

# IMPLEMENTING IMPROVED TENURE GOVERNANCE IN FISHERIES

A TECHNICAL GUIDE TO SUPPORT THE IMPLEMENTATION OF THE  
VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF  
TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF  
NATIONAL FOOD SECURITY



PRELIMINARY VERSION

SEPTEMBER 2013



The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views or policies of FAO.

ISBN 978-92-5-107900-3 (print)  
E-ISBN 978-92-5-107901-0 (PDF)

© FAO, 2013

FAO encourages the use, reproduction and dissemination of material in this information product. Except where otherwise indicated, material may be copied, downloaded and printed for private study, research and teaching purposes, or for use in non-commercial products or services, provided that appropriate acknowledgement of FAO as the source and copyright holder is given and that FAO's endorsement of users' views, products or services is not implied in any way.

All requests for translation and adaptation rights, and for resale and other commercial use rights should be made via [www.fao.org/contact-us/licencerequest](http://www.fao.org/contact-us/licencerequest) or addressed to [copyright@fao.org](mailto:copyright@fao.org).

FAO information products are available on the FAO website ([www.fao.org/publications](http://www.fao.org/publications)) and can be purchased through [publications-sales@fao.org](mailto:publications-sales@fao.org).

***Cover photograph:***

Courtesy of Nicole Franz.

## PREFACE

This document has been developed to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in fisheries, focusing on the small-scale sector.

The endorsement of the VGGT by the Committee on World Food Security (CFS) in May 2012 was a major achievement. The recognition of the importance of secure and equitable access to natural resources for food and nutrition security and sustainable livelihoods that the VGGT represent is of fundamental significance to fishing communities, in particular vulnerable and marginalized groups. The VGGT have been through a rigorous consultation and negotiation process, involving government officials, civil society organizations, private sector representatives, international organizations and academia. The inclusion in the process of the people that the VGGT intend to support – small-scale farmers, fishing communities and pastoralists – ensured that the issues and proposals dealt with were anchored in real life and addressing genuine concerns. The VGGT are based on key international human rights standards and constitute a powerful instrument for improving the lives of millions of people.

In order for the VGGT to have the positive impact they are set out to achieve, support to their implementation is of utmost importance. Concerted efforts are required to ensure that the principles and standards of the VGGT are integrated into policies and plans, and utilized to improve governance of tenure for the benefit of the vulnerable and marginalized and for the achievement of poverty eradication and food security for all. This guide to implementing improved tenure governance in fisheries supports this process and endeavours to provide advice and direction for the fisheries sector. It should be read as a complement to the VGGT and considered in the context of other international instruments addressing sustainable development, e.g. the FAO Code of Conduct for Responsible Fisheries (1995), the FAO Voluntary Guidelines to the Right to Food (2005) and the forthcoming Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication.<sup>1</sup>

---

<sup>1</sup> The Twenty-ninth Session of the FAO Committee on Fisheries (COFI) held in February 2011 recommended that an international instrument on small-scale fisheries be developed (SSF Guidelines). At the time of preparing this guide, the SSF Guidelines were under development – see [www.fao.org/fishery/ssf/guidelines/en](http://www.fao.org/fishery/ssf/guidelines/en).

## PREPARATION OF THIS DOCUMENT

As part of the consultation process for the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT), several case studies were carried out on governance of tenure in fisheries. The case studies covered a variety of countries and fisheries environments and explored the meaning of governance of tenure in fisheries. Several of these case studies are being published in a thematic issue on fisheries of the FAO Land Tenure Journal in 2013. FAO organized a workshop in July 2011 to discuss the governance of tenure for responsible capture fisheries, drawing on the results of the case studies and the “Voices of fishers” initiative – a project carried out in collaboration with the International Collective in Support of Fishworkers and providing testimonies on tenure governance issues from fishers. This document *Implementing improved governance of tenure in fisheries: a technical guide to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (the ‘Guide’) is based on these outcomes. It also takes into account the results and information generated by other relevant processes, in particular the consultations carried out in the context of the development of the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication.

This document was prepared by the FAO Fisheries and Aquaculture Department. The text was initially drafted by Lena Westlund (FAO consultant) with important inputs from FAO staff including Nicole Franz, Carlos Fuentevilla, Rebecca Metzner, Francesca Romano, Margret Vidar and Rolf Willmann. The contributions by several external peer reviewers including Svein Jentoft, John Kurien, Patrick McConney and Jackie Sunde are gratefully acknowledged. The final version of this document will be become available after a period of additional discussions and reviews in 2014.

The publication of this document was made possible thanks to funding from the Federal Ministry of Food, Agriculture and Consumer Protection of Germany and from Sweden through the FAO Multi-Partner Programme Support Mechanism (FMM).

### **For further information or to provide comments, please contact:**

Rebecca Metzner  
*Fisheries and Aquaculture  
Department*  
FAO  
Rebecca.Metzner@fao.org

Nicole Franz  
*Fisheries and Aquaculture  
Department*  
FAO  
Nicole.Franz@fao.org

Francesca Romano  
*Tenure, Climate and Energy  
Division*  
FAO  
Francesca.Romano@fao.org

### **FAO. 2013.**

*Implementing improved tenure governance in fisheries – A technical guide to support the implementation of the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security.* Preliminary version, September 2013. Rome. 71 pp.

## CONTENTS

<b>PREFACE .....</b>	<b>iii</b>
<b>PREPARATION OF THIS DOCUMENT.....</b>	<b>iv</b>
<b>CONTENTS .....</b>	<b>v</b>
<b>LIST OF TABLES .....</b>	<b>vi</b>
<b>LIST OF FIGURES .....</b>	<b>vi</b>
<b>LIST OF BOXES .....</b>	<b>vii</b>
<b>ABBREVIATIONS AND ACRONYMS.....</b>	<b>viii</b>
<b>INTRODUCTION .....</b>	<b>1</b>
Background.....	1
Objective and scope of this guide .....	2
<b>PART 1: CHARACTERISTICS OF RESPONSIBLE TENURE GOVERNANCE IN FISHERIES .....</b>	<b>3</b>
<b>What do tenure rights and governance of tenure mean in the context of fisheries? .....</b>	<b>3</b>
<b>Why is responsible governance of tenure needed in fisheries? .....</b>	<b>4</b>
Livelihood security and social well-being.....	5
Biologically sustainable and economically efficient resource utilization.....	6
<b>Who has rights to fishery resources, and what are the related responsibilities? .....</b>	<b>7</b>
<b>Can fisheries resources be sustainably managed as common property? .....</b>	<b>10</b>
<b>Why should a human rights approach be used in small-scale fisheries governance and development? ....</b>	<b>11</b>
<b>What are the different types of formal tenure rights in fisheries? .....</b>	<b>13</b>
<b>What are customary and informal tenure rights? .....</b>	<b>16</b>
<b>What happens with shared fishery resources and those in international waters? .....</b>	<b>18</b>
<b>Is there an international legal and policy framework relevant to governance of tenure in fisheries? .....</b>	<b>19</b>
<b>How can tenure rights be valued? .....</b>	<b>20</b>
<b>What are the emerging issues that need to be considered in the future? .....</b>	<b>22</b>

<b>PART 2: IMPLEMENTING RESPONSIBLE TENURE IN FISHERIES.....</b>	<b>24</b>
<b>Implementation context .....</b>	<b>24</b>
<b>General principles .....</b>	<b>26</b>
<b>Setting objectives .....</b>	<b>27</b>
<b>Improving knowledge .....</b>	<b>29</b>
Stakeholders and existing tenure rights .....	29
Assessing the value of tenure rights .....	32
Investments .....	33
<b>Allocating rights.....</b>	<b>35</b>
Allocation process.....	35
Reallocation of tenure rights and competition among users .....	39
<b>Administering tenure rights .....</b>	<b>42</b>
Administrative and related services provided by governments .....	42
Capacity and institutional structures.....	43
Rights registry, records and information .....	45
Conflict resolution mechanisms.....	47
<b>Special considerations: climate change and natural disasters .....</b>	<b>49</b>
<b>Monitoring and evaluation (M&amp;E) and compliance.....</b>	<b>51</b>
<b>REFERENCES .....</b>	<b>53</b>
<b>APPENDIX 1: GLOSSARY.....</b>	<b>59</b>
<b>APPENDIX 2: APPROACHES AND TOOLS.....</b>	<b>61</b>

## LIST OF TABLES

Table 1: Typology of rights-based management systems – examples found in OECD countries .....	15
---	----

## LIST OF FIGURES

Figure 1: Context and process of implementing responsible tenure .....	25
--	----

## LIST OF BOXES

Box 1: What is governance of tenure and why is it important? .....	1
Box 2: Small-scale fisheries.....	2
Box 3: What is governance? .....	4
Box 4: What is fisheries management? .....	8
Box 5: Men and women in the fisheries sector .....	12
Box 6: What is integrated spatial planning? .....	14
Box 7: Co-management structures in Burkina Faso.....	14
Box 8: Migrating fishers and fishworkers and informal rights.....	16
Box 9: Accommodation of customary rights in South Africa .....	17
Box 10: Selected international instruments .....	19
Box 11: Implications of buffer zone policy after the 2004 tsunami.....	23
Box 12: Local fisheries governance and management arrangements in the Philippines .....	27
Box 13: Integrating traditional rights.....	31
Box 14: The case of marine protected areas (MPAs).....	32
Box 15: The “parcela” systems of Chilean algal harvesters .....	36
Box 16: ICCAT criteria for the allocation of fishing possibilities .....	37
Box 17: Transferability of Galapagos Islands commercial fishing rights.....	38
Box 18: Fishing communities in the Patos Lagoon system in Brazil .....	50

## ABBREVIATIONS AND ACRONYMS

ABNJ	areas beyond national jurisdiction
ADR	alternative dispute resolution
CBA	cost–benefit analysis
CBD	Convention on Biological Diversity
CBM	community-based ecological monitoring
CBO	community-based organization
CCA	climate change adaptation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFS	Committee on World Food Security
COFI	Committee on Fisheries (FAO)
CSO	civil society organization
CVM	contingent valuation method
DRM	disaster risk management
EAF	ecosystem approach to fisheries
EEZ	exclusive economic zone
ESCR	International Covenant on Economic, Social and Cultural Rights
FARMC	Fisheries and Aquatic Resources Management Council (Philippines)
GEF	Global Environment Facility
HIPC	heavily indebted poor country
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICT	information and communication technologies
ICZM	integrated coastal zone management
IMF	International Monetary Fund
ITQ	individual transferable quota
IUU	illegal, unreported and unregulated (fishing)
LGAF	Land Governance Assessment Framework
LGU	Local Government Unit (Philippines)
LMMA	locally managed marine area



M&E	monitoring and evaluation
MCS	monitoring, control and surveillance
MPA	marine protected area
MSP	marine spatial planning
NGO	non-governmental organization
NOAA	National Oceanic and Atmospheric Administration (United States)
OECD	Organisation for Economic Co-operation and Development
PM&E	participatory monitoring and evaluation
PRA	participatory rural appraisal
PRSP	poverty reduction strategy plan
RFB	regional fishery body
RFMO/A	regional fisheries management organization/arrangement
RUM	random utility modelling
SFLP	Sustainable Fisheries Livelihoods Programme
SIA	social impact assessment
SIDS	Small Island Developing States
SWOT	strengths, weaknesses, opportunities and threats
TCM	travel cost method
TURF	territorial use rights in fisheries
UNEP	United Nations Environment Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security



## INTRODUCTION

### BACKGROUND

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT) were officially endorsed by the Committee on World Food Security (CFS) on 11 May 2012. This endorsement represented the successful conclusion of an extensive consultation and negotiation process, and there is now an internationally agreed framework, including principles and accepted standards, for responsible governance of tenure of land, fisheries and forests (see Box 1). The VGGT will be used by actors and stakeholders – government authorities, the private sector, civil society and citizens – when developing strategies, policies, legislation and programmes, and they constitute an important tool for judging whether proposed actions constitute acceptable practices. The implementation of the VGGT will contribute to poverty alleviation, food and nutrition security and equitable economic growth and, hence, promote an economically, socially and environmentally sustainable future for the planet and its people in line with the outcomes of the United Nations Conference on Sustainable Development in Rio de Janeiro in 2012 (Rio+20).

#### **Box 1: What is governance of tenure and why is it important?**

Tenure is how people gain access to land, fisheries, forests and other natural resources. Governance of tenure affects whether, and how, people are able to acquire rights and to protect already existing rights to use and to control these resources. Many tenure problems arise because of weak governance, and the quality of governance affects the attempts to fix these problems. Inadequate and insecure tenure rights to natural resources often result in extreme poverty and hunger. The eradication of hunger and poverty – as well as the sustainable use of the environment and the continued provision of ecosystem services – depends in large measure on how people, communities and others gain access to land and other natural resources. The livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. They are: the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in equitable economic growth.

*Source: FAO (2012a).*

In the fisheries sector, ineffective governance of tenure constitutes a major obstacle to a sustainable and efficient use of natural resources and, hence, livelihoods and food and nutrition security are jeopardized. Many small-scale fishing communities suffer from insecure access to the resources they depend on. While access to fishery resources is a key consideration, it is important to understand that fishing communities also depend on access to other resources and services: land, housing, markets, financial resources, information, legal systems and social services (e.g. education, health care, sanitation). In fact, land and fisheries tenure rights need to be combined. Small-scale fishing communities need secure use rights to fishery resources and to land in the coastal, lakeshore or waterfront area – for ensuring and facilitating access to the fishery, for accessory activities (including processing and marketing), and for housing and other livelihood support.

Many of the world's fishery resources – both in marine and inland waters – are in a precarious state. Overfishing and economic inefficiency because of overcapacity characterize numerous fisheries around the world. This means that fisheries do not contribute to economically, socially and environmentally sustainable development in the way the sector could do. This situation is further aggravated by uncertainties related to climate change impacts and other developments due to global change. Improving governance of tenure, taking these aspects and underlying causes into consideration, is hence a matter of urgency.

## OBJECTIVE AND SCOPE OF THIS GUIDE

This Guide has been developed to assist in the implementation of the VGGT with regard to fisheries in marine and inland waters. It explains the characteristics of the fisheries sector and provides technical guidance. Its purpose is to contribute to the achievement of the VGGT objectives in respect of the improvement of governance of tenure in fisheries. Special attention is given to small-scale fisheries, considering the sector's particular importance to food security and nutrition, poverty eradication, equitable development and sustainable resource utilization (see Box 2). Many small-scale fishing communities are vulnerable and marginalized and, hence, represent the people who are at the core of the VGGT remit.

The Guide is directed to those in governments and other organizations who are involved in issues related to governance of tenure in fisheries and in areas where fishing communities are settled or where they carry out activities supporting their livelihoods. The target audience thus includes in particular relevant staff of fisheries and other government agencies and regional organizations but also the private sector and civil society organizations (CSOs). Part 1 of the Guide provides explanations with regard to important concepts for understanding tenure in fisheries. This part is of particular relevance to those who are not familiar with the fisheries sector. Part 2 discusses approaches for how to implement responsible tenure in fisheries and is directed to those who are tasked with implementing the VGGT in the fisheries sector and for the benefit of small-scale fishing communities.

Governance in fisheries with respect to rights to fishery resources (access to fishing) is a subject on which there is already considerable literature and guidance available. While attempting to give an accurate overview of the subject matter, this Guide focuses on issues of concern with regard to tenure in the context of livelihoods of vulnerable and marginalized groups. References to more in-depth information and specialized literature that readers are invited to consult along with this document are provided, as applicable.

It should be noted that the term fishery resources in this document includes other aquatic animals or plants that are fished or harvested. However, while it is recognized that there are often important linkages between aquaculture and fisheries, the Guide focuses on the capture fisheries sector.

### **Box 2: Small-scale fisheries**

Small-scale fisheries generate income, provide food for local, national and international markets and make important contributions to nutrition. They employ more than 90 percent of the world's capture fishers and fishworkers, about half of who are women. In addition to full- and part-time fishers and fishworkers, seasonal or occasional fishing and related activities often provide vital supplements to other livelihood activities, in times of difficulties or as a recurrent sideline activity. Small-scale fisheries are estimated to contribute almost half of global fish catches and, when considering catches destined for direct human consumption, the share contributed by the sector increases to two-thirds. Inland fisheries are particularly important in this respect, with small-scale fisheries food fish production dominating the subsector.

*Sources:* FAO (2012b); World Bank, FAO and WorldFish Center (2012).

## PART 1: CHARACTERISTICS OF RESPONSIBLE TENURE GOVERNANCE IN FISHERIES

*Part 1 of this document intends to enhance the understanding of how responsible tenure applies to fisheries focusing on small-scale fishing communities. It intends to provide information for those who are not familiar with the fisheries sector and on how to look at tenure in this context. Questions with regard to what tenure rights are and why they are important to small-scale fishing communities, as well as the meaning of rights in the fisheries sector, are discussed. Tenure rights come in many different forms, and an overview of the different rights and systems available is provided. A description of the relevant international policy and legal frameworks is given, and the need to understand customary and informal tenure systems is emphasized. Moreover, the complex concept of tenure right values is addressed, and issues related to global change, including climate change, are raised.*

### WHAT DO TENURE RIGHTS AND GOVERNANCE OF TENURE MEAN IN THE CONTEXT OF FISHERIES?

**With regard to the definition of tenure, the VGGT explain that:**

*Tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices.*

**(Preface)**

Tenure in fisheries – as in other natural resource sectors – refers to the manner in which the relationships between people are defined and negotiated in the context of the utilization of fishery and related resources, i.e. tenure defines who is a user and, therefore, who has a legitimate right to a resource and who does not. Governance of tenure then deals with how tenure rights are allocated, changed (legalized, transferred, etc.) and administered (see Box 3).

While formal tenure rights are generally still a developing concept in fisheries, there is a long history of customary and traditional tenure systems in fishing communities (Cordell, 1989). These have tended to be in the form of rights (to fish) in certain areas – i.e. spatial access or use rights (see section *What are the different types of formal tenure rights in fisheries?* below) – and have often been found in conjunction with land tenure. In many places, for example in small island States in Oceania, natural resources and the space they occupy have traditionally not been divided into two different components of land and water (Aswani, 2005). Instead, nature – including humans and society – has been seen holistically, with communities having a multifunctional resource space as the basis for their livelihoods (Ruddle, 1988). Hence, fisheries tenure cannot be viewed in isolation but needs to be considered in connection with a broader land and livelihoods context (FAO, 2011a).

**Box 3: What is governance?**

Governance can be construed as the formal and informal arrangements, institutions, and mores that determine how resources or an environment are utilized; how problems and opportunities are evaluated and analysed, what behaviour is deemed acceptable or forbidden, and what rules and sanctions are applied to affect the pattern of resource and environmental use.

*Source:* Juda (1999).

However, governance can also take a more holistic meaning:

Governance is the whole of public as well as private interactions taken to solve societal problems and create societal opportunities. It includes the formulation and application of principles guiding those interactions and care for institutions that enable them.

*Source:* Kooiman *et al.* (2005).

However, the development of formal tenure arrangements in fisheries has tended to focus on access to fisheries and use of fishery resources. In this context, the terminology of “rights” (as in rights-based management, discussed below) is perhaps more commonly used than “tenure”.<sup>2</sup> Still, tenure is a useful term because it indicates the broader system of rights – formal and informal – and includes social and societal notions of rights that individuals, groups of people or communities may have to a fishery resource. The term tenure rights covers the concepts of use and management rights but it is different from ownership and it is broader than fisheries management (see Box 4). Accordingly, tenure also includes traditional and customary rights that are not formally legalized.

**WHY IS RESPONSIBLE GOVERNANCE OF TENURE NEEDED IN FISHERIES?****The VGGT emphasize the importance of governance of tenure and that:**

*States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.*

**(§4.1 in *Rights and responsibilities related to tenure*)**

Responsible governance of tenure ensures that tenure rights are recognized, defined, allocated and administered in a fair and equitable way, respecting human rights and reflecting societal objectives and the need to support the small-scale fisheries sector’s potential to contribute to food security and nutrition, poverty eradication, equitable development and sustainable resource utilization. Recognizing existing rights or allocating rights to, as well as responsibilities for, fishery and other natural resources to legitimate rights holders fulfils two key functions. First, users need secure access – defined in relation to other potential

---

<sup>2</sup> The term “property” is also used, as in “common property” and “private property” (see the sections *Can fisheries resources be sustainably managed as common property?* and *What are the different types of formal tenure rights in fisheries?* below).

users<sup>3</sup> – to the resources they depend on for their livelihoods. Second, recognizing and allocating rights to fishery resources is a tool for fisheries management for promoting socially, economically and environmentally sustainable resource utilization.

---

## LIVELIHOOD SECURITY AND SOCIAL WELL-BEING

Secure access to resources is a prerequisite for livelihood security and development. Not being able to count on certain basic resources creates vulnerability. Moreover, people are more likely to invest in their own future when they are confident that they will continue to be able to draw on the resources they need for their livelihoods. Fishers and fishworkers first and foremost need access to fishery resources to pursue their livelihood strategies but, as mentioned above, fishing communities also need other resources such as land – for the physical access to the water, storage of boats and gear, housing, etc. Fish processors and traders also need land together with access to water to set up their businesses. Moreover, in many small-scale fishing communities, livelihoods are diverse and households may be involved in other economic activities (e.g. farming or tourism) in parallel with fisheries activities requiring access to the relevant resources for these activities. In accordance with international human rights legislation, all persons have the right to “an adequate standard of living, including adequate food”<sup>4</sup> and the right to “just and favourable conditions of work, which ensure ... a decent living for themselves and their families”<sup>5</sup> and there is hence a strong link between rights to resources and human rights (see also below). Moreover, small-scale fishing communities, indigenous and others, often see fishing (and related activities) as more than a source of income. It is a way of life, and securing rights to their traditional way of living is a question of social justice (Jentoft, 2011).

With regard to secure access to land, in many countries, land in coastal areas cannot be privately owned. In some Caribbean and Indian Ocean islands, the land adjacent to the coastline is owned exclusively by the government and can only be leased, not sold, to private individuals. On the other hand, in many islands in the Pacific and the Indian Ocean, e.g. Maldives, there is a pattern of customary ownership, with communities, villages and clans owning coastal lands. Still, beaches in small island States in the Caribbean, Indian Ocean and Pacific regions tend to be considered public property for the use and enjoyment of all. Where coastal developments, such as tourism, interfere with this concept, conflicts may arise (Cambers, Muehlig-Hofmann and Troost, 2003). In this context, fishing communities are in a particular situation with regard to tenure and access to the shore area. If other sectors and economic activities, which may have strong political support, make claims to the area, they may be threatened by eviction if they do not have formal tenure of the land they occupy as well as to their fishing grounds. Hence, fishing communities need a bundle of rights covering both land and fisheries.

