

Fisheries and aquaculture in the Lao PDR – a legislative review



**FISHERIES AND AQUACULTURE IN THE LAO PDR
– A LEGISLATIVE REVIEW**

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FOREWORD

The importance of living aquatic resources to the people of Lao PDR is increasingly well understood. Their role is woven into the culture food and tradition of Lao people from every part of the country and each of its eco-regions. Lao PDR's fisheries resources are an important source of nutritional quality in the diet as well as providing an important element of food security and source of income to the Lao People. The effective management of both fisheries and aquaculture is a critical need, as Lao PDR is rapidly changing its agriculture and water control systems. Declining fisheries resources as a result of increasing population pressures and environmental change are an increasing feature of the Lao landscape.

The Government of Lao PDR has recognized the need for a national legal framework to be developed to enable the effective management of fisheries and aquaculture and requested the Department of Livestock and Fisheries to undertake this task. This review forms a background document to a legal review process for fisheries and aquaculture in Lao PDR. The output of this process has been the development of a draft framework for fisheries and aquaculture for further development into national legislation.

This work has taken nearly two years to complete and has been the result of a unique collaboration between the Government of Lao PDR, in particular the Department of Livestock and Fisheries, the Food and Agriculture Organization of the United Nations (Legal Service and the Regional Office for Asia and the Pacific), WWF, the Mekong River Commission's Fisheries Programme, in particular its 'Fisheries Management and Governance Component, the Asian Institute of Technology and the WorldFish Center (SE Asia Regional Office). Each organization has provided not only technical and advisory input to this process, including the organization of, and participation in stakeholder consultations, but have also committed funding support. The significant support provided by the European Union in project GCP/GLO/162/EC, which enabled the initiation of this two year programme and the FAO TCP-Facility managed by the Representative of FAO in Lao PDR are gratefully acknowledged.

I believe this process is an excellent example of partnership that exemplifies modern development assistance and the kind of consultative and inclusive process that ensures a robust outcome that will benefit the people of Lao PDR for generations to come.



He Changchui
Assistant Director General
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ACRONYMS

AIT	Asian Institute of Technology
CBD	Convention on Biological Diversity of 1992
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973
CPMI	Committee for Promotion and Management of Investment
DAFO	District Agriculture and Forestry Office
DLF	Department of Livestock and Fisheries
EIA	Environmental Impact Assessment
FIA	Forest Inspection Agency
FMC	Fisheries Management Committee
GMO	Genetically Modified Organism
IEE	Initial Environment Examination
LARReC	Living Aquatic Resources Research Center
MAF	Ministry of Agriculture and Forestry
MRC	Mekong River Commission
NA	National Assembly
NAFRI	National Agriculture and Forestry Research Institute
NBCA	National Biodiversity Conservation Area
NGO	Non-Governmental Organization
PAFO	Provincial Agriculture and Forestry Office
RFMC	Reservoir Fisheries Management Committee
STEA	Science, Technology and Environment Agency
WAAA	Wildlife and Aquatic Animals Act
WWF	World Wildlife Fund for Nature
WTO	World Trade Organization

1 INTRODUCTION

There is currently no specific fisheries and aquaculture legislation in Lao PDR. Traditionally, fisheries and aquaculture related issues have been dealt with in the Forestry Law and the Agriculture Law and more recently in the Wildlife and Aquatic Animals Law. While fish production is important in terms of social and nutritional value and contributes significantly to food security, it has received little attention by the Government. The reason for this relative lack of interest is that, hitherto, fisheries and aquaculture have primarily been household subsistence activities with limited impact on the environment and the fisheries resource base. However, the situation is likely to change within the next few years due to a combination of factors.

- Continuous population growth is putting increasing pressure on the fisheries resources and signs of overfishing have been reported in certain areas.
- The Government has launched an ambitious hydropower policy designed to boost the production of electricity through the construction of a network of hydropower dams for export to Thailand and China. It is acknowledged that the damming of major rivers throughout the country is likely to adversely impact Lao fisheries and fishers' livelihoods (e.g. changing flow regimes, disruption of fish migrations, reduced flooding of nursing grounds and displacement of fishing communities). Concurrently, the creation of dams also creates new fishing possibilities through the creation of new water bodies.
- One of the major objectives of the newly adopted national fisheries policy is to increase fish production for export by encouraging national and foreign persons to invest in aquaculture and fisheries.

A recent shift in policy prompted the Government to strengthen the Fisheries Section lodged in the Department of Livestock and Fisheries (DLF) under the Ministry of Agriculture and Forestry (MAF) by upgrading it to the rank of Fisheries Division.

It is against this backdrop that the Lao PDR Government requested legal assistance from FAO to draw up a fisheries and aquaculture fisheries law. The legislative process started in September 2007 under an EC Facility Project (GCP/GLO/012/EC)¹ and was pursued under the FAO TCP Facility Project (TCP/LAO/32019)². This document reviews the existing institutional and legal framework governing fisheries and aquaculture activities (Parts 2, 3 and 4). It examines the major legal issues (Part 6) that were discussed throughout the legislative process (Part 5).

¹ Two reports were produced by the technical assistance under that project, namely Review of the fisheries legal framework and outline of a draft fisheries bill (FAO, October 2007) and Review of the fisheries legal framework and presentation of a draft fisheries and aquaculture bill (FAO, January 2008).

² A third report summarizing the legal issues that were discussed during the national and regional consultations and keeping track of the modifications that were introduced in the draft fisheries and aquaculture law was written up under the follow-up project. See, *Draft Fisheries and Aquaculture Law* (FAO, June 2008).

2 ADMINISTRATION OF AQUACULTURE AND FISHERIES

2.1 FISHERIES ADMINISTRATION

In Lao PDR, as in many countries throughout the world, inland fisheries and aquaculture activities are administered by the ministry responsible for agriculture. The Fisheries Section is lodged in the Technical Division of the DLF of the Ministry of Agriculture and Forestry (MAF).

Recently, the Government undertook an overhaul of major ministries, including the MAF, in an attempt to improve the global effectiveness of the administration. To this end, an *ad hoc* committee was set up to identify the institutional deficiencies of the current structure of the MAF and make proposals for re-organizing the ministry. With respect to fisheries and aquaculture, it recommended that the *fisheries administration be upgraded to the rank of a division under the authority of the DLF. This proposal was accepted by the Government and the newly established Fisheries Division became effective as of December 2007.* This change in status should strengthen the position of the fisheries administration within the MAF and contribute to give fisheries and aquaculture issues more prominence.

It remains a small department with a small staff and limited financial resources. Currently, the Fisheries Department employs 39 persons country-wide, which, of course, is insufficient to provide effective technical support throughout the provinces and districts. By comparison, the Livestock Section, also placed under the DLF, has a staff of 1 018 persons to carry out its duties³. Aware of the understaffing of the fisheries and aquaculture administration, the MAF has programmed a gradual increase in staff for this administration over the next 13-year period to reach approximately 150 staff members by the end of this period.

The *ad hoc* committee also noted an imbalance in the staffing of the various departments of the MAF with an overwhelming proportion of staff working for the Forestry Department⁴. It recommended that some staff of the Forestry Department be redeployed to other sectors within MAF. Recently, MAF decided to increase fisheries and veterinary staff in agriculture and forestry offices at both province and district levels. It is expected that an additional 30 to 40 persons will be allotted to the Fisheries Department to strengthen capacity of the fisheries offices in both provinces and districts throughout the country⁵. At the moment, the fisheries administration is represented in every province by at least one person.

As will be seen in more details in Part 3 of this document, the regulation of the fisheries sector has, up to this point, been treated as a subsector of forestry resulting in fisheries regulations being adopted under the Forestry Law 1996. Traditionally, the Forestry Department (DOF) is also responsible for managing protected areas and wildlife. In order to avoid conflict of jurisdiction between the Forestry Department and the DLF, the *ad hoc* committee made clear in its recommendations that *all aquaculture and fisheries-related issues should be dealt with by the Fisheries Division and that the management of wildlife and protected areas should remain in the purview of the Forestry Department.* In effect this means that the DOF will still be responsible for any CITES species, even if they are aquatic, but the DLF will coordinate with DOF on protection of aquatic species listed in CITES Appendices.

³ MAF statistics as of 12 September 2007.

⁴ According to MAF statistics, the Forestry Department has a staff of 2 243 persons representing about 33% of total MAF personnel.

⁵ As of writing, it is unclear whether this staff will be hired or the result of redistribution of staff throughout the MAF.

2.2 DELEGATION OF AUTHORITY

Lao PDR has a single party system⁶ with decision-making process in the Lao administration being based on the principle of democratic centralism⁷. This system aims at combining centralized management through consensus of central authorities with the delegation of responsibilities to local authorities⁸. In 2003, the National Assembly enacted the Local Administration Law to define the nature and extent of the delegation of authority to lower level of government⁹. This process is sometimes referred to as “deconcentration”. Indeed, the goal is not to transfer authority and responsibilities from the central government to lower level of government, but to delegate some authority and responsibilities as is clearly stated in the last paragraph of Article 2 of the Local Administration Law 2003¹⁰. The term “local administration” refers to the local representatives of the State administration (central level of government) in the provinces, districts and villages. There are no elected assemblies at the local level of government and no elected heads of local administration, with the exception of village heads. Heads of local administration are appointed by the central government¹¹. Village heads are elected by eligible voters in the villages and approved by district heads or municipality heads¹². Furthermore, local administrations have not been granted any authority to levy taxes¹³, indicating that revenues are derived from the State budget.

One of the main responsibilities of the local administration is to manage and protect natural resources and the environment within their area of jurisdiction¹⁴. Provincial governors, district heads, municipality heads and village heads are vested with regulatory powers to take measures aiming at implementing state laws and regulations. Local regulations may also be enacted to regulate the use and protection of natural resources, including fisheries, at the local level¹⁵.

⁶ The Lao People’s Revolutionary Party is recognized by the Constitution as being the nucleus of the Lao political system (Article 5).

⁷ Article 5 of the Constitution stipulates that “the National Assembly and other state organizations are established and function in accordance with the principle of democratic centralism”.

⁸ See provisions of Article 18 of the Constitution.

⁹ This law implements the provisions of Chapter 8 of the Constitution on local administration. Article 75 of the Constitution provides that the Lao People’s Democratic Republic is divided into three levels of local administration, namely provinces, districts and villages.

¹⁰ The last paragraph of Article 2 of the Local Administration Law 2003 reads as follows: “[T]he Government *delegates responsibility* to the local administration authorities to manage the territory, natural resources and population in order to preserve and develop into modern, civil and prosperous society” (emphasis added).

¹¹ Provincial governors are appointed by the President of the State on the recommendation made by the Prime Minister (Article 16 of the Local Administration Law 2003), whereas district heads are appointed by the Prime Minister on the proposal of the governor or mayor (Article 29 of the Local Administration Law 2003).

¹² Note that to be eligible, village heads are required to be members of the Lao People’s Revolutionary Party.

¹³ Note that Article 43 of the Local Administration Law 2003 provides that municipalities are entitled to levy local taxes. No regulations have yet been enacted to specify how this provision will be implemented.

¹⁴ See Articles 4.3, 7, 20, 33 and 47 of the Local Administration Law 2003.

¹⁵ See Articles 14.7, 27.7, 40.7 and 53.8 of the Local Administration Law 2003.

3 REVIEW OF EXISTING LEGAL FRAMEWORK PERTAINING TO OR HAVING A DIRECT OR INDIRECT IMPACT ON AQUACULTURE AND FISHERIES¹⁶

3.1 CONSTITUTION

The Lao People's Democratic Republic asserts its sovereignty over its territorial waters (Article 1). It promotes economic expansion and recognizes the principle of market economy regulated by the State (Article 13). The State encourages foreign investments in Lao PDR to boost the development of the country. Constitutional protection of lawful investments is provided for by preventing the State from unilaterally confiscating, seizing or nationalizing lawful assets and capitals (Article 15).

The State recognizes and protects all forms of property rights, including private property rights, as well as inheritance rights (Articles 16 and 17). With respect to land, it is unclear whether full property rights are recognized. Indeed, Article 17 falls short of making such a statement and stipulates that "land is a national heritage and the State ensures the rights to use, transfer and inherit it in accordance with the laws".

All legal entities and citizens have a general obligation of protecting the environment and natural resources, including land surfaces, animals and water resources (Article 19).

The Lao Constitution guarantees the inviolability of Lao citizens in their persons by providing that Lao citizens must not be arrested nor searched without an order of the public prosecutor or the competent people's court. Likewise dwelling houses must not be searched without a warrant (Article 42).

The National Assembly is the only organ of the legislative branch of government. Representatives to the National Assembly are elected by the people through direct suffrage (Article 4). It is the duty of the National Assembly to consider, adopt, amend and abrogate legislation. The National Assembly convenes twice a year at the summons of the National Assembly Standing Committee¹⁷. Legislation may be initiated by the President of the State, the National Assembly Standing Committee, the Government, the People's Supreme Court, the Office of the Supreme Public Prosecutor and the Lao Front for National Construction and the mass organizations at the central level (Article 59)¹⁸. In order to come into force, laws must be promulgated by the President of the State no later than 30 days after their adoption by the National Assembly (Article 60).

The President is the head of State. He or she is elected by the National Assembly with two-thirds of the votes of the representatives present and voting (Article 66). The president is empowered with regulatory powers and thus may issue presidential decrees. He or she appoints or removes the Prime Minister and members of the government after approval by the National Assembly (Article 67).

The Government, which represents the executive branch of the State, consists of the Prime Minister, the Deputy Prime Minister(s), ministers and chairmen of the ministry-equivalent organizations¹⁹. The Government is tasked with implementing the constitution, the laws and resolutions of the National Assembly as well as presidential decrees. It may issue decrees and resolutions with respect to national resources and the environment (Article 69).

¹⁶ Legislation and regulations that were consulted by the technical assistance are listed in Annex 1.

¹⁷ The National Assembly Standing Committee is the permanent body of the National Assembly responsible, among other things, to interpret and explain the provisions of the Constitution and the laws.

¹⁸ Such as the Women's Union and the Youth Union.

¹⁹ This is a reference to independent agencies, such as the Science, Technology and Environment Agency (STEA), that are headed by chairpersons with ministerial level.

3.2 FISHERIES AND AQUACULTURE LEGAL FRAMEWORK

In many countries, rules governing fisheries and aquaculture activities are spread over many laws and regulations. Unlike in most countries, *Lao PDR has not enacted a separate fisheries and aquaculture legislation*. The sector is currently regulated under the Forestry Law 1996. Fisheries-related provisions may also be found in the Agriculture Law 1998 and the Penal Law 1990.

3.2.1 Forestry law 1996²⁰

While the Forestry Law 1996²¹ is primarily designed to administer and regulate forestry and forestry resources, it also contains a chapter dedicated to aquatic animals and wildlife. *Aquatic animals are regarded as part of forest resources*²².

Aquatic animals and wildlife living naturally in the territory of Lao PDR are the property of the national community. It is, therefore, the responsibility of the State, as representative of the people, to determine the conditions of access, protection, propagation and use of these animals and wildlife (Article 39). This provision does not apply to aquatic animals introduced in Lao PDR for aquaculture purposes, as they do not live naturally in the territory of Lao PDR and live in a controlled environment. It is the duty of the competent State agency to determine which types of species of aquatic animals should receive particular attention and be listed as protected or prohibited species (Article 39)²³. Catching of near extinct species is strictly prohibited at any time, except for study and research purposes (Article 40.3)²⁴. Protection of nearly extinct species or of species having special value²⁵ applies throughout the Lao territory. It is prohibited to export such species except with a special authorization by the MAF (Article 43).

The taking of certain species of aquatic animals may be subject to the prior authorization of the relevant authority (Article 40.1). Catching of other species of aquatic animals may be prohibited during certain seasons or throughout the year in designated areas (Article 40.2). This provision is designed to ensure adequate protection of aquatic animals during the spawning season and effective protection of breeding grounds.

Use of destructive fishing methods and gears is forbidden, particularly use of explosives, poison (both natural and man-made) and electric shocks (Article 40.2)²⁶.

Furthermore, it is prohibited to remove, export, import, sell or purchase any prohibited or endangered aquatic animals, whether dead or alive, except with a special authorization and in accordance with conditions as may be prescribed (Article 40.4).

While many activities in protected forests²⁷ are strictly prohibited, fishing is not specifically mentioned (Article 41)²⁸. In forest reserves, any type of forestry activities is strictly forbidden in core protection areas. However, special authorizations may, under certain circumstances, be granted by local authorities and the MAF for the removal of flora and fauna therein (Article 42).

Article 46 declares the 13th of July as National Fishery, Aquatic Animals and Wildlife Protection Day.

²⁰ The Forestry Law was amended in December 2007. The amendment was not made available to the technical assistance.

²¹ Law No. 04/96 of 1996.

²² Forest resources are defined as living and non-living resources, including water, aquatic animals and wildlife (Article 3).

²³ It is the responsibility of MAF as stated in Article 60.1.

²⁴ The distinction between protected, prohibited and near extinct species is unclear. It is probably linked to the degree of protection allocated to these various categories of species of aquatic animals.

²⁵ The nature of the species targeted by this provision is unclear.

²⁶ Note that the list provided in Article 40 is not exhaustive. See Annex 4 for a list of gears.

²⁷ Note that five categories of forests have been established under the Forestry Law 1996, namely protected forests, forest reserves, production forests, rehabilitated forests and degraded forests and defoliated land (Article 16).

²⁸ Note that the list is not exhaustive.

It is worth noting that a Forestry and Forestry Resources Fund is established under Article 47 and that moneys allocated to this fund may be used for the protection and “development”²⁹ of aquatic animals. In practice, however, no such activity has been financed through this fund due to lack of financial resources.

The MAF is designated as the competent authority for regulating any aquatic animal-related activity throughout the country (Article 60.1). At the village level, administrative authorities are empowered to make regulations to protect aquatic animals (Article 63.6)³⁰. They are also required to disseminate information and raise awareness on the importance of natural resources protection, including aquatic animals (Article 63.3).

A Forestry Inspection Agency (FIA) is established under Article 65³¹. To carry out their duties, FIA agents are vested with enforcement powers, including: (a) examining documents and inspecting exploitation sites; (b) requiring the provision of data within a specified period of time; (c) entering premises and sites for inspection purposes; and (d) applying sanctions pursuant to violations of the forestry law and regulations such as re-education, fines, taking offenders into custody or arresting them, and seizing evidence. Where necessary, FIA agents may also request the support of armed forces to carry out their duties (Article 67).

Four types of sanctions may be imposed against offenders of the Forestry Law 1996 and its implementing regulations, namely re-education, fines, criminal sanctions and additional punitive measures (Article 69). Sanctions applicable to fisheries are summarized in Table 1 below³².

Table 1 on offences and penalties scheme – Forestry Law 1996

Type of offences	Penalties
Taking of protected species of aquatic animals (listed as endangered or near extinction), taking of aquatic animals in prohibited areas or during closed seasons (Article 70.4)	Re-education for first offenders insofar as the value of damages caused by the infringement is less than 50 000 kip
Import of aquatic animals in contravention with conditions of authorization or regulations (Article 70.6)	Fines equal to twice the estimated value of damages or catch for first offenders where the value of estimated damages or catch is more than 50 000 kip and less than 500 000 kip or for a second offence where the estimated value of damages or catch is less 50 000 kip.
Taking of protected species of aquatic animals with a value not exceeding 500 000 kip (Article 71.6)	Fines equal to twice the estimated value of damages or catch
Taking of protected species of aquatic animals (Article 72.2)	Imprisonment from 3 months to 5 years and a fine of twice the estimated value of the catch or damages.
Fishing by means of explosives (Article 72.3).	Note: that sanction provided under this law for use of explosives for fishing purposes conflict with provisions of Article 131 of the Penal Law which provide for a maximum imprisonment term of 1 year not 5 years.

²⁹ This is the terminology used in the English translation. One may question the accuracy of this translation and wonder whether it should read *propagation, rearing or stocking* instead.

³⁰ It is likely that provincial and district levels authorities have been granted similar powers. However, this could not be verified since the copy of the Forestry Law 1996 that was made available to the mission was incomplete (Articles 61 and 62 were missing).

³¹ In practice, the Forestry Inspection Agency has become effective in 2007. Forestry control units have also been set up at the provincial level.

³² See Articles 70 to 73 of the Forestry Law 1996.

The offences and penalties scheme with respect to fisheries-related activities is incomplete. Indeed, lawmakers have omitted to provide penalties for use of destructive fishing methods other than use of explosives, whereas the Forestry Law 1996 prohibits the use of poison and electric shocks (Article 40.2). This scheme has been completed in 2003 with the adoption of Rules No. 360/MAF-2003, which provides penalties for these particular violations (see Section 3.2.2 below). Moreover, no penalty has been provided for exporting, selling or purchasing protected species of aquatic animals without an authorization³³.

In addition to any penalties that may be imposed, any offender may have his or her authorization withdrawn (Article 73).

3.2.2 Fisheries regulations

This section examines and summarizes the main provisions adopted by the MAF under the Forestry Law 1996 to regulate fishing activities in Lao PDR³⁴.

In 2002, the Minister responsible for agriculture and forestry adopted Instruction No. 0077/MAF-2002 on hunting, trade in wildlife and aquatic animals and import, export and transit to a third country³⁵. This instruction is directed at heads of Provincial Agriculture and Forestry Offices (PAFOs) throughout Lao PDR.

It instructs PAFO to strengthen surveillance activity, particularly by increasing the number of patrols at border points between provinces, districts and villages.

It prohibits: (a) at any time, hunting³⁶ and trading in wildlife and aquatic animals (and part thereof) that are listed in Categories I and II; and (b) hunting wildlife and aquatic animals of the species listed in Categories I and II during the spawning season (from 1st May to 31st October)³⁷. Species are divided into two categories³⁸ and, where relevant, reference to their listing under CITES is made³⁹. A number of species of fish is listed in both categories and include giant catfish (*Pangasianodon gigas*), tiger perch (*Datnioides pulcher*) and gobies (*Oxyeleotris marmorata*). The full list of aquatic species under these listings can be found in Annex 2, Annex 5 contains a list of the Fishbase fish species listed for Lao PDR with their local names.

Any violation of the above provisions is to be dealt with under Articles 69, 70, 71 and 72 of the Forestry Law 1996 (see Table 1 in Section 3.2.1 above).

In 2003, the Minister responsible for agriculture and forestry enacted *Instruction No. 0565/MAF-2003 on spawning season and release of fish*. Like the instruction described above, it is directed at PAFO's Heads throughout the country. It is primarily intended at sensitizing people in rural areas on the importance of wildlife, aquatic animals and their habitats in their livelihoods and on the need to ensure their sustainability. To this end, it requires PAFO to launch an awareness campaign using the media

³³ As provided for under Article 40.4 of the Forestry Law 1996.

³⁴ Note that, as far as could be established, no specific provision has been adopted to regulate aquaculture activities.

³⁵ An instruction is a directive taken by the Minister to provide guidance to the competent authorities on how to implement legislation, policy documents or rules (see Article 22 of Presidential Ordinance No. 2 of 2003 on legal act formulation).

³⁶ In this instruction, as is generally the case in regulations adopted by the MAF, *hunting* should be interpreted at including fishing.

³⁷ Note that this provision is conflicting with provision (a) which prohibits any taking of the same species at any time.

³⁸ Category I lists the species that are protected, whereas Category II lists the species that are managed.

