

# **Governance of Tenure in Small-Scale Fisheries: Key Considerations**

**Anthony Charles**

Saint Mary's University

Halifax Canada

e-mail: [tony.charles@smu.ca](mailto:tony.charles@smu.ca)

web: <http://husky1.smu.ca/~charles/>

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## 1. Introduction

FAO views tenure as the rules that “define how rights to land and other natural resources are assigned within societies” as well as “rights to use, control and transfer these resources”. Essentially, then, “tenure systems determine who can use what resources, for how long, and under what conditions”. Thus, tenure relates closely to the much-referenced shift in fishery thinking, over the past century or so, from a ‘freedom of the seas’ mentality of open access to a recognition of the fundamental limitations inherent in fish stocks. This point lay at the heart of the emergence of abundant literature, in the past couple of decades, on the importance of secure, well-defined ‘rights’ in fisheries – *use rights* that specify resource access, and *management rights* specifying who is to be involved in decision making.

This paper focuses primarily on considerations relating to recognizing, reinforcing or developing tenure systems in small-scale fisheries, and creating the right conditions for flourishing tenure systems that are both secure *and* fair. The focus here is on relating tenure to the many forms of rights in fisheries, and exploring key factors in recognizing and/or designing tenure systems, including linking of fishery rights and human rights, and local organizational capacity, legal space and empowerment within tenure arrangements. The goal is to provide insights relevant to the governance of tenure, with governance referring to ‘*the full range of public and private interactions taken to solve societal problems and create societal opportunities*’ through ‘*dynamic institutions and processes that permit key management interventions at the appropriate scales and times*’ (McConney and Charles, 2009).

The paper begins with an exploration of ideas relating to ‘secure tenure’ and fishery rights. Three subsequent sections examine the relationship of tenure to fishery use rights, management rights and human rights. These are followed by two sections on the recognition of existing tenure systems, and the design of new systems. Finally, section eight surveys four important factors of success in the governance of tenure, and the paper closes with a set of conclusions. The paper draws extensively on several key sources: (a) the 1995 Code of Conduct for Responsible Fisheries and related technical guidelines, particularly those concerning small-scale fisheries and their roles in poverty alleviation and food security, and the human dimensions of the ecosystem approach to fisheries, and (b) papers relating to the Global Conference on “Securing Sustainable Small-Scale Fisheries: Bringing together responsible fisheries and social development” (FAO, 2008) and the ‘Bangkok Statement’ produced by the Civil Society Preparatory Workshop (2008) for that Global Conference.

## 2. Exploring the idea of ‘secure tenure’

Tenure systems represent mechanisms to avoid or eliminate *open access* – which occurs when there are no limits on access to the fishery, so everyone has the right to fish. Experience with fisheries world-wide indicates the hazard of having a limited resource exploited by an unlimited fleet. In particular, unregulated ‘laissez-faire’ (free enterprise) exploitation of marine resources is

considered incompatible with long-term sustainability of fishery systems. More generally, there is widespread agreement that rights and ‘secure tenure’ are key means to ensure the sustainability of a fishery system. The fundamental idea is that under the right circumstances, those with secure access to fishery resources will be more likely to steward those resources for the future. The potential benefits of secure rights within a tenure system are seen to arise as well in terms of economic efficiency, social stability, and ease of fishery governance. There are, however, important caveats about the details of tenure arrangements, which will be discussed in this paper.

As with so many policy thrusts, the push for ‘secure tenure’ arrangements, along with the widely-accepted move away from open access toward ‘rights’, manifests itself in very divergent policy directions. Perhaps the dominant one comes from an industrialized fishery perspective, where the focus is on creating *new* use rights systems (perhaps because traditional tenure systems were lost or destroyed over time). In particular, the focus has been on promoting market-determined rights, notably through individual transferable quotas (ITQs, or what are now being re-branded, in the United States but with impacts beyond, as ‘catch shares’). In other situations, where quotas and perhaps even total allowable catches do not exist, the market-based approach may still be advocated, in the form of transferable fishing effort, for example. The premise in these situations is that no suitable tenure system exists, so a new one is needed, and the desirable choice is a market-based one.

While that premise, of the need for a new rights system, may hold in some cases, we know that in much of the world, tenure systems developed naturally over time, and the most cost-effective path to ensure secure tenure, and the benefits it produces, may be to recognize and reinforce those systems. On the other hand, promotion of market-based forms of tenure (typically based not on a comprehensive analysis of individual cases but often on an ideological approach) has led in various situations to serious negative consequences on fisherfolk and coastal communities. ITQs, in particular, have had detrimental effects on community sustainability and wellbeing, inducing a loss of fishery access in coastal communities, as those with access to capital (often urban-based) buy up use rights in the fishery. Indeed, in the past few years, this tendency has partially inspired a new direction in relation to small-scale fisheries, described below – to link fishery rights with human, social and economic rights, so as to better recognize both the broader concepts of ‘rights’ as well as the broader links of fisheries to wellbeing of fishing communities.