---

<sup>3</sup> Secure tenure for some inevitably means exclusion of others. The importance of clear objectives, commensurate with human rights and overarching societal goals, and policy coherence is further discussed in the section *Setting objectives* in Part 2.

<sup>4</sup> Article 11.1, International Covenant on Economic, Social and Cultural Rights.

<sup>5</sup> Article 7 (ii) International Covenant on Economic, Social and Cultural Rights.

## BIOLOGICALLY SUSTAINABLE AND ECONOMICALLY EFFICIENT RESOURCE UTILIZATION

Overcapitalization and overexploitation is the sad reality of many fisheries in the world where conventional fisheries management has been unsuccessful or inadequate (see also the following section *Who has rights to fishery resources, and what are the related responsibilities?*). This has led to a dissipation of the economic benefits, referred to as rent, that can be created by the fishery. This rent—or rather loss of rent—was estimated at the global level by the joint World Bank/FAO report *The Sunken Billions* (World Bank, 2009). The study argues that, because of the inefficiency of fisheries, the world’s capture fishery resources are costing the world economy an estimated USD50 billion per year in forgone resource rent. The cause of this poor economic performance of fisheries is that there are too many boats, gear and fishers (fishing capacity) compared with the amount of fish that can be caught sustainably.<sup>6</sup>

By giving users a stake in the future of the resource, a more responsible behaviour is expected and the incentives behind the “race for the fish” are dismantled. For this approach to work, the right given to a user or a group of users has to be secure – if the risk is high that the right will be taken away, the incentive to manage the fishery sustainably is diminished. The VGGT state that (§4.3) “... no tenure right, including private ownership, is absolute. All tenure rights are limited by the rights of others and by the measures taken by States necessary for public purposes”. While this is a necessary premise of tenure of natural resources in general, it should be noted that long-term secure tenure is an important element of successful rights-based fisheries management.<sup>7</sup> Still, it should be pointed out that a rights-based fisheries management system does not automatically remedy overfishing and induce good management. The appropriate type of rights regime needs to be in place and a variety of other conditions apply, e.g. there is a need for enforcement mechanisms and (scientific) information (WHAT, 2000).

The two aspects – livelihood security and sustainable and efficient resource utilization – are of course linked. Economically healthy fisheries are a prerequisite for achieving goals and benefits including sustainable livelihoods, food security and productive fish stocks (World Bank, 2009). The small-scale fisheries sector can play an important role in development and economic growth if provided with the right incentives and an enabling environment. Vesting use and management rights in small-scale fishing communities is likely to bring economic, social and environmental gains (UNEP *et al.*, 2012).

---

<sup>6</sup> This theory and the “race for the fish” is explained and discussed in the literature (see, for example, WHAT, 2000).

<sup>7</sup> See p. 16 and also the discussion in the chapter *Allocating rights* in Part 2.



## WHO HAS RIGHTS TO FISHERY RESOURCES, AND WHAT ARE THE RELATED RESPONSIBILITIES?

### **The VGGT point out that**

*States have the power to allocate tenure rights in various forms, from limited use to full ownership. Policies should recognize the range of tenure rights and right holders.*

### **(§ 8.8 in *Public land, fisheries and forests*)**

*States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.*

### **(§ 9.4 in *Indigenous peoples and other communities with customary tenure systems*)**

Because of the characteristics of fishery resources – living in the water where they are difficult to see and rarely keeping within set boundaries – it is often more difficult to determine who owns them or has rights to them than it is for terrestrial resources. The “ownership” of fishery resources hence tends to be different from ownership of land, especially when defined as private or individual ownership. In fact, while fish in a lake on someone’s land could be seen as privately owned, in the marine sector “individual ownership in the fishery is rare” (p. 4, Scott, 2000). In most European countries, ownership of fish before it is caught is not conceivable – historically, wild fish has been considered as *res nullius* or unowned property (MRAG *et al.*, 2009). Still, in many places in the world, fishery resources are considered to be collectively owned by the communities that use them, and the concept of common property is important to many indigenous and small-scale fishing communities (see further below and the discussion in the section below *Can fisheries resources be sustainably managed as common property?*).

In the marine exclusive economic zones (EEZs) of countries, States have jurisdiction over living resources, and governments are thus responsible for managing these national assets. A variety of measures to control fishing (e.g. licensing, catch quotas, gear regulations) can be used, and governments can also delegate rights and responsibilities to individuals or communities. Fishery resources have the character of common pool resources, i.e. “resources in which (i) exclusion of beneficiaries through physical and institutional means is especially costly, and (ii) exploitation by one user reduces resource availability for others” (p. 278, Ostrom *et al.*, 1999). The need for fisheries management is based on this concept of fish stocks as common pool resources and that “individual fishers are unable to control the activities of other fishers in exploiting this common pool. Individuals’ attempts to moderate their own use of the resource will only result in benefits flowing to other users and, as a result, there is every reason to overuse, rather than conserve, the resource” (FAO, 2005–2013a). Fisheries that do not have regulations with regard to access are commonly referred to as “open access” fisheries, i.e. allowing anyone who wishes to fish to do so, and are hence likely to be subject to economic inefficiency due to overcapitalization as well as overexploitation (see also Box 4).

**Box 4: What is fisheries management?**

Fisheries management aims to achieve sustainable utilization of fishery resources, optimizing the benefits for society at the same time as safeguarding biodiversity. The term “conventional fisheries management” tends to be used for fisheries management carried out by a State through centralized command-and-control measures. This is the system that often replaced local customary and traditional systems as nation States with centralized administrations developed and exclusive economic zones (EEZs) were extended in the 1970s. As these systems have not always been effective, participatory management involving various degrees of decentralization and devolution of state functions and the introduction of right-based management systems have started to be advocated.

The scope of fisheries management has also widened in recent years to take broader ecosystem considerations more explicitly into account. The ecosystem approach to fisheries (EAF) “strives to balance diverse societal objectives, by taking account of the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries” (p. 14, FAO, 2003).<sup>1</sup> Its principles are not new but firmly anchored in a number of policy instruments and international agreements on sustainable development. Many governments and organizations are moving towards implementing ecosystem-based approaches to fisheries and natural resource management.

<sup>1</sup> See also FAO. 2009. *Fisheries management. 2. The ecosystem approach to fisheries. 2.2 The human dimensions of the ecosystem approach to fisheries*. FAO Technical Guidelines for Responsible Fisheries No. 4, Suppl. 2, Add. 2. Rome. 88 pp.

Sources: FAO (1997, 2003, 2005–2013a).

Traditionally, de facto use rights and management responsibilities for coastal and inland water fishery resources tended to be assumed by local fishing communities. As explained above, these rights and management systems were often spatially based. However, because of centralized fisheries management systems, technology development and demographic changes, customary practices for allocation and sharing of resource benefits in small-scale fisheries have often been eroded. Sometimes, traditional or customary claims to resources still exist but they are not always legally recognized, and management responsibilities may be ambiguous and/or ineffective. Legal pluralism is a term used to describe situations where there are several different legal ideas, principles and systems applied at the same time, and this is found in the fisheries sector (Jentoft *et al*, 2009).

In 1968, Hardin (1968) introduced the concept of the “tragedy of the commons”, arguing that unless a common pool resource were privatized and some sort of property rights attached to it, users of a commons would be caught in a process of overuse that would lead to the destruction of the resource. The recent move towards rights-based fisheries management is based on the notion that fisheries will generate more benefits if users have stronger rights to them more in line with property rights to, for example, land. Rights-based fisheries management is hence a concept that focuses on the privileges and rights – and responsibilities – in the form of common or private property rights of individuals (fishers), fishing vessels, communities or companies relating to fishing. These rights are often referred to as use rights and exist in many different forms, consisting of bundles of entitlements that confer both privileges and responsibilities (see also the section *What are the different types of formal tenure rights in fisheries?*).

Generally, a set of four attributes can be used to describe the characteristics of the different types of tenure rights in fisheries. These characteristics apply to all types of tenure rights, including both common and private property rights. The greater is the extent of these attributes, the stronger is the right (Scott, 2000):

- **Security** refers to the ability of the holder of the right to hold onto this right and not to have it challenged or revoked by other individuals, institutions or the government.

- **Durability** refers to the time span of the entitlement and can range from virtually nothing or one season or year to perpetuity.
- **Transferability** refers to the ability of the right holder to reassign (transfer or sell) his/her entitlement to others.
- **Exclusivity** refers to the extent to which the rights holder is allowed to use and manage his/her entitlement – such as a share of a fish stock – without interference from fisheries management regulations (with regard to methods of harvesting, seasons, etc.).

When designing and implementing a tenure system in fisheries, there are several decisions to be made with regard to these attributes. This is further discussed in Part 2 (see the chapter *Allocating rights*). Different types of rights are discussed below and examples given (see Table 1).

## CAN FISHERIES RESOURCES BE SUSTAINABLY MANAGED AS COMMON PROPERTY?

### **The VGGT recognize the importance of resources that are collectively used and that:**

*Noting that there are publicly owned land, fisheries and forests that are collectively used and managed (in some national contexts referred to as commons), States should, where applicable, recognize and protect such publicly owned land, fisheries and forests and their related systems of collective use and management, including in processes of allocation by the State.*

### **(§ 8.3 in *Public land, fisheries and forests*)**

It is important to understand that a rights-based fisheries management regime does not necessarily imply privatization of resources through individual tenure rights but that it also includes options for common property and community-based arrangements.<sup>8</sup> There is evidence that common pool resources can be utilized sustainably, e.g. by self-management by local communities. Certain conditions should be fulfilled, e.g. users need to perceive that common benefits are higher than costs and they should have some autonomy to make their own use and harvesting rules. The ability of users to self-organize is dependent on the social setting and users need to “share an image of how the resource system operates and how their actions affect each other and the resource” (p. 281, Ostrom *et al.*, 1999). In fact, most coastal resources are likely to have some forms of (collective) management systems attached to them, either customary arrangements that are still being applied to some extent by local fishing communities or systems that have been replaced by central management.

While an “open access” fishery implies risks for resource exploitation and economic inefficiency, the role of access to fishing for poverty prevention needs to be considered when looking to introduce or improve fisheries tenure rights regimes (Jentoft and Eide, 2011). Relatively “easy and free access to fishing grounds allows poor people to rely more heavily on local riparian resources to obtain the goods and services they need to sustain their livelihoods or to gain access to paid employment. Inland fisheries are particularly important in this context. This safety-net dimension of fisheries is of greater importance and relevance to poor and marginalized households – generally those with limited access to land and other resources.” (p. 409, Kurien and Willmann, 2009). It gives an opportunity to supplement other activities in situations of disruptions (unemployment, natural disasters, etc.). Small-scale fisheries are also important for poverty alleviation because of their capacity to absorb surplus labour (Béné, 2011). If and when considering converting common pool fishery resources into other forms of tenure, these types of functions need to be taken into account.

In the *Bangkok Statement*,<sup>9</sup> prepared by small-scale fisheries civil society organizations (CSOs) for the Global Conference on Small-Scale Fisheries, privatization of fishery resources as well as waters and lands that fishing communities depend on for their livelihoods were strongly opposed to (SAMUDRA, 2008). Importance was given to the protection of customary and traditional access to fishery resources by small-scale fishing communities. States were urged to “guarantee access rights of small-scale and indigenous fishing communities

---

<sup>8</sup> Sometimes, rights-based fisheries management is interpreted to imply privatization through allocation of individual rights. Here, the approach includes also common property rights held by a group of users or a community.

<sup>9</sup> Text available at [www.foodsovereignty.org/Portals/0/documenti%20sito/Core%20issues/Fisheries/bangkokstatement.pdf](http://www.foodsovereignty.org/Portals/0/documenti%20sito/Core%20issues/Fisheries/bangkokstatement.pdf)

to territories, lands and waters on which they have traditionally depended for their life and livelihoods” and “protect access of women of fishing communities to fish resources”. These statements indicate a need for replacing “open access” regimes with systems that ensure secure access to resources by certain groups (small-scale fishers) through, for example, community-based or common property rights (FAO, 2009a).<sup>10</sup>

## WHY SHOULD A HUMAN RIGHTS APPROACH BE USED IN SMALL-SCALE FISHERIES GOVERNANCE AND DEVELOPMENT?

**The VGGT refer to human rights and stress the importance of governance of tenure being consistent with States’ obligations under international law and that:**

*Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests.*

**(§ 4.8 in *Rights and responsibilities related to tenure*)**

As indicated above, the use of the word “rights” in a fisheries context has tended to refer to rights-based fisheries management (fishing rights). However, especially in the context of small-scale fisheries, more recent discussions have evolved to include a human rights perspective and the right to secure and just livelihoods, including social and economic rights as well as rights to related resources (such as land). Linking fishing rights and human rights reflects a move towards an approach more in line with the reality of the diverse livelihoods of small-scale fishing communities and the complexity of poverty. To apply a broader-based approach to the allocation of rights in a fisheries and fishing community context means giving fishers rights to adequate livelihoods and equitable benefits. Good (fair and secure) tenure rights should balance social, cultural, economic and environmental goals, assist in reducing conflict, enhance food security and livelihoods for small-scale fishers and fishing communities, and facilitate the conservation of local ecosystems. This is not always an easy balance but by changing the perspective to a focus on people – the livelihoods of fishing communities – instead of on fisheries, the way tenure rights are perceived and defined will change. This requires a good understanding of the issues at hand and of the priorities of fishing communities. For example, the need for secure access to and management responsibilities for fishery resources may not be perceived as a first priority. Due to poverty and vulnerability, other pressing problems – health, schooling, etc. – could be considered more important. Small-scale fishing communities may lack the capacity and incentives to participate in fisheries

---

<sup>10</sup> For a discussion on how to decide what type of tenure rights system that should be introduced in different situations, see the chapter *Allocating rights* in Part 2.

management, and other aspects of poverty need to be addressed first, or simultaneously, as tenure rights are dealt with (Allison *et al.*, 2012; FAO, 2009a).

**Among the principles of implementation, the VGGT mention:**

**Non-discrimination:** *no one should be subject to discrimination under law and policies as well as in practice.*

**Equity and justice:** *recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.*

**Gender equality:** *Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.*

**(§ 3B in Guiding principles of responsible tenure governance)**

A central premise of human rights is non-discrimination, and equity and justice as well as gender equality are among the principles that the VGGT are based on.<sup>11</sup> Gender considerations in fisheries are important and, while the concept of gender, by definition, deals with both men and women – and boys and girls – and the socially, culturally and economically established roles and relationships between them, women are often more disadvantaged than men. Gender equality efforts hence often mean supporting and empowering women while working with both men and women (see Box 5). When addressing tenure rights, care has to be taken that arrangements benefit both men and women.<sup>12</sup>

**Box 5: Men and women in the fisheries sector**

The fisheries sector is often perceived as male-dominated because most fishers – those who go out in boats and fish – are men. However, women play an equally important role, and it is estimated that about half of all people around the world working in fisheries are women. Women are generally key in the post-harvest handling of fish and other aquatic products from their point of landing to reaching the consumer. Women also participate as entrepreneurs and as fish buyers; it is not unusual that they advance money to finance fishing trips or give loans to fishers against a guaranteed supply of fish when the catch is landed. In some countries, it is common that women fish or collect seafood, for example mussels and clams, in coastal or inland waters.

*Source:* FAO (2010).

---

<sup>11</sup> See also the chapter *General principles* in Part 2.

<sup>12</sup> See also the document *Governing land for women and men – A technical guide to support the achievement of responsible gender-equitable governance of land tenure* (FAO, 2013a). This implementation guide has also been prepared to support the Guidelines but it does not deal with gender in fisheries.

## WHAT ARE THE DIFFERENT TYPES OF FORMAL TENURE RIGHTS IN FISHERIES?

### **As a key principle, the VGGT establish that:**

*States should recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.*

### **(§ 3A in Guiding principles of responsible tenure governance)**

There are many different forms of tenure rights in fisheries in the context of rights-based fisheries management. It is a fairly complex arena and there no globally agreed set of terms. The designations and definitions used vary between countries, locations and organizations. In this document, the term “use right” is utilized by preference when referring to formal rights to fishery resources, i.e. when defining who is involved in a fishery and how. When rights also include management responsibilities, i.e. a right or obligation to be part of fisheries management, the term “management right” is sometimes used.<sup>13</sup>

Fisheries tenure rights would typically be seen as part of a broader fisheries governance and management framework. Some tenure rights arrangements resemble measures applied in conventional fisheries management (see Box 4), e.g. access rights to a fishery (licences) or withdrawal or harvest rights (quotas). These are similar to fisheries management input (effort) and output controls but are, from a rights-based fisheries management perspective, seen as rights or privileges given to fishers instead of as restrictions and regulations.

There are a number of different area-based management regimes that refer to the fishing location, e.g. territorial use rights in fisheries (TURFs). TURFs assign rights to individuals or groups to fish within a certain location, commonly based on a customary right (see below).

Marine protected areas (MPAs) have generally been promoted from a biodiversity conservation perspective but – depending on the exact definition of the concept in the particular situation – they are also considered a fisheries management measure. Different types of spatial–temporal gear closures are historically a very common fisheries management tool. However, MPAs have tended to be set up as independent management units, sometime infringing on existing tenure rights in fisheries, while they should preferably be considered in broader management frameworks. They range from “no take” (no fishing allowed) to planned “multiple-use” areas and are increasingly serving both biodiversity conservation and fisheries management purposes.<sup>14</sup>

---

<sup>13</sup> Common terminology used includes property rights (common property and private property), access rights and fishing rights. For further clarifications, see, for example, the many articles in Shotton (2000). This section draws on this work as well as on MRAG *et al.*, (2009); FAO (2005–2013b); and Charles (2011).

<sup>14</sup> There are many different terms used for MPA type of arrangements, e.g. reserves, ocean sanctuaries, marine parks, fisheries refugia, locally managed marine areas (LMMAs), and there is no globally agreed definition of the concept. See FAO (2011b) for more information on MPAs and fisheries.

Zoning is a type of area-based management tool approach. Countries sometimes give preferential access to small-scale fishing, in general in inshore waters, e.g. by prohibiting larger vessels to fish close to shore. However, such regimes are sometimes weakly enforced and tend not to resolve the inability to limit access and fishing effort. There may also be competing non-fisheries uses in the inshore area, and increased attention needs to be given to broader spatial planning systems, combining and coordinating plans and activities of different sectors (see Box 6).

**Box 6: What is integrated spatial planning?**

Integrated management (whether of oceans, coasts, watersheds, etc.) is an approach, or mechanism, to manage multiple (competing) uses of a certain designated area. These uses include different sectors such as fisheries, aquaculture, forestry, oil and gas, mining, agriculture, shipping and tourism. It involves managing a range of stakeholders (e.g. local communities and industries) as well as interactions among people and other components of ecosystems, and among different levels of government. The need for integrated and cross-sectoral approaches is increasingly being recognized and the intensified attention given to the ecosystem approach to fisheries (EAF) is one aspect of this (see Box 4).

There are several types of spatial planning and management frameworks with relevance to fisheries and that have the potential to integrate the dual need for fishery resources and land of fishing communities, including marine spatial planning (MSP) and integrated coastal zone management (ICZM). The Code of Conduct for Responsible Fisheries (FAO, 1995) specifically refers to the need to take fisheries “into account in the multiple uses of the coastal zone and are integrated into coastal area management, planning and development” (Art. 6.9).

*Sources:* FAO (1995, 2011b).

Community-based management systems vest management rights in communities or community groups. When communities and governments share management responsibilities, co-management arrangements are referred to. A co-management arrangement can also include other partners, e.g. non-governmental organizations (NGOs), research institutions and traditional leaders (see example in Box 7). Co-management is by and large considered the recommended best practice for small-scale fisheries management. Co-management arrangements are often combined with a delegation of management responsibilities from the central-level government to local governments in addition to giving management responsibilities also to resource users. In fisheries and with regard to management responsibilities of coastal and inshore waters, several countries have given local governments increased responsibilities (e.g. in the Philippines and in Indonesia) (Pomeroy and Rivera-Guieb, 2006; Pomeroy, 2001).

**Box 7: Co-management structures in Burkina Faso**

A pilot project under the Sustainable Fisheries Livelihood Programme (SFLP) supported the introduction of co-management arrangements on the large dams (artificial lakes) in Burkina Faso, and two management committees were set up – one on Lake Bagré and one for Lake Kompienga. These committees included the local administration, the decentralized technical administrations, consular chambers, non-governmental organizations (NGOs), microfinance institutions, representatives of traditional rulers, and representatives of socioprofessional associations. The committees were given legal and legitimate status to approve and validate co-management plans and rules of procedure. Specialized commissions were created to address specific management issues such as surveillance in fishing camps, establishment of local fisheries management funds, training of committee members, and protection of fish habitats by designating fish reproduction zones.

Moreover, within the co-management framework of the pilot project, a new committee was established in the village of Kompianbiga/Tounga, the main fishing village of Lake Kompienga, with a view to addressing the various conflicts arising among the large migrant community and the local population. This committee consisted of the heads of all the different community and ethnic groups, and it was given the task to rule on matters regarding, among other things, theft, wandering cattle in the village, disputes between villagers,



tensions within households, application of fishery management measures, repayment of loans between villagers, and participation in community services. With the establishment of the committee, the number of serious conflicts decreased, and it also created a new openness between the migrant and local population groups. In general, all three committees have played a key role in increasing the awareness among national authorities of the need to take the interests of fishing communities into account in fishery management.

*Sources:* Njock, Allison and Konan (2008); Konan (2007).

Table 1 gives examples of different types of rights, together with a brief description of how they work and their attributes.