³⁹ CITES provides three appendices listing species requiring different levels or types of protection from over-exploitation. Appendix I lists species that are the most endangered among CITES-listed animals and plants. They are threatened with extinction and CITES prohibits international trade in specimens of these species except when the purpose of the import is not commercial. Nine species of fish are currently listed in CITES-Appendix I. Appendix II lists species that are not necessarily threatened by extinction but that may become so unless trade is closely controlled. Sixty-eight species of fish are currently listed in CITES-Appendix II. Appendix III is a list of species included at the request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation. There are currently no species of fish listed therein.

and any other methods available to convey the information, including distribution of leaflets, technical hand books on fish species and rules and regulations protecting these species and their habitats. It also calls for PAFO to organize operations aiming at collecting firearms and destructive fishing gears through voluntary handover to local authorities⁴⁰. It encourages PAFO to collaborate with local authorities to arrange widespread releases of fish in fish ponds, natural lakes, rivers and national biodiversity conservation areas (NBCAs).

It prohibits: (a) the hunting⁴¹, at any time, of protected species listed in Categories I and II, except for scientific research purposes⁴²; (b) the hunting of protected wildlife and aquatic animals from 1st May to 31st October; (c) the hunting of wildlife and aquatic animals during the spawning season, in particular in deep pools; (d) the use of any fishing method aiming at obstructing waterways; (e) the use of small mesh size drift nets; (f) and the use of explosives, chemical, poison and any other destructive fishing method or gear.

PAFO is responsible for the implementation of this instruction. Sanctions for any violation of the above rules and measures include: confiscation of prohibited gear and material, confiscation of catch, re-education and fines⁴³. The latter are directly imposed by enforcement officers. Judicial proceedings should be initiated for serious violations.

In December 2003, the MAF adopted *Rules No. 360/MAF-2003 on the management of national biodiversity conservation areas, wildlife and aquatic animals*. These rules reiterate that wildlife and aquatic animals are national resources and that any legal and natural persons as well as the State have a general obligation of protecting them. They provide for the definitions of key terms, including NBCA, protected species, managed species and deep pool. The latter is defined as being a section of river, stream or natural lake identified by people, user groups (e.g. fishermen groups) and village authorities designed to protect species of aquatic animals during the spawning seasons, natural habitats and breeding grounds.

In an attempt to enhance protection of wildlife, aquatic animals and their habitats, twenty NBCAs have been established throughout the Lao territory covering approximately 3.3 million hectares⁴⁴.

Once more there is provision stating that the closed season for hunting⁴⁵ is from 1st May to 31st October throughout Lao territory.

For management purposes, species of wildlife and aquatic animals have been divided into 2 categories, namely protected species (list I) and managed species (list II)⁴⁶.

Import, export, re-export and transit of any species of wildlife or aquatic animals or any part thereof is subject to prior authorization by MAF and should take place at a specified border point and in accordance to applicable CITES rules.

To ensure effective protection of wildlife and aquatic animals, the rules prohibit: (a) the use of destructive fishing gears and methods such as firearms, explosives, poison, electric shock, drift nets and beach seines; (b) the taking of wildlife and aquatic animals in protected areas; and (c) the taking of wildlife and aquatic animals during the spawning season.

⁴⁰ It is unclear whether such initiatives have been put into effect.

⁴¹ *Supra* note 36.

⁴² Apparently, it refers to lists of protected species that were annexed to Instruction No. 0077/MAF-2002.

⁴³ Although it is not specified in the translated document, it is assumed that sanctions mentioned in this instruction refer to the relevant provisions of the Forestry Law 1996.

⁴⁴ Units managing NBCAs are placed under the supervision of the Department of Forestry.

⁴⁵ *Supra* note 36.

⁴⁶ Both lists of protected and managed species have been annexed to the rules. However, it is unclear whether any species of fish have been incorporated therein.

Sanctions that may be imposed for violation of the rules are as follows: (a) measure of re-education for first offender, provided that the estimated value of damages resulting from the infringement is less than 50 000 kip; (b) a fine for a first offence, provided that the estimated value of damages resulting from the wrongful act or omission is more than 50 000 kip and less than 500 000 kip and for a second offence, where the estimated value of damages caused by the violation is not more than 50 000 kip; and (c) imprisonment from 3 months to 1 year and a fine amounting to twice the value of the damages caused by the wrongful act or omission provided that the value of estimated damages is more than 500 000 kip. It is also applicable to repeat offenders, provided that the estimated value of damages resulting from the offence is less than 500 000 kip.

Lastly, a number of *local fisheries regulations* have been enacted at the local level to regulate fishing activities within reservoirs or specified stretches of rivers or streams, mostly at the initiative of projects supported by foreign aid. Management of fisheries in reservoirs has received support from the Living Aquatic Resources Research Center (LARReC)⁴⁷ and the MRC. As part of its Greater Mekong Programme, the World Wildlife Fund for Nature (WWF) assists local communities in strengthening fisheries management at the village level in selected locations throughout the country. Currently, there is no established record of local fisheries regulations kept by the DLF⁴⁸, making any attempt at extracting common provisions very difficult. However, two examples of regulations, one in a reservoir, the other in a river system, have been selected to illustrate the type of local regulations that have been adopted.

Example 1 – Nam Houm reservoir

Nam Houm reservoir is located in Naxaythong District in Vientiane Province. It is an irrigation reservoir covering an area of approximately 500 hectares. It was created in 1978. Fisheries management is the responsibility of the Reservoir Fisheries Management Committee (RFMC) established by District Head's Decree No. 794 of 2001. The RFMC, which is made up of 20 members representing reservoir users, is officially appointed by the District Head⁴⁹. The RFMC develops a yearly management plan which is implemented by reservoir users through the RFMC and supported by the District Agriculture and Forestry Office (DAFO) and LARReC staff, in cooperation with the MRC Fisheries Programme's FMG Component. Since 2005, the RFMC has been granted exclusive rights to collect and market fish caught in the reservoir⁵⁰. Fisheries management rules, which take the form of District Regulations issued by the District Head, are prepared by DAFO, in close consultation with the RFMC.

Principal features of the Regulations on the management of fisheries in Naxaythong District are the following:

Geographical scope: these regulations apply to all water bodies located in the Naxaythong District, including the Nam Houm reservoir⁵¹;

*Access rights in reservoirs*⁵²: access is open to RFMC members and to individuals belonging to recognized fishermen groups⁵³. Civil servants, police officers and persons living in the vicinity of the reservoirs, wishing to fish or undertake aquaculture activities therein, are required to be licensed. The licensing system was introduced to control operations by persons not traditionally involved in fishing or aquaculture activities. In Nam Houm Reservoir, it has not yet been

⁴⁷ LARReC reports to the National Agriculture and Forestry Research Institute (NAFRI) placed under the MAF.

⁴⁸ Note that not all regulations or rules are in a written form.

⁴⁹ See Chief District Decision of 31 May 2003.

⁵⁰ It is commonly referred to as concession. In principle, this concession is granted for 1 year through a competitive bidding process. However, priority is given to the RFMC.

⁵¹ Note that where a reservoir or lake straddles more than one district, rules for the management of this reservoir or lake are made at the provincial level.

⁵² There is more than one reservoir in Naxaythong District. RFMCs have been set up in at least two reservoirs, namely Nam Houm and Nam Suang. RFMC's are also being supported by MRC/FMG at two reservoirs in Bolikhamxay Province, that is, in Huey Siet and Pak Beung.

⁵³ This provision refers to fishermen groups that have been officially established and recognized by local authorities.

implemented, but should come into force as of 2008. It will be extended to any person who is not living in the reservoir's area. To facilitate control by enforcement officers, license holders are required to carry their license where undertaking any fishing or aquaculture activity.

Fishing gears and methods: any person engaged in fishing in reservoirs may use the following implements:

- all types of hooks;
- all types of nets;
- all types of fish traps;
- *lob, sorn* and *sai* of all types⁵⁴; and
- nets with a mesh size more than 4 cm.

It is prohibited to use the following implements for fishing purposes throughout the basin area:

- lift nets equal to or more than 2.5 m x 2.5 m in size;
- nets equal or more than 10 m in length;
- any poison (natural⁵⁵ or man-made);
- any kind of guns, including underwater guns;
- electric shocks;
- using special bait to attract fish⁵⁶; and
- place *Tonh, Lee* or traps at the mouths of streams where they flow into the reservoirs or use canoes in these areas, particularly during the spawning season.

No-take zones: permanent no-take zones are established in the Nam Houm reservoir (1 500 m from the dam), the Nam Suang reservoir (800 m from the dam), the Sorn stream (500 m from the dam) and the Terler pond (500 m from the dam) for both conservation and safety purposes. A 300-meter area around the mouths of streams flowing into the reservoirs is closed to fishing during the breeding season, from 10 June to 30 September.

Protected species: six species of fish have been declared protected species in the Naxaythong District, namely *pa beuk* (*Pangasianodon gigas*, giant Mekong catfish), *pa earn* (*Probarbus jullieni*), *pa lerm* (*Pangasius sanitwongsi*), crocodile fish, *pa seua* (*Datnioides species*) and *pa koon* (*Wallago leerii*). It is strictly prohibited to catch these species. In the event that a protected species is caught, it must be released, if alive, or taken to the competent authorities for recording, if dead.

Purchase and marketing of fish: as was mentioned earlier, the RFMC has been granted an exclusive right for the marketing of fish taken in the Nam Houm reservoir. In the basin area, fishermen are required to sell their fish to a designated fish buying group.

Offences and penalties: the offence and penalties scheme provides for the following:

- Any person fishing in the basin area without an authorization is liable to a fine of 20 000 kip together with the confiscation of fishing gears. A record is kept as evidence of first offence;
- Any person engaging in fishing in no-take zones is liable to a fine equivalent to 50 percent of the value of the estimated damages and judicial proceedings should be initiated;
- Any person using prohibited gears or methods to catch fish is liable to a fine of 50 000 kip together with the confiscation of both catch and prohibited gears. Judicial proceedings should be initiated;
- Any person who catches protected species of fish in no-take zones is liable to a fine equivalent to the value of the catch⁵⁷. In addition, the catch will be confiscated and judicial proceedings will be initiated;
- Any person who lends his/her license to someone else or produces a false license is liable to a fine of 10 000 kip for each count of violation. Judicial proceedings should be initiated; and

⁵⁴ These are local names of fish traps. A full list can be found in Annex 4.

⁵⁵ Poison from tree bark is commonly used to catch fish in Lao PDR.

⁵⁶ The kind of bait that is used is unclear.

⁵⁷ Note that this provision is redundant with the provision above prohibiting any fishing operation in no-take zones.

- Any person or fish buying group involved in trading protected species of fish is liable to a fine equivalent to the estimated value of the catch. Judicial proceedings should be initiated.

Minor violations are to be dealt by fishing groups, whereas serious violations should be submitted to the Fisheries Management Committee of Naxaythong District for review and decision. While it is not mentioned in the regulations, it is worth noting that 40 percent of total fines are allocated to the RFMC special fund and 60 percent to enforcement personnel (police, village militia and fishermen participating in the enforcement of the regulations).

Example 2 – Management of stretches of the Kading River

Local regulations, providing for the management of fisheries in specified stretches of rivers or streams, are also found at the village level. Many of these rules, which are based on customary rights, are unwritten. However, an increasing number of communities, with the support of WWF, have initiated a participatory process aiming at strengthening local fisheries management through, among other things, the development of duly recognized written rules⁵⁸. Village authorities, fishermen, neighbouring village authorities and DAFO are involved in the drafting process. Once a consensus has been reached at the village level, the rules are submitted to the District Head for approval. Upon approval, the District Head issues fisheries regulations in relation to the specific area. To illustrate this process, this paper examines the rules⁵⁹ that have been agreed upon in South and North Pak Kading villages in Bolikhamxay Province for the management of a particular stretch of the Kading River⁶⁰.

Principal measures of the set of rules are as follows:

Objective of the rules: the objective is three-fold: (i) protect and conserve aquatic biodiversity, particularly indigenous species of fish that are endangered or in decline; (ii) conserve and protect spawning grounds; and (iii) strengthen local food security through sustainable utilization of fisheries resources.

Location and demarcation of the managed area: the identified area is called *Vang Hin Busa* in the Kading River. It covers an area of approximately 400 meters stretching from the Nam Kading bridge to a specific rock upstream.

Management committee: A management committee is established. It comprises representatives of the village administration authority (chairperson), village security force (police and military), village elders, Women's Union, Youth Union, village agriculture, village economy and village militia.

Management measures: fishing is strictly prohibited in the *Vang Hin Busa* area throughout the year. It is a no-take zone.

Offences and penalties:

Any person who engages in fishing in the no-take zone by means of hooks and lines, scoop nets, cast nets, gill nets, spears, *lop*, *kha* and *chan* is liable to a fine of 1 000 000 kip for a first offence and 2 000 000 kip for a second offence together with the confiscation of catch and gears⁶¹. In case of a second offence, judicial proceedings should be initiated.

Any person who engages in fishing in the no-take zone by means of explosives, poison, electric shock, firearms or masks and spear guns is liable to a fine of 10 000 000 kip together with the confiscation of both catch and gears. Judicial proceedings should be initiated.

⁵⁸ The purpose here is not to describe the methodology and process used by WWF to promote fisheries co-management.

⁵⁹ These rules have now been accepted by the District Governor's Office.

⁶⁰ Note that two rough translations of the rules were provided to the authors, one refers to a stretch of river, the other more specifically to a deep pool.

⁶¹ Note that the fines provided for in these regulations are higher than those prescribed in the Forestry Law 1996. Generally, penalties prescribed in local level law are less than those prescribed in a national law.

Reward scheme: the reward scheme that has been agreed upon provides that: 40 percent of the total fine should be allocated to the person who has reported the violation, 40 percent to the management committee and 20 percent to the village fund.

The management committee is responsible for the dissemination of the rules in neighbouring communities to ensure their being widely known.

3.2.3 Wildlife and Aquatic Animals Act 2008

The Wildlife and Aquatic Animals Act (WAAA) was adopted by the National Assembly in 2008. The brief review of the main provisions of the Act below is based on the final version of the Wildlife and Aquatic Animals Bill that was submitted to the National Assembly⁶². Few modifications, and none of substance, were introduced by lawmakers.

The WAAA is administered by the Forestry Department of the MAF. The objective of the WAAA is to set out the principles, rules and measures relating to the management, preservation, protection, utilization, propagation and rearing of wildlife and aquatic animals with a view to minimizing impacts on habitat and ecosystems (Article 1).

The scope of the WAAA extends to any kind of aquatic animal and habitat, including water bodies and conservation areas (Article 2).

It reiterates that wildlife and aquatic animals are the property of the national community (common property) and that, therefore, it is the responsibility of the State, on behalf of the Lao people, to manage these resources. The State may allocate such resources to individuals or legal entities with a view to ensuring their protection, development and use in compliance with relevant laws and regulations. It specifies that any wildlife or aquatic animals that have been raised by any individual or legal entity are the property of the said individual or legal entity. Hence, fish or other aquatic animals raised in a fish farm are owned by the fish farmer (Article 3).

The WAAA covers a wide range of activities relating to wildlife and animals from management and use to raising, movement and trade (Article 4). Apparently, sanitary and health issues were left out of the draft bill as lawmakers did not want to impinge on the scope of the draft Veterinary Bill.

The right to hunt⁶³ wildlife and aquatic animals is recognized to any individual or legal entity within the limits of the law (Article 9). Hunting of certain species is prohibited or restricted. It is strictly prohibited to hunt species listed in Category I except for research or propagation purposes⁶⁴, whereas catching of species listed in Category II is allowed with an authorization and during certain periods. Species listed in Category III may be taken for customary purposes and to some extent for commercial purposes with an authorization by PAFO (Article 9). Species of wildlife and aquatic animals are classified into three Categories: (a) Category I lists species that are considered to be rare, endangered or highly valuable in socio-economic terms; (b) Category II covers species that are required to be managed to avoid their falling into Category I; and (c) Category III provides for other species. These lists are annexed to the WAAA. It is important to note, however, that out of practical consideration provision is made in the WAAA empowering the MAF to modify these lists through regulations.

⁶² Note that the review below is partial as only selected articles of the Wildlife and Aquatic Animals Bill were translated into English. In addition, the draft bill underwent further modifications and articles were added prior to its being submitted to National Assembly. As a result, reference (numbering) to articles mentioned in this document may no longer be correct. However, the content of the provisions described in this section remains unchanged.

⁶³ This is the terminology used in the Wildlife and Aquatic Animals Bill as was confirmed by the translator. It should be noted that there is no definition of the term "hunting" in the bill. However, it seems reasonable to assume that this concept entails both hunting and fishing activities in the context of this legislation. This interpretation is supported by the fact that species of fish and other aquatic animals are listed in the three categories of species annexed to the draft Bill.

⁶⁴ Eight species of aquatic animals are listed therein.

The WAAA provides for the registration of any undertaking involving the rearing or raising of animals. This requirement is likely to apply to aquaculture operations, even though they are not specifically mentioned. Any commercial undertaking must be registered with the PAFO in the jurisdiction of which it is located, while any non commercial operation must be registered with the DAFO in the jurisdiction of which it is situated (Article 15).

It is prohibited for any individual or legal person to operate any business involving wildlife and aquatic animal listed in Category I, except with a special authorization granted by the Government for socio-economic purposes. Commercial operations involving species listed in Categories II and III are subject to prior approval by both MAF and PAFO respectively (Article 17).

Trade in reared species of wildlife and aquatic animals is authorized insofar as it complies with relevant laws and regulations and rules of international law as reflected in CITES (Article 18).

Import, export, re-export or transit of any species of wildlife or aquatic animal or any part thereof is contingent upon the grant of an authorization by MAF and must be undertaken at designated border points and in accordance with CITES rules (Article 19).

Any movement of wildlife and aquatic animals within the country is subject to the grant of an authorization (Article 20). MAF is required to adopt rules specifying the conditions governing such movement.

Customary hunting and fishing rights are recognized and may be exercised to the extent that they do not have a significant impact on wildlife and aquatic animal populations⁶⁵ (Article 22).

It is prohibited to: (a) hunt wildlife and aquatic animal during the spawning season and any individual bearing eggs; (b) hunt wildlife and aquatic animals in protected areas, including wildlife and aquatic animal conservation areas, reserve forests, protection forests, national production forests and other places where hunting is prohibited by the State; (c) use destructive gears or methods such as firearms, explosives, chemical, poison, electric shock and drift nets; (d) encroach upon and destroy wildlife and aquatic animal habitats and conservation areas without an authorization; (e) undertake any survey, research and taking of any species of wildlife or aquatic animals or any part thereof for the purpose of exportation except with a special authorization; (f) trade or move any species of wildlife or aquatic animal without an authorization⁶⁶; (g) falsify or use expired authorization; and (h) transfer any authorization without prior approval by the competent authority (Article 34).

Any offence under the WAAA may be dealt with administratively by the Forestry Department of the MAF (administrative procedure) or may be submitted to the court of competent jurisdiction (judicial proceedings) (Article 36).

The thirteenth of July is designated as the Wildlife and Aquatic animals National Day (Article 38).

3.2.4 Agriculture Law 1998

Fisheries-related provisions are also found in the *Agriculture Law 1998*, as the fisheries⁶⁷ sector is viewed as a subsector of agriculture⁶⁸. In turn, *agricultural activities include fisheries*⁶⁹. *Any legal or natural person undertaking agricultural activities is recognized the right to own the assets and products of his or her activities* (Article 10). *In the aquaculture context, this would translate into the right of the owner*

⁶⁵ Note that this measure does not apply to species listed in Category I.

⁶⁶ Redundant with provisions of Articles 19 and 20.

⁶⁷ Although it is not specifically mentioned, fisheries should be interpreted as a global term encompassing both fisheries and aquaculture activities.

⁶⁸ Agriculture is defined as the "undertaking of cultivation, animal husbandry and fisheries for consumption and as food for the public, as raw materials to supply industrial processing factories, as well as serving as domestically consumed and exported commodities" (Article 2).

⁶⁹ Agricultural activities entail works relating to horticulture, animal husbandry and fisheries (Article 8).

of a fish farm to own the fish reared therein. When undertaking agricultural activities, any legal or natural person has the duties: (a) to not cause any damage to other person's undertakings or any detrimental effect to the environment; (b) to report animal epidemics; and (c) to report requested data relating to the agricultural activity (Article 10). When applied to aquaculture, this would mean that any person involved in aquaculture is required to take all necessary measures to avoid any harmful effect that may be caused by fish farming, to report any disease outbreak to the competent authorities and to provide any requested information in relation to aquaculture activities.

Use of genetically modified organisms (GMO) for aquaculture purposes is allowed in Lao PDR provided that the species to be used in Lao waters has been approved by the MAF (Article 25). Import and introduction of new species of aquatic animals in Lao PDR is subject to the authorization of the MAF. Likewise, an authorization by MAF is required for exporting any species of aquatic animals (Article 26).

Article 30 of the Agriculture Law 1998 provides a definition of *animal feed*⁷⁰. While the State encourages the domestic production of animal feed, it also allows imports from abroad where domestic production is insufficient to satisfy domestic needs (Article 52). As far as could be established, no rule regulating animal feed for fish farming has yet been enacted.

Use of animal vaccines or chemicals in animal raising activities should strictly comply with existing rules and regulations (Article 34). Imports of animal vaccines or chemicals from abroad are permitted where domestic production is insufficient to meet local demand (Article 53).

Building of processing plants or establishments should comply with regulations and technical standards adopted by the Ministry responsible for public health and the Ministry responsible for industry (Article 41). No such standards have yet been enacted with respect to fish processing establishments. It should be noted here that food safety and hygiene standards are typically covered under food safety legislation and are not normally included within fisheries and aquaculture legislation.

Lao PDR encourages foreign investments in agricultural activities, including fisheries and aquaculture (Articles 45 and 46). Investment in agricultural production is divided into three categories according to the size of the envisaged undertaking (small, medium and large scale production and agri-business). Criteria to determine sizes of production are established by the MAF in consultation with the Committee for the Management and Promotion of Investment (Article 47).

An Agricultural Promotion Fund is established to promote efficient agriculture (Article 50). This fund, like the Forestry and Forestry Resources Fund, is not operational due to insufficient financial resources.

Any legal or natural person involved in agricultural activity has a general obligation of protecting the environment (Article 65). With respect to fisheries, this translates into *the prohibition of using destructive fishing gears or practices such as poison (both natural and man-made), explosives, electric shocks, fine mesh cast nets and gill nets, fence traps, fence filter traps and box funnel nets set in streams to collect fry or large fish primarily during the breeding season. Use of masks and goggles is also forbidden*⁷¹. Regarding aquaculture, it is stipulated that discharge of waste water should not result in the pollution of the environment (Article 68).

An Agricultural Activities Inspection Agency is established under Article 75. It is conceived as an enforcement agency designed to ensure the proper enforcement of the Agriculture Law 1998 and regulations made thereunder. As of writing, this Agency has not yet been set up due in particular to lack of skilled personnel.

⁷⁰ Animal feed is defined as "material used to raise animals that is derived from nature, production or processing from agricultural produce and other substances that have nutritional value".

⁷¹ It is unclear whether scuba and snorkel are also prohibited.

Any natural or legal person who infringes the Agriculture Law 1990 or its implementing regulations may be punished by education measures, fines or imprisonment depending on the seriousness of the offence that has been committed (Article 79). Penalties applicable to fisheries and aquaculture activities are summarized in Table 2 .