The point here is that ‘secure tenure’ invokes differing meanings and implications for different people. Those focusing on the well-being and human rights of small-scale fishers and fishing communities may view secure tenure in a positive light as a route to providing coastal fishers with more secure livelihoods, greater control over their future, as well as environmental sustainability benefits. Secure access combined with rights to be involved in management decision making mean that fisherfolk have a fighting chance to earn a livelihood from the sea, both today and tomorrow. On the other hand, those embracing market forces as a means to allocate fishing rights may invoke the same environmental sustainability benefits while also seeing secure tenure as beneficial in maximizing economic efficiency in the fishery, regardless of its impacts on wellbeing, resilience or sustainability of communities. Thus, there is a crucial need to go beyond a simple idea of the benefits of ‘secure tenure’ to a recognition of its positive *and negative* potential, and therefore the need both to be concerned about how it is implemented, and to ensure good governance arrangements for subsequent decision making about tenure.

So ‘secure tenure’ is not intrinsically a good thing – the *wrong* kind may well be harmful to the wellbeing of small-scale fishers and their communities. It is important, therefore, in analysing tenure systems, to understand at the outset all the objectives being pursued, and to ask the fundamental questions: tenure for what ends? tenure for whom? If a tenure system is already in place, and if it is effectively achieving the fishery objectives, and if it is widely accepted, then there may be no reason to change. On the other hand, if problems arise with the existing tenure system (as has been the case, for example, when previously dispossessed people were excluded from fishery access, as with indigenous people in Canada or non-whites in South Africa), then major change to that system may be considered desirable.

Accordingly, rather than the simplistic diagnostic that led, over the past few decades, to the promotion of an overly-narrow form of ‘rights-based management’ thinking (along with some unfortunately inappropriate policy measures), fishery governance requires more nuanced and context-sensitive perspectives on rights in small-scale fisheries. This requires recognizing, for example, that who has tenure, and how the rights are handled, makes a critical difference to the broader issues of community wellbeing, poverty alleviation, socioeconomic success and system resilience. Also important is a recognition that the governance of tenure relates to the use and management of resources, but not to the ownership of those resources *per se* (i.e., who owns the fish in the sea), and further, that *responsibilities* accompany rights and tenure, as identified in the FAO’s Code of Conduct for Responsible Fisheries. These, and other factors described in this paper, create the nuances to be taken into account in considering ‘secure tenure’.

### **3. Tenure and use rights**

Tenure addresses what is perhaps the most common concern of small-scale fishing communities, that of access to the resources they need for their livelihood and food security. Since tenure systems are defined as restricting who can have access to the fishery, and potentially how much fishing activity (fishing effort) the participants are allowed, or how much catch each can take, this is closely related to the idea of use rights (Charles, 2001, 2002, 2009) – ‘the right to use’, as recognised or assigned by the relevant management authority (whether formal or informal). It is important to reiterate that use rights refer to the right to ‘use’ the fishery, and such rights should not be misinterpreted as implying ‘ownership’ of the fish resource itself. This crucial distinction has been confused at times, with use rights promoted by suggesting that fishers holding rights will in fact ‘own’ fish in the sea, just as one may own their fishing boat.

Tenure, through use rights, is referenced in the Code of Conduct Article 6.18:

*‘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’* (FAO 2005, paragraph 2.7.6)

Furthermore, FAO’s Code of Conduct (1995, Article 10.1.3) states, not only for fisheries specifically but pertaining to coastal resources in general:

*‘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...’.*

In small-scale fisheries, use rights within tenure systems may arise as access rights – designating who can fish, whether through informal means or formal licenses, and potentially their fishing space as well – and potentially (but less likely) as rights to specific levels of fishing effort, i.e. effort rights, or of fish catch, i.e. harvest rights, with those rights allocated based on fishing activity or catch, for each fisherfolk unit.

Access rights are predominant in small-scale fisheries, and are the focus of attention for fisherfolk organizations in the *Bangkok Statement* to the Global Conference on Small-Scale Fisheries (Civil Society Preparatory Workshop 2008). The Statement highlights the need for tenure systems that “*Guarantee access rights of small-scale and indigenous fishing communities to territories, lands and waters on which they have traditionally depended for their life and livelihoods*” and that specifically “*Protect access of women of fishing communities to fish resources for processing, trading and food, particularly through protecting the diversified and decentralized nature of small-scale and indigenous fisheries*”.