**Table 1: Typology of rights-based management systems – examples found in OECD countries**

<b>Type of right</b>	<b>Key features</b>
Territorial use rights in fisheries	Allocation of a certain area of the ocean to a single user, usually a group, which then undertakes fishing by allocating rights to users within the group. Usually of long duration and with a high degree of formal and informal transferability within the group.
Community-based catch quotas	Catch quotas are attributed to a fishing community with decisions on allocation of rights within the community taken on a cooperative basis. They are often used in formalizing traditional access rights in small-scale fisheries. They provide a high degree of exclusivity, divisibility and flexibility.
Vessel catch limits	Restrict the amount of catch that each vessel can land for a given period (week, month or year) or per trip. These instruments are characterized by relatively low or moderate levels for most rights characteristics. They provide limited exclusivity and may not reduce the race for the fish, while providing some degree of flexibility and quality of title.
Individual non-transferable quotas	Provide a right to catch a given quantity of fish from a particular stock, or, more usually, a percentage of a total allowable catch (TAC). Relatively high characteristics of exclusivity and flexibility allow rights holders to use their rights in a least-cost way to secure a given quantity of fish. The race for the fish that exists under a competitive TAC is largely eliminated, but the lack of transferability restricts the efficiency of harvesting.
Individual transferable quotas	Provide a right to catch a given percentage of a TAC, which is then transferable. This instrument rates highly on all criteria. The features of the system allow for appropriate long-term incentives for investment decisions as well as optimizing short-term use of fishing capacities.
Limited non-transferable licences	These licences can be attached to a vessel, to the owner, or to both, and have to be limited in number and applied to a specific stock or fishery to be considered as market-like. By restricting access to a stock, this instrument helps to reduce the race for the fish and prevent rent dissipation. However, the lack of transferability and divisibility limits the optimal use of fishing capacity.
Limited transferable licences	By making limited licences transferable, fishers are provided with an increased incentive to adjust capacity and effort over the short to long term in response to natural and economic conditions. They are generally given for a very long duration, but are not divisible.
Individual non-transferable effort quotas	Rights are attached to the quantity of effort unit that a fisher can employ for a given period. They tend to be used in fisheries for sedentary species and are characterized by moderate or relatively high levels of exclusivity, duration and quality of title.
Individual transferable effort quotas	Transferability makes short- and long-term adjustment easier and allows for a better use of fishing capacities.

*Sources:* Adapted from pp. 13–14, MRAG *et al.* (2009).

## WHAT ARE CUSTOMARY AND INFORMAL TENURE RIGHTS?

### **The VGGT state that:**

*State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems.*

### **(§ 9.1 in *Indigenous peoples and other communities with customary tenure systems*)**

*Indigenous peoples and other communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women.*

### **(§ 9.2 in *Indigenous peoples and other communities with customary tenure systems*)**

*Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognize and protect these rights. Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands.*

### **(§ 9.5 in *Indigenous peoples and other communities with customary tenure systems*)**

Fisheries tenure rights can be formal and legally recognized – as those described above in the context of rights-based fisheries management – or informal and customary (or traditional). Customary tenure rights of a community include the collective rights of community members to the natural commons as well as private rights of community members to specific land parcels or natural resources. Informal tenure rights are tenure rights that lack formal, official protection by the State. They often arise spontaneously, e.g. the emergence of informal tenure rights in areas arising from migrations (Box 8). These rights can still be legitimate because they are being covered by, for example, international laws and conventions, treaties or other legal instruments although not explicitly included in national tenure legislation.

### **Box 8: Migrating fishers and fishworkers and informal rights**

Throughout history, migration has been a common livelihood strategy among fishing communities in Africa as well as elsewhere. In the West and Central Africa region, coastal countries allow entry to migrant fishing communities from neighbouring countries without any restrictions, and it would appear that this relatively open access to resources favours increased migration for fishing. Migration has developed informal rights to fishing grounds. These rights are often part of customary management systems. In Benin, Cameroon and Gabon, a study carried out by the Sustainable Fisheries Livelihoods Programme (SFLP) found evidence that newly arrived migrants would be introduced to the traditional chief or village head against the payment of a symbolic tithe. If the migrant failed to respect the procedure, a conflict could ensue.

Migrants often have greater problems to obtain tenure of land for agricultural production, a common component of the often complex livelihood strategies of fishing community households. Moreover, they – as well as local fishing communities without formally recognized tenure rights – may feel threatened by coastal development initiatives and be at risk of eviction.

*Source: Njock and Westlund (2010).*

Informal and customary rights generally play an extremely important role, particularly in the small-scale fisheries sector and in developing countries. Moreover, many formal tenure systems are based on rights that were initially customary. In some countries, customary tenure rights have been granted formal legal recognition equivalent to other statutory tenure rights. In other countries, they lack legal recognition. This

means there are cases where legitimate customary rights exist but, because these are not formally recognized, rights holders cannot easily defend them in the event of competition from other resource users. Expansion of tourism, port or harbour infrastructure projects and industrial progress have increasingly led to claims by other interest groups and resource users on land in coastal areas traditionally held by fishing communities. Forced eviction of coastal communities for the purposes of such developments is on the rise (Monsalve Suárez, Marques Osorio and Langford, 2009). There are also examples of formal tenure arrangements that have been set up without respecting already existing customary and traditional rights, and this has then given rise to conflicts and hardship for coastal communities. An example is the post-apartheid legal reform in South Africa, which failed to accommodate the customary rights of traditional fishing communities (see Box 9).

**Box 9: Accommodation of customary rights in South Africa**

In South Africa, a variety of community-based customary tenure systems exist that date back several centuries. These systems differ from one region to another according to historical developments and the ways in which their customary legal systems interfaced with colonial and apartheid governance. Following the election of a democratic government in 1994, there were hopes that the legal reforms of the new State would lead to governance of marine resources that was better suited to small-scale fishing communities. The new South African Constitution recognizes customary law insofar as it is consistent with the Bill of Rights.

However, the marine resource legislation introduced in 1998 failed to recognize the small-scale, artisanal sector and its customary fishing systems and rights. Instead, an individual permitting system was introduced for a newly recognized subsistence sector that focused mainly on low value sedentary species. In the western and northern coastal regions where the large, commercial industry is located, the State allocated commercial rights for four years to selected individuals and registered associations within the inshore, small-scale sector. These rights were called “limited commercial” and comprised very small allocations that were not considered viable for a small-scale enterprise. The rights application process was very complex and discriminated against fishers with low levels of literacy. Moreover, the verification process was not regarded by the fishers as legitimate and the appeal processes were complex and costly. Many traditional small-scale fishers were thus excluded from gaining access to resources or to what they considered to be their traditional fishing grounds. In 2006, the Department of Environmental Affairs and Tourism again allocated individual commercial rights decoupled from any community-based context for decision-making. In response to the failure of the new policy to accommodate their rights, the fishers of the Western and Northern Cape embarked on a series of advocacy actions to raise awareness about their marginalization and to advocate for a more equitable policy. Eventually, in 2012, a new small-scale fisheries policy was adopted that formally recognizes artisanal fishing communities. It aims “to provide redress and recognition of the rights of the small-scale fisher communities in South Africa ... in order to fulfill the constitutional promise of substantive equality” (DAFF, 2012). It recognizes customary rights and allows for a move to collective fishing rights (and away from the individual quota system that has excluded the majority) and improved marine resource co-management. It also lays the basis for demarcating exclusive fishing zones for small-scale fishers, which will be out of bounds for large commercial fishing companies.

*Sources:* DAFF (2012); Masifundise (2012); Sunde *et al.* (forthcoming).

## WHAT HAPPENS WITH SHARED FISHERY RESOURCES AND THOSE IN INTERNATIONAL WATERS?

### **With respect to regional and international commitments, the VGGT affirm that:**

*States should ensure that all actions regarding the legal recognition and allocation of tenure rights and duties are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.*

### **(§ 7.2 in Safeguards)**

In international waters, i.e. in areas beyond national jurisdiction (ABNJ), rights to resources and management responsibilities tend to be unclear. These waters are at some distance from the coast and generally exploited by large-scale fisheries, sometimes with vessels from far away. In many areas, countries with an interest in the fisheries of the area have come together to form a regional fishery body (RFB) or a regional fisheries management organization/arrangement (RFMO/A).<sup>15</sup> This development has been greatly supported by the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 UN Fish Stocks Agreement). The RFBs have varying degrees of management mandate but, generally, there is still a need for increased regional and international collaboration if sustainable resource utilization is to be achieved.

There are waters and resources that are shared by two or more countries. It is not uncommon to have fish stocks straddling borders between EEZs as well as international waters. Some fish stocks are highly migratory and fish in general do, of course, not respect borders. In some cases, RFMOs are established also in these situations (e.g. the International Baltic Fisheries Commission) but other forms of cooperation for management purposes also exist, e.g. regular consultations between countries, joint programmes dealing with specific aspects of fisheries management (e.g. surveillance) or general cooperation agreements. Some of the large lake and river basins in Africa are covered by basin commissions (e.g. the Lake Chad Basin Commission, Lake Victoria Basin Commission and Niger River Commission). These commissions usually have broader mandates than only fisheries, but in some locations there are also organizational structures especially for regional collaboration on fisheries (e.g. Lake Victoria Fisheries Organization). The management of transboundary resources in coastal and inland waters are of direct concern to small-scale fisheries, in particular as migration is a common livelihood strategy of many fishing communities.

Other initiatives aiming at improved collaboration across borders and taking a regional approach to managing natural resources include the Large Marine Ecosystem initiatives,<sup>16</sup> spearheaded by the United States National Oceanic and Atmospheric Administration (NOAA), and supported projects funded by the Global Environment Facility (GEF) and the Regional Seas Programme of the United Nations Environment Programme (UNEP). Another intersectoral approach is the “landscape approach” applied by the WWF in, for example, in the Congo River Basin.<sup>17</sup>

---

<sup>15</sup> See [www.fao.org/fishery/rfb/search/en](http://www.fao.org/fishery/rfb/search/en)

<sup>16</sup> See [www.lme.noaa.gov](http://www.lme.noaa.gov)

<sup>17</sup> [wwf.panda.org/what\\_we\\_do/where\\_we\\_work/congo\\_basin\\_forests/wwf\\_solutions](http://wwf.panda.org/what_we_do/where_we_work/congo_basin_forests/wwf_solutions)

## IS THERE AN INTERNATIONAL LEGAL AND POLICY FRAMEWORK RELEVANT TO GOVERNANCE OF TENURE IN FISHERIES?

### **The VGGT refer to other legal frameworks and state that:**

*These VGGT should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance. Nothing in these VGGT should be read as limiting or undermining any legal obligations to which a State may be subject under international law.*

### **(§ 2.2 in Nature and scope)**

In addition to the VGGT, States have committed to ensuring equitable and sustainable development, encompassing secure livelihoods, responsible use of natural resources and safeguarding of the environment – as well as respecting, protecting and fulfilling human rights – through a number of international instruments and agreements (see Box 10). These instruments are highly relevant in the context of governance of tenure in the fisheries sector.

### **Box 10: Selected international instruments**

- Universal Declaration of Human Rights
- Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines)
- International Covenant on Economic, Social and Cultural Rights (ESCR Covenant)
- United Nations Declaration on the Rights of Indigenous Peoples (Indigenous Peoples Declaration)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child
- The World Summit on Sustainable Development and the Johannesburg Plan of Action
- Convention on Biological Diversity (CBD)
- Outcome document adopted at Rio+20: The future we want

With regard to fishing activities, there are several international instruments, including binding agreements that regulate fisheries management, such as the 1982 UN Convention on the Law of the Sea and – already mentioned above – the 1995 UN Fish Stocks Agreement. The 1995 FAO Code of Conduct on Responsible Fisheries (the Code) is a fundamental voluntary fisheries instrument that promotes sustainable fishing practices. International plans of action have been elaborated under the Code, including for illegal, unreported and unregulated (IUU) fishing and management of fishing capacity. The Code is also supported by a number of technical guidelines providing implementation guidance on key issues.

Tenure, through use rights for small-scale fishers, is referenced in the Code: “when designing management measures, it might be appropriate to consider those which provide exclusive or preferential access for small-scale fisheries. Zoning, for instance, could favour and protect access to the resource by small-scale fishers, amongst whom the poorest are likely to be found” (Article 6.18). Furthermore, the Code states, not only for fisheries specifically but pertaining to coastal resources in general, that “States should develop, as appropriate, institutional and legal frameworks in order to determine the possible uses of coastal resources and to govern access to them taking into account the rights of coastal fishing communities” (Article 10.1.3).

The Code also points out the need for States to ensure that there are appropriate policy, legal and institutional frameworks for achieving the “sustainable and integrated use of the resources, taking into account the fragility of coastal ecosystems and the finite nature of their natural resources and the needs of coastal communities”

(Article 10.1.1). This is mentioned in the context of coastal zone management, and there is increasing recognition of the need to take holistic approaches to fisheries governance and development. As explained in Box 4, the EAF takes its focus in fisheries management but broadens the perspective and is holistic, integrated and participatory based on the Code's philosophy and values.

With regard to small-scale fisheries, their importance for food security and nutrition, poverty eradication, equitable development and sustainable resource utilization has become increasingly recognized. At the Twenty-ninth Session of the FAO Committee on Fisheries (COFI) in 2011, it was recommended that a new international instrument on securing sustainable small-scale fisheries should be developed to complement the Code in this respect. This instrument will take the form of international guidelines and is currently (2012) being developed.<sup>18</sup>

## HOW CAN TENURE RIGHTS BE VALUED?

**With regard to values and valuation of tenure rights, the VGGT establish that:**

*States should ensure that appropriate systems are used for the fair and timely valuation of tenure rights for specific purposes, such as operation of markets, security for loans, transactions in tenure rights as a result of investments, expropriation and taxation. Such systems should promote broader social, economic, environmental and sustainable development objectives. States should facilitate the operations of efficient and transparent markets to promote participation under equal conditions and opportunities for mutually beneficial transfers of tenure rights which lessen conflict and instability; promote the sustainable use of land, fisheries and forests and conservation of the environment; promote the fair and equitable use of genetic resources associated with land, fisheries and forests in accordance with applicable treaties; expand economic opportunities; and increase participation by the poor.*

**(§ 18.1 in Valuation)**

Tenure rights have a value. First, there is a value related to the right as such, especially when a tenure right is formally and legally recognized, because of the security and control this brings to the rights holder (or holders). Second, there is a value that is related to the underlying resource, i.e. the fishery resource and its related habitat and ecosystem, or the land value if it refers to a parcel of (coastal) land. With regard to fishery resources, the value can be seen from different perspectives and relates to:

- the current and future value of the fish stock (or stocks) that the right gives use (and management) rights to;
- economic, social and cultural values of fishing and related activities;
- the value of other ecosystem services.

If wanting to quantify the value in monetary terms, it can be said that the fishery resource or fish stocks have a value associated with the current and future value of the fish once landed less the costs for bringing it ashore.

---

<sup>18</sup> See also Box 2, FAO, 2005, and [www.fao.org/fishery/ssf/guidelines/en](http://www.fao.org/fishery/ssf/guidelines/en).

Because fishery resources are renewable if sustainably utilized, current exploitation patterns influence future returns and value. Hence, fishery resources that are exploited optimally both from a biological and economic perspective would have both a high current and future value.

The economic, social and cultural values of a tenure right are associated with the activity of fishing (and processing, trading and other accessory activities) in the form of benefits such as employment and income generation. This value may vary depending on the local importance of fishing, including if there are alternative livelihood opportunities or not. Small-scale fisheries often fill critical labour absorption and safety-net functions, and easy access to fishing can be important for poor households to sustain their livelihoods.<sup>19</sup> Moreover, for many small-scale fishers and fishworkers, the fisheries represent a way of life, and this has an important social and cultural value (Béné, 2011; Béné, Macfadyen and Allison, 2007).

Fishery resources are part of ecosystems, and there they have values as they provide ecosystem services. Ecosystem values are measures of how important ecosystem services are to people, including both coastal communities and other members of society at large. These services can be categorized into direct and indirect use values, and non-use values. Use values are based on actual use of the environment, or an option to use it, while non-use values are values that are not associated with actual use of an ecosystem or its services. Accordingly, direct use includes things such as food (fish), recreational activities and relaxation. Non-use values reflect values in the form of supporting and regulating functions, for example, through maintaining water quality and community traditions, or when people enjoy watching a television programme about the area and its wildlife, thus receiving indirect use values. Some subsets of these values include:

- An option value is a type of use value based on the idea that people want to have the option to use something in the future.
- A bequest value is the value that relates to knowing that future generations will have the option to enjoy something.
- An existence value refers to the value a person assigns to knowing that something exists even if not using, or planning to use, it.

The values described above – with regard to the fishery resource and fishing and related activities – are values of the related ecosystem services. In addition, there are more abstract values that are more difficult to quantify, but they are still important for understanding the full value of a fishery resource and its related habitat and ecosystem.<sup>20</sup> In some cultures, the value of a species or a specific area is related to the ancestral and spiritual practice of a community and cannot be easily reduced to the concept of values dominant in conventional fisheries management systems and literature.

**On the subject of valuation, the VGGT state that:**

*Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable.*

**(§ 18.2 in Valuation)**

---

<sup>19</sup> See the section (above) *Can fisheries resources be sustainably managed as common property?*

<sup>20</sup> For a more complete discussion on ecosystem services and values, see De Young, Charles and Hjort (2008).

In accordance with the reasoning above, that effectively managed fishery resources have a higher value than those that are badly managed and overexploited, it is clear that the value of the related tenure rights may change over time. By investing in good governance that promotes responsible fishing practices and, hence, improves resource status, supports economic, social and cultural values and protects key ecosystem services, the value of tenure rights can be enhanced. The wrong type of investment could make matters worse. Increasing fishing capacity, through adding vessels and better technologies allowing boats to fish more efficiently, could promote overexploitation and hence decrease the future value.

It is important to understand the different elements of the value of tenure rights and how the related benefits (and costs) are distributed – who gains and who loses – when allocating or transferring rights. A good understanding of the value is also needed to inform policy decisions in the fisheries sector. In Part 2, the issue of valuation is further discussed (see the section *Assessing the value of tenure rights*).

## WHAT ARE THE EMERGING ISSUES THAT NEED TO BE CONSIDERED IN THE FUTURE?

**With regard to climate change and disaster risks, the VGGT establish that:**

*States should ensure that the legitimate tenure rights to land, fisheries and forests of all individuals, communities or peoples likely to be affected, with an emphasis on farmers, small-scale food producers, and vulnerable and marginalized people, are respected and protected by laws, policies, strategies and actions with the aim to prevent and respond to the effects of climate change consistent with their respective obligations, as applicable, in terms of relevant climate change framework agreements.*

**(§ 23.1 in *Natural disasters*)**

*All parties should ensure that tenure aspects of land, fisheries and forests are addressed when preventing and preparing for natural disasters and in their responses to them. Regulatory frameworks for tenure, including spatial planning, should be designed to avoid or minimize the potential impacts of natural disasters.*

**(§ 24.1 in *Natural disasters*)**

In the changing world of today, there are several trends relating to global change. These include the globalization of trade; fish and fishery products are among the world's most traded food products, and fish trade has increased lately. With a growing world population, there are increased demands on food supplies, and food price volatility is a concern. There is also the rapid development and use of information technology, and changing lifestyles and human systems, including demographic developments (Perry and Ommer, 2010). It should be noted that small-scale fishing communities tend to also be exposed to the impacts of fluctuating resources, HIV/AIDS, market fluctuations, conflict, political marginalization and poor governance as well as insecure use rights (Cochrane *et al.*, 2009; Allison, Beveridge and van Brakel, 2009).

The changes that are likely to be particularly significant as well as difficult to foresee are related to climate change and variability. The threats that climate change constitutes – to human society and to natural ecosystems – are recognized as key concerns in the future of sustainable development. A number of climate-related changes are likely to occur in marine systems in the years to come, including warming temperatures, rising sea levels, increasing acidification, changing precipitation patterns and increased frequency of extreme weather events (Perry and Ommer, 2010; Cochrane and Garcia, 2009). These changes will have an impact on aquatic ecosystems, their productivity, on fisheries – and on the people that depend on fisheries.



The sensitivity to global change will vary between fisheries. The most affected will be fisheries in small rivers and lakes, in regions with larger temperature and precipitation change and those on anadromous species. They will be followed by fisheries within EEZs, fisheries in large rivers and lakes, fisheries in estuaries (particularly where there are species without migration or spawn dispersal) and in the high seas. (FAO, 2005–2013c). It should be noted that, in particular, inland fisheries ecology is affected by changes in precipitation and runoff which may be influenced by climate change (Cochrane *et al.*, 2009). Small Island Developing States (SIDS) will be particularly vulnerable, especially in association with coral reefs.

Many small-scale fishing communities are particularly vulnerable to climate change as well as to natural disasters. Small-scale fishing communities are often located in areas that are prone to natural disasters; where land and water meet is one of the most environmentally dynamic environments that exist. The increased seriousness of the effects of natural disaster hazards, induced by climate change, is further exacerbated by demographic changes. Climate change and disasters will influence migration patterns and may trigger displacements. Disaster risk management (DRM) and climate change adaptation (CCA) policies and interventions that respond to the specific needs of small-scale fisheries, recognizing that special considerations must be given to fishing communities living on small islands, need to be an integral part of policies and action programmes for small-scale fisheries governance and development – including with regard to tenure rights. By not having secure rights to the resources on which they depend, i.e. in particular land and water, the impacts of climate and change and natural disasters are often increased (see Box 11).

**Box 11: Implications of buffer zone policy after the 2004 tsunami**

Fishing communities on the Andaman coast of Thailand that were not in possession of land titles faced difficulties in reclaiming their land after the December 2004 tsunami. As they did not have formal tenure rights to their parcels, they were considered to be squatters on State land. Already prior to the tsunami, most of these settlements were under immense pressure from the tourist industry wanting to develop beachfront facilities. After the tsunami, also shrimp farm investors saw opportunities in the wiped-out communities. By the attention given to the situation in media and with the help of various groups in support of the fishing communities, the land grabbing could be slowed down. However, the land disputes did also considerably slow down rehabilitation and delayed the rebuilding of homes.

*Sources:* Fernando and Punchihewa (2011); ACHR (2006).

## PART 2: IMPLEMENTING RESPONSIBLE TENURE IN FISHERIES

Part 2 of this Guide focuses on how to implement responsible tenure in fisheries. After introducing the subject by describing the context and key elements of responsible tenure implementation, it discusses considerations to take into account and good practices when allocating, transferring and administering tenure rights in fisheries. A glossary is provided in Appendix 1, and Appendix 2 suggests different approaches and methods that can be applied and includes additional information on tools.