In addition to any penalty that may be imposed, the court may require that the license or authorization of any individual having committed a serious violation having caused significant damages to State assets or to the social or natural environment be withdrawn, that the said individual be prevented from undertaking agricultural activities for a specified period of time, or that any vehicles used in the commission of the offence be confiscated (Article 83).

Table 2 summarizing offences and penalties – Agriculture Law 1998

Nature of offences	Penalties
<p>Minor offences⁷²</p> <ul style="list-style-type: none"> • failure to report production data • failure to report an outbreak of disease • non-compliance with technical standards 	Warning or education measures
<p>More serious offences</p> <ul style="list-style-type: none"> • Misreporting • Failure to comply with technical safety measures resulting in damages for others • Failing to prevent the spread of animal diseases • Failure to cooperate with enforcement officers 	Fines – double the value of actual damages
<p>Serious offences</p> <ul style="list-style-type: none"> • Falsifying of authorizations to conduct agricultural activities • Failure to implement safety standards causing death, injury or causing damages to State, collective or private assets 	Punished according to the Penal Law, including term of imprisonment.

3.2.5 Penal Law 1990

The Penal Law 1990 establishes three distinct categories of offences and spells out the type of penalties that can be imposed for each such category: (a) minor offences are punished by public criticism; (b) serious offences are punished by re-education without deprivation of liberty, fines, or/and imprisonment from three months to ten years; and (c) crimes are punished by imprisonment from five years to life imprisonment or by capital punishment (Article 7). In turn, penalties are divided into two broad categories, namely principal penalties (public criticism⁷³, re-education without deprivation of liberty⁷⁴, imprisonment and death penalty) and additional penalties (fines⁷⁵, confiscation of items, confiscation of property, deprivation of election rights and house arrest). Of interest is the placing of fines (pecuniary penalties) in the category of additional penalties. However, there is language stipulating that fines may, under certain circumstances, become a principal penalty⁷⁶. In addition to any penalty that may be imposed, the court may require the competent authorities to withdraw any permit or

⁷² Whether these violations should be regarded as minor violations in the context of fisheries and aquaculture is highly debatable.

⁷³ Public criticism refers to the criticism of the offender in court. The court’s decision may be published in a newspaper or advertised through other medium.

⁷⁴ Re-education without deprivation of liberty is a penalty imposed by the court consisting of depriving the offender of part of his or her salary (5 to 20%) for a specified period of time.

⁷⁵ A fine is determined in accordance with the gravity of the offence and on the basis of the offender’s economic status. In the event that the offender does not have the capacity to pay the fine, the court may commute the fine into a penalty of re-education without deprivation of liberty (Article 31).

⁷⁶ There is no mention though on the nature of these circumstances.

authorization or suspend the eligibility of the offender to undertake any specific activity for any specified period (Article 26). In determining the nature and severity of the penalty, the competent court should consider the nature and degree of social threat posed by the offence, the personality of the offender and the circumstances of the case (Article 35).

In case of multiple offences, each count of violation should be taken into consideration and penalties for each separate offence should be computed insofar as the final penalty does not exceed the highest penalty that could have been imposed for the most serious offence (Article 40).

Under the Lao criminal law, a repeat offender is any individual who commits an intentional offence while serving the sentence for a previous offence or within a period of 5 years after serving the sentence for the same or a similar offence (Article 11).

Interestingly, *the Lao Penal Law 1990 contains a part dealing with economic offences, including a specific article on illegal fishing*⁷⁷. Article 131 provides that any person engaging in fishing operations in contravention of fisheries regulations, particularly where using explosives, poisons, chemicals or other prohibited gears or methods for fishing purposes, is liable upon conviction to *a term of imprisonment from 3 months to 1 year and to a fine as prescribed in fisheries regulations*. The way this article is written indicates that any offence against fisheries regulations should carry an automatic jail sentence. This would be unfair and conflict with provisions of Article 7 of the Penal Law 1990, which clearly distinguish various categories of offences (and penalties) in accordance with their perceived degree of seriousness. In practice, warnings, re-education measures and fines rather than jail terms are commonly imposed for minor offences and first time offenders.

Offences directly relevant to fisheries or having a bearing on fisheries and aquaculture activities are summarized in Table 3.

Table 3 – Relevant offences and penalties

Offences	Penalties
Fishing in contravention of fisheries regulations and fishing by means of destructive gears or methods (Article 131)	Fine as prescribed in fisheries regulations and imprisonment from 3 months to 1 year
Unlawful possession and/or use of explosives (Article 70)	Fine from 500 000 to 10 000 000 kip and imprisonment from 6 months to 5 years
Production or sale of fish unfit for human consumption or hazardous for health (Article 133) ⁷⁸	<i>Where non-intentional:</i> fine from 100 000 to 1 000 000 kip <i>Where intentional:</i> fine from 1 500 000 to 5 000 000 kip and imprisonment from 3 months to 3 years
Abuse of power by enforcement officer affecting the rights of citizens (Article 143)	Fine from 500 000 to 5 000 000 kip and imprisonment from 3 months to 3 years <i>With use of force, threat, intimidation:</i> fine from 2 000 000 to 7 000 000 kip and imprisonment from 3 to 5 years

⁷⁷ Note that this is highly unusual as generally offences and penalties relating to fishing are found in the specialized legislation.

⁷⁸ This provision could be applied to any person fishing by means of poison or selling fish knowing that they have been caught by means of poison as it is clearly a public health issue.

Table 3 (continued)

Offences	Penalties
Obstruction of enforcement officers in the performance of their duties (Article 147)	<i>Threat or use of force</i> against an enforcement officer in the performance of his/her duties: fine from 200 000 to 2 000 000 kip and imprisonment from 3 months to 2 years <i>Where such offence causes injury</i> to enforcement officer: fine from 300 000 to 3 000 000 kip and imprisonment from 2 to 5 years <i>Where such offence cause physical disability</i> to enforcement officer: fine from 1 000 000 to 10 000 000 kip or life imprisonment or death penalty
Forging documents and use of forged documents (Article 150)	Fine from 200 000 to 2 000 000 kip and imprisonment from 3 months to 2 years
Failure to report an offence (Article 154)	Imprisonment from 3 months to 2 years or re-education without deprivation of liberty and fine from 200 000 to 2 000 000 kip
Intentional destruction of evidence (Article 156)	Imprisonment from 6 months to 3 years or re-education without deprivation of liberty and fine from 300 000 to 5 000 000 kip

3.2.6 Comments

As shown in the sections above, fisheries activities have not been the subject of systematic regulation in Lao PDR. The principal reason for this is that, hitherto, little pressure has been exerted on fisheries resources in this sparsely populated country where fish are still relatively abundant in most rivers and streams. In addition, local or customary management arrangements have probably been the norm. Aquaculture is in its infancy as most undertakings consist of fish culture in ponds (subsistence aquaculture) and small-scale cage culture in rivers and reservoirs. Hence, aquaculture remains virtually unregulated even though several provisions found in the Agriculture Law 1998 could be used to control and manage aquaculture activities⁷⁹.

Provisions regulating fisheries are scattered throughout many laws and regulations making it very difficult to know with certainty the extent of the fishery regulatory framework. In addition, this may trigger a conflict of jurisdiction over fisheries and aquaculture between the Agriculture Department, the Forestry Department and the DLF as both the Agriculture and Forestry departments may legitimately claim jurisdiction over these two economic sectors. It is true, though, that most fisheries regulations have been adopted under the Forestry Law 1996 through a combination of rules of general application and instructions directed at the local administration. Analysis of these rules and regulations shows that currently fisheries is under an open access regime with measures prohibiting the use of destructive fishing gears and methods and the catching of certain species, regulating closed seasons and import and export of certain species, and protecting spawning grounds. Many of these measures are similar and to a large extent redundant⁸⁰.

⁷⁹ These provisions, which are highlighted in Section 3.2.3, were primarily designed to control and manage livestock.

⁸⁰ The Forestry Law 1996, the Agriculture Law 1998, Rules No. 360/MAF-2003, Instruction No. 0565/MAF-2003 and local fisheries regulations contain provisions banning the use of destructive fishing gears and methods and prohibiting fishing during the closed season. With respect to prohibited gears and methods, the most comprehensive lists are those provided for under the Agriculture Law 1998 and local fisheries regulations.

While access to fisheries in Lao waters bodies is open and free, it is worth noting that the RFMC in Nam Houm reservoir is contemplating introducing a limited access system through licensing. This system, which is primarily intended to allow local authorities to levy taxes on occasional fishers and outsiders, may also be used as a management tool to regulate fishing effort should pressure on the resource become too strong.

Existing regulations are poorly enforced due to a large extent to the lack of DLF personnel. It was reported that enforcement of fisheries regulations is also cause for concern in Nam Houm reservoir. As of next year, the RFMC with the support of local authorities envisages to create an enforcement unit in each of the four villages surrounding the reservoir.

There is clearly a need to develop a fisheries and aquaculture legislation in Lao PDR so as to, *inter alia*: (1) ensure the global coherence of the fisheries regulatory framework (e.g. avoid redundancy) to make it easy to comprehend by fishers and facilitate its implementation by competent authorities; (2) designate the authorities responsible for fisheries and aquaculture management at the different levels of government and thus assert DLF responsibility in line with the recommendation of the reorganization and restructuration committee; and (3) designate or provide a mechanism for the designation of enforcement officers and define the extent of their powers.

3.3 OTHER RELEVANT LEGISLATION

This section reviews other legislation that contains provisions that may have an indirect impact on fisheries and aquaculture.

3.3.1 Land Law

A new *Land Law* was enacted in 2003⁸¹. It provides for the management and registration of land and the rights and obligations of land users. Provisions that may have some bearing on aquaculture activities are identified and summarized below.

Whether the Land Law 2003 recognizes full land ownership by individuals or legal entities is uncertain. There seems to be some ambiguity on this point, as there is no reference to land ownership by individuals and legal entities but only to land use rights. Even acquisition of a land title seems to fall short of conferring the holder full land ownership⁸². Land is regarded as a national heritage⁸³ belonging to the national community as a whole (Article 3). Can thus land be privately owned? It seems that, even though the term *ownership* is not used, permanent land use rights is akin to ownership as they are not limited in time and confer the holder the rights to use the land, collect usufruct or income from land, transfer land use rights, use land as a collateral and pass land use rights to one's spouse, children or close relatives (Articles 53 to 58).

Land throughout the country is classified in different categories, including agricultural land, forest land and water area land (Article 11). Classification of land is an ongoing process. While there is no specific mention of aquaculture, it is likely that aquaculture activities could be undertaken in water area land⁸⁴ and possibly in agriculture land⁸⁵ and forest land⁸⁶. This would have to be clarified by the competent authorities. This issue could be raised by the DLF with both the agriculture and forestry departments under the MAF so as to ensure that it is taken into consideration.

⁸¹ Land Law No. 04/NA of 2003.

⁸² A land title confers "permanent land use rights" (Article 49).

⁸³ See Article 17 of the Constitution.

⁸⁴ The concept of *water area land* is defined as "the land which is submerged or which surrounds bodies of water such as submerged land, land at river sources, river banks, islands, newly-formed land, land formed when water recedes or land formed by a change or diversion of waterways" (Article 23).

⁸⁵ Agriculture land entails land that is to be used for "cultivation, animal husbandry, agricultural research and experimentation and for irrigation" (Article 15).

⁸⁶ Forest land encompasses land which is covered by forest or which is designated as forest land by the competent authority (Article 19).

Any Lao citizen⁸⁷ may lease land from the State or another Lao citizen for a maximum period of 30 years. This period may be extended. The lease period is contingent upon the characteristics and size of the operations to be undertaken. Where the land is leased from another Lao citizen, the lease agreement must be approved by the village authorities and must be registered with the district or municipal administration (Article 13).

Foreign individuals and legal entities are allowed to lease land or receive a land concession from the State or from Lao citizens. Duration of land lease or concession agreement by the State to foreign individuals, investing in Lao PDR, must not exceed 50 years but may be extended on a case by case basis as decided by the Government. Duration of land lease or concession agreement by Lao citizens to foreign investors⁸⁸ must not exceed 30 years but may be extended on a case by case basis, as agreed by the contracting parties and with the approval of the National Land Management Authority (Article 65).

3.3.2 Water and Water Resources Law

The *Water and Water Resources Law* was enacted in 1996 to provide for the classification, use, management and protection of water and water resources⁸⁹. Provisions that are relevant to fisheries or aquaculture activities are summarized below.

Water resources encompass both living and non-living natural resources and include fish (Article 3). Water and water resources are common property and are therefore managed by the State on behalf of the people (Article 4). This means that fish occurring naturally in rivers, streams, lakes, reservoirs and ponds⁹⁰ is a public resource that cannot be privately owned unless caught in accordance with applicable rules and regulations.

Water and water resources may be lawfully used for a variety of purposes, including fishery and agricultural production⁹¹. In principle, underground water can be used only for drinking purposes. However, it can be used in medium and large scale activities with an authorization of the competent authorities (Article 13)⁹².

Use of water and water resources is divided into three distinct categories according to the size of the envisaged undertaking, namely small, medium and large-scale (Article 14). Are classified as small-scale use activities, any basic activity such as any water use for domestic purposes, subsistence agriculture and livestock production and “fishing and fisheries”⁹³. Small-scale activities are open but may be subject to certain restrictions by the competent authorities (Article 15). Medium-scale use activities include the construction of a “reservoir for irrigation, hydropower generation, livestock or fisheries”. No person is allowed to undertake such activities without a permit and the quantity of water to be used must be declared and registered (Articles 16 and 18). Large-scale use activities encompass the installation of important structures or large equipment nearby water bodies and any industrial production or processing activity using large quantity of water. Undertaking of such activities is subject to a prior authorization by the Government together with an environmental impact study (Articles 17 and 18).

⁸⁷ Curiously, there is no provision for lease of land by Lao body corporates and other legal entities.

⁸⁸ Note that the terminology used in Article 65 is not consistent, as there is reference to the terms *foreign individuals and their organizations*, *foreign individuals* and *foreign investors*. Whether the term *foreign investors* is different from the term *foreign individuals and their organizations* is unclear. In other words, there is no certainty as to whether the term *foreign investors* is intended to cover both foreign legal entities and foreign individuals.

⁸⁹ Law No. 106 of 1996.

⁹⁰ This rule does not apply to fish in small ponds located on a private land.

⁹¹ Note that while there is no specific mention of aquaculture, it is reasonable to assume that aquaculture is covered either by the term fishery or by the term agricultural production.

⁹² Note that a National Water Resources and Environment Agency has just been established.

⁹³ It is unclear whether the use of both the terms fishing and fisheries is the result of approximate translation or whether it reflects the intention of lawmakers to cover both subsistence fishing and aquaculture. Considering the fact that small-scale fish culture is widespread in Lao PDR, it is likely that this activity is included.

The Government encourages the construction of hydropower dams for the production of electricity. Several dams will be built in the coming years and are likely to have a significant impact on fisheries and aquatic ecosystems. While *constructors are required to take due consideration of the environment and fisheries in the planning of their projects* (Article 25), it is the responsibility of the DLF and the MAF to ensure that adequate mitigation measures with respect to fisheries are incorporated in the project and environmental management plans as well as ensure that the concerns and need for productivity and sustainability of aquatic resources as highlighted in Section 3 (Watershed Management and Conservation) of the National Policy No. 561/CPI “Environmental and Social Sustainability of the Hydropower Sector in Lao PDR” are taken into account.

For the purpose of protecting water resources and aquatic ecosystems, it is prohibited, *inter alia*, to: (a) cut trees on the river, lake or reservoir banks; (b) dump any material or substance that may adversely affect water quality and water resources; and (c) obstruct the flow of water in natural water ways⁹⁴ (Article 31).

The Government has the duty to set water quality and waste water standards (Article 32).

3.3.3 Environmental Protection Law

In 1999, the Lao National Assembly enacted the *Environmental Protection Law*⁹⁵. It lays down the basic principles underpinning the protection of the environment. In particular, it provides that: (1) environmental protection must be a priority consideration and that environmental mitigation and restoration, though important activities, are less preferable; (2) as a general principle, all legal and natural persons have an obligation to protect the environment; and (3) any person who causes damages to the environment must bear the cost of such damages and insofar as possible restore the environment to its previous state (Article 5).

It requires that any project or activity likely to have an adverse impact on the environment be subject to an Environmental Impact Assessment (EIA) (Article 8). In 2000, the Science, Technology and Environment Agency (STEA)⁹⁶ issued a set of *Regulations on environment assessment*⁹⁷. They establish a uniform procedure, applicable to all development projects, for assessing environmental impact. Each such project is screened to determine, based on its nature, size and location, whether it should undertake further environmental assessment. Those that are deemed to cause minimal environmental impact are exempt from environmental assessment. All other projects are subject to an initial environment examination (IEE). Based on the findings and recommendations of the IEE report, it is determined whether a full EIA should be carried out. Neither the Environmental Protection Law 1999 nor the Regulations on environment assessment contain a list of undertakings or activities that, by their nature and size, are necessarily subject to an EIA.

Since all natural and legal persons have a general obligation to protect natural resources, they are also required to report any loss of natural resources to the competent agency for timely and appropriate action (Article 13).

Protection of biodiversity is the primary responsibility of the State at every level of government, particularly at the local level. As a result, local administration and concerned line agencies are required to establish biodiversity conservation areas and designate the species that need to receive some degree of protection (Article 15).

Any import or export of plants and animals must be made in a way that strictly complies with regulations and measures on biodiversity management (Article 15)⁹⁸.

⁹⁴ This activity may be undertaken with an authorization from the competent authorities.

⁹⁵ Law No. 02/99 of 1999.

⁹⁶ STEA is an independent agency placed directly under the authority of the Prime Minister's Office.

⁹⁷ Regulations No. 1770/STEA of 2000.

⁹⁸ STEA is responsible for adopting such measures and regulations.

All legal and natural persons have a general obligation to take all necessary measures to control pollution. In particular, they are required to use technologies and install appropriate pollution control facilities or devices to meet the prescribed environment quality standards (Article 22). It is prohibited to discharge waste water, or water that does not satisfy the prescribed standards into canals, natural water bodies or any other place without proper treatment (Article 23). There is no doubt that these requirements apply to any fish farm and any fish and fish products processing establishment.

National Policy No. 561/CPI entitled “Environmental and Social Sustainability of the Hydropower Sector in Lao PDR” prescribes that all large hydropower projects (that have dams with installed capacity of higher than 50 megawatts or inundating more than 10 000 hectares of land at their full supply level) shall produce a full EIA Report and an Environmental Management Plan (EMP). Such IEA will include a comprehensive risk analysis over the entire lifespan of the project, an analysis for alternatives for project structure and location including the no-project alternative, lessons learned from previous projects and sub-basin cumulative impact analysis. The EMP will provide cost estimates for these activities and identify their sources of funding and an implementation schedule. A comprehensive monitoring and evaluation framework consisting of both internal and independent or third party monitoring arrangements should also be included in the EMP. The EIA Process will also include provisions for field based surveys of archaeological, historical and/or sacred sites.

3.3.4 Law on the Promotion of Foreign Investment

In 2003, Lao legislators undertook to review the Law on the Promotion of Foreign Investment to give effect to the provisions of Article 15 of the 2003 Constitution which encourages foreign investment in Lao PDR. The amended Law on the Promotion of Foreign Investment was enacted on 22 October 2004 and promulgated on 15 November 2004. It promotes foreign investment in production and all types of business activities, except those which may be detrimental to national security, have an adverse impact on the environment or disrupt national traditions or customs (Article 3). It provides for legal protection of foreign investors’ assets and investment against seizure, confiscation or nationalization, except where required for public purpose, in which case foreign investors must be compensated in accordance with laws and regulations (Article 4).

Foreign persons may invest in Lao PDR through business cooperation by contract or by setting up under the laws of Lao PDR a joint venture or a one hundred percent foreign owned enterprise (Article 5). The registered capital of a foreign investment enterprise must not be less than thirty percent (Article 9). While the investment term of a foreign investment enterprise depends on the nature, size and conditions of the business activity or project, it must not exceed fifty years and may be extended with the approval of the government for a maximum period of twenty five years (Article 11).

Rights and benefits of foreign investors include:

- a. Obtaining protection of their rights and legitimate interests relating to business operations;
- b. Owning assets;
- c. Receiving benefits from a land lease or concession;
- d. Using foreign workers, where necessary, provided that the percentage of foreign workers does not exceed ten percent of the enterprise’s workforce;
- e. Repatriating profits, capital and other income after full payment of duties, taxes and other fees in accordance with Lao PDR’s laws and regulations, to their home countries or a third country through a bank located in Lao PDR (Article 12).

Obligations of foreign investors include:

- a. Operating production and any business activity in accordance with their license, the procedures set out in the feasibility study, their contract and the relevant laws and regulations of Lao PDR;
- b. Maintaining accounts in accordance with the Enterprise Accounting Law;
- c. Giving priority to Lao workers in their recruitment policy and providing them with adequate training to improve their skills;
- d. Protecting the environment and ensuring that their business activities do not severely impact on national security or public order; and
- e. Reporting on the performance of business operations to competent authorities (Article 13).

The Law on the Promotion of Foreign Investment identifies priority activities and zones so as to direct foreign investments in activities and areas where it is most needed. Are listed among priority activities: (1) production for export; (2) activities relating to agriculture or forestry; and (3) activities relating to industrial processing and to industrial activities using modern techniques (Article 16). The country is divided into three categories of zones according to their level of economic development (Article 17)⁹⁹. Any foreign person investing in a promoted sector of activity benefits from financial incentives in the form of profit tax exemption or reduction, the duration or rate of which varies according to the type of zone in which the investment is made (Article 18)¹⁰⁰.

To facilitate foreign investment, a one-stop service in the form of a Committee for Promotion and Management of Investment (CPMI) has been set up under the auspices of the Committee for Planning and Investment (CPI). The CPMI is represented at the provincial level in the Planning and Investment Division. At the central level, the CPMI is responsible, *inter alia*, for: (a) disseminating policies, laws and regulations and providing information to facilitate foreign investments; (b) issuing or withdrawing a foreign investment license; (c) supervising and coordinating with line ministries and local authorities in implementing the Law on the Promotion of Foreign Investment; and (d) being a focal point in supporting, promoting and solving problems in relation to foreign investments (Article 22). At the provincial level, the CPMI promotes foreign investment and acts as a support to provincial governors and the capital city governor. The CPMI at the provincial level is tasked with: (a) implementing strategic plans and policies aiming at promoting and attracting foreign investment within their area of jurisdiction; (b) disseminating policies, laws and regulations and providing information to facilitate foreign investments; (c) issuing or withdrawing a foreign investment license; (d) monitoring, inspecting, assessing foreign investment projects and reporting on such projects to provincial governors, the capital city governor and the CPMI at the central level; (e) acting as a focal point in solving problems related to foreign investment (Article 23).

Any foreign person wishing to invest in Lao PDR is required to submit an application together with the feasibility study or the business plan to the CPMI at the central or provincial level (Article 19). Upon receipt of the application, the CPMI send it to the relevant line ministry or ministries and local authorities for review and approval. They are required to respond, in writing, within fifteen working days for projects falling in the category of priority activities, twenty-five working days for projects falling in the category of open activities with conditions and forty-five working days for projects involving the grant of a concession. Upon approval of investment projects, foreign investors are issued by the CPMI a foreign investment license, an enterprise registration certificate and a tax registration certificate. The holder of

⁹⁹ Zone 1 refers to mountainous, plain and plateau areas with no economic infrastructure to facilitate investments; zone 2 to mountainous, plain and plateau zones with a moderate level of economic infrastructure suitable to accommodate investments to some extent; and zone 3 to mountainous, plain and plateau zones with good infrastructure to support investments.

¹⁰⁰ Financial incentives are as follows: (1) for investments in zone 1 – profit tax exemption for a period of 7 years and thereafter a 10% profit tax rate; (2) for investments in zone 2 – profit tax exemption for a period of 5 years, thereafter a 7.5% profit tax rate for a period of 3 years and thereafter a 15% profit tax rate; and (3) for investments in zone 3 – profit tax exemption for a period of 2 years, thereafter a 10% profit tax rate for a period of 2 years and thereafter a 20% profit tax rate.

the foreign investment license is required to commence business activities within ninety days of the date of receipt of the license. Failure to act within this period results in the license being terminated (Article 20).

Disputes arising from business operations under the Law on the Promotion of Foreign Investment must be settled through amicable settlement, mediation or judicial review (Article 25).

3.4 INTERNATIONAL COMMITMENTS

In the past 15 years, Lao PDR has become a party to several important multilateral environmental agreements, in particular to the Convention on Biological Diversity (CBD) and CITES. As a contracting state, Lao PDR has an obligation to comply with and implement the decisions taken in the framework of these conventions by reflecting international measures in domestic law.

The Mekong River Commission (MRC) was formed on 5 April 1995 by an agreement between the governments of Cambodia, Lao PDR, Thailand and Vietnam. It provides a forum for discussion and promotes regional cooperation for the sustainable development of water and related resources in the Mekong Basin¹⁰¹.

Lao PDR adheres to best practices for fisheries management as reflected in the FAO Code of Conduct for Responsible Fisheries.

4 RELEVANT DRAFT LEGISLATION

At the time of this review, two pieces of legislation likely to have an impact on the conduct of fisheries and aquaculture operations in Lao PDR were in the process of being drafted, namely, the draft Veterinary Law and the Prime Minister Decree on concession and lease of State land. The draft Veterinary Bill, which is prepared under the aegis of the MAF, is part of the legislative plan submitted by Lao PDR to the World Trade Organization (WTO) in the framework of the accession process¹⁰². A draft Prime Minister Decree on concession and lease of State land was drawn up by the Department of Assets and Property in the Ministry of Finance, in close consultation with the Land Management Agency. Relevant provisions of the draft Veterinary Bill are examined in the section below. However, no review of the draft Prime Minister Decree is provided for in this section, as the text of this draft decree was not made available to the technical assistance for review.

4.1 DRAFT VETERINARY BILL

The Draft Veterinary Bill has been approved by Government and submitted to National Assembly for review and adoption. In the meantime, the implementing decree, which was submitted together with the draft Bill, has been enacted¹⁰³. At the second stakeholders meeting, it was noted that although the Draft Veterinary Bill was intended to deal with livestock and aquatic animals, it contained few provisions in relation to the latter. DLF agreed to rectify this omission by preparing specific provisions for aquatic animals to be introduced in the Draft Veterinary Bill.

While aquatic animals fall within the purview of the draft Bill¹⁰⁴, it is primarily intended for livestock. It deals with: (a) the prevention, control and eradication of animal diseases; (b) the control of live animal

¹⁰¹ The MRC supports the Mekong Programme, a Regional Cooperation Programme for the Sustainable Development of Water and Related Resources in the Mekong Basin. It includes components on fisheries, hydropower, water utilization and flood management and mitigation. For more details consult the MRC website at www.mrcmekong.org

¹⁰² Lao PDR has engaged in negotiations with the World Trade Organization (WTO) to become a member of that organization.

¹⁰³ Note that it is common practice in Lao PDR to submit the bill together with its major implementing subsidiary legislation to the National Assembly.

¹⁰⁴ Aquatic animals are part of the animals covered by this draft Bill.

movement; (c) importation, exportation, transit and quarantine; (d) processing establishments¹⁰⁵; and (e) inspection of animal products¹⁰⁶ (Article 3).

The Government is empowered to make regulations: (a) preventing, controlling or eradicating certain animal diseases and prescribing measures to prevent the spread of such diseases; (b) prescribing methods of destruction of contaminated animals as well as measures of disinfection of contaminated material or location; (c) prescribing measures for the isolation, observation and quarantining of infected or contaminated animals; and (d) prohibiting or regulating the movement and transport of animals throughout the country (Article 6). Animal owners are required to report any disease outbreak to the competent authorities (Article 7).

No animals or animal products other than those with a health and sanitary certificate issued by the Veterinary Authority of the exporting country are allowed to be imported or introduced in the Lao territory. The Government is entitled to prohibit the introduction of any animals or animal products into the Lao territory where a disease outbreak has been reported in the exporting or transit country. It may also deny access to the Lao territory to any animals or animal products where the veterinary services at the border post found that such animals or animal products are affected or suspected of being affected by diseases. Any animals or animal products to be imported or introduced in the Lao territory must be inspected by veterinary inspectors (Article 15).

Regulatory powers vested with the Veterinary Authority include prescribing measures with respect to: (a) control of animal diseases; (b) international trade; (c) quarantine of animals and animal products; and (d) the sanitary and quality standards of animal products (Article 26).

It is the duty of the MAF to appoint and revoke veterinary inspectors. The latter are empowered to: (a) inspect animal means of transportation; and (b) inspect sanitary and hygiene of any premises or place where animals or animal products are kept, stored, sold or processed (Article 28).

No person should engage in the production of animal feed without an authorization (Article 31).

Introduction of any animals or animal products into the Lao territory is prohibited where: (a) it is found that there was an outbreak of disease in the exporting or transit country that occurred before or during transportation; (b) there is no certificate of health or quality issued by the competent authority of the exporting country; (c) veterinary inspectors at the point of entry into Lao territory find that the animals are contaminated with a transmissible or dangerous disease; and (d) where details of import or transit, such as date, number, type of transportation, are not made available to the competent authorities at least 15 days in advance (Article 36).

Export of animal or animal products from Lao PDR is prohibited unless the following conditions are met: (a) export of such animals or animal products is authorized by the Veterinary Authority at the central or local level; (b) all steps of inspection set out in the regulations have been complied with; and (c) animals and animal products meet the required health and sanitary standards of the importing country (Article 37)¹⁰⁷.

It is prohibited to move live animals and animal products affected by a dangerous disease or not meeting the conditions and certification requirements set out by the Veterinary Authority (Article 38).

¹⁰⁵ It focuses essentially on slaughter houses for cattle.

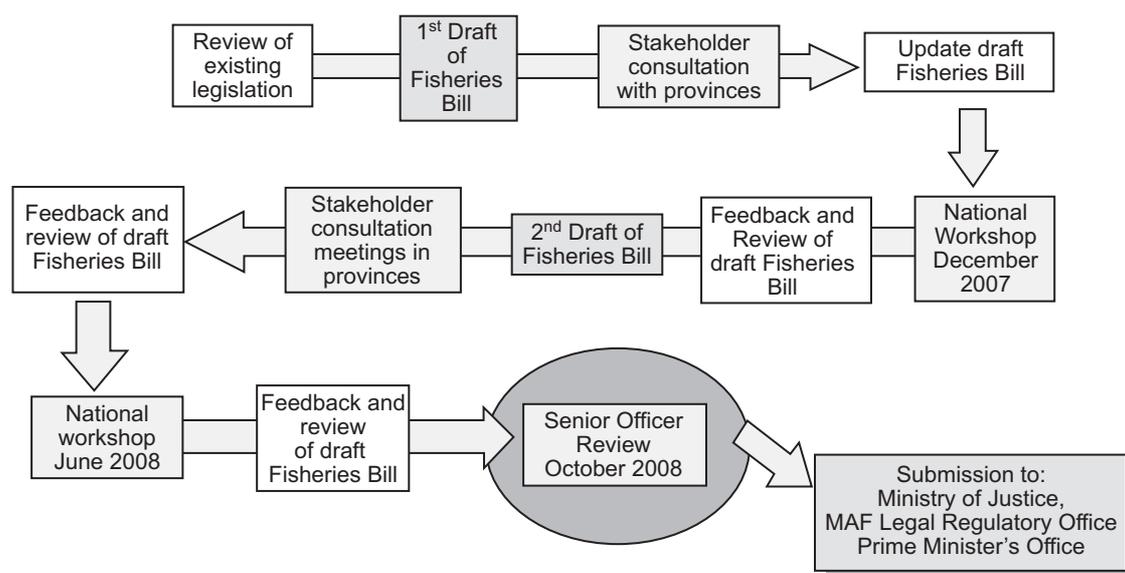
¹⁰⁶ Principally cattle meat.

¹⁰⁷ Note that, in practice, it would be extremely difficult to implement such a measure to control the flow of fish and fish products across the Mekong River.

5 LEGISLATIVE PROCESS

The process to develop a comprehensive legislation for fisheries and aquaculture was initiated in September 2007 through the convening of an inception meeting designed to present the goals of the process, collect information, identify resource persons to be consulted, identify the major issues to be addressed by the draft law and seek the views of major stakeholders¹⁰⁸. Particular effort was made to ensure broad participation of stakeholders through national and regional consultations at every step of the legislative process. A drafting team, made up of local and international experts, was set up to prepare the draft fisheries and aquaculture law and coordinate the consultative process.

Diagrammatic representation of the fisheries and aquaculture legislation development process 2007-2008



The first step consisted in reviewing and analyzing the existing fisheries and aquaculture legal framework (this review), including relevant legislation having an impact on fisheries and aquaculture¹⁰⁹, so as to identify the gaps and inconsistencies of this framework and prepare a concept note to guide the drafting of a framework fisheries and aquaculture legislation for Lao PDR. Major findings of the analysis were as follows –

- Fisheries regulations are scattered throughout several laws and regulations, particularly in the Forestry Law, Agriculture Law and MAF rules and instructions, and are, to a large extent, redundant dealing mainly with protected and managed species, prohibited fishing gears and methods and closed seasons;
- Aquaculture activities are virtually unregulated;
- There is a need to clarify the extent of the powers conferred by the Local Administration Law 2003 upon local authorities with respect to fisheries and aquaculture at each level of government (province, district and village);
- Signs of overfishing have been reported in certain areas indicating that there may be a need to introduce legal mechanisms to restrict or limit access to such areas;
- Existing regulations are poorly enforced, if at all;

¹⁰⁸ It was held at DLF in Vientiane from 4 to 5 September 2007.

¹⁰⁹ See Sections 3 and 4 of this document.

- It was proposed to introduce co-management mechanisms drawing on co-management initiatives by the Living Aquatic Resources Research Center (LARReC), the Mekong River Commission (MRC) and WWF for the management of fisheries at the local level;
- It is recognized that a significant amount of fish is produced in rice field fisheries and that rules of access to such fisheries need to be clarified;
- To facilitate the orderly development of commercial aquaculture and control the conduct of such activities, it was suggested to introduce a licensing system;
- There is a need to reassess the procedure and objective of fishing concessions, as so far, fishing concessions that have been granted are marketing concessions;
- Provide for enforcement mechanisms (e.g. designation of enforcement officers, specification of enforcement officers' powers); and
- There is no offences and penalties scheme for fisheries and aquaculture.

Based on the findings of the analysis a first outline of a framework fisheries and aquaculture legislation together with a concept note were produced and translated into Lao for presentation at regional consultations in the Northern, Central and Southern Provinces of Lao PDR. These consultations took place in November 2007. Relevant comments and issues raised by various stakeholders throughout the country were recorded, summarized and translated into English to feed into the drafting process.

A follow-up stakeholders meeting designed to discuss the main issues identified by the technical assistance in its first report¹¹⁰ and during the regional consultations was held on 12 December 2007 at the DLF in Vientiane. Two days later, the findings of the technical assistance were presented to the main ministries and agencies concerned at a one-day national workshop held in Bankeud, Thulakhom District, Vientiane Province. Based on the feedback from the stakeholders meeting and the national workshop and comments from the regional consultations, the drafting team prepared a full-fledged preliminary draft fisheries and aquaculture law. The draft law was attached to the second report of the technical assistance and was submitted to the MAF/DLF in January 2008 for consideration¹¹¹.

The draft law was translated into Lao and submitted to the Ministry of Justice for review and verification of conformity with law making practice as reflected in Presidential Ordinance No. 2 of 2003. As a result, several standard provisions were added and some articles were moved around to make the structure of the draft law compliant with existing legislative practice in Lao PDR. In May 2008, further provincial consultations were conducted to present the provisions of the draft law, article by article, to local authorities, fisher groups and other persons concerned¹¹². Relevant comments and feedback from stakeholders were recorded and introduced into the draft law.

In June 2008, the drafting team met in Vientiane together with a representative from the Justice Department to review the modifications introduced in the draft law pursuant to the regional consultations and to finalize the text to be presented at the two-day national workshop, held in Vientiane from 11 to 12 June 2008. Relevant comments and suggestions made by the representatives of concerned administrations and agencies attending the national workshop were then incorporated into the draft law.

In the course of July 2008, the Director of DLF and the national legal advisor presented the main features of the draft law to members of the Law Commission of the National Assembly to sensitize lawmakers on the importance of adopting a framework law for the management of fisheries and aquaculture in Lao PDR and explain the rationale behind the main provisions of the law.

¹¹⁰ *Supra* note 1.

¹¹¹ *Supra* note 1.

¹¹² Two Two-day regional consultations were held in Bolikhamxay and Luang Prabang Provinces.

To conclude the consultation process, the final draft of the fisheries and aquaculture bill was presented to some members of the National Assembly and senior officers of concerned administrations and agencies and non-governmental organizations at a two-day meeting in Luang Prabang, from 7 to 8 October 2008. The purpose of this meeting was to raise awareness amongst lawmakers and decision makers on fisheries and aquaculture issues and facilitate the review process of the fisheries and aquaculture legislation by the National Assembly.

The final draft bill will now be submitted to the MAF Regulatory Committee for review prior to being sent to the Prime Minister's Office for approval. Once approved, it will be sent to the National Assembly for examination and approval.

As of writing, it is expected that the draft law will be tabled for the first session of the National Assembly in 2009.

6 LEGAL ISSUES

This part examines and discusses the major policy and legal issues that were addressed in the preparation of the draft framework legislation.

6.1 FRAMEWORK LEGISLATION

The draft fisheries and aquaculture bill is intended to be a framework legislation, that is a legislation which provides the major principles and mechanisms to facilitate the orderly development of fisheries and aquaculture activities in Lao PDR. It should be flexible enough to allow adaptive management. Details for its implementation will be set out in subsidiary legislation. The goal is not to over-regulate these activities, but to provide a legal environment conducive to their development while ensuring adequate protection of the environment.

6.2 SINGLE VERSUS SEPARATE LEGISLATION

The first issue to be dealt with is to determine whether a single framework legislation dealing with both fisheries and aquaculture or two separate pieces of legislation, one handling fisheries and the other aquaculture, should be drafted. State practice indicates that both approaches are commonly used¹¹³. However, in countries where aquaculture is nascent or at an early stage of development, a single legislation covering both sectors is generally adopted. Considering the state of development of aquaculture in Lao PDR, it is recommended that a single legislation be prepared. The idea is to incorporate a chapter on aquaculture under the fisheries law rather than drafting an enabling legislation vesting the Minister with the power to make regulations with respect to a number of issues including aquaculture. This approach was endorsed by the DLF and thus the draft law covers both fisheries and aquaculture activities.

6.3 JURISDICTION

As described above, the MAF is responsible for managing fisheries and aquaculture. However, there is some overlap between the provisions of the Forestry Law 1996 and of the Agriculture Law 1998 as the scope of both legislation encompasses fisheries and aquaculture activities. As a result, both the Forestry and Agriculture Departments have a legitimate claim over the jurisdiction of these activities. To compound matters further the Fisheries Section, which in principle is the authority responsible for managing these activities¹¹⁴, is lodged in neither of these departments but in the DLF. The need to clarify which

¹¹³ In the region, Vietnam has adopted the Fisheries Act 2003 dealing with both fisheries and aquaculture whereas Myanmar has enacted three distinct legislation, namely the Aquaculture Act 1989 and the Freshwater Fisheries Act 1991 and Marine Fisheries Act 1993.

¹¹⁴ Based on the attributions of the Division.

administration is the competent authority for administering aquaculture and fisheries was recognized by the *ad hoc* committee in charge of supervising and facilitating the restructuring and reorganization of the MAF. In its conclusions, the *ad hoc* committee recommended that DLF should be designated as the competent authority for administering aquaculture and fisheries activities in Lao PDR and that the Forestry Department remain in charge of wildlife. The upgrading of the Fisheries Section to the rank of a division together with the drafting of a specialized legislation offers a unique opportunity to clearly establish the authority of the DLF over fisheries and aquaculture. To avoid any lasting confusion and ensure global coherence of the institutional and legal framework, there is also a need to modify the Forestry Law 1996 and the Agriculture Law 1998 to remove fisheries and aquaculture from the scope of these laws.

6.4 REGIMES OF ACCESS

Currently access to fisheries is open and free throughout Lao PDR. However, signs of overfishing have been reported in certain areas and introduction of mechanisms designed to control and regulate fishing effort in these areas has been advocated by some¹¹⁵. At the inception workshop, there was consensus on the need to define regimes of access in relation to the various types of water bodies. This approach would require that Lao water bodies are classified in different categories and that a regime or regimes of access are defined for each established category of water bodies. Typically, regimes of access include licensing¹¹⁶ or/and concession¹¹⁷. For each identified category of water bodies such as rivers and streams, reservoirs, lakes and ponds, one would have to determine which type(s) of access regime is most appropriate in the Lao context. For instance, there is little doubt that a global individual licensing system applicable to all rivers and streams is not advisable because pressure on fisheries is unequal and DLF does not have the capability to enforce such a measure country wide. However, limited access may be deemed appropriate in specified areas where signs of overfishing have been reported and where pressure on the fisheries is growing. In reservoirs and lakes, access may be limited and priority may be given to the communities living in the vicinity of such reservoirs and lakes. *Existing management regimes such as the one in Nam Houm Reservoir should be reviewed and analyzed by the DLF to determine whether this approach should be duplicated in other reservoirs throughout the Lao territory and given formal recognition by the legal framework.*

It is also the duty of lawmakers to anticipate likely developments in the concerned sector to provide a proper legal framework capable of dealing with emerging issues. In this regard, *DLF should devise approaches for the management of fisheries in the artificial water bodies that are increasingly appearing in the Lao landscape as a result of the national energy and irrigation policies*¹¹⁸.

6.4.1 Co-management mechanisms

The review and analysis of the existing legal and institutional framework in Parts 2 and 3 above show that no mechanism of co-management has yet been introduced for the management of fisheries in Lao PDR. While the central government has delegated a great deal of power to lower level of government with respect to the management of natural resources in line with the Local Administration Law 2003, it has not transferred any such powers to any institution, organization, group or structure outside the government. In practice, however, initiatives by LARReC, MRC and WWF designed to involve grassroots level groups in the management of local fisheries resources in rivers, streams and reservoirs have been

¹¹⁵ Introduction of a licensing system in certain water bodies or areas was proposed during the inception workshop of this project.

¹¹⁶ Licensing can relate to boats, individuals or gears or a combination of these options.

¹¹⁷ Fisheries concession refers to exclusive rights granted by the State to an individual, a community, a group or a legal entity (e.g. fishing company) to exploit, under certain conditions, a reservoir, lake or part thereof or a specified stretch of river or stream.

¹¹⁸ The Lao Government has planned to build several high capacity hydropower dams across major rivers in the coming years.

launched¹¹⁹. Up to now, co-management approaches promoted by these initiatives have not been formally recognized, even though they have been endorsed, to a large extent, by local authorities at the district level. *At this juncture, there is an urgent need for the Lao PDR Government to indicate whether it intends to support the development of these approaches and to determine how, and to which extent, they should be given legal recognition to ensure their effectiveness and sustainability.*

Pursuant to regional consultations with stakeholders that were held in preparation of the draft fisheries law, the Lao PDR Government decided to embrace a participatory approach to fisheries management through the establishment of Fisheries Management Committees (FMCs) and the development of village regulations and management plans. These co-management mechanisms have already been tested in several places throughout Lao PDR by LARReC/MRC and WWF. The former have provided assistance to local fisher groups and authorities in setting up FMCs on reservoirs, whereas the latter has worked closely with local communities in villages in several provinces of Lao PDR to develop village regulations and fisheries management plans applicable to specified areas in the vicinity of the concerned villages. These initiatives are strongly supported by local government and welcomed by local communities. As a consequence, there was a broad consensus for the recognition of these co-management mechanisms in the framework fisheries legislation. In its current form, the draft law gives legitimacy to these mechanisms by recognizing their existence, by providing for their establishment FMCs and by spelling out the approval process. Quite remarkably, the Lao Government proposed the introduction of an additional provision stating clearly that fisheries management was the primary responsibility of local authorities in close collaboration with local communities and fisher groups. The guidelines for co-management of fisheries developed by DLF and WWF-Lao PDR are appended in Annex 3.

Initiative for the setting up of FMCs and the development of village regulations and management plans is left to the village authorities, fisher groups and local communities to decide. The role of the fisheries sections in both the District Agriculture and Fisheries Office (DAFO) and the Provincial Agriculture and Fisheries Office (PAFO) is to provide technical assistance and guidance, whereas that of local authorities (district Heads and provincial Governors) is to verify through an approval process that the establishment of FMCs and the content of local regulations and fisheries management plans are compliant with existing fisheries policy, law and regulations (e.g. maximum fines should not be higher than those contained in the fisheries law).

The proposal by the DLF to require the establishment of a FMC where more than 3 villages were involved in the development of village regulations and fisheries management plans was rejected on the grounds that this threshold was completely arbitrary as it was not intended to tackle any particular issue, that it would unnecessarily encumber the process which should be as flexible as possible, and that decision as to whether a FMC should be established should be left at the discretion of village authorities, local communities and fisher groups. DLF recognized that the 3-village threshold was not a valid benchmark. However, it expressed its willingness to tie the establishment of FMCs to a reference point and suggested that it may be linked to the concept of cluster of villages¹²⁰. It is important to note that a *cluster* is not a formally recognized territorial division for local government. It is a political subdivision used by the Lao Politburo for channeling support to local authorities for the purpose of economic development, administrative management and local infrastructure¹²¹.

It was proposed that the main members of FMCs be specified in the draft law (e.g. local authorities, representatives from DAFO or PAFO, fisher groups). The list of members, however, was left open so that it could be adapted to local needs.

¹¹⁹ See Section 3.2.2 of this document.

¹²⁰ What should be the rule? In the event that villages from more than one cluster are involved in the development of local regulations and management plans, a FMC should be created.

¹²¹ There are currently 1180 clusters. Each cluster comprises 5 to 8 villages. Reference to clusters is common practice in Lao PDR. It somewhat replaces the *canton* which was an intermediary territorial division (between the district and the village) for local government.

6.4.2 Regulation of fishing effort through restriction of access

Reports of overfishing in certain areas of Lao PDR emphasized the need to move from a regime of open access to a regime of restricted access in respect of certain fisheries. In its initial form, the draft law provided two mechanisms to regulate access to selected fisheries. First, access could be restricted through village regulations and management plans developed by FMCs and village authorities. These plans and regulations may make provision for a licensing/authorization system to access a specified managed area. In addition, a licensing scheme applicable to large scale fishing gears was introduced to avoid excessive concentration of such gears in specified areas. The DLF was of the opinion that an individual licensing system for commercial fishing operations should also be provided for under the draft law and inserted language to that effect therein. The soundness and adequacy of the proposed measures were challenged during the national and regional consultations. The proposal to introduce an individual commercial fishing license was rejected on the grounds that this measure:

- a. Was not enforceable due in particular to the lack of enforcement capacity by the administration and to the fact that such an approach is not suitable to the type of fisheries in Lao PDR (largely small-scale) and contrary to local practice (open access to common property resources);
- b. Was not needed as a country-wide requirement for managing fisheries¹²².

Likewise, a licensing scheme applicable to large-scale fishing gears was thought inappropriate for Lao PDR fisheries as fishing activities are mostly small-scale. It was argued that there was no large-scale fishing gears in Lao PDR and that, in any case, it would be extremely difficult to agree on an adequate definition of the term *large-scale fishing gear* to be applied country-wide since perception of what should be regarded as a large-scale gear was likely to vary from one province to another¹²³.

As a result, it was decided that access to certain fisheries should be regulated at the local level through local regulations and management plans developed by FMCs and local authorities and be combined with the requirement for FMC and village authorities to record information for assessing the level of fishing effort (e.g. individual fishers, fishing gears, boats). Moreover, it was agreed to introduce language in the draft law enabling the Minister responsible for fisheries to establish through regulations licensing or permitting systems. This provision is conceived as a default measure to be acted upon where no action is taken at the local level and where there is a clear need to regulate fishing effort in a specified area or in respect of certain types of gears.

The Lao Government is entitled to grant fishing concession in certain areas of Lao waters. A concession confers an exclusive right to fish in a specified area on the concessionaire, who may be a local or foreign person. Conditions for issuing a concession agreement and main provisions to be contained therein are spelled out in the law. In addition, it was agreed to consider whether a model fishing concession agreement should be drawn up and adopted through regulations. The goal of this approach is two-fold:

- a. Ensure consistency between the various concession agreements; and
- b. Ensure transparency in the process of granting fishing concessions by provincial Governors or district Heads.

Provision requiring that no fishing concession should be granted in a water body where a FMC has been established, unless it complies with the management plan adopted by the FMC, was introduced at the initiative of DLF. The concessionaire is also subject to an obligation of stock enhancement to benefit local communities. It was agreed that fishing concessions should no longer be designed as

¹²² If the purpose is to levy taxes on fishers, other measures can be utilized.

¹²³ This issue was raised during the regional consultations. Many different views were expressed and demonstrated the difficulty of finding a consensus on the definition of large scale fishing gear.

marketing concessions resulting in the creation of fish marketing monopoly in certain water bodies (e.g. Nam Houm). Fishing concessions dealt with under the fisheries law are directed at facilitating the production of fish by granting exclusive fishing rights to a concessionaire over a specific water body or part thereof. Needless to say, that the concession agreement is likely to also entail provisions on the marketing of fish since fish are being produced for commercial or business purposes. To avoid the dumping of sub-standard fish on the local market, it was agreed that every concession agreement granted for the production of fish for export should contain a clause laying down the conditions governing the selling of such fish in Lao PDR.

6.4.3 Fishing in rice fields

Specific provisions governing access to rice field fisheries have been introduced in the draft law. The initial draft law recognized two separate regimes of access depending on whether the area where the rice fields are located is flooded. Under normal circumstances, any person wishing to fish in a rice field is required to seek permission from the field owner or the holder of a land use right over that field. In the event of a flood, any person may fish in submerged rice fields without permission from the field owner or use right holder if the water level is sufficiently high to cover the bunds entirely. While this approach was well received and thus acceptable in the southern provinces of Lao PDR, it was vigorously contested in the northern provinces. The reason was that in the North the rice fields are generally flooded for a much shorter period of time and therefore open access to the rice field fisheries during that period is more likely to damage rice culture. Also, to accommodate the diversity of practices throughout the country, the wording of the draft law was modified so as adapt the regime of access to rice field fisheries during the flooding period to local practice.

6.5 DELEGATION OF AUTHORITY

As is common practice in Lao law, the draft fisheries law includes provisions spelling out the responsibility of each level of government (central, provincial and district)¹²⁴ with respect to fisheries and aquaculture activities.

6.6 THREATS FROM OTHER ACTIVITIES

As was already mentioned, one of the priorities of the Lao Government for the next decade is to dramatically increase electricity production through the construction of hydropower dams. These waterworks, which will alter water level and profoundly modify existing ecosystems, are likely to have a serious impact on Lao fisheries. While aware of the problem, the MAF and DLF do not yet have a strategy to ensure that fisheries-related issues receive the attention they deserve in the management of the dams. Concern about the potential devastating impact of these constructions on fisheries was voiced at the inception workshop. To tackle this issue, proposal was made that provision requiring due consideration of the fisheries dimension, through consultation with the MAF, be introduced in the draft fisheries law. It is the view of the technical assistance that adoption of such a measure would not make any difference. First, it would be too little too late¹²⁵. Second, like provision already exists under the Water and Water Resources Law 1996¹²⁶. Third, it is primarily a political rather than a legal issue.

The Electricity Law 1997¹²⁷, the Environmental Protection Law 1999 and the Regulations on environmental assessment taken thereunder and the National Policy No. 561/CPI “Environmental and Social Sustainability of the Hydropower Sector in Lao PDR” already furnish the legal and policy tools that can be used to protect fisheries interests, notably, by requiring that an environmental assessment

¹²⁴ Note that the National Assembly has adopted guidelines, directed at legal drafters in the ministries and agencies, outlining the typical structure of a piece of legislation (required provisions).

¹²⁵ There is a need for immediate action. Enactment of a fisheries legislation may take several years.

¹²⁶ See Article 25 of the Water and Water Resources Law 1996.

¹²⁷ See Article 14 of Law No. 02-97 of 1997.

be undertaken for projects likely to have an impact on the environment and local population. *It is therefore the duty of the MAF and DLF to be more forceful in their action to ensure that fisheries-related issues are adequately taken into consideration in the design of hydropower projects and that sufficient compensation and mitigation measures¹²⁸ are inscribed in the environmental management plan resulting from the EIA¹²⁹.*

6.7 FISHING IN PROTECTED AREAS

Pursuant to the restructuring of the MAF, it is now clearly established that management of fisheries is the responsibility of the DLF and that of wildlife and National Biodiversity Conservation Areas (NBCA) the task of the Forestry Department. The next question to be asked is which authority is responsible for the management of fisheries in NBCAs or other protected areas. In practice, fishing activities in protected areas are generally dealt with under the management plan of the concerned protected area. This approach, should it be adopted by the Lao Government, would not prevent the DLF from consulting the Forestry Department on fisheries-related issues. This is an important consideration in the context of Lao PDR, where NBCAs covers an extensive area of the territory¹³⁰.

6.8 PROTECTION OF RESOURCES

The use of a number of destructive fishing gears and methods are prohibited throughout the Lao territory. As was seen in Section 3.2 of this document, these prohibitions are scattered throughout a number of laws and regulations. While they all ban the use of explosives, poisons and electric shocks for fishing purposes, they differ with respect to other prohibited gears and methods. *The drafting of a fisheries legislation offers a unique opportunity for the DLF to clarify this point by inserting the list of universally prohibited gears and methods in the framework legislation¹³¹.* Once enshrined therein, there will be no need to repeat such prohibitions in subsidiary legislation as the framework legislation is of general application. The issue of whether specific gears should be added to the list of prohibited gears and methods in the framework legislation was debated at length during the national and regional consultations. Discussions revealed that it would be extremely difficult, if at all possible, to establish a list of prohibited fishing gears and methods applicable throughout the country. For instance, proposal was made to outlaw the use of *Lee* and *Tonh* in Lao waters. After careful consideration, participants to the national workshop opted to introduce a general statement prohibiting the use of gears or methods aiming at altering the flow of a river or stream for the purpose of catching fish without expressly mentioning *Lee* and *Tonh*. The reasoning was that banning of *Lee* and *Tonh* would have required the introduction of legal definitions of such gears based on technical criteria. This approach was thought to be ineffective as fishers could easily circumvent this measure by modifying their gears so that they do not meet the legal definition. In addition, finding a universal definition of such gears was likely to be a challenge due to the fact that these gears are slightly different from one province to the next. Consequently, it was agreed that lists of prohibited fishing gears and methods should be established locally by village authorities and FMCs.

A suggestion to formally recognize the use of traditional fishing gears and methods to preserve local culture was rejected, as it was pointed out that some of these practices are clearly harmful to aquatic biodiversity and the environment. Proposal to prohibit the catching of fish bearing eggs was also rejected on the basis that this measure was too difficult to enforce and that it was more efficient to make provisions for the protection of breeding grounds.

¹²⁸ An EIA report must “identify, evaluate and compare appropriate mitigation measures for preventing or reducing the impacts of the project and of all project alternatives. In cases where impacts cannot be prevented and reduced, the report must propose ways to compensate for them” (Article 12.3 of the Regulations on environment assessment).

¹²⁹ See Articles 14 and 15 of the Regulations on environment assessment.

¹³⁰ They cover a combined area of approximately 3.3 million hectares.

¹³¹ This has become a standard provision in most fisheries legislation throughout the world.

Technical specifications are to be introduced in the regulations as they may need to be adjusted over time (e.g. mesh size of nets). To facilitate enforcement of this provision, DLF would have to consider whether language should be introduced to extend the scope of this provision by prohibiting not only the use but also the possession of such gears, materials or substances. In practice, this has important implication as it is much easier to prove that a person is in possession of prohibited gears, materials or substances than it is to catch a person in the action of using such gears, materials or substances¹³². It would have to be verified if presumption (assumption that the person in possession of prohibited gears, materials or substances intends to use them for fishing purposes)¹³³ is a legal concept that is recognized by Lao law and determined if its application has not been restricted by Lao courts through case law.

It was agreed that DLF should be consulted for determining the species of fish and other aquatic organisms to be included in the lists of protected and managed species administered by the Department of Forestry and for determining the criteria to be used to establish such lists.

Protection of fish during the spawning season is an important measure to ensure the sustainability of the resource. In Lao PDR, the closed season starts on 1st May to end on 31st October. This period coincides with the rainy season during which an estimated 95 percent of the species of fish spawn. It is unclear whether this measure applies to all species of fish in all places or only to certain areas (breeding grounds). It was recommended to reassess the validity of this period prior to incorporating it in the framework legislation and to introduce language therein providing that duration of closed season(s) may vary according to local fisheries.

6.9 AQUACULTURE

To date, existing aquaculture activities in Lao PDR, which consist of subsistence and small-scale operations, remain to a large extent unregulated. Some activities, such as cage culture, have, in certain areas, been authorized by local authorities. It would not be totally accurate to conclude that aquaculture is developing in a virtual legal vacuum as certain measures, though not primarily intended for aquaculture, adopted under the agriculture and water laws¹³⁴ may be used for aquaculture purposes. Given the fact that there is potential for further expansion of these activities in Lao water bodies and that some large foreign agro-industrial companies¹³⁵ have expressed interest in investing in this sector, time has come to define a proper legal framework to facilitate the orderly development of these activities. As mentioned earlier in this document, it is recommended that a specific section on aquaculture be inserted in the fisheries law. It is not intended to provide a full set of provisions regulating every aspect of the activity, but to establish the basic principles governing aquaculture operations. In particular, the following issues should be addressed:

- a. Conditions to be met for the establishment of a fish farm. DLF would have to determine whether the establishment of a fish farm is subject to an authorization or the grant of a concession (may depend on the size of the operation to be undertaken, criteria would have to be defined, subsistence aquaculture may be subject to a mere declaration). This also entails conditions relating to: (i) the use of land and water for the purpose of aquaculture (in accordance with water and land laws – the applicant would have to show evidence that he/she has secured land and water for the intended operation); and (ii) the applicant (e.g. minimum skill requirement).
- b. Species that can be used for the purpose of aquaculture. DLF would have to assess which indigenous and non-indigenous species can be safely used in aquaculture operations in Lao PDR. It would have to determine the procedure to be applied for the introduction of

¹³² Especially in places where there is a limited number of enforcement officers.

¹³³ The effect of presumption is to move the onus of proof from the State on to the alleged offender.

¹³⁴ See Sections 3.2.3 and 3.3.2 of this document.

¹³⁵ Such as Charoen Pokphand PLC (CP). CP is a large Thai company that is already involved in the business of producing feed for livestock in Lao PDR.

non-indigenous species. While it is common practice to subject introduction of such species to a prior authorization, DLF would also have to assess whether it has the scientific capacity to implement such a measure.

- c. Other issues include: (i) sanitary, hygiene and health issues in relation to the conditions of exploitation in the fish farm and the handling and processing of fish and fish products; (ii) measures for reporting and preventing the spread of diseases; and (iii) use of drugs and antibiotics in the rearing of fish. With respect to sanitary, hygiene and health issues, two options may be envisaged. They may be regulated either in the framework of the veterinary law or of the fisheries law. If the first option is retained, the veterinary law, which is in the process of being drafted¹³⁶, would have to be reviewed so as to include specific provisions in relation to fish and fish products¹³⁷.

As of writing, the draft law distinguishes three types of aquaculture undertakings. In addition to subsistence and commercial aquaculture, the DLF has introduced the notion of research aquaculture and propagation of fingerlings. The concepts of subsistence and commercial aquaculture are defined in the framework legislation. The former refers to aquaculture undertakings in ponds covering less than a combined total surface of 0.5 hectare or using no more than 5 cages. By contrast, the latter designates aquaculture undertakings in ponds covering a combined total surface of more than 0.5 hectare and using more than 5 cages. A definition of the notion of *standard cage* is provided for and stipulates that it is a cage no more 4 x 6 x 2 meters (being the typical size found in the Lao PDR and neighbouring countries). It is unclear whether this point of reference is appropriate for the type of aquaculture envisaged in Lao PDR. Another option could be to determine the total volume of cage (expressed in cubic meters) that could be exploited for subsistence aquaculture purposes. Exploitation of any higher volume would be regarded as a commercial activity. In any case, it is the view of the technical assistance that these definitions should be introduced through regulations rather than in the framework legislation. This would allow greater flexibility by enabling the administration to modify the technical reference point without the National Assembly's approval should there be a need to do so.

Unlike commercial aquaculture, subsistence aquaculture does not require an authorization from the administration. However, it is subject to applicable regulations, particularly with respect to import and release of live species, feed, use of chemicals or drugs, and report of diseases. The conditions that may be attached to the aquaculture licence relate, *inter alia*, to: (a) the amount of fee to be paid; (b) the species and quantities of aquatic organisms which may be introduced and retained at the site; (c) the structures and equipment which may be used and the maintenance practices to be followed at the site; (d) water quality; (e) the feed which may be used; (f) the use of hormones for controlling reproduction or enhancing growth; (g) the use of any drugs, antibiotics or other chemicals; and (h) the keeping of records.

The issue of import and export of live species of fish or other aquatic organisms was discussed. It was noted that this issue was also addressed by the Wildlife and Aquatic Animals Law and that both laws should be consistent. There is no conflict of laws as relevant provisions were to a large extent "borrowed" from the Wildlife and Aquatic Animals Law¹³⁸. Import and export of live species of fish or other aquatic organisms is subject to a written permission by MAF. Likewise, movement of live fish or other aquatic organisms within Lao PDR is subject to a prior authorization by MAF. Permits should be issued by the MAF (central level of Government) as PAFO or DAFO do not have the technical capacity to do so.

As is now well established, introduction of non-indigenous species may have a serious impact on indigenous species and on aquatic ecosystems. Also, it is advisable to apply a precautionary approach through the establishment of a list of authorized species. In other words, no species other than those

¹³⁶ See Section 4.1 of this document.

¹³⁷ In its current form, the draft Veterinary Bill focuses principally on livestock.

¹³⁸ It is common practice in Lao law to repeat articles from another law where such articles are relevant to the subject matter being considered.

included in such a list should be authorized to be farmed or released in Lao PDR waters. This list will be put together by the MAF, which will also have to determine the criteria and devise the process whereby a species can be added to, or removed from, the list.

6.10 POWER TO MAKE REGULATIONS

Introduction of such an article is intended to define the extent of regulatory powers in relation to fisheries and aquaculture vested in the Minister and local authorities, namely the Provincial Governor, the District Head and the Village Head. While local authorities have received general authority for the protection and use of natural resources under the Local Administration Law 2003¹³⁹, they can also be entrusted with additional powers by laws¹⁴⁰. Areas that may be regulated include:

- a. Management plans (devising of fisheries management plans in certain areas, for certain species);
- b. Conditions of licenses and concessions;
- c. Registration of boats and gears (to control fishing effort, may be a requirement in specified water bodies);
- d. Fishing gears (list of prohibited gears, technical specifications of lawful gears);
- e. Closed seasons (possibility of closing fishing operations during certain periods of time in specified areas);
- f. Establishment of fisheries reserves;
- g. Reporting (collect of catch statistics to assess production and improve management – it may, for instance, include the establishment of landing sites);
- h. Shared resources (e.g. for the implementation of international agreements for the management of shared resources in the Mekong River);
- i. Dispute settlement mechanism¹⁴¹;
- j. Trade in fish, fishery and aquaculture products (e.g. conditions of import and export); and
- k. Processing of fish and fish products (e.g. rules governing the establishment of processing plants, handling of fish and fish products).

The list above is not exhaustive. DLF would have to decide which level of government is competent for what. Rules of general application such as those in respect of processing and trade will have to be entrusted with the Minister, while regulations governing closed seasons, for instance, may be adopted at the provincial or district level to reflect local specificities and practices.

6.11 POST-HARVEST ISSUES

The draft law does not address the post-harvest issues such as hygiene and quality of aquatic organisms, handling and processing, and marketing of fish. The rationale behind this approach is that these issues are already or will soon be dealt with by other laws, particularly the Veterinary Law and the Business Law. In this regard, the drafting team urged DLF to introduce specific provisions dealing with hygiene and quality and handling and processing of fish and other aquatic organisms in the Veterinary Law. This law, which is being developed by DLF, is intended to apply to livestock and aquatic organisms. The issue of whether the draft fisheries and aquaculture law should provide for a permit for the purpose of selling fish was also addressed but discussions were not conclusive.

¹³⁹ See note 14.

¹⁴⁰ See Articles 14.19, 27.18 and 53.13 of the Local Administration Law 2003.

¹⁴¹ Note that village heads are competent to settle local conflicts, including those related to fisheries (see Article 53.10 of the Local Administration law 2003).

6.12 ENFORCEMENT

There seems to be a trend in recently adopted Lao natural resources legislation to entrust enforcement powers in an inspection agency. Such a mechanism is provided for under the Forestry Law 1996¹⁴², the Water and Water Resources Law 1996¹⁴³ and the Agriculture Law 1998¹⁴⁴. It is worth noting that the Agriculture Inspection Agency is not operational due to lack of staff and that the Water Resources and Environment Agency, which has been established earlier this year, is not yet functional. The Forestry Inspection Agency, however, is up and running with Forestry Control Units established in each province. Interestingly, the penal law empowers forestry officers to investigate forestry-related infringements¹⁴⁵. So far, they have been unable to fulfil this task due to lack of manpower and skills. As a result, the current procedure for handling any breach of the forestry law is as follows: where a case is reported, it is transferred to the police, which does not have sufficient knowledge to deal with it effectively. In its report, the *ad hoc* committee for the reorganization and restructuring of the MAF advised that forestry cases should be directly investigated by forestry officers appointed in Forestry Control Units rather than being handed over to the police¹⁴⁶. Based on these examples, the DLF would have to determine whether a similar mechanism should be introduced in the fisheries and aquaculture law to enforce fisheries and aquaculture laws and regulations.

It is also *important that powers of enforcement officers are clearly defined in the law* so as to ensure that these officers are granted sufficient powers to perform their duties (e.g. powers to inspect any premises, boats, catches and gears; to examine licenses, authorizations or any other required documents) and secure evidence (e.g. powers of search and seizure) and that they act within the limits set by the penal law and the constitution (e.g. conditions for the search and inspection of a dwelling house).

After consultation with the justice department, the DLF opted not to create an inspection agency. As of writing, the draft law designates, the DLF, including its decentralized services in PAFO and DAFO, as the competent “inspection organization” for enforcing the fisheries and aquaculture law. Inclusion of forestry officers in the list of fisheries inspectors was rejected. Interestingly, the draft law makes provision for the provincial Governor or the district Head, on the proposal by the DAFO or PAFO, to appoint local fisheries inspectors to be selected amongst FMC or village management unit’s members¹⁴⁷. Local fisheries inspectors are competent within their area of jurisdiction (a specific water body or within the geographical limits of a village or a group of villages). The powers conferred on fisheries inspectors include: (a) entry and inspection of aquaculture sites, vehicles, boats and any other means of transportation; (b) examination of any fish and fishing gear and of any license, permit, concession or any other document required under the law; and (c) search and seizure of any fish caught, sold or stored in breach of the fisheries legislation and of any fishing gear, boat, vehicle or any other means of transportation used in the commission of the offence. It is unclear whether local fisheries inspectors should enjoy the gamut of powers conferred upon fisheries inspectors or only restricted powers. Adequate training of fisheries inspectors is critical to ensure effective enforcement of the fisheries and aquaculture legislation. To this end, it was proposed to introduce language providing for the training of fisheries inspectors in the draft law.

¹⁴² A Forestry Inspection Agency is established under Article 65 of the Forestry Law 1996.

¹⁴³ Earlier this year, the Water Resources and Environment Agency responsible for enforcing both the water and environmental laws has been set up. Powers of enforcement officers have still to be defined.

¹⁴⁴ An Agriculture Inspection Agency is set up under Article 75 of the Agriculture Law 1998.

¹⁴⁵ Forestry officers are specifically mentioned in the penal law together with traditional investigating authorities, namely police officers, public prosecutors and custom.

¹⁴⁶ This recommendation was endorsed by the national meeting on forestry that took place in March 2007.

¹⁴⁷ A village management unit refers to the group of people in charge of managing natural resources at the village level. It is an informal arrangement.

A standard provision (found in most Lao law) providing for inspection carried out by inspectors outside MAF has been introduced. Three types of inspection are established, namely regular inspection (once a year), inspection by advance notice (24-hour advance notice), and routine inspection (at any time).

6.13 OFFENCES AND PENALTIES SCHEME

Traditionally, Lao legislation does not contain a comprehensive offences and penalties scheme, but simply provides for the types of sanction that may be inflicted (warning, re-education with deprivation of liberty, fines or imprisonment). Typically, the seriousness of the offence is determined in relation to the estimated value of the damages caused by the infringement. In practice, however, this system is not functioning properly as police officers do not have the resources nor the knowledge to perform an adequate assessment of the damages.

Currently, any breach of fisheries regulations is sanctioned under Article 131 of the Penal Law 1990¹⁴⁸ and the relevant provisions of the fisheries regulations¹⁴⁹. The former, which sets the minimum and maximum terms of imprisonment that can be imposed for the violation of any fisheries regulation, does not provide any guidance for determining which types of offence should carry an imprisonment term.