Among access rights arrangements, those involving spatial rights have a particularly long history in traditional, small-scale/artisanal and indigenous fisheries worldwide. Such tenure systems arise as Territorial Use Rights in Fishing (TURFs) and Customary Marine Tenure (Christy 1982). These involve rights assigned to individuals and/or groups to fish in certain locations, often on the basis of long-standing tradition (‘customary tenure’). Cycon (1986, p.5) notes that “traditional sea tenure systems have operated, and continue to operate, around the world” and that these systems have great potential to provide relatively stable socially-supported tools of fishery management. Indeed, TURF systems have a particularly long history in traditional, small-scale and indigenous fisheries [Acheson (1975), Johannes (1978), Ruddle et al. (1992)]. As with any management mechanism, TURFs and CMT are not always suitable, but in the right circumstances, they may provide an efficient, effective means of fishery management. For example, in the fisheries of Oceania, while traditional CMT/TURF systems declined as fisheries were ‘modernized’, there is increasing recognition of the efficiency of such systems, and initiatives to reinforce them.

Access rights are clearly beneficial to those holding them, whether an individual fisher, a fishers’ organizations, or a fishing community. If the access rights within a tenure system are managed well, they can reflect a desired balance of social, cultural, economic and environmental goals, they can assist in reducing conflict, they can enhance food security and livelihoods for small-scale fishers and fishing communities, and they can facilitate the protection of local ecosystems, notably if rights-holders support or initiate conservation actions. Furthermore, as noted by FAO (2005), access rights that involve ‘*Promoting the small-scale over the industrial sub-sector may bring efficiency gains for the fisheries as a whole in addition to social benefits for the small-scale sub-sector.*’

Despite the potential benefits of access rights, it should be noted that there are significant issues to be addressed in tenure systems with respect to restricting fishery access. These relate especially to equity considerations, and to impacts on poverty and vulnerability of households and communities (see, e.g., Béné et al., 2010). The access restrictions put in place within a tenure system must be carefully considered and evaluated, as problems can arise with too *little* access as well as with too much. Accordingly, in some circumstances, it may be desirable to have the resource widely available *within* a *limited* community – so that access, while prohibited to outsiders, is unlimited for the fixed population of local users. Panayotou (1980: p.146) made the

point that “in the presence of widespread unemployment outside the fishery sector, not only is a reduction in the number of small-scale fishermen unwarranted, but even restrictions of entry for potential fishermen cannot be justified”. In a study of fisheries in New England (U.S.), Townsend (1985) noted that the very existence of a local-level *right to fish* enhanced community stability by ensuring a base-line occupation in the community, a readily-available fall-back job in

Note that any form of use rights may be held at a variety of organisational levels, depending on the fishery objectives, i.e. by individuals, by communities or regions, or by specific groupings such as fishing vessel or gear sectors. (A particular discussion of community-held rights will be presented below.) Furthermore, use rights can be viewed in parallel to the many forms of regulation available to fishery managers – such as area closures, limited entry and other input controls (effort limitation) and output controls (quotas) – if these regulations are seen from a different perspective, not as restrictions but rather as the rights held by fishers or fishing communities to use the fishery resources. For example, a program of limited entry licensing may be seen as an ‘input control’ from the perspective of resource management, but each license also conveys a ‘right’ to access the fishery. In this sense, the tenure arrangement specifies certain individuals, groups or communities who have the right to ‘use’ the fishery (i.e., to go fishing) while all others do not have that right.

Finally, note that the nature of a tenure system will depend on the qualities inherent in the corresponding use rights. The characteristics a given use right has may vary from case to case, but some possibilities include: security of the right, durability (longevity of the right) and exclusivity (ability to exclude others from infringing on the right, i.e., enforceability). The presence of each of these characteristics may have both positive and negative implications in any given situation, so the issue of which should be attached to a certain use right needs careful attention.

#### **4. Tenure and management rights**

While tenure systems may be seen as focused largely on “who can use what resources, for how long, and under what conditions”, they are also seen as dealing with “rights to... control and transfer these resources”. Thus a tenure system may specify who has the right to be involved in fishery management decision-making – i.e. through *management rights*. In some cases these rights may be held entirely at a local level, and the tenure system will be oriented at that scale. Often, however, the State has the responsibility for management, although it may delegate management functions – the issue is that of who else *is or should be* involved in fishery management, whether alongside government or delegated by government.

Experience in fisheries throughout the world has demonstrated that while undoubtedly secure access rights are crucial for the wellbeing of small-scale fishers, this must be accompanied by suitably-distributed management rights, since effective management requires the support and participation of fishery stakeholders, and conversely, management practiced in a top-down manner is quite likely to fail. Specifically, while the State typically maintains responsibility for fishery management, it has become clear over time that to make management more effective, and conservation more likely, requires the support and preferably the involvement of fishers and fishing communities. Accordingly, management rights are referred to in the Code of Conduct’s (Paragraph 6.13) call to ‘*facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision-making with respect*

*to the development of laws and policies related to fisheries management, development, international lending and aid’.*

Management rights also fit within the ‘vision’ for small-scale fisheries described by FAO’s Advisory Committee on Fishery Research (ACFR) Working Group on Small-Scale Fisheries (2004), which states the desirability that *“fishers, fish workers and other stakeholder have the ability to participate in decision-making, are empowered to do so, and have increased capability and human capacity, thereby achieving dignity and respect”*. This is compatible with the call in the *Bangkok Statement* to the Global Conference on Small-Scale Fisheries (Civil Society Preparatory Workshop 2008), to *“Recognize and implement the rights of fishing communities to restore, protect and manage local aquatic and coastal ecosystems”* and to *“Guarantee the equal participation of small-scale and indigenous fishing communities in fisheries and coastal management decision-making, ensuring their free, prior and informed consent to all management decisions”*.