### IMPLEMENTATION CONTEXT

**The VGGT state that:**

*In accordance with the voluntary nature of these VGGT, States have the responsibility for their implementation, monitoring and evaluation.*

**(§ 26.1 in Promotion, implementation, monitoring and evaluation)**

*All parties, including civil society organizations and the private sector, are encouraged to use collaborative efforts to promote and implement these VGGT in accordance with national priorities and contexts. All parties are encouraged to disseminate information on responsible tenure governance in order to improve practices.*

**(§ 26.5 in Promotion, implementation, monitoring and evaluation)**

There are many different tenure rights systems in fisheries and in relation to livelihoods of small-scale fishing communities. Over time, traditional and customary systems for natural resources, both fishery resources and land, have evolved in accordance with local circumstances. When legalizing existing informal systems or introducing new arrangements, there is a vast array of possibilities with regard to how rights and responsibilities should be defined and how tenure systems can be administered. There are in fact no fixed solutions or set procedures for how to implement governance of tenure in the fisheries sector, but the process by which it is done is very important. Circumstances vary considerably from one country, location, fishery or fishing community to another, and it is essential to take the local conditions into account through participatory and holistic approaches to tenure rights allocation, transfers and administration. Accordingly, the guidance that can be given mainly refers to processes and principles to consider rather than to solutions or rigid methods.

The VGGT (which this Guide supports) provide an international framework for the implementation of responsible tenure that should be applied at all different scales, both at the national and local levels. There needs to be coherence between different types of tenure arrangements that are important to fishing communities, including both use rights to fishery resources and coastal land tenure rights. The government department or agency responsible for fisheries governance and management should promote the mainstreaming of the principles of the VGGT in all relevant fisheries policies, strategies and plans. The VGGT should also be implemented by other departments and agencies that are involved in tenure affecting small-scale fishing communities in coastal and inland areas. Particular attention should be paid to MPAs, which often fall under an administrative responsibility different from fisheries. At the same time, coordination and collaboration are needed with government authorities that deal with land tenure and coastal planning to ensure that fishing communities have a complete set of rights supporting their livelihoods.

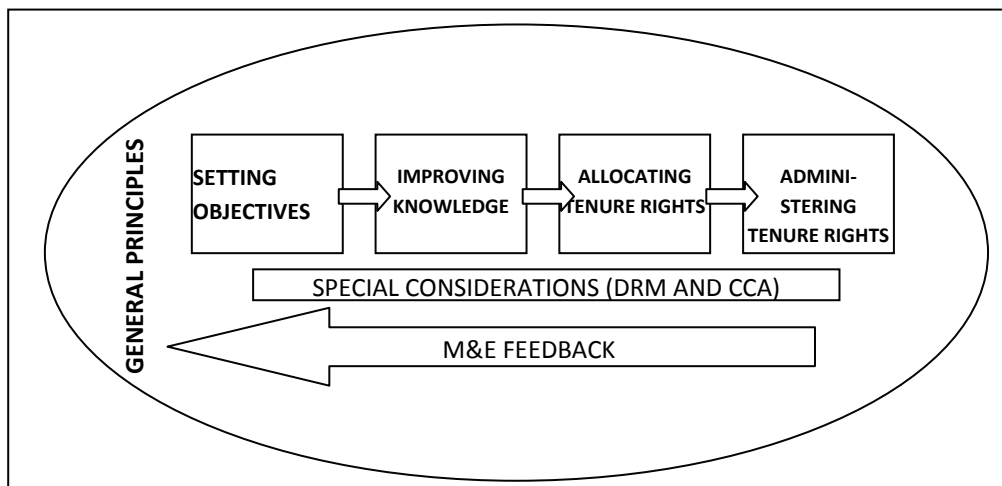
There are different pathways for improving governance of tenure, and the starting point for the necessary reform is not always the same. Opportunities may present themselves that constitute entry points for introducing more responsible tenure governance, e.g.:

- A more general need for overall policy reform or adjustments to legal frameworks at the national level with regard to fisheries governance and management. This could be triggered by changes in related policies or institutions, e.g. with regard to decentralization.
- A need to address overcapacity and overfishing threatening the economic viability and biological sustainability of resources within a specific fishery.
- A need to resolve conflicts between different stakeholder groups or resource users.

In other situations, a specific initiative is required to enable a review of existing governance systems and to introduce improvements to tenure arrangements. Such initiatives could originate from a government agency (dealing with fisheries or with tenure in other sectors) or from outside the government, e.g. from civil society or development partners that promote responsible tenure governance principles through their programmes and projects.

Fully implementing responsible tenure is a long-term commitment requiring partnerships and collaboration and allowing sufficient time for participatory approaches and buy-in by stakeholder groups. This Guide provides advice on the different elements of the likely process needed at the national and local levels, focusing on key aspects and approaches. Figure 1 gives an overview of the context and processes that are considered important for implementation of responsible tenure in accordance with the VGGT. The sections below discuss these different elements and include boxes giving specific guidance on selected issues. Appendix 2 provides more information on the suggested approaches and tools.<sup>21</sup>

Figure 1: Context and process of implementing responsible tenure



<sup>21</sup> Many of the tools included in Appendix 2 are based on the EAF Toolbox available at [www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en).

## GENERAL PRINCIPLES

**The VGGT explain that, in the context of governance of tenure, States have obligations under applicable international human rights instruments. Governance of tenure in fisheries should be governed by the general principles underpinning good governance, i.e.:**

*Human dignity; Non-discrimination; Equity and justice; Gender equality; Holistic and sustainable approaches; Consultation and participation; Rule of law; Transparency; Accountability and Continuous improvement.*

**(§ 3B in *Guiding principles of responsible tenure governance*)**

When implementing a tenure rights system, the government needs to provide safeguards to ensure that good governance principles are followed. Equity is an important consideration in responsible tenure governance that is likely to be reflected in overall societal objectives as well (see also below). Sometimes, preferential treatment is required for achieving equitable outcomes for all, men and women, including vulnerable and marginalized people. Intergenerational equity also needs to be considered and attention given to youth. Gender equality can be seen as part of the overall principles of equity, justice and non-discrimination. To achieve gender equality, mainstreaming of gender considerations in policies, strategies and plans at all levels is usually required, as are targeted interventions. In the context of implementing responsible tenure, it is important that gender analysis accompanies all assessments and planning processes.

Holistic and sustainable approaches that allow for taking the complexity of fishing community livelihoods into consideration are required for improving governance of tenure in the fisheries sector. A basic premise in the small-scale fisheries sector is that natural resource and ecosystem management and social and economic development should be viewed together and, hence, tenure rights arrangements need to be assessed, allocated and administered in this context. Sustainability is a key concept that is valid for both bioecological aspects and human dimensions, i.e. referred to as the three pillars of social, economic and environmental sustainability in Rio+20. Actions should be guided by the precautionary approach and risk management to guard against undesirable outcomes, including not only overexploitation of fishery resources and negative environmental impact but also unacceptable social and economic consequences.

### **GUIDANCE 1: PROMOTION OF GENDER EQUALITY**

Special attention should be paid to women. Because of the common gender lines in fisheries professions and the often disadvantageous traditional female role with respect to decision-making, women are often forgotten in fisheries management processes and, hence, risk to be so also with regard to tenure rights. Women often work in the post-harvest sector and are responsible for fish processing and trade (see also Box 5 in Part 1). Care should be taken that women are not left out when formalizing tenure rights. Women should be included in consultative processes on tenure as well as fisheries management. Because of their common role for the well-being of the family, they may have different needs from men with regard to tenure rights and arrangements. The importance of the post-harvest sector should be recognized. Those involved in the marketing of fishery products have an understanding of resource utilization drivers such as demand. Post-harvest workers also need secure access to means of production (land, water, fish, etc.), and they constitute an essential part of the fishery system.

#### **SUGGESTED APPROACHES/TOOLS:**

- COMMUNITY GENDER ANALYSIS (see **Appendix 2**)
- VALUE CHAIN ANALYSIS

Consultation and participation should form the basis for any decision-making and policy formulation with regard to tenure in the fisheries sector. Decision-making at the lowest-possible decentralized level (principle of subsidiarity) should be encouraged in a way that ensures transparency, accountability and equity. Small-scale fishers and fishworkers should be represented in relevant local and national professional and sector bodies (e.g. fisheries and coastal resources management councils). In addition, vertical links in decision-making processes – from the local level to the provincial, national, regional and international levels – with appropriate representation of different interests at each level should be established, ensuring that local concerns are appropriately reflected in broader policies and action programmes. Box 12 describes decentralization and local governance structures in the fisheries in the Philippines. For making participation and decentralization effective, capacity is required at the local and community levels. The need for strengthening capacity is further discussed below (see the section *Capacity and institutional structures*).

**Box 12: Local fisheries governance and management arrangements in the Philippines**

In 1991, the Government of the Philippines recognized the need to increase participation in management and to decentralize control over resource access to local levels of government through policy and institutional reforms. Authority was devolved to local government units (LGUs), specifically municipalities. The LGUs and local communities were given certain privileges and/or preferential rights. Municipalities have the exclusive authority to grant fishery privileges in municipal waters, up to 15 km from shore, and impose rentals, fees and charges. In 1998, the Philippine Fisheries Code was signed into law and it endorsed the establishment of Fisheries and Aquatic Resources Management Councils (FARMCs) at the national, municipal and barangay (village or ward) levels. Organized community members are given the opportunity to participate formally in management efforts through the FARMCs. The FARMCs are mandated to carry out a number of management advisory functions in close collaboration with the LGUs. These functions include assisting in the preparation of municipal fishery development plans, recommending the enactment of fishing ordinances, assisting in enforcement, and advising the LGUs on fishery matters. The FARMCs are formed by fisher organizations and cooperatives and non-governmental organizations (NGOs) with assistance from the LGUs.

Source: Pomeroy (2001).

## SETTING OBJECTIVES

**With regard to the overall objectives that should guide governance of tenure, the VGGT establish that:**

*States should develop and publicize policies covering the allocation of tenure rights to others and, where appropriate, the delegation of responsibilities for tenure governance. Policies for allocation of tenure rights should be consistent with broader social, economic and environmental objectives. Local communities that have traditionally used the land, fisheries and forests should receive due consideration in the reallocation of tenure rights. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation, participation and decision-making processes. Such policies should ensure that the allocation of tenure rights does not threaten the livelihoods of people by depriving them of their legitimate access to these resources.*

**(§ 8.7 in *Public land, fisheries and forestry*)**

When introducing a new tenure rights system, or changing an existing one, clear objectives should be defined. It is important that the objectives are coherent with other overarching societal objectives and environmental objectives and policies – in the fisheries sector as well as in other sectors. At the same time, there may be a

need to create awareness about the VGGT and other relevant instruments, both at the higher political level and among practitioners, to ensure that the important principles they contain are reflected in the overarching policy frameworks. In many developing countries, there are poverty reduction strategy plans (PRSPs)<sup>22</sup> or similar policy instruments. These do not always explicitly consider the fisheries sector, and efforts are required to introduce both the sectoral perspective and the good governance of tenure tenets.

GUIDANCE 2: AWARENESS RAISING
<p>Awareness raising is about communicating information and creating knowledge. This is needed for stakeholders to take part in decision-making processes and to facilitate policy coherence. When a new instrument such as the VGGT is made available, special efforts need to be made to allow those concerned to learn about it and how it should be implemented. This includes ensuring that the purpose of the VGGT is known and how they are intended to achieve food security and nutrition, poverty eradication, equitable development and sustainable resource utilization. The importance of the general principles and the role of social justice need to be communicated.</p> <p>Awareness raising can take many different forms and involve distribution of printed material, and the organization of workshops and training. Different approaches are required for different stakeholder groups and may need to be carried out in different steps. Awareness raising requires information and the use the right tool for the particular audience that is targeted.</p>
<p>SUGGESTED APPROACHES/TOOLS:</p> <ul style="list-style-type: none"> <li>- STAKEHOLDER WORKSHOPS (<i>see Appendix 2</i>)</li> <li>- COMMUNICATION STRATEGY AND COMMUNICATION MATERIAL</li> <li>- TRAINING COURSES</li> </ul>

Fisheries tenure rights arrangements will be nested within broader fisheries management frameworks. In the fisheries sector, it is common to narrowly define overfishing as the problem and sustainable yield as the objective. With the EAF, more attention is given to intersectoral linkages and a holistic perspective. The national legal framework may also hold fisheries accountable to laws that apply to all industry sectors, and the sector is usually subject to environmental laws that protect environmental quality, biodiversity and endangered species. There may also be governmental policies and objectives, e.g. seeking industry efficiency or full employment. For responsible tenure in a context of small-scale fisheries livelihoods, the objectives also at the sectoral level need to include social and economic ambitions, e.g. to promote equitable distribution of benefits and ensure food and nutrition security. As fishing communities need secure access to both fishery resources and land, they are likely to be affected by tenure systems in different sectors. It is important that there is coherence between these different sectors – fisheries and land use. The use of integrated spatial planning and management systems in the coastal area, such as marine spatial planning (MSP) and integrated coastal zone management (ICZM), can be advantageous in this respect (see also the section *What are the different types of formal tenure rights in fisheries?* in Part 1 above).

---

<sup>22</sup> The PRSP is a planning instrument that was introduced by the International Monetary Fund (IMF) and the World Bank in 1999 and intends to help guide policies, particularly in heavily indebted poor countries (HIPC).

### GUIDANCE 3: OBJECTIVE SETTING

When introducing a new tenure rights system, or amending an existing one, in fisheries (e.g. defining use rights within a co-management arrangement), initial stakeholder consultations should identify the interests and objectives of different groups (see also the section *Stakeholders and existing tenure rights* below). These should be shared and a common vision elaborated, defining the policy goal of the tenure rights and fisheries management system. This may be a difficult process requiring negotiations, compromise solutions and conflict management (see the section *Conflict resolution mechanisms* below). Within this framework, there is a need for management-level objectives. These are more narrowly expressed and tend to exist at two levels: broad management objectives and operational objectives. The broad objectives state the intended outcomes of the tenure rights and fisheries management system. The operational objectives are more specific and have direct and practical meaning for tenure rights and fisheries management. They should be measurable and amenable to monitoring and evaluation (M&E) processes (see also the chapter below *Monitoring and evaluation (M&E) and compliance*).

#### SUGGESTED APPROACHES/TOOLS:

- STAKEHOLDER WORKSHOPS (see **Appendix 2**)
- FACILITATION (see **Appendix 2**)
- VISIONING (see **Appendix 2**)

*Setting objectives is an important part also of the EAF process and additional guidance can be found in the FAO technical guidelines on the EAF (see FAO, 2003 and 2009b).*

## IMPROVING KNOWLEDGE

### STAKEHOLDERS AND EXISTING TENURE RIGHTS

#### **The VGGT strongly defend existing customary tenure rights and establish that:**

*Where States intend to recognize or allocate tenure rights, they should first identify all existing tenure rights and right holders, whether recorded or not. Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected should be included in the consultation process, consistent with paragraphs 3B.6 and 9.9. States should provide access to justice, consistent with paragraph 4.9 if people believe their tenure rights are not recognized.*

#### **(§ 7.3 in Safeguards)**

A key first activity when planning and implementing new or modified tenure rights system is to carry out a stakeholder analysis. The stakeholder analysis should be combined with a review of existing tenure systems. Legitimate customary and traditional use rights must be respected before allocating rights. Stakeholder analysis is also an important analytical tool for promoting transparency.

Special attention should be given to indigenous people, and relevant international and national instruments should be respected. These instruments give guidance as to what tenure rights should be considered legitimate. Article 26 of the Indigenous Peoples Declaration states that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” In fisheries, the rights to traditional resources (land as well as fishery resources) tend to extend beyond indigenous groups and apply to small-scale fishing communities in a broader sense. The Code states the importance of traditional arrangements and urges States to consider such rights in fisheries management: “Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.” (Article 6.18).

The situation of migrant fishers and fishworkers is often particular with regard to rights, both tenure rights in the context of access to fishery resources and other resources (including land) and services needed for secure livelihoods. Their rights tend to be of an informal character and, hence, not legalized and at times not covered by local customary arrangements. In a stakeholder analysis, it would be important to ensure that migrant fishers and fishworkers are included, and that their interests, concerns and informal rights are understood.

<b>GUIDANCE 4: STAKEHOLDER ANALYSIS</b>
Stakeholders are those who have an interest in the fishery resources that are the object of a new or modified tenure system. Stakeholder analysis helps to systematically determine stakeholders, their power, potential conflicts, relative incentives and other relationships. In the context of tenure, the stakeholder analysis should also include their current tenure rights (if any) and the characteristics of these rights. There will also be a need to investigate rules and relations with the help of institutional and network analyses. It would be particularly important to identify weaker stakeholder groups, e.g. women, indigenous groups and other vulnerable groups.
<p>SUGGESTED APPROACHES/TOOLS TO BE USED:</p> <p>STAKEHOLDER ANALYSIS (see <b>Appendix 2</b>) – INCLUDING IDENTIFICATION OF EXISTING TENURE RIGHTS</p> <p>INSTITUTIONAL AND NETWORK ANALYSES</p>

<p><b>The VGGT point out the importance of taking an active approach to gender equality:</b></p> <p><i>States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems.</i></p> <p><b>(§ 3A in Guiding principles of responsible tenure governance)</b></p>
--

Understanding existing tenure rights is needed not only to ensure justice but also because they can constitute a useful and powerful basis for the new or modified system. The design of new tenure systems may be initiated because the current arrangements do not work any longer. However, customary systems have often evolved over a long time taking local circumstances into account, shaping them into dynamic and heterogeneous institutions that can be built on (Aswani, 2005; see also see Box 13). However, care should be taken to ensure that the new tenure system does not repeat possible inequalities in the traditional system; for



example, in some customary contexts, women have a disadvantageous role. There is also the risk that situations of legal pluralism – in which “different legal mechanisms applicable to identical situations” (Bavinck, 2005) – may result in conflict and friction as different groups seek to exploit the resources according to the conceived system that better fits their interest (Bavinck, 2005).

**Box 13: Integrating traditional rights**

In Gouyave in Grenada, conflicts and the erosion of traditional beach seine rules prompted the design of new tenure arrangements and legislation of rights. Still, the traditional rights form a strong element of the new system, and legislation did not replace all informal rights and rules. A critical factor for the system’s success was the extent to which legislation allowed local-level interpretation and development of the beach seine rules to continue to take place largely through existing informal institutions. These institutions were complemented by a formal judicial system but not replaced.

*Sources:* Finlay and McConney (2011).

When looking at existing tenure rights, rights by users in other sectors also need to be considered. There are often competing uses of waters, and this competition tends to be on the increase. Small-scale fishing communities often suffer from other sectors being given priority in coastal areas – tourism, energy, industry developments – ignoring customary rights, but there can also be situations where, for example, farmers have legitimate claims on water resources for irrigation. A relatively recent development is the increasing number of MPAs, designated in accordance with international biodiversity commitments.<sup>23</sup> While the concept of MPAs was originally strongly associated with biodiversity conservation, there is now better understanding of the need to implement MPAs in reconciled multisectoral frameworks. The process by which MPAs are planned and implemented is crucial to their success, and participation and buy-in by fishers, their communities and other stakeholders is a prerequisite (see Box 14).

---

<sup>23</sup> For example, the Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, South Africa 2002.

**Box 14: The case of marine protected areas (MPAs)**

There are cases where MPA practice has led to a weakening of tenure rights of fishing communities. In such cases, MPA implementation has been associated with conflict, denial of livelihoods and impoverishment or even criminalization of local populations:

- In Guam, in the Western Pacific Ocean, fishers lost access to fishing grounds owing to the establishment, in 1997, of five MPAs in traditional Chamorro fishing areas on the west coast. Fishing for most species and by most techniques was prohibited in the MPAs. This also had safety repercussions, as fishers were forced to fish on the windier east coast. A study indicates that the number of deaths due to drowning among the traditional Chamorro fishers almost doubled after the establishment of the MPAs.
- The Had Chao Mai Marine National Park in Thailand was established without consultation with local communities. There is a lack of clarity on MPA boundaries and rules, and conflicts between communities and management authorities are common. Communities located inside the park face additional problems, as many of them do not have land title deeds or documents, not even for land needed for habitation and agriculture. They are consequently threatened with displacement.

There are also several cases where tenure rights have been strengthened during MPA practice. In all such cases, it can be seen that strengthening tenure rights is a strong motivation for communities opting for MPAs allowing them to exclude others, such as fishers from other areas or other sectoral interest groups, for example, tourism and the oil industry. Some of the best-known examples are so-called locally managed marine areas (LMMAs) established mainly in countries of the Pacific and also in a few countries in Asia. An LMMA tends to be a nearshore area managed by local communities or collaboratively managed by resident communities, the local government and/or partner organizations, and characterized by local ownership and/or control.

Accordingly, it can be noted that the clarification of the tenure arrangements has to be a critical element in MPA planning and implementation. Overall, MPA practice has to move towards greater equity and participation, both as an end in itself and as a means to more sustainable conservation and management.

*Sources:* Sharma and Rajagopalan (2011), citing the Western Pacific Regional Fisheries Management Council (2010); Prasertcharoensuk and Shott (2010); Govan (2009). See also FAO (2011b) and [www.lmmanetwork.org](http://www.lmmanetwork.org).

---

**ASSESSING THE VALUE OF TENURE RIGHTS**

**The VGGT recognize that tenure right values are not always reflected in market prices and recommend that:**

*... States should take measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure. States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through appropriate policies and laws on tenure.*

**(§ 11.2 in Markets)**

As noted in Part 1, the value of tenure rights in fisheries can be seen in two perspectives: the value of the right itself as a security and livelihood basis, and with reference to the value of the fishery resource and to the economic, social and cultural importance of the fishing activity (and of other related activities) as well as the values embedded in ecosystem services. While the value of the right itself is important, it is difficult to express

it in monetary terms, and the discussion here focuses on the value related to the fishery resource, fishing activity and the ecosystem services. These too are not easily quantified, but there are different methods that can be used for this purpose. These approaches include bioeconomic modelling, economic valuations and social impact assessments (SIAs). Different types of tenure rights – referring to the same fishery resource – may have different values depending on how the different value components have been assessed under different scenarios.