It is suggested to introduce a comprehensive offences and penalties scheme in the fisheries law comprising several categories of offences in relation to their degree of seriousness and providing a progressive penalty scale. In determining the nature and level of sanctions to be imposed, it is important that due regard be given to the past behaviour of the offender, the nature of the offence, the economic benefits derived from the offence, the circumstances of the case at hand and the value of the damages caused by the infringement. Additional sanctions such as the confiscation of the catch and gears or the suspension or withdrawal of an authorization should be integrated in the penalty scheme and may be either imposed automatically or left to the discretion of the judge.

In the realm of forestry, it is reported that, for minor offences, administrative fines can be imposed directly by the forestry administration on the proposal made by an *ad hoc* committee, consisting of a forestry, police and customs officer. DLF would have to decide whether a like procedure should be introduced in the fisheries law. It is worth noting that this administrative procedure presents similarities with compounding, which is an out-of-court settlement mechanism widely used in fisheries legislation. It is an administrative procedure allowing the State to compound offences within the limits set in the law. The principal advantage of this procedure is to avoid protracted judicial proceedings. It may be used for any type of offence or for certain types of offence only (e.g. minor offences).

The issue of offences and penalties was addressed at the national workshop. Participants to the national workshop acknowledged the importance of devising a comprehensive and coherent offences and penalties scheme. However, they felt that the national workshop was not the right forum to discuss the detail of that scheme and thus directed the drafting team to review the proposed scheme. The drafting team discussed the issue and agreed to the following:

- Three types of penalties may be imposed for any breach of the fisheries and aquaculture law and regulations, namely warning/re-education, fine and imprisonment;
- Penalties that can be imposed:
 - for a first offence, regardless of the seriousness of the offence, are warning/re-education;
 - for a second offence, are fines. In addition, fish or other aquatic organisms caught as a result of a serious offence are automatically confiscated. In the event that use of prohibited fishing gears is made in the commission of the offence, prohibited fishing gears must be confiscated and destroyed in the prescribed manner; and

¹⁴⁸ See Section 3.2.4 of this document.

¹⁴⁹ See Section 3.2.2 of this document.

- for a third or subsequent offence, are fines and confiscation of catch (for any type of offence) and/or imprisonment.
- It was agreed to provide for two types of offences, namely ordinary and serious offences. The following actions fall within the category of serious offences: (1) use of poison, explosives, firearms and other noxious substances; (2) use of prohibited gears and methods; (3) introduction of non-indigenous species in Lao PDR territory without a permit for release or aquaculture purposes;
- The minimum level of fine for an ordinary offence should be 200 000 kip, whereas it should be 500 000 kip for a serious offence;
- It was advised to determine a maximum level of fine to avoid imposition of unreasonable fines and provide guidance to the judge; and
- It was also recommended to introduce language specifying the maximum level of fine that can be imposed through local regulations to avoid imposition of unreasonable fines.

7 CONCLUSIONS

The adoption of a framework fisheries and aquaculture legislation in Lao PDR will have the effect of clarifying the applicable legal principles for the conservation and management of fisheries and aquaculture, which, up to now, have been scattered over many laws and regulations. This legislation is developed as a so-called “enabling legislation” (as opposed to a “prescriptive legislation”) and allows for flexibility and adaptive management. This is an important feature in a country such as Lao PDR which is endowed with abundant, diffuse and widely diverse fisheries and undergoing rapid change. The proposed legislation is not a theoretical exercise nor overly top-down in its administration, as it promotes and recognizes management mechanisms that have already been tested in the country and are widely supported by local authorities and communities. The implementation of the core principles of the law will be the responsibility of the FMCs and local authorities, to ensure that measures adopted at the local level are commensurate with local realities and practices and thus likely to be implemented.

An important effort was made to ensure wide participation and transparency at every stage in the drafting process in an attempt to build a large consensus on the core features underpinning the fisheries and aquaculture bill. It is fair to say that, in its current form, the fisheries and aquaculture bill reflects the results of the discussions with stakeholders. If, as expected, this framework legislation is adopted by the National Assembly at its first 2009 session, this will be a remarkable achievement and a good example of what a small but focused FAO project coupled to collaboration with relevant partners and stakeholders can accomplish.

The legislative practice in Lao PDR requires that any new framework legislation is submitted to National Assembly with its implementing regulations. Attention should now turn on the preparation of regulations intended to facilitate the implementation of the fisheries and aquaculture law. In a previous report, the technical assistance identified the key regulations and guidelines to be drafted for the implementation of the law. They were the following:

- Contribution by the DLF to the lists of protected and managed species put together by the Forestry Department. Assessment of existing listing and identify the species of aquatic animals to be integrated in such lists. Assistance to the Forestry Department in determining a set of objective criteria to establish these lists (see Annex 2);
- Regulations providing for the list of species of aquatic organisms that can be farmed or released in Lao waters and the list of species of aquatic organisms that are banned for aquaculture or stock enhancement in these waters. These regulations should also lay down the process for adding or removing species from these lists;

- Guidelines on the process for devising village fisheries regulations (see Annex 3);
- Guidelines for the establishment and operation of FMCs;
- Regulation on prohibited fishing gears and methods (see Annex 4);
- Guidelines for the authorization and regulation of fishery and aquaculture concessions.

It appears that the drafting of a regulation of general application listing prohibited fishing gears and methods (item a above) is no longer necessary, as lists of prohibited fishing gears will be established locally by FMCs and village authorities through local regulations and management plans.

With respect to item c), it is strongly recommended that effort be made to devise a “positive” list of species of aquatic organisms (that is a list of species of aquatic organisms that are authorized to be farmed or released in Lao waters). The effect of this list will be to make the farming of any other species of aquatic organism an offence under the fisheries and aquaculture law.

The preparation of guidelines to assist village authorities in developing local regulations and management plans is critical to ensure effective management of local fisheries (item d). These guidelines should not only focus on the content and process for devising such regulations and plans, but also on the approval process and the role to be played by the fisheries administration through the DAFO and PAFO and by local authorities (district Heads and provincial Governor). It is suggested that DLF be associated with this initiative and that DLF endorses the final product. The goal is to avoid duplication of documents and thus potential for confusion by ensuring that only one set of guidelines of universal application be adopted and published. DLF in association with WWF have developed such guidelines and these are appended in (Annex 3).

As for the preparation of guidelines on the establishment and operation of FMCs (item e), it is recommended that both LARReC and MRC be associated to this task as both institutions have long-standing experience with the formation of fisher and user groups on water bodies.

Two other areas for the development of regulations have been identified. One is the preparation of a model fishing concession agreement designed to define key provisions that should be incorporated in all such agreements signed in Lao PDR. This would provide a “minimum standard agreement” so as to avoid the conclusion of substandard agreements and consequent stakeholder conflicts or resource degradation as a result. The model fishing concession agreement would serve as a benchmark against which the fisheries administration would be able to assess the soundness of any proposed concession agreement. More stringent and additional provisions may be agreed upon by the parties to the agreement. Another requirement is the preparation of a ministerial instruction¹⁵⁰ directed at local authorities (Provincial Governors and district Heads) explaining the role to be played by these authorities in the process of approving the establishment of FMCs and local regulations and management plans.

¹⁵⁰ Likely to be a Prime Minister instruction.

ANNEX 1 – LIST OF CONSULTED LEGISLATION AND REGULATIONS

LEGISLATION

Title	Date of Adoption	Date of Promulgation	Nature
Wildlife and Aquaculture Law	2008		Basic law
Law on the Promotion of Investment	22 October 2004	15 November 2004	Basic law
Land Law	21 October 2003	5 November 2003	Framework legislation
Law on Local Administration	21 October 2003	5 November 2003	Framework legislation
Constitution		28 May 2003	Fundamental law of the Lao PDR
Environmental Protection Law	3 April 1999		Framework legislation
Agriculture Law	10 October 1998	6 November 1998	Framework legislation
Electricity Law No. 02/97	12 April 1997		Framework legislation
Forestry Law No. 01/96	11 October 1996	2 November 1996	Framework legislation
Penal Law	23 November 1989	9 January 1990	Basic law

SUBSIDIARY LEGISLATION

Title	Date of Adoption	Nature
Rules No. 360/MAF – 2003 on Management of National Biodiversity Conservation Areas and Wildlife and Aquatic Animals	8 December 2003	
Instruction No. 0565/MAF – 2003 on spawning season and release of fish	5 June 2003	Ministerial Instruction to DAFO Directors
Presidential Ordinance on Legal Act Formulation No. 2 of 2003	20 October 2003	Presidential Ordinance
Instruction No. 0077/MAF – 2002 on the prohibition of hunting, trade of wildlife and aquatic animals within the country and abroad, importation and transit to third country	5 June 2002	Ministerial instruction to PAFO Directors
Temporary regulations on the Management of Fisheries in Naxaythong District	Unknown (but since 2000)	District Regulations
Regulations No. 1770/STEA on Environmental Assessment	3 October 2000	STEA regulations
Prime Minister Decree on the Establishment of Biodiversity Conservation Areas	In the 1990s	Prime Minister Decree
Council of Ministers Decree No. 118/CCM	5 October 1989	Unclear whether this decree is still in force. It may have been superseded. However, it is referred to in the Naxaythong District fisheries regulations

ANNEX 2 – DLF LIST OF AQUATIC ANIMALS FOR INCLUSION IN THE AQUATIC ANIMALS AND WILDLIFE BILL

Category I – Restricted Species	Lao Name	Scientific Name	CITES	IUCN Red List
Mammals				
Irrawaddy dolphin	Pa ka	<i>Orcaella brevirostris</i>	I	CE
Reptiles				
Siamese crocodile	Pa keh	<i>Crocodylus siamensis</i>	I	CR
Giant soft shell turtle	Pa fah ohng yai Pa fao hooa gop	<i>Pelochelys cantorii</i>	II	EN
Fish				
Mekong Giant Catfish	Pa beuk	<i>Pangasianodon gigas</i>	I	CR
Giant mottled eel	Pa lai fai fa	<i>Anguilla marmorata</i>		
Boesman Croaker	Pa goowang	<i>Boesemania microlepis</i>		
Giant Pangasius	Pa leum	<i>Pangasius sanitwongsei</i>		DD
Tiger perch	Pa seua	<i>Datnioides undecimradiatus</i>		
Tiger perch	Pa seua	<i>Datnioides pulcher</i>		
Cat face fish	Pa maew	<i>Setipinna melanochir</i>		
ປາສະນາກໃຫຍ່; ປາສະນາກ	Pa sanag yai	<i>Aaptosyax grypus</i>		DD
Laotian shad	Pa mak pang	<i>Tenulosa thibaudeaui</i>		
Sheatfish	Pa koun	<i>Wallago leeri</i>		
Mekong stingray	Pa fah lai	<i>Dasyatis laosensis</i>		EN
Amphibians				
Lao salamander	Pa Dteun	<i>Paramesotriton laoensis</i>		DD
Category II – Managed Species				
Category II – Managed Species	Lao Name	Scientific Name	CITES	IUCN Red List
Reptiles				
Soft shell turtle	Pa fa ohng	<i>Amyda cartilaginea</i>	II	VU
Wattle-necked soft shell turtle	Pa fa kor eum	<i>Palea steindachneri</i>	III	EN
Fish				
Red-fin catfish	Pa keung	<i>Hemibagrus wyckioides</i>		
	Pa soay hang leuang	<i>Pangasius krempfi</i>		
Isok barb, Seven striped barb	Pa eun da daeng	<i>Probarbus jullieni</i>		DD
ປາເອີນ, ປາເອີນຂາວ	Pa eun khao	<i>Probarbus labeomajor</i>		
ປາແດງ	Pa deng	<i>Tor sp.</i>		
ປານາງແດງ	Pa nang deng	<i>Hemisilurus mekongensis</i>		
ປາສະນາກ, ປາສາກ, ປາຂັງ	Pa gang, Pa sak	<i>Luciocyprinus striolatus</i>		
ປາວ່າໜ້ານິ້, ປາວ່າຫົວບັກ	Pa va hooa khum	<i>Bangana behri</i>		
ປານາງເງິນ	Pa nang ngeun	<i>Micronema bleekeri</i>		
Featherback	Pa dtong khouey	<i>Chitala ornata</i>		
Featherback	Pa dtong gai	<i>Chitala blanci</i>		NT
	Pa sooang	<i>Labeo pierreii</i>		
ປາຄ້າວ	Pa Khao	<i>Wallago attu</i>		
Giant Siamese Carp	Pa Gaho	<i>Catlocarpio siamensis</i>		EN
ປາໝາກໜວາຍ	Pa mahk vai	<i>Luciosoma bleekeri</i>		

CR: Critically endangered, DD: data deficient, EN: Endangered, EX: NT: Near threatened, VU: Vulnerable

ANNEX 3 – DLF/WWF FISHERIES CO-MANAGEMENT GUIDELINES

Development of the guidelines on fisheries co-management¹⁵¹

The original draft of these guidelines was written by Eric Meusch and Roger Mollot based on the experience of the WWF ARL Xe Kong Basin and ComFish projects. Feedback for revision and refinement was provided by the Fisheries Division of the DLF, the Livestock and Fisheries Sections and involved District Agriculture and Forestry staff from of Bolikhamxay, Khammouane, Savannakhet, Xekong and Attapeu Provinces, and the WWF Lao Freshwater team. These guidelines will be published in the Lao language by WWF Lao PDR.

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¹⁵¹ Recommended citation: **DLF and WWF (2009) Fisheries co-management guidelines. WWF, Vientiane. 20 pp. (English language)**

The Participatory Approach to Management

Participatory management applies a bottom-up approach that incorporates the experience and understanding of local communities in planning for the management of aquatic resources. It is a process that relies on the knowledge and participation of the aquatic resource users in the design, implementation and monitoring of management systems.

In participatory aquatic resources management, the responsibility for management is shared between the community and local government authorities. Regulations are defined, enforced and monitored through a process that is sensitive and adaptive to local conditions. Each participatory management agreement therefore is unique and will reflect the actual conditions as perceived by local communities and government to meet the policy of the government.

Guidelines for Participatory Aquatic Resources Management

The following guidelines have been developed and tested through the collaboration of the Department of Livestock and Fisheries and WWF. These steps are intended to guide the process of establishing participatory management arrangements for living aquatic resources. Rather than being a rigid tool for implementation, the information provided in these guidelines must be adaptable to the needs and understanding of the resource users within the community. The steps outlined below are intended to highlight some important issues to consider while monitoring the progress towards establishing management arrangements for living aquatic resources.

These guidelines are intended for implementation with village and local authorities for the management of common property aquatic resources. They do not ONLY apply to villages who wish to establish fish conservation zones in deep pools of mainstream river channels. Although deep pools are indeed important, other critical habitat such as rapids, streams, ponds, or other types of wetlands that may be in need of management. Therefore, these guidelines could be applied with any community or group of communities that have identified a need for managing common-property aquatic resources, regardless of the type of water body.

Key Steps in Sustainable Participatory Aquatic Resources Management

Step 1: Consensus Building

Achieving consensus within and between villages is essential for the successful implementation of regulations for aquatic resource management. Organizing village meetings will help to build consensus through open discussion to identify the issues that management will seek to solve. To achieve consensus it is important to have a high degree of participation from as many people as possible. The people should feel that their ideas and concerns are included in the process to develop village regulations for aquatic resource management.

Action

- Village meeting to discuss the importance of fisheries, use of aquatic biodiversity and sustainable management of aquatic resources
- Site selection for village fish conservation area using habitat mapping exercises to identify critical habitat and demarcate the boundaries for the fish conservation area
- Situation analysis to understand the use and importance of fisheries
- Problem analysis to determine problems and opportunities
- Define the village objectives for management

Activities	Outputs
<ul style="list-style-type: none"> • Village meetings • Interview fishermen, women and children • Gather information on capture fisheries management • Habitat mapping to determine critical fisheries habitat • Collect data on fishing gear, fish species, migratory information 	<ul style="list-style-type: none"> • Consensus and understanding of the objectives for management regulations • Understanding of issues and problems that management seek to solve • Generate information on fisheries that can be used to improve management

Important Issues

- Are villagers interested in participating in the management of aquatic resources?
- What do the villagers see as the benefits of managing aquatic resources?
- Are there any fishing conflicts in the area? (i.e.; outsiders, illegal gear, etc.)
- What are the current regulations? Was there a management system in the past?
- Where do the people fish? What types of habitat are there? (ex; deep pools, rapids, wetlands, seasonally flooded forests, streams, etc.) How do people fish? How much fish do they catch?
- Who has access to these habitat types? (ex; women, children, men, people from another village or ethnic group)
- What types of fishing gear are used in each habitat? Are there seasonal changes in fishing gear? What fish species are caught with each gear type? Are there seasonal changes in fish species caught?
- It is important to look at the seasonal aspects of the fishery. During peak fishing seasons, people from neighbouring villages may be allowed to fish certain habitat. The access rights and historical use of certain habitat must be well understood in order to solicit input and participation from everyone who uses the fishery.

Assisting villages to develop regulations for aquatic resource management is a complex task that requires time and consideration to identify all of the stakeholders and understand the issues. A process that excludes legitimate users of the fishery could lead to ineffective enforcement of regulations, and conflicts within and between villages. Similarly the lack of interest or social harmony within a community can jeopardize the effectiveness of the process. It must first be determined if the community understands there are fisheries worth managing, and then determine if there is sufficient support from the users of these aquatic resources to develop effective management regulations.

Step 2: Drafting Regulations

The drafting of regulations for aquatic resource management should be done by a group of villagers with assistance from DAFO and PAFO. The group responsible to make the first draft can be a large or small group of village representatives. The details of the draft regulations should reflect the agreements made by the broader village during the previous step of consensus building.

Action

- Explain the steps to be taken to formally establish the village regulations on aquatic resource management;
- Define the roles and responsibilities of the agencies involved in implementing the regulations (DAFO, PAFO, village agencies); and
- Present the content of the draft regulations to the community for feedback, clarification and revision.

The content of the village regulations should include the following:

- Objective of the village regulations for aquatic resource management;
- Description of aquatic resources within the village area;
- Aquatic resource use and management in the village;
- A detailed description of regulations;
- Penalties and fines for each regulation; and
- Details of village agencies responsible for implementation of the regulations.

Activities	Outputs
<ul style="list-style-type: none"> ● Village meetings to discuss fisheries management and to draft regulations 	<ul style="list-style-type: none"> ● Draft regulations (single village or multi-village regulations) that describe the village objectives, history and use of aquatic biodiversity, restricted activities and areas, penalties and fines, and enforcement authority

Important Issues:

- Who is included in developing the village regulations? Who is excluded from this process? Are there any fishermen that are not participating in drafting the regulations?
- As much as possible, the needs of women, poorer households, and minorities should be given specific consideration.
- If agreement cannot be reached the development of fisheries regulations should be postponed.

Step 3: Revision of Draft Regulations

The draft regulations must be reviewed and revised by the community to ensure that the document accurately reflects the intent of the villagers during the consensus building activities. The review process should be organized by the village authorities who are responsible for presenting the draft regulations in detail to the community for discussion and feedback. A revised draft of the regulations will be developed based on the feedback provided. Documentation of this revised draft can be facilitated by DAFO and PAFO technical staff.

Action

- Convene a village meeting where village chief presents each section of the draft regulations for comment and review
- Revise the draft regulations based upon villager feedback

Activities	Outputs
<ul style="list-style-type: none">• Village meeting to explain how regulations will be developed and who should participate• Discussion of the draft regulations with people in the villages, expert fishers, neighbouring villages• Record the feedback from the different groups of people and revise the draft regulations	<ul style="list-style-type: none">• Draft regulations for aquatic resources management (reviewed and revised based upon village feedback)

Important Issues

- Who is involved in offering feedback on the regulations?
- Who is not involved?
- Will the regulations cause conflicts with certain groups?

Step 4: Agreement on Revised Draft Regulations by Local Level Stakeholders

A meeting should be held to present the revised draft regulations to a broader group of stakeholder at the local level. Continued discussion and feedback from this wide range of local-level stakeholders will help to increase awareness of the village regulations and strengthen the implementation and enforcement of the regulations. The discussion should seek to include stakeholders from outside of the target village, including neighbouring villages, District agencies, such as the agriculture office, administrative office, military and police. The draft regulations should be presented in detail to clarify each item and achieve consensus and approval. Further revision of draft regulations may be necessary based upon feedback from the various stakeholders. Written comments and agreement with the revised draft regulations should be recorded during this meeting.

Action

- Convene a meeting to present the revised draft regulations to a wider range of stakeholders for feedback and acknowledgement.

Activities	Who is Involved	Outputs
<ul style="list-style-type: none"> • Village meeting to present the draft regulations in detail. • Revise draft regulations based on feedback 	<ul style="list-style-type: none"> • Community members • Village authorities • DAFO • District Governors Office • District Police • District Army • District Judiciary • Representatives of surrounding villages • PAFO 	<ul style="list-style-type: none"> • Understanding and approval of regulations by neighbouring villages, District agencies, such as the agriculture office, administrative office, military and police

Important Issues

- Good presentation of the community is important at this meeting to build ownership of the draft regulations.
- Ideally, all potential local stakeholders should be included in this meeting.

Step 5: District Approval of Aquatic Resources Management Regulations

When the Regulations have been finalized, documented and printed, they are issued by the Village Head and submitted to the District Agriculture and Forestry Office (DAFO). DAFO will issue a letter endorsing the Regulations, and submit them to the District Governor approval. A letter of agreement approving the Regulations will be issued and signed by the District Governor.

Action

- Prepare hard copies for signature by the village authorities and District Governor Office
- The final document should signatures the village authorities, District Agriculture Office and District Governor's Office
- Prepare a signboard to erect in the village to announce the fishing regulations

Activities	Outputs
<ul style="list-style-type: none"> • Regulations are signed by the Village authorities and presented to DAFO. • DAFO signs and endorses the regulations and presents them to the District Governor. • District Governor signs the regulations and issues an agreement to allow the village to implement the proposed regulations 	<ul style="list-style-type: none"> • Approval of the village regulations by District Governors Office

Important Issues

- Formal endorsement is extremely important, but may vary slightly from District to District. For example in some districts they have required the signature of the Village Party Secretary as well as the Village Head. Other Districts may not require the DAFO office to sign, and regulations are endorsed and approved by the District Governor's Office.

Step 6: Public Announcement of the establishment of Village Regulations for Aquatic Resources Management

Public knowledge of the new village regulations for aquatic resources management is an important step to ensure effective implementation of the regulations, and to avoid potential conflicts that may arise from uncertainty of the regulations. Public announcement of the regulations offers the community the opportunity to take pride in their communal effort to towards the responsible use of aquatic resources and protection of aquatic biodiversity. It also is an opportunity to share information between villages on best practice in the management of aquatic resources and encourage other villages to initiate the process to establish village regulations in other areas and critical habitats. Public announcement of the regulations should be disseminated as broadly as possible, and can be in the form of village ceremonies and meetings, distribution of signed copies of the regulations, village sign boards, television and radio news programs, and press releases in local media outlets.

Action

- The final public approval and launch of the regulations;
- Prepare signs demarcating management areas;
- Distribute copies of the approved regulations to all local stakeholders; and
- Distribute original copies of the approved regulations to the village authorities, DAFO, District Governor’s Office, and PAFO.

Activities	Who is Involved	Outputs
<ul style="list-style-type: none"> • Provide copies of the approved regulations to all local stakeholder representatives • File original copies of the regulations in agreed locations • Inform the general public of the management regulations via local news media • Conduct opening ceremony (optional) and erect village signboard 	<ul style="list-style-type: none"> • Community members • Village authorities • DAFO • PAFO • District Authorities • Neighbouring villages 	<ul style="list-style-type: none"> • Village sign board to publicly announce the details of the regulations • Distribution of signed copies of the regulations to neighbouring villages, DAFO, Governors Office, Military and Police • Press release, radio and television broadcast in local news media • Awareness of the regulations amongst the general public

Important Issues

- Many potential conflicts can be avoided by ensuring that all stakeholders (including neighbouring villages) are properly informed about the management regulations.

Conclusions and follow-up:

The steps for establishing participatory aquatic resources management outlined above describe how to organize and establish an official agreement on the local-level management of aquatic resources. Rather than offer strict guidelines, they should be seen as steps in a flexible process that encourages full participation of stakeholders, promotes local ownership, and meets the requirements for formal recognition of participatory aquatic resources management and authorization of the power to enforce village regulations.

It is important to remember that the results of this process will be a set of rules intended to meet specific objectives and address problems identified by local stakeholders. Naturally it will be important to review these regulations on a regular basis (at least once every 3 years) to assess progress towards meeting the set objectives, as well as to identify new problems or challenges that may have emerged concerning the management and use of aquatic resources. These local management arrangements therefore, may need to be periodically revised based upon the results of regular review of current status and threats to the aquatic resources.

As the objectives are defined and agreed upon by the local community, it is important that the community members are involved in periodically reviewing the effectiveness of regulations in meeting these objectives. This approach is often called "Participatory Monitoring and Evaluation (PM&E)" and includes the ideas and knowledge of the community in defining the parameters to measure the effectiveness of their management effort. Such regular review of village regulations and management plans should be first conducted within the community, and then followed up through consultation with other stakeholders, such as neighbouring villages. Any changes or amendments should be endorsed by the District Agriculture and Forestry Office (DAFO), approved by the District Governor and announced to the public.

By developing participatory approaches for the management and use of local aquatic resources, and continuing to review and revise them to address emerging needs, the local communities and Government agencies can collaborate towards effective management strategies and continue to benefit from the rich aquatic resources of the Lao PDR.

ANNEX 4 – LIST OF FISHING GEARS AND METHODS

Lao Name	English Transliteration	English Name	Category ¹⁵²	
			I	II
Destructive Fishing Gear and Methods				
	Taan houay	Cutting off streams and then using traps to stop migration	I	
	Labert	Explosives	I	
	Ya Beua	Poison	I	
	Sai Fai fa	Electric Shock	I	
	Sieng mouan	A sound attractant device targeting catfish species	I	
Fishing gears (Category I & II)				
ມອງ	Mohng loeleh, Mohng saam sanh	3 layer gill net	I	
ນາມ	Naam	Hand operated drift net	I	
ໂຕ່ງ	Dtong	Box funnel net	I	
ລີ	Lee/Li	Fence filter trap	I	
ຈິບ	Tchip/Jeep	Small scissor net	I	
ປືນຍິງ	Peun ying	Spear gun	I	
ອວນ	Uan	Large seine	I	
ຕ້ອນ	Tonh/Ton/Dton	Fence funnel trap	I	
ແຍ່ງ	Yaeng	Fine mesh seine	I	
ລອບນອນ	Lorp norm/Lawp norm	Horizontal cylinder trap		II
ລອບຕັ້ງ	Lorp/Lawp tung	Horizontal cylinder trap		II
ປືນແຫລມ	Peun laem	Spear gun		II
ຈັ່ນ	Tchan	Drop door traps		II
ດາງ	Dang	Seine		II
ຂຸດເອົາ	Kut ow	Dig trap pond		II
ສະເອົາ	Sa ow	Drain water off		II
ມຸ້ງ	Moong	Mosquito net		II
ຈະວີ້	Javaw	Funnel basket trap		II
Other Fishing gears				
ສະຫວິງ, ຫວິງ	Saving	Scoop net		
ເຂັ້ງ, ເຂິງ	Kheng, kheung	Scoop basket		
ສະນາງ	Sanang	Wedge shaped scoop basket		
ກະດູງ	Gadoong	Lift net		
ກະຊ້ອນ, ຊ້ອນ	Ga sawn	Triangular scoop net		
ຊ້ອນ	Sawn	Scoop net		
ແຫ	Hae	Cast net		

¹⁵² Gear Category I: forbidden gears/methods, Gear Category II:

Lao Name	English Transliteration	English Name	Category ¹⁵²	
			I	II
ມອງ	Mohng	Gill net		
ມອງທຽນ	Mohng teean	Small gill net		
ມອງປົວ	Mohng piew	Small size gill net		
ມອງຖີ່	Mohng thi	Small size gill net		
ມອງຫ່າງ	Mohng hang	Big size gill net		
ຕູ້ມອ່ຽນ	Dtoom eean	Basket eel trap		
ຕູ້ມ	Dtoom	Upright basket trap		
ຊຸ່ມ	Soum	Plunge basket		
ໄຊລັນ	Sai lahn	Drop door enclosure		
ໄຊ	Sai	Funnel basket trap		
ໄຊກົບ, ແງບ	Sai kop, gnep	Basket frog trap		
ຂາ, ລ້າກ	Kha, lahk	Fish attractant basket		
ບັ້ງລັ, ລັອ່ງ	Bang lanh	Bamboo tube eel trap		
ຕູ້ມລານ	Dtoom laan	Open weave upright basket trap		
ຈັນຊຸມ	Tchan khoum	Drop door ditch trap, baited basket trap		
ໄຊໜາມ	Sai naam	Barbed rattan cone		
ແຫລມ	Laem	Hand spear		
ສະນອງ, ຊ້ອນ	Sanong, law sohn	Large lift net – scissor style		
ໜ້າດິດ, ໜ້າເກັກ	Naa deet, Nah gehg	Spear gun		
ເບັດຕຶກ	Bet dteuk	Pole and line fishing		
ເບັດຊິດ	Bet sit	Pole and line fly fishing		
ເບັດປັກ	Bet pak	Set pole and line		
ເບັດພຽກຈິມ	Bet peeak tchom	Bottom longline		
ເບັດພຽກລອຍ	Bet peeak loy	Surface longline		
ເບັດເຕົ້າ	Bet dow	Float — line seine		
ເຍືອງ	Yuang	Spot light		
ຈັບເອົາ, ເກັບ	Chap ow, gep	Catch, collect by hand		

ANNEX 5 – FISHBASE SPECIES LIST FOR LAO PDR AND LOCAL NAMES

Scientific Name ¹⁵³	Transliterated Lao Name ¹⁵⁴
<i>Aptosyax grypus</i>	Sanak, Sanak gnai
<i>Acantopsis choirrhynchos</i>	It
<i>Akysis variegatus</i>	Khi hia
<i>Amblyrhynchichthys truncatus</i>	Dta bo, Jon, Ta po, Dta jon, Dta pbo
<i>Anabas testudineus</i>	Kheng, Keng
<i>Anguilla marmorata</i>	Lai fai fa, Lat meow
<i>Annamia normani</i>	Tit hin
<i>Auriglobus modestus</i>	Pao luang
<i>Bagarius bagarius</i>	Ke
<i>Bagarius yarrelli</i>	Khae, khe, kae
<i>Bagrichthys macracanthus</i>	Ka theung, Mak khan, mak kheu, makehr
<i>Bagrichthys macropterus</i>	Gooay sook, Kouay souk , Makahn, makehr
<i>Balantiocheilos melanopterus</i>	Pit
<i>Bangana behri</i>	Va ho kham, Wa nah nuk, Va nah nuk, Va kum, Wa na nor
<i>Barbichthys nitidus</i>	Va hang dam
<i>Barbonymus altus</i>	Vien fai
<i>Barbonymus gonionotus</i>	Pak
<i>Barbonymus schwanenfeldii</i>	Vien fai
<i>Belodontichthys dinema</i>	Khop
<i>Boesemania microlepis</i>	Gooawng, Kouang
<i>Brachirus harmandi</i>	Pe
<i>Brachirus panoides</i>	Pan gnai
<i>Catlocarpio siamensis</i>	Kaho
<i>Cephalocassis borneensis</i>	Khat ok
<i>Channa gachua</i>	Kan
<i>Channa lucius</i>	Tion
<i>Channa marulius</i>	Gooan
<i>Channa marulius</i>	Kouan, Gooa
<i>Channa micropeltes</i>	Do, Meng phou
<i>Channa orientalis</i>	Kan, Kang
<i>Channa striata</i>	Kaw, Kho
<i>Chela caeruleostigmata</i>	Khi pagnat
<i>Chitala blanci</i>	Dtong gai, Tong kai, Dtawng lai
<i>Chitala chitala</i>	Thong, Tong
<i>Chitala ornata</i>	Tong khouay, Dtong kwai, Tong keua, Tong khua
<i>Cirrhinus cirrhosus</i>	Nang chan
<i>Cirrhinus jullieni</i>	Dok ngieu pha, Soi

¹⁵³ Source of species names www.fishbase.org accessed 27 January 2009.

¹⁵⁴ The FISHBASE local names are not consistently transliterated from local spelling, thus several local names are simply variations in transliteration rather than differing local names. They are all included here.

Scientific Name ¹⁵³	Transliterated Lao Name ¹⁵⁴
<i>Cirrhinus lobatus</i>	Soi houa lem, Soi hang leuang, Soi hooa lem, Soi hua lem
<i>Cirrhinus microlepis</i>	Phone, Pawn
<i>Cirrhinus molitorella</i>	Geng, Keng
<i>Clarias batrachus</i>	Douk
<i>Clarias macrocephalus</i>	Douk
<i>Cosmochilus harmandi</i>	Mak ban
<i>Cosmochilus harmandi</i>	Tiok
<i>Crossocheilus reticulatus</i>	Kiang, Tok thoi, Kee kom
<i>Crossocheilus siamensis</i>	Khang lai noi
<i>Ctenopharyngodon idella</i>	Kin gnia
<i>Cyclocheilichthys apogon</i>	Dok ngieu, Dawk ngiew
<i>Cyclocheilichthys armatus</i>	Dok ngieu khao, Dok niew, Tiok
<i>Cyclocheilichthys enoplus</i>	Jork, Jawk, Johk, Chok, Choke, Tiok
<i>Cyclocheilichthys repasson</i>	Dta sai, Da si, Dok niew, Doke ngieu, Khao i thai
<i>Cynoglossus microlepis</i>	Lin ma
<i>Cyprinus carpio carpio</i>	Nai
<i>Dasyatis laosensis</i>	Fa hang, Fa lai
<i>Datnioides microlepis</i>	Seua, Soua
<i>Datnioides undecimradiatus</i>	Seua, Seua
<i>Discherodontus ashmeadi</i>	Sawk jan
<i>Epalzeorhynchus frenatum</i>	Tout hin
<i>Esomus longimanus</i>	Sieu
<i>Esomus metallicus</i>	Sieu, Sieu houa gnen
<i>Garra cambodgiensis</i>	Gaw hin
<i>Garra fasciacauda</i>	Kikko
<i>Garra nasuta</i>	Gaw hin
<i>Glossogobius giuris</i>	Boo
<i>Glossogobius koragensis</i>	Bou khao
<i>Gyrinocheilus aymonieri</i>	Ko, Gaw
<i>Gyrinocheilus pennocki</i>	Ko, Gaw
<i>Hampala dispar</i>	Sout
<i>Hampala macrolepidota</i>	Sout , Soot
<i>Helicophagus waandersii</i>	Noo, Nou
<i>Hemiarus stormii</i>	Kaht oak, Khat ok sop lem
<i>Hemibagrus microphthalmus</i>	Kung. Keung
<i>Hemibagrus nemurus</i>	Kot. Goht. Kot leuang, Goht leuang
<i>Hemibagrus wyckii</i>	Kheung, Goht mahw, Kot mo
<i>Hemisilurus heterorhynchus</i>	Dan deng
<i>Hemisilurus mekongensis</i>	Nang deng
<i>Henicorhynchus lineatus</i>	Soi, Soi lai
<i>Henicorhynchus siamensis</i>	Mohk, Soi, Soi houa po
<i>Hilsa kelee</i>	Mak pang
<i>Himantura chaophraya</i>	Fa hang, Fa lai

Scientific Name ¹⁵³	Transliterated Lao Name ¹⁵⁴
<i>Homaloptera ophiolepis</i>	Dtit hin
<i>Homaloptera smithi</i>	Dtit hin, Tit hin
<i>Hypsibarbus lagleri</i>	Pak pay
<i>Hypsibarbus pierrei</i>	Pak khao, Pak ta leuang
<i>Hypsibarbus wetmorei</i>	Pak gohm, Pak thong kham, Pak thong leuang
<i>Kryptopterus bicirrhis</i>	Pi kai
<i>Kryptopterus kryptopterus</i>	Peek gai
<i>Labeo barbatulus</i>	Idtoo
<i>Labeo chrysophekadion</i>	Phia, Pia
<i>Labeo dyocheilus</i>	Va
<i>Labeo erythropterus</i>	Va, Va souang, Wa sooang
<i>Labeo pierrei</i>	Sooang
<i>Labiobarbus leptocheila</i>	Khoui lam, Lang khon, Lang kohn, Soi, Pboot
<i>Laides hexanema</i>	Nyawn, Gnone thong
<i>Leptobarbus hoevenii</i>	Phong, Pohng, Phong long
<i>Lobocheilos melanotaenia</i>	Khiang khang lai, Kiang kang lai, Kiang, Soi
<i>Luciosoma bleekeri</i>	Mak vai, Sieu ao, Pbawn
<i>Luciosoma setigerum</i>	Sieu ao, Pbawm
<i>Lycothrissa crocodilus</i>	Hang pah, Maeo, Mak chan
<i>Macrochirichthys macrochirus</i>	Hang fa, Hang pha
<i>Macrognaathus aculeatus</i>	Lot
<i>Macrognaathus semiocellatus</i>	Loht
<i>Macrognaathus siamensis</i>	Loht, Laht, Lot
<i>Mastacembelus armatus</i>	Lat, Loht, Laht
<i>Mastacembelus favus</i>	Lat
<i>Mekongina erythrospila</i>	Sa I, Sa-ee, Sae, Wa
<i>Monopterus albus</i>	Lai, lan, l'en
<i>Mystacoleucus atridorsalis</i>	Lang ko
<i>Mystacoleucus marginatus</i>	Lang ko
<i>Mystus atrifasciatus</i>	Kahn yeng kang lai
<i>Mystus bocourti</i>	Kha gneng chong lang gnao
<i>Mystus cavasius</i>	Ka gnen
<i>Mystus multiradiatus</i>	Kha gneng khang lai
<i>Mystus mysticetus</i>	Kahnyeng kang lai, Kha gneng khang lai
<i>Mystus rhegma</i>	Ka gnen
<i>Mystus singaringan</i>	Kha gneng kho, Kahnyeng koh
<i>Mystus vittatus</i>	Ka gnen
<i>Nandus nandus</i>	Ka
<i>Nemacheilus masyai</i>	It
<i>Notopterus notopterus</i>	Dtong, Tong na, Dtawng noi, Tong
<i>Ompok bimaculatus</i>	Seum, Seuam
<i>Ompok hypophthalmus</i>	Peek gai
<i>Ompok miostoma</i>	Khoun

Scientific Name ¹⁵³	Transliterated Lao Name ¹⁵⁴
<i>Opsarius koratensis</i>	Sieu
<i>Opsarius pulchellus</i>	Lai khouang
<i>Oreochromis niloticus niloticus</i>	Nin
<i>Osphronemus exodon</i>	Men, Haet
<i>Osphronemus goramy</i>	Men, Meng
<i>Osteochilus hasseltii</i>	I thai, Khao mong, Khi ka pheuay, Kee ga peu
<i>Osteochilus lini</i>	Soi
<i>Osteochilus melanopleurus</i>	Nok khao
<i>Osteochilus microcephalus</i>	Khang lai gnai, Kang lai
<i>Osteochilus waandersii</i>	Khang lai gnai, Kang lai
<i>Oxyeleotris marmorata</i>	Boo, Bou, Bout
<i>Oxygaster pointoni</i>	Thep
<i>Pangasianodon gigas</i>	Beuk, Boeuk
<i>Pangasianodon hypophthalmus</i>	Sooai, Sooai khao, Souay kheo
<i>Pangasius bocourti</i>	Hua muam, Yang
<i>Pangasius conchophilus</i>	Ke-pa pho, Paw, Por, Gae
<i>Pangasius elongatus</i>	Nyawn hang hian, Gnone hang hian
<i>Pangasius krempfi</i>	Sooai hang luang, Souay hang leuang, Sooay mak mai, Sooai
<i>Pangasius larnaudii</i>	Beung, Pboong, Peung, Hou mat
<i>Pangasius macronema</i>	Nyawn
<i>Pangasius nasutus</i>	Ling
<i>Pangasius pangasius</i>	Souei
<i>Pangasius sanitwongsei</i>	Leum
<i>Parachela oxygastroides</i>	Thep
<i>Parachela siamensis</i>	Tep houa beut
<i>Paralabuca riveroi</i>	Tep
<i>Paralabuca stigmabrachium</i>	Thep
<i>Paralabuca typus</i>	Dtep, Dtaep, Tep
<i>Parambassis apogonoides</i>	Kahpkawng
<i>Parambassis siamensis</i>	Khap khong, Kahp kawng
<i>Parambassis wolffii</i>	Khap khong, Kahpkawng
<i>Phalacrotonotus apogon</i>	Nang, Sa ngoua
<i>Phalacrotonotus bleekeri</i>	Nang ngeun, Nang, Kayt, Souam
<i>Phalacrotonotus micronemus</i>	Nang khao
<i>Plotosus canius</i>	Duk taleh, Lai fai fa
<i>Polynemus dubius</i>	Chin
<i>Polynemus paradiseus</i>	Jin
<i>Poropuntius deauratus</i>	Chat hang leuang, Jaht, Jat
<i>Poropuntius malcolmi</i>	Khao lan, Pak kom, Pak nouat
<i>Pristis pristis</i>	Salam
<i>Pristolepis fasciata</i>	Gah, Ka
<i>Probarbus jullieni</i>	Eun, Eun dta deng, Eun ta deng, Uhn
<i>Probarbus labeamajor</i>	Eun khao

Scientific Name ¹⁵³	Transliterated Lao Name ¹⁵⁴
<i>Pseudolais pleurotaenia</i>	Nyawn tong khom, Nyawn tawng khom, Gnone thong khom
<i>Pseudomystus siamensis</i>	Kee hia
<i>Puntioplites falcifer</i>	Sagang, Sakang
<i>Puntioplites proctozystron</i>	Sagang, Sa kang
<i>Puntius orphoides</i>	Pok, Pohk
<i>Puntius partipentazona</i>	Seua noi
<i>Raiamas guttatus</i>	Sanak
<i>Rasbora borapetensis</i>	Sieu
<i>Rasbora myersi</i>	Sieu
<i>Scaphognathops bandanensis</i>	Pian, Pien
<i>Scaphognathops stejnegeri</i>	Pian, Pien
<i>Setipinna melanochir</i>	Maeo, Mak jan
<i>Sikukia gudgeri</i>	Khao na, Mang
<i>Syncrossus beauforti</i>	Kieo kai
<i>Syncrossus helodes</i>	Kheo kai, Moo mun
<i>Tenualosa thibaudeaui</i>	Mak pang, Mak phang
<i>Tetraodon baileyi</i>	Pbao, Pao thong
<i>Tetraodon cutcutia</i>	Pao
<i>Tetraodon leiurus</i>	Pbao, Pao
<i>Thynnichthys thynnoides</i>	Keum, Koum, Goom
<i>Tor douronensis</i>	Hien
<i>Tor sinensis</i>	Daeng
<i>Tor tambra</i>	Gwa, Tohn
<i>Tor tambroides</i>	Kva
<i>Toxotes chatareus</i>	Mong
<i>Toxotes microlepis</i>	Meo
<i>Trichogaster pectoralis</i>	Sa lit
<i>Trichogaster trichopterus</i>	Ka dout, Salid
<i>Trichopsis vittata</i>	Mat, Maht
<i>Troglocyclocheilus khammouanensis</i>	Kham khom
<i>Wallago attu</i>	Khao
<i>Wallago leerii</i>	Koon, Khoun
<i>Xenentodon cancila</i>	Kathong, Katong
<i>Xenentodon canciloides</i>	Sa thong
<i>Yasuhikotakia caudipunctata</i>	Mou man
<i>Yasuhikotakia eos</i>	Mou man, Moo mun
<i>Yasuhikotakia lecontei</i>	Mou man
<i>Yasuhikotakia modesta</i>	Keeo gai, Mou man, Mou mang, Moo
<i>Yasuhikotakia sidthimunki</i>	Moo

ANNEX 6 – DRAFT FISHERIES AND AQUACULTURE LAW

IMPORTANT NOTE: The following English language draft framework law formed the basis for discussion and consultation between the legal consultants and a wide variety of stakeholders. It is therefore a working draft framework, not the final version of the fisheries and aquaculture legislation. This version should therefore **be considered indicative only as it does not constitute a translation of the final Lao fisheries and aquaculture legislation.** The final version of the Lao fisheries and aquaculture legislation will evolve from this draft and will have been subject to discussion and modification in the legislation development process, which will see its passage from a discussion document to a legal instrument.

CHAPTER 1 GENERAL PROVISIONS

Article 1 Objective

The objective of this law is to facilitate the development of the fisheries and aquaculture sectors to contribute to poverty reduction, food security and economic growth in Lao PDR through the sustainable utilization of aquatic resources and the promotion of adaptive and effective management mechanisms.

Article 2 Definitions

“aquaculture” means the breeding or farming of aquatic organisms;

“aquaculture products” means the aquatic organisms or part thereof, whether alive or dead, which are being or have been farmed in an aquaculture site in Lao PDR;

“aquaculture site” means any area of land or water or both in which aquaculture is conducted and includes any premises, equipment, ponds, tanks or cages;

“aquatic organisms” means any aquatic animals or plants, alive or dead, and includes their eggs, spawn, fingerlings and juveniles;

“DAFO” means the District Agriculture and Forestry Office;

“fisher” [*determine whether there is a need to provide a definition of this term*];

“fishing” means taking or catching aquatic organisms by any method and includes attempts to take or catch and searching for aquatic organisms;

“Lao waters” means all permanent or seasonal water bodies, whether natural or man-made including rice fields, within the territory of Lao PDR, capable of supporting aquatic organisms and those parts of rivers and other water bodies shared with neighbouring states, and over which Lao PDR exercises sovereignty.

“MAF” means the Ministry of Agriculture and Forestry;

“Minister” means the Minister responsible for fisheries and aquaculture;

“PAFO” means the Provincial Agriculture and Forestry Office; and

“subsistence fishing” means any fishing activity undertaken by any fisher for the primary purpose of feeding his family.

Article 3 Scope

This law applies –

- (a) within the territory of Lao PDR; and
- (b) to any natural or juridical person engaged in fishing or aquaculture activities in Lao waters.

Article 4 Promotion of aquaculture development

The Lao Government encourages national and foreign investments in the aquaculture sector to ensure the continuous supply of fish on local markets and the development of fish production for export.

Article 5 Basic principles

The basic principles governing the use, management and development of aquatic resources are –

- (a) to ensure that aquatic resources are conserved and managed in a manner that meets the needs of the present generation without compromising the rights of future generations;
- (b) to apply precautionary approaches in the management and development of fisheries resources;
- (c) to preserve aquatic biodiversity and protect aquatic ecosystems;
- (d) to devolve or delegate functions and powers in the sphere of fisheries and aquaculture to local governments and communities or user based organizations for increased efficiency in the management, conservation and development of aquatic resources;
- (e) to encourage and facilitate local participation in the management and conservation of fisheries resources;
- (f) to promote best management practices in the fisheries and aquaculture sectors; and
- (g) to encourage the creation of fishers organizations or groups to better represent the interests of fisher groups and facilitate dialogue with the central and local governments.

Article 6 Environmental principles

All persons engaged in fishing or aquaculture or exercising or performing functions, duties, or powers under this law in relation to the development, management and utilization of aquatic resources, shall take into account and give effect to environmental principles as prescribed in the Environment Law.

Article 7 Ownership

The property of all wild fish, including wild fish found in private rice fields and ponds, is the property of the national community and no person may acquire any right in such fish other than in accordance with this law.



**CHAPTER 2
MANAGEMENT, CONSERVATION
AND SUSTAINABLE USE OF FISHERIES RESOURCES**

**Section 1
Fisheries Management Committees**

Article 8 Formation

Fishers residing in villages adjacent to a water body [or part thereof] [or engaged in fishing in that water body] may form a fisheries management committee.

Representatives of the fisheries management committee shall inform the competent authority of the fishers' decision of establishing a fisheries management committee and shall apply to the competent authority for the formal recognition of the said committee.

Where he is satisfied that all prescribed conditions have been met, the competent authority shall, by decision, proclaim the establishment of the fisheries management committee.

Any decision under the paragraph above shall be transmitted to the MAF who shall keep a record of all fisheries management committees established throughout the Lao territory.

Article 9 Competent authorities

The competent authority referred to in Articles 8 and 12 shall be –

- (a) the district Chief where the body of water concerned [or part thereof] is located within the limits of one district;
- (b) the provincial Governor where the body of water concerned [or part thereof] stretches over the boundaries of more than one district; and
- (c) the Minister where the body of water concerned [or part thereof] stretches over the boundaries of more than one province.

Article 10 Membership

Membership in a fisheries management committee shall be open to any fisher residing in a village adjacent to the water body concerned [or part thereof] [or involved in fishing activities on that water body].

Each fisheries management committee shall keep a record of its members.

Article 11 Functions

A fisheries management committee shall –

- (a) prepare a fisheries management plan with respect to the water body concerned [or part thereof];
- (b) devise fisheries regulations governing fishing activities in the water body concerned [or part thereof], including regulations relating to prohibited fishing gears and methods, prohibited fishing areas and closed seasons;
- (c) assist in settling fisheries-related disputes in the water body concerned [or part thereof];
- (d) represent fishers' interests, including in any water users arrangement at the water body level; and
- (e) assist in enforcing management measures and fisheries regulations applicable to the water body concerned [or part thereof].

Article 12 Approval process and promulgation of fisheries management plans and fisheries regulations

Upon adoption of fisheries management plans and fisheries regulations under article 11, fisheries management committees shall submit such plans and regulations for review and approval to the competent authority in accordance with Article 9.

Where he is satisfied that a fisheries management plan or fisheries regulations are in conformity with the national fisheries policy and the fisheries laws and regulations, the competent authority shall, by decision, promulgate such plan or regulations.

Fisheries management plans and fisheries regulations shall be broadly disseminated by any means available, including through meetings, sign boards, television and radio programs, and press releases in local media outlets.

Section 2 Village fisheries regulations

Article 13 Initiative

At the village level, fisheries regulations shall be prepared by the village authorities in consultation with the villagers and neighbouring communities and with the assistance from the DAFO in the jurisdiction of which the village is located.

Article 14 Approval process

Upon agreement of the village fisheries regulations by the villagers, the village authorities shall submit the village fisheries regulations to the DAFO for review and endorsement.

Where it is satisfied that the village fisheries regulations are consistent with the fisheries law and regulations, the DAFO shall issue a letter endorsing the village fisheries regulations and submit it together with the regulations to the competent district Chief for approval.

The district Chief shall, within 15 days of the date of receipt of the letter and the village fisheries regulations, issue a decision promulgating the village fisheries regulations.

Article 15 Dissemination

Village fisheries regulations shall be broadly disseminated including through meetings, sign boards, television and radio programs, and press releases in local media outlets.

Section 3 Protection of aquatic resources and ecosystems

Article 16 Prohibition to use poison, electric shock, explosive and other noxious substance

No person shall –

- (a) use or attempt to use any poison, electric device, explosive or other noxious substance in Lao waters for the purpose of killing, stunning or catching any aquatic organisms; and
- (b) carry or have in his possession or control any poison, electric device, explosive or other noxious substance in circumstances indicating an intention of using such poison, electric device, explosive or other noxious substance for any purpose referred in paragraph (a).

No person shall land, sell, buy, receive, possess or transport any aquatic organisms knowing or having reasonable cause to believe that such aquatic organisms have been taken by the use of any poison, electric device, explosive or other noxious substance.

Article 17 Prohibited fishing gears and methods

No person shall –

- (a) erect, construct, use or maintain in Lao waters any net or other fishing gear which unduly obstructs the passage of aquatic organisms;
- (b) erect any structure, dig any trap pond or pump any water near a recession area of wetland, a permanently inundated area or the draw down point of any rice field system; and
- (c) fish –
 - i. with mosquito nets
 - ii. by means of brush parks

Article 18 Prohibition to use or possess prohibited fishing gears

No person shall use, possess or have on board any fishing boat any prohibited fishing gear or engage in any prohibited fishing method in any area of Lao waters.

Article 19 Prohibition to manufacture or sell prohibited fishing gears

No person shall manufacture, import or sell any prohibited fishing gear in Lao territory.

Article 20 Prohibition to take undersized and protected species of aquatic organism

No person shall fish or cause any other person to fish –

- (a) [any undersized aquatic organism]
- (b) any protected species of aquatic organism as listed in the laws of Lao PDR or in international conventions to which Lao PDR is a party.

Article 21 Protected species of aquatic organism

In determining the list of species of aquatic organism that shall receive special protection under the laws of Lao PDR, the competent authority [or the Forestry or Wildlife Department] shall consult with the DLF.

**CHAPTER 3
FISHING LICENSE, PERMIT AND CONCESSION**

**Section 1
Fishing licenses and permits**

Article 22 Subsistence fishing

Subsistence fishing in Lao waters is free and open.

Article 23 Fishing by foreigners

No foreign person shall engage in any commercial fishing activity in Lao waters [except under a fishing concession in accordance with Article 29].

Article 24 Fishing in rice fields

No person shall engage in fishing in any rice field unless he has been authorized to do so by the field owner [or the holder of a land use right over that field].

In circumstances where an area is flooded, any person may fish in submerged rice fields without permission under the paragraph above if the water level is sufficiently high to cover the bunds entirely.

Article 25 License for use of large scale fishing gear

No person shall use a large scale fishing gear in Lao waters without a license issued by the MAF.

The Minister shall make regulations prescribing application procedures, conditions and grounds for suspending or revoking a license issued under this article.

Article 26 Permit for taking ornamental fish

No person shall take ornamental fish for commercial purposes without a permit issued by the MAF.

Article 27 Permit for research fishing

No person shall undertake research fishing in Lao waters without a permit issued by the MAF, on the advice of the competent scientific research agency, and upon the payment of a prescribed fee.

An application for a research fishing permit shall be made, in the prescribed form, to the MAF and shall be accompanied by a detailed work plan.

A research fishing permit granted under this article shall –

- (a) specify the area or areas in Lao waters where research fishing is permitted;
- (b) describe the fishing gear and method to be used;
- (c) specify the period of validity of the permit;
- (d) include a condition providing that at least one Lao scientist be included in the research project and that expenses in relation to that person shall be borne by the permit holder; and
- (e) require the research findings to be communicated to the Minister within a specified period.

The Minister may impose any other condition that he deems fit.

Section 2 Fishing concession

Article 28 Application

Any person may apply for a fishing concession in any area of Lao waters.

An application for a fishing concession shall be made, in the prescribed manner, to the Minister or the provincial Governor, as the case may be, and shall be accompanied by a detailed business plan and such documents and information as may be prescribed.

Article 29 Grant of fishing concession

The Minister or the provincial Governor, as the case may be, shall not grant a fishing concession unless he is satisfied that –

- (a) all documents and information required under Article 28 is complete; and
- (b) the prescribed fee has been paid.

Before making any decision on any application, the Minister or the provincial Governor, as the case may be, shall –

- (a) submit such application together with the prescribed documents and information to the DLF or PAFO for technical assessment; and
- (b) consult with the FMC if the fishing concession to be granted is located in a water body where such a committee has been formed.

Article 30 Exclusive fishing right

A fishing concession shall confer upon the concessioner an exclusive right to fish aquatic organisms within the area of Lao waters specified in the fishing concession.

Article 31 Duration

A fishing concession shall not be granted for a period exceeding 5 years [and may be renewed in the prescribed manner].

Article 32 Content of a fishing concession

A fishing concession shall *inter alia* –

- (a) specify the area of Lao waters where the fishing concession applies;
- (b) prescribe the amount of fee to be paid by the applicant;
- (c) specify the type and number of fishing gears to be used;
- (d) require the concessioner to maintain a record and report catch data; and
- (e) specify the duration of the concession.

Article 33 Suspension or revocation

The Minister or the provincial Governor, as the case may be, may suspend or revoke a fishing concession at any time if –

- (a) the concessioner has failed to comply with any condition of the fishing concession;
- (b) the concessioner has ceased to conduct fishing operations;
- (c) the concessioner has failed to harvest aquatic organisms within six months of the approval of the fishing concession agreement; and
- (d) he is of the opinion that suspension or revocation is required to ensure protection and conservation of aquatic organism and ecosystems.

The Minister or the provincial Governor as the case may be, instead of suspending or revoking the fishing concession, may issue in writing a variation of the fishing concession allowing the continuation of fishing operations under such conditions as the competent authority may determine.

CHAPTER 4 AQUACULTURE

Section 1 Aquaculture license

Article 34 Aquaculture to be conducted with a license

Subject to the paragraph below, no person shall engage in aquaculture in any area of Lao waters without a license issued by the Minister, the provincial Governor or the district Chief, as the case may be.

Small-scale aquaculture projects [undertakings] shall not be subject to a license under the paragraph above.

Article 35 Application

An application for an aquaculture license shall be made, in the prescribed manner, to the Minister, the provincial Governor or the district Chief, as the case may be, and shall be accompanied by a detailed business plan and such documents and information as may be prescribed.

[Requirement for public notice]

Article 36 Issue of license

The Minister, the provincial Governor or the district Chief, as the case may be, shall not issue a license unless he is satisfied that –

- (a) all the information required under Article 35 is complete;
- (b) the applicant has obtained any concession, authorization, permit or approval which may be required under the laws relating to land and water;
- (c) where an environmental assessment is required under the laws on environment, that an environmental clearance [authorization] for the project [undertaking] has been issued by the competent authority in accordance with the laws on environment; and
- (d) where the applicant is not the owner of the site, the application is accompanied by the written consent of the owner of the site authorizing the applicant to use the site.

Before making a decision on any application, the Minister, the provincial Governor or the district Chief, as the case may be, shall –

- (a) submit such application together with the prescribed documents and information to the DLF, PAFO or DAFO, as the case may be, for technical assessment;
- (b) consult with the FMC if the aquaculture license to be granted is located in a water body where such a committee has been formed;
- (c) consider whether the grant of a license will create a significant risk of pollution or otherwise adversely affect the environment;
- (d) consider whether the site in respect of which a license is sought is suitable for aquaculture or the type of aquaculture planned, having regard to its general characteristics, traffic requirements, or the risk of conflict with other activities being undertaken or proposed in the vicinity of the selected site;
- (e) consider any other matters applicable to the license that, in the opinion of the Minister, the provincial Governor or the district Chief, as the case may be, are relevant.

Article 37 Exclusive right to farm and harvest

An aquaculture license shall confer upon the license holder an exclusive right to farm and harvest any aquaculture products within the site defined in the license.

Article 38 Ownership of aquaculture products

All aquaculture products of the species of aquatic organisms specified in a license are, while contained within the boundaries of the site, the exclusive property of the license holder until sold, traded, transferred or otherwise disposed of by the license holder.

[All aquaculture products referred to in the paragraph above, which escape into the natural environment, remain the exclusive property of the license holder insofar as the license holder can prove their identity].

Article 39 Duration

An aquaculture license shall not be issued for a period exceeding 5 years and may be renewed in the manner and under the conditions prescribed by the Minister.

Article 40 Conditions

A license shall be issued for the site defined in the license and shall specify the species of aquatic organisms that may be farmed and harvested at the site.

The Minister, the provincial Governor or the district Chief, as the case may be, may issue a license subject to any conditions the Minister, the provincial Governor or the district Chief, as the case may be, considers appropriate, including conditions relating to –

- (a) the amount of fee to be paid;
- (b) the species and quantities of aquatic organisms which, at any given time, may be introduced and retained at the site;
- (c) the structures and equipment which may be used and the maintenance practices to be followed at the site;
- (d) water quality;
- (e) the feed which may be used;
- (f) the types of manures or fertilizers which may be used;
- (g) the use of hormones for controlling reproduction or enhancing growth;
- (h) the use of any drugs, antibiotics or other chemicals;
- (i) the disposal of dead or diseased aquaculture products, material or waste resulting from aquaculture;
- (j) the keeping of records; and
- (k) the duration of the license.

Article 41 Suspension or revocation of license

The Minister, the provincial Governor or the district Chief, as the case may be, may suspend or cancel a license at any time if –

- (a) the license holder has failed to comply with any condition of the license;
- (b) the license holder has ceased to conduct aquaculture operations at the site;
- (c) the license holder has not commenced aquaculture activities within twelve months of the issue of the license or within such longer period as may be stipulated in the license;

- (d) he is of the opinion that suspension or revocation is required to ensure protection and conservation of the environment;
- (e) the license holder has failed to report the presence of any disease or harmful organism as required under Article 43 or the license holder has failed to take all possible measures to prevent the spread of disease or of any harmful organism as required under Article 43; or
- (f) the license holder has failed to treat or destroy any aquatic organism that is or may be diseased or that contains or may contain parasites as required under Article 43.

The Minister, the provincial Governor or the district Chief, as the case may be, instead of suspending or revoking a license under the paragraph above, may issue in writing a variation of the license allowing the continuation of aquaculture under such conditions as the Minister, the provincial Governor or the district Chief, as the case may be, may determine.

Article 42 Record of aquaculture licenses

The MAF shall keep a record showing every aquaculture license issued under this law and such particulars as may be prescribed.

Section 2 Management and control measures

Article 43 Report of disease or harmful organism

Any license holder or other person engaged in aquaculture shall immediately report to the Minister, the provincial Governor or the district Chief, as the case may be, the presence of any disease or harmful organism in an aquaculture site.

The Minister, the provincial Governor or the district Chief, as the case may be, may, upon the advice of the Ministry responsible for public health, where there is deemed to be a significant risk to any aquatic organism or to the environment –

- (a) order the destruction, isolation, quarantine or treatment of any aquatic organism infected or thought to be infected with a disease or of any harmful organism; and
- (b) order the quarantine of any aquaculture site in which the Minister, the provincial Governor or the district Chief, as the case may be, reasonably suspects that a disease or harmful organism is present.

Any license holder or other person engaged in aquaculture shall take all possible measures to prevent the spread of disease or of any harmful organism in or from an aquaculture site, including the destruction of aquatic organisms or aquaculture products and the disinfection of aquaculture sites, and the license holder shall immediately comply with any measures that the Minister, the provincial Governor or the district Chief, as the case may be, may direct for that purpose.

Article 44 Introduction and transfer of aquatic organisms

No person shall, without a written permission granted by the MAF, introduce or cause to be introduced into Lao PDR or any Lao waters any species of aquatic organism or any genetically modified aquatic organism or transfer any species of aquatic organisms from one aquaculture site in Lao PDR to another or from any location in Lao PDR to another.

The permission granted by the MAF under the paragraph above may be subject to such conditions as the MAF may determine.

The MAF shall not issue any approval under this section unless the impact of any introduction or transfer of any aquatic species or genetically modified aquatic organism has been assessed.

Article 45 Import and export of live aquatic organisms

No person shall without a written permission granted by the MAF import or export live aquatic organisms.

The MAF may grant a permit for the import or export of live aquatic organisms subject to such conditions the MAF considers appropriate.

The MAF may inspect any live aquatic organisms before or after they are imported and inspect any live aquatic organisms that are destined for export.

The MAF may seize, hold, quarantine, disinfect or destroy any live aquatic organisms that have been imported or that are destined for import or export.

CHAPTER 5 FINANCIAL PROVISIONS

Whether there is a need to establish a fisheries development fund to support the development of fishing and aquaculture activities in Lao PDR would have to be assessed by the DLF in consultation with the stakeholders. In recent years, many funds have been established and few are working properly. Therefore, the National Assembly may be reluctant to approve the creation of a new development fund under the fisheries law.

- establishment of a fisheries development fund
- purpose of the fund
- financial resources

CHAPTER 6 ADMINISTRATION

Article 46 Administration of fisheries and aquaculture

Fisheries and aquaculture activities shall be administered by the MAF, the PAFO, the DAFO and the village authorities.

Article 47 Functions and powers of the MAF

The MAF shall –

- (a) develop, implement and disseminate the national fisheries and aquaculture policy and the national fisheries and aquaculture strategic plan;
- (b) liaise with other ministries, agencies and international and regional organizations on matters relating to fisheries and aquaculture;
- (c) coordinate, monitor and support the work of fisheries and aquaculture services in PAFO and DAFO to help them carry out their duties;
- (d) coordinate the provision of aid and assistance from foreign and multi-national donors;
- (e) manage the fisheries and aquaculture activities within Lao waters in accordance with this law;
- (f) prepare, in consultation with the industry and other stakeholders, fisheries and aquaculture regulations applicable throughout the country;
- (g) collect data on fishing and aquaculture activities, aquatic organisms and ecosystems.

Article 48 Functions and powers of the PAFO

The PAFO shall –

- (a) coordinate and monitor the work of DAFO;
- (b) provide support to DAFO to help them carry out their duties;
- (c) provide technical advice to the provincial Governor on any matters concerning fisheries and aquaculture;
- (d) provide technical advice and support to FMCs, any group of fishers and any person engaged or wishing to engage in aquaculture or fisheries activities within their area of jurisdiction; and
- (e) report, on a regular basis, catch or production data and any other information required under this law to the MAF.

Article 49 Functions and powers of the DAFO

The DAFO shall –

- (a) assist village authorities in developing and implementing village fisheries regulations;
- (b) provide technical advice to the district Chief on any matters concerning fisheries and aquaculture; and
- (c) provide technical advice and support to FMCs, any group of fishers and any person engaged or wishing to engage in aquaculture or fisheries activities within their area of jurisdiction.

Article 50 Functions and powers of village authorities

Village authorities shall –

- (a) take the necessary measures to manage fisheries resources and protect aquatic ecosystems within the limits of their jurisdiction;
- (b) prepare fisheries regulations in accordance with Article 13; and
- (c) perform such tasks as has been devolved to them by this law or any other law.

CHAPTER 7 ENFORCEMENT

Article 51 Fisheries inspectors

[For the purposes of this law, the following persons shall be fisheries inspectors –

- (a) village policemen;
- (b) any staff member in the MAF as designated by the Minister; and
- (c) forestry officers.]

Article 52 Powers of fisheries inspectors

For the purpose of enforcing this law, a fisheries inspector may [without a warrant] –

- (a) require to be produced, examine and make copies of any license, permit, concession or any document required under this law;
- (b) require to be produced and examine any aquatic organism and any fishing gear;

- (c) enter and inspect any aquaculture site, its premises, structure, equipment, tanks, cages and ponds, any aquaculture product therein and any document or record required under this law; and
- (d) stop, enter, inspect and search any vehicle, boat or any other means of transportation that may be used for transporting aquatic organisms or aquaculture products.

Where a fisheries inspector has reasonable cause to believe that an offense against this law has been committed, he may –

- (a) seize any fishing gear, boat, vehicle or any other means of transportation that has been used in the commission of the offence;
- (b) seize any aquatic organism caught, sold or stored in breach of this law; and
- (c) arrest any person who he believes to have committed the offense.

CHAPTER 8 OFFENCES AND PENALTIES

Article 53 Types of penalties

Penalties that may be imposed under this law are –

- (a) warnings;
- (b) fines; and
- (c) imprisonment.

Article 54 Offenses and penalties

Any person who –

- (a) uses a large-scale fishing gear without a license;
- (b) engages in research fishing or takes ornamental fish without a permit;
- (c) engages in fishing in a rice field without the permission of the field owner;
- (d) being a foreign national, engages in commercial fishing in Lao waters;
- (e) engages in aquaculture without a license;
- (f) fails to comply with any condition of a license, permit or concession under this law;
- (g) being an aquaculture license holder, fails to –
 - i. report the presence of a disease or harmful organism;
 - ii. take all necessary measures to prevent the spread of a disease or of any harmful organism; and
 - iii. comply with any measures aimed at preventing the spread of a disease or of any harmful organism adopted by the Minister, the provincial Governor or the district Chief;
- (h) introduces or causes to be introduced into Lao territory or waters any species of aquatic organism or any genetically modified aquatic organism without a permit;
- (i) transfers any species of aquatic organisms from one aquaculture site to another in Lao PDR without a permit;
- (j) imports or exports live aquatic organisms without a permit;
- (k) uses or possesses prohibited or non-compliant fishing gears;
- (l) manufactures, imports or sells any prohibited fishing gear in Lao territory;

- (m) uses prohibited fishing methods;
- (n) uses or attempts to use or carries or has in his possession or control any explosive, electric shock, poison or any other noxious substance for the purpose of fishing;
- (o) takes any aquatic organisms within a prohibited fishing area or during a closed period; and
- (p) takes, possesses, sells, purchases, transports, treats or transforms any undersized aquatic organisms or any protected species of aquatic organisms.

shall be guilty of an offense and liable on conviction to a fine not less than [*insert amount*] kip and not more than [*insert amount*] kip or to a term of imprisonment not less than 3 months and not more than 1 year, or to both.

Article 55 Suspension or revocation of a license, permit or concession

The Minister may, at any time, suspend or revoke a license, permit or concession issued under this law where the holder of such a license, permit or concession has contravened any provision of this law.

**CHAPTER 9
FINAL PROVISIONS**

Article 56 Conflict of laws

In the event of any inconsistency with respect to any matters concerning fisheries and aquaculture between this law and any other law, the Fisheries Law shall prevail.

Article 57 National fishing day

The [*insert date*] shall be declared the National Fishing Day.

Article 58 Savings and abrogation

Any law or part thereof that is contrary to this law is repealed.

Fisheries regulations that are not contrary to this law shall remain in force.

Article 59 Commencement

The Fisheries Law shall come into operation on the date of its promulgation by decree by the President of the Lao People's Democratic Republic.



Food and Agriculture Organization of the United Nations



Department of Livestock and Fisheries, Ministry of Agriculture and Forestry



World Wildlife Fund for Nature



Mekong River Commission



WorldFish Center



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