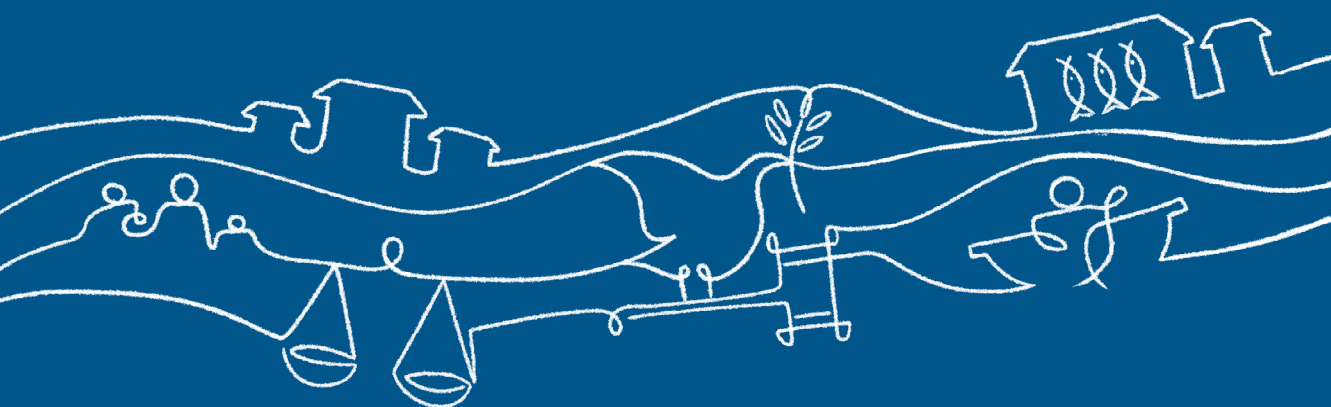




Food and Agriculture
Organization of the
United Nations



Legislating for sustainable small-scale fisheries

A guide and considerations for implementing aspects of the
Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries
in the Context of Food Security and Poverty Eradication in National
Legislation

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Abbreviations and acronyms

CBD

Convention on Biological Diversity

CCRF

Code of Conduct for Responsible Fisheries

CFS RAI PRINCIPLES

Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems

CITES

Convention on International Trade in Endangered Species of Wild Fauna and Flora

COFI

Committee on Fisheries

CSO

Civil society organization

EAF

Ecosystem approach to fisheries

FPIC

Free Prior and Informed Consent

HRBA

Human rights-based approach

ICCPR

International Covenant on Civil and Political Rights

ICESCR

International Covenant on Economic, Social and Cultural Rights

ILO

International Labour Organization

IMO

International Maritime Organization

MCS

Monitoring, control and surveillance

SSF

Non-governmental organization

Right to Food Guidelines

Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security

SDG

Sustainable Development Goal

SSF Guidelines

Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication

UN

United Nations

LOSC

United Nations Convention on
the Law of the Sea

UNDRIP

United Nations Declaration
on the Rights of Indigenous
Peoples

UNFSA

United Nations Fish Stocks
Agreement

VGGT

Voluntary Guidelines on the
Responsible Governance of
Tenure of Land, Fisheries
and Forests in the Context of
National Food Security

WTO

World Trade Organization



1. Introduction

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (hereafter “[SSF Guidelines](#)” or “Guidelines”) is the first international instrument dedicated entirely to the small-scale fisheries sector. The [SSF Guidelines](#) are the outcome of consultations at all levels which provided the basis for the work of the FAO Technical Consultations convened in May 2013 and February 2014. They were endorsed by the Thirty-first Session of the FAO Committee on Fisheries (COFI) in June 2014.

The [SSF Guidelines](#) complement the Code of Conduct for Responsible Fisheries (hereafter “Code” or “CCRF”) and are interlinked with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereafter “VGGT”), the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (hereafter “Right to Food Guidelines”), and the Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems (hereafter “CFS RAI Principles”).

The [SSF Guidelines](#) recognize that, given the diversity of the characteristics of small-scale fisheries around the world, there is no consensus on a single, global definition of “small-scale fisheries” or “small-scale fisher”. For the purposes of this Legislative Guide, “small-scale fisheries” include subsistence fisheries, artisanal fisheries, customary or aboriginal fisheries, and commercial fisheries of a small-scale nature, whether in inland waters or at sea, involving the full range of activities along the entire supply and value chain in accordance with national definitions, when they exist, or according to the prevailing common understanding of the meaning of “small-scale fisheries” in a given community or locality. “Small-scale fisher” and “small-scale fishworker”, therefore, refer to any person who is engaged in or in support of any of the small-scale fisheries as described above. The issue of characterizing versus legally (or statistically) defining small-scale fisheries is further discussed in [Chapter 5](#).

Small-scale fishery-related activities encompass the entire value chain (pre-harvest, harvest and post-harvest). The important role these fisheries play in food security and nutrition, poverty eradication, equitable development, cultural heritage and sustainable resource utilization is widely recognized. The small-scale fisheries sector operates in both marine and inland waters and contributes to over half of the fish catches in developing countries. Between 90 to 95 percent of small-scale fishery landings are destined for local consumption. The sector employs more than 90 percent of the world’s capture fishers and fishworkers (which in 2012 was estimated at 120 million people), many of them self-employed and about half of whom are women. Over 90 percent of all small-scale fishers live in developing countries (World Bank, 2012). This demonstrates the importance but at the same time the vulnerability of the sector and the global need to reinforce legislation to give fishers greater protection and participation in managing resources and decision-making.

The law has an important function in the sustainable use, management and development of fisheries in general and in ensuring rights as well as providing for duties, as appropriate, for small-scale fisheries. Among other benefits, legislation provides the strongest possible framework for fisheries governance, facilitates management of resources, and provides a

coherent legal basis for implementing and enforcing international, regional and subregional agreements and related commitments. It is hoped that this Legislative Guide will be a tool for states to strengthen their legislation in order to establish conditions for fisheries development, safeguard and advocate for the rights and interests of the population (in particular fishers and fishworkers), accord due consideration to the concerns and interests of marginalized groups, and ensure that social, economic and environmental aspects of sustainability are accommodated.

The law is crucial to securing responsible governance of tenure and sustainable resource management; to empowering and protecting the more vulnerable segments of society; and to enabling equitable and participatory socio-economic development. Fittingly, among the guiding principles of the [SSF Guidelines](#) is the rule of law (as seen in **paragraph 3.1.7**): “adopting a rules-based approach for small-scale fisheries through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments”. This guide contributes to strengthening the rule of law as a key human rights principle, and to helping adapt existing national legal frameworks to better reflect the principles of the [SSF Guidelines](#). Further, it demonstrates how to incorporate the Guidelines into new or existing national fishery legislation.

This Legislative Guide should be used together with “*A Diagnostic tool for Sustainable Small-Scale Fisheries - advancing the implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication in national policy and legal frameworks*” (hereafter “SSF Diagnostic Tool”), also developed by FAO. The SSF Diagnostic Tool has been designed to facilitate the identification of national policy and legal frameworks relevant to small-scale fisheries and to conduct a preliminary assessment of how well the [SSF Guidelines](#) are already reflected in a country’s fisheries policy and legislation (see also Chapter 3 below).

This Legislative Guide is intended for use by the legislative bodies of states in general, individual national legislators, and those advising on legal reforms. It can also be useful to policymakers, public institutions, judicial authorities and local governments that contribute to designing and implementing fisheries-related legislation, as well as development partners including non-governmental organizations (NGOs) and civil society organizations (CSOs) that work with small-scale fisheries communities and the broader communities they inhabit. Likewise, public-interest law organizations can use this guide to advance the implementation of small-scale fisheries legislation in communities, or to use it to advocate for law reform. The regulatory bodies of the legal profession can also play a key role in mainstreaming the [SSF Guidelines](#) in the legal practice through awareness raising, continuing professional development, and dissemination of best practices. This guide may also be of interest to academia.

The [SSF Guidelines](#) take a holistic approach to small-scale fisheries governance and development, implying that resource management and social and economic development must be addressed simultaneously and given equal importance (**paragraphs 3.1 and 4.1**). The scope of the [SSF Guidelines](#), hence, extends beyond fisheries. However, this Legislative Guide focuses mainly on [Chapter 5](#) of the Guidelines (“Governance of tenure in small-scale fisheries and resource management”), illustrating how the recommendations therein are currently covered in conventional fisheries-related legislations of various jurisdictions, and providing advice on how to better align national legislation with the [SSF Guidelines](#).

The recommendations of the different sections of the [SSF Guidelines](#) are underpinned by a set of guiding principles of which the human rights-based approach (HRBA) is at the centre.¹ This guide follows a similar approach by linking and pursuing the HRBA, where it is considered relevant, in its guiding elements.

The HRBA is generally understood as a conceptual framework of human development that is normatively based on international human rights standards and operationally directed at promoting human rights. The relevance of the HRBA to small-scale fisheries should be understood not only in relation to access and management of fisheries, but also from a broader perspective covering vital issues for small-scale fisheries actors, such as health, education, food security and employment. This helps to ensure participation, inclusion and non-discrimination between genders and economic classes, thus empowering right holders so that they have a voice in the decision-making processes that affect their rights and livelihoods, and also giving special attention to vulnerable and marginalized groups.

The HRBA calls for fostering non-discriminatory participation of small-scale fishing communities in transparent and responsible decision-making processes that impact on their lives. It seeks to empower fishers and fishworkers, fishing communities, fisheries management organizations, and other right holders to claim their rights, and requires the duty bearers to fulfil their obligations.

The application of the HRBA to the management, conservation and development of small-scale fisheries should be understood as the process of providing or securing the rights of small-scale fishers, actors and fishing communities to active, free, meaningful and effective participation in decisions and processes affecting their lives and well-being. This includes freedom of association and assembly (in the case of co-management arrangements) and freedom of expression and information, with special attention to the allocation of provisions for equal gender representation. It also entails the process for ensuring that duties and accountability of small-scale fishers, small-scale fisheries actors and small-scale fishing communities are appropriately set out.

While the HRBA is usually not explicitly invoked in typical fisheries legislation or may have not been the cause or incentive for existing legislative provisions that are aligned with the approach, this Legislative Guide recognizes its particular importance for the small-scale fisheries sector, and thus integrates the notion of the HRBA to guide the review, development and enhancement of legislative and governance processes, frameworks and their implementation.

Within this context, the Legislative Guide follows the following structure:

First, it presents the international and national frameworks supporting small-scale fisheries so that the [SSF Guidelines](#) can be placed in the broader context of the global fisheries governance framework. This includes an overview of how the [SSF Guidelines](#) relate to other international instruments, and how these instruments in turn should inform the interpretation and application of the [SSF Guidelines](#) (as stated in **paragraph 4.1**). It also provides guidance on how to assess national legal frameworks in relation to the SSF Guidelines.²

¹ Specifically, paragraphs 1.2, 3.1, 4.1, 5.2, 5.4, 5.12, 6.1, 6.2, 6.7, 6.12, 6.18, 8.2, 10.1 and 10.4.

² For further guidance on assessing national fisheries policy and legal instruments, see the SSF Diagnostic Tool.

Next, in [Chapter 4](#), the Legislative Guide contributes to enhancing the knowledge base in this field and, drawing on [Chapters 1 to 3](#) of this Guide offers broad guidance to states in legislating for small-scale fisheries. This chapter also provides a menu or “toolkit” detailing the structure and content of small-scale fisheries legislation, designed to provide guidance to states that have yet to legislate for small-scale fisheries or those intending to revise their small-scale fisheries legislation.

Finally, in line with the framework of typical fisheries legislation, [Chapters 5 to 11](#) complement and develop some of the key aspects that legislation on small-scale fisheries should contain, such as: institutional and administrative arrangements; tenure and access rights in small-scale fisheries; management, conservation and development of small-scale fisheries, including principles for decision-making; social development; monitoring, control and surveillance; and provisions concerning enforcement and legal proceedings. These chapters also provide examples of how states have legislated for those aspects.

2. International framework for small-scale fisheries

The present chapter details the key global and regional instruments that compose the international framework applicable to small-scale fisheries as referred to in paragraph 4.1 of the [SSF Guidelines](#), including the 1982 United Nations Convention on the Law of the Sea (LOSC), the 1995 United Nations Fish Stocks Agreement³ (UNFSA), and non-binding fisheries instruments such as the CCRF, the [SSF Guidelines](#), the VGGT and the CFS RAI Principles. The [SSF Guidelines](#), as the most directly relevant instrument to small-scale fisheries, discussed in greater detail here than other instruments and are the main reference for the guidance elements of this Legislative Guide.

This chapter also discusses binding and voluntary international instruments that are indirectly relevant for small-scale fisheries – including instruments that relate to labour, human rights, safety and environmental commitments – such as: human rights treaties, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Labour Organisation (ILO) treaties, the FAO/ILO/International Maritime Organization (IMO) Safety Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels, the Convention on Biological Diversity (CBD), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

2.1. International fisheries instruments

The international fisheries management regime comprising international legally binding and non-legally binding instruments provides overall guidance for states to ensure sustainable resource utilization, responsible fisheries operations and sustainable social and economic development. It ensures the recognition of the rights of small-scale fishers, fishworkers and their communities (especially women and vulnerable and marginalized groups) while protecting them and providing tools for them to access justice. It also ensures the recognition of the role of all stakeholders directly involved in the small-scale fisheries sector in the production and sustainable management of fisheries resources, and their empowerment.

Paragraph 4.1 of the [SSF Guidelines](#) provides that the “... [g]uidelines should be interpreted and applied consistent with existing rights and obligations under national and international law and with due regard to voluntary commitments under applicable regional and international instruments”. Reference to international law in fisheries is essentially an allusion to the LOSC. The [SSF Guidelines](#) therefore refer to and build on the LOSC which is widely accepted as the fundamental governance framework for various ocean uses, including fisheries and the protection of the marine environment.

The LOSC provides, *inter alia*, rules for each maritime zone and the areas beyond national jurisdiction. In relation to these zones, the provisions on internal waters, archipelagic waters and the territorial sea are of most significance to small-scale fisheries because small-scale fishing is largely undertaken in maritime zones within 12 nautical miles from the baselines.⁴ An important example in this regard is

³ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

⁴ For instance, the Guinea-Bissau legislation ensures exclusive fishing rights of artisanal fishing vessels in reserved zones corresponding to the country's internal waters and respective 12 nautical miles of territorial sea. See 2011 Decree No. 10, Art. 24(1) and the Artisanal Fisheries Law 2011 Decree No. 24, Art. 13(1)

the responsibility imposed on archipelagic States Parties to recognize traditional fishing rights, which would include small-scale fisheries' fishing rights, and other legitimate activities of the immediately adjacent neighbouring states in certain areas falling within archipelagic waters. There are several mechanisms that a state may utilize for such recognition. For example, a state may provide for constitutional recognition and the protection of such rights, or it may recognize such rights by offering some statutory preferential treatment.

While the LOSC briefly addresses straddling and highly migratory fish stocks in the exclusive economic zone, cooperation for the conservation and management of these stocks is specifically provided for in the UNFSA. Like the LOSC, the UNFSA is crucial to ensuring the implementation by States Parties of conservation and management measures for the sustainable development of fishing activities, including small-scale fisheries. But unlike the LOSC, the UNFSA contains specific provisions that refer to small-scale fisheries. According to the agreement, in establishing the conservation and management of those straddling and highly migratory fish stocks within areas under national jurisdiction, the coastal states must, inter alia, "take into account the interests of artisanal and subsistence fishers". Furthermore, the UNFSA establishes a duty to cooperate in the conservation and management of the fish stocks in question, imposing on states the responsibility to take into account the special requirements of developing states, particularly "the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous peoples in developing States, particularly small island developing States".

The LOSC and the UNFSA are two treaties that support small-scale fisheries. In particular, the provisions of the UNFSA that expressly address small-scale fisheries call attention to the social component of such activities, with a focus on protecting the interests and rights of small-scale fishers, including women and indigenous peoples. As such, these treaties establish at a global level the main legally binding fisheries rules for addressing environmental and social aspects related to small-scale fisheries activities.

The Code of Conduct for Responsible Fisheries (CCRF) together with the [SSF Guidelines](#) constitute two voluntary international instruments of vital importance to small-scale fisheries, which, despite their soft-law status, have a significant practical effect on states.

The CCRF is of great importance given that almost all FAO members report having fisheries policies that reflect and implement the CCRF and almost two-thirds of them comply fully with the Code (FAO, 2016). The provisions of the CCRF that particularly address small-scale fisheries cover the recognition of the contribution of this sector to employment, income and food security; the protection of the rights of the sector's fishers and fishworkers, including their preferential access rights; the consideration of the interests of these workers in the adoption of conservation and management measures, as well as in coastal management planning; and the investigation and documentation of traditional knowledge and technologies applied to small-scale fisheries. The importance of the CCRF's provisions on small-scale fisheries is clearly demonstrated by the fact that they are already binding on the countries that have incorporated them into their national legislation.

The most important instrument of relevance to small-scale fisheries is the [SSF Guidelines](#).

The [SSF Guidelines](#) were negotiated and adopted as an instrument to complement the CCRF because it was considered that the CCRF did not provide enough details on how to address the small-scale fisheries sector. Almost two decades separated the adoptions of the CCRF, in 1995, and of the [SSF Guidelines](#), in 2014. The Guidelines were the result of a long and intensive consultative process, based on the recommendations of the Twenty-ninth and Thirtieth COFI sessions. They were

endorsed by the Thirty-first COFI session in June 2014, representing a major achievement towards ensuring secure and sustainable small-scale fisheries. The Guidelines complement the CCRF in a very comprehensive manner, providing principles and recommendations relevant to the activities of the entire small-scale fisheries supply and value chain, as well as addressing various issues that directly or indirectly relate to the operation of the sector.

The [SSF Guidelines](#) are designed to empower and protect small-scale fisheries communities at the social level (e.g. promoting the recognition and protection of their human, tenure and labour rights), the economic level (e.g. fostering guarantees to their activities in local, national, regional and international trade) and the environmental level (e.g. engaging support to small-scale fisheries communities in the sustainable and responsible management of fisheries and addressing the adverse impacts that these fisheries may suffer due to disaster risks and climate change).

The [SSF Guidelines](#) are voluntary and global in scope, with a focus on developing countries, and are meant to cover all fishery-related activities in marine and inland aquatic waters. They should be interpreted and applied consistent with existing rights and obligations under national and international law and with due regard to voluntary commitments under applicable regional and international instruments.

Further, the [SSF Guidelines](#) should be used to guide amendments and inspire new or supplementary legislative and regulatory provisions. They expressly build on a number of relevant binding and non-binding international instruments including the LOSC and the CCRF, reflecting the need for recognition, protection and promotion of small-scale fisheries both nationally and internationally. Nothing in the [SSF Guidelines](#) should be read as limiting or undermining any rights or obligations to which a state may be subject under international law.

Although the [SSF Guidelines](#) are voluntary, states can incorporate them into their national legal framework in order to accord them legally binding effect. For example, the Government of Costa Rica included the [SSF Guidelines](#) in its National Development Plan in November 2014 and, through an Executive Decree in 2015, incorporated the Guidelines into the national legal framework.⁵ This development had the direct effect of enabling the government institutions to allocate economic resources for their implementation. In 2018, a draft bill to guarantee the development of the artisanal fisheries sector and to benefit the local coastal communities was presented, adapting the provisions of the Guidelines to the specific needs of the country (FAO, 2018a).

Further, it is relevant to note the tendency to overlook small-scale fishers' interests in relation to safety-at-sea matters, as small vessels are not usually accommodated within safety-at-sea instruments developed by the International Maritime Organization (IMO). The [SSF Guidelines](#) highlight the need for states to develop, enact and implement appropriate national laws and regulations that are consistent with the guidelines co-elaborated by FAO, the ILO and the IMO for work in fishing and sea safety in small-scale fisheries,⁶ while also emphasizing the need for states to address occupational health issues and unfair working conditions in these fisheries in accordance with relevant ILO conventions. While both the ILO and IMO have a large number of conventions and treaties assuming formal employment relationships that may not be common in small-scale fisheries, they are based on principles of human rights related to work and employment – such as

⁵ See: Aplicación oficial de las Directrices voluntarias para lograr la sostenibilidad de la pesca en pequeña escala en el contexto de la seguridad alimentaria y la erradicación de la pobreza. No. 39195 MAG-MINAE- MTSS, Art. 1 (available at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=80178&nValor3=101643&strTipM=TC).

⁶ For instance, the revised 1968 Code of Safety for Fishermen and Fishing Vessels; the revised 1980 Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels; and the 2010 Safety Recommendations for Decked Fishing Vessels of Less than 12 Metres in Length and Undecked Fishing Vessels.

freedom of association, elimination of forced labour and child labour, and non-discrimination – that are applicable to all workers. Most of the fishery-specific instruments apply to vessels that are bigger than those commonly used by small-scale fishers, but the IMO/FAO/ILO Safety Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels were created for small-scale fisheries.

2.2. Other relevant international instruments

The [SSF Guidelines](#) expressly mention certain international non-binding instruments that are important in addressing the needs and interests of small-scale fisheries communities and the fisheries sector as a whole. For each social, economic and environmental component addressed, a relevant international instrument is highlighted, providing a useful reference to the many other responsibilities that states should observe depending on the specific concern.

Within this secondary group of instruments are the Right to Food Guidelines and VGGT as well as the CFS-RAI Principles. These instruments are strongly based on a human rights approach with the overarching goal of achieving food security, eradication of hunger and poverty alleviation. The creation of the Right to Food Guidelines and the VGGT had the initial effect of strengthening certain rules for the small-scale fisheries sector. The [SSF Guidelines](#) embraced their spirit by providing recommendations that covered the needs and interests of the small-scale fisheries sector in a much more holistic and comprehensive way.

With regards to the Right to Food Guidelines, for instance, certain of its provisions recommend that states pursue inclusive, non-discriminatory and economically sound fisheries that allow for fishers, including women, to earn a fair return from their labour, capital and management, while also fostering sustainable fisheries management. States are encouraged to increase productivity and to revitalize the fisheries sector through special policies and strategies targeted at small-scale and traditional fishers.⁷

The VGGT is the first international instrument on governance of tenure, which determines access for people to natural resources in support of their livelihoods. The VGGT sets out principles and internationally accepted standards of practice for the responsible governance of tenure and provides a framework that states can use when developing their own strategies, policies, legislation, programmes and activities. [The SSF Guidelines](#) (in **Chapter 5**) take into account the VGGT objectives and provide specific provisions in relation to responsible governance of tenure.

The VGGT contains more detailed provisions on matters of access to justice and the settlement of disputes, which states need to take into account in order to secure the rights and interests of the small-scale fisheries sector and ensure that related tensions and potential conflicts are resolved in a fair and balanced manner.⁸ It also fosters the empowerment of customary, indigenous and women's rights in fisheries, which the [SSF Guidelines](#) particularly address in relation to the small-scale fisheries sector (FAO, 2018b; FAO, 2018c; FAO, 2015a).

In dealing particularly with responsible investment in agriculture and food systems, the CFS-RAI Principles call for respect for legitimate tenure rights to land, fisheries and forests, and shed light on the importance of addressing priority investments in, by, and with smallholders, including those that are small-scale producers and processors such as small-scale fishers.⁹

⁷ Right to Food Guidelines, paras 2.5, 3.7 and 8.13.

⁸ VGGT, paras 4.9 and 21

Other subject areas relevant to small-scale fisheries include trade and labour issues. While the [SSF Guidelines](#) emphasize the importance of supporting regional trade in small-scale fisheries products and taking into account World Trade Organization (WTO) agreements, they do not provide specific guidance on how to address this challenge. A particularly important aspect of these disciplines in the application of fishery subsidies is having workable and globally acceptable distinctions between small-scale fisheries and large-scale fisheries.

2.2.1 Relevant international human rights instruments

Human rights instruments cited in the [SSF Guidelines](#) include legally binding treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹¹ and the Convention on the Rights of the Child (CRC),¹² as well as non-binding instruments such as the Beijing Declaration¹³, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁴, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities¹⁵. All these instruments that protect the rights of particular vulnerable groups are applicable to small-scale fishers and their communities. These instruments are important in that they influence and provide the basis for guiding principles in the [SSF Guidelines](#) such as non-discrimination, gender equality and equity, consultation and participation, and transparency.

It is important to note, as stated above, that while the [SSF Guidelines](#) are voluntary in nature, they build on a range of relevant binding instruments that will impose obligations on those states that have ratified them. While these instruments do not specifically mention the small-scale fisheries sector, rights and obligations under them are applicable to the small-scale fisheries context. In particular (as explored below), the rights of women are important to keep in mind in any legislative project, as are the rights of indigenous peoples and ethnic minorities, including rights to consultation and participation, and equality before the law.

Gender equality

Gender equality is at the hearth of human rights and United Nations (UN) values. Among the purposes of the UN founding charter in 1945 is “To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language and religion”.

In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women. In its 30 articles, this “women’s bill of rights” explicitly defines discrimination against women and sets up an agenda for national action to end such discrimination. The Convention targets culture and traditions as influential forces shaping gender roles and family relations.

The Beijing Declaration and Platform for Action, adopted in 1995 by the Fourth World Conference on Women, sets government commitments to enhance women’s rights. In addition, the Sustainable Development Goals (SDGs) specifically recognize women’s equality and empowerment. Specifically, SDG 5 aims to “achieve gender equality and empower all women and girls”.

⁹ CFS-RAI Principles, Principle 5.

¹⁰ Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979, entered into force on 3 September 1981) 1249 UNTS 13.

¹¹ International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966, entered into force on 3 January 1976) 993 UNTS 3.

¹² Convention on the Rights of the Child (New York, 20 November 1989) 1577 UNTS 3.

¹³ Adopted in the United Nations Fourth World Conference on Women (15 September 1995).