<b>GUIDANCE 5: VALUATION METHODS</b>
<p>A combination of different valuation methods is likely to be needed to form the basis for the necessary political decisions on what tenure rights system to design and how to allocate and/or transfer rights. A comprehensive analysis of different alternatives – including consideration of food security and nutrition, poverty eradication, equitable development and sustainable resource utilization – is recommended to ensure that the most effective tenure system is put in place and that it is coherent with overall societal objectives (see also the section <i>Setting objectives</i> above).</p>
<p><b>SUGGESTED APPROACHES/TOOLS:</b></p> <ul style="list-style-type: none"> <li>- BIOECONOMIC MODELLING</li> <li>- ECONOMIC VALUATION METHODS (<i>see Appendix 2</i>)</li> <li>- SIA</li> </ul>

## INVESTMENTS

### **The VGGT support responsible investments and declare that:**

*State and non-state actors should acknowledge that responsible public and private investments are essential to improve food security. Responsible governance of tenure of land, fisheries and forests encourages tenure right holders to make responsible investments in these resources, increasing sustainable agricultural production and generating higher incomes. States should promote and support responsible investments in land, fisheries and forests that support broader social, economic and environmental objectives under a variety of farming systems. States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.*

### **(§ 12.1 in Investments)**

If governance in the sector and fisheries management are improved so that resource exploitation becomes biologically and economically sustainable, the value of the resource and associated tenure rights will increase. Attempts have been made to assess the amount of investment required to ensure that the world's capture fishery resources make their full potential contribution to the world economy, and it would appear that massive resources need to be invested in the overexploited fish stocks. The loss estimated in *The Sunken Billions* study (see p. 6) is explained by the poor economic health of fisheries due to weak governance and this is both a cause and an outcome of biological overfishing and economic inefficiency. The study supports the strengthening of tenure in fisheries to increase the benefits from fishing, i.e. to capture the rents. However, it recognizes the potentially important political, social and legal challenges this could involve. As with any

positive investment, costs and sacrifices must be borne first in the hope of an economic return in the future (Munro, 2010).

**The VGGT promote investments that are beneficial to small-scale producers and state that:**

*Considering that smallholder producers and their organizations in developing countries provide a major share of agricultural investments that contribute significantly to food security, nutrition, poverty eradication and environmental resilience, States should support investments by smallholders as well as public and private smallholder-sensitive investments.*

**(§ 12.2 in Investments)**

Another side of investments is to look at the fish once it has been caught. If the value of the fish can be increased after it has been landed, the overall benefits gained from the fishery will increase and, hence, also the value of the tenure right allowing that fish to be caught. Accordingly, investments in the post-harvest sector that reduce post-harvest losses and create value added for the benefit of small-scale fishers and fishworkers could be important. Improving access to markets for the small-scale fisheries sector would be a similar approach. However, there may be trade-offs and political decisions to be made with regard to how local food security and access to reasonably priced fishery products for poorer population groups are handled if, for example, exports from developing countries to lucrative developed-country export markets are encouraged. These are political decisions to be made and should refer to overall societal objectives. It should also be remembered that the value of fishing and related activities is not only represented by the rent it generates. The economic, social and cultural values as well as ecosystem values are often more difficult to assess in a clear way but their importance is essential.

In addition to improving fisheries management, investing in other aspects related to the governance of tenure is important. The investments required span a wide range of interventions and vary according to specific situations. In the small-scale fisheries sector, capacity building and organizational development to increase the awareness of rights holders' rights and responsibilities and enhance their capabilities to manage resources sustainably are likely to be widely required. Some of these aspects are discussed in the chapter *Administering tenure rights* below.

## ALLOCATING RIGHTS

### ALLOCATION PROCESS

#### **The VGGT promote fair and equitable allocation of tenure rights and establish that:**

*When States recognize or allocate tenure rights to land, fisheries and forests, they should establish, in accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights.*

#### **(§ 7.1 in Safeguards)**

When a government (or government authority such as a fisheries department or an agency responsible for MPA designations) decides to distribute new rights – or formalize existing informal and customary rights – there are several decisions and considerations to be made. Some of these have been discussed above, i.e. with regard to principles and safeguards, setting objectives and identifying stakeholders and existing rights. Moreover, the design of the tenure rights system needs to include a decision on what type of rights there should be. The different types that are found in fisheries have been discussed above in Part 1 (see the section *What are the different types of formal tenure rights in fisheries?*). It should be remembered that fisheries tenure rights generally need to be combined with access to other vital resources, such as land, to provide livelihoods security in small-scale fishing communities. A new concept could be required in this context, i.e. livelihood community-based rights reflecting the dual need for fishery resources and land and linking the rights to basic livelihood needs (FAO, 2012c). However, in the present reality, it is likely that communities will need to receive separate rights for land and for fishing although intersectoral collaboration and policy coherence should ensure that the two are mutually complementary (see the section *Setting objectives* above).

#### **The VGGT refer to the need for spatial planning and inter-sectoral coherence and establish that:**

*States should ensure that regulated spatial planning is conducted in a manner that recognizes the interconnected relationships between land, fisheries and forests and their uses, including the gendered aspects of their uses.*

#### **(§ 20.3 in Regulated spatial planning)**

With regard to fisheries and related to the decision on the type of rights, it needs to be determined whether rights should be distributed to individuals, groups of individuals or communities. In a relatively newly developed fishery that has a large-scale character or takes place in a certain area, individual rights may be suitable. Such rights could be designed with restrictions for the benefit of community interests. In another situation, where there are customary community rights, these rights may be strengthened and hence remain with the community or be allocated to a group of users (e.g. a fishers association). In most cases, these collective rights would subsequently be further distributed within the community or user organization (see Box 15). A related aspect to address is the definition of the “community”. In many instances, it may be clearly defined geographically. In other situations, the community may be characterized by a common interest, e.g. the use of the same gear, and its members are spread out geographically (Shotton, 2000).

**Box 15: The “parcela” systems of Chilean algal harvesters**

A traditional tenure system for bull-kelp harvesting has been in use and adjusted over generations in central Chile. It consists of a rotational allocation of use rights to members of a fishers organization (and their families) for the harvest of seaweed, cochayuyo (*Durvilea antarctica*), within coastal sectors or “parcelas” (approximately 100–150 m of coastline). The seaweed is extracted from the intertidal and shallow subtidal areas by cutting the plant at the base of the stipe during low tides, and collecting the algae that drifts to shore. Parcelas are delimited on the basis of production, not size, and are identified by tracing an imaginary line from a distinctive rock on the intertidal to another. They are allocated to individual members every 1–2 years at the beginning of the harvesting season through a lottery supervised by the leader of the organization. A parcela holder is allowed to harvest accompanied by family members, or to transfer his/her harvesting rights to others in exchange for monetary or non-monetary payment (often done by old or disabled members). Parcela holders decide how the parcela is to be managed; a common practice is to clean rocks, extracting other kelp species to promote increased recruitment and production of cochayuyo.

Source: Orensanz *et al.* (2011).

**GUIDANCE 6: CHECKLIST FOR SELECTING RIGHTS REGIME**

A checklist for examining the appropriateness of a particular rights system should include the following questions (adopted from p. 11, Kurien, 1998, cited in WHAT, 2000):

- Does the rights regime fit “the innate characteristics” of the resource to be managed?
- Will the rights regime ensure a balance between productivity of the resource and the state of the stock?
- Is the rights regime consonant with existing international law?
- Will it help balance likely conflicts between multiple economic and social uses of the resource?
- Will the rights regime optimize costs of monitoring, information gathering and surveillance (the transaction costs) of management of the resource?
- Can it foster societal priorities without discouraging “the fair spirit of individual actions”?
- Will the regime lead to greater equity and participation among resource users?

Decisions on who should receive rights are likely to be based on a combination of current circumstances and historical involvement in a fishery. Mechanisms that can be used include market-based approaches, by which tenure rights are auctioned or sold in other ways, and allocation panels or boards engaging in a political process that takes customary rights, catch history, alternative livelihoods, vulnerability, maintenance of rural communities, etc. into account. Market-based approaches typically have questionable value for small-scale fisheries as the social values that are often central in these fisheries are not captured. There may be a political decision to devolve responsibility for fisheries tenure rights to the local level, e.g. providing collective rights to a community based on its location and traditional involvement in the fishery. Also at the regional and international level, allocation procedures are needed. Some RFBs establish criteria for how to select participants in the fisheries under their responsibility (see example in Box 16).

**Box 16: ICCAT criteria for the allocation of fishing possibilities**

The International Commission for the Conservation of Atlantic Tunas (ICCAT) applies a set of criteria for allocating quotas to contracting and collaborating parties in their convention area. These criteria refer to, among other things:

- historical catches of the qualifying participant;
- the interests, fishing patterns and fishing practices of qualifying parties;
- the interests of artisanal, subsistence and small-scale coastal fishers;
- the needs of the coastal communities that are dependent mainly on fishing;
- the socio-economic contribution of the fisheries for stocks regulated by ICCAT to the developing State;
- the economic and/or social importance of the fishery for qualifying participants whose fishing vessels have habitually participated in the fishery of the convention area;
- the record of compliance or cooperation by the qualifying partner with ICCAT's conservation and management measures.

*Source:* ICCAT website ([www.iccat.int](http://www.iccat.int)).

Other questions to address in designing a fisheries tenure right system are whether the rights allocated by the government should be permanent or temporary, and whether rights holders should be allowed to transfer their entitlements to other users. The choice between permanent and temporary rights mainly revolves around a balance between two aspects: management flexibility, and sustainable use and conservation incentives. Having a limited duration of the rights gives the government the possibility to reallocate rights if societal objectives or other circumstances change (but it will make tenure rights less secure and less valuable). Permanent rights require a decision up front about who should be a user and hence on who should be excluded. Permanent or longer-duration rights, on the other hand, give more security to fishery users as well as “a stake in the well-being of the resource further into the future and an incentive to ‘plan for the future’ in husbanding the resource” (p. 274, Charles, 2009). There is no optimal trade-off between these aspects, and tenure right arrangements may need to be given additional features to capture the desired effects, e.g. attaching conservation performance criteria to the option of renewing short-duration rights (Shotton, 2000).

With regard to transferability, good practices in small-scale fisheries call for attention to local cultural and institutional factors and that there is merit in only allowing limited transferability. For example, temporary transferability could be allowed (e.g. within a fishing season) as a means to provide important short-term flexibility while maintaining long-term stability in the distribution of the rights. Permanent or long-term transfers may be considered reasonable within communities, households or families, but not through the use of market mechanisms (buying and selling rights). Market mechanisms tend to lead to a concentration of control over rights, which could lead to a shift of the rights out of small communities. This could have negative effects on rural livelihoods and on the stability, sustainability and equity in the community and coastal economy (Copes and Charles, 2004) (see Box 17). In a different setting of large-scale fisheries, tradable tenure rights (tradable quotas, individual transferable quota [ITQs], etc.) may be appropriate in some contexts. However, they may not be suitable in other situations, and States should limit the transferability, as appropriate, of (individual) rights with a view to securing benefits for small-scale fishing communities. Transfers and reallocation of rights are discussed further below in the section *Reallocation of tenure rights and competition among users*.

**Box 17: Transferability of Galapagos Islands commercial fishing rights**

Commercial divers in the Galapagos Marine Reserve (Ecuador) target spiny lobsters (*Panulirus penicillatus* and *P. gracilis*), sea cucumber (*Isostichopus fuscus*) and a variety of other minor resources. Access to the fishery is restricted by a moratorium on the size of the fleet and participating fishers, but new licences may still be granted to the sons and daughters of existing fishers, who must be residents of Galápagos. Licences allow harvesting of any resource within permitted areas of the reserve. Fishing permits are annual and are vested in the boats, while access of fishers is regulated through a personal fishing identity card, valid for two years. While the number of boats is capped, small “pangas” can be replaced by larger speedboats. Owing to dwindling stocks, registered fishers have been allowed to exchange their fishing permit for a highly coveted tourism licence (otherwise impossible to obtain).

*Source: Orensanz et al. (2011).*

**GUIDANCE 7: METHODS FOR SELECTING RIGHTS HOLDERS**

Deciding what type of tenure rights should be used in a certain fishery or in a specific local situation will be influenced by many factors. The decision should be objective driven and take the safeguards described in the VGGT into consideration. Consultative processes and participation are key for ensuring a system that will be respected by all stakeholders and, hence, be viable for implementation. Moreover, a good knowledge of customary tenure arrangements, where such exist, constitutes an important input to the decision-making process and the tenure system design. Where (customary) tenure rights exist, there is already a distribution of rights among users (and exclusion of others) that need to form the basis for the new or modified system.

Specific mechanisms for allocating new rights include market-based approaches such as auctions and sales. An auction may be a suitable mechanism in situations where there is a pure large-scale fishery with limited social and cultural factors. Auctioning tenure rights is a way of maximizing economic efficiency, but care has to be taken to ensure that certain fishers or groups of people are not excluded because of the financial means required to bid. It can be noted that auctions as a way of allocating rights have been rarely used in Europe, and are no longer used in the member States of the Organisation for Economic Co-operation and Development (OECD). Other market-based approaches also exist, implying that the rights are sold and bought in a marketplace. One disadvantage by using such mechanisms is that it will be more difficult for the State to change its allocations of rights later on in the event of, for example, a change in policy.

In the many situations where market-based approaches are unlikely to give the desired results, other methods are required. A special body – an allocation panel or board – may be set up by the government to determine how allocations should be made and who should receive them. This system has been used in a number of countries, including Canada, New Zealand, South Africa and the United States of America. One criterion that decision-makers could consider in such a process is the catch history. However, there are issues that need to be addressed, for example, what time perspective that is being considered. Also, in a fishery that has been overexploited, it may appear unfair that those that have been contributing to the overexploitation should be rewarded with rights to continue fishing.

*Criteria for allocation of fishing possibilities are also used by RFBs to distribute quota allocations*

In the context of small-scale fisheries, where customary community-based rights often have a long history, the approach may need to be different, and collective rights allocated to the community within a co-management arrangement. This approach seems to be effective in particular in cases where there is cohesiveness of the community involved, experience in and capacity for local management, geographical clarity of the community and a modest overall size and extent (Charles, 2009; MRAG *et al.*, 2009; Shotton, 2000).



APPROACHES/TOOLS TO BE USED:

- STAKEHOLDER WORKSHOPS (see **Appendix 2**)
- FACILITATION (see **Appendix 2**)
- SPECIFIC ALLOCATION MECHANISMS: AUCTIONS, CATCH HISTORY DATA, ALLOCATION PANEL

In summary, the particular circumstances, the outcomes of consultative processes and the political decisions on what the tenure system should achieve will decide how rights are allocated, what types of rights should be allocated and their characteristics. Hence, it is important to have clear objectives for the tenure rights system (see above) and to recognize that different solutions are needed in different situations. There are many different variations of the types of rights and tenure systems, and tenure systems may also need to adapt to new conditions and change over time. The process by which the system is established is crucial, and consultations with stakeholders and resource users are key. The good governance principles of participation and transparency are very important in this context.

## REALLOCATION OF TENURE RIGHTS AND COMPETITION AMONG USERS

**The VGGT discuss principles for readjustments of rights and proclaim that:**

*States should establish strategies for readjustment approaches that fit particular local requirements. Such strategies should be socially, economically and environmentally sustainable, and gender sensitive. Strategies should identify the principles and objectives of the readjustment approaches; the beneficiaries; and the development of capacity and knowledge in the public sector, the private sector, organizations of farmers and small-scale producers, of fishers, and of forest users, and academia. Laws should establish clear and cost-effective procedures for the reorganization of parcels or holdings and their uses.*

**(§ 13.5 in *Land consolidation and other readjustment approaches*)**

As discussed above, tenure rights can be temporary and/or transferable. When including this feature in a tenure rights system, processes for how the transfers are made in a fair and equitable manner need to be built in. There may be situations when it is discovered that an existing tenure system is not fair and equitable, and/or not in line with societal and environmental objectives, and the government wants to readjust it to improve tenure governance in fisheries. Such reforms can be beneficial to fishing communities, e.g. transferring access rights in an earlier open-access inshore area to the exclusive use of small-scale fishing or creating TURFs.

In other situations, readjustment reforms may create hardship for small-scale fishers and fishworkers. Growing competition between sectors and national priorities may be a reason for redistributing rights from one sector to another. The small-scale fisheries sector often suffers competition from various developments in the coastal area, and political decisions may be made to use coastal areas for, for example, tourist developments, yielding higher returns in monetary terms (disregarding other values and benefits). In such situations, small-scale fishing communities often have difficulties in fighting their cause, especially if their rights are informal, because they often have limited political power and inadequate access to legal assistance. This is often even more of a difficulty for migrant fishers and their communities (see Box 8 in Part 1). If losing their land rights, fishing communities may have difficulties to exercise their fishing rights – even if they are legally recognized use rights – because of their dependence on the coastal area as a base for their activities. Accordingly, with

regard to possible readjustment of land tenure and reallocation among small-scale fishing communities, the following principles should be considered:

- Voluntary trade-offs respecting the principle of free, prior and informed consent should always be sought.
- Expropriation should only take place in extreme and justifiable cases as a last resort. Adequate compensation should be provided, taking lost social, cultural and economic values into consideration.

**The VGGT provide recommendations for how to deal with necessary expropriations and declare that:**

*States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages. Consultations, consistent with the principles of these VGGT, should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods. States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable.*

**(§ 16.2 in Expropriation and compensation)**

*States should ensure a fair valuation and prompt compensation in accordance with national law. Among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination.*

**(§ 16.3 in Expropriation and compensation)**

It needs to be recognized that in any tenure rights allocation or reallocation process, there are likely to be winners and losers, i.e. those that gain rights – or whose rights become more secure – and those that lose rights and potentially become worse off. This could be the case also where the intentions are the best; the very definition of a secure tenure right is that it allows the exclusion of other users, and these other users (or potential users) are hence possibly worse off. There is likely to be a particularly difficult transition period. Short-term sacrifices are often required in order to establish long-term gains (WHAT, 2000). Also where this is considered socially and economically desirable, it may be politically difficult. If the reform causing the exclusion is considered justified and necessary, care has to be applied in assessing whether those losing rights had legitimate rights, how they are affected, what their needs are and whether they should be offered compensation. In a situation of poverty, the consideration of the urgency of needs becomes particularly important.

It also has to be recognized that there are situations where fishery resources are economically and/or biologically overexploited and there is a need to decrease fishing capacity and effort. This could directly concern both the small-scale and large-scale sectors. At times, it may include a political decision to reallocate rights from large-scale fisheries to the small-scale sector where overall environmental impact tends to be less negative (although this is not always the case). In particular, within small-scale fishing communities, there may be a possibility to decrease the total fishing effort without excluding fishers by adjusting rights and limiting the amount or time of fishing – hence allowing everybody to continue fishing but less. In other situations, this may be difficult, and alternative and supplementary livelihood opportunities have to be found for those who cannot continue in fishing or related activities. Hence, in order to decrease fishing pressure, promoting the creation of an enabling environment for entrepreneurship and supporting the establishment of sustainable additional alternative income and employment opportunities are important. This type of support would also be essential in order to decrease the vulnerability of small-scale fisheries communities in a wider sense.

#### GUIDANCE 8: LIVELIHOODS DIVERSIFICATION

While many small-scale fishing communities have diverse livelihoods and households may be engaged in a variety of non-fisheries activities, finding alternative income-generating opportunities is not always an easy task. Constraints to identifying and implementing viable options may include a lack of resources and skills, limited market access, and cultural and social customs and attitudes. The identification of potential activities needs to be done by the communities and individuals themselves, and support should be provided to participatory processes of analysing strengths, weaknesses, opportunities and threats (SWOT). Once feasible options have been identified, there is likely to be a need for further support with regard to, among other things, skills development and access to resources (credit) and markets.

#### APPROACHES/TOOLS TO BE USED:

- FACILITATION (*see Appendix 2*)
- PARTICIPATORY RURAL APPRAISAL (PRA) TECHNIQUES (*see Appendix 2*)
- SWOT
- TRAINING COURSES AND SKILLS DEVELOPMENT

### ADMINISTRATIVE AND RELATED SERVICES PROVIDED BY GOVERNMENTS

**With regard to the role of the State in administering tenure, the VGGT establish that:**

*States should place responsibilities at levels of government that can most effectively deliver services to the people. States should clearly define the roles and responsibilities of agencies dealing with tenure of land, fisheries and forests. States should ensure coordination between implementing agencies, as well as with local governments, and indigenous peoples and other communities with customary tenure systems.*

**(§ 5.6 in Policy, legal and organizational frameworks related to tenure)**

With regard to the administration of tenure, the role and responsibilities of States include the provision of competent, timely, fair, accessible and non-discriminatory services. In fisheries, the services that the State is likely to be required to deliver with regard to administration of existing formal tenure rights include:

- capacity building and institutional development services to support rights holders and resource users to exercise their rights in line with sustainable development and equity principles;
- rights registry and records as well as information and research services required for effective governance of tenure;
- conflict resolution and legal services allowing rights holders and resource users access to arbitration and/or judicial authorities, as required.

When allocating or changing tenure rights, including the legalization of customary rights, the role of the State and the services it needs to provide extends to additional aspects that could include, *inter alia*, participatory consultation and negotiation processes, and support to organizational development and the setting up of appropriate institutional structures.

As has been seen above, fisheries management and tenure (and hence administration and services) tend to be under the responsibility of a fisheries department or authority, but other authorities may also be involved (e.g. in the case of MPA management). However, to cater for the often multiple and interlinked needs of small-scale fishing communities – including access to land and other resources required for sustainable livelihoods, taking a holistic rights-based approach to governance and development – cross-sectoral linkages and collaboration with other government departments and/or actors are required in order to ensure that the competences are available to deliver quality services. Moreover, knowledge of the local situation is essential for providing services that are appropriate for the specific circumstances in different locations, and the decentralization of service delivery to local governments may support more adequate outcomes.

It should also be noted that small-scale fishing communities are often located in remote areas. Migration is a common livelihood strategy, and fishers and fishworkers tend to be more mobile than other rural communities. These aspects need to be taken into consideration with regard to service deliveries in more than one way, ensuring that services are accessible to those in remote areas and that they are provided in a manner that is also timely for migrant populations (Njock and Westlund, 2008). Modern information and communication technologies (ICT) should be explored in this respect.

Administration of tenure needs to be funded. States may want to capitalize on the rent created by a fishery and could use different forms of taxation for recovering this income. Taxation in the context of tenure rights in fisheries refers to several different types of direct and indirect taxes and fees. When a State allocates a right to

fish, it is fairly common for the rights holder to pay a fee, e.g. a licence or vessel registration fee. There is also a whole range of other tax payments that fishers, fishing companies and fishworkers may pay (Béné, Macfadyen and Allison, 2007):

- income tax and employment tax, such as national insurance contributions;
- tax on company sales or income;
- social employment taxes;
- duties on products used as inputs to business activities;
- customs and excise tax on imports and exports;
- value-added tax;
- landing fees;
- levies on sales.

The level of a licence fee – i.e. the price of the tenure right – should refer to its value (see discussions above). There are political decisions to make in this context, and the State may want to consider the distributional effects of its fee structures and taxation schemes.