This leads to the approach of *co-management*, through the joint development of management measures by fishers, government and possibly local communities – see, for example, Berkes et al. (2001), Pinkerton (1989), Pomeroy (2001) and Wilson et al. (2003), among many others. As FAO (2005) notes, *‘Co-management is also expected to promote improvements in public accountability and to foster empowerment of poor and vulnerable groups’*.

Who exactly is to be involved in fishery decision-making is a key question to be considered in the governance of tenure. Who should hold fishery management rights? Government is typically involved, and the above discussion suggests that fishers should be among the rights-holders. Indeed, at the operational level of management, involving measures that affect the fishing process directly, it is particularly important for fishers to hold management rights, so as to encourage compliance at sea. At the strategic level, debates over the fishery’s overall objectives and policy directions are typically matters of public interest, so wider participation may be desired – with the general public, nongovernmental organisations (NGOs) and fishing communities typically seen as legitimate interested parties, in addition to the fishers. For example, legislation in the Philippines places management rights over coastal ‘municipal fisheries’ (notably small-scale community-based fisheries) clearly with local municipalities.

In the context of small-scale fisheries, a particularly important management rights option to consider is that of community-based fisheries management. This is essentially a matter of assigning management rights – and indeed organizing the tenure system – specifically on a community basis (whether to the set of fishers in a community, or to the community itself). It thus takes a ‘place-based’ approach to involving fisherfolk, and potentially others within a coastal community or coastal region, in fishery management decision-making.

While community management rights cannot be expected to work in every fishery, Berkes (1986, p.228) proposes that a community-based approach *‘provides a relevant and feasible set of institutional arrangements for managing [particularly] small-scale fisheries in which the community of users is relatively homogeneous and the group size relatively small’*. Other aspects facilitating effectiveness are cohesiveness of the community involved, experience in and capacity for local management, geographical clarity of the community, a modest overall size and extent, and an institutional framework in which rights are specified through a combination of legislation, government decisions and traditional/informal

arrangements (Charles, 2011). Furthermore, in some cases, a factor in success may be an understanding and revival of former management systems (Panayotou 1982).

While community rights may not be feasible in the absence of these conditions, when those conditions are met, the benefits of such a system of rights can be considerable. Community-based rights systems can draw on local institutions, as well as moral pressure, to create incentives for resource stewardship. This in turn can increase management efficiency, and improve the implementation of local enforcement tools. Furthermore, a key element with community rights is that the system can take into account a broader range of fishery participants within a community, including boat owners/captains, crew members, shore workers, etc., and thereby support equity and fairness goals (Graham *et al.*, 2006).

## **5. Tenure and human rights**

The original Code of Conduct for Responsible Fisheries (FAO, 1995; article 6.18), while containing few explicit references to small-scale fisheries, does state:

*‘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.’*

This provides guidance in considering fishery tenure systems, as it encompasses two specific kinds of rights – the right ‘to a secure and just livelihood’ and the right to ‘preferential access, where appropriate, to traditional fishing grounds and resources’. As noted earlier, this reflects a broadening of the narrow version of ‘rights-based management’ that has been a focus of fishery management for several decades. The right ‘to a secure and just livelihood’ relates to the human rights, as well as social and economic rights, of fishers, households and communities. Until recently, these human rights have rarely been included in fishery policy debates, but now this is changing within legal and policy debates. Notably, attention has been drawn to the matter by international organizations of fishers and fishworkers and their supporters, such as the World Forum of Fisher People (WFFP) and the International Collective in Support of Fishworkers (ICSF). Now, governance discussions on tenure systems, and specifically fishery rights (relating to access to fishery resources and involvement in management decision-making), are seen as best discussed alongside human rights, particularly in small-scale fisheries [e.g., FAO (2007); Civil Society Preparatory Workshop (2008)].

This reflects recognition of two realities. First, in a small-scale fishery setting, fishery rights may impact on the wellbeing and security of fishers and fishing communities, with effects that may be positive (given suitable recognition, design and implementation of rights) or negative (Charles, 2001; Béné *et al.*, 2010). Second, fishery rights can affect human rights, and conversely, the pursuit of human rights can alter how fishery rights are designed and implemented, such as decisions concerning who should hold those rights, and how they should be managed (Charles, 2008, 2009).

Such linkages are important in particular in addressing the challenge of poverty in fishing communities (Béné *et al.*, 2007). A tenure system for small-scale fisheries would take a suitably broad view of the fishery and fishing communities (FAO 2007, p. 6):



*‘A rights-based approach, in defining and allocating rights to fish, would also address the broader human rights of fishers to an adequate livelihood and would therefore include poverty-reduction criteria as a key component of decisions over equitable allocation of rights, including in decisions over inclusion and exclusion, and the protection of small-scale fishworkers’ access to resources and markets.’*

The WFFP and the ICSF, together with many other civil society organizations, defined a human rights approach in fisheries within the ‘Bangkok Statement’ (Civil Society Preparatory Workshop, 2008) noted above. The approach of ICSF-WFFP (2009, p.3) includes the rights of fishing communities:

*‘(a) to their cultural identities, dignity and traditional rights, and to recognition of their traditional and indigenous knowledge systems’, (b) to access ‘territories, lands and waters on which they have traditionally depended for their life and livelihoods’, (c) ‘to use, restore, protect and manage local aquatic and coastal ecosystems’, (d) ‘to participate in fisheries and coastal management decision-making’, (e) ‘to basic services such as safe drinking water, education, sanitation, health and HIV/AIDS prevention and treatment services’ and (f) of all fish workers ‘to social security and safe and decent working and living conditions’.*

Furthermore, ICSF and WFFP (2009, p. 3) specifically note the rights of women to *‘participate fully in all aspects of small-scale fisheries’* and to have access to *‘fish resources for processing, trading, and food, particularly through protecting the diversified and decentralized nature of small-scale and indigenous fisheries’*.

Tenure is closely related to sustainable livelihoods and poverty reduction in the context of small-scale fisheries. Allison and Horemans (2006, p. 760) noted that in fisheries, *‘Livelihoods approaches are evolving and merging with rights-based approaches and community-development’* and that *‘Addressing governance therefore remains the key challenge for both poverty reduction and responsible fisheries’*. Fundamentally, as stated by FAO (2007), *‘Adopting a rights framework also reminds fishery managers, community leaders, fish consumers and donors that small-scale fishers have a right to development, and that governments are accountable for helping them realise that right.’*

Finally, in considering the need to integrate fishery rights with human rights, FAO (2005) suggests the need for actions beyond the fishery itself:

*‘States should consider legislation in support of the various international conventions on: right to food; women’s rights; the right to earn a living; the right not to be discriminated against; the right to education; and other secure outcomes ....’*

In a similar vein, the *Bangkok Statement* to the Global Conference on Small-Scale Fisheries (Civil Society Preparatory Workshop 2008) calls on nations to *“Guarantee the rights of all categories of workers in the fisheries, including self-employed workers and workers in the informal sector, to social security and safe and decent working conditions.”*

## **6. Recognizing existing tenure systems**

The benefits of tenure systems (notably access and use rights) for fishers and communities, in providing some security over their fishing grounds, has motivated the support for and emergence of such arrangements in a wide range of locations around the world.

Documentation of past and present ‘indigenous’ use rights includes, for example, many cases in the Pacific Islands – see, e.g., Johannes (2002); Ruddle (1989); Veitayaki (1998). For further discussion of this, see Dyer and McGoodwin (1994) and Hanna et al. (1996). Béné et al. (2010, p.338) has suggested that the emergence of rights systems is a general reality:

*‘Anyone who has worked closely with small-scale fisheries in developing countries knows that the access to fisheries (in particular, small-scale coastal or inland fisheries) is always conditioned by some form of formal or informal, symbolic or substantial, control systems generally established at the local/community level.’*

If a tenure system already exists, then only if it is for some reason unsustainable or unsuitable will it be necessary to implement a new system. Indeed, if the system is well accepted, suitably effective, and meeting current objectives in the fishery, as well as criteria of equity and sustainability, then the key may well be to accept and reinforce these traditional rights.

The *Bangkok Statement* to the Global Conference on Small-Scale Fisheries (Civil Society Preparatory Workshop 2008) notes the need to “*Ensure the integration of traditional and indigenous knowledge and customary law in fisheries management decision-making*” and to “*Protect the cultural identities, dignity and traditional rights of fishing communities and indigenous peoples*”.

At the same time, there will be a need to examine issues of equity and fairness in existing tenure systems. What if the status quo set of use rights is seen as inappropriate in the context of broader national priorities and policy directions? In South Africa, for example, national policy goals drove use rights decisions in the fishery sector, as the transformation from a period of apartheid into one of democracy meant that broadening the right to access the fishery was a matter of urgency (Cochrane and Payne, 1998). The former allocation of use rights did not pass the test of equity and fairness – and even today, there are concerns over the distribution of fishery access. The reality is that policy directions need to provide guidance on which parties in the fishery are to receive priority with respect to tenure arrangements.

Finally, it is also important to keep in mind that decisions involving tenure can affect not only current fishers but potential participants as well. This implies that it may be considered unfair to restrict participation in discussions of use rights to only the current fishers.

## **7. The design of tenure systems**

The previous section discussed the likely scenario in which a fishery tenure system already is in place. However, what if no use rights arrangements exist, or current rights are seen as ineffective or unacceptable? Then a suitable tenure system will need to be designed and implemented, given the recognized desirability of restricting fishery access. Various options exist, and no single approach will be applicable everywhere – each use rights option has its inherent advantages and limitations, so that what is ‘best’ will depend on the specific situation. As Nomura (2006, p.25) has noted:

*‘...fisheries policies, management approaches—and fishing rights—need to be tailored to the specific context of countries and localities with respect to the fisheries in question, the social setting, culture, etc.’.*

This reinforces the broad point of Kuperan and Raja Abdullah (1994, p. 306):

*‘Planning and setting objectives for management of small-scale coastal fisheries requires a good understanding of what is meant by small-scale coastal fisheries, the resource attributes, the traditional values of fishing communities, the institutional arrangements and the overall environment in which small-scale fisheries operate.’*

In designing a tenure system, factors to take into account will include (a) societal objectives, (b) relevant history and traditions, (c) relevant social, cultural and economic environment, (d) key features of the fish stocks and the ecosystem, and (e) financial and personnel capacity of the particular fishery (Charles, 2002). While there are no clear rules concerning which approach is most compatible with which fishery, experience provides some tentative guidance. For example, (1) sedentary fishery resources may be especially amenable to the use of territorial rights (TURFs), (2) access and/or effort rights may be preferable to harvest rights (quotas) if biomass estimates are unavailable or unreliable, or if catch monitoring is too expensive, and (3) in fisheries with many different gear types, harvest rights may be preferable, while management of fisheries in which the fishing technology is relatively uniform may focus on effort rights.

Of course, these points do not cover all possible scenarios, and in any given case, the importance of each of the fishery characteristics must be weighed in assessing the pro’s and con’s of tenure options, before arriving at a desired solution. Indeed, any single approach may be unable to produce optimal results, so a tenure system may best involve a ‘portfolio’ of use rights - a combination that is most acceptable, helps the fishery operate best, and maximises benefits for the given context.

Processes for allocating use rights can also be challenging. Some approaches, such as auctions or ongoing markets for use rights, are not generally suitable for small-scale fisheries, since the community and social values that are crucial in such fisheries are typically ignored in these approaches. For example, as Panayotou (1982, p.43) notes, *‘Auctioning or market sale of a limited number of licences is certain to exclude many small-scale fishermen who have poor access to funds to bid for or purchase a licence.’* On the other hand, use rights allocated on a collective basis directly to communities, fishing sectors or other identifiable groups can help in empowering communities and allowing for local values to be reflected, but must ensure that possible imbalances in power within the community do not lead to inequitable results in the allocation of rights.

A further issue regarding tenure is that of transferability – whether the rights can be transferred to others. This could be permanently (e.g. by selling those rights, or handing them down in a family from one generation to the next), or temporarily (e.g. by transferring the rights to another fisher within a fishing season). The choices can have large impacts on small-scale fisheries and fishing communities. There is often merit in only having temporary transferability, within a fishing season (and with the rights then reverting to the original fisher at the end of the season) as a means to provide important short-term flexibility while maintaining long-term stability in the distribution of the rights. For permanent transfers, good practices call for attention to local cultural and institutional factors. Subject to this, transferability is considered reasonable within households, or even families, but not through the use of market mechanisms (buying and selling rights). The latter tends to lead to concentration of control over rights to access the fishery, and a shift of these rights out of

small communities and into larger centres. This in turn has negative effects on rural livelihoods, on community stability and sustainability, and on equity in the coastal economy (Copes and Charles, 2004).

Not only the type of use rights but the allocation of the use rights needs consideration. As noted above, use rights can be allocated to individual fishers or held in a collective manner by a community, or a fishers' association. There is a long history in small-scale fisheries of fishing rights being held collectively within a particular community (cf. Charles, 2006; Kurien, 2000, 2007), and as Panayotou (1982, p.44) has suggested some time ago, *'The revival and rejuvenation of traditional community rights over coastal resources offer, perhaps, the best possible management option for scattered, remote and fluid, small-scale fisheries.'*

Indeed, tenure arrangements based on group or community-defined rights have the potential to bring people in a community together to use the fishery resources to suit their specific local situation, to maximize overall benefits, and to reflect community values and objectives (Willmann, 2000; Charles, 2001). The Code of Conduct technical guidelines argue that these community-based rights are particularly suitable to 'pro-poor' policies for small-scale fisheries (FAO, 2005):

*"By restricting the access to the resources to a well-identified group, community property rights help to reduce the risks of overfishing, thus preventing the fishers from falling into the downward spiral of poverty and resource overexploitation associated with open access regimes. At the same time the fact that these property rights are granted to groups rather than to individuals may ensure a certain level of equity within the community by allowing all members (including the poorest) to access the fishing grounds and therefore to rely on fishing to sustain their livelihoods. The concept of community property rights is therefore particularly attractive from a poverty alleviation perspective in the context of small-scale fisheries in developing countries."*

One form of collective right is that of exclusive artisanal fishing zones. Sharma (2008) notes that *"Many countries around the world, such as India, Peru, Chile, Thailand, Malaysia, Marshall Islands, Guinea Bissau, Mauritania, Venezuela, Indonesia and the Philippines have introduced exclusive artisanal fishing zones"* while also recognizing that *"enforcement of these zones remain a persistent problem..."*. In some cases these zones may be policy measures while in other cases they may be included in legislation (Sharma 2008).

## **8. Factors of success in the governance of tenure**

### **(a) Legal space and empowerment**

For the governance of tenure in small-scale fisheries to include the desired participation of fishers and fishing communities in management and policy-making will often require accompanying efforts at empowerment, and at providing the 'legal space' (notably through legislation and clear policy) for fisher organizations and fishing communities to be able to manage access rights and take on management responsibilities. FAO (2005) notes that participation in management needs to cover the spectrum from the harvesting process to higher levels of decision making:

*‘...small-scale fishers and fishworkers must be included in the process of developing legislation (both within fisheries and in other sectors), even if the process is prolonged. Only by doing so can it be hoped that conflicts will be minimized and that legislation will really address the needs and potentials of poor small-scale fishers and fishworkers and have a measure of legitimacy.’*

If the focus is on ‘pro-poor’ approaches, empowerment must go beyond policy and legislation to look also at how participatory processes are implemented at the community level. FAO (2005) cautions that:

*‘Devolving management responsibility to the local level, for example, may not be sufficient to ensure the interests of the poor are adequately represented. “Communities” are usually stratified by wealth and power, with local elites and decentralized governments sometimes colluding to exclude the less powerful. ...fisheries development programmes should examine ways in which “traditional” leadership, local government and civil society can work together to ensure that the interests of poorer and marginalized groups are taken into account in decentralized resource management.’*

Allison et al. (2010) notes that *“Transition to (human + property) rights-based fishing requires relationships between fishing rights-holders and duty-bearers (such as governments) to be transparent and based on mutual trust and accountability. ...Community institutions must be strengthened and approaches must be cross-cutting and integrative.”*

The latter point about community institutions implies that empowerment requires local initiatives that go beyond the fishery per se. As FAO (2005) indicates:

*...Community development and empowerment through the provision of education, social services, welfare and health improvements, are all important in ensuring that the contribution of small-scale fisheries to poverty alleviation and food security is increased, and that fisheries-specific strategies aimed at doing so are likely to be successfully implemented.’*

### **(b) Organizational capacity and institutional development**

Related to the above efforts at empowerment and provision of legal space, to support effective governance of tenure, is the reality of an accompanying need to support and build the *capacity* of organizations/associations of fishers, as well as community institutions. Furthermore, 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. Overall, then, good governance implies suitable attention to a wide range of capacity and institutional development. As FAO (2005) has highlighted:

*‘Especially important at the organizational, institutional and individual levels is the need to... enhance the capacity in organizations representing and working for small-scale fisheries – e.g. those concerned with technical fisheries management issues, social welfare, credit/savings and marketing, and political negotiation or lobbying.’*

### **(c) Addressing food sovereignty and household/community well-being**

Tenure arrangements can strongly affect the interaction of small-scale fisheries with food security and livelihoods, on the one hand, and human rights and fishery rights, on the other hand (Schumann and Macinko, 2007). The importance of small-scale fisheries to food

sovereignty and community well-being is reflected in FAO's Code of Conduct (1995) where Article 11.2.15, in addressing international fish trade and export production, notes that:

*'States, aid agencies, multilateral development banks and other relevant international organizations should ensure that their policies and practices... do not result in environmental degradation or adversely impact the nutritional rights and needs of people for whom fish is critical to their health and well-being and for whom other comparable sources of food are not readily available or affordable.'*

In connecting small-scale fisheries with goals of food sovereignty and local well-being, Allison et al. (2010) recommend that authorities *'Integrate responsible fisheries policies with wider poverty reduction policies in countries where fisheries are economically important.'*

#### **(d) Linking to beyond-fishery policy measures and livelihood diversification options**

In small-scale fisheries, tenure arrangements are likely to be affected by, and have impacts on, realities beyond the fishery. A "bigger picture" perspective is needed, recognizing that the fishery 'silo' really connects to a range of policy and legal frameworks (De Young et al., 2008) and to the well-being of coastal communities. For example, Allison et al. (2010) note that beyond-fishery needs include improving *'value-addition in the supply chain, infrastructure, market cooperatives, and access to credit'* and *'addressing deficiencies in fishing people's rights of equitable access to health care, education, and community services'*. Furthermore, as noted in the Code of Conduct technical guidelines (FAO, 2005), it is necessary for fishery governance to deal with *'(i) cross-sectoral policies at the national level, (ii) policies in other sectors, and (iii) local policies – all of which can impact on small-scale fisheries'*. Accordingly, *'Those wishing to support the contribution of small-scale fisheries to poverty alleviation and food security should thus strive to engage in policy processes in other sectors.'*

Similarly, the Code of Conduct's Article 10.1.2 specifically refers to fisher participation in broader decision-making for coastal areas:

*'In view of the multiple uses of the coastal area, States should ensure that representatives of the fisheries sector and fishing communities are consulted in the decision-making processes and involved in other activities related to coastal area management planning and development.'*

Moving to a 'bigger picture' perspective will involve better understanding linkages among the various forms of rights, both within the fishery system itself and in a multi-sectoral context, so as to produce more comprehensive approaches, ones better able to improve wellbeing and safeguard livelihoods. For example, ensuring access rights to subsistence fishing in coastal communities may serve food security goals, and incorporating post-harvest aspects in rights discussions may help reinforce the rights of women involved in marketing fish. To this end, Allison et al. (2010) particular recommend that governments *'Support improvements in the broader governance context including access to justice and mechanisms for conflict resolution by advocating for the fair treatment of fishers under the rule of law and their equitable participation in inter-sectoral decision-making.'*

## **9. Conclusion**

The governance of tenure in small-scale fisheries requires the right ingredients and the right processes. This paper has reviewed many of the key considerations in this regard. In the end, it is

crucial to look together at rights to access fishery resources (use rights) and rights to manage the fishery (as in co-management), to blend these together with social, economic and human rights, and to place a particular focus on collective or community rights (which often work particularly well in small-scale fisheries). In this way, we are creating a modern view of ‘rights-based fishery governance’, that looks at use rights and management rights, together with social, economic and human rights – of individuals as well as communities. The resulting more comprehensive and more just tenure system challenges the simplistic mode of rights-based thinking – as crucial a move for governance as the challenging of the equally-simplistic “Tragedy of the Commons” over the past couple of decades.

The new thinking recognizes that in small-scale fisheries, there are benefits of secure access to the fishery – more security for the rights-holders and a greater incentive to take care of the resource into the future – but attention is needed to the details of the fishing rights, to avoid negative impacts. This attention relates to (1) who holds the rights (which matters to community wellbeing, food security, and poverty alleviation), (2) whether there are pre-existing tenure arrangements (which, in most cases, likely should be reinforced, for the sake of efficiency, equity and good governance), and (3) how fishing rights connect with other rights (since there can be significant impacts on social, economic and human rights). As Hersoug (2006, p.7) notes, drawing on the work of Béné (2003) on poverty and fisheries:

*‘The point is simple: rights-based fisheries management may secure some type of ownership, be it individual or collective. But we need to secure rights for the right people. That can only be done through institutional reforms...’*

From a small-scale fishery perspective, this implies the need for government support in protecting and/or enhancing the tenure arrangements of fisherfolk. For example, larger-scale fishing enterprises may exploit the same fish stocks as small-scale fishers, and may threaten (whether deliberately or indirectly) to take over increasing proportions of the fishing space or fishery activity, i.e. to shift the tenure arrangements in their direction. In such situations, while small-scale fisherfolk may be keen to hold both secure access rights and meaningful management rights, they may also see an important role for government in the governance of tenure, particularly in mediating fishery tenure debates.

Accordingly, while the role of ‘good governance’ with respect to fishery tenure may relate to local management of tenure within a small-scale fishing community, it also includes the actions of governments in creating the policy environment and policy space for secure *and* fair tenure arrangements to succeed. First, tenure systems, of various forms, already exist in many fisheries, and need to be recognised. Second, if there is no tenure arrangement in place, or if it is widely considered ineffective or unacceptable, a suitable replacement must be developed and implemented – but must incorporate fishery rights and human rights, and must be appropriate to the cultural and historical situation, the policy directions, and the capacities of the particular fishery.

Third, attention must be paid to how tenure and fishery rights relate to the overall objectives of development policy, applying a broad perspective that must include post-harvest aspects, and must look beyond the fishery ‘silo’ in addressing rights. Fourth, thinking on tenure arrangements must be connected with that on the sustainability of the fishery – as the FAO Code of Conduct for Responsible Fisheries (1995, article 6.1) states, *‘The right to fish carries with it the obligation*

*to do so in a responsible manner...'*. A key aspect in moving toward responsible fisheries thus lies in developing effective and accepted sets of both rights and responsibilities – both a broader perspective on rights-based management, and a suitable focus on 'responsibilities-based fisheries management'.

All of these considerations must be brought to bear in exploring and evaluating existing tenure arrangements, and if necessary, creating new arrangements. The governance of tenure is undoubtedly a complex and sensitive task, involving as it does this complex blend of use rights, management rights and human rights, but as should be clear, the importance of the 'right' tenure system cannot be over-estimated if small-scale fisheries are to meet their potential as sustainable sources of livelihoods and wellbeing.

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