¹⁴ Adopted in United Nations General Assembly Resolution A/RES/61/295 (13 September 2007).

¹⁵ Adopted by the United Nations General Assembly on 18 December 1992, by resolution No. 47/135.

Despite the broad recognition of gender equality in almost every human rights treaty, gender disparity remains a major issue, including in legislation, affecting both developing and developed economies. Women's empowerment, including through legislation reforms, is central to realizing women's rights and gender equality. This includes women's ability to participate in decision-making; their access to and control over economic and productive resources; access to decent work; and control over their own time, lives and bodies.

The [SSF Guidelines](#) recognize specifically women's contribution to the small-scale fisheries sector. Gender equality and equity is one of the 13 guiding principles, stated as follows: "Recognizing the vital role of women in small-scale fisheries, equal rights and opportunities should be promoted." This represents a significant achievement towards women's empowerment. Moreover, in [Chapter 8](#), there are calls for all parties to "recognize that achieving gender equality requires concerted efforts by all and that gender mainstreaming should be an integral part of all small-scale fisheries development strategies" (**paragraph 8.1**); for states to "endeavour to secure women's equal participation in decision-making processes for policies directed towards small-scale fisheries" (**paragraph 8.2**); for states to "establish policies and legislation to realize gender equality and, as appropriate, adapt legislation, policies and measures that are not compatible with gender equality, taking into account social, economic and cultural aspects" (**paragraph 8.3**); and for all parties to "collaborate to develop functional evaluation systems to assess the impact of legislation, policies and actions for improving women's status and achieving gender equality" (**paragraph 8.3**).

Indigenous peoples' rights

The international community has increasingly recognized the socio-economic marginalization of indigenous groups, their systematic exclusion from the benefits of economic growth, and the deleterious impacts that global processes have often had on their cultures, identities and resources. In parallel, the importance of indigenous peoples' unique contribution to social and economic development is also gaining greater appreciation.

Free, prior and informed consent (FPIC) is a principle protected by human rights standards that derives from the collective rights of indigenous peoples to self-determination over their lands, territories and other properties.

The International Covenant on Civil and Political Rights (ICCPR) and the ICESCR protect peoples' right to self-determination. While these universally binding instruments do not explicitly mention the principle of FPIC, the Human Rights Committee, which monitors compliance with the ICCPR, and the Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, have frequently interpreted these covenants as requiring FPIC as an expression of self-determination. The Committee on the Elimination of Racial Discrimination, which monitors compliance with the International Convention on the Elimination of all Forms of Racial Discrimination, has also been vocal in relation to indigenous peoples' rights to lands, and has repeatedly called upon states to recognize and protect these rights and to apply FPIC.

The UNDRIP expressly recognizes the principle of FPIC. It requires states to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative or administrative measures, including measures that introduce activities such

as tourism, mining and infrastructural development that may affect them (Article 19). It also establishes that indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully in the political, economic, social and cultural life of the state (Article 5); moreover, it strengthens the rights of indigenous peoples to participate in decision-making (Article 18).

One of the guiding principles of the [SSF Guidelines](#) concerns consultation and participation (paragraph 3.1.6) – “ensuring active, free, effective, meaningful and informed participation of small-scale fishing communities, including indigenous peoples” – and refers specifically to the UNDRIP. Consultation and participation have an instrumental value in terms of incorporating the interests and values as well as knowledge of small-scale fisheries communities in decisions affecting their lives, including participation in management of resources. With regards to indigenous peoples, the notion of participation requires consent to actions that affect their land, territory and natural resources. Although the element of “prior consent” is not sufficiently addressed in the principle of consultation and participation in the [SSF Guidelines](#), implementing this principle according to the provisions of the UNDRIP nonetheless strengthens the application of those elements (FAO, 2017a).

2.2.2 Relevant international environmental instruments

The [SSF Guidelines](#) also refer to binding treaties such as the United Nations Framework Convention on Climate Change (UNFCCC)¹⁶, and to non-binding instruments such as “The future we want” of the UN Conference on Sustainable Development.¹⁷ The UN has expressly highlighted the needs of small-scale fisheries within **SDG 14**, particularly the target aimed at provisioning access for small-scale fisheries to marine resources (**SDG 14b**).¹⁸ Although **SDG 14** and its target **SDG 14b** focus on oceans, it is important to note that small-scale fisheries are important also in inland waters and that the rationale behind **SDG14b** should be understood as also valid for inland fisheries.

The concern with climate change and disaster-related issues resides both in the impact that they may have on small-scale fishing communities, particularly those living on small islands, and in the need to promote adaptation and mitigation strategies to support the resilience of these communities. To ensure that small-scale fisheries activities are undertaken in alignment with international environmental management and protection standards, it is important to also take into account the Convention on Biological Diversity (CBD),¹⁹ notably with regards to traditional knowledge, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to better support livelihoods.²⁰ These two key treaties are not expressly mentioned in the [SSF Guidelines](#), but some of their key features are considered therein, especially in reference to the need for responsible and sustainable use of aquatic biodiversity, application of the precautionary approach, risk management, and the ecosystem approach to fisheries (EAF).²¹ The increasing number of commercially exploited and largely managed aquatic species falling under CITES (in

¹⁶ United Nations Framework Convention on Climate Change (New York, 9 May 1992, entered into force on 21 March 1994) 1771 UNTS 107.

¹⁷ Endorsed in United Nations General Assembly Resolution A/RES/66/288 (11 September 2012).

¹⁸ See: UNGA. 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. UN Doc. A/RES/70/1, 25 September 2015.

¹⁹ Convention on Biological Diversity (Rio de Janeiro, 5 June 1992, entered into force on 29 December 1993) 1760 UNTS 79.

²⁰ Convention on the International Trade of Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973, entered into force on 1 July 1975) 993 UNTS 243.

²¹ For implementing the ecosystem approach to fisheries in fisheries legislation, see: Cacaud, P. & Cosentino- Roush, S. 2016. *A How-to Guide on legislating for an Ecosystem Approach to Fisheries*. FAO EAF-Nansen Project Report No. 27. Rome, FAO (available at <http://www.fao.org/3/a-i5966e.pdf>).

Appendix II), including shark and ray species, which are potentially harvested by small-scale fisheries, underlines the importance of ensuring capacity development for small-scale fisheries communities so that they are not disproportionately affected by CITES requirements and/or can contribute to their implementation.

2.3 Relevant regional instruments

In addition to the developments at the global level, there are various binding multilateral conventions in place at the regional level covering specific ocean areas, inland fisheries or particular marine species. Such regulatory frameworks are implemented by the corresponding regional fisheries management organizations.²²

Certain regional bodies have begun advancing guiding instruments of particular interest to small-scale fisheries. Examples include the Latin American and Caribbean Parliament Model Law on Small-Scale Fisheries (PML-SSF),²³ the Pacific Community Strategy “New Song” (PCSNS) (Pacific community, 2015), and the Southeast Asian Fisheries Development Centre Council Recommendations for the Regional Approaches for Securing SSF (SEAFDEC-RASSF) (Seafdec, 2017). Although these instruments are non-legally binding, they are relevant in setting minimum international and regional standards, and provide essential guidance that will help states to develop, adapt or enhance their laws and policies in order to strengthen their small-scale fisheries sectors.

There are human rights systems located within intergovernmental arrangements in Europe, the Americas and Africa with instruments that reflect and adapt international human rights instruments to regional specificities; these systems also establish monitoring bodies. The human rights instruments are as follows: the European Convention for the Protection of Human Rights and Fundamental Freedoms;²⁴ the American Convention on Human Rights,²⁵ which is monitored by the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights; and the African Charter on Human and People’s Rights,²⁶ which is supervised by the African Commission on Human and People’s Rights and the African Court on Human and People’s Rights. The regional systems feature other instruments that provide for particular categories of rights and the rights of specific groups of people (and may also establish monitoring bodies). The instruments and monitoring mechanisms of the regional human rights systems apply to and can be used to the benefit of small-scale fishers, fishworkers and communities like those of the UN human rights system (FAO, 2017a).

²² For instance, the International Convention for the Conservation of Atlantic Tunas (Rio de Janeiro, 14 May 1966, entered into force on 21 March 1969).

²³ Latin American and Caribbean Parliament Model of Law on Small-Scale Fisheries (Panamá City, June 2017).

²⁴ Adopted on 4/11/1950 and entered into force on 3/09/1953, supervised by the European Court of Human Rights.

²⁵ Adopted on 2/11/1969 and entered into force on 18/07/1978.

²⁶ Adopted on 28/06/1981 and entered into force on 21/10/1986.

3. National framework for small-scale fisheries

While the rights, duties and commitments in the international and regional instruments identified in the preceding chapter are important in the preparation of national small-scale fisheries legislation, legislating is the prerogative of states. Each state has its own history, geography, politics, traditions, legislation, institutions, resources and capacities, all of which will affect its strategies for and the design of its national laws in terms of their form and content. New laws, if they are to be developed, should take into account these factors in order to ensure that they reflect national interests, priorities, aspirations and circumstances, while at the same time complying with the state's obligations under international law.

3.1 Policies and priorities

National policies and priorities have an important bearing on the national framework for the governance of fisheries in general. Policies and priorities are influenced, among others, by international and regional commitments of the state, interests of communities, and political considerations. Where there is a lacuna or omission in national policy, the drafting of legislation can be an arduous process. With clear and holistic policy guidance, the task of preparing legislation is less onerous as the policy will provide the basis or "drafting instructions" for what should be reflected in legislation.

3.2 Legal system and legislative practice

The type of small-scale fisheries legislation that will be developed in a particular state depends in the first instance on the national legal system, i.e. the constitution (for the countries that have one) and the full set of legal instruments, as well as the ways in which these laws are interpreted and enforced. It should be ascertained whether the country has a civil law or a common law tradition.

Notwithstanding the kind of formal legal system in place, the role of law in society can vary from one state to another. In some states, legislation seems generally effective and significant in the regulation of activities. In others, legislation may have less impact with respect to the establishment of rights and obligations or regulation of activities. The significance placed upon legislation by society generally reflects the overall perception of laws and government authority in the state, but may also be attributed to other reasons such as lack of awareness, confusion about applicable laws, mistrust of public authorities or resistance from stakeholders against applicable laws (due to their perceived inadequacy). While there are no panaceas for this, inclusive and participatory legislative processes can help improve awareness and acceptance of legislation and increase its chances of being implemented and enforced.

In many states, statutory law exists in parallel with customary law,²⁷ the latter consisting of the written and unwritten rules which have been developed from the customs and traditions of communities. In some states, the status of customary law in relation to national statutory law is ambiguous; in others, customary law is codified or otherwise explicitly recognized by national legislation. National legislation may give legal recognition to customary practices and customary

²⁷ To be distinguished from customary international law.

institutions, including the decisions of traditional authorities.²⁸ Also, national legislation may safeguard or protect the rights of persons within the community as well as customary institutions. The status and the relationship of customary law and statutory law should be ascertained. In addition, customary law, practices or institutions, if considered relevant in the country concerned, should be taken into account in the development of small-scale fisheries legislation and fisheries legislation in general.

Customary law or customary rights are particularly important in the context of small-scale fisheries, and of local and indigenous tenure systems. The degree of legal recognition of rights based on customary systems varies depending on the jurisdiction, however the [SSF Guidelines](#) (in **paragraph 5.4**) call for states to “recognize, respect and protect all forms of tenure rights taking into account, where appropriate, customary right to aquatic resources and land and small-scale fishing areas enjoyed by fishing communities States should take appropriate measures to identify, record and respect legitimate tenure right holders and their rights. Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities including indigenous peoples and ethnic minorities, should be recognized, respected and protected in ways that are consistent with international human rights law”. As such, when implementing the [SSF Guidelines](#) at the national level, it is necessary to ensure that national law recognizes, respects and protects legitimate customary rights. For instance, a state should consider the fishing activities that customarily transcend established geographical boundaries – the conditions upon which such activities are undertaken, their nature, the extent and the areas in which they apply. States shall regulate such activities through international cooperation, i.e. bilateral, multilateral or regional agreements, mandates of regional organizations or arrangements, etc. In the creation of such agreements, states must consider and incorporate small-scale fisheries principles into the agreement, and the small-scale fisheries law should reflect or refer to the relevant provisions.

3.3 Assessing existing legal and institutional frameworks

Prior to developing new small-scale fisheries legislation, it will be essential to identify, analyse and assess the existing institutional and legal framework for fisheries, in order to determine how to best align national laws with the [SSF Guidelines](#) and ensure harmonization with the national legal framework.

Compared to large-scale fisheries, the institutional and legal framework for small-scale fisheries is more diverse and layered with a myriad of interests from communities and institutions. Small-scale fisheries are evolving and dynamic in nature, and require interdisciplinary approaches to better integrate and understand the social, economic, cultural and political aspects in which they operate (FAO, 2005). Given such complexities, it is particularly important that caution is exercised, particularly where the rights and interests of small-scale fishers and fishworkers are at risk of being affected.

An assessment of the institutional and legal framework, with due account of the provisions of the [SSF Guidelines](#), helps to determine the range of reforms that will be necessary, and ought to specify the parameters within which any new legislation will function.²⁹

²⁸ See for example: Decreto No. 106-2015 - Ley General de Pesca y Acuicultura (Honduras), Arts. 19 & 29 (recognition of traditional customary systems) (available at <http://extwprlegs1.fao.org/docs/pdf/hon170043.pdf>).

²⁹ As stated in the Introduction, this Legislative Guide focuses mainly on Chapter 5 of the [SSF Guidelines](#), illustrating how the recommendations herein are currently covered in conventional fisheries-related legislations of various jurisdictions, and providing advice on how to better align legislation with the SSF Guidelines.

The assessment of the existing framework should start with the constitution, if any, as it serves as the supreme law of the land and defines how the legislative, executive and judicial functions and responsibilities are assigned within the state; moreover, it should guarantee all human rights including civil and political rights. The constitution may allocate specific powers to national authorities (or federal authorities, in a federal system), state or provincial governments, and local or municipal authorities. Understanding the competencies of these authorities could contribute, for instance, to establishing or improving interactions between governmental institutions and small-scale fisheries communities, thereby contributing to the development of rules, policies and governance that are more sensitive to the context of small-scale fisheries.

When reviewing the constitution, it is important to bear in mind the extent of protection provided to certain groups such as indigenous peoples and other minority groups and, where applicable, the legal tests that must be met. For example, in Canada, a constitutional “Right to Fish” has been recognized for certain groups of indigenous peoples, while other groups are offered preferential access rights but not constitutionally protected rights.³⁰

Gender considerations should also be taken into account when reviewing existing legislation. An assessment of the existence and adequacy of provisions that take into account gender-specific considerations, such as gender equality, equity and impartiality of women and men in terms of rights, benefits, obligations and opportunities, should be carried out. Likewise, the existence of provisions and mechanisms that allow for active participation and consultation of women, as well as the extent of protection for and empowerment of women in current legislation, should be evaluated. If there are discriminatory constitutional provisions or laws, these must be scrutinized to eliminate gender inequalities. Gender mainstreaming (Box 1) as a process for the continuous evaluation of national legislation, policies and programmes regarding the lives of small-scale fishers and their communities, must be incorporated and conducted (FAO, 2017b).

Box 1. Gender mainstreaming

Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation. Gender mainstreaming is a strategy for making women's and men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality and equity.

Source: FAO. 2017. *Towards gender-equitable small-scale fisheries governance and development*. Rome (also available at <http://www.fao.org/3/a-i7419e.pdf>).

Following the review of the constitution and the international and regional context, an assessment of existing national legislation should be conducted, as such legislation may affect the design of any new fisheries law. The assessment will allow states to identify the strengths, weaknesses, gaps and challenges in existing legal frameworks.

³⁰ A number of local, national and regional terms are used to describe indigenous peoples in Canada including First Nations, aboriginals and natives.

As stated in the introduction, FAO has developed an SSF Diagnostic Tool, which supports the identification of national policy and legal frameworks relevant to small-scale fisheries and gives guidance on how to conduct a preliminary assessment of the extent of integration of the [SSF Guidelines](#) in a country's fisheries policy and legal instruments. The tool facilitates reviewing the status of a country's policy and legislation in this light and will hence help provide an essential baseline for applying the recommendations provided in this Legislative Guide.

The SSF Diagnostic tool contains three annexes designed for practical use. The first is a table template for identifying the status of national legislation with respect to adherence to the international legal instruments relevant for small-scale fisheries, which are mentioned in the [SSF Guidelines](#). The second is a table template for assessing the coherence of and cross-references in national fisheries policy with other issues³¹ or other national requirements relevant to small-scale fisheries and referred to in the SSF Guidelines. The third annex is a checklist for assessing the implementation of the SSF Guidelines in selected national fisheries policy and legal instruments.

FAO has developed other guides, reports and tools that although not specifically related to the SSF Guidelines, constitute materials that could be useful when conducting the assessment of existing national legal frameworks. Specifically, these are the Legal Assessment Tool for gender-equitable land tenure, which analyses national legal frameworks across 30 legal indicators to provide prompt, targeted and effective policy advice to states;³² the "Responsible Governance of Tenure and the Law" (FAO, 2016b) guide for lawyers and other service providers, which discusses legal assessments in the context of legislating, providing guidance on how to use the law to promote responsible governance of tenure of land, fisheries and forests; and the "Analytical assessment report on the implementation of the voluntary guidelines on responsible governance of tenure and on sustainable small-scale fisheries and aquaculture legislation in Sierra Leone" (FAO, 2015b) (detailed in [Box 2](#)).

Box 2. Legal assessment of fisheries legislation in Sierra Leone against the SSF Guidelines and the VGGT

In 2014 and 2015, FAO and the Government of Sierra Leone undertook a comprehensive legal and policy assessment of laws related to tenure of land, fisheries and forests against the VGGT and [SSF Guidelines](#). For fisheries and aquaculture, a national legal consultant scrutinized the available laws, policies and draft instruments for consistency with 50 indicators prepared on the basis of the two instruments, in collaboration with the Ministry of Fisheries and various stakeholders, including representatives of small-scale fishers. The resulting report was discussed in a public meeting and finalized in collaboration with the government. It included recommendations for strengthening provisions on small-scale fisheries in the country's draft Fisheries bill.

Source: FAO. 2015. *Implementation of the Voluntary Guidelines on Responsible Governance of Tenure and on Sustainable Small-Scale Fisheries in the Fisheries and Aquaculture Legislation in Sierra Leone: An analytical assessment report*. Rome (also available at <http://www.fao.org/3/i5194e/i5194E.pdf>).

³¹ That is, on human rights, indigenous peoples, economic development, energy, education, health, rural development, environmental protection, food security and nutrition, labour and employment, trade, disaster risk management (DRM), climate change adaptation (CCA) and gender equity and equality.

³² For more information on the LAT, see <http://www.fao.org/gender-landrights-database/legislation-assessment-tool/en/>.

Furthermore, an assessment framework focused on the SSF Guidelines is in the process of being developed by USAID. This assessment tool builds on work already carried out by USAID (See [Box 3](#)) and is intended to become a tool for states for conducting policy and legal reviews against the [SSF Guidelines](#).

Box 3. SSF Guidelines assessment framework – USAID

USAID has developed an [SSF Guidelines](#) assessment tool, the “SSF assessment framework” (see <https://www.land-links.org/tool-resource/taking-stock-of-the-voluntary-guidelines-on-securing-sustainable-small-scale-fisheries-development-and-testing-of-a-country-level-assessment-tool>) to support a participatory country-level assessment of the status of implementation of the Guidelines, including in legislation.

In the SSF assessment framework, the 90 provisions of the [SSF Guidelines](#) have been reviewed and re-structured into an action-oriented “good practice statement” format that can be used for assessment. The aim is to make states aware of strengths and gaps in national and local legal frameworks and policies supporting sustainable small-scale fisheries, therefore informing developing legislation or legislative reforms, programming and project design.

The assessment process consists of a combination of desk reviews, expert consultations and workshops, and is intended to: “a) raise awareness of the [SSF Guidelines](#) among development partners; b) enable an assessment of the status of implementation of the [SSF Guidelines](#) at a country level; and c) indent gaps and opportunities for investment for development programs and partners working across a diversity of sectors”.

The SSF assessment framework has been tested in two countries: Indonesia and Philippines.

Source: Courtney, C.A., Pomeroy, R. & Brooks, S.H. 2019. *Taking stock of the status of implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries: a country-level assessment framework*. *Marine Policy*, 100 (February): 361–370 (also available at (<https://reader.elsevier.com/reader/sd/pii/S0308597X18302240?token=350AF81F8032663F8F52E4CE6C73C059EC494FC777A4CA3EBFB-CB23E4D04D8DF711A77EBD85C286C2B25111B66A65182>)).

Additionally, the Environmental Law Institute, an independent research centre dedicated to strengthening environmental rule of law and sustainable natural resources management, is currently developing specific legal guidance and drafting documents that will assist lawmakers in adapting specific provisions of the [SSF Guidelines](#) to their national legal frameworks.



4. Approaches, structure and main components of small-scale fisheries legislation

4.1 Deciding on a legislative approach

An important question that should be addressed is whether the new law on small-scale fisheries should be: i) part of a consolidated law on fisheries through the inclusion of small-scale fisheries provisions in general fisheries law; ii) a separate piece of legislation altogether through the enactment of a specific small-scale fisheries law; or iii) the object of promulgation of regulations on small-scale fisheries under existing legislation. It must be noted that whatever option is used, care must be taken to ensure harmony between the new small-scale fisheries law and the general fisheries law.

Defining a strategy or an approach for legislating for small-scale fisheries should be the first step. This can include amendments to other sectoral laws (e.g. social security, labour, environmental) so that the interests and needs of small-scale fisheries are addressed and international human rights laws are respected. The international legal framework detailed in [Chapter 2](#) of this Legislative Guide gives a broad outline of the voluntary and binding instruments that should be taken into account in the legislating process.

4.1.1 Consolidation of small-scale fisheries in primary fisheries legislation

One strategy is to develop and enact overarching primary fisheries legislation with a major component devoted to small-scale fisheries. This is referred to as the consolidation approach. A major benefit to this approach is that the primary law will contain the fundamental provisions applicable to all fisheries sectors and activities. Specific provisions for small-scale fisheries would ensure adequate protection of the sector and should be in alignment with the range of issues that the [SSF Guidelines](#) highlight. It will be easier to consult one piece of primary legislation instead of comparing various primary laws or different pieces of legislation on different fisheries sectors and activities where these exist. With the consolidated approach, specific provisions relating to small-scale fisheries may be elaborated upon in secondary laws. A possible disadvantage is the risk of overemphasizing specific sectors, such as commercial industrial fisheries, rather than small-scale fisheries.

4.1.2 Separate small-scale fisheries legislation

Alternatively, the state may enact specific and separate legislation on small-scale fisheries. With attention focused on the small-scale fisheries sector, this will therefore make it possible to elaborate on specific principles for decision-making for the sector, and safeguard unique rights and interests of stakeholders.

When preparing new legislation, states should consider how the new or modified legislation relates to other relevant national laws as well as the states' international obligations. Notwithstanding the emphasis and scrutiny, there will be significant overlap with components of broader fisheries legislation and other legislation. For instance, it is possible that the same persons who are authorized to undertake monitoring, control and surveillance (MCS) and enforcement responsibilities in broader fisheries legislation will be responsible for the same functions in small-scale fisheries legislation.

To address this particular circumstance, general overarching primary fisheries legislation may provide for the fundamental provisions applicable to all fisheries sectors, including but not limited to institutional arrangements, MCS and enforcement provisions. Then a separate small-scale fisheries legislation could cover specific principles for decision-making, and management arrangements for the sector.

It is important to note that when preparing separate small-scale fisheries legislation, an experienced drafter that is well versed in fisheries matters is absolutely necessary. In addition, the draft should be written in clear and accessible language that is understandable by all stakeholders; if the legislation is overly technical or legalistic, stakeholders will not be able to comment or implement it appropriately.

The review of legislation in many jurisdictions undertaken in the preparation of this Legislative Guide found that the consolidation approach is the most common, although it should be noted that in recent years, many states have enacted separate primary legislation for the small-scale fisheries sector.

4.2 Public participation in the legislative process

When considering the legislative process in relation to small-scale fisheries, it is important to promote public participation.

Participation is one of the main components of the HRBA along with accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law (PANTHER), among others. The HRBA seeks to address critical governance issues by ensuring the inclusion and participation (including freedom of expression) of small-scale fishing communities in decisions that affect their rights and livelihoods. The principle of meaningful and effective consultation and participation in the legislative process requires that small-scale fisheries communities participate from the beginning of the legislative process; that their representation follows basic principles of equality in terms of gender and other social factors; that communities or their representatives are empowered or supported in terms of negotiation skills; and that their opinions are duly considered and/or taken into account (FAO, 2017a).

Ensuring public participation in the legislative process will serve to achieve the objectives of the HRBA by addressing asymmetries of power through inclusion and non-discrimination that empower right holders and build the capacity of duty bearers.

The principle of public participation is based on the belief that those who might be affected by a decision have a right to be involved in the decision-making process. In this regard, it is essential that legislators and/or the leading agency (i.e. the fisheries department) as duty bearers ensure that the voices of different stakeholders, including small-scale fishers, CSOs and small-scale fishers' organizations (right holders), are heard throughout the legislative process. There are also power imbalances based on gender, income level, provenance and socio-economic interests that will need to be considered to ensure fair participation. This participation will increase the quality and legitimacy of the new law, creating a sense of ownership and promoting the acceptance of the new law by all stakeholders, thus leading to better implementation through awareness and acceptance.

The consultative process with national stakeholders and various citizens groups should take place at the beginning of the legislative process and continue until the legislation is enacted by parliament. Early consultations can help to gather data about what types of reforms are necessary and allow for proactive contributions that can help strengthen the resulting legislation.