## CAPACITY AND INSTITUTIONAL STRUCTURES

**The VGGT refer to the need to ensure that capacity and institutional structures are available, e.g. that:**

*To the extent that resources permit, States should ensure that implementing agencies and judicial authorities have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective and gender-sensitive manner. Staff at all organizational levels should receive continuous training, and be recruited with due regard to ensuring gender and social equality.*

**(§ 6.1 in *Delivery of services*)**

*... States and other relevant parties should inform individuals, families and communities of their tenure rights, and assist to develop their capacity in consultations and participation, including providing professional assistance as required.*

**(§ 12.9 in *Investments*)**

Effective governance of tenure in small-scale fisheries will require accompanying efforts at capacity development at different levels. This concerns both strengthening the skills and capacities of individuals and ensuring that the appropriate institutional structures and processes are in place. It covers empowerment of fishing communities and their members to take an active role in exercising their rights within the tenure system and fulfilling their responsibilities in the context of, for example, a co-management arrangement. It also means providing an enabling framework, including supportive policies and the necessary legal provisions for implementation of an effective and equitable tenure system, including participation of fishing communities in decision-making on fisheries management, etc. in accordance with their rights (Charles, 2011).

It is important that empowerment goes beyond policy and legislation to include participatory processes implemented at the community level. It should be recognized that communities “are usually stratified by wealth and power, with local elites and decentralized governments sometimes colluding to exclude the less powerful” (p. 32, FAO, 2005). Thus, “ways in which ‘traditional’ leadership, local government and civil society

can work together” should be explored “to ensure that the interests of poorer and marginalized groups are taken into account in decentralized fisheries management” (p 32, FAO, 2005).

Moreover, effective governance of tenure requires efforts to support and build the capacity of fisher organizations and community institutions. Capacity development is often needed in governments as well, so that governmental staff and institutional arrangements understand the needs and rights of small-scale fishers and communities. This applies also to local government structures, in particular where decentralization processes have given them increased responsibilities with regard to fisheries management (and tenure rights). Governing institutions and procedures need to ensure representation and fair decision-making. Overall, then, good governance implies suitable attention to a wide range of capacity and institutional development, also in organizations representing and working for small-scale fisheries, e.g. those providing technical support with regard to fisheries management issues, working on social welfare, credit/savings and marketing issues, and engaging in political negotiation or lobbying (Charles, 2011).

**The VGGT recognize the importance of regional and international cooperation and the need to address transboundary issues and state:**

*Where appropriate, States should harmonize legal standards of tenure governance, in accordance with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Where appropriate, this should be coordinated with relevant regional bodies and with affected parties. States, with the participation of the affected parties as appropriate, should develop or strengthen existing international measures to administer tenure rights that cross international boundaries. Where appropriate, they should coordinate with relevant regional bodies. This should be done especially to protect the livelihoods and, in line with paragraph 4.8, the rights of all those affected.*

**(§ 22.3 in Transboundary matters)**

Managing tenure rights in transboundary areas, e.g. when fishery resources exploited by fishers straddle across international boundaries, poses particular problems that need addressing at a regional or international level. States need to strive for a harmonization of policies and legal frameworks in order to accommodate the needs of fishing communities. The need for cooperation at a regional level with regard to fisheries management is well recognized. As mentioned above in Part 1 (see the section *Who has rights to fishery resources, and what are the related responsibilities?* ), co-operation takes place through regional institutional set-ups (RFBs and RFMOs/As) and other ecosystem-based or regional marine and aquatic resources initiatives. These organizations need to take on a role with regard to securing tenure rights for small-scale fisheries and fishing communities. Governments need to support regional collaboration within this framework.

Fisheries management and tenure rights in fisheries tend to be the responsibility of fisheries departments or other designated management agencies (at the national level). As already mentioned, small-scale fishing communities need secure rights to other resources in addition to fisheries, in particular land, to support their livelihoods. Cross-sectoral coordination, integrated spatial planning frameworks (e.g. ICZM) and policy coherence are called for to meet this need effectively. This in turn requires institutional structures and procedures that allow for collaboration. There is a spectrum of approaches to institutional arrangements and case-specific solutions will need to be sought. Experiences from ICZM, EAF and MPA management may provide useful insights (see, for example, FAO, 2011b, 2009b; de Young, Charles and Hjort, 2008).

#### GUIDANCE 9: CAPACITY DEVELOPMENT

Capacity development is a broad concept that is key to any area that is supported and expected to contribute to food and nutrition security and sustainable development. The FAO framework differentiates between two types of capacities: technical and functional. These capacities need to be developed at three interlinked dimensions: individual, organizational and with regard to an enabling environment (see the FAO Capacity Development Portal – FAO, 2013b):

- Capacities developed at the **individual dimension** lead to changes in skills, behaviours and attitudes among a wide range of actors in the agriculture and rural development sector. Training, knowledge sharing, and networking are ways of strengthening capacities at this dimension.
- Strengthening capacities at the **organizational dimension** consists of taking measures to improve the overall functioning and performance of an organization. This dimension has a direct impact on how individuals within the organization develop their competencies and use their capabilities.
- The **enabling environment** is the context in which individuals and organizations put their capabilities into action, and where capacity development processes take place. It includes: political commitment and vision; policy, legal and economic frameworks; budget allocations and processes; governance and power structures; incentives; and social norms.

#### APPROACHES/TOOLS TO BE USED:

- STAKEHOLDER WORKSHOPS (see **Appendix 2**)
- VISIONING (see **Appendix 2**)
- TRAINING COURSES
- NETWORKING AND KNOWLEDGE SHARING
- ORGANIZATIONAL DEVELOPMENT

#### RIGHTS REGISTRY, RECORDS AND INFORMATION

##### **On the subject of records of tenure rights, the VGGT establish that:**

*States should provide systems (such as registration, cadastre and licensing systems) to record individual and collective tenure rights in order to improve security of tenure rights, including those held by the State and public sector, private sector, and indigenous peoples and other communities with customary tenure systems; and for the functioning of local societies and of markets. Such systems should record, maintain and publicize tenure rights and duties, including who holds those rights and duties, and the parcels or holdings of land, fisheries or forests to which the rights and duties relate.*

##### **(§ 17.1 in Records of tenure rights)**

It is important that individual and community holders of rights can defend their rights legally and, hence, rights need to be clear and registered. It is also generally important for fisheries management to have information on the number of rights holders, the types of rights they hold and how much is being fished. This type of information forms the basis for management decisions. The need for information for fisheries management purposes is not discussed in this document but it should be noted that there are certain types of tenure rights

in fisheries that require good and reliable catch data in order to function. These include all those involving quotas. For example, an ITQ arrangement requires a data system allowing accurate data to be recorded effectively.

Information needs to be available for rights holders and is required to ensure the effective implementation of the tenure system. In a small-scale fisheries context, it has to be made sure that fishers and fishworkers have information on their rights and that they also have the capacity to claim them. Communities that have customary rights should be able to defend those when they are being threatened by developments in other sectors that may compete with their rights to fishery resources as well as land.

**The VGGT promote integrated frameworks for rights registration and suggest that:**

*In order to enhance transparency and compatibility with other sources of information for spatial planning and other purposes, each State should strive to develop an integrated framework that includes existing recording systems and other spatial information systems. In each jurisdiction, records of tenure rights of the State and public sector, private sector, and indigenous peoples and other communities with customary tenure systems should be kept within the integrated recording system.*

**(§ 17.2 in Records of tenure rights)**

The exact form of a rights registry needed will depend on the specific situation and context. In line with the need for integrated spatial planning and catering for small-scale fishing communities' needs for tenure rights for different resources, holistic frameworks for rights registration should be created. At the state level, a formal and public registry should be kept. There is a need for formal state processes for upholding and protecting rights. Such systems should preferably also include customary rights. When formally legalizing customary rights (see also the section *Allocating rights* above), including them in the public registry could be one step in the process.

If community rights or other forms of group rights have been allocated, the State needs to keep records on which communities or groups have received rights and what type of rights. At the community (or group) level, there then needs to be system for keeping track of which individuals are using the collective right and how. This could be done through a registry of rights or a depository of rights (handled by, for example, a "group of elders" or community members in general as in traditional systems).

In fisheries, recording may encounter some resistance as secrecy is important where tenure security is usually low and competition high (e.g. intellectual right – "I know my spot"). Fishers perceive a danger in recording their fishing grounds and do not necessarily have an interest in sharing their knowledge, which is part of their working capital (FAO, 2011a).

Transparency is important in all aspects regarding allocation or transfer of rights. The decisions discussed above on who can receive rights and how they are allocated and transferred should be properly justified and information made available on how the decisions have been made. Transparency also implies that States should make informed decisions in line with overall policies when designing tenure rights systems. A particular situation is where States enter foreign fishing agreements, i.e. providing rights (licences) to large-scale foreign fishing vessels. A responsible approach should be taken and such rights allocations should only be made if the rights of others (small-scale fishers) are not negatively affected and there are not threats to the sustainability of the resources. This refers to the need for policy coherence and adherence to overall national objectives for food security and nutrition, poverty eradication, equitable development and sustainable resource utilization.



## CONFLICT RESOLUTION MECHANISMS

**The VGGT address the need for avoiding and resolving conflicts and establish, among other things, that:**

*All parties should take steps to prevent and eliminate issues of tenure of land, fisheries and forests as a cause of conflict and should ensure that aspects of tenure are addressed before, during and after conflict, including in situations of occupation where parties should act in accordance with applicable international humanitarian law.*

**(§ 25.1 in *Conflicts in respect to tenure of land, fisheries and forests*)**

Where there are competition and many different users of a resource, it is not unusual for conflicts to arise. In its work on conflict management training with regard to land tenure, FAO has noted that conflicts arise over (p.1, Herrera & da Passano, 2006):

- inherited land tenure rights;
- boundaries between neighbouring families or communities;
- disagreements between pastoralists and farmers over access to land and water in a specific territory;
- disagreements between a community and a government agency over access to state land;
- overlapping customary and legal frameworks in the recognition of land rights.

In the context of fisheries and small-scale fishing communities, similar types of conflicts can be found. They may be over land or fishery resources – or a combination of both. As described in Part 1 (see the section *Why is responsible governance of tenure needed in fisheries?*), it is not unusual for there to be conflicts between different users in the coastal area, e.g. fishing communities facing competition for land and water areas from tourism, industry and energy developments. Fisheries and coastal management conflicts often involve several issues and parties, which adds to the complexity of dealing with them (FAO, 2011b).

The government has an important role to play in both preventing conflicts from arising and in resolving conflicts that have emerged. By using broader spatial management frameworks, consultative and participatory processes for spatial management and applying transparency, many issues with regard to competing uses of resources can be resolved (see also Box 6 in Part 1). However, it is has to be recognized that not all users may be equally satisfied, and it is important to ensure that the processes in place are not disadvantageous for weaker stakeholder groups. Existing tenure rights, including customary rights – see also above – should always be considered.

Where a conflict has arisen, there are different ways of addressing it. Each conflict is different and unique, and different solutions have to be found accordingly. If the cause of the conflict can be identified, it is easier to find an approach for moving forwards. For example, if there is a conflict due to disagreement on data and facts, it could be resolved by obtaining additional data, carrying out more studies, etc. Differences in views regarding needs and interests and on how benefits should be shared, resources allocated or external costs financed are common types of conflicts needing conflict management interventions. Conflicts over values, i.e. beliefs, are not always amenable to negotiation or other conflict management approaches, and the solution may have to be “to agree to disagree”. Mediation by a third party may be the solution to personality and relationship conflicts (FAO, 2011b).

**On the issue of the need for judicial systems, VGGT state that:**

*States should provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.*

**(§ 3A in Guiding principles of responsible tenure governance)**

Conflict resolution mechanisms need to be available at different levels. When setting up, for example, a co-management system (see the section *What are the different types of formal tenure rights in fisheries?* in Part 1), conflict resolution mechanisms need to be foreseen. At the national or local government level, there also need to be systems in place that allow for legal arbitration of tenure conflicts, both when conflicts have arisen between different users or when there is disagreement with government decision. It is important to ensure that all parties have equal access to the judicial systems and processes, and support mechanisms may be required in order to make them available to weaker stakeholder groups that may be disadvantaged through low levels of education and illiteracy. In this context, a basic condition is that all stakeholders are aware of their rights, and governments should support awareness raising with respect to the VGGT.

**GUIDANCE 10: CONFLICT MANAGEMENT**

Conflicts in fisheries and over marine and related resources have many dimensions and can take place at different levels. Conflict management is a collaborative and voluntary approach that is about those in conflict developing a process for dealing with their problems.

**APPROACHES/TOOLS TO BE USED:**

- CONFLICT MANAGEMENT (see **Appendix 2**)

**With regard to climate change and how to address it in the context of tenure, the VGGT state that:**

*Where appropriate, States should strive to prepare and implement strategies and actions in consultation and with the participation of all people, women and men, who may be displaced due to climate change. Any provision of alternative land, fisheries, forests and livelihoods for displaced persons should not jeopardize the livelihoods of others. States may also consider offering special assistance to small island and other developing states.*

**(§ 23.2 in *Climate change*)**

**The VGGT proposes to address tenure in all the different components of the relief-development continuum, i.e.:**

*States should address tenure in disaster prevention and preparedness programmes.*

*States and other parties should address tenure in the emergency response phase.*

*States and other parties should address tenure during the reconstruction phase.*

**(§ 24.3, 24.4 and 24.5 in *Natural disasters*)**

Tenure rights arrangements need to take global change into consideration. As outlined in Part 1 above (see the section *What are the emerging issues that need to be considered in the future?*), globalization of economies, population growth and demographic changes, as well as technology innovations and changing life styles, form a web of events and developments that is made more unpredictable by climate change. The different parts of this evolutionary pattern create threats and opportunities that lead to different outcomes for different population groups. Already, vulnerable groups are likely to have more difficulties in coping with change and, hence, be more severely affected by negative climate change impacts. By strengthening resilience to change, enhancing coping capacities and building sustainable livelihoods, the actual realization of threats may be decreased and the chances of benefiting from opportunities increased. Ensuring secure tenure rights is an important part of such efforts, and the way tenure rights are designed and allocated needs to take possible climate change consequences into consideration.

Thus, if and when climate change leads to changes in the distribution of fishery resources, tenure arrangements pertaining to those resources need to be adaptable. Small-scale fishers in particular are likely to have limited possibilities to “follow the fish” although migration in accordance with traditional patterns – for various reasons – is already a common livelihood strategy for many fishing communities.<sup>24</sup> Because of increasing populations and a general higher demand on resources, it could be expected that new migration patterns to tap fishery resources are becoming more difficult to establish or, if they do take place, take the form of involuntary displacements. It needs to be recognized that the relevance of traditional, and other, area-based use rights may become questionable if local fishery resources disappear or move to other areas.

---

<sup>24</sup> See Njock and Westlund (2010, 2008) for more information on global change and migration in a fisheries context.

However, while some fishing communities will see their target species disappear, others could benefit from increased abundance of species of high commercial value (Cochrane *et al.*, 2009). This dilemma is not easily addressed but it is important that governments recognize the issue and that – when tenure rights systems are designed – safeguards and options are built in to allow for adaptation of the arrangements over time as required. Diversification of livelihoods is often a strategy that can strengthen the resilience to climate change consequences, and secure access to alternative resources may then be required (see Box 18).

**Box 18: Fishing communities in the Patos Lagoon system in Brazil**

In the Patos Lagoon area in Brazil, small-scale fishing communities are highly affected by climate variability and change as they depend on natural resources for their livelihoods. Fishing communities that diversify and have a higher degree of self-organization appear to be able to decrease their level of vulnerability to adverse climatic conditions. This diversification takes place with regard to the species caught, employment on industrial fishing vessels, exploration of freshwater resources, and alternative sources of income from agriculture and other temporary jobs.

*Source:* Kalikoski, Quevedo Neto and Almudi (2010).

Another risk to fishing communities related to climate change is that coastal areas diminish because of sea-level rises affecting their settlements. Moreover, small-scale fishers are particularly exposed to natural disaster risks related to increasing storm intensities and frequency because of their location on the coastlines or in inland areas where water levels may be unpredictable. Severe weather events may also increase the risks associated with working at sea, disrupting fishing practices that are based on traditional knowledge of local weather and current systems.

The effect of natural disasters on other sectors (e.g. agriculture, tourism and manufacturing) by extreme weather events could lead to increased pressure on coastal land and a move of labour into fishing. This could lead to increased pressure both on land in coastal areas and on fishery resources (Cochrane *et al.*, 2008). For example, after Hurricane Luis in 1995, people in Antigua and Barbuda who became unemployed – because of the closure of hotels and other businesses – sought short-term employment in fishing (Mahon, 2002).

The understanding of fishing community livelihoods and all the different aspects of fishing and related activities is fundamental to designing tenure rights systems that respond to the needs of fishing communities and vulnerable groups. It is also important to understand the linkages between fisheries and other sectors and what the cross-sectoral impacts of disasters and climate change are likely to be. This also implies that, when addressing climate change impacts and disaster risks in national planning, the reality of fishing communities needs to be considered. In the context of disasters, a relief-development continuum – i.e. how emergency response, disaster preparedness and sustainable livelihoods are related – needs to be understood and considered. Longer-term development objectives need to be taken into account throughout the emergency sequence, including in the immediate relief phase, and the rehabilitation, reconstruction and recovery should include actions to reduce vulnerabilities to potential future threats. Ensuring adequate secure tenure rights to critical resources would be an important step towards establishing resilience.

**The implementation of the VGGT is the responsibility of States, and accordingly:**

*States are encouraged to set up multi-stakeholder platforms and frameworks at local, national and regional levels or use such existing platforms and frameworks to collaborate on the implementation of these VGGT; to monitor and evaluate the implementation in their jurisdictions; and to evaluate the impact on improved governance of tenure of land, fisheries and forests, and on improving food security and the progressive realization of the right to adequate food in the context of national food security, and sustainable development. This process should be inclusive, participatory, gender sensitive, implementable, cost effective and sustainable. In carrying out these tasks, States may seek technical support from regional and international bodies.*

**(§ 26.2 in Promotion, implementation, monitoring and evaluation)**

Monitoring and evaluation (M&E) systems and procedures are needed to ensure that the objectives of a tenure rights arrangement are achieved (see also the section *Setting objectives* above). These should include context-specific indicators referring to the defined objectives for regularly evaluating the effectiveness of the tenure system, i.e. to what extent it is achieving what it was set out to achieve (with regard to equitable benefits, resource sustainability, secure livelihoods, etc.). Robust and well-designed monitoring systems include performance indicators and baseline information. Complementing the more specific operational objectives of the system and considering the overall link of the VGGT to food security, special efforts should be made to monitor how improved governance of tenure is contributing to better food and nutrition security. The monitoring system should also allow for assessing management efficiency, i.e. using process indicators to evaluate administrative structures and procedures.

Monitoring systems vary in who does the measuring, how often and how. Participatory M&E involves rights holders and stakeholders. In addition to generating the monitoring information, it is also an approach that supports increasing awareness and empowerment of communities. In addition to the more formal monitoring process, efforts should be made to document good practices with regard to tenure arrangements for small-scale fishing communities. These should be shared, nationally, regionally and internationally, with a view to advancing the aggregated knowledge on effective solutions and, hence, further promote the implementation of the VGGT.

The World Bank has developed a tool, the Land Governance Assessment Framework (LGAF) for monitoring governance of land tenure (see Deininger, Selod and Burns, 2012). The LGAF can be used in a country to evaluate the legal framework and the policies and practices pertaining to land and land use. The framework builds on 21 indicators in 5 thematic areas: legal and institutional framework; land use planning, management and taxation; management of public land; public provision of land information; and dispute resolution and conflict management. It could be useful to develop a similar framework for the fisheries sector with a special focus on small-scale fisheries and the tenure rights needed for securing their livelihoods.

A topic related to M&E and which is important in the context of fisheries management – and hence also with regard to tenure rights in fisheries – is monitoring, control and surveillance. Monitoring, control and surveillance, or MCS, is a component of the fisheries management process that seeks to ensure compliance with existing regulations. Effective MCS involves a twin-track, parallel approach, relying on both prevention and deterrence. The preventive approach encourages “voluntary compliance” through understanding and support for the management strategies. The parallel approach of deterrent/enforcement MCS is necessary to ensure compliance by fishers who resist adhering to the regulatory regime. Deterrence and enforcement include inspection, investigation, prevention and court proceedings to enforce the law. Voluntary compliance

will be compromised if stakeholders see non-compliant fishers successfully evading the law and receiving economic returns from their illegal activity at the expense of the fishers who comply with all requirements (FAO, 2013d).

In line with the sharing of responsibilities in other aspects of fisheries management (e.g. co-management), participatory MCS is also practised. This means that fishers and their communities are involved in the compliance monitoring process in partnership with government authorities. This can constitute a powerful component of, for example, a co-management arrangement. However, the government has to remain responsible in order to ensure that legitimate rights are respected.

<b>GUIDANCE 11: PARTICIPATORY M&amp;E</b>
Participatory monitoring and evaluation (PM&E) is an integral part of a management system. It is a process that is characterized by dynamic interactions among key stakeholders, and it can be a powerful tool for several outcomes in addition to producing information for decision-makers, e.g. for learning what works, empowering stakeholders, enhancing the understanding of the link between objectives, implementation and outcomes on the ground, and demonstrating impact.
APPROACHES/TOOLS TO BE USED:  - PM&E (see <b>Appendix 2</b> )

## REFERENCES

- Asian Coalition for Housing Rights (ACHR).** 2006. Land issue in Thailand. In: *ACHR* [online]. [Cited 11 September 2013]. ([www.achr.net/000ACHRTsunami/Thailand%20TS/Land-1.html](http://www.achr.net/000ACHRTsunami/Thailand%20TS/Land-1.html))
- Allison, E.H, Beveridge, M.C.M. & van Brakel, M.** 2009. Climate change, small-scale fisheries and smallholder aquaculture. In M. Cullberg, ed. *Fisheries, sustainability and development*, pp. 109–122. Stockholm, Royal Swedish Academy of Agriculture and Forestry.
- Allison, E.H., Ratner, B.D., Åsgård, B., Willmann, R., Pomeroy, R. & Kurien, J.** 2012. Rights-based fisheries governance: from fishing rights to human rights. *Fish and Fisheries*, 13(1): 14–29.
- Arenas, M.C. & Lentisco, A.** 2011. *Gender mainstreaming strategy for the Regional Fisheries Livelihoods Programme (RFLP) for South and Southeast Asia*. RAP publication 2011/15. Bangkok, FAO. 92 pp.
- Aswani, S.** 2005. Customary sea tenure in Oceania as a case of rights-based fishery management: does it work? *Reviews in Fish Biology and Fisheries*, 15(3): 285–307.
- Bavinck, M.** 2005. Understanding fisheries conflicts in the South – a legal pluralist perspective. *Society and Natural Resources*, 18(9): 805–820.
- Béné, C.** 2011. *CAADP and fisheries policy in Africa: are we aiming for the right reform?* Policy Brief No 040. April 2011. Future Agricultures Consortium. 8 pp. (also available at [www.future-agricultures.org](http://www.future-agricultures.org)).
- Béné, C., Macfadyen, G. & Allison, E.H.** 2007. *Increasing the contribution of small-scale fisheries to poverty alleviation and food security*. FAO Fisheries Technical Paper No. 481. Rome, FAO. 125 pp.
- Cambers, G., Muehlig-Hofmann, A. & Troost, D.** 2003. Coastal and land tenure: a small-islands' perspective. In: *UNESCO. Environment and development in coastal regions and in small islands* [online]. [Cited 11 September 2013]. [www.unesco.org/csi/wise/tenure.htm](http://www.unesco.org/csi/wise/tenure.htm)
- Charles, A.** 2009. Rights-based fisheries management: the role of use rights in managing access and harvesting. In K.L. Cochrane & S. Garcia, eds. *A fishery manager's guidebook*, pp. 253–282. Rome, FAO, and UK, Wiley-Blackwell.
- Charles, A.** 2011. Governance of tenure in small-scale fisheries: key considerations. Case study prepared for the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries, Rome, 4–6 July 2011. (unpublished working paper).
- Cochrane, K.L., ed.** 2002. *A fishery manager's guidebook. Management measures and their application*. FAO Fisheries Technical Paper No. 424. Rome, FAO. 231 pp.
- Cochrane, K.L. & Garcia, S., eds.** 2009. *A fishery manager's guidebook*. Rome, FAO, and UK, Wiley-Blackwell. 544 pp.
- Cochrane, K., De Young, C., Soto, D. & Bahri, T., eds.** 2009. *Climate change implications for fisheries and aquaculture: overview of current scientific knowledge*. FAO Fisheries and Aquaculture Technical Paper No. 530. Rome, FAO. 212 pp.
- Copes, P. & Charles, A.** 2004. Socioeconomics of individual transferable quotas and community-based fishery management. *Agricultural and Resource Economics Review*, 33: 171–181.
- Cordell, J., ed.** 1989. *A sea of small boats*. Cambridge, USA, Cultural Survival Inc.

**Deininger, K., Selod, H., & Burns, A.** 2012. *The Land Governance Assessment Framework. Identifying and monitoring good practice in the land sector.* Washington, DC, World Bank. 147 pp.

**Department of Agriculture, Fisheries and Forestry (DAFF).** 2012. Policy for the Small-scale Fisheries Sector in South Africa. *In: Government Gazette.* Pretoria, South Africa.

**De Young, C., Charles, A. & Hjort, A.** 2008. *Human dimensions of the ecosystem approach to fisheries: an overview of context, concepts, tools, and methods.* FAO Fisheries Technical Paper No. 489. Rome, FAO. 152 pp.

**Fernando, N., Punchihewa, A.** 2011 *Migration and Global Environmental Change, CS2: Lessons learnt from the 2004 Asian tsunami.* UK Government's Foresight Project.

**FAO.** 1995. *Code of Conduct for Responsible Fisheries.* Rome. 41 pp.

**FAO.** 1997. *Fisheries management.* FAO Technical Guidelines for Responsible Fisheries No. 4. Rome. 82 pp.

**FAO.** 2003. *The ecosystem approach to fisheries.* FAO Technical Guidelines for Responsible Fisheries No 4, Suppl. 2. Rome. 112 pp.

**FAO.** 2005. *Increasing the contribution of small-scale fisheries to poverty alleviation and food security.* Technical Guidelines for Responsible Fisheries No. 10. Rome. 97 pp.

**FAO.** 2005–2013a. Regulating fishing capacity. *In: FAO Fisheries and Aquaculture Department* [online]. [Cited 11 September 2013]. [www.fao.org/fishery/topic/14857/en](http://www.fao.org/fishery/topic/14857/en)

**FAO.** 2005–2013b. Property rights and fisheries management. *In: FAO Fisheries and Aquaculture Department* [online]. [Cited 11 September 2013]. [www.fao.org/fishery/topic/13335/en](http://www.fao.org/fishery/topic/13335/en)

**FAO.** 2005–2013c. Variability and climate change. *In: FAO Fisheries and Aquaculture Department* [online]. [Cited 11 September 2013]. [www.fao.org/fishery/topic/13789/en](http://www.fao.org/fishery/topic/13789/en)

**FAO.** 2005–2013d. Monitoring, control and surveillance. *In: FAO Fisheries and Aquaculture Department* [online]. [Cited 11 September 2013]. [www.fao.org/fishery/topic/3021/en](http://www.fao.org/fishery/topic/3021/en).

**FAO.** 2009a. *Report of the Global Conference on Small-Scale Fisheries – Securing sustainable small-scale Fisheries: Bringing together responsible fisheries and social development. Bangkok, Thailand, 13–17 October 2008. Rapport de la Conférence mondiale sur les pêches artisanales – Pour une pêche artisanale durable: Associer la pêche responsable au développement social. Bangkok, Thaïlande, 13-17 octobre 2008. Informe de la Conferencia Mundial sobre la Pesca en Pequeña Escala – Garantizar la pesca en pequeña escala: Pesca responsable y desarrollo social unidos. Bangkok, Tailandia, 13-17 de octubre de 2008.* FAO Fisheries and Aquaculture Report / FAO Rapport sur les pêches et l'aquaculture / FAO Informe de Pesca y Acuicultura No. 911. Rome/Roma. 189 pp.

**FAO.** 2009b. *Fisheries management. 2. The ecosystem approach to fisheries. 2.2 The human dimensions of the ecosystem approach to fisheries.* FAO Technical Guidelines for Responsible Fisheries No. 4, Suppl. 2, Add. 2. Rome. 88 pp.

**FAO.** 2010. *Report of the Inception Workshop of the FAO Extrabudgetary Programme on Fisheries and Aquaculture for Poverty Alleviation and Food Security. Rome, 27–30 October 2009.* FAO Fisheries and Aquaculture Report No. 930. Rome. 68 pp.



- FAO.** 2011a. *Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries*. Rome, 4–6 July 2011. FAO Fisheries and Aquaculture Report No. 983. Rome. 34 pp.
- FAO.** 2011b. *Fisheries management. 4. Marine protected areas and fisheries*. FAO Technical Guidelines for Responsible Fisheries No. 4, Suppl. 4. Rome. 198 pp.
- FAO.** 2012a. Governance of tenure. In: *FAO Natural Resources Management and Environment Department* [online]. [Cited 11 September 2013]. [www.fao.org/nr/tenure/governance-of-tenure/en/](http://www.fao.org/nr/tenure/governance-of-tenure/en/)
- FAO.** 2012b. Zero Draft – International Guidelines for Securing Sustainable Small-scale Fisheries. Rome. 38 pp. (also available at [www.fao.org/fishery/ssf/guidelines/en/](http://www.fao.org/fishery/ssf/guidelines/en/)).
- FAO.** 2012c. *Report of the Workshop on International Guidelines for Securing Sustainable Small-Scale Fisheries, Rome, Italy, 7–10 February 2012*. FAO Fisheries and Aquaculture Report No. 1004. Rome. 44 pp.
- FAO.** 2013a. *Governing land for women and men – a technical guide to support the achievement of responsible gender-equitable governance of land tenure*. Governance of Tenure Technical Guide No 1. Rome. 120 pp.
- FAO.** 2013b. Capacity Development Portal. In: *FAO Capacity Development Portal* [online]. [Cited 11 September 2013]. [www.fao.org/capacitydevelopment/capacity-development-home/en/](http://www.fao.org/capacitydevelopment/capacity-development-home/en/)
- Finlay, J. & McConney, P.** 2011. Tenure in the Grenada beach seine fishery. Case study prepared for the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. (unpublished working paper).
- Govan, H.** 2009. *Study report on status and potential of locally-managed marine areas in the south Pacific: meeting nature conservation and sustainable livelihood targets through wide-spread implementation of LMMAs*. Component 3A- Project 3A3. Institutional strengthening and technical support. SPREP/WWF/WorldFish-Reefbase/CRISP. 95 pp.
- Hardin, G.** 1968. The tragedy of the commons. *Science*, 162(3589): 1243–1248.
- Herrera, A. & da Passano, M.G.** 2006. Land tenure alternative conflict management. Land Tenure Service Rural Development Division in collaboration with Livelihoods Support Project International Land Coalition. FAO. Rome. 140p.
- Holvoet, K.** 2008. Mainstreaming gender in fisheries. In L. Westlund, K. Holvoet & M. Kébé, eds. *Achieving poverty reduction through responsible fisheries: strategies and lessons from the West and Central Africa Sustainable Fisheries Livelihoods Programme*, pp. 139–152. FAO Fisheries and Aquaculture Technical Paper No. 513. Rome, FAO. 168 pp.
- Jentoft, S.** 2011. Governing tenure in Norwegian and Sami small-scale fisheries : from common pool to common property? Case study prepared for the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. (unpublished working paper).
- Jentoft, S. & Eide, A.** 2011. *Poverty mosaics. Realities and prospects in small-scale fisheries*. Springer.
- Jentoft, S., Bavinck, M., Johnson, D.S. & Thomson, K.T.** 2009. Fisheries co-management and legal pluralism: how an analytical problem becomes an institutional one. *Human Organization*, 68(1): 27–38.
- Juda, L.** 1999. Considerations in the development of a functional approach to governance of large marine ecosystems. *Ocean Development and International Law*, 30: 89–125.

- Kalikoski, Daniela C., Quevedo Neto & Pedro.** 2010. Building adaptive capacity to climate variability: the case of artisanal fisheries in the estuary of the Patos Lagoon, Brazil. *Marine Policy*, Volume 34 (4): 742-751
- Kooiman, J., Bavinck, M., Jentoft, S. & Pullin, R., eds.** 2005. *Fish for life. Interactive governance for fisheries.* Amsterdam, Amsterdam University Press.
- Konan, A.** 2007. *Projet pilote «Amélioration de l'environnement politique et institutionnel pour le développement de systèmes de cogestion en pêche continentale au Burkina Faso, au Mali, en Côte d'Ivoire et au Ghana»*. Rapport terminal. Sustainable Fisheries Livelihoods Programme (SFLP) report. 55 pp.
- Kurien, J.** 1998. *Property rights, resource management and governance: crafting an institutional framework of global marine fisheries.* Thiruvananthapuram, India, Centre for Development Studies.
- Kurien, J. & Willmann, R.** 2009. Special considerations for small-scale fisheries management in developing countries. In K.L. Cochrane & S. Garcia, eds. *A fishery manager's guidebook*, pp. 404–424. Rome, FAO, and UK, Wiley-Blackwell.
- Mahon, R.** 2002. *Adaptation of fisheries and fishing communities to the impacts of climate change in the CARICOM region.* Issues paper prepared for the CARICOM Fisheries Unit, Belize City, Belize, as input to the planning process for the project Mainstreaming Adaptation to Climate Change (MACC) of the Caribbean Centre for Climate Change (CCCC). 35 pp.
- Masifundise.** 2012. Preparation for the phasing in of Small Scale Fisheries (SSF) policy. In: *Masifundise* [online]. [Cited 11 September 2013]. [www.masifundise.org.za/preparation-for-the-phasing-in-of-small-scale-fisheries-ssf-policy/](http://www.masifundise.org.za/preparation-for-the-phasing-in-of-small-scale-fisheries-ssf-policy/)
- Monsalve Suárez, S., Marques Osorio, L. & Langford, M.** 2009. *Voluntary guidelines for good governance in land and natural resource tenure: civil society perspectives.* Land Tenure Working Paper 8. FIAN International and Hakijamii (Economic and Social Rights Centre). Rome, FAO. 85 pp. (also available at <ftp://ftp.fao.org/docrep/fao/011/ak280e/ak280e00.pdf>).
- MRAG, IFM, CEFAS, AZTI Tecnalia & PoLEM.** 2009. *An analysis of existing Rights Based Management (RBM) instruments in Member States and on setting up best practices in the EU.* Final Report. London, MRAG Ltd. 117 pp.
- Munro, G.R.** 2010. *From drain to gain in capture fisheries rents: a synthesis study.* FAO Fisheries and Aquaculture Technical Paper No. 538. Rome, FAO. 49 pp.
- Njock, J.-C. & Westlund, L.** 2008. Understanding the mobility of fishing people and the challenge of migration to devolved fisheries management. In L. Westlund, K. Holvoet & M. Kébé, eds. *Achieving poverty reduction through responsible fisheries: strategies and lessons from the West and Central Africa Sustainable Fisheries Livelihoods Programme*, pp. 85–98. FAO Fisheries Technical Paper No 513. Rome, FAO.
- Njock, J.-C. & Westlund, L.** 2010. Migration, resource management and global change: experiences from fishing communities in West and Central Africa. *Marine Policy*, 34(4): 752–760.
- Njock, J.-C., Allison, E.H. & Konan, A.** 2008. Institutional innovations in fisheries co-management in West and Central Africa. In L. Westlund, K. Holvoet & M. Kébé, eds. *Achieving poverty reduction through responsible fisheries: strategies and lessons from the West and Central Africa Sustainable Fisheries Livelihoods Programme*, pp. 67–84. FAO Fisheries Technical Paper No. 513. Rome, FAO.

**Orensanz, J.M., Cinti, A., Parma, A.M., Burotto, L., Espinosa-Guerrero, S., Sosa-Cordero, E., Sepúlveda, C. & Toral-Granda, V.** 2011. Governance of tenure in Latin-American small-scale fisheries targeting seabed resources. Case study prepared for the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries, Rome, 4–6 July 2011. (unpublished working paper).

**Ostrom, E., Burger, J., Field, C.B., Norgaard, R.B. & Policansky, D.** 1999. Revisiting the commons: local lessons, global challenges. *Science*, 284: 278–282.

**Perry, R.I. & Ommer, R.E.** 2010. Introduction: Coping with global change in marine social-ecological systems. *Marine Policy*, 34(4): 739–741.

**Pomeroy, R.S.** 2001. Devolution and fisheries co-management. In R. Meinzen-Dick, A. Knox & M. Di Gregorio, eds. *Collective action, property rights and devolution of natural resource management: exchange of knowledge and implications for policy*, pp. 108–145. Feldafing, Germany, DSE/GTZ.

**Pomeroy, R.S. & Rivera-Guieb, R.** 2006. *Fisheries co-management: a practical handbook*. Rome, CAB International, and Ottawa, International Development Research Centre.

**Prasertcharoensuk, R. & Shott, J.** 2010. *Marine protected areas in Thailand: time for a sea change: a study of the effectiveness of biodiversity conservation measures and marine protected areas along southern Thailand's Andaman Sea coastline*. Monograph ICSF. Chennai, India, SAMUDRA. 81 pp. (also available at [icsf.net/icsf2006/uploads/publications/monograph/pdf/english/issue\\_110/ALL.pdf](http://icsf.net/icsf2006/uploads/publications/monograph/pdf/english/issue_110/ALL.pdf)).

**Ruddle, K.** 1988. Social principles underlying traditional inshore fishery management systems in the Pacific Basin. *Marine Resource Economics*, 5: 351–363. **SAMUDRA.** 2008. *Statement from the Civil Society Preparatory Workshop to the Global Conference on Small-Scale Fisheries (4SSF), Bangkok, Thailand*. SAMUDRA Report No. 51. pp. 7–9.

**Scott, A.** 2000. Introducing property in fishery management. In R. Shotton, ed. *Use of property rights in fisheries management. Proceedings of the FishRights99 Conference, Fremantle, Western Australia, 11-19 November 1999. Mini-course lectures and core conference presentations*, pp. 1–13. FAO Fisheries Technical Paper No. 404/1. Rome, FAO.

**Sharma, C. & Rajagopalan, R.** MPAs: securing tenure rights in fishing communities? Case study prepared for the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries, Rome, 4–6 July 2011. (unpublished working paper).

**Shotton, R., ed.** 2000. *Use of property rights in fisheries management. Proceedings of the FishRights99 Conference. Fremantle, Western Australia, 11-19 November 1999. Mini-course lectures and core conference presentations*. FAO Fisheries Technical Paper No. 404/1. Rome, FAO. 342 pp.

**Sunde, J., Sowman, M., Smith, H. & Wicomb, W.** (forthcoming). Emerging proposals for governance of tenure in small-scale fisheries in South Africa. *FAO Land Tenure Journal*.

**UNEP, FAO, IMO, UNDP, IUCN, WorldFish Center, GRID-Arendal.** 2012. *Green economy in a blue world*. Nairobi, UNEP. 132 pp.

**Western Pacific Regional Fishery Management Council.** 2010. *The impact of marine preserve areas on the safety of fishermen on Guam*. Honolulu, USA. 19 p.

**Vieira, S., Schirmer, J. & Loxton, E.** 2009. Social and economic evaluation methods for fisheries a review of the literature. Fisheries Research Contract Report No. 21. Department of Fisheries, Western Australia. 94p.

**World Bank.** 2009. *The sunken billions – the economics justification for fisheries reform.* Washington, DC, International Bank for Reconstruction and Development / World Bank. 100 pp.

**World Bank, FAO & WorldFish Center.** 2012. *Hidden harvests – the global contribution of capture fisheries.* Economic and sector work. Report No 66469-GLB. Washington, DC, International Bank for Reconstruction and Development / World Bank. 69 pp.

**World Humanity Action Trust (WHAT).** 2000. *Governance for a sustainable future. ii: fishing for the future.* Report of the Commission on Fisheries Resources. London. 68 pp.

## APPENDIX 1: GLOSSARY

### **Common pool resources**

Natural or man-made resources systems in which: (i) exclusion of any beneficiaries through physical or institutional means is especially costly, if not impossible, even if they do not contribute to its management (e.g. a free rider) and undermines the capacity for others to do so; and (ii) exploitation by one user reduces resource availability for others (subtractability). While a common pool resource system (a fishing ground) can be jointly appropriated, the resource units withdrawn from it (e.g., the catch) are private.

*Source:* FAO Fisheries Glossary ([www.fao.org/fi/glossary/](http://www.fao.org/fi/glossary/)) (combined from Ostrom, E. 1990. *Governing the commons. The evolution of institutions for collective action*. Cambridge, UK, Cambridge University Press; and Ostrom, E., Burger, J., Field, C.B., Norgaard, R.B. & Policansky, D. 1999. Revisiting the commons: local lessons, global challenges. *Science*, 284: 278–282).

### **Fishery resource**

In general, refers to elements of a natural aquatic resource (e.g. strains, species, populations, stocks, assemblages) that can be legally caught by fishing. May sometimes be taken as including also the habitat of such resources.

*Source:* Modified from FAO. 1998. *Guidelines for the routine collection of capture fishery data*. FAO Fisheries Technical Paper No. 382. Rome. 113 pp.

### **Fishing rights**

A right to catch a specified quantity of fish, or proportion of the total allowable fish catch or a right to use a boat (or any other specified fishing equipment) in a manner specified in a management plan or in the fishery regulations.

*Source:* FAO Fisheries Glossary ([www.fao.org/fi/glossary/](http://www.fao.org/fi/glossary/)).

### **Open access**

A condition of a fishery in which anyone who wishes to fish may do so. This condition should not be confused with ‘common property’, a form of communal right to the resource and control of the access to it.

*Source:* FAO Fisheries Glossary ([www.fao.org/fi/glossary/](http://www.fao.org/fi/glossary/)).

### **Small-scale fishing community**

Members of small-scale fishing communities include all those dependent on the aquatic resources for all or part of their livelihoods and well-being: fishers, those involved in post-harvest and upstream activities, and their family members. Small-scale fishers and fishworkers can be engaged in the sector full time or part time, or on an occasional basis as a supplement to other livelihood strategies. The activities can be for commercial purposes or for subsistence needs, or a combination of the two.

### **Small-scale fisher**

Person who is involved in small-scale fisheries primary production, i.e. harvesting fish or other aquatic animals or aquatic plants.

### **Small-scale fish worker**

Person who is not involved in primary production but in other parts of the small-scale fisheries value chain and accessory activities, in both the upstream and downstream subsectors.

### **States**

Governments at all levels (national, provisional, local).

### **Tenure**

Tenure is the relationship among people with respect to land and other natural resources. The rules of tenure determine who can use what resources of the land for how long, and under what conditions.

*Source:* FAO. 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security* [online]. Committee on World Food Security. [Cited 11 September 2013]. [www.fao.org/docrep/016/i2801e/i2801e.pdf](http://www.fao.org/docrep/016/i2801e/i2801e.pdf)

### **Use right**

The rights held by individual fishers, fishing groups, fishing communities or companies to have access to a fishery and use the fishery resources.

*Source:* Adapted from Glossary in Cochrane, K.L., ed. 2002. *A fishery manager's guidebook. Management measures and their application*. FAO Fisheries Technical Paper No. 424. Rome, FAO. 231 pp.

### **Vulnerable and marginalized groups/people**

Relevant stakeholder groups that are lacking assets for secure, sustainable, livelihoods and/or lack influence over decision-making processes including, for example, women, youth, elders and the disabled.

*Source:* FAO, UNDP and UNEP. 2011. UN-REDD Programme Social and Environmental Principles and Criteria, version 3 Draft for Consultation [online]. [Cited 11 September 2013]. [www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=5993&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=5993&Itemid=53)

### **COMMUNITY GENDER ANALYSIS TOOL**

#### ***Purpose***

An approach for community gender analysis developed by the Sustainable Fisheries Livelihoods Programme (SFLP) combined a gender analytical framework with a livelihoods analysis, allowing an understanding of gender relation dynamics and the institutional context, and facilitating the negotiation for change in social, political and economic relationships between men and women as well as between youth and the elderly.

#### ***Overview***

The gender analysis process involved communities and community-based organizations (CBOs) and consisted of nine main steps:

1. Negotiate and design partnerships with the community.
2. Collect data for gender profiles at household, community organization, value chain, and policies, institutions and processes levels.
3. Analyse data, prepare gender profiles and visualize gender inequalities.
4. Validate the profiles and identify changes the community will engage in.
5. Elaborate a community gender strategy.
6. Prepare action plans for each CBO.
7. Facilitate the development of a consolidated plan for organizational capacity building.
8. Prepare a consolidated community project.
9. Assess the project and start implementation.

