] from the adverse impacts of other uses, while supporting actions to make ongoing fishing practices more sustainable. It should be recognized that scientific knowledge of the impacts of fishing on habitats and fish populations will advance. Improvements in more sustainable gear technology, fishing practices, and management tools may improve the state of fisheries resources. A general goal of the [relevant authority] is to constantly improve the health of the [area-based planning area] ecosystem and the populations of fish and shellfish it provides. Cooperative research, utilizing the unique skills and expertise of the fishing community, will be a cornerstone of this goal.

Commercial, small-scale, and recreational fisheries activities are dynamic, taking place at different places at different times of the year due to seasonal species migrations and other factors. The [relevant authority] recognizes that fisheries are dynamic, shaped by these seasonal migrations as well as other factors including shifts in the regulatory environment, market demand, and global climate change. The [relevant authority] further recognizes that the entire [area-based planning area] is used by commercial, small-scale, and recreational fishers employing different fishing methods and gear types. Changes in existing uses, intensification of uses, and new uses within the area could cause adverse impacts to these fisheries. Accordingly, the [relevant authority] shall—

- (1) in consultation with the [fisheries advisory body], identify and evaluate prime fishing areas on an ongoing basis through an adaptive framework; and
- (2) review any uses or activities that could disrupt commercial, small-scale, and recreational fisheries activities.<sup>175</sup>

## **Step Four. Drafting adequate regulatory reforms.**

Once the drafter has identified both the issues to solve and the model legal language to use, enacting an effective regulatory reform is still a “translation” process. Good models need to be adapted to the idiosyncratic characteristics of a specific country or region. They also must be adaptive to the legal framework already in place to avoid discrepancies or unnecessary repetition.

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<sup>174</sup> Marine and Coastal Act No. 26 of 2018 (Australia), § 64.

<sup>175</sup> Rhode Island Approved Ocean SAMP (USA), § 560.1.3-4, p. 151.

A country's legal drafters, either government agencies, parliamentarians and their staff, or both, will be taking the lead in this process, using the information available through the LFA and the SSF Regulatory Toolkit. Assistance from legal drafting experts or peers from other jurisdictions can be of significant help during this stage, but the country's legal practitioners will know best what regulatory language reflects their country's circumstances and needs. Legal drafting is, in most cases, a collaborative effort.

## **Step Five. Assessing regulatory performance and correcting mistakes.**

Performance indicators are not very common in legal studies. Still, they are fundamental to avoid repeating ineffective approaches that thwart fisheries management and damage coastal communities' trust in the legitimacy of the regulatory decision-making process. Corruption and poverty indexes can offer insights into reasons for regulatory failure, but developing more specific regulatory performance indicators addressing, for example, the presence of legal requirements that unnecessarily burden fisheries and MPA officers, or vague or inadequate legal wording, can make a huge difference. Indicators can also help compare implementation effectiveness across a variety of countries, regions, and fisheries institutional constructs.

The successful implementation of legal reforms depends to a significant degree on the creation of a unified methodology that includes a specific evaluation method for SSF governance and helps decision-makers evaluate the design and implementation of regulations to achieve specific policy objectives. While this Toolkit does not include or recommend a specific methodology, some studies have developed methods for assessing regulatory performance that might be useful.<sup>176</sup>

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<sup>176</sup> Rhode Island Approved Ocean SAMP (USA), § 560.1.3-4, p. 151.

## CONCLUSION

Small-scale fisheries involve approximately 90% of all fishers, especially in developing countries, where economic and food security greatly depends on the short-term availability of natural resources. The small-scale fishing sector is not adequately represented in governance decision-making processes, is greatly underrepresented in the creation, allocation, and distribution of financial support mechanisms and subsidies, and in general, is in dire need of its own, dedicated, stewardship focus. This focus must build on the close connection between SSF and ocean resources preservation and place SSF communities at the center of the decision-making processes, institutions, and procedures.

Although some countries had been able to advance on the more adequate management of the SSF sector, the COVID-19 pandemic has adversely affected small-scale fisheries, forcing market closures, reducing tourism to unprecedented levels, and disrupting SSF distribution networks. In the current context, strengthening sustainable SSF governance is now more urgent than ever.

This Toolkit offers an overview of how the governance infrastructure for SSF can be organized by focusing the efforts of policymakers, parliamentarians, and other key stakeholders in achieving targeted, scalable policy reforms on a small set of particularly relevant topics. Although the conditions and needs will greatly vary depending on the specific features of the countries and the types of fisheries in question, the information contained in this Toolkit addresses the most widely accepted policy responses for the most common challenges to sustainable SSF governance. It does so by focusing on enabling fisheries co-management: recognizing the coastal communities' rights to coastal fishing resources, and to actively participate in their management, as well as these communities' unique responsibility in ensuring that fisheries management is sustainable, transparent, and inclusive.

In a time when the world is moving towards an unprecedented level of industrial exploitation of the ocean, it is fundamental that the voices of SSF communities are adequately represented and heard. The implementation of detailed, sound, and sustainable governance structures for SSF activities is a required first step in this process.

## REFERENCES AND LINKS

### Food and Agriculture Organization:

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (2012).
- [Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication](#) (2015).
- [Legislating for sustainable small-scale fisheries](#) (2020).
- Code of Conduct for Responsible Fisheries (1995)
- [FAO Committee on Fisheries](#) (COFI).

### Environmental Law Institute (ELI) resources:

- [Legal Tools for Strengthening Marine Protected Area Enforcement: A Handbook](#) (2016).
- [Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters](#) (2020).

### Research Programs:

- Too Big to Ignore (TBTI), [Global Partnership for Small-Scale Fisheries Research](#).
- USAID, [Land-Links](#).
- Duke University, [Illuminating Hidden Harvest](#).
- Universidad Nacional Autónoma de México (UNAM), [Laboratorio Nacional de Ciencias de la Sostenibilidad](#).
- University of British Columbia, [Institute for Oceans and Fisheries](#).

### SSF governance initiatives:

- Rare, [Fish Forever](#).
- Environmental Defense Fund, [Fisheries Solutions Center](#).
- [Sustainable Fisheries Partnership](#).
- [Blue Ventures](#).
- [Fundacion Lonxanet](#).
- [ABALOBI](#).
- [International Pole and Line Foundation](#).



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