It is important for those conducting consultations to include certain key elements to ensure effective, meaningful and equal participation of men and women in the context of small-scale fisheries communities. For example, the consultations should take place in the local language, and the scheduling should take into account market days, weekends, and those days when women have free time away from their daily obligations, depending on the specific context. The consultations should be held in locations that are accessible to communities, or within the communities themselves; the consultation process should be shared through various means such as local newspapers, radio, internet, television and brochures; and the consultations should be convened by entities trusted by the communities. According to each context, target initiatives must also be introduced to ensure the participation of women and minority groups. Efforts should be made to develop local capacities to ensure that citizens are equipped to understand the proposed legislation – such as the potential positive and negative ramifications of each section or article – and to comment accordingly. If only local and regional leaders of various stakeholder groups are included, mechanisms should be established to ensure that these leaders represent the interests of their stakeholder group, that women's interests are duly represented (through women associations), and that the leaders are accountable to their constituents.

Once the consultations have taken place, a report should be provided to the legislators and made available to the public. The report should record the consultation outcomes and how they have affected the draft law.

4.3 Structure and content of small-scale fisheries legislation

The following structure outlines and summarizes different parts of a legal framework for small-scale fisheries.

Part I: Preliminary

Typically, this part contains the following elements:

- (i) short title (i.e. what the legislation can conveniently be called);
- (ii) objectives;
- (iii) interpretation and definitions;
- (iv) scope or application.

This part sets out the overarching objectives of the legislation, which should take into consideration the objectives and guiding principles of the [SSF Guidelines](#) and adapt them accordingly. The objectives should also reflect human rights goals such as the realization of the right to adequate food, and to an adequate standard of living for fishers and fisheries actors; decent work conditions; protected tenure rights; indigenous peoples' rights; rights related to participation and non-discrimination; the right to effective remedy and due process; and increased availability of nutritious food for markets, while safeguarding the resources for future generations. Further details are provided in [Chapter 5.1](#).

Part I should also have an extensive provision defining the terms used in the legislation; this is key to successful implementation. A definition should also be included of “small-scale fisheries”, and if applicable “small-scale fishing vessel”, “small-scale fisher” and “small-scale fishworker”. Chapter 5.3 explains the importance of defining small-scale fisheries in national legislation and introduces a matrix to assist states in assessing the scale of their fisheries.

This part should include provisions on the jurisdictional scope or extent of application of the legislation. These should state the geographical application of the legislation which may include all relevant aquatic areas, including internal waters where inland fisheries occur, and persons or

objects such as flagged and foreign vessels or persons engaged in fishing and other related activities that will be regulated under the legislation. Depending on the treaty obligations and other commitments of a state, the law may explicitly allow for or disallow the application of conservation and management measures by regional fisheries management organizations within its internal waters, archipelagic waters (in the case of an archipelagic state) and territorial sea.

Finally, it is important that the legislation be applicable extra-territorially. The main reason for this is to ensure that the law has the necessary reach to deal with any circumstance, offence or violation that occurs in areas beyond the jurisdiction of the state enacting the legislation. For example, where a person has contravened small-scale fisheries legislation by fishing without a licence, such a provision will allow the right of hot pursuit beyond the jurisdiction of the state in which the offence was committed. The extraterritorial obligations should extend to national corporations or entities with operations abroad. A given state must ensure that its legislation applies to the entire value chain of corporations whether inside or outside its territory.

Part II: Institutional and administrative arrangements

This part provides for the institutional and administrative arrangements for small-scale fisheries. Here we present a general framework; [Chapter 6](#) provides a more detailed explanation of its requirements and practical examples in legislation.

The institutional and administrative arrangements should refer to a statutory authority, ministry or department, depending on the institutional framework in the country that administers or will be responsible for small-scale fisheries. These entities would also be responsible for ensuring consultation with and participation of small-scale fisheries communities, organizations, cooperatives and any other recognized entity representing small-scale fishers and fisheries, for example with advisory bodies (as detailed below and in [Chapter 6.2](#)).

Part II must also delineate clearly the respective functions and responsibilities of the national authority vis-à-vis state governments (in the case of a federal system), provincial governments and municipal government authorities, as well as customary or traditional governance mechanisms (where they exist). This is further explained (with examples) in [Chapter 6.1.1](#).

For states that establish a statutory authority for the regulation of small-scale fisheries, this part explicitly sets out the establishment of its functions, powers and specific responsibilities: namely, its establishment and legal character; the delimitation of its functions and roles, including those of its manager; and the composition and functions of the board or council responsible for its oversight, administration, protection and financial matters.

Where a ministry is identified to be responsible for small-scale fisheries (or aspects relating to small-scale fisheries), the objective of the ministry and responsibilities of the minister and senior officials would need to be stipulated. Typically, where there is a ministry, the following components will be provided for: powers and responsibilities of the ministry, the responsibilities of the minister, the responsibilities of senior officers such as the Chief Fisheries Officer or Director of Fisheries, and principles for decision-making in line with the [SSF Guidelines](#).

Further, for both situations where there is a statutory authority or a ministry identified to be responsible for small-scale fisheries, primary legislation should also provide for the establishment, purpose and composition of advisory bodies and committees (such as an interministerial committee), representing interdisciplinary sectors so that social, economic and

environmental aspects of small-scale fisheries are accommodated. Such bodies and committees are designed to provide policy advice and recommendations to the statutory authority or ministry. Details of the composition and functions of these advisory bodies are given in [Chapter 6.2](#).

Part III: Small-scale fisheries management, conservation and development

This part provides for the objectives and principles upon which all management, conservation and development decisions relating to small-scale fisheries are based, as stated in the CCRF, the [SSF Guidelines](#), and other relevant international instruments. In essence, the two overarching small-scale fisheries management objectives are:

- (i) long-term (social, economic and environmental) sustainability, and
- (ii) responsible operations.

In order to achieve sustainable resource management, states are encouraged to promote management systems that are participatory. More specifically, the [SSF Guidelines](#) (in **paragraph 5.15**) recommend that states “involve small-scale fishing communities – with special attention to equitable participation of women, vulnerable and marginalized groups – in the design, planning and as appropriate, implementation of management measures, including protected areas affecting their livelihood options. Participatory management systems, such as co-management, should be promoted in accordance with national law”.

Procedures for developing management and conservation measures and plans should be provided for by a transparent, inclusive and accessible process enabling fair and constructive outcomes for small-scale fisheries communities. The small-scale fisheries legislation should set out the procedures for the development and finalization of plans, including consultations with all relevant stakeholders at all levels as detailed in the [SSF Guidelines](#). In some jurisdictions, aquatic areas for the sole (or preferential) use of small-scale fishers are clearly identified (further information on preferential access rights is given in [Chapter 7.2](#)). The rights and responsibilities of small-scale fishers and fishworkers should also be delineated. Management plans for small-scale fisheries should take into account biological, social, economic and environmental factors. These plans may focus on specific fisheries and commodities or be broad in scope. The small-scale fisheries legislation should set out the procedures for the development and finalization of plans, including consultations with all relevant stakeholders at all levels.

Provisions for the development of small-scale fisheries should be included in both fisheries and related legislation, to ensure among other things the development of the sector, as well as the social and economic development of fishers and fishworkers (further information on social development of fishers and fishworkers is given in [Chapter 10](#)). These will be influenced by national policy interests and priorities. For example, there may be subsidies available to eligible small-scale fishers for the purchase of small fishing vessels, gear or bait, or incentives for the establishment and operation of fisheries cooperatives.

Small-scale fisheries management and development components should include the following aspects:

- (i) the objectives and administration of small-scale fisheries conservation, management and development;
- (ii) the designation of small-scale fisheries of national significance;
- (iii) small-scale fisheries management and development plans;
- (iv) prohibitions or restrictions relating to fishing gear, fishing methods, and the use of explosives, chemicals, poisons or other toxic substances;

- (v) restricted and prohibited areas, seasons and species; and
- (vi) relevant offences or violations and commensurate penalties.

For any decision-making that will be required to operationalize these components, it is important that legislation provide corresponding administrative procedures to ensure the participation of all stakeholders in a transparent and effective manner. This could take the form of requirements such as the establishment of public hearings, the development of itinerary meetings with local communities, or the establishment of co-management committees (or similar) at the local or fishery level, which includes fisheries and others with a stake in the resources such as women in the post-harvest sector. (More information on co-management initiatives is found in [Chapter 8.3](#).)

Part IV: Requirements for small-scale fishing and related activities

This part contains the fundamental requirements for engaging in small-scale fishing and related activities. It should accord with the recommendations contained in the CCRF and the [SSF Guidelines](#), among other instruments.

The specific components of Part IV should include the following aspects:

- (i) requirements for undertaking small-scale fishery operations;
- (ii) requirements for undertaking related activities;
- (iii) activities that may be exempt;
- (iv) requirements for the registration of small-scale fishers;
- (v) requirements for the marking and identification of fishing vessels and fishing gear;
- (vi) registration of persons undertaking related activities;³³
- (vii) compliance with other written laws; and
- (viii) relevant offences or violations and commensurate penalties.

The state has the prerogative of determining requirements to be imposed on each category of fisheries (both small-scale and large-scale) as well as the related activities to be conducted. Indeed, some states exempt subsistence and indigenous fishers from certain requirements. Therefore, the state may variously require the registration of some or all small fishing vessels, the marking and identification of such vessels, and/or the registration of small-scale fishers – whether subsistence, artisanal, customary or indigenous, or commercial. There may also be a provision requiring the registration of all persons undertaking related activities, including persons engaged in the processing and trade of small-scale fisheries products. Notably, registration is only one of the many methods of regulation available to states. For all states, the method of regulation will depend on the local context. It is incumbent on states to choose the appropriate method that best fits their needs and accommodates efficient management of small-scale fishing.

Part V: Provisions related to tenure and access rights

This part contains provisions to guarantee and secure tenure rights to fishery resources, including rights to adjacent land areas whether coastal/waterfront or lakeshore, including those adjacent to commons. It should provide for granting preferential access for small-scale fisheries to fish in specific areas, and restrict or prohibit large and commercial vessels from fishing in those areas (further details are provided in [Chapter 7](#)). This part should also provide for the formal recognition of customary tenure and access rights in legislation (as detailed in [Chapter 7.3](#)).

³³ A related activity may be any activity undertaken in relation to small-scale fisheries that assists, facilitates or enhances small-scale fisheries activity. It may include fish processing, transportation (including distribution) and marketing, or any other activity which a state may categorize as a related activity.

In addition, **Part V** should describe the licensing of small-scale fishing and related activities such as processing and trade. Noting the national context, small-scale fishing will relate to fisheries that are considered “small-scale fisheries” including but not limited to subsistence fisheries, artisanal fisheries, customary or indigenous fisheries, and commercial fisheries of a small-scale nature. The process for submitting applications, as well as the criteria for approving them, should be laid out giving due account to non-discriminatory, substantive, participatory, consultative, multilevel and objective-oriented processes as set out in the [SSF Guidelines](#).³⁴ Terms and conditions (whether general or specific) applicable to each category of small-scale fisheries should also be included. Further, the transferability of a licence or right needs to be addressed with careful consideration, and clear rules should be set (more detail and legislative examples are provided in [Chapter 7.4](#)).

Fishing vessels engaged in small-scale fishing and fishing without a vessel will need to be licensed accordingly. The institution or agency responsible for licensing will need to ensure that specific requirements are met, such as the marking and identification requirements, and the presence of the necessary safety equipment on board. There would need to be a continuous national record or register of all licensed small-scale fishing vessels that may also indicate levels of compliance and periodical renewals of licensing pursuant to satisfactory performance in meeting the licensing conditions.

Aside from small-scale fishing, the licensing of related activities (i.e. any activities in support of small-scale fishing) should be provided for, including but not limited to the basic obligation for the completion and submission of logbooks on a regular basis, and compliance with catch documentation requirements. Examples of related activities include landing, transshipment, processing and trade. Hitherto, such activities may not have been the subject of adequate regulation; but it is important to ensure that those activities that are prevalent are regulated, and that a continuous national record or register of persons engaged in small-scale fisheries-related activities is maintained. Further, there may be need for the licensing of the processing and trade of commercially lucrative products such as fish maw (swim bladders), *beche-de-mer* and abalone. Such licensing should be distinct from the requirements for the export of such products.

Normally, the provisions contained in this part should include:

- (i) requirements for a licence to undertake small-scale fishing within specified areas;
- (ii) requirements for the licensing of fishing vessels and fishing gear engaged in small-scale fishing;
- (iii) requirements for the licensing of small-scale fishing-related activities;
- (iv) terms and conditions for each licence;
- (v) procedures for licence application;
- (vi) criteria and procedures for the grant, refusal or renewal of a licence;
- (vii) procedures and criteria for suspension or cancellation of a licence;
- (viii) appeals;
- (ix) recording or registering fishing vessels licensed to engage in small-scale fisheries;
- (x) recording or registering persons licensed to engage in small-scale fishing-related activities; and
- (xi) relevant offences or violations and commensurate penalties.

³⁴ See [SSF Guidelines](#), para. 2.4.

Part VI: Trade in fish and fish products

Trade in fish and fish products will need to be provided for in small-scale fisheries legislation (as with broader fisheries legislation). Caution must be taken to ensure that measures or programmes accommodate WTO rules and case law in order to avoid contravening international trade law, except in cases authorized under Article XX of the General Agreement on Tariffs and Trade (GATT).

Part VI contains requirements for the processing of fish and fish products originating from small-scale fisheries, as well as for domestic, regional and international trade of such fish and fish products, ensuring that all small-scale fishers, including women participating in the post-harvest subsector, receive fair and equitable benefits from their activities. To guarantee that small-scale fishers are appropriately and effectively active in domestic and export markets, legislation should provide for the empowerment of fishers ensuring, for instance, that they are formally recognized and specially protected by applicable trade regulations. Where possible, depending on the country's priorities, provisions for allocation of funds to promote small-scale fishers' and their access to markets should be considered (see Chapter 9.2 on social development initiatives).

Given health and safety issues, all fish and fish products that are traded will need to comply with laws relating to health and food safety. Standards and rules established under legislation will need to take into account the Codex Alimentarius and provide for

- (i) good practices for handling, preservation, processing and packaging of fishery products;
- (ii) better utilization of low-value fish, bycatch and discards; and
- (iii) development of by-products.

Further, fishery products' safety should be enhanced by strengthening inspection and quality control services and systems, in addition to capacity building on the importance of food safety and possible market advantages of high-quality products. Small-scale fisheries legislation will need to enforce compliance with health and food safety requirements and standards, and other relevant laws. Moreover, there should be a competent authority in place to provide support and oversee compliance.

This part should also include recognition of the rights of small-scale fishers (including women) engaged in any post-harvest fishing activities to appropriate access to regional and international markets, fair benefits from applicable trade regulations, and necessary protection. Moreover, the following should be covered:

- (i) establishment, where there is no competent authority in place, or recognition of an existing competent authority in charge of trade in fish and fish products originating from small-scale fisheries;
- (ii) the functions and responsibilities of the competent authority;
- (iii) appointment and authority of fish quality auditors/inspectors;
- (iv) requirements for the import and export of fish and fish products that originate from small-scale fisheries;
- (v) criteria for eligibility for certification for export purposes;
- (vi) licensing and registration of post-harvest facilities;
- (vii) prohibition on the labelling of fish and fish products that originate from small-scale fisheries in one state as a product of another state;
- (viii) prohibition of fish fraud including but not limited to the requirement for correct labelling of fish and fish products that are traded domestically, imported or exported; and
- (ix) relevant offences or violations and commensurate penalties.

Part VII: Monitoring, control and surveillance

The purpose of a monitoring, control and surveillance (MCS) system is to ensure that fisheries law and policy in general and the conservation and management arrangements for specific fisheries are implemented fully and effectively. States should ensure that any MCS system is suitable to small-scale fisheries but also that small-scale fishers participate in such arrangements as co-managers. (Further details on the importance and elements for successful MCS implementation along with legislative examples are provided in [Chapter 9](#).)

The elements of MCS have been commonly defined as seen in [Box 4](#).

Box 4. Monitoring, control and surveillance

- **Monitoring:** includes the collection, measurement and analysis of information on fishing activities, including but not limited to catches, species composition, fishing effort, discards and area of operations. This information is the primary data that fisheries managers use to arrive at management decisions. If this information is unavailable, inaccurate or incomplete, managers will be handicapped when developing and implementing management measures.
- **Control:** involves the specification of the terms and conditions under which resources can be harvested. These specifications are normally found in national fisheries legislation and other arrangements that might be agreed to nationally, subregionally or regionally. The legislation provides the basis for which fisheries management arrangements, via MCS, are implemented. For maximum effect, legislation should be flexible (to cater to different and changing circumstances) and easily enforceable.
- **Surveillance:** involves checking and supervising fishing activities to ensure compliance with national legislation and terms, conditions of access, and management measures. This activity is crucial for ensuring that resources are not overexploited, poaching is minimized and management arrangements are implemented.

Small-scale fisheries legislation must contain effective MCS provisions as well as the necessary institutions and mechanisms for implementation. The appointment procedures and powers of officers with MCS responsibilities under the legislation must be clear and transparent, allowing for the adequate participation of small-scale fishers in each of the MCS components. The appointment, functions and powers of authorized officers are further explained in [Chapter 10.2](#).

In addition, the law should provide the legal basis for the powers and protection of MCS officers; the establishment and functions of observer programmes and port or landing site catch monitoring programmes; the use of electronic monitoring devices; and catch reporting.

To implement provisions under **Part VII**, legislation may include the following:

- (i) mandatory participation of small-scale fisheries representatives, including women, in the design of MCS frameworks;
- (ii) participation of recognized small-scale fisheries bodies and entities in MCS system implementation;
- (iii) appointment of authorized MCS officers;
- (iv) duties owed to authorized MCS officers;
- (v) powers of authorized MCS officers;

- (vi) appointment and duties to observers and port or landing site monitors and samplers;
- (vii) appointment and responsibilities of fish quality control auditors;
- (viii) appointment and responsibilities of small-scale fisheries wardens;
- (ix) establishment and functions of electronic monitoring devices and systems and other MCS tools;
- (x) an offence for obstruction or interference with authorized MCS officers;
- (xi) protection from liability of authorized MCS officers acting in good faith in the exercise of their duties; and
- (xii) relevant offences or violations and commensurate penalties and remedy mechanisms.

Part VIII: Jurisdiction and procedure

The contents of this part are nation-specific, and depend upon *lex fori*.³⁵ Notwithstanding, in areas of close geographic proximity between littoral states or neighbouring coastal states, such as those in enclosed or semi-closed seas or along an international watercourse, a state should consider regulating potential transboundary small-scale fisheries activities in small-scale fisheries law. This consideration may be relevant where small-scale fisheries activities occur beyond national jurisdiction (including maritime boundaries) in the exercise of traditional fishing rights. It may prevent or resolve problems arising from the detention of fishers and crew (in some cases) and also the problems with catch certification (on the origin of fish caught in one jurisdiction and landed in another).

If the small-scale fisheries legislation has extra-territorial reach, it should be made clear that the jurisdiction of a court extends to activities conducted by its nationals outside its national jurisdiction. Jurisdiction would need to extend to all activities falling within the scope of the legislation. Standard procedures and liabilities, including vicarious liability (if appropriate) of vessel owners for acts or omissions of the master or employee of a vessel, should be set out in this part.

Typically, **Part VIII** may include the following:

- (i) jurisdiction, including identification of the court of first instance and appeal;
- (ii) procedure;
- (iii) liabilities, fines, penalties, etc.;
- (iv) seizure and criteria for the release of seized items; and
- (v) forfeiture of items.

Part IX: Administrative proceedings

Administrative penalty regimes are not a novel concept, especially in countries that follow a civil law tradition. They have been applied in many jurisdictions to ensure compliance with laws relating to civil aviation, customs, immigration, trade and traffic violations. The resolution of offences through an administrative process, among others, avoids the backlog of cases before the judiciary and could be particularly useful for small-scale fisheries cases that would usually involve minor violations³⁶. Administrative sanctions that may be imposed vary, and may include:

- (i) imposition of a monetary penalty;
- (ii) the loss of a fishing right or quota;
- (iii) the suspension or cancellation of a licence or other authorization;
- (iv) a temporary ineligibility to hold a licence; and
- (v) confiscation of catch, gear or a vessel.

³⁵ Latin noun meaning the laws of the jurisdiction in which a legal action is brought.

³⁶ For further background, see for instance: Cacaud, P., Kuric, M. & Spreij, M. 2003. *Administrative Sanctions in Fisheries Law*. Rome, FAO.

This part of the legal framework should provide a system identifying offences or violations which can be dealt with by administrative procedure. Generally, if a person who has committed such an offence or violation settles the penalty imposed, he or she may resume fishing or other activity and without undergoing lengthy court proceedings. Each jurisdiction determines the summary administrative proceedings that are appropriate. For those jurisdictions that include such proceedings in legislation, the following provisions are included:

- (i) compounding of offences (and related procedures);
- (ii) fixed penalty notices issued for minor offences or violations; and
- (iii) procedures for the issuance of fixed penalty notices.

Legislation should also provide for appeal procedures. These provisions should ensure equality before the law, safeguards against abuse by officials, and access to justice considerations throughout proceedings.

Part X: Evidence

Evidence refers to testimony, exhibits, documents, or demonstrative evidence that prove or disprove something in an adjudicatory forum (e.g. tribunal or court). The rules of evidence in each jurisdiction govern the admissibility or weight of evidence that is admitted in a judicial or administrative proceeding. Fisheries legislation in many jurisdictions provide for the admissibility of certain kinds of evidence. In some cases, the acceptance of oral evidence may be necessary, especially when examining historical rights. In the case of aboriginal rights in Canada, for example, the Canadian courts admitted oral evidence as an exception to hearsay rules.

Provisions in **Part X** are particularly important because fisheries managers and authorized officers will need to ensure that evidence collected in the course of investigations is admissible in court. Managers and authorized officers may also need to prepare certificates of evidence for judicial proceedings. Legally, certificates of evidence have the status of initial evidence that can be rebutted by the accused or defendant, and the presence of the person making the certificate is not required. This saves time and money and upholds the idea of fairness in judicial proceedings. Certificates must follow a certain form, and are usually served on the accused or defendant a specified time before trial. They cover a range of subjects with which managers and authorized officers should be familiar.

In various jurisdictions there are evidentiary presumptions that facilitate proceedings in court. For example, when a fishing vessel is found to have committed a fisheries violation, the fish on board is presumed to have been caught in the commission of that violation, unless the contrary is proved. Such presumptions may, of course, be rebutted by the accused or defendant, but this means that the manager or authorized officer does not have to prove that the fish was indeed caught in the commission of the violation.

Fisheries legislation may also accord due recognition to specific tools, such as the electronic on board a vessel or vessel monitoring systems. While these devices are placed primarily for monitoring and surveillance purposes, they may also have been utilized for safety purposes. Recognition facilitates the admissibility of information from such devices or systems in court proceedings. Notably, in many jurisdictions, vessel monitoring systems are described as being “notoriously accurate”.³⁷

³⁷ See for instance: Fisheries Management Act 2016 (Samoa), section 49(3) [MTU]; Fisheries Management Act 2015 (Solomon Islands), section 121(3) [MTU]; Fisheries Act 2014 (Vanuatu), section 140(3) [designated machines]; Offshore Fisheries Management Decree 2012 (Fiji), section 84(4) [MTU]; Marine Resources Act 2005 (Cook Islands), section 62(3) [ALC]; Fisheries Act 2002 (Ghana), section 120(3) [designated machines]; Fisheries Management Act 1998 (Papua New Guinea), section 69(2)(g) [ALC].

In some legislation, the onus or burden of proof may be reversed: for example, by requiring the master of a vessel (rather than the state prosecutor) to prove he or she held a licence at the relevant time.

Typically in common law countries, provisions pertaining to evidence in fisheries legislation include the following:

- (i) certificate evidence;
- (ii) procedures for the issuance of certificate evidence;
- (iii) prohibition on the destruction or disposal of evidence;
- (iv) photographic evidence;
- (v) vessel monitoring system evidence (such as evidence derived from a mobile transceiver unit (MTU), automatic location communicator, or designated machine); and
- (vi) evidence from electronic devices.

Part XI: Regulations or subsidiary legislation

This part should empower the minister or other authority to make regulations or allow for the making of subsidiary legislation covering specific subjects related to small-scale fisheries and, in general, for any purpose required to give effect to the primary legislation.

Part XII: Repeal, savings and transitional provisions

The items in this part are housekeeping provisions. They should stipulate that all previous laws that the legislation replaces are repealed, but existing licences, contracts, agreements and legal actions are still valid until cancelled under the new law. If a statutory authority is established, assets are transferred to the new authority, and appointments made under the former legislation may or may not be terminated.

5. Small-scale fisheries legislative practice: elements of the preliminary section

The present chapter complements **Part I** of [Chapter 4.3](#) of this Legislative Guide, detailing some of the elements that the preliminary section of the legislation should contain, namely: objectives; principles; definitions; and scope and application. In some jurisdictions, the contents of this chapter are located at the end of the legislation.

5.1 Objectives

When the objectives of the legislation are to be set out, the following objectives from **paragraph 1.1** of the [SSF Guidelines](#) should be considered and adapted accordingly:

- (i) enhance the contribution of small-scale fisheries to global food security and nutrition and support the progressive realization of the right to adequate food;
- (ii) contribute to the equitable development of small-scale fishing communities and poverty eradication and to improve the socio-economic situation of fishers and fishworkers within the context of sustainable fisheries management;
- (iii) achieve sustainable utilization, prudent and responsible management and conservation of fisheries resources;
- (iv) promote the contribution of small-scale fisheries to an economically, socially and environmentally sustainable future.

These objectives are to be achieved through the promotion of a HRBA (as recommended in **paragraph 1.2** of the Guidelines). To achieve the objectives of the [SSF Guidelines](#), the process and procedures established in legislation must be aligned with a HRBA to secure participation, non-discrimination and accountability for small-scale fishers. Similarly, good development practices such as participation, gender equality and empowerment must be integrated into legislation. The outcome document of the FAO workshop in 2016, *Exploring the human rights-based approach in the context of the implementation and monitoring of the SSF Guidelines*, provides additional guidance for states on pursuing the HRBA in developing new legislation (FAO, 2017a).

According to the HRBA, small-scale fishers and small-scale fishing communities should be empowered to participate in decision-making processes and assume responsibility for sustainable use of fishery resources. Indeed, as the CCRF states: “the right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living aquatic resources.”³⁸

In fisheries legislation globally, states have incorporated the concepts of environmental, social and economic sustainability, the rational use of resources, and long-term conservation. For example, in Argentina, the state promotes marine fishing in pursuit of maximum development compatible with the rational use of marine living resources, the effective protection of national interests related to fishing, and sustainability to ensure the long-term conservation of resources.³⁹

³⁸ CCRF, para. 6.1.

³⁹ Law No. 24.922 (Argentina), Art. 1.

Functions of the country's Federal Fisheries Council include ensuring that excess exploitation is avoided, harmful effects on the environment prevented, and the unity of the ecological system maintained.⁴⁰ Specific objectives may also be contained in policy. For instance, the objective of the policy for the small-scale fisheries sector in South Africa includes "adopting a developmental approach and an integrated and rights-based allocation system which recognizes the need to ensure the ecological sustainability of the resource; identifies small-scale fisheries as a category of fishers for the purposes of the Marine Living Resources Act in law; and provides for community orientation in the management of the marine living resources harvested by these fishers."⁴¹

5.2 Principles

In typical fisheries legislation, the overall objectives of the law can be distinguished from principles that apply in the management of fisheries, including the principles that relate to enabling broader participation of stakeholders in decision-making, allocation or granting of access or user rights, licensing, MCS, and enforcement. Such principles may be found together with the overall objectives of the law in the introductory or preliminary section of the legislation (as in the case of South Africa and Solomon Islands) or in the legislative provisions that are specific to the management of fisheries (as in the case of Papua New Guinea). It is open to states to incorporate principles together with or after the provisions on objectives in the preliminary section of the law in accordance with their legislative practice. For the purposes of this Legislative Guide, the nature of the provisions relating to principles are discussed generally in this section, while specific principles for fisheries management in the context of small-scale fisheries, such as the ecosystem approach to fisheries, are discussed in [Chapter 8](#).

The countries that set out the overall objectives and principles in the same part of the fisheries legislation list an array of principles that cover many aspects of sustainable development. These include consideration of the natural resources of the country as an asset and natural heritage to be developed for the benefit of the people; achieving socio-economic benefits while applying the ecosystem approach to fisheries; and minimizing waste and pollution and ensuring broad and accountable participation of stakeholders in fisheries.

In addition to the legislative practice in fisheries legislation, incorporating the key principles that should guide the interpretation and implementation of the legislation is also an emergent practice in other fields of national law, for instance framework laws on food security and nutrition (FAO, 2009a).

The [SSF Guidelines](#) contain a number of principles on human rights, responsible fisheries and sustainable development that should guide the implementation of laws and policies related to small-scale fisheries:

- › 1) Human rights and dignity;
- › 2) Respect of cultures;
- › 3) non-discrimination
- › 4) Gender equality and equity;
- › 5) Equity and equality;
- › 6) Consultation and participation;
- › 7) Rule of law;
- › 8) Transparency;
- › 9) Accountability;
- › 10) Economic, social and environmental sustainability;
- › 11) Holistic and integrated approaches;

⁴⁰ Idem, Art.17

⁴¹ Policy for the Small-Scale Fisheries Sector in South Africa, Government Notice No. 474 (20 June 2012), pp. 15–16.

- › 12) Social responsibility; and
- › 13) Feasibility and social and economic viability.

These principles could be the starting point for deciding those guiding implementation of small-scale fisheries legislation at the national level. Many of the principles of current national laws are generally aligned with the 13 guiding principles of the [SSF Guidelines](#), but could be enriched by reflecting each principle more specifically.

At the regional level, the Latin American and Caribbean Parliament Model Law on Small-Scale Fisheries (Parlatino, 2017) contains the following guiding principles: Consultation and participation; Human rights and dignity; Fishery land-use planning approach; Holistic and integrated approaches; Equity and equality; Gender equality and equity; Feasibility and social and economic viability; Rule of law; Non-discrimination; Accountability; Respect of cultures; Social responsibility and co-management; Economic, social, and environmental sustainability; Transparency.

It is important to not only incorporate principles that should guide implementation; it is equally important to have substantive provisions on how these principles should be pursued. For instance, the principle of transparency should be implemented by ensuring that decisions on fisheries management are published and widely advertised in ways that are accessible to those who should follow them, such as members of local communities. The principle of participation should be implemented by institutionalizing consultative processes and forums where representatives of fishers and fishing communities (both men and women) are consulted on a regular basis.

5.3 Definitions

5.3.1 Towards a global characterization of small-scale fisheries

Defining small-scale fisheries in domestic legislation is an important undertaking that requires extensive consultation. The definitions available are specific to each country's context and not interchangeable with other countries or regions. In addition, within a jurisdiction there are likely to be various categories of fishing that may qualify as small-scale. The varied terminology for the small-scale sector (small-scale, artisanal, subsistence, aboriginal, coastal, nearshore, municipal, customary) further complicates efforts to establish a definition. In some countries, fishing units may fall into more than two categories, with the inclusion of one or more intermediate categories. This also means that in defining small-scale fisheries, one or more subcategories may be identified, i.e. a country may have small-scale fisheries but under this larger category (or as a separate category) also specify, for example, subsistence fisheries.

There are also difficulties when countries base their definitions on a limited set of quantitative metrics (such as vessel size and power, gear type, or area of operation). Narrow characterizations tend to exclude fishers that should rightfully be considered small-scale, or allow large-scale vessels to be included in the small-scale fleet. This leads to disputes, conflicts, and dissatisfaction with fisheries regulations. It may also have serious economic consequences or unwanted impacts on resources.

At the global level, there are currently only soft definitions of small-scale fisheries that provide general characteristics, rather than quantitative metrics. The most comprehensive definition was provided by the FAO Advisory Committee for Fisheries Research:

Small-scale fisheries can be broadly characterized as a dynamic and evolving subsector of fisheries employing labour-intensive harvesting, processing and distribution technologies to exploit marine and inland water fishery resources. The activities of this subsector, conducted full-time or part-time, or just seasonally, are often targeted on supplying fish and fishery products to local and domestic markets, and

for subsistence consumption. Export-oriented production, however, has increased in many small-scale fisheries during the last one to two decades because of greater market integration and globalization. While typically men are engaged in fishing and women in fish processing and marketing, women are also known to engage in nearshore harvesting activities and men are known to engage in fish marketing and distribution. Other ancillary activities such as net-making, boat-building, engine repair and maintenance, etc. can provide additional fishery-related employment and income opportunities in marine and inland fishing communities. Small-scale fisheries operate at widely differing organizational levels ranging from self-employed single operators through informal microenterprises to formal sector businesses. This subsector, therefore, is not homogenous within and across countries and regions and attention to this fact is warranted when formulating strategies and policies for enhancing its contribution to food security and poverty alleviation.

Despite these challenges, characterizing the scale of a fishing unit in legislation is useful and necessary, as it informs fisheries management, policy development, research and governance at national and regional levels, as well as enhancing transparency.

The method used should assess scale without imposing a narrow definition and, in line with [SSF Guidelines paragraph 2.4](#), allow for a participatory characterization process. The method should involve a description of the characteristics of small-scale fisheries with a mixture of quantitative and qualitative descriptions, using a single cut-off for each to define small- versus large-scale fisheries.

In order to address this complexity in a systematic and objective manner, the diversity of characteristics exhibited by small-scale fisheries can be assessed using a scoring approach: assessing a range of elements related to fishing units, which in combination can be used to establish the extent to which a fishing unit is large- or small-scale. Each of the characteristics under consideration (encompassing vessel types and gear, harvesting operation, degree of organization, and preservation and disposal of catch) is described across a range of scales, from small to industrial (separated into four types). A matrix for this assessment is included in [Appendix B](#).

The matrix provides a score for each characteristic. A fishing unit may have characteristics typically associated with both small-scale and large-scale fisheries, so it will receive lower scores in some categories and higher scores in others. The aggregation of the scores from all the categories provides an overall picture that facilitates differentiation between large-scale and small-scale fisheries. The scoring allows for an objective characterization of the fishing unit, indicating whether it tends towards small-scale or large-scale. A decision is then made, based on an overall cut-off score, to separate small-scale and large-scale operations.

The score can be applied to fisheries within a country or region. It has also the potential to be applied across regions, if sufficient case material is used to rigorously test the method.

It is important to highlight that this characterization carries no value judgement of the nature of the fishing unit (i.e. no implication of a “good” or “bad” activity).

The analysis of scores for different fishing units quickly yields a picture of whether there are clear differences between small-scale and large-scale fisheries. It also enables the rapid identification of the key characteristics that determine this distinction.

The advantage of this approach is that it allows for accommodating the diverse characteristics of fishing units, while still providing a relatively clear distinction between small and large scales. It also avoids inappropriate classifications that can emerge when relying on a single characteristic or a highly constrained number of characteristics, such as gear and vessel length.

In theory, the matrix should highlight those fisheries which may be on the edge of small-scale and large-scale (i.e. a small vessel with a high-powered engine and large-scale level of fishing effort), assigning them their own category. Furthermore, by incorporating multiple dimensions, the matrix approach seeks to avoid misleading or inappropriate characterizations of fisheries as small-scale or large-scale, which can sometimes occur when a single criterion, such as vessel length, is used.

The flexible nature of the matrix means that the fishing unit assessed can either be an entire fishery or fleet, a part of it, or an individual vessel or fisher. This flexibility allows the matrix to be applied to diverse types of fishing activity.

The matrix approach provides an effective research tool for exploring the characteristics of large- and small-scale fisheries. It can also be used by states for the development of their legislation and as a basis for a participatory process to develop a national definition of small-scale fisheries.

It should be noted that the matrix only covers the fishing portion of the value chain. For defining other small-scale fisheries activities, in particular in the post-harvest subsector, different criteria will be needed, but a similar participatory process is required (Funge-Smith, 2019).

The definition of small-scale fisheries also lays the grounds for defining “small-scale fisher”, “small-scale fishworker” and “small-scale fishing community”.

5.3.2 “Small-scale fisher” and “small-scale fishworker”

“Small-scale fishers” and “small-scale fishworkers” have been defined, following the definition of small-scale fisheries discussed above, as those involved in small-scale fisheries. Accordingly, small-scale fishers may also include: artisanal fishers, customary or indigenous fishers, subsistence fishers, etc.

It is important to highlight the inclusion of women fishers and fishworkers within this definition. The term “fisher” is gender-neutral and thus preferred for use in legislation, rather than “fisherman”. About half of the small-scale fisheries labour force is represented by women and they should therefore be expressly mentioned as part of “small-scale fisher” and “fishworker” definitions, where “fishers” would refer to those doing the fish harvesting and “fishworkers” to those who are involved in other up- and down-stream activities of the value chain.

5.3.3 “Small-scale fishing community”

The definition of “small-scale fishing community” is not common in legislation; however, if a definition is preferred, its formulation should take into account the approach and considerations highlighted for defining the term “small-scale fisheries” in [5.3.1](#) above. A general definition may be included to ensure that small-scale fishers and fishworkers that are eligible are accommodated. Also, there may be groups identified in legislation that also qualify as “small-scale fishing communities” and they may be identified directly or indirectly. For example, customary fishing rights owners in Fiji are identified by a commission which determines customary fishing rights, and the owners of such rights ([Box 5](#)).

Box 5. Fiji: Native Fisheries Commission

14. The Minister responsible for Fijian affairs may appoint a Native Fisheries Commission (hereinafter referred to as the Commission), consisting of one or more commissioners, each of whom shall have the powers of the Commission, who shall be charged with the duty of ascertaining what customary fishing rights in each province of Fiji are the rightful and hereditary property of native owners, whether of mataqali [Fijian clan or landowning unit] or in whatsoever manner or way or by whatsoever divisions or subdivisions of the people the same may be held.

Source: Fisheries Act, Cap.158 (Fiji)

5.3.4 “Fishing”

The definition of “fishing” is normally provided separately, and in primary legislation this applies to all fisheries. There are several approaches that states have used to defined fishing, ranging from general to very prescriptive. The definition of fishing in Canada is an example of a general definition: “... fishing means fishing for, catching or attempting to catch fish by any method ...”⁴² For the prescriptive approach, definitions vary according to the desired level of prescriptiveness (see [Boxes 6, 7, 8, and 9](#)). The most prescriptive definitions cover any activities in support of fishing, including fishing-related activities. Fishing-related activities accommodate any activity in support of fishing such as transportation and storage of fish and fish products.

Box 6. New Zealand: “fishing” definition

fishing—

(a) means the catching, taking, or harvesting of fish, aquatic life, or seaweed; and

(b) includes—

- (i) any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and
- (ii) any operation in support of or in preparation for any activities described in this definition.

Source: Fisheries Act, R.S.C. 1985, c. F-14 (Canada), s.2.

⁴² Fisheries Act, R.S.C. 1985, c. F-14 (Canada), s.2.

Box 7. Seychelles: “fishing” definition

fishing—

- (a) means-
 - (i) searching for, catching, taking or harvesting fish or attempting any such activity;
 - (ii) placing, searching for or recovering fish aggregating device or associated equipment including a radio beacon; and
- (b) includes activities performed in support of fishing;

Source: Fisheries Act 2014 (Seychelles), s.3.

Box 8. Barbados: “fishing” definition

“fishing” means

- (a) catching, taking or harvesting fish or aquatic flora;
- (b) attempting to catch, take or harvest fish or aquatic flora; or
- (c) any operation at sea in connection with, or in preparation for, catching, taking or harvesting fish or aquatic flora, including placing, searching for or retrieving any fish aggregating device and searching for fish or flora;

Source: Fisheries Act, Cap. 391 (Barbados), s.2.

Box 9. Namibia: “fishing” definition

“harvest” means

- (a) searching for, catching, taking or attempting to catch or take any marine resource;
- (b) placing, or having, fishing gear in the sea or using it on the sea shore or on an island;
- (c) engaging in any other activity that can reasonably be expected to result in the locating, catching or taking of marine resources;
- (d) undertaking any operations at sea or on an island in preparation for any activity mentioned in sub-paragraph (a), (b), or (c);

Source: Marine Resources Act 2000 (Namibia), s.1.

5.4 Scope and application

Legislation must clearly set out its scope and application (see **Part I** of [Chapter 4.3](#) above). The [SSF Guidelines](#) are broad in scope, applying to all small-scale fisheries, whether inland or marine, involving both men and women, along the entire value chain.⁴³

If there are different subcategories of small-scale fisheries, there is a need to clearly identify the requirements for each category of fishing. Each fishing category should have terms and conditions that are clearly elaborated. In some jurisdictions, “subsistence fishing” may for instance be exempted from the licensing requirement, while others may require a licence but with basic conditions.

For example, Article 2 of the Argentina Resolution⁴⁴ establishes the scope of application, which includes the following extraction or harvesting acts with direct intervention of fishers or collectors, carried out on land or by smaller vessels: a) the use of beach nets, trammel nets, gillnets, fixed nets, traps, hooks and any other non-prohibited gear; b) manual extraction by diving from the shore or boat; and c) manual collection in the intertidal zone.

⁴³ See [SSF Guidelines](#), Chapter 2.

⁴⁴ *Regimen federal de pesca*. Law No. 24.992 (Argentina)

6. Institutional and administrative arrangements

Institutional and administrative arrangements that are put in place depend on the domestic context. In some jurisdictions, a statutory body is established; in others, a government ministry (or decision maker) may hold such responsibility. In a federal system, there are also at least two tiers established at the national and state levels. In the same way, in a provincial government system, there are at least two tiers of management: national and provincial. This chapter complements **Part II** of [Chapter 4.3](#) with a more detailed explanation and legislative examples.

Besides the primary institutions, there should also be advisory or other bodies provided for. These may have a general focus such as a fisheries advisory council that provides policy recommendations to the decision maker; or they may be specific, such as a scientific committee which undertakes analyses and provides scientific recommendations. For jurisdictions that recognize customary or aboriginal fishing communities, specific institutions will be established to, *inter alia*, identify members of the customary or aboriginal fishing communities, delineate associated fishing grounds, regulate fishing within such areas, make secondary legislation, or enforce requirements.

The [SSF Guidelines](#) promote institutional structures that are decentralized with linkages at all levels, from local to global networks, with points of contact in government authorities and agencies for small-scale fishing communities, so that all the relevant institutions are able to implement coherent policies and collaborate with each other. A relevant illustration of these coordinative interactions among government institutions can be seen in Venezuela (see [Box 10](#)).

Box 10. Venezuela: coordination between government institutions

- The Decree No. 1408 of 13 November 2014 on fisheries and agriculture shows coordination between the Ministry of People's Power (*Ministerio del Poder Popular*), the Social Institute for Fisheries and Aquaculture (*Instituto Socialista de la Pesca y Acuicultura*) and with other institutions and government agencies.
- On the one hand, the Ministry of People's Power has jurisdiction over fisheries and aquaculture and is the governing body in the sector. It has among its attributes: to formulate the national policy of fishing and aquaculture; approve the fisheries and aquaculture component of the Comprehensive Plan for Agricultural Development; monitor, evaluate and control the national policy; and elaborate the national plan and technical management standards in the field of fisheries and aquaculture, among others (Article 50).
- On the other hand, the Socialist Institute of Fisheries and Aquaculture is an autonomous entity, with its own property/assets independent from the National Treasury. It is the entity responsible for the execution of the national fisheries and aquaculture policy, as well as the Comprehensive Plan for Agricultural Development (Article 52) formulated by the Ministry of People's Power.
- In addition, its competences include the preparation, execution, promotion and

- development of several programmes in coordination with other institutions, for example:
- Provide technical advice to the competent bodies and entities in all matters related to fisheries, aquaculture and related activities.
- Elaborate, promote and coordinate, with the producers and other entities related to the sector, the implementation of consolidated programmes for artisanal commercial fishing, aimed at supporting the creation of cooperatives and companies, as well as coordinating with the competent agencies the plans to improve education, social development and living conditions in artisanal fishing communities and towns.
- Define the necessary research programmes in fisheries and aquaculture, which will be developed in coordination with the competent agencies.
- Establish coordination mechanisms in relation to the implementation of fishery development plans defined in the respective jurisdictions, respecting the distribution of competencies established in the national constitution.
- Create mechanisms to guarantee the rights of fishermen and artisanal fisherwomen, in coordination with the competent bodies in matters of labour and social security (Article 53).

Source: Decree 1408 of 2014 (Venezuela)

6.1 Types of institutional arrangements

There are various government institutions (and non-government agencies) that work in small-scale fisheries or on matters relevant to fishing communities such as education, health, gender, and food security. Usually, the legislative framework specifically recognizes primary governmental institutions and, where non-government agencies are integral to governance, such agencies are also provided for typically through membership of advisory bodies and committees. The 2015 Costa Rica Executive Decree provides an example of specific legislation identifying institutions responsible for implementation of the [SSF Guidelines](#) (Box 11). Indeed, Costa Rica has taken the lead in implementing the [SSF Guidelines](#) with the elaboration of a draft law for bettering the livelihoods of the small-scale fisheries sector, going beyond conventional fishery matters (FAO, 2017c).

Box 11. Costa Rica: institutional arrangements

On 7 August 2015, Costa Rica's government issued Executive Decree No. 39195 MAG-MINAE-MTSS that officially incorporated the [SSF Guidelines](#) within the national legal system. This Decree entrusted the promotion and monitoring of the [SSF Guidelines](#) application across several ministries and outside the fisheries sector itself, i.e. to the Ministry of Agriculture and Livestock, Ministry of Energy and Environment, Ministry of Labor and Social Security and Costa Rica's Fisheries and Aquaculture Institute (INCOPESCA).

In addition, the Decree determines that authorities should include the [SSF Guidelines](#) in their institutional operative plans.

Source: *Aplicación oficial de las Directrices voluntarias para lograr la sostenibilidad de la pesca en pequeña escala en el contexto de la seguridad alimentaria y la erradicación de la pobreza* No. 39195 MAG-MINAE-MTSS, (Article 1) (available at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=80178&nValor3=101643&strTipM=TC).

In Argentina, the regulation of small-scale fisheries has been undertaken in a more conventional way, involving only fisheries institutions dealing with common fishing issues (Box 12).⁴⁵

Box 12. Argentina: institutional arrangements

The Federal Fishing Council (*Consejo Federal Pesquero*), an interjurisdictional body, is the governing body of the national fisheries policy and the main regulator. The Council is composed of five provincial representatives and five representatives from the National State and is presided over by the Secretary of Fisheries. Among its functions are: to establish national fisheries policy; determine the maximum allowable catch per species; approve commercial and experimental fishing permits; advise the Enforcement Authority in international negotiations; and regulate the exercise of artisanal fishing by establishing a reserve of fishing quota for different species, among others (Article 9, Fishing Law).

The Authority of Application (established under Decree No. 214, which corresponds with the Secretariat of Agriculture, Livestock, Fishing and Feeding of the Ministry of Economy and Works and Public Services) is in charge of implementing the national fishing policy, and regulating exploitation, inspection and investigation. The Enforcement Authority is responsible for issuing fishing permits (with the authorization of the Federal Fisheries Council), establishing methods and techniques for capture, applying sanctions, creating a record of offenders, and collecting extraction rights, among others (Article 7, Fishing Law).

The National Directorate of Fisheries Coordination of the Undersecretariat of Fisheries and Aquaculture is responsible for carrying out inspections on board vessels, including fishing, support, transport and any other vessel directly involved in such fishing operations.

The National Institute for Fisheries Research and Development (INIDEP) is responsible for the planning and execution of scientific and technical activities, and must annually determine the maximum sustainable yield of the species (Article 12, Fishing Law).

Source: Regimen federal de pesca. Law 24.992 (Argentina)

6.1.1 Federal and provincial government systems

In a federal, unitary government system, often there is a delegation or an allocation (as the case may be) of fisheries management responsibilities from the federal/national level to the states, provinces or regions.

In a federal government system,⁴⁶ the state government may have jurisdiction over specific aquatic areas, whether inland or marine areas.⁴⁷ The primary legislation of the state government should

⁴⁵ See Resolución 3/2000 Argentina (available at http://www.agroindustria.gob.ar/sitio/areas/d_recursos_humanos/concurso/normativa/archivos/000001_Resoluciones/000000_RESOLUCI%C3%93N%203-2000%20Consejo%20Federal%20Pesquero-Pesca%20Artesanal%20Mar%C3%ADtima.pdf).

⁴⁶ Examples of federal government systems with responsibilities for small-scale fisheries include: Australia, Brazil, Palau and the United States of America.

⁴⁷ See for example the delineation of the powers of state governments and the Commonwealth in Australia: Coastal Waters (State Powers) Act 1980 (Commonwealth) and the Coastal Waters (State Title) Act 1980 (Commonwealth).

provide for small-scale fisheries and set out functions and responsibilities of the state institutions. Generally, provisions should provide, inter alia, for: the specific functions of the institutions of the state government, linkages with the national government, and the establishment of advisory bodies and committees. This may include the role of state government institutions in the management and conservation of areas subject to their jurisdiction or competence; the registration and licensing of small-scale fisheries; the regulation of small fishing vessels; the monitoring, control and surveillance of small-scale fisheries; and the enforcement of small-scale fisheries legislation.

State governments may have jurisdiction over internal waters and over areas within a certain distance of the coastline, with the federal government maintaining jurisdiction over areas further off shore. In Australia for example, state governments exercise certain jurisdiction within 12 nautical miles, with the delineation of powers set out in the constitution and specific legislation.⁴⁸ In Brazil, the management of fisheries has been regionalized. The federal system empowers state governments and municipalities with the responsibility for the management fisheries for inland and inshore areas (Box 13).

Box 13. Brazil: regionalized fisheries management

In Brazil, the political administrative organization is provided by the Constitution of the Federative Republic of Brazil (CFRB), comprising the Federal Union, states and municipalities.¹ In addition to the federal government, the 27 federal units (26 states and the Federal District) and around 5 570 municipalities² have the autonomous power of governance over fisheries (and aquaculture) issues in inland and inshore areas.

Each of these federal entities has the requisite power to develop, organize and set up their own administrative institutions and policies to attend their particular interests while, at the same time, being obliged to cooperate towards balanced development and welfare at the national level.³ The number of institutions devoted or related to fisheries and aquaculture, including small-scale fisheries, are thus extensive, and are to be found not only at the national level, but also under the state and municipality administrative structures.

Some states and municipalities in Brazil have established their own bodies competent for governing fisheries and aquaculture at state and municipal levels.

For instance, while the states of Bahia, Ceará, Goiás, Mato Grosso, Rondônia, and Sergipe have created a secretariat with broad competencies in which fisheries and aquaculture issues are included, other states such as Amazonas, Maranhão, Minas Gerais, Pará, Paraíba, Pernambuco, Rio de Janeiro and Rio Grande do Sul have established a specific secretariat, council, agency or institute charged with the implementation of the respective state policy on fisheries and aquaculture. In certain municipalities, it is possible to find a secretariat for such purposes as well (e.g. Belmonte in the state of Bahia and Ananindeua in the state of Pará).⁴

¹ CFRB, Articles 1 and 18.

² The number of municipalities is indicated by the Brazilian Institute of Geography and Statistics according to information of 2012. See <http://brasilemsintese.ibge.gov.br/territorio/dados-geograficos.html> (accessed 12 June 2017).

³ This is called "common competence" shared by the Federal Union, the states, the Federal District and the municipalities (see CFRB, Article 23, VI and VIII and Single Paragraph).

⁴ The autonomy of states and municipalities to organize and have their own administrative structure is provided by the CFRB (Articles 25 and 30, I).

⁴⁸ See in particular: Coastal Waters (State Powers) Act 1980 (Commonwealth) and Coastal Waters (State Title) Act 1980 (Commonwealth).

In a jurisdiction where provincial governments are responsible for the regulation of small-scale fisheries, the primary legislation should clearly set out functions and responsibilities that will be delegated to provincial or local governments and establish how these governments will cooperate with the national government and with small-scale fisheries representatives, communities and other stakeholders.⁴⁹ In general, such provisions will cover the delegation of specific functions to the provincial government(s), as well as determining their functions and responsibilities, including but not limited to: their role in the management and conservation of areas subject to their jurisdiction or competence; the registration and licensing of small-scale fisheries; the regulation of fishers or small fishing vessels; the monitoring, control and surveillance of small-scale fisheries; and the enforcement of small-scale fisheries legislation. The inclusion of reporting requirements is essential to ensure that the respective authority, whether at the local, provincial or national level, receives and maintains consolidated accounts of vessels, fishers and their respective catches and activities.

There are several ways in which provincial government systems are involved in the governance of small-scale fisheries. Generally, the provincial administration may have an active role in governance or a passive role in support of the national administration. An example of the latter is found in Canada, where the Constitution Act of 1867 provides for the legislative authority of the Parliament over fisheries, which includes “sea coast and inland fisheries”.⁵⁰ The country’s fishery resources are managed by a federal department (Fisheries and Oceans Canada). Within the Canadian context, much of the small-scale fishing activities are undertaken by Aboriginal peoples. The Fisheries Act does not use the term “small-scale fisher” or “small-scale fisheries”, but it formally recognizes Aboriginal fisheries. The Act uses the term “Aboriginal fishery” and defines it in the following way: “Aboriginal, in relation to a fishery, means that fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes or for purposes set out in land claims agreement entered into with the Aboriginal organization”.⁵¹

An example of an active role in governance is found in the provincial government of the Solomon Islands, where provinces are bestowed with the necessary powers to make laws (albeit as secondary legislation) for small-scale fisheries.⁵² Such fisheries ordinances are however subject to the assent of the minister of the national government responsible for fisheries.

6.2 Advisory bodies

As explained in [Chapter 4.3 \(Part II\)](#), fisheries advisory bodies are established in primary fisheries legislation. The laws establishing and empowering these bodies should ensure that there is civil society representation in the decision-making, planning and implementation processes affecting small-scale fisheries, and also provide policy advice and recommendations on small-scale fisheries to the statutory body or the ministry.

The advisory bodies should include the participation of relevant local, regional and national professional associations and other fisheries bodies representing small-scale fisheries, as highlighted in [Chapters 3 and 5 of the SSF Guidelines](#). They should be comprised of a representative of each key government ministry or authority with functions related to small-scale fisheries as well as stakeholder representatives (i.e. members of the small-scale fishing communities and

⁴⁹ Examples of jurisdictions with provincial governments with responsibilities for small-scale fisheries include: Canada, Papua New Guinea and Solomon Islands.

⁵⁰ See Art. 91.12: The exclusive powers of provincial legislatures include legislating for non-renewable natural resources and forestry resources in the province.

indigenous peoples). Gender considerations, following **paragraph 5.18** of the [SSF Guidelines](#), should be taken into account in the constitution of such advisory bodies and committees. In particular, special measure should be adopted to ensure equitable participation of women.

Legislation should provide that such advisory bodies (and other decision makers) must follow principles of good governance. Provisions typically set out the composition and functions of such bodies. In many instances, such bodies may convene committees to address specific aspects related to the sector. Representation of government agencies and fisheries stakeholders is provided for in many jurisdiction, such as in Malawi ([Box 14](#)), where small-scale fisheries are explicitly included in national fisheries advisory bodies. This has the advantage that civil society representatives work directly with high-ranking members of the government, and thus potentially have a stronger voice in decision-making.

Box 14. Malawi: representation of government agencies and fisheries stakeholders

5. Fisheries Advisory Board

(1) There is hereby established a board to be known as the Fisheries Advisory Board (in this Act otherwise referred to as the “Board”) which shall consist of—

- (a) a Chairman appointed by the Minister;
- (b) a Vice-Chairman elected by and from among members of the Board;
- (c) the following ex officio members—
 - (i) the Principal Secretary responsible for natural resources;
 - (ii) the Director;
 - (iii) the Principal Secretary responsible for community services, or his designated representative;
 - (iv) the Principal Secretary responsible for agriculture, or his designated representative;
 - (v) the Principal Secretary responsible for research and environmental affairs, or his designated representative; and
 - (vi) the Principal Secretary responsible for irrigation, or his designated representative;
- (d) three members nominated by and from among small-scale commercial fishermen and appointed by the Minister;
- (e) three members nominated by and from among fisheries protection officers and appointed by the Minister;
- (f) one member nominated by and from among large-scale commercial fishermen and appointed by the Minister;
- (g) one member nominated by and from among fish traders and appointed by the Minister; and
- (h) three members appointed by the Minister from the general public and one of whom shall be a person knowledgeable in consumer concerns.

⁵¹ Fisheries Act 1985 (Canada), Art. 2(1).

⁵² See Provincial Government Act 1997, ss. 30 and 31, Schedule 3; Fisheries Management Act 2015, s.14 (responsibilities of provincial governments).

(2) Where there is no association representing any of the persons referred to in paragraphs (d), (e), (f) or (g) of subsection (1), the members shall be nominated by the Director after appropriate consultations with fisheries protection officers, fishermen or fish traders, as the case may be.

Source: Fisheries Conservation and Management Act 1997, (Malawi) s.5.

6.3 Customary or indigenous institutional arrangements

Many states have customary or indigenous institutional arrangements established or recognized within fisheries legislation, which can be of relevance to small-scale fisheries. Depending on the context, customary or indigenous institutions may have the powers to undertake a range of functions, including but not limited to:

- (i) ascertaining customary or indigenous fishing rights;
- (ii) determining the boundaries in which such rights may be exercised;
- (iii) identifying customary or indigenous fishing right holders;
- (iv) overseeing the management of customary fishing grounds; or
- (v) regulating fishing in customary or indigenous fishing rights areas.

The guiding principles of the [SSF Guidelines](#), in line with the UNDRIP, call on states to ensure that there is “active, free, effective, meaningful and informed participation of small-scale fishing communities including indigenous peoples”. For example, the Fiji Native Fisheries Commission is responsible for determining the rightful and hereditary fishing right holders and the boundaries within which such rights may be exercised ([Box 5](#)).

The village council (or *fono*) in Samoa is another example of a customary institution directly involved in the regulation of small-scale fisheries within village fisheries management areas.⁵³ The *fono* may also make fisheries by-laws that are consistent with primary fisheries legislation ([Box 15](#)). Monitoring of compliance with such by-laws is the responsibility of village fisheries management committees.⁵⁴

⁵³ Fisheries Management Act 2016 (Samoa), s.19; Village Fono Act (Samoa).

⁵⁴ Fisheries Management Act 2016 (Samoa), s.87.

Box 15. Samoa: customary institutional arrangement

86. Making of fisheries by-laws

(1) A village Fono may make village fishery by-laws, consistent with this Act, for the purpose of conserving, protecting, managing, developing and sustaining harvest of fish in the village fisheries management area, including any or more of the following matters:

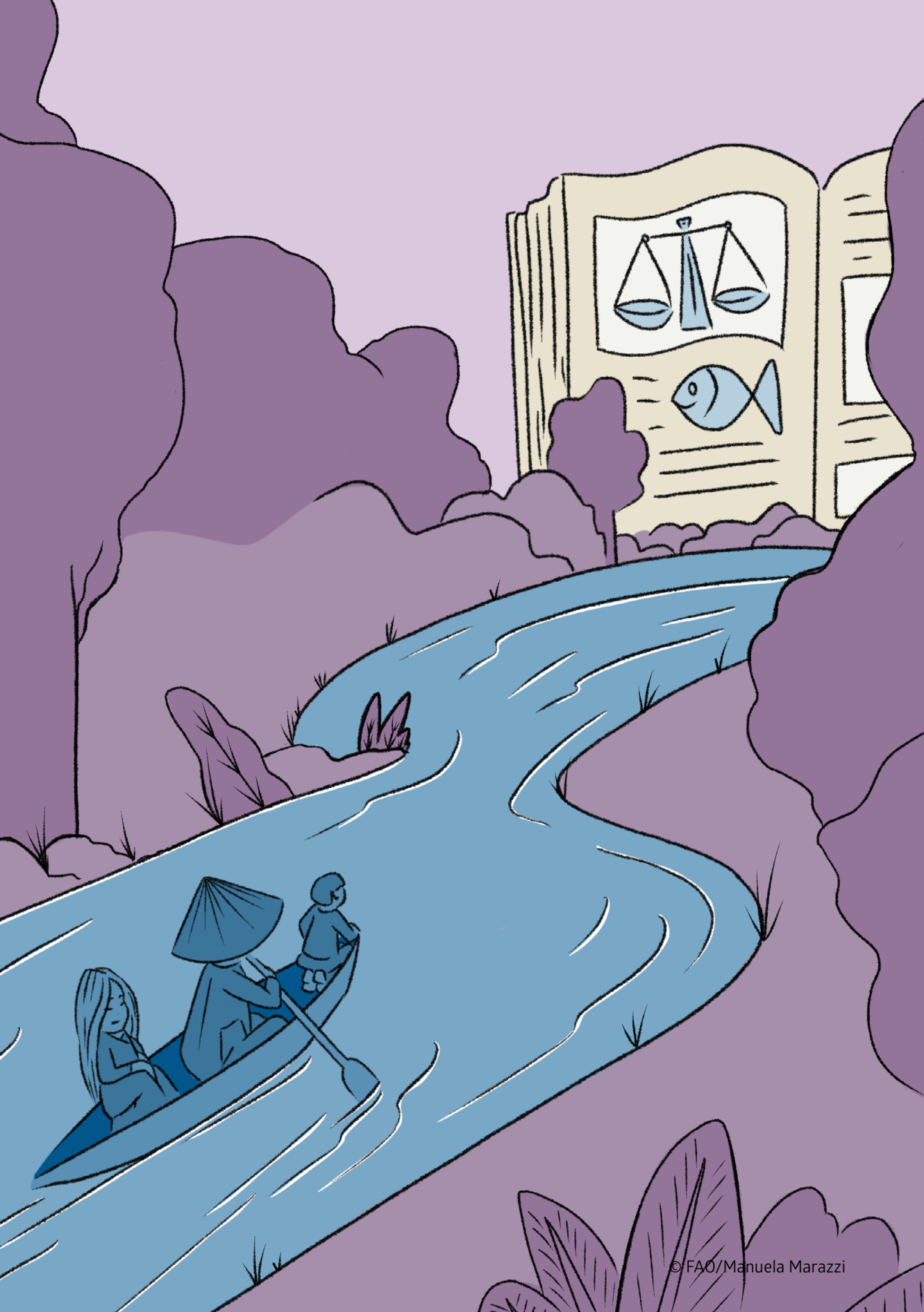
- (a) prohibit harvest of certain type of fish;
- (b) prohibit fishing methods that are destructive or damaging;
- (c) provide periodic closure of fishing in certain areas;
- (d) restrict or limit size of fish to be caught or harvested;
- (e) restrict mesh size fishing nets;
- (f) restrict importation or exportation of fish;
- (g) regulate any activity that would cause adverse effects
on marine environment and coastal fisheries;
- (h) provide any other matter necessary to protect coastal fisheries.

(2) Fisheries by-laws are to be:

- (a) prepared under the guidelines issued under section 6; and (b) vetted by the Attorney General; and
- (c) approved by Cabinet; and
- (d) signed by the Chief Executive Officer; and
- (e) published in the Savali after they are signed; and
- (f) effective on the 14th day after they are first published in the Savali; and
- (g) distributed (copies of by-laws) by the Chief Executive Officer to stakeholders, including neighbouring village communities.

87. Monitoring of by-laws – The village fisheries management committee must monitor its village fisheries by-laws.

Source: Fisheries Management Act 2016 (Samoa), s.86.



7. Tenure and access rights in small-scale fisheries

7.1 The importance of tenure and access rights in small-scale fisheries

Access to fishery resources and land is crucial for the livelihoods of small-scale fishing communities, and is an essential element for the existence of a fishery. Many small-scale fishers, fishworkers and fishing communities suffer from insecure access to the resources they depend on, and as a result, they lack solid legal tools to defend them. The present chapter refers to **Chapter 5** of the [SSF Guidelines](#) on responsible governance of tenure, and complements **Part V** in [Chapter 4.3](#) of this Legislative Guide.

States should facilitate, guarantee and secure access and tenure rights to fishery resources, including commons, in national legislation. Access to commons is not mentioned as such in the [SSF Guidelines](#); however they do stipulate (in **paragraph 5.6**) that “States should, as applicable, recognize and safeguard publicly owned resources that are collectively used and managed, in particular by small-scale fishing communities”.

Access to fishery resources should comprise access to adjacent land. Without secure access to land – through which fishing grounds may be accessed; where boats, nets and other gear may be parked; and where vital post-harvest activities such as cleaning may be carried out – the right to access these resources loses its meaning. Further, fishery tenure may be easily undermined by the growth of competitive sectors in the area. Tenure, in the context of small-scale fisheries, represent a combination of rights covering both land and water (FAO, 2013a).

The level of prescription for the regime for tenure and access depends, inter alia, on the characteristics of the fisheries and the recognized rights of small-scale fishers, whether subsistence, artisanal, small-scale commercial, or otherwise.

Consistent with the above, the [SSF Guidelines](#) (in **paragraph 5.1**) stipulate that small-scale fishing communities need to have secure tenure rights to the resources that form the basis for their social and cultural well-being, their livelihood and their sustainable development. The Guidelines also stipulate that states should adopt measures to facilitate equitable access to fishery resources for small-scale fishing communities (**paragraph 5.8**). This is supported by the CCRF, wherein (in its Article 10.1.3) it requires states to “develop, as appropriate, institutional and legal frameworks in order to determine the possible uses of coastal resources and to govern access to them taking into account the rights of coastal fishing communities...”

Moreover, **SDG target 14.b** focuses on access to resources and markets for small-scale fishers, in line with the Rio+20 outcome document which provides that in order to guarantee secure access, an enabling environment is necessary which recognizes and protects small-scale fisheries rights.

It is important to note that tenure and access rights do not necessarily imply privatization of the resources through individual tenure rights, but should include options for common property and community-based arrangements (FAO, 2013b).

Tenure and access rights may belong to individuals, groups of individuals or communities that satisfy the requirements for being a small-scale fisher, in the national context, taking into account specific groups such as customary or indigenous fishing right holders.

Box 16. Defining tenure and commons

Tenure: Tenure systems define and regulate how people, communities and others gain access to natural resources, whether through formal law or informal arrangements. The rules of tenure determine who can use which resources, for how long, and under what conditions. They may be based on written policies and laws, as well as on unwritten customs and practices.

Commons: Commons are natural resources such as land, fisheries, forests and water bodies that are used and managed collectively by a group of people (often understood as a “community”). The members of the group (the right holders) may hold diverse, multiple and flexible bundles of tenure rights to the common resource; they may also hold collective ownership rights to the resource.

Source: FAO. 2016. *Governing Tenure Rights to Commons: A guide to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Rome (also available at <http://www.fao.org/3/a-i6381e.pdf>).

Box 17. Tenure rights in fisheries

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

While formal tenure rights are generally still a developing concept in fisheries, there is a long history of customary and traditional tenure systems in fishing communities (Cordell, 1989). These have tended to be in the form of rights (to fish) in certain areas (i.e. spatial access or use rights) and have often been found in conjunction with land tenure. In many places, for example in small island states in Oceania, natural resources and the space they occupy have traditionally not been divided into two different components of land and water (Aswani, 2005).

Instead, nature – including humans and society – has been seen holistically, with communities having a multifunctional resource space as the basis for their livelihoods (Ruddle, 1988).

Hence, fisheries tenure cannot be viewed in isolation but needs to be considered in connection with a broader land and livelihoods context (FAO, 2011).

The VGGT provides guidance on tenure rights, and **Chapter 5** of the [SSF Guidelines](#) is largely based on its provisions.

7.2 Preferential access for small-scale fisheries

Granting preferential access for small-scale fisheries to fish in national waters is enshrined in the CCRF, which provides that states should protect the rights of small-scale fishers “to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction” (Article 6.18). Building on this, the [SSF Guidelines](#) provide that states should implement measures such as exclusive zones for small-scale fisheries. Before agreements to grant resource access are entered into with third parties, the claims of small-scale fishing communities to such areas should be given due consideration (**paragraph 5.7**).

Preferential access for small-scale fisheries can appear in the form of exclusive access to small-scale fishers, or be qualified by restricting or prohibiting access by other persons or groups of persons. Restricted or prohibited access to a specific small-scale fisheries zone may limit or prohibit the quantity of persons or groups of persons, vessels or fishing gear in a specific area. Commonly, legislation identifies areas in which small-scale fisheries may operate and sets out the prerequisites for access. South Africa’s Small-Scale Fisheries Regulations,⁵⁵ for instance, lay out the basis for demarcating exclusive fishing zones for small-scale fishers, and limit or forbid other activities such as large commercial fishing companies ([Box 18](#)).

Box 18. South Africa Small-Scale Fisheries Regulations

Small-scale fishing areas and zones

5(1) In order to facilitate the establishment of areas where small-scale fishers may fish, the Department must set up a procedure to engage and consult with the small-scale fishing community in proposing demarcated areas that may be established as areas where small-scale fishers may fish.

- (2) For the purposes of sub-regulation (1), the demarcation must –
 - (a) be done in a manner that reduces conflict between small-scale fishing communities; and
 - (b) take into account the mobility of each species in the allocated basket of species with sessile species requiring smaller fishing areas while nomadic and migratory species requiring larger areas.
- (3) If there are other activities that have a proven severe impact on the fishing activities of a small-scale fishers, the Department shall by means of Gazette establish exclusion zones which can either regulate or prohibit these activities from operating in that area.

Source: Marine living resources act, 1998 (ACT No.18) – Regulations relating to small scale fishing (South Africa). Available at: <http://extwprlegs1.fao.org/docs/pdf/saf155134.pdf>

⁵⁵ Regulations relating to Small-Scale Fishing (South Africa), No. 229. 8 March 2016.

The scope of access rights granted to small-scale fishers varies from the legislation of one state to another, as illustrated in the examples below:

- In Chile, artisanal fishers have exclusive rights in the exploitation of hydrobiological resources, provided they are registered in the National Registry for Artisanal Fishers.⁵⁶ Areas reserved for small-scale fishing include the area within 5 nautical miles from the baselines as well as the interior waters of Chile, and within 1 nautical mile from the baselines for fisheries activities with vessels 12 m or longer in certain authorized temporary periods. There are also provisions for extending the area in the case of artisanal fishers operating in more than one region when targeting highly migratory and deep-sea demersal fish species.⁵⁷
- The Ghana Fisheries Act 2002 provides for the establishment of the Inshore Exclusive Zone for the exclusive use of small semi-industrial vessels, canoes, and recreational fishing vessels.⁵⁸ The zone is described as “the coastal waters between the coastline and the 30 meters isobaths or the 6 nautical miles offshore limit whichever is farther”⁵⁹ (see [Box 19](#)).⁶⁰

Box 19. Ghana Inshore Exclusive Zone

Establishment of zones and prohibition of fishing inside zones

81. (1) The water area specified in the Schedule to this Act is hereby declared as the Inshore Exclusive Zone (IEZ) of Ghana.
- (2) The IEZ shall be used exclusively by small semi-industrial vessels (SIVs), canoes and recreational fishing vessels.
- (3) A person shall not use a large semi-industrial vessel or industrial fishing vessel for fishing inside the IEZ.
- (4) A person shall not use a canoe support vessel to fish in the IEZ.
- (5) Towing gear shall not be used in the 30-metre zone or such depth as may be prescribed by Regulations.
- (6) Notwithstanding any provision of this section the Commission may at such periods as it considers appropriate permit large semi-industrial vessels to enter the IEZ for the capture of cephalopods.

Source: Fisheries Act 2002 (Ghana), ss. 81 and s.51.

- In the interior waters and in the territorial sea (12 nautical miles) of Guinea-Bissau, small-scale fishing access is permitted under specific conditions:
 - (i) in non-marine interior waters, for artisanal vessels powered by paddles, sails or with ≤ 15 horsepower;
 - (ii) in marine interior waters, for those vessels with ≤ 40 horsepower; and

⁵⁶ Law 18892/89 (Chile), Art. 47, Art. 50; Decree 635/92.

⁵⁷ Decree No. 430/91 (Chile), Art. 47, Art. 47bis, Art. 50.

⁵⁸ Fisheries Act 2002 (Ghana), s. 81(3) provides that large semi-industrial vessels or industrial fishing vessels are prohibited from fishing in the Inshore Exclusive Zone.

⁵⁹ Fisheries Act 2002 (Ghana), s. 81(1) and Schedule. See also: Arrêté No. 6 du 23 janvier 2014 portant interdiction aux navires de pêche et autres embarcations l'exercice de la pêche maritime dans la zone de navigation réservée à la pêche artisanale et à l'aquaculture (Republic of Congo), and Loi No. 2-2000 portant organisation de la pêche maritime en République du Congo, Art. 10.

⁶⁰ For exclusive fishing areas, see also Decree-Law No. 6/2004 (Timor-Leste), Arts. 45 and 88 (available at <http://extwprlegs1.fao.org/docs/pdf/tim63488E.pdf>).

- (iii) in the territorial sea, for those with ≤ 60 horsepower.⁶¹
- Small-scale fishing access in Honduras is provided for within 3 nautical miles of the baselines. There is a provision for authorized zones (in the 12 nautical miles of the territorial sea, in the Fonseca Gulf and in the continental waters) for the capture of species by properly licensed artisanal fishers.⁶²
- In Nicaragua, areas that are reserved consist of:
 - (i) interior waters and the area within 3 nautical miles measured from the low-tide line along the coast of the Pacific and of the Caribbean Sea;
 - (ii) Autonomous Regions, which have exclusive rights for communal and artisanal fishing within 3 miles adjacent to the coastline and 25 miles around adjacent cays and adjacent islands; and
 - (iii) the San Juan River, where only artisanal fishing is allowed and industrial fishing is expressly forbidden.⁶³
- In Peru, preferential rights of peasant and native communities to the sustainable utilization of natural resources in their lands is provided for in the country's legislation.⁶⁴ In addition, the legislation provides for a reserved area within 5 nautical miles from the coast for artisanal and small-scale fishing.⁶⁵

Further, the access rights granted to small-scale fishers in Venezuela, in particular to fisherwomen, are noteworthy. [Box 20](#) summarizes these rights.

Box 20. Venezuela: small-scale fisher access rights

Venezuelan Decree 1408/14 provides for preferential access rights and other specific provisions for small-scale fisheries, making specific mention of fisherwomen as follows:

The legislation aims to:

- (i) protect settlements and artisanal fisher communities as well as ensure the improvement of the quality of life of small-scale fishermen and fisherwomen;
- (ii) protect the fishing grounds of artisanal commercial fishermen and fisherwomen, in continental waters and close to the maritime coastal line, as well as the traditional areas for artisanal commercial fishing;
- (iii) guarantees full social benefits and social security access to artisanal fishermen and fisherwomen; and
- (iv) establishes genuine means of participation of fishermen and fisherwomen in decisions taken by the state regarding fisheries, aquaculture and related activities (Article 2, paragraphs 4, 5, 8 and 12).

Artisanal and subsistence fishermen, fisherwomen and their organizations have exclusive rights to:

- the exploitation of specific hydrobiological resources (*sardine*, *pepitona*, *ostra perla guacuco*, *chipichipi*, *almeja*, *mejillón*, *ostra mangle*, etc);

⁶¹ Decree 10/11 (Guinea-Bissau), Art. 24; Decree 24/11, Arts. 8 and 13.

⁶² Accord 1098/01 (Honduras), Regulation (Art. 6, Art. 10), Decree 172/99 (Art. 2).

⁶³ Law 489/04 (Nicaragua), Arts. 79 and 82.

⁶⁴ Law 26821 (Peru), Art. 18.

⁶⁵ Law-Decree 25977/92 (Peru), Art. 33; Supreme-Decree 12/01, Art. 63.

- the resources available up to 6 nautical miles from the coastal line, as well as in rivers and other continental aquatic ecosystems (Article 36).

Communal councils, councils of fishermen and fisherwomen and other organizations have the right to participate and exercise control over fisheries, aquaculture and related activities (Article 79).

Source: Decree 1408 of 2014 (Venezuela)

7.3 Customary tenure and access rights in legislation

Customary tenure and access rights should be formally recognized in legislation in order for right holders to enjoy protected access to resources, and to be able to defend them in the event of competition with other resource users or industries such as infrastructure and tourism projects.

The [SSF Guidelines](#) provide that states in accordance with their legislation should recognize, respect and protect all form of legitimate tenure rights, taking into account “customary rights to aquatic resources and land and small-scale fishing areas enjoyed by small-scale fishing communities”. The Guidelines also stipulate that local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities, should be recognized, respected and protected in ways that are consistent with international human rights laws (**paragraph 5.4**).

In this sense, aside from the [SSF Guidelines](#) and the CCRF, there are other international instruments that protect tenure rights of communities. For instance, the UNDRIP enshrines the collective as well as individual rights of indigenous peoples, stating that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”. States should give legal recognition to these territories (Article 26). Furthermore, Article 27 of the ICCPR concerning the right to culture of ethnic, linguistic and religious minorities, and Article 21 of the American Convention on Human Rights concerning the right to property, are interpreted as protecting indigenous peoples’ customary tenure rights to natural resources such as fisheries. This special attention to protected customary tenure and access rights is strongly related to fundamental principles of human rights and, therefore, fits the notion of a HRBA for the achievement of the objectives of the [SSF Guidelines](#) (FAO, 2017a).

In some legislation, customary rights may be already protected in fisheries or related legislation, as exemplified in New Zealand through the Marine and Coastal Area (Takutai Moana) Act 2011 ([Box 21](#)) and in the Solomon Islands through the Fisheries Management Act 2015 ([Box 22](#)); in other states, recognition is still lacking.

Box 21. New Zealand: customary rights

protected customary right means an activity, use, or practice—

- (a) established by an applicant group in accordance with subpart 2 of Part 3; and
- (b) recognized by—
 - (i) a protected customary rights order; or
 - (ii) an agreement

protected customary rights area means the part of the common marine and coastal area where a protected customary rights order or an agreement applies

protected customary rights group—

- (a) means an applicant group to which a protected customary rights order applies or with which an agreement is made; and
- (b) includes a delegate or transferee of the group if the delegation or transfer is made in accordance with *tikanga* (Māori concept for traditional rules, custom, culture, etc.)

Note: See also Fisheries Act 1996 No. 88 (New Zealand), s.2.

Source: Marine and Coastal Area (Takutai Moana) Act 2011 (New Zealand), s. 9.

Box 22. Solomon Islands: customary rights

"Customary rights area" means the areas within Solomon Islands waters that communities of indigenous Solomon Islanders own, use, or occupy according to current customary usage.

"Customary rights" means the rights that communities of indigenous Solomon Islanders establish over customary areas in the fisheries waters by virtue of historical use and association with such areas through acknowledgement of such rights by traditional leaders "Customary rights holder" in respect of any area within Solomon Islands fisheries waters means such person or persons as may be authorized under customary law to give on behalf of the owners of customary fishing rights permission to fish.

Source: Fisheries Management Act 2015 (Solomon Islands), s.2.

In Fiji, customary right holders have preferential usage rights when engaged in non-commercial fishing within customary fishing grounds.⁶⁶ However, where a customary right holder engages in commercial fishing, either within customary fishing grounds where he or she is registered or elsewhere, a licence must be obtained.

⁶⁶ Fisheries Act, Cap. 158 (Fiji).

7.4 Licensing and registration requirements

The VGGT calls on states to “provide systems (such as registration, cadaster and licensing systems) to record individual and collective tenure rights in order to improve security of tenure rights Such systems should record, maintain and publicize tenure rights and duties, including who holds those rights and duties, and the parcels or holdings of land, fisheries or forests to which the rights and duties relate”.⁶⁷

It is important that individuals and community right holders are able to defend their rights legally and, hence, rights need to be clearly registered and licences should be provided. It is also generally important for fisheries management to have information on the number of right holders, the types of rights they hold and how much is being fished. This type of information forms the basis for management decisions (FAO, 2013b).

Registration and licensing requirements should not be too onerous or cumbersome and should be informed by an assessment of the impact of fishery activities on fish stocks and the ecosystem. For fishery activities conducted on a more structured and highly commercial level (industrial and semi-industrial), registration and licensing are required as a control mechanism. For fishery activities conducted on a subsistence or low commercial level (household consumption or bartering), licensing may not be the most effective regulation tool because the activity is minimal, with minimal potential impact on fish stocks. However, a state may consider instituting a basic form of regulation targeting the method of fishing. This may be necessary to ensure that subsistence fishers are not engaged in illegal fishing through the use of prohibited methods.

Licensing requirements and procedures for small-scale fishing and related activities need to be effective, transparent and with clearly defined administration, whether centralized or decentralized, to allow for coordination of management. They should take into account the differences between small-scale fishers, their interests, and potential opportunities from which they could benefit. Such benefits include the formal recognition of their professional activities to gain fair and adequate income, and investments in better infrastructure and services for the sector. The requirements should also be flexible enough to implement management decisions in a rapid and responsive manner. Further, they should be broad in terms of area of application in order to address small-scale fishing vessels that may fish beyond waters under the jurisdiction of their state. In line with an effective regulation scheme, the managers of the sector must make the tools of regulation accessible to the small-scale fishers. Failure of the managers to create easily accessible regulating areas spread across the geographic areas and tailored to the language needs or literacy levels of the targeted populations will result in a porous, ineffective regulatory scheme that reduces compliance.

This section complements **Part V** of [Chapter 4.3](#).

It is evident that in many states the licensing of small-scale fishers is a prerequisite for fishing. The requirements in Ghana for the licensing of canoes is a typical example ([Box 23](#)).

⁶⁷ VGGT, para. 17.1 (Record of tenure rights).

Box 23. Ghana: licensing requirements

Licence for canoes and qualification for licence

- 52. (1) A person shall not use a canoe for fishing in the fishery waters unless a licence has been issued for the canoe for the purpose of fishing.
- (2) A fishing licence shall not be issued for a canoe unless the canoe
 - (a) is owned by a citizen of Ghana, a company or a partnership registered in Ghana under the relevant law in which the shares are beneficially held by a citizen;
 - (b) has been registered with the Commission through the District Assembly of the area where it is to be used; and
 - (c) bears the markings of identity allocated to it by the Commission
- (3) A person who acts contrary to any provision in subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 25 penalty units and not exceeding 500 penalty units; the canoe or gear used in the commission of the offence shall upon conviction be forfeited to the State.

Note: A “canoe” is defined as any planked, dugout or fabricated vessel which is propelled by means of sails, oars, paddles, poles, outboard engine or a combination of any of these.

Source: Fisheries Act 2002 (Ghana), s. 52.

In terms of registration, both Chile and Argentina have established a compulsory registration system of artisanal fishers by means of a national registry of artisanal fisheries. In the case of Brazil, the registration should be made in the General Fisheries Registry, except for the indigenous communities engaging in subsistence fishery activities and fishers engaging in fishery activities exclusively for household consumption.⁶⁸

⁶⁸ Executive Decree No. 8.425 of 2015, regulating Arts. 24 and 25 of Law No. 11.959, Art. 3: “Natural or juridical persons, national or foreign, and owners or persons responsible for fishing vessels shall apply to the Ministry of Fisheries and Aquaculture for enrolment in the RGP in one of the categories provided for in Art. 2 and the granting of authorization, permission or licence to engage in fishing activity in Brazil. Single paragraph. They are exempted from the inscription mentioned in the caput: I – subsistence fishermen and fishers who engage in fishing for non-profit domestic consumption or barter purposes and using equipment provided for in specific legislation; II – amateur fishermen and amateur fishermen using a hand line or simple reed; and III – Indians and Indies that practice the fishing activity for subsistence.”

8. Management, conservation and development of small-scale fisheries

8.1 Principles for small-scale fisheries management

Specific principles that guide the management of fisheries are important, including ensuring the participation of small-scale fishers and fishing communities in the development, conservation and management of small-scale fisheries. The CCRF provides that “...States, in accordance with appropriate procedures, should facilitate consultation and the effective participation of industry, fishworkers and environmental and other interested organizations in decision-making with respect to the development of laws and policies related to fisheries management...” (Article 6, §6.13).

Legislation should provide for participatory management involving various degrees of decentralization of state functions and the introduction of a rights-based management system, appropriate to small-scale fisheries and local situations. The [SSF Guidelines](#) encourage the involvement of all small-scale fisheries actors, including both men and women along the entire value chain, so that all those engaged in small-scale fisheries participate and interact in developing and implementing co-management plans and arrangements. These rules complement the CCRF which provides broad overarching guidance for management, conservation and development of fisheries. It also establishes that the right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of living aquatic resources.⁶⁹

The [SSF Guidelines](#) also contain provisions in support of sustainable resources management encouraging states and all those engaged in fisheries management to “adopt measures for the long-term conservation and sustainable use of fisheries resources and to secure the ecological foundation for food production” (paragraphs 5.13 and 5.14).

From a HRBA perspective, public participation and consultation are particularly important for bringing the interests and values as well as the knowledge of small-scale fisheries, small-scale fisheries actors and small-scale fisheries communities into the development, conservation and management of resources. The [SSF Guidelines](#) provide that states should ensure that the knowledge, culture and practices of small-scale fishing communities, including indigenous peoples, women fishers and women fishworkers, are recognized and supported: “States should investigate and document traditional fisheries knowledge and technologies in order to assess their application to sustainable fisheries conservation, management and development” (paragraph 11.6).

While there are many development, conservation and management principles that are relevant to small-scale fisheries, this Legislative Guide elaborates briefly on the following five: the ecosystem approach to fisheries; participatory approaches, in particular co-management initiatives; the precautionary approach; the use of the best scientific evidence available; and the need for transparent processes.

⁶⁹ CCRF, para. 6.1.

8.2 Ecosystem approach to fisheries

The ecosystem approach to fisheries (EAF) “strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic, and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries” (FAO, 2003). The approach involves, among other things, the assessment of impacts of fishing and other factors on targets, stocks and species belonging to the same ecosystem or species (depending on the target stocks).⁷⁰ Management measures adopted for species within the same ecosystem are to ensure that the level of reproduction of these species is not seriously threatened.

The EAF is supported by various international instruments. It adheres to the principles agreed upon in the Stockholm Declaration, the LOSC, the UN Conference on Environment and Development, the CBD, the UNFSA, the CCRF and the [SSF Guidelines](#), among others.

In the [SSF Guidelines](#), the EAF is enshrined in the guiding principles (in **paragraph 3.1.11**) as the essence of a holistic and integrated approach, embracing the notions of comprehensiveness and sustainability of all parts of ecosystems as well as the livelihoods of small-scale fishing communities, and ensuring cross-sectoral coordination between small-scale fisheries and other sectors.

States should strive towards the implementation of EAF in domestic legislation, recognizing its importance and providing mechanisms to achieve it. Such mechanisms will comprise stakeholder involvement in decision-making, conflict management mechanisms, and defining roles and responsibilities clearly and transparently, including the management and regulatory powers of the responsible authorities.

A legal framework should furthermore provide for the establishment of EAF management plans and clearly designate the institutions responsible for implementing and enforcing them. To that effect, the legislation should clarify: the decision-making entities at various jurisdictional levels; the geographical area that will be covered by policy or legislation; the stakeholders; and how institutional and jurisdictional disputes will be resolved (Cacaud and Cosentino-Roush, 2016).

Existing legal instruments, hence, need to be assessed and adjusted where needed and where possible. Implementing and sustaining an EAF effectively not only requires suitable fisheries legislation, but would also benefit from suitable legal frameworks in other sectors. It should be noted, though, that since this approach most commonly evolves based on current fisheries management practices, some regulations and legal provisions may already be in place and do not need to be replaced, only adapted as required.⁷¹

The following examples of Seychelles ([Box 24](#)) and Saint Kitts and Nevis ([Box 25](#)) show how states have referred to the EAF in their legislation.

⁷⁰ See UNFSA, Art. 5(d) and (e); CCRF, para. 6.2.

⁷¹ Further information about the ecosystem approach to fisheries can be found in the FAO Technical Guidelines for Responsible Fisheries No. 4 (2008).

Box 24. Seychelles: EAF in legislation

“Ecosystem approach to fisheries” means an approach that balances diverse societal objectives by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions, and applying an integrated approach to fisheries within ecologically meaningful boundaries.

Source: Fisheries Act 2014 (Seychelles), s. 3.

Box 25. Saint Kitts and Nevis: EAF in legislation

(f) The ecosystem approach shall be applied to the management and development of fisheries and to promote the health of the general marine and aquatic environment.

Source: Fisheries Aquaculture and Marine Resources Act 2016 (Saint Kitts and Nevis), s.5(1)(f).

Further guidance on how to incorporate the EAF in fisheries legislation can be drawn from *A How-to Guide on legislating for an ecosystem approach to fisheries* (Cacaud and Cosentino-Roush, 2016), which sets out ways in which the approach can be implemented across 17 components of fisheries legislation ([Box 26](#)).

Box 26. EAF implementation in legislation

Component 1: The objectives and principles of EAF-relevant legislation should include key EAF concepts.

Component 2: To the extent possible, the formation of management boundaries should be ecologically meaningful and management measures should be harmonized across boundaries and jurisdictions, locally, nationally and internationally, when ecologically relevant.

Component 3: The precautionary approach should be outlined.

Component 4: Mechanisms for stakeholder participation and transparency should be outlined.

Component 5: Mechanisms for coordination, cooperation and integration of approach between the institution responsible for fisheries management and other relevant institutions should be established.

Component 6: Lower-level authorities, bodies and stakeholders should be integrated into management processes.

Component 7: Mechanisms for conflict management should be outlined.

Component 8: Mechanisms for the integrated management of aquatic ecosystems should be established.

Component 9: Controls on fishing operations, such as catch/output controls, effort/input

controls, fishing gear controls, spatial controls and temporal controls, should be outlined. Component 10: The design, implementation, monitoring and review of fishery management plans (FMPs) should be mandated.

Component 11: Monitoring, control, surveillance and enforcement (MCSE) measures should be outlined.

Component 12: Fisheries-related offences, penalties and administrative and judicial processes should be outlined.

Component 13: EAF research should be promoted and provided for.

Component 14: Mechanisms for habitat and biodiversity conservation and restoration should be outlined.

Component 15: Energy expenditure, pollution, the introduction of species and other potentially harmful activities should be regulated in order to limit the impacts on aquatic ecosystems.

Component 16: A requirement for the production, submission and review of environmental impact statements (EIS) or assessments (EIA) for potentially impactful activities should be outlined.

Component 17: The regular monitoring and review of management measures should be required.

Source: Cacaud, P. & Cosentino-Roush, S. 2016. *A How-to Guide on legislating for an ecosystem approach to fisheries*. FAO EAF-Nansen Project Report No 27. Rome, FAO.

8.3 Participatory approaches: co-management

Co-management refers to a system for fisheries management in which the responsibilities are shared among those having an interest in the resource. It is a participatory and collaborative process of decision-making involving fisheries and other resource users, government agencies at different levels, as well as possibly NGOs and other stakeholder organizations.

Co-management does not follow a standardized approach, but rather a range of arrangements, levels of sharing of responsibility and power, and ways of integrating local management mechanisms and more formalized government systems.

This practice is the most important for the management of small-scale fisheries, for which local management capacity and responsibility, combined with the support of formal policy and legal frameworks and decision-making systems, may offer particular advantages. It builds on the notion of EAF but promotes for an even stronger community participation in decision-making. However, its potential depends on the existing policy and legal environment, local and national support for community-based initiatives, and the capacities of various partners.⁷²

Applying a HRBA to co-management should be seen as a way of accommodating competing interests and giving meaningful and effective participation to small-scale fisheries communities, while recognizing traditional systems in the co-management arrangements and paying special attention to issues related to gender representation, transparency and accountability in decision-making.

In this context, the [SSF Guidelines](#) explicitly state that governments should involve small-scale fisheries communities in the design, planning and implementation of management resources, and that “participatory management systems such as co-management should be promoted in accordance with national legal frameworks” (paragraph 5.15). States should ensure that the roles

and responsibilities within the context of co-management arrangements of concerned parties and stakeholders are clarified and agreed through a participatory and legally supported process (paragraph 5.17). In addition, governments and small-scale fisheries actors should encourage and support the role and involvement of both men and women within the context of co-management (paragraph 5.18).

From the fisheries perspective, co-management has proven to be successful in advancing gender equity, human rights and subjective well-being within fisheries. It is probably most effective in achieving the objectives set out in the [SSF Guidelines](#) when accompanied by extensive structural changes in legislation and efforts to improve coherence in all areas of jurisdiction (FAO, 2019).

For co-management arrangements to be successful including through legislation, the role of states in providing the legal basis for these arrangements is crucial. States should provide for defined tenure and access rights (see [Chapter 7](#) above), and establish appropriate policy and legal frameworks and fully engage communities in the process.

While no fundamental laws (constitutions) deal with co-management in fisheries as such, a principal consideration is to determine whether the fundamental law or constitution permits the establishment of participatory management either explicitly or by necessary implication. If it stipulates that certain components of co-management are not possible, then co-management in its fullest sense may be hindered.

Provisions dealing with decentralization are central for successful co-management initiatives. The establishment of decentralized institutions is often found either in the constitution of a state or in national legislation on decentralization.

Where decentralization or delegation laws exist, it should be ascertained how co-management is facilitated through decentralization institutions such as regional, provincial or local governments/councils, and how such institutions fit with, and relate to, decentralized fisheries management structures.

Often provision in decentralization, or delegation of authorities, is not found in fisheries legislation but in other legislation relating to local government and other natural resources. Therefore, legal provisions to other sectors, depending on the circumstances, could be applied to co-management in fisheries.

However, non-fisheries-specific decentralization legislation often determines the nature of the powers to be transferred to designated authorities (e.g. provinces, districts, communes), but only in general terms. Hence it should be assessed if such legislation makes reference to co-management or to fisheries. The role decentralized institutions play in co-management is key, and thus needs to be specified and defined in specialized legislation rather than in decentralized law (Macfadyen, Cacaud, and Kuemlangan, 2005).

The following example on Solomon Islands shows an example of delegation of authority ([Box 27](#)).

⁷² Small-scale fisheries - Web Site. Co-management. FI Institutional Websites. In: *FAO Fisheries and Aquaculture Department* [online] Rome. <http://www.fao.org/fishery/>

Box 27. Solomon Islands: delegation of authority

Community Fisheries Management Plan

18.

1. Notwithstanding Section 17(1),¹ a community fisheries management plan may be drawn up for communities by or on behalf of customary rights holders for a customary rights area or areas in consultation with the Director and Provincial Executive, and may without limitation provide for matters set out in the Second Schedule.
2. Each Community Fisheries Management Plan shall apply to an area no greater than the extent of the customary rights of the relevant community and in any case shall not extend beyond the outer edge of the reef or fringing reef and the provincial waters in which such rights are exercised, and such area shall be clearly demarcated in the Plan.
3. ...
4. Each Community Fisheries Management Plan shall be consistent with applicable Provincial Ordinances, by-laws and fisheries management plans applicable to provincial waters.
5. Each Community Fisheries Management Plan drawn up in accordance with this section shall be submitted to both the Provincial Executive and the Director at the same time, for their respective review and approval.
6. Where the Provincial Executive or Director has any comment on or objection to a proposed Community Fisheries Management Plan –
 - (a) the Provincial Executive or Director (as the case may be) shall notify the relevant community of their comment or objection ...
 - (b) the Provincial Executive shall also notify the Director ...

but if no such notification has been made, their respective approvals shall be deemed to have been given.

1. 17. (1) The Director may cause to be prepared Fisheries Management Plans at national, provincial and community levels or any fishery in the fisheries waters and shall undertake consultations set out in the Second Schedule.

Source: Fisheries Management Act 2015, (Solomon Islands) s.18.

Another key element of developing legislation in co-management is the participation of community and other stakeholders in developing fisheries legislation. By doing so, legislation is more likely to be supportive of co-management initiatives, and where it impacts on co-management is then more likely to meet the needs and desires of different co-management partners, and to have a measure of legitimacy.

National fisheries legislation should provide for a broad and flexible legislative framework that enables a choice over co-management arrangements and rules and that can be adapted to local circumstances. Ultimately, a flexible co-management legislative framework must allow for changes in policy, and should preferably provide a framework law that allows detailed mechanisms to be set out in regulations that can be easily amended if necessary.

Legislation in co-management should promote the establishment and powers of such fisheries management committees and determine that the membership should be composed of representatives of fishers, social organizations, fisheries organizations and local governments (FAO, 2016b).

The application of co-management is site-specific. Given this, any law that is enacted for establishing co-management should preferably be a framework law. This law must primarily enable the use of co-management through provisions that ensure security, exclusivity and permanence for any rights that may be allocated. However, the legal framework should also, as a minimum, ensure that powers are vested or entities are designated to invoke co-management when the need arises.

It is worth noting that a co-management system can evolve without a corresponding *de jure*, which is a legally enshrined fishing right. However, it is likely to be more effective if the community or co-management group will ultimately have legally protected exclusive rights.

The legislation of Seychelles defines "co-management arrangement" as "a partnership arrangement in which the Government, local resource users (fishers), organizations including NGOs, and other fisheries and marine resource stakeholders including tourism operators share the responsibility and authority for decision-making in the management of a fishery".⁷³

A state may explicitly provide for areas within which co-management is carried out through legislation. For instance, a fisheries law enacted by Chile in 2017 provides for standards for the declaration and allocation for such areas, with specific support (in Article 4) for capacity building and infrastructure development.⁷⁴ And in Tonga, the country's fisheries legislation provides for Special Management Areas, which are areas co-managed with designated coastal communities (Box 28).

Box 28. Tonga: co-management through Special Management Areas

14 Designation of coastal communities

1. The Minister may, in consultation with the Committee, designate any local community in Tonga to be a coastal community for the purposes of community-based fisheries management and may –
 - (a) allocate any Special Management Areas or parts thereof for which such coastal community shall be responsible under this Act;
 - (b) prescribe the rights and responsibilities of such coastal community in respect of the Special Management Areas or part thereof.
2. The Minister shall, in designating a community to be a coastal community pursuant to subsection (1), take into account –
 - (a) concerns of communities living adjacent to the Special Management Area;
 - (b) organization of communities, towns, districts or other institutions.
5. A coastal community shall organize itself and its operations on administration in a manner that is conducive to the effective conservation and management of fisheries resources in the Special Management Area.

Source: Fisheries Management Act 2002, (Tonga) s.14.

⁷³ Fisheries Act 2014 (Seychelles), s. 3.

⁷⁴ Ley Núm. 21.027 – *Regula el desarrollo integral y armónico de caletas pesqueras a nivel nacional y fija normas para su declaración y asignación* (available at <http://extwprlegis1.fao.org/docs/pdf/chi170933.pdf>).

The application of co-management does not necessarily mean the enactment of new legislation. Co-management arrangements might be implemented through the use of existing legislation on issues such as the creation of community associations and/or producers (law of societies, law of public associations, etc.). Depending on each specific case, states may have adequate legal instruments in place that can be applied to the context of small-scale fisheries.

When developing or adapting fisheries co-management legislation, states should aim at including the following elements (among others) in their provisions:

- (i) definition of objectives in biological, sociocultural and economic dimensions;
- (ii) explicit mention of gender throughout the legislation;
- (iii) capacity building provisions;
- (iv) knowledge integration;
- (v) defined processes for consultations with communities;
- (vi) clear assignment of decision-making and enforcement authorities;
- (vii) provisions that define social and environmental responsibilities;
- (viii) provisions in relation to benefit sharing;
- (ix) surveillance and compliance mechanisms;
- (x) provisions ensuring transparency;
- (xi) assignment of tenure and/or based fishing rights; and
- (xii) provisions to secure funding.

Co-management law must also provide protection for individuals against the abuse of local power, as well as mechanisms for conflict resolution.

Furthermore, because co-management is based on a high degree of trust between fishers' associations and management agencies, it is particularly important to have provisions in legislation related to updated transparency and access to information mechanisms.

8.4 Precautionary approach

The precautionary approach is key for incorporating uncertainty into decision-making (FAO, 2009b). The most common used definition is found in Principle 15 of the Rio Declaration of the United Nations Conference on Environment and Development, which states that "In order to protect the environment, the precautionary approach should be widely applied by States according to their capabilities. Where there are serious threats of irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".⁷⁵

The general principles of CCRF Article 6.5 prescribe a precautionary approach to all fisheries, in all aquatic systems, and regardless of their jurisdictional nature, recognizing that most problems affecting the sector result from insufficient precaution in management regimes when faced with high levels of uncertainty.

The [SSF Guidelines](#) build on the provision of the CCRF and promote the application of the precautionary approach in their guiding principles (in **paragraph 3.1.10**): "applying the precautionary approach and risk management to guard against undesirable outcomes, including overexploitation of fishery resources and negative environmental, social and economic impacts". Hence, the precautionary approach not only should be applied in legislation to mitigate or prevent negative effects from fishing on the living aquatic resources and the environment, but also must be applied in a much broader manner to mitigate adverse social and economic consequences for small-scale fisheries and fishers.

An example of the practical inclusion of the precautionary approach in domestic legislation can be seen in the Fisheries Aquaculture and Marine Resources Act 2016 of Saint Kitts and Nevis: “(e) the precautionary approach shall be applied to the management and development of the fisheries at a standard that is equal or superior to the standard in any applicable international instrument.”⁷⁶

States are to be more cautious when information is uncertain, unreliable or inadequate, and the absence of scientific information cannot be used as an excuse for postponing or failing to take measures.

An example of how states have incorporated the related requirement that lack of certainty or the inadequacy or absence of information should not be used as an excuse for postponing or failing to take measures can be seen in the legislation of Vanuatu ([Box 29](#)).

Box 29. Vanuatu: precautionary principle

5. Application of the precautionary principle

(1) Despite the provisions of any other Act, any person or agency having responsibilities under this Act, or whose functions or powers may relate to any matter or thing involving the utilization of fisheries resources, is to apply the precautionary principle when discharging his or her responsibilities and functions, or exercising his or her powers.

(2) For the purposes of this Act, a lack of full scientific certainty regarding the extent of adverse effects of a threat or damage to fisheries resources existing in Vanuatu is not to be used to prevent or avoid a decision being made to minimize the potential adverse effects or risks of that threat or damage.

Source: Fisheries Act 2014 (Vanuatu), s.5.

It should be noted that the precautionary approach is an integral component of the EAF. Therefore, incorporation of the EAF in its fullest sense in national legislation in accordance with the guidance provided above should enable the incorporation and application of the precautionary approach in small-scale fisheries conservation and management.

⁷⁵ The 1992 Rio Declaration on Environment and Development 31 ILM 874 (1992). See also para. 17.21 of Agenda 21.

⁷⁶ Fisheries Aquaculture and Marine Resources Act 2016 (Saint Kitts and Nevis), s. 5(1)(e).

8.5 Use of best scientific evidence available and traditional knowledge

The use of the best scientific evidence available is essential for decision-making. This principle is contained in several international instruments including the LOSC (Article 6.13), UNFSA, CCRF and [SSF Guidelines](#) as well as in the relevant principles and approaches, including the precautionary approach and the EAF. There may still be situations, however, where there is lack of or uncertainty with the scientific information. Such situations will necessitate, on the basis of the HRBA and public participation, the CCRF and the [SSF Guidelines](#), that traditional knowledge and the knowledge of small-scale fishing communities be sourced in making decisions.

The CCRF stipulates that the best scientific evidence available shall form the basis for conservation and management measures. In addition, those engaged in fisheries management should adopt, through an appropriate policy, legal and institutional framework, measures for the long-term conservation and sustainable use of fisheries resources (Article 7.1.1). Those measures should also take into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors (Article 6.4). Further, in relation to the precautionary approach above, states should take into account the best scientific evidence available (Article 6.5).

The [SSF Guidelines](#) call on states to recognize small-scale fishing communities as “holders, providers and receivers of knowledge” (**paragraph 11.4**). In addition to the best scientific evidence available, traditional knowledge should also be taken into account in decision-making on conservation and management of small-scale fisheries. Such knowledge is derived from the culture, traditions and practices of small-scale fishing communities through participatory approaches and consultative processes, and is of utmost importance in supporting responsible local governance and sustainable fisheries conservation, management and development. Legislation hence needs to make provisions for how such knowledge is to be integrated into fisheries management and development.

In Angola, the Aquatic Biological Resources Law 2004 assigns measures for the protection of aquatic biological resources and environment, outlining objectives that include “ensuring the protection, utilization and dissemination of traditional knowledge on aquatic resources and environment as well as on practices for the protection and sustainable use of these resources and the aquatic environment” (Article 63(t)). The law also assigns measures for the protection of these resources: namely, “the protection, dissemination and application, where appropriate, of traditional knowledge on aquatic biological resources and ecosystems and on hydric resources” (Article 65(h)).

In Saint Kitts and Nevis, the Fisheries and Aquaculture and Marine Resources Act 2016 outlines two relevant principles which should be read and applied in combination. First, the principle of “fisheries conservation and management measures shall be based on the best technical knowledge and scientific evidence available to maintain or restore stocks at levels capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and relevant international standards” (Section 5(c)). The other principle is that “the interests of artisanal and subsistence fishers shall be taken into account, including their participation in management of their respective fisheries” (Section 5(m)).

8.6 Transparent processes and accountability

The CCRF provides general guidance on the need for transparency thusly: “States should, to the extent permitted by national laws and regulations, ensure that decision-making processes are transparent and achieve timely solutions to urgent matters. States, in accordance with appropriate procedures, should facilitate consultation and the effective participation of industry,

fishworkers, environmental and other interested organizations in decision-making with respect to the development of laws and policies related to fisheries management, development, international lending and aid.”⁷⁷

In accordance with international human rights standards, the [SSF Guidelines](#) include transparency and accountability as part of their guiding principles and pillars of good governance at all levels. Transparency involves clearly defining and widely publicizing policies, laws, procedures and decisions in applicable languages and in formats accessible to all (**Paragraph 3.18**). To promote accountability, the Guidelines identify the need to hold individuals, public agencies and non-state actors responsible for their actions and decisions according to the principle of the rule of law (**paragraph 3.19**).

In national legislation, principles for decision-making must provide for greater transparency and accountability. This can be achieved through, inter alia, publication of licences and rights granted under the law, public access to information, and the participation of small-scale fisher representatives in advisory and decision-making bodies. Provision of accountability should also be taken into account when developing legislation to seek remedy, and reparation in case of violation of rights.

In Mozambique, the Fisheries and Aquaculture Law 2013 provides for a participatory model of fisheries management, which involves the inclusion of fishing communities in planning and management activities (Article 23(2)(a)). For the coordination of efforts of protection, conservation and sustainable use of fishery resources, this law establishes the Committee of Co-Management of Fisheries, a local-level advisory body that represents all interested groups (Article 25(1)(b)(2)).

In Mauritania, the Marine Fisheries Code 2015 requires the mechanisms for fishing rights allocation, management and concessions therein to be applied in accordance with “rules of transparency and equity, within the general interest and with a view to achieve inclusive growth for the development of the country” (Article 25).

⁷⁷ CCRF, para. 6.13.

9. Social development provisions

9.1 An integral approach to social development

Social development is central to the needs and aspirations of small-scale fishing communities and actors. Hence states should empower small-scale fishing actors, including through legislation, to maximize their capacities, resources and opportunities in order to improve their livelihoods in harmony with the environment.

According to the World Summit for Social Development, states should create an economic, politic, social, cultural and legal environment that will enable people to achieve social development, while providing a stable legal framework consistent with international law and obligations. This involves the inclusion and promotion of “equality and equity, full respect for all human rights and fundamental freedoms and the rule of law, access to justice, the elimination of all forms of discrimination, transparent and accountable governance and administration and the encouragement of partnership with free and representative organizations of civil society”.⁷⁸

Chapter 6 of the [SSF Guidelines](#) includes various provisions supporting social development, employment and decent work, founded on a HRBA. These provisions promote integrated ecosystem and holistic approaches to small-scale fisheries management and development. Attention to the social and economic development of small-scale fishing communities is considered a prerequisite for the enjoyment of their human rights (**paragraph 6.1**). The Guidelines also stress the necessity of ensuring that small-scale fishing communities are empowered and can enjoy their human rights.

States should promote investment in human resources development, for example in social development, health, education, literacy, digital inclusion, infrastructure, financial services, social security, and labour protection initiatives for small-scale fishing communities and fishworkers.

Fisheries or related legislation should therefore provide for social development initiatives, taking a holistic approach in order to achieve policy coherence between different applicable laws to cover matters crucial for the livelihoods, rights and responsibilities of fishers, fishworkers, and all other actors involved in the small-scale value chain. This includes men, women, youth and migrant workers in pre-harvest, harvest and post-harvest activities.

Specifically, social development initiatives may include:

- (i) tax benefits, incentives and financial support;
- (ii) social security protection for workers in small-scale fisheries;
- iii) development of and access to appropriate services such as savings, credit and insurance schemes;
- (iv) decent work and labour rights;
- (v) occupational health and safety requirements;
- (vi) safety at sea;
- (vii) infrastructure, education and training;

⁷⁸ UN. 1995. Copenhagen Declaration on Social Development. A/Conf.166/9.

- (viii) protection of human rights;⁷⁹
- (ix) implementation of international instruments related to indigenous peoples' rights;
- (x) facilitation of access, including to customary fishing grounds;
- (xi) effective participation in decision-making processes; and
- (xii) recognition of traditional customary systems.

In Indonesia for example, most of the elements in the preceding paragraph are contained in various legislation ([Box 30](#)).

Box 30. Indonesia: social development provisions

- (i) Facilitation of funding assistance and financial assistance to small fishers, traditional fishers, small fish raisers, including their families through capital loan for fisheries business, subsidy for credit interest and insurance service yield, and use of corporate responsibility fund as well as partnership and environment development program fund from corporate bodies. Loans for small fishers and small fish raisers, for working capital or cost of operation with easy requirements, low interest rate. – Law 7/16 (Article 61), Law 31/04 (Article 60)
- (ii) Provision for security and safety guarantees to fishers while fishing, ensuring safety equipment to fishers before fishing and “giving search and help to fishermen that meet accident in a fast, proper, secure, integrated and coordinated way”. Provision for fisheries insurance for occupational accidents or life insurance for the loss of lives of fishers. – Law 7/16 (Article 30(1)(2)(6), Articles 39, 40)
- (iii) Provision for education, training and elucidations for small fishers, fish raisers to improve knowledge and skill in the fields of fish catching, breeding, processing and marketing. Provision for counselling and assistance to fishers, fish raisers and their families. Facilities that cover assistance for life insurance, fisheries insurance payments for small fishers and traditional fishers. – Law 7/16 (Article 33(2)(d), Articles 46, 47 and 49)
- (iv) Recognition of the community's right to manage resources in coastal areas and small islands based on the customary law that is not against law and regulations. – Law 1/14

Moreover, the fisheries law of Timor-Leste ([Box 31](#)) provides for “compensation tariffs” that are linked to fisheries development. National holders of artisanal and semi-industrial fishing permits having a direct impact on fisheries development may enjoy a reduction in or exemption from the fishing compensation tariff.

⁷⁹ See for example: Loi No. 3-2010 du 14 juin 2010 portant organisation de la pêche et de l'aquaculture continentals (Republic of Congo), Art. 56.

Box 31. Timor-Leste: compensation tariffs

Article 26 (Setting a Compensation Tariff)

1. The compensation tariff on commercial fishing shall be paid on an annual basis and the amount shall be fixed by a decision of the Council of Ministers, upon proposal by the Minister.
2. The tariff amount referred to in item 1 above shall be set, by bearing in mind, namely, the market value of authorized catches of species, the allocated fishing quotas or the volume of authorized catches, the gross tonnage of the fishing vessel, as well as the fishing tariff policies of other countries, especially those of the region.
3. Without prejudice to the payment of a compensation tariff, the issuance of any fishing permit may be equally subject to additional, non-monetary compensations.
4. Where investments have been duly verified, national holders of artisanal and semi-industrial fishing permits, who have a direct impact on the fishing development may, upon favourable recommendation by the National Consultative Council of the Ministry, enjoy a reduction in or a complete exemption from the fishing compensation tariff, for a period of up to three years, in accordance with the terms and conditions established in applicable regulations.

Source: Decree-Law No. 6/2004 (Timor-Leste), available at <http://extwprlegs1.fao.org/docs/pdf/tim63488E.pdf>.

Another crucial element of social development is safety at sea, which should be promoted to ensure the safety of small-scale fishers and fishworkers, efficiency in their operations, and the delivery of fish to the market. The [SSF Guidelines](#) provide that “all parties should recognize the complexity that surrounds safety at sea issues (in inland and marine fisheries) and the multiple causes behind deficient safety” (paragraph 6.16).

Small-scale fishing vessels are generally not covered under international shipping treaties in terms of construction and seaworthiness, safety, and crewing requirements. Fisheries or related legislation should therefore include basic requirements that are appropriate to guarantee safety at sea. For example, in Papua New Guinea, separate legislation provides for small craft safety requirements ([Box 32](#)).

Box 32. Papua New Guinea: safety at sea

SCHEDULE 3.

SAFETY STANDARDS FOR SMALL CRAFT.

1. For all small craft registered under this Act, the craft must have the following safety equipment, in good working order, on the craft whenever it is operated or goes to sea:
 - (a) lifejackets, approved by the National Marine Safety Administration of Papua New Guinea (NMSA), for all persons on the craft;
 - (b) a pair of oars or paddles;

- (c) a waterproof torch with spare battery and bulb;
 - (d) a stainless-steel mirror;
 - (e) an anchor, with length (not less than 20 m) of rope attached;
 - (f) a sea anchor, with length of rope attached to allow for proper deployment;
 - (g) a bucket or bailer;
 - (h) tools and spare parts for the craft's engine (if craft is fitted with an engine);
 - (i) sailor tarpaulin (preferably bright orange in colour) as an alternative means of propulsion (if the craft is fitted with an engine);
 - (j) whistle or horn;
 - (k) emergency food and water, sufficient for all persons on the craft for 24 hours.
2. For craft travelling out of sight of land, they must have a reliable compass.
3. For craft travelling at night, they must have navigation lights approved by NMSA.
4. For commercial small craft licensed under the Act, in addition to the safety equipment for all craft specified in Section 1 above, the craft must have the following safety equipment, in good working order, on the craft whenever it is operated or goes to sea:
- (a) commercial passenger small craft: safety equipment approved by the NMSA;
 - (b) commercial fishing small craft: safety equipment approved by the NMSA;
 - (c) commercial cargo small craft: safety equipment approved by the NMSA;
 - (d) commercial mixed-use small craft: safety equipment approved by the NMSA.

Source: Small Craft Act 2011 (Papua New Guinea), Schedule 3.

9.2 Social development initiatives

In many jurisdictions, a fund is established in legislation to provide for the promotion and development of fisheries. Such funds may also support the social and economic development of small-scale fisheries in alignment with the overall thinking behind the [SSF Guidelines](#), which acknowledges that fisheries management and sustainable resource utilization must go hand in hand with social and economic development.

For example, the Fisheries Act 2002 in Ghana ([Box 33](#)) allows for the application of monies from its fund to, *inter alia*, assist small-scale fishery cooperative enterprises.

Box 33. Ghana: social development fund

Objective of the Fund

38. The monies of the Fund shall be applied as follows:

- (a) towards the promotion and development of fisheries in the country;
- (b) to meet the liabilities of the Commission in respect of the monitoring, control and surveillance of the fishery waters;
- (c) to provide assistance to small-scale fishery co-operative enterprises;

- (d) to promote research and studies of the fishing industry; and
- (e) toward such other purposes as the Commission in consultation with the Minister may determine.

Source: Fisheries Act 2002 (Ghana), s.38.

Legislation may also provide for the development of small-scale fisheries by, for instance, promoting the development of small-scale fishing landing facilities, establishing reserved areas for fishing activities of small-scale fishing vessels, or giving priority to small-scale fishers in the allocation of fishing licences or quotas. An example of a provision for the development of artisanal fishing can again be found in the Fisheries Act of Ghana ([Box 34](#)).⁸⁰

Box 34. Ghana: artisanal fishing development

Development of artisanal fishing

51.

(1) The Commission shall in the implementation of its functions under this Act take such action as it considers necessary to protect and promote artisanal and Semi-industrial fishing including the following:

- (a) the provision of extension and training services;
- (b) the registration of artisanal fishing vessels and any class of related fishing gear;
- (c) the exemption for such period as it may recommend to the Minister of such fisheries activities as it may determine from any requirement concerning licensing and the payment of fees under this Act;
- (d) the promotion of the establishment and development of fishing, processing and marketing co-operative societies;
- (e) promotion of the development of artisanal fishing landing facilities;
- (f) the establishment of reserved areas for fishing activities of artisanal and semi-industrial fishing vessels;
- (g) the giving of priority to artisanal and semi-industrial fishing in the allocation of fishing licences or quotas; and
- (h) the promotion of joint venture arrangements, technology transfer agreements and transfer of technology and experience.

(2) The Commission shall not in any action taken under subsection (1) establish concessionary areas within the Inshore Exclusive Zone for activities not permitted under this Act.

Source: Fisheries Act 2002 (Ghana), s.51.

⁸⁰ See also Fisheries Act 2003 (Tanzania), s. 9(1), where there is an obligation on the Director of Fisheries to facilitate the development of artisanal fishing.

9.3 Safeguards for small-scale fishers and small-scale fisheries actors

Fundamental safeguards on the rights of individuals are normally entrenched in the constitution of a country and other legislation. These include protections such as the right to due process under the law consistent with pursuing a HRBA. Specific safeguards in favour of small-scale fisheries actors are contained in fisheries legislation but may also be included in other laws not specifically related to the fisheries sector. It is therefore crucial when addressing safeguards for small-scale fisheries actors to go beyond fisheries legislation and have an interdisciplinary approach to achieve policy coherence between different applicable laws.

A legislative framework (in alignment with a HRBA) addressed to small-scale fisheries actors may, for instance, include safeguards to fundamental rights and the processes associated with such rights. Examples include safeguarding the traditional knowledge of customary or indigenous fishing communities; the protection, promotion and respect of the rights of small-scale fishers and small-scale fisheries actors, including social protection; freedom of expression, assembly and association; the right to an adequate standard of living; the right to freedom of movement; and tenure rights entailing the right to fish in areas reserved for small-scale fishers. The protection and respect of these safeguards by states are crucial for the successful implementation of the [SSF Guidelines](#).

Traditional knowledge and practices, including those of customary fishing communities, should be protected due to their social, cultural and economic value. Several countries have relevant examples in their legislation. In Brazil, legislation provides for mechanisms to guarantee the protection and security of peoples with traditional knowledge.⁸¹ In Thailand, the constitution recognizes the rights of local or traditional communities to conserve or restore their customs, local knowledge, arts or culture of their communities and of the nation.⁸² Further, in Peru, legislation provides the right of free access particularly for native and peasant communities to natural resources if no other exclusive rights of third parties or of the state have been established. There is also recognition of traditional modalities that are in accordance with the rules on environmental protection.⁸³

The recognition and protection of the rights and entitlements of small-scale fishers is normally contained in fisheries and related legislation. Legislation may merely recognize basic rights, such as in Papua New Guinea ([Box 35](#)), Solomon Islands ([Box 36](#)) or Peru ([Box 37](#)), or provide additional provisions such as preferential or exclusive rights (explained in [Chapter 7.2](#) above).

Box 35. Papua New Guinea: recognition of rights of small-scale fishers

26. CUSTOMARY RESOURCE OWNERSHIP

The rights of the customary owners of fisheries resources and fishing rights shall be fully recognized and respected in all transactions affecting the resource or the area in which the right operates.

Source: Fisheries Management Act 1998 (Papua New Guinea), s.26.

⁸¹ Law 11.959/09, (Brazil) Art. 5, II.

⁸² 2007 Constitution of the Kingdom of Thailand, Art. 66.

⁸³ Law 26821 (Peru), Arts. 17 and 18.

Box 36. Solomon Islands: recognition of rights of small-scale fishers

Recognition of Customary Rights

21. (1) Customary rights shall be fully recognized and respected in all activities falling within the scope of this Act.

(2) No person shall, without permission given by the relevant customary rights holders, use a vessel other than a vessel used for customary fishing, to

- (a) engage in fishing;
- (b) otherwise enter; or
- (c) directly or indirectly cause destruction to an area subject to customary rights.

(3) Any person who contravenes subsection (2) commits an offence and on conviction is subject to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.

(4) Where it is proved that customary rights have been breached, the High Court may order compensation to be paid to the customary rights holder.

Source: Fisheries Management Act 2015 (Solomon Islands).

Box 37. Peru: recognition of rights of small-scale fishers

The Peruvian Fisheries Law establishes a promotional scheme in favour of natural and juridical persons engaging in artisanal fishing activities. There is a national innovative programme on fisheries and aquaculture within the Indigenous Peoples Plan (*Marco de Planificación de Pueblos Indígenas*), a programme advocating for innovation in fisheries and aquaculture activities, respecting their ancestral rural rights to territories, resources, ethnic identity and ancestral traditions.

Source: Decree-Law 25977 (Peru), Article 36



10. Monitoring, control and surveillance in small-scale fisheries

10.1 Overview

Commonly, monitoring, control and surveillance powers are stipulated in primary legislation and apply to all kinds of fisheries including small-scale fisheries. The [SSF Guidelines](#) (in **paragraph 5.16**) identify the need for an MCS system to be in place. According to the Guidelines, states should establish and promote MCS systems applicable and suitable for small-scale fisheries. In addition, states should aim to deter, prevent and eliminate illegal and destructive fishing practices. Furthermore, small-scale fishers should support MCS systems and also provide the authorities the information needed for management.

MCS systems for small-scale fisheries, although varied in scale, similarly focus on operations, enforcement and compliance. Therefore, the implementing legislation must be specific about the role played by fishing communities in ensuring regulations are implemented, as well as the need to work with compliance authorities.

This chapter complements **Part VII** of [Chapter 4.3](#) above.

10.2 Appointment, functions and powers of authorized officers

The appointment of persons authorized to undertake MCS functions in small-scale fisheries must be explicitly provided for in legislation. Appointments may be made by a minister or other authority. Authorized officers, depending on the jurisdiction, may include fisheries officers, persons in a specific government service (such as the police, coast guard or navy) or fish quality control auditors. In various states, persons other than officials may also be appointed, such as the honorary fish wardens in Fiji.⁸⁴

Legislative provisions for the functions and powers of authorized officers vary from general to specific. It is important that such functions and powers are congruent with the constitution and other legislation. Generally, powers of officers should be comprehensive enough to support the effective implementation of fisheries legislation.

Specific powers of authorized officers normally include powers of entry and search; the power to take, detain, remove and secure information and evidence; the power of arrest; the power to give orders; the power of seizure; and the power to remove parts from seized vessels or vehicles for the purpose of immobilizing that vessel or vehicle.⁸⁵

Duties owed to these officers (e.g. to enable them to carry out their responsibilities) should be clear, and communication and interaction between them and small-scale fishers should be facilitated and guaranteed to ensure the information is effectively collected and registered, and that the respective conservation and management measures are complied with. The legislation may also need to include provisions for giving more direct responsibilities to small-scale fishers (e.g. as fisheries wardens).

⁸⁴ Fisheries Act (Fiji), Cap. 158, s. 3.

⁸⁵ See for instance Fisheries Management and Development Act 2016 (Kenya), ss. 138–145.

Legislation and operational practices of authorized officers need to ensure that the powers of these individuals are exercised in good faith and in accordance with applicable legislation. Accordingly, it is common for fisheries legislation, whether consolidated or specific to small-scale fisheries, to include a general indemnity provision for authorized officers. This stipulates that if a given authorized officer exercises his or her powers under the law in good faith, then no civil or criminal liability ensues. A typical example of an indemnity provision is contained in [Box 38](#).

Procedures to be followed in the exercise of powers must also be set out in primary legislation. For example, if items are seized, then the legislation must set out, among other things, the requirement for the custody and release of the seized items.

Box 38. Malta: indemnity provision

22. No civil or criminal action shall lie against a fisheries protection officer or a convention fisheries officer in respect of any act done or omitted to be done by him in good faith in the purported exercise of his powers under this Act if there shall have been reasonable cause for such act or omission.

Source: Fisheries Conservation and Management Act 2001, Cap. 425 (Malta), s.22.

10.3 Monitoring, control and surveillance tools

Catch and effort reporting requirements, catch sampling, port sampling, observers, safety requirements, and mandatory fishing inspections are among the MCS tools available for use in small-scale fisheries. These may be set out in legislation (primary or secondary) and made explicit in the terms and conditions attached to a licence or permit to fish.

10.4 Community participation in monitoring, control and surveillance

States should aim to involve small-scale fishing communities, including women, in decisions pertaining to MCS in order to build trust and ensure effective mechanisms to deter, prevent and eliminate all forms of illegal and/or destructive fishing practices having a negative effect on both marine and inland ecosystems.

MCS in small-scale fisheries is often a complex task due to the combination of various types of fishers, mixed gear types, migrant fishers and the proliferation of landing points. Therefore, a community-based approach to MCS aligned with co-management provisions in legislation provides a workable approach (FAO, 2002).

A growing number of states explicitly allow for community participation in MCS. For instance, the Fisheries Act of Canada has provisions relating to First Nations and provides powers to fishery officers and fishery guardians ([Box 39](#)).

Box 39. Canada: First Nations provisions

Part 5, Fishery Officers and Fishery Guardians, section 4, Laws of Certain First Nations, stipulates that the powers and protections which fishery officers and fishery guardians have under this Act, apply to fishery officers and fishery guardians enforcing First Nations (Nisga'a, Tla'amin and Tsawwassen) laws.

Source: Fisheries Act (R.S.C) 1985, c. F-14 (Canada).

Community participation in MCS is also exemplified in the legislation of Angola ([Box 40](#)) which shows the role of community observers for the monitoring of fishing and related activities. Also, in the role of village council (or *fono*) in Samoa. The *fono* has significant responsibilities (under the Village Fono Act 1990) in the oversight of village life including the management and conservation of resources. Recent fisheries legislation provides for the role of the *fono* in the declaration and delineation of village fisheries management and in the making and monitoring of village fisheries by-laws, and the monitoring of fisheries by-laws (see [Box 15](#) above), as well as the suspension and revocation of such by-laws ([Box 41](#)).⁸⁶

Box 40. Angola: community participation in MCS

Article 151. Community Observers – The community observers are members of the designated coastal and riverside communities, under the terms to be defined by regulation, for the monitoring of fishing and fishing-related activities, in the zones reserved to artisanal and subsistence fisheries (...)

Article 152. Functions of the Community Observer – The functions of the community observer are:

- a) collect biological samples and fisheries data, including catch data, in the reserved zones referred in articles 78 and subsequent ones;¹
- b) collect evidence of industrial and semi-industrial fishing activities in the reserved fishing zones;
- c) report to the competent authorities about any known offence against the present law and its regulations.

Article 153. Rights of the Community Observer

- a) The community observer is identified by presentation of the respective identification card issued by the competent ministry.
- b) The community observer may use all necessary means in the exercise of his duties, namely binoculars, cameras, manual GPS, radio and mobile phones.
- c) The competent ministry shall provide to the community observer the necessary means for the exercise of his duties as well as the adequate training.

1. Meaning the aquatic protected areas.

Source: Aquatic Biological Resources Law 2004 (Angola).

⁸⁶ Fisheries Management Act 2016 (Samoa), section 19 (Village fisheries management areas), section 86 (making of fisheries bylaws) and section 87 (monitoring of bylaws).

11. Enforcement, access to justice, accountability and effective remedy in small-scale fisheries legislation

11.1 Enforcement as a component of fisheries legislation

Enforcement, or the act of compelling observance of or compliance with the law, is an essential component of any fisheries legislation. Legislative provisions on enforcement, like MCS provisions, are normally found in primary legislation and are applicable to all fisheries.

In legislation, although they are related, MCS provisions are separated from enforcement provisions. For some jurisdictions such as Trinidad and Tobago, only precepted officers may exercise certain enforcement functions such as the power of arrest. The legislation must identify persons or classes of persons that can enforce the law, including recognized coastal fisheries institutions.

11.1.1 Community participation in enforcement of small-scale fisheries legislation

States should ensure the effective implementation and enforcement of legislation concerning the small-scale fisheries sector by providing the necessary information and training not only to the administrative and judicial powers, but also to community members – so they can demand action. A well-designed and implemented consultation process will have a direct effect on the implementation of the legislation, improving the credibility and legitimacy of government action and gaining the support of both the groups involved in the decision-making process and the communities in general.

Community participation is also important in relation to enforcement. Communities should be provided with legal training to understand their rights and obligations under the new developed law. Legislation should include procedures for the inclusive monitoring and review of institutions, process and legislation by different stakeholders, including CSOs and communities.

In various states, the enforcement of community by-laws is provided for, whereby the community is involved in the monitoring and reporting of infringements of those laws so that they can be enforced. The breach of village fisheries by-laws in Samoa, for instance, warrants a significant penalty which may include imprisonment ([Box 41](#)).

Box 41. Samoa: breach of village fisheries by-laws

88. Breach of by-laws:

- (1) A person who breaches a village fisheries by-law commits an offence and is liable on conviction to a fine not exceeding 1000 penalty units or to 12 months imprisonment, or both.
- (2) When a Court imposes a fine under by-laws, the Court may order that the fine be deposited into a fund of the village Fono whose fisheries by-laws are breached.
- (3) A penalty imposed by a Village Fono under its powers under the Village Fono Act 1990 must be taken into account by:

- a) the Chief Executive Officer or the Commissioner of Police when considering to prosecute a breach of by-laws; and
- (b) a Court, as a mitigating factor, when passing sentence or dealing with the defendant.

Source: Fisheries Management Act No8, 2016 (Samoa)

11.2 Access to justice, accountability and effective remedy

Access to justice is fundamental in any legal system. Among the guiding principles of the [SSF Guidelines](#) is the principle of the rule of law, by which states are encouraged to adopt a rules-based approach for small-scale fisheries through laws that are widely publicized, applicable to all, equally enforced and independently adjudicated, and consistent with existing obligations.

States should ensure that national procedures do not restrict access to justice when individuals and communities wish to raise concerns relevant to the implementation of small-scale fisheries legislation. Often, communities lack sufficient access to justice due to high levels of bureaucracy, high economic costs of presenting a case, lack of transparency in processes, illiteracy, lack of education, and limited access to professional legal advice. Women, the poor, minority groups, and others who suffer discrimination are often the most affected.

To the extent possible, legal procedures should be conducted in the local language, taking into account cultural and local evidence, and legal assistance (ideally through legal aid) should be granted to small-scale fisheries actors.

States must guarantee accessible judicial and administrative systems at the national and local levels that are knowledgeable, in the sense of having actors who are familiar with small-scale fisheries-related legislation and consistent with human rights standards, while recognizing and integrating mechanisms at the local level for the resolution of disputes. They should also adopt ombudsman mechanisms to file complaints and report misconduct or rights violations.

Integrating a HRBA with human rights standards and laws, including through secured access to justice for potential breaches, enhances the accountability for rights violations, which in turn promotes more effective governance and responsive decision-making.

In addition, the application of a HRBA implies the establishment of procedures to hold individuals, public authorities and non-state actors accountable for their conduct and decisions, through simple and accessible mechanisms that can provide timely and effective responses – which translates into the right to effective remedy and due process. This includes implementing, for example, participatory and innovative (formal and informal) mechanisms for impact assessment, feedback and reporting.

In certain states, there is more than one pathway for addressing violations of fisheries or related legislation. Generally, there are two broad approaches: the institution of legal proceedings in a court of law, or the application of administrative proceedings with the consent of the person who committed the violation. The former may include various courts at different levels such as village courts, provincial courts or national courts. The latter involves the preparation of an agreement for the resolution of the violation, or the issuance by the administration of a penalty notice. Administrative penalty notices are usually issued for minor violations of fisheries legislation.

Access to justice also includes the right to an effective remedy for anyone whose rights are violated as well as the guarantee to due process in all legal proceedings. Small-scale fisheries legislation should establish a special appeals process and reaffirm the right of all to seek redress from the courts for rights violations. This right to redress should be interpreted to apply to the registration process when it is used as a form of regulation.

Access to justice and accountability provisions in national legislation may be broadly categorized, inter alia, into legal support to fishers, alternative means of dispute resolution, and the establishment of special institutions. It is useful to note that fisheries legislation may defer to other legislation which explicitly provides fundamental provisions on the rule of law. [Table 1](#) provides examples of access to justice provisions in select states.

Table 1. Examples of access to justice and accountability provisions

a. Legal support; b. Alternative means of dispute resolution; c. Special institution

Country	a	b	c
Indonesia	✓	✓	✓
			<p>a. Facilitation and provision for legal aid to small fishers, small fish raisers, including their families engaged in processing and marketing that face problems in running their business; provision for legal aid and protection to fishers facing problems related to fishing in the territory of other countries. – Law 7/16 (Article 3(f), Articles 41 and 42)</p> <p>b. Provision for taking efforts to settle every dispute related to management of coastal areas and isles outside the court, by means of consultation, specialist evaluation, negotiation, mediation, conciliation, arbitration or local custom/habit/wisdom. – Elucidation on Law 27/07 (Article 64)</p> <p>c. Fishery Court, within the environment of the public court, with authority to investigate, adjudge and decide upon a criminal act in the field of fishery. – Law 45/09 (Article 71)</p>
Mozambique	-	✓	-
			<p>a. Provision for the adoption of required measures to prevent and resolve conflicts that emerge from fisheries practice, taking into account anticipated and mandatory subscription of insurance schemes by those involved in fisheries in order to guarantee the reparation of damages eventually caused; establishment of commissions of mediation and adoption of measures that implement the recommendations adopted; involvement of communitarian authorities. – Law 22/13 (Article 24)</p>
South Africa	-	✓	-
			<p>b. Provision for the resolution of conflicts between members of small-scale fisheries community in terms of the internal conflict resolution mechanisms agreed upon by members of the community-based legal entity at the time of its' establishment; provision for mediation to assist in resolving disputes arising from conflicts between small-scale fisheries communities. – Policy for the SSF Sector 474/12 (Section 6.2.8)</p>
Venezuela	-	✓	✓
			<p>b. Provision for an administrative procedure that comprises provisional measures, conciliation hearing and a probative period prior to submitting the process to the court. – Decree 1408/14 (Article 145-154)</p> <p>c. Socialist Institute for Fisheries and Aquaculture, with power to recognize and decide on conflicts deriving from fisheries interference as well as respective redress. – Decree 1408/14 (Article 145-154)</p>



Final remarks

Using the law to implement the [SSF Guidelines](#) is a tangible way to support small-scale fishers, fisheries actors and communities in attaining an adequate standard of living; support the progressive realization of the right to food; and contribute to poverty eradication, equitable development and sustainable resource utilization.

The legislative implementation of the [SSF Guidelines](#) requires the contribution of a variety of actors ranging from national legislators, members of the executive and judicial branches of the government, various legal professionals, academics, and community members. Their coordinated contribution will strengthen the rule of law, strengthen the protection of human rights, improve good governance, enhance transparency, and raise the standards of the legal practice, thus making a real and tangible difference in people's lives.

The guidance, approaches and recommendations detailed in this Legislative Guide reflect the importance placed by states on the sustainable management of small-scale fisheries. Their inclusion does not mean an endorsement by FAO of one guiding element, approach or recommendation over another. Rather, the intention has been to provide a toolkit with legislative options for states to consider in developing or reforming their laws.

The implementation of this Legislative Guide and the incorporation of the [SSF Guidelines](#) into national law are the exclusive preserve of the sovereign state. For states that already have legislation concerning small-scale fisheries, the [SSF Guidelines](#) provide a benchmark upon which they may strengthen those legal frameworks.

The legislative process must be transparent, participatory and inclusive, accommodating representatives of the small-scale fisheries sector and other stakeholders. Legislating for small-scale fishers and fisheries actors cannot be done in isolation. Rather, the legislative process must have a scope that looks beyond fisheries legislation, taking into account an array of related legislation, including but not limited to health, education, social security, labour, gender and climate change.

This Legislative Guide is part of FAO's effort to guide states in strengthening the governance frameworks that support the small-scale fisheries sector. It joins other related publications addressed to the legislative bodies of states, drafters, policymakers and those concerned with small-scale fisheries, and aims to be a useful tool to guide states either in drafting or amending their fisheries legislation.

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Appendices

Appendix A: List of legislation reviewed

Angola

Ordinance 9/73
Law 6-A/04
Decree 41/05

Argentina

Law No. 24.922
Regulatory Decree No. 748

Australia

Coastal Waters (State Powers) Act 1980
(Commonwealth)
Coastal Waters (State Title) Act 1980
(Commonwealth)
Fisheries Administration Act 1991
(Commonwealth)
Fisheries Management Act 1991
(Commonwealth)

Barbados

Fisheries Act Cap. 391

Brazil

Law 11.959/09⁸⁷
Executive Decree No. 8.425 of 2015

Cambodia

Royal Decree for Community Fishery
Establishment 2005
Fisheries Law 2006
Sub-Decree on Community Fishery Management
2007

Canada

Fisheries Act, R.S.C. 1985, c. F-14
Fishery General Regulations SOR/93-53
Small Fishing Vessels Regulations SOR/2016-
153
Oceans Act S.C. 1996
Species at Risk Act S.C. 2002

Chile

Law 18892/89
Law 2017

Colombia

Law No. 13 General Statute of Fisheries (enacted
15 January 1990)
Decree 2256/91
Resolution 3478/07

Congo

Loi No. 2-2000 portant organisation de la pêche
maritime en République du Congo
Loi No. 3-2010 du 14 juin 2010 portant
organisation de la pêche et de l'aquaculture
continentales
Décret No. 2011-317 du 26 avril 2011 déterminant
les conditions d'exercice de la pêche maritime
artisanale professionnelle
Décret No. 2012-175 du 12 mars 2012 portant
réorganisation et fonctionnement du fonds
d'aménagement halieutique
Arrêté No. 6 du 23 janvier 2014 portant
interdiction aux navires de pêche et autres
embarcations l'exercice de la pêche maritime
dans la zone de navigation réservée à la pêche
artisanale et à l'aquaculture

Cook Islands

Marine Resources Act 2005

Costa Rica

Law on Fisheries and Aquaculture Law No.
8436/05
Regulation 36782/11

Ecuador

Ley de Pesca y Desarrollo Pesquero, Codificación
2005–2007
Decreto No. 3198 (2016) – Reglamento general a
la Ley de Pesca y Desarrollo Pesquero

⁸⁷ Available at <https://www2.senado.leg.br/bdsf/bitstream/handle/id/509231/001030625.pdf?sequence=1>.

El Salvador

Decree 637/01
Decree 82 (1983)

Fiji

Fisheries Act Cap. 158
Offshore Fisheries Management Decree 2012
Offshore Fisheries Management (Amendment) Decree 2014
Offshore Fisheries Management Regulations 2014

Ghana

Fisheries Act 2002
Fisheries (Amendment) Act 2014

Grenada

Fisheries Act No. 15/1986

Guatemala

Decree 80/02

Guinea

Loi No. 2015/26/AN du 14 septembre 2015
Portant Code de la pêche maritime

Guinea-Bissau

Decree 10/11
Decree 24/11

Honduras

Accuerdo 1098/01
Decreto No. 106-2015 - Ley General de Pesca y Acuicultura

Iceland

Act 116/06

India

Comprehensive Marine Fishing Policy 2004

Indonesia

Law 7/16
Law 31/04
Law 45/09

Italy

Ministerial Decree 07.12.16

Jamaica

Fisheries Industry Act 1975

Fishing Industry Regulations
Fishing Industry Special Fishery Conservation Area Regulation 2012
Morant and Pedro Cays Act
Exclusive Economic Zone Act

Japan

Fishery Act 267/49
Fisheries Cooperative Association Law, Law No. 242 of 1948 as amended
Fisheries Basic Law (Act No. 89 of 29 June 2001)
The Fisheries Law
Living Aquatic Resources Protection Law
Law Concerning Conservation and Management of Marine Living Resources

Kenya

Fisheries Management and Development Act 2016
Kiribati
Fisheries Act 2010
Fisheries (Amendment) Act 2015

Kiribati

Fisheries Act 2010
Fisheries (Amendment) Act 2015

Madagascar

Loi No. 2015-053 du 16 décembre 2015 portant Code de la pêche et de l'aquaculture

Malawi

Fisheries Conservation and Management Act 1997

Maldives

The Fisheries Act 1987
Law No. 5/87

Malta

Fisheries Conservation and Management Act 2001, Cap. 425

Marshall Islands

Marshall Islands Marine Resources Act 1997
Fisheries Act (51 MIRC Ch 2)
Fisheries (Amendment) Act 2016

Mauritania

Law 17/15

Mauritius

The Fisheries and Marine Resources Act 2007
No. 27 of 2007

Mexico

General Law of Sustainable Fisheries and
Aquaculture 2007

Mozambique

Law 22/13
Decree 43/03
Decree 57/08

Namibia

Marine Resources Act 2000
Regulations relating to the Exploitation of
Marine Resources 2001

Nauru

Fisheries Act 1997
Fisheries (Amendment) Act 2017
Nauru Fisheries and Marine Resources Authority
Act 1997
Nauru Fisheries and Marine Resources Authority
(Amendment) Act 2016

New Zealand

Fisheries (Amateur Fishing) Regulations 1986
Treaty of Waitangi (Fisheries Claims) Settlement
Act 1992
Fisheries Act 1996 No. 88
Fisheries (Kaimoana Customary Fishing)
Regulations 1998
Fisheries (South Island Customary Fishing)
Regulations 1999
Maori Commercial Aquaculture Claims
Settlement Act 2004
Maori Fisheries Act 2004
Marine and Coastal Area (Takutai Moana) Act
2011

Nicaragua

Fishing and Aquaculture Law 489/04

Norway

Act of 3 July 1983 relating to Salt Water Fisheries
Act of 26 March 1999 relating to the Regulation
of the Participation in Fisheries
Marine Resources Act 2008

Panama

Decree-Law No. 17/59
Law No. 44/06

Papua New Guinea

Fisheries (Torres Strait Protected Zone) Act
1984
Fisheries (Torres Strait Protected Zone)
Regulation 1987
Organic Law on Provincial Governments and
Local-level Governments 29/1998
Fisheries Management Act 1998
Fisheries Management (Amendment) Act 2012
Fisheries Management (Amendment) Act 2015
Fisheries Management Regulation 2000
Fisheries Management (Amendment)
Regulation 2016
Small Craft Act 2011

Peru

Law-Decree 25977/92
Supreme-Decree 12/01
Ley No. 30636 – Ley que crea el Seguro
Obligatorio del Pescador Artesanal
Law 26821

Philippines

Philippines Fisheries Code 1998 (Republic Act
No. 8550)

Portugal

Regulatory Decree 43/87
Regulatory Decree 7/00
Ordinance 12/02

Saint Kitts and Nevis

Fisheries, Aquaculture and Marine Resources
Act 2016 (Act No. 1 of 2016)

Saint Lucia

Fisheries Act Cap. 7:15

Saint Vincent and the Grenadines

Fisheries Act No. 8 1986, as amended by Acts
No. 32 (1986), No. 25 (1989), No. 36 (1989)
Fisheries Regulations of 1987 (No. 1)
Fisheries (Fish and Fish Products) Regulations
of 2006 (No. 12)
Fisheries (Prevention of Illegal, Unreported and
Unregulated Fishing) Regulations of 2017

Samoa

Village Fono Act 1990

Village Fono (Amendment) Act 2017

Fisheries Management Act 2016

Sao Tomé e Príncipe

Decree 28/2012

Senegal

Loi No. 2015-18 du 13 juillet 2015 portant Code de la Pêche maritime

Décret portant application de la loi No. 2015-18 du 13 juillet 2015 portant code de la pêche maritime

Solomon Islands

Provincial Government Act 1997

Fisheries Management Act 2015

South Africa

Marine Living Resources Act 1998

Marine Living Resources (Amendment) Act 2014

Regulations relating to Small-Scale Fishing No. 229 (8 March 2016)

Policy for the Small-Scale Fisheries Sector in South Africa – Policy 474/12

Spain

Royal Decree 1549/09

Sri Lanka

Fisheries and Aquatic Resources Act 1996

Thailand

Royal Ordinance on Fisheries BE 2558 2015

Timor-Leste

Decree-Law No. 6/2004 of 21 April 2004

General Bases of the Legal Regime for the Management and Regulation of Fisheries and Aquaculture

Tonga

Fisheries Management Act 2002

Trinidad and Tobago

Fisheries Act 1916

Archipelagic Waters and Exclusive Economic Zone Act No. 24/1986

Tuvalu

Marine Resources Act 2006

Marine Resources (Amendment) Act 2012

United Republic of Tanzania

Fisheries Act 2003

United States of America

The Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. 1801-1891(d)

P.L. 109-304, 2006

Uruguay

Law on Agricultural Family Production and Artisanal Fisheries (Law No. 19.292 of 2014)

Vanuatu

Fisheries Act 2014

Venezuela

Law on Fishing and Fish Farming Decree 1408/14

Appendix B: matrix for characterizing the scale of fishing units

Description of fishing unit assessed¹: _____

Name of fishing unit: _____

Number of vessels/fishers:: _____

Target specie(s): _____

Location (country and province/county/district, etc.): _____

Location of landing site: _____

Please select ONE option per row:

When assessing a fleet/fishery fishing unit (rather than a fisher/vessel fishing unit), select the option that most closely matches the majority of the group or majority of activities.

	0	1	2	3
Size of fishing vessel	No vessel <input type="checkbox"/>	<12 m, <10 GT <input type="checkbox"/>	≤24 m, <50 GT <input type="checkbox"/>	>24 m, >50 GT <input type="checkbox"/>

Comments: Although vessel size isn't necessarily an indicator of fishing scale and intensity, it is an important characteristic when paired with variables such as motorization and mechanization. The four categories give a range of sizes which cover the majority of vessels (including shore-based activities) which occur globally.

Motorization	No engine <input type="checkbox"/>	Outboard engine/ inboard engine ≤100 hp <input type="checkbox"/>	Inboard engine <400 hp <input type="checkbox"/>	Inboard >400 hp <input type="checkbox"/>
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Comments: Indicates the presence of an engine on board, its horsepower and whether it is outboard or inboard. In the case of multiple engines, consider the main one only.

Mechanization	No mechanization <input type="checkbox"/>	Small power winch/ hauler, powered-off engine <input type="checkbox"/>	Independently powered gear deployment/ hauling <input type="checkbox"/>	Fully mechanized gear deployment and hauling <input type="checkbox"/>
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¹ Please insert a short description of the fishing unit assessed, including all information available, with particular reference to the terminology defined in the document glossary.

² GT refers to gross register tonnage. The vessels total internal volume expressed in register tons.

Comments: Indicates what type of mechanization, if any, is used to deploy gear during the fishing unit.

Fishing gear	Labour-intensive gear	Passive gear	Gear with aggregating devices	Highly active gear
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Labour-intensive gear includes mostly small gear handled manually by the fisher (e.g. hand-hauled nets, pole and line, crab pots). Passive gear includes larger gear sets that are deployed passively (e.g. longlines, trap sets, gillnets/driftnets). Gear with aggregating devices includes larger gear sets which use aggregating and attracting methods such as light attraction and fish aggregating devices. Highly active gear includes gear that require vessel power to encircle, chase, deploy and retrieve fish.

Refrigeration/storage on board	No storage	Ice box (i.e. on deck)	Ice hold (i.e. below deck)	Refrigerated hold
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: An ice box is a free-standing container filled with ice for the purpose of chilling fish (above or below deck). An ice hold is a structure below deck containing ice for the purpose of chilling fish. A refrigerated hold is part of boat structure and is mechanically refrigerated for the purpose of freezing fish

Labour/crew	Individual and/or family members	Cooperative group	≤2 paid crew	>2 paid crew
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: The term cooperative group refers to any arrangement in which individuals, other than family members or paid crew, work together to carry out the fishing unit activities. The two paid crew categories refer to fishers paid either in monetary or non-monetary (e.g. part of the catch) terms.

Ownership	Owner/operator	Leased arrangement	Owner	Corporate business
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Owner/operator refers to a fisher who operates his or her own vessel/gear. Leased arrangement refers to fishers who operate using a rented vessel/ gear. Owner refers to a respondent who owns the vessel/ gear but does not carry out the fishing unit activities first hand. Corporate business refers to a company or group of people that carries out fishing activities as a single legal entity (usually owning multiple vessels/gear and employing multiple crew).

Time commitment	Occasional	Full-time, but seasonal	Part-time, all year	Full-time
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Occasional fishers receive under 30 percent of their livelihood from fishing or spend under 30 percent of their working time in that occupation. Part-time fishers receive at least 30 percent but less than 90 percent of their livelihood from fishing or spend at least 30 percent but less than 90 percent of their working time in that occupation. Full-time fishers receive at least 90 percent of their livelihood from fishing or spend at least 90 percent of their working time in that occupation. The full-time but seasonal category refers to fishers who are occupied with other full-time seasonal activities when not fishing (such as farming), or where the fishing “season” may be adapted so that it does not coincide with the peak tourist period during which earnings might well be higher.

Daily trip/multi-day	<6 hours	Day trip (< 24 hours)	<4 days	> 4 days
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Depending on the type of gear, this category could refer to a detailed unit of measure, i.e. hours fished; to “number of days fished”, i.e. the number of days on which fishing took place (for those fisheries in which searching is a substantial part of the fishing unit, days in which searching but no fishing took place should be included); or to “number of days on ground”, which in addition to days fishing and searching also includes all other days while the vessel was on the ground

Fishing grounds/zone/ distance from shore	<100 m from shoreline/ baselines/ high-water mark	<10 km from shoreline	<20 km	>20 km from shoreline/ baselines
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Indicates at what distance from shoreline/baselines/high-water mark the fishing activity is carried out.

Disposal of catch	Household consumption/ barter (exchange for payment in goods or services)	Local direct sale (exchange for monetary payment)	Sale to traders	Onboard processing and/ or delivery to processors
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Household consumption or barter refers to fisheries catch mainly consumed in the household or informally exchanged for goods or services. Local direct sale refers to sales to individuals, restaurants or small local businesses, often close to landing sites. Sale to traders refers to one or multiple traders operating in the value chain between producer and consumer. On-board processing and/or delivery to processors refers to catch processed for value addition or preservation before being traded into the value chain.

Utilization of catch, value addition/ preservation	For direct human consumption	Chilled/ locally processed/ cured	Frozen	Frozen/chilled for factory processing (for human consumption or fishmeal)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Direct human consumption refers to fish that is consumed fresh, with minimal to no processing. The other three categories indicate varying degrees of sophistication and durability of the preservation and value-addition methods. Chilled/locally processed/cured includes smoking and salting.

Integration into economy and/or management system	Informal, not integrated (no fees)	Integrated (registered, untaxed)	Formal, integrated (licensed, landing fees)	Formal, integrated (licensed, taxed)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: This category provides a description of the level at which the fishing unit is integrated into formal economic and management systems. Informal/not integrated fishing units lack any form of licence or registration and are not subject to licence or landing fees or taxation. Integrated fishing units are formally registered; however, they are not taxed or charged a fee for their activities. Formal integrated operations are divided into two types: those that are licensed and subject to licence and/or landing fees, but not taxed as a commercial concern; and those that are licensed and taxed as a commercial concern.

Do you want to know more?

Legislating for sustainable small-scale fisheries is one important aspect among many to implementing the SSF Guidelines. FAO works closely with States as well as fisheries management organizations, non-governmental organizations, civil society organizations, academia, small-scale fisheries actors and others at global, regional and national level to secure social, economic and environmental sustainability in the small-scale fisheries sector. Find out more on the links below.

Please visit our website

fao.org/2/ssf-guidelines

Download the SSF Guidelines

In English:

<http://www.fao.org/3/i4356en/I4356EN.pdf>

In other languages:

<http://www.fao.org/documents/card/en/c/I4356EN>

The Voluntary Guidelines for Securing Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (“SSF Guidelines”) are the first international instrument dedicated entirely to the small-scale fisheries sector. Their endorsement by the FAO Committee on Fisheries in 2014 added much needed principles and recommendations for small-scale fisheries governance and development to the set of international binding and non-binding instruments forming the framework of international fisheries legislation.

While the implementation of the SSF Guidelines will require legal and regulatory adjustments beyond national fisheries legislation, to ensure political and legislative coherence and fully reflect the breadth of their provisions, the fundamental function of fisheries law in sustainable use, management and the development of small-scale fisheries is indisputable.

Appropriate fisheries legislation provides the strongest possible framework for inclusive participatory fisheries governance and resource management by providing a coherent basis for implementing and enforcing the SSF Guidelines and other related international and regional agreements and commitments.

Legislation can, therefore, be a tangible way to support small-scale fishers, fish workers and their communities and to contribute to broader development goals including the progressive realization of the right to food, poverty eradication, equitable development and sustainable resource utilization.

This document, *Legislating for sustainable small-scale fisheries - A guide and considerations for implementing aspects of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication in National Legislation*, is a tool for States to strengthen their fisheries legislation in order to establish conditions for inclusive and sustainable small-scale fisheries development, taking into account the interrelatedness of social, economic and environmental sustainability, while focusing on marginalised groups.

Fisheries - Natural Resources and Sustainable Production

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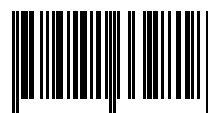
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