Partnerships with community-based and meso-level actors are an important part of the process. Questions related to inequalities between men and women are often sensitive issues in communities, and an open discussion from the beginning, involving different groups of both men and women, is a necessary approach to gain acceptance. It is also fundamental to negotiate partnerships with communities and meso-level actors and to instigate ownership of the process with CBOs and partner organizations.

An important part of the tool is the value chain analysis where gender roles and relationships between male and female actors of different socioprofessional groups are analysed. In the SFLP, these roles and relationships were looked at in the light of a changing environment, e.g. the globalization of fish markets. Institutions and policies, vulnerability factors and profiles with regard to access and control influence different actors' possibilities to change and adapt to external influences. Changes within the value chain will have impacts on organizations and households, and the development will have implications for both women and men along the whole value chain, their livelihoods and, ultimately, the sustainability of the fishery resources.

*Sources:* Holvoet (2008). See also Arenas and Lentisco (2011).

### **STAKEHOLDER WORKSHOPS**

#### ***Purpose***

To provide an appropriate forum for the identification, discussion and resolution of issues using inputs from multiple stakeholders or groups. These types of fora are useful at different steps in a tenure implementation process, e.g. for awareness raising and objective setting, and can include various ranges of stakeholders (community groups, only fisheries sector, cross-sectoral, multidisciplinary, etc.).

## **Overview**

Planning and implementing responsible tenure often require stakeholder buy-in and participation. Holding stakeholder workshops is a very good way to initiate or contribute to the formation of partnership approaches. Workshops allow a group of people, usually with the help of a facilitator, to participate actively in tasks such as visioning, strategic planning, problem-solving, reaching consensus or other desirable end points.

Workshops can combine training, development, team-building, communication, motivation and planning. They usually have a clear purpose or output that is to be generated through the workshop process rather than just being an awareness raising exercise. Participation and involvement in workshops increase the sense of ownership and empowerment, and facilitate the development of the organizations and individuals involved. Workshops are effective in helping to manage or facilitate change, achieving improvement and particularly the creation of initiatives, plans, process and actions to achieve aims. They are also good for breaking down barriers and for improving communications inside and outside of agencies, groups and communities.

The main steps for running a good workshop are:

1. Determine who should be at the workshop.
2. Ensure a suitable date is set.
3. Send out an agenda or topic or background material early enough for comments and for participants to have read the material.
4. Use a suitable venue that has all the equipment needed and that it is close to where participants are staying.
5. At the opening of the workshop, explain the background and context for the workshop, and the intended outcomes.
6. Have participants introduce themselves and, if appropriate, conduct some sort of ice breaker that establishes rapport between participants and generates a few laughs.
7. Explain the agenda and process of the workshop and the role of the facilitator.
8. Invite participants or representatives to make a statement about what they would like to see achieved from the workshop.
9. Run the series of activities that will enable the objectives of the workshop to be achieved.
10. Clarify the outcomes from the workshop and agree upon future actions.
11. Ask participants to provide an evaluation of the workshop (optional).
12. Close the workshop by inviting participants to say what the workshop has meant for them.
13. Write up the workshop and provide a report to participants as soon as possible.

If there are more than 15 people, have breakout sessions to try and obtain more input from those that will not talk in larger groups. Especially relevant if one or two people are expected to dominate the discussions.

A workshop should have a facilitator, either the meeting leader or another designated individual. The role of the facilitator is to keep the discussion focused on the topic, stay on the agenda, and stay on time. The facilitator controls the meeting by establishing time limits, listing specific agenda items, defining the purpose of the meeting, and controlling the discussions.

The following website has a number of tools and descriptions that can be used in workshops:  
<http://portals.wi.wur.nl/msp>.

*Sources:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)); and De Young, Charles and Hjort (2008).



## **FACILITATION**

### ***Purpose***

Group facilitation plays a critical part in encouraging people to contribute to the identification of issues and the resolution of problems or generating solutions, which are critical parts of all the steps in the any planning or implementation process. Facilitation is used as part of a number of approaches and tools, such as workshops (see above) and focus group discussions.

### ***Overview***

The facilitator is responsible for ensuring that the group (large or small) works in a cohesive manner to reach a workable solution as quickly as possible. Improving facilitation skills will assist in the efficient and effective running of these meetings and workshops and should generate better overall outcomes.

Good facilitation is extremely valuable. It is so easy for meetings to become lost in unnecessary detail or to have individuals hijack the process for their own purposes. The facilitator should not be a subject-matter expert (which is different to being a process expert) who is critical to the outcome. Subject-matter experts can dominate the discussion and drive the meeting to their own solution. However, they may not have enough “brain space” to think about their contribution to the subject matter, and how to keep the meeting progressing towards a conclusion. It is often important to have a trained facilitator, who:

- distinguishes process from content;
- manages the client relationship;
- prepares thoroughly for planning;
- uses time and space intentionally;
- evokes participation and creativity;
- maintains objectivity at all times;
- reads underlying group dynamics;
- releases blocks to the process;
- adapts to the changing situation;
- shares responsibility for process;
- demonstrates professionalism;
- shows confidence and authenticity;
- maintains personal integrity.

*Sources:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)); and De Young, Charles and Hjort (2008).

## **VISIONING EXERCISE**

### ***Purpose***

Assist stakeholders (including the community and government) to generate an agreed set of key values and outcomes for use in planning a tenure rights system by encouraging them to look backwards from some future time.

### ***Overview***

Visioning exercises are used to define and help achieve a desirable future by setting the stage for creating the future through positive discussions. Studies have shown that people are more likely to reach an objective if they can see it, and can then imagine the set of steps needed to reach it.

The aim is first to create a “vision of success” statement, which is a brief written account of what a successful tenure rights system would produce over the long term (i.e. 5–20 years). This statement outlines what would be the result from the successful implementation and what would define the high-level objectives that, if achieved, would produce that success. The basis of this method is that if people do not know what success would look like it is very hard to achieve it.

The exercise is therefore intended to present the participants with a scenario that they can **visualize** as successful, but without the facilitator **dictating** what the success looks like. Therefore, the visualization must present the “outline”, but each participant colours in the outline with his/her particular view.

There are advantages and disadvantages with the visioning method:

- Pros: Visioning generates a common goal, hope and encouragement; it offers a possibility for fundamental change; it gives people a sense of control; it gives a group something to move towards; and it generates creative thinking and passion. A problem is something negative to move away from, whereas a vision is something positive to move towards.
- Cons: Visioning can sometimes lead to poor results because people cannot want what they do not know. In such situations, it may be necessary to present a range of options, each with a list of pros and cons. Once this has been done satisfactorily, people can then be asked: "What do you want?"

Source: EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)).

## **STAKEHOLDER ANALYSIS**

### ***Purpose***

Stakeholder analysis helps to determine systematically who really needs to be involved in the tenure rights planning process, and whose interests may be too removed to make this a necessity. This process should also examine power, conflict, relative incentives and other relationships among these stakeholders. It is related to institutional analysis, but places far more emphasis on individual motivation and/or collective interest of the individuals/groups than on institutional structures and procedures.

### ***Overview***

Stakeholders are all those who have an interest in the issues being addressed in terms of either their welfare or utility. Some stakeholders are active – they affect the system; some are passive – they are affected by it.

They may be considered in detail because:

- of their importance – as possible beneficiaries of development;
- of their influence – their power over the success of project;
- they can be identified as winners or losers in the fishery management planning process.

Stakeholder analysis seeks to:

- identify, assess and compare sets of interest;
- examine inherent conflicts and/or compatibilities;
- describe and explore trade-offs.

Thus, the concept of stakeholder extends beyond merely those directly involved in the exploitation of the fisheries resource but includes all those deriving some form of benefit from the resource or the region/community in which it is found. In the case of marine resources, this can include fishers, all those involved in the processing and sale of fish, fish consumers, tourists in the area, transport operators and their passengers, industries using water or polluting it, and any other groups or individuals with more marginal interests.

For those groups identified as having significant interests or deriving important benefits from the fishery, sociological analyses could look at their priorities and motivations, decision-making processes and institutions, and understand the social, economic and cultural links between each group and the resource.

At the level of the household, other issues including the role of women, their degree of mobility and the stage in the household development cycle can all be relevant. Women are liable to constitute a distinct group of stakeholders in most fisheries, and women from different social and economic backgrounds may also have distinct and different interests. Special attention needs to be paid to coastal fisheries with relatively easy access as there may be quite important involvement of women, which is not always obvious and which needs to be specifically investigated.

Different members of catching and processing and other supply chain sectors will have different interests and stakes in the resource according to the benefits they derive from its use. The owner of fishing gear and craft, which represent a major investment aimed at exploiting a specific fishery, will have a different stake in the resource compared with crew members who may only work seasonally in the fishery and be able to move into other fisheries or other sectors relatively easily.

There is no single best method of stakeholder analysis. Common sense must be applied. Special care must be taken to ensure that voiceless and disadvantaged groups that may include women, youth, the elderly and poor people, are not excluded from the analysis. Multiple group memberships are common, especially in small communities. In such cases, it will be necessary to be certain “who is speaking” at any given time and “which hat” the person is wearing.

*Source:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)).

## **ECONOMIC VALUATION METHODS**

### ***Purpose***

Economic and social assessments are used to understand more fully the social and economic status, values and issues associated with the fishery and its dependent communities. Social and economic (impact) assessments can also be done to investigate the possible implications of any proposed new management arrangements.

### ***Overview***

Different methods can be applied depending on the exact purpose of the assessment and available data:

#### *Market-based economic valuation*

- A market economic valuation of a commercial fishing sector estimates the total net economic benefits generated from the use of a fishery resource by the commercial sector in a given period. Data on revenues and costs are needed.

#### *Non-market economic valuation*

- Revealed preference: travel cost method (TCM). Non-market economic valuation methods can be used for resources that are generally not associated with an observable market. The TCM is “an indirect valuation method used to estimate the consumer surplus per fishing trip using the travel cost as a proxy for the price of the recreational activity”. For fishery evaluations, TCM has most commonly been used to estimate the resource values of recreational anglers; yet it could also be used for other user groups (such as non-extractive users).
- Revealed preference: random utility modelling (RUM) is similar to TCM in that both techniques utilize trip and cost data to estimate economic value. Therefore, RUM requires the same data collection methods as the TCM, but RUM treats the demand for recreational fishing as a series of discrete choices. That is, a decision is made for every trip in the form of a one-off discrete choice between multiple fishing sites. Each decision made by a user is based on the objective of maximizing the expected benefits (or utility) from a fishing trip and will be dependent on the relative qualities of all sites available and the utility derived from the site.
- Stated preference method: the contingent valuation method (CVM) is a “method of estimating consumer surplus based on individual responses to contingent circumstances posited in hypothetical or experimental markets”. The objective of the CVM is to collect a stated value or willingness to pay and/or accept compensation that is attached to a particular hypothetical scenario or circumstance by survey respondents. This sample of stated values is then used to estimate the benefit that would arise for an entire population if that circumstance actually occurred.
- Stated preference: choice modelling is a technique that was developed from conjoint analysis – a form of statistical analysis traditionally used for marketing research purposes to analyse the attributes of different marketable goods. Choice modelling has similarities to the CVM in that respondents are asked to reveal their preferences under hypothetical scenarios. However, in choice modelling, respondents are required to make a sequence of multiple hypothetical choices, as opposed to one in the CVM.

#### *Regional economic impact assessment methods*

- A regional economic impact estimation method includes any technique in which a model is used to understand and simplify an economy (at the local, regional, national or international level) to determine

the impact that a sector (e.g. a commercial fishery) has on the economy of the region. Such approaches deal only with economic activity and not net economic benefits. Consequently, such approaches do not provide the information necessary for making resource allocation decisions under an objective of maximizing net economic benefits.

*Sources:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)); summary of economic and social assessment methods extracted from Vieira, Schirmer and Loxton (2009).

## **COST-BENEFIT ANALYSIS**

### ***Purpose***

A cost-benefit analysis (CBA) can be used to help assess whether the case for undertaking a major initiative, such as introducing a new tenure rights system, is cost-effective for government. A CBA can also be used to assist in determining which of a number of different options may be the best choice. A CBA is often used by governments to evaluate the desirability of a given intervention. It is an analysis of the cost-effectiveness of different alternatives (including doing nothing) in order to see whether the benefits outweigh the costs. The aim is to gauge the efficiency of the intervention relative to the status quo. The costs and benefits of the impacts of an intervention are evaluated in terms of the public's willingness to pay for them (benefits) or willingness to pay to avoid them (costs). Inputs are typically measured in terms of opportunity costs – the value in their best alternative use.

### ***Overview***

The CBA process involves explicitly or implicitly weighing the total expected costs against the total expected benefits of one or more actions in order to choose the best or most appropriate option. It works by finding and quantifying and then adding all the positive factors (these are the benefits), and identifying, quantifying and subtracting all the negatives (the costs). The difference between the two indicates whether the planned action is advisable. The real key to doing a CBA is to ensure that all the costs and all the benefits are included and properly quantified.

In cases when both the benefits and costs are expressed in money terms, they can also be adjusted for the “time value” of money, so that all flows of benefits and flows of project costs over time (which tend to occur at different points in time) are expressed on a common basis in terms of their “present value”, using what is called a discount rate. Most commonly, the discount rate used for present-value calculations is an interest rate taken from financial markets. The choice of the discount rate can be very controversial because a high discount rate implies a very low value on the welfare of future generations, which may have a considerable impact on the desirability of interventions to help the environment. Empirical studies suggest that, in reality, people's discount rates do decline over time. Because CBAs often aim to measure the public's true willingness to pay, this feature is typically built into studies.

One of the main problems with CBA is that it requires translation of all values for a given proposal into monetary terms. This is seen by many who favour CBA to be its chief asset because it uses economic value as a universal metric, which, they say, is the least biased way to judge the impact of regulatory decisions. However, such analyses are rarely neutral and all data, including non-economic data, must be considered in the context of the decision that is being made.

Furthermore, no matter how sophisticated the mathematics, certain key inputs in a CBA cannot be translated into economic value. Security and safety, the preservation of wildlife and open spaces, the reduction of fear in a community, and scientific uncertainty in fields that spawn technological innovation are all economic

intangibles. Other economic benefits and costs are generally easier to measure. First, some are amenable to standard fishery data gathering – e.g. for benefits or costs at the fisher level (such as changes in income per fish caught, in catch levels, and in fishing costs), and for those at the sector level (such as changes in employment, net economic returns, and contribution to the economy). Some measures can be obtained through governmental accounting systems (such as changes in the revenues from licences). Still others may require more specific data collection, e.g. through surveys to assess changes in livelihood opportunities for fishers, or in increased income disparity among fishers.

Another challenge to CBA comes from determining which costs should be included in an analysis (the significant cost drivers). This is often controversial because organizations or interest groups may think that some costs should be included or excluded from a study.

*Source:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)).

## **PARTICIPATORY RURAL APPRAISAL (PRA)**

### ***Purpose***

Participatory rural appraisal (PRA) facilitates the capture of the perspectives of stakeholders, and provides scope for all involved to learn from one another, and stimulate self-propelled initiatives. A PRA consists of a set of tools and techniques that allows for the transformation of knowledge and shared experiences into actions.

### ***Overview***

The different tools and techniques used in PRA include:

- **interviews/discussions:** individuals, households, focus groups, community meetings;
- **mapping:** community maps, habitat census, personal maps, institutional maps;
- **ranking:** problem ranking, preference ranking, wealth ranking;
- **trend analysis:** historical diagramming, seasonal calendars, daily activity charts.

The central part of any PRA is semi-structured interviewing – that is, interviewing based not on a questionnaire but on a checklist of issues that the PRA team adapts according to the interview situation. These interviews are, therefore, more like conversations guided informally by the interviewers. While sensitive topics are often better addressed in interviews with individuals, other topics of more general concern are amenable to focus group discussions and community meetings. During these interviews and discussions, several diagrammatic techniques are frequently used to stimulate debate and record the results. Many of these visuals are not drawn on paper but on the ground with sticks, stones, seeds and other local materials, and then later transferred to paper for a permanent record.

Mapping techniques are very useful for PRA activities that involve community members depicting the characteristics of their community, or individuals drawing their own personal perspective of the community and the areas of most importance to them, or key informants mapping the extent to which local organizations interact with each other. Ranking exercises, done either by individuals or groups, reveal the priority problems and preferences of the population or, in wealth ranking, the local definition and indicators of poverty and the stratification of the community by relative wealth. Other diagrams address the historical and seasonal trends and daily routines of local livelihoods.

*Source:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)).

## **CONFLICT MANAGEMENT**

### ***Purpose***

The goal of conflict management is not to avoid conflict, but to apply skills that can help people to express their differences and solve their problems for win-win, or mutually beneficial, outcomes. Closely related to conflict management, consensus building is the term used for a number of collaborative decision-making techniques in which a facilitator or mediator assists diverse or competing interest groups to agree on contentious policy issues, management objectives, or other matters for which consensus rather than majority decisions are being pursued.

These tools are useful at many points in policy and planning cycles, and in management, to reduce the actual or potential levels of conflict among diverse stakeholders so that decision processes can be more positive and productive.

### ***Overview***

Given the valuable resources and high levels of human activity that characterize coastal areas, there are inevitably competing and conflicting claims over the allocation and use of such resources. The resolution of conflict is a central concern of any legal system, and courts may have an important part to play in resolving disputes in coastal areas. However, traditional “top-down” legislative processes and litigation through the courts have often proved to be ineffective methods of regulating competing interests and addressing conflicts concerning natural resources and the environment.

Dissatisfaction with conventional litigation and rule-making processes has led to a growing trend in favour of alternative dispute resolution (ADR) techniques in the context of natural resource and environmental management. These techniques include arbitration, mediation and direct negotiation, and alternative means of regulating to avoid or manage conflict, such as negotiated rule making. As these techniques aim to engage the disputants actively in seeking a result acceptable to all the parties involved, they are likely to be more effective in the integrated coastal zone management (ICZM) context.

#### **• Conflict resolution**

Being social interactions, conflicts have many dimensions that should be properly understood before interventions are made. Often, there will be more than one source of conflict. Correct identification of the nature of the source of the conflict requires penetrating past the symptoms until the root cause (or causes) are reached.

There are several stages in conflict management and negotiation. The following apply to most methods:

- Initiation – a stakeholder or outsider invites help to manage the conflict.
- Preparation – conflict analysis, information sharing, rules, participant selection.
- Negotiation – articulating interests and win-win options, packaging desired options.
- Agreement – concluding jointly on best option package, recording final decisions.
- Implementation – publicizing outcomes, signed agreement (optional).

- **Consensus building**

Consensus is a decision-making process that works creatively to include all persons making the decision. It is the most powerful decision process as all members agree to the final decision, as all participants have a direct voice and veto power. In short, consensus takes into account and validates each participant, and all participants have the opportunity to voice their opinion, or block a proposal if they feel strongly enough about a decision.

A consensus means overwhelming agreement, which is not the same as unanimity. It is important that consensus be the product of a good-faith effort to meet the interests of all stakeholders. The key indicator of whether or not a consensus has been reached is that **everyone agrees they can live with the final proposal**. Thus, this also differs from a majority rule outcome. Rather than focusing on producing the best possible outcome for everyone, majority-rule decisions almost guarantee an unhappy minority and instability, with the minority biding their time, awaiting an opportunity to sabotage the group's outcome.

Most dispute-resolution professionals believe that groups or assemblies should seek unanimity, but settle for overwhelming agreement that goes as far as possible towards meeting the interests of all stakeholders. It is absolutely crucial that this definition of success be clear at the outset. Before the parties in a consensus building process come together, mediators (or facilitators) can play an important part in helping to identify the right participants, assist them in setting an agenda and clarifying the ground rules by which they will operate, and even in convincing reluctant parties of the value to them of participating. Once the process has begun, mediators (facilitators) try to assist the parties in their efforts to generate a creative resolution of differences. During these discussions or negotiations, a mediator may accompany a representative back to a meeting with his or her constituents to explain what has been happening.

The mediator might serve as a spokesperson for the process if the media are following the story. A mediator might (with the parties' agreement) push them to accept an accord (because they need someone to blame for forcing them to back-off the unreasonable demands they made at the outset).

Finally, the mediator may be called upon to monitor implementation of an agreement and re-assemble the parties to review progress or deal with perceived violations or a failure to live up to commitments.

*Source:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)).

## **PARTICIPATORY MONITORING AND EVALUATION**

### ***Purpose***

To develop and monitor suitable indicators that are based on locally collected data in order to provide a practical and cost-effective method to measure progress towards meeting the operational objectives developed for a tenure rights system.

### ***Overview***

Community-based ecological monitoring (CBM) or participatory monitoring and evaluation (PM&E) and research is the process of integrating public/community participation in the collection, analysis and interpretation of data, changes or trends in the natural environment that occur in a particular ecosystem. The relationship between conservation and community involvement is central to these concepts. This is because in order for conservation efforts to be successful and sustained over the long term, there has to be involvement and ownership at the local or community level.



It is possible to use CBM/PM&E to focus on the biotic and abiotic parameters of the environment, identify and determine causal relationships, and attempt to determine anthropogenic and natural impacts as well as the outcomes of management interventions. This information is important in guiding adaptive management. The use of CBM enables stakeholders (community) to recognize the negative ecological effects of their activities at an early stage and to adapt their actions.

These processes require early and continuous consultation with members of the community who have a stake in their natural resources and are interested in monitoring and conservation efforts. The basic elements of CBM include: clearly defined goals and objectives for monitoring; participatory design of a monitoring plan (including selection of appropriate monitoring sites, monitoring protocols, indicators for monitoring and determination of the frequency of monitoring); baseline data collection; data analysis; feedback; and critical evaluation of the monitoring methodology.

The negotiation that leads to agreement on how progress should be measured and the findings acted upon is a challenging process for all concerned as different stakeholders must examine their assumptions about what constitutes progress. Engaging and encouraging community participation in monitoring ensures such ownership at the local level. This can be a valuable source of information for aiding conservation and informed management decisions. It can also be a useful tool for environmental outreach as well as a means to connect scientists with experienced field personnel. It should be noted that CBM does not necessarily involve just the community. Appropriate expertise is critical during the implementation phase and periodically during the operational or monitoring phase to ensure that the monitoring suits both the community's and management's needs for information.

*Source:* EAF toolbox ([www.fao.org/fishery/eaf-net/topic/166272/en](http://www.fao.org/fishery/eaf-net/topic/166272/en)).



This document has been developed to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in fisheries, focusing on the small-scale sector.

ISBN 978-92-5-107900-3



9 789251 079003

I3420E/1/08.13