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Table. Overview on provisions of the Code relevant to indigenous peoples

Potentially relevant terms in the Code referring/relating to or encompassing indigenous fishing communities	Relevant Code articles	Sub-articles including the relevant term
<b>small-scale and artisanal</b>	6. General Principles 7. Fisheries management  8. Fishing operations  12. Fisheries research	6.18 7.2.2 Management objectives 7.6.9 Management measures 8.11.3 Artificial reefs and fish aggregation devices 12.12
<b>subsistence</b>	6. General Principles 7. Fisheries management 8. Fishing operations	6.18 7.2.2 Management objectives 8.11.3 Artificial reefs and fish aggregation devices
<b>local, fishing or coastal communities</b>	2. Objectives of the Code 6. General Principles 7. Fisheries management  8. Fishing operations  9. Aquaculture Development  10. Integration of fisheries into coastal area management.	2 (f) 6.19 7.6.4 Management measures 7.6.6  8.4.8  9.1.4 Responsible dev. of aquaculture, including culture-based fisheries, in areas under national jurisdiction 9.4.2 Resp. aquaculture dev. at the production level 10.1.1 Institutional framework 10.1.2 Institutional framework 10.1.3 Institutional framework
<b>indigenous peoples</b>	7. Fisheries management	7.6.6 Management measures
<b>traditional fisheries</b>	12. Fisheries research	12.12
<b>traditional knowledge</b>	12. Fisheries research	12.12

# ANNEX II

## KEY PROVISIONS IN THE CODE RELEVANT TO INDIGENOUS FISHING COMMUNITIES

### Key provisions relevant to indigenous fishing communities in the Code of Conduct for Responsible Fisheries

#### General Principles

6.4 Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors. [...]

6.18 Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.

6.19 States should consider aquaculture, including culture-based fisheries, as a means to promote diversification of income and diet. In so doing, States should ensure that resources are used responsibly and adverse impacts on the environment and on local communities are minimized.

#### Fisheries management

7.2.1 Recognizing that long-term sustainable use of fisheries resources is the overriding objective of conservation and management, States and sub-regional or regional fisheries management organizations and arrangements should, inter alia, adopt

appropriate measures, based on the best scientific evidence available, which are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing countries.

7.2.2 Such measures should provide inter alia that:

- a. excess fishing capacity is avoided and exploitation of the stocks remains economically viable;
- b. the economic conditions under which fishing industries operate promote responsible fisheries;
- c. the interests of fishers, including those engaged in subsistence, small-scale and artisanal fisheries, are taken into account;
- d. biodiversity of aquatic habitats and ecosystems is conserved and endangered species are protected;
- e. depleted stocks are allowed to recover or, where appropriate, are actively restored;
- f. adverse environmental impacts on the resources from human activities are assessed and, where appropriate, corrected; and
- g. pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species are minimized, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.

7.6.6 When deciding on the use, conservation and management of fisheries resources, due recognition should be given, as appropriate, in



accordance with national laws and regulations, to traditional practices, needs and interests of indigenous peoples and local fishing communities which are highly dependent on fishery resources for their livelihood.

### Fishing operations

8.11.3 States should, within the framework of coastal area management plans, establish management systems for artificial reefs and fish aggregation devices. Such management systems should require approval for the construction and deployment of such reefs and devices and should take into account the interests of fishers, including artisanal and subsistence fishers.

### Aquaculture development

9.1.4 States should ensure that the livelihoods of local communities, and their access to fishing grounds, are not negatively affected by aquaculture developments.

### Integration of fisheries into coastal area management

10.1.1 States should ensure that an appropriate policy, legal and institutional framework is adopted to achieve the sustainable and integrated use of the resources, taking into account the fragility of coastal ecosystems and the finite nature of their natural resources and the needs of coastal communities.

10.1.3 States should develop, as appropriate,

institutional and legal frameworks in order to determine the possible uses of coastal resources and to govern access to them taking into account the rights of coastal fishing communities and their customary practices to the extent compatible with sustainable development.

### Fisheries research

12.12 States should investigate and document traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries, in order to assess their application to sustainable fisheries conservation, management and development.

# ANNEX III

## KEY PROVISIONS OF THE INTERNATIONAL NORMATIVE INSTRUMENTS LISTED IN ARTICLE 3 OF THE CODE

The Declarations as well as Chapter 17 of Agenda 21 are explicitly referred to in Article 3 of the Code. They should be used for the interpretation and application of the Code.

Agenda 21 is highly relevant to IP as Chapter 17 refers throughout the text to IP (see most relevant articles below, emphasis added).

### Rio Declaration on Environment and Development

#### Principle 22

*Indigenous peoples* and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

#### The Cancún Declaration

9. States should take measures to ensure respect for the interests of small-scale artisanal and *indigenous fishers*.

#### Agenda 21, Chapter 17

##### Activities

(a) Management-related activities

17.128. Small island developing States, with the assistance as appropriate of the international

community and on the basis of existing work of national and international organizations, should:

- (d) adapt coastal area management techniques, such as planning, siting and environmental impact assessments, using Geographical Information Systems (GIS), suitable to the special characteristics of small islands, taking into account the traditional and cultural values of indigenous peoples of island countries;
- (c) human resource development.

17.134. Since populations of small island developing States cannot maintain all necessary specializations, training for integrated coastal management and development should aim to produce cadres of managers or scientists, engineers and coastal planners able to integrate the many factors that need to be considered in integrated coastal management. Resource users should be prepared to execute both management and protection functions and to apply the polluter pays principle and support the training of their personnel. Educational systems should be modified to meet these needs and special training programmes developed in integrated island management and development. Local planning should be integrated in educational curricula of all levels and public awareness campaigns developed with the assistance of non-governmental organizations and indigenous coastal populations.

17.74. States commit themselves to the conservation and sustainable use of marine living resources under national jurisdiction. To this end, it is necessary to:



- (a) develop and increase the potential of marine living resources to meet human nutritional needs, as well as social, economic and development goals;
  - (b) take into account traditional knowledge and interests of local communities, small-scale artisanal fisheries and indigenous peoples in development and management programmes;
  - (c) maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors, taking into consideration relationships among species;
  - (d) promote the development and use of selective fishing gear and practices that minimize waste in the catch of target species and minimize by-catch of non-target species;
  - (e) protect and restore endangered marine species;
  - (f) preserve rare or fragile ecosystems, as well as habitats and other ecologically sensitive areas.
- 17.79. Coastal States, individually or through bilateral and/or multilateral cooperation and with the support, as appropriate of international organizations, whether subregional, regional or global, should inter alia:
- (b) implement strategies for the sustainable use of marine living resources, