

**SMALL-SCALE FISHERIES:
On Rights, Trade and Subsidies**

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ABSTRACT This paper provides a preliminary exploration of current debates over the nature and interaction of rights within small-scale fisheries, and the connection of these rights with issues of global trade, subsidies and food security. Specifically, the paper highlights linkages between fishing rights and human rights; the applicability of these rights to discussions of fishery markets and trade; and how a focus on rights, together with Millennium Development Goals and food sovereignty initiatives, can inform global trade negotiations and fishery subsidy reform.

Introduction

In recent years, we have seen several global imperatives impacting on the world's fisheries and their governance. First, the Millennium Development Goals (MDG: United Nations 2000), and efforts to achieve them, are driving the increasing attention being paid to human rights, poverty alleviation, and the enhancement of food security and food sovereignty. In fishery discussions, this is particularly relevant in the case of small-scale fisheries. Second, pursuit of the MDG combines with a focus on 'good governance' of natural resources to produce a policy emphasis on ensuring that resource-dependent communities, in small-scale fisheries and elsewhere, have secure tenure and rights over access to resources, as well as 'management rights' to participate in decision making processes (FAO 2009). Third, global concerns over depleted fish stocks have converged with initiatives for trade reform, leading to active discussion of the nature and role of subsidies in fisheries (Sumaila *et al.* 2010). Such subsidies are especially of concern in industrial fisheries, but there is a need to understand how they affect small-scale fisheries as well.

How do these three avenues of fishery-related debate inter-relate on the international scene? On the one hand, one major avenue lies in connecting human rights (including social and economic rights) and secure fishery access rights, notably in small-scale fisheries. On the other hand, fishery trade and subsidy issues must be linked to MDG-oriented goals of food security and food sovereignty, as well as to fishery rights and human rights. This paper provides a preliminary exploration of these various interactions.

An initial caveat is important. The many categorizations of small-scale fisheries (subsistence, artisanal, etc.) and their diversity of forms imply that any broad discussion of these fisheries cannot deal with all the nuances of specific situations – a small-scale fishery in one location will not necessarily look similar to

one elsewhere. However, small-scale fisheries do share a set of key characteristics, particularly when seen in comparison with larger-scale or industrially-oriented fisheries, and these commonalities have made it useful to speak of small-scale fisheries collectively – especially in a context such as international trade. Accordingly, this paper explores current debates over the interaction of rights, trade, subsidies and food sovereignty within a broad context of small-scale fisheries globally.

Rights

The FAO's Code of Conduct for Responsible Fisheries (FAO 1995), widely accepted internationally as laying out key directions for fisheries into the future, focuses (in article 6.18) on rights, particularly in relation to small-scale fisheries:

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.

There are two key elements in this statement: the right to “a secure and just livelihood” for small-scale fishers, and their right to “preferential access... to traditional fishing grounds and resources”. These two aspects reflect the two main avenues of discussion in relation to rights in fisheries policy and governance – the first could be said to relate to social and economic rights (within a broader package of human rights) while the second relates specifically to ‘use rights’ determining who can access fishery resources.

While such fishing rights may be seen as inherently a part of social and economic rights (i.e., as a determinant of the capability to earn a livelihood and achieve food sovereignty), within fishery discussions they are seen typically as part of fishery management and governance. Thus ‘rights-based management’ includes rights to fishery access and in some cases to quantitative levels of catch or fishing effort, as well as to ‘management rights’ governing participation in fishery decision making. There is a vast literature on use rights and management rights in fisheries (for example Charles 2001, 2002, 2009; Christy 1982; Neher *et al.* 1989; Pinkerton 1989; Pomeroy 2001; Ruddle *et al.* 1992; Veitayaki 1998; Wilson *et al.* 2003). This body of work covers specific management instruments (such as territorial use rights, limited entry licensing and quantitative quota rights) as well as broad aspects of governance (for example collaborative and participatory approaches through ‘co-management’).

While fishery rights (and rights to resource access more generally) would naturally form part of the consideration of human rights, particularly social and economic rights, until recently the reverse was not the case – discussion of rights-based management in fisheries took place without explicit reference to human rights. In reality, however, there are clear and important relationships between

these forms of rights (Charles 2009), which FAO (2007:6) connects together in addressing small-scale fisheries, as follows:

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.

By adding a human rights-based 'lens' to the thinking around access and use rights, a more balanced view of rights-based fisheries management is achieved (Charles 2011). In particular, decisions regarding fishery access and use need to take into account human rights considerations. However, while human rights are 'universal', a human rights perspective does not imply 'universal' access to fisheries, and unlimited exploitation. That would be counter to the fundamental reality that since small-scale fisheries (like all others) are susceptible to over-exploitation, limitations on use of the fishery, in order to achieve environmental sustainability, is necessary for long-term food security, poverty alleviation and other development objectives. Put another way, the right to fishery livelihoods can be seen as applying also to those in future generations, so as Allison *et al.* (2011) indicate, 'As well as defining rights to fish, the rights of present and future generations to benefit from the resources should be included.'

This can build on the considerable evidence globally of effective local self-management having evolved within small-scale fisheries, as one of the 'benefits of the commons'. However, the fact remains that many small-scale fisheries do suffer from over-exploitation, in which case there is a need for rebuilding depleted resources and addressing the roots of over-fishing. This requires finding the 'right form of rights' over access and use – to ensure that small-scale fisherfolk have secure access and incentives to support and be involved in stewardship of resources. Overall, then, adding a human rights dimension to discussion of access and use rights implies that among the range of choices compatible with long-term sustainability, options superior from a human rights perspective would be preferable.

Markets, Trade and Food Sovereignty

Consider now the three inter-related matters of markets, trade and food security, in relation to small-scale fisheries (for example De Young *et al.* 2008). It is clear that the right to '*a secure and just livelihood*' described in the FAO Code of Conduct for Responsible Fisheries (quoted above) cannot be secured without including the post-harvest sector of the fishery. Market and trade components, as well as the fish supply chain, determine the value-added from the catch, the price (if sold in a market), and indeed the eventual benefits to the fishers – as well as to all those in the post-harvest sector itself.

Therein lies the importance of ‘*protection of small-scale fishworkers’ access to... markets*’ (FAO 2007: see above), and of a role for rights – both human (including social and economic) rights and fishing (access and management) rights – in the post-harvest components of the fishery. Indeed, the Civil Society Preparatory Workshop (2008), in its statement on small-scale fisheries (articles 17, 18, 19 and 20), focuses on three key aspects in linking international trade and fishing community rights:

- Ensure that international trade does not lead to environmental degradation or undermine the human rights and food security of local fishing communities;
- Put in place specific mechanisms to ensure that trade promotes human development, and that it leads to equitable distribution of benefits to fishing communities;
- Effectively involve fishing communities in negotiations dealing with international trade in fish and fish products;
- Guarantee institutional arrangements that give priority to fish for local consumption over fish for export or for reduction to fishmeal.

An important example of this relates to reinforcing the rights of women involved in marketing fish. Allison et al. (2011) 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, ICSF and WFFP (2009:3) specifically note the rights of women 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’, and to utilize ‘fish markets, particularly through provision of credit, appropriate technology and infrastructure at landing sites and markets’.

The right to food (and food sovereignty) is another avenue that links markets and trade to human rights in small-scale fisheries, which have increased their profile in international policy with the realization of the major role they play, or could play, in enhancing food security and poverty alleviation. This counteracts the ‘*tendency globally to focus on industrialized, larger scale fisheries involved in commodity production and trade*’ (McConney and Charles 2009). The importance of small-scale fisheries to food sovereignty and community well-being is also reflected in the Code of Conduct for Responsible Fisheries (FAO 1995) where Article 11.2.15 addresses international fish trade and export production:

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.

Various civil society initiatives have linked trade and food security, notably in relation to the World Food Summit in 1996, a follow-up World Food Summit in 2002, and the FAO World Summit on Food Security in 2009. These civil society initiatives focus particularly on the idea of food sovereignty, which prioritizes local and national economies and markets. As the “Peoples’ Food Sovereignty Statement” from the Forum for Food Sovereignty (Nyéléni 2007) states: ‘Food sovereignty is the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; to restrict the dumping of products in their markets, and; to provide local fisheries-based communities the priority in managing the use of and the rights to aquatic resources.’ This declaration clearly links human rights and trade, as well as speaking to use rights and management rights within fisheries.

Trade, Subsidies and Rights

The above discussion highlights the connections between rights, trade and human development, within the context of small-scale fisheries. This section focuses on a specific aspect of these interactions that is receiving remarkable attention in current global trade negotiations, namely the issue of fishery subsidies – which are typically defined as government financial transfers to the fishery that increase its profitability differentially relative to other economic sectors. The interest in fishery subsidies relates to the common concern of the World Trade Organization (WTO), in considering products traded globally, of trade distortions arising when some countries subsidize their industry, gaining an unfair advantage over unsubsidized industry elsewhere. However, attention to fisheries is also seen as a ‘test case’ for incorporating ‘environmental’ considerations into the WTO. The environmental argument is that fish stock depletion globally has been driven in part by high levels of fishing subsidies (see, for example Sumaila *et al.* 2010). Thus, the WTO’s fisheries trade reform discussions have linked the conventional emphasis on reducing trade-distorting measures with a focus on eliminating ‘environmentally bad’ subsidies (while maintaining ‘good’ subsidies that improve the environmental state of fisheries).

However, in addition to trade distortion and environmental effects, subsidies are also recognized to have impacts on human development. This recognition partially explains the broader move in international fora to treat subsidies differently between developing and developed countries, in acknowledgement of their differing histories and current needs. In addition, within the fishery sector specifically, there is an understanding of two key realities: (1) that the negative aspects of subsidies are largely found in industrial rather than small-scale fisheries, and (2) that certain subsidies may provide support for the role of small-scale fisheries in pursuing the Millennium Development Goals, including food sovereignty and poverty alleviation, as well as in supporting social, economic and human rights. These realities clearly need to be taken into account in subsidy discussions.

Thus fishery subsidies, particularly in small-scale fisheries, might be best evaluated using *three* sets of criteria: their trade distorting effects, their environmental impacts, and the extent to which they contribute to or impede progress toward human development (including food sovereignty, poverty alleviation and other aspects of the MDG). An assessment of a specific fishery subsidy, then, may lead to either a positive or a negative verdict in terms of each of these criteria. Truly 'bad' subsidies would have negative impacts on each of trade, environmental and human development (MDG) criteria, and conversely a 'good' subsidy would ideally be positive in all three dimensions. Given this, a win-win-win situation in small-scale fisheries will be one in which a subsidy is minimally trade distorting, and simultaneously supports human development needs and produces conservation benefits (or at least avoids negative environmental impacts and over-fishing incentives).

There are many circumstances in which subsidies that have a positive impact in environmental and human development dimensions simultaneously seem to also involve reinforcing rights, whether fishery rights or human rights. For example, fishery use rights, as well as social and economic rights to food and livelihoods, could be improved through subsidies that improve access of small-scale fishing communities to the fishery, whether directly (e.g., a subsidy to shift the fishery toward a more small-scale focus) or indirectly (e.g., through support for an appropriate access rights system).

In a similar vein, fishery management rights could be reinforced by subsidies that facilitate good governance and organizational capacity, and that provide legal space and empowerment (e.g. support for research, enforcement and information acquisition, for community management and for fishermen's organizations). Management rights (as well as social and economic rights to secure livelihoods) may also be strengthened through subsidies to aid small-scale fishing communities in acting as conservation stewards, such as through support for traditional management practices and local institutions.

Furthermore, human rights may be directly enhanced by subsidies targeted to small-scale fishing communities that help in the provision of fundamental health care, a healthy environment and acceptable working conditions, etc. Subsidies that improve food sovereignty and household well-being (for example, through support for value-added measures, such as local fishery markets and ice plants, and for quality improvement, such as inspection and certification) reinforce the right to food, and may also support the rights of women in fishing communities. Social and economic rights may be improved through subsidies that adjust the post-harvest component of the fishery to reduce waste and post-harvest losses, maximize value-added in processing, improve distribution and marketing, improve gender participation, and/or integrate the fishery into overall rural development. Various other examples might be noted here.

On the other hand, some subsidies may have negative impacts on small-scale fisheries, including both those with negative environmental effects, and those that tend to favour industrial fisheries. Examples of the latter might include (a) subsidies producing excessive fleet capacity in a given fishery, (b) investment subsidies promoting vessel 'modernization' (which tend to go to larger-scale enti-

ties, and cause over-fishing in fully-exploited fisheries); (b) fuel subsidies (which will tend to go disproportionately to industrial fisheries, since artisanal fisheries are far less fuel-intensive), and (3) subsidies to introduce *market-based* access rights systems (which have tended in practice to have negative impacts on fishing communities). Each of these may be detrimental to the rights of small-scale fishing communities, for example, perhaps impacting on the right to food, or on specific social and economic rights.

In summary, as reviews of fishery trade and subsidies proceed, the goal will be to produce scenarios that are 'win-win-win' in meeting trade reform, human development and environmental goals. This implies ensuring that fully negative subsidies are the ones being reduced or eliminated, while those with sufficient positive attributes are maintained (i.e., excluded from subsidy prohibitions). From a rights perspective, and especially for small-scale fisheries, care is needed in this process, to fully understand the effects of current subsidies with respect to the right to food, and other social, economic, human and fishing rights.

Conclusion

This brief paper has reviewed current thinking on the emergence within fishery discussions globally of (1) linkages between fishing rights (including secure tenure and resource access, and often in the context of good governance) and human rights (notably including the right to food), and (2) how these various rights relate to current issues concerning markets, trade and subsidies. To this end, the paper explored the specific issue of trade reform and fishery subsidies from a rights perspective, and from a perspective of balancing environmental and human development considerations. Given that post-harvest and trade concerns have received relatively little attention in ongoing rights discussions within small-scale fisheries, and conversely, a rights perspective is relatively uncommon within trade and subsidy debates, the paper has sought to better link these lines of policy debate. In particular, the paper sought to demonstrate, albeit in a very preliminary manner, the value of combining a 'rights lens' (of fishery and human rights) with a human development perspective (poverty alleviation, food security and the MDG) in examining a range of post-harvest and trade-oriented fishery issues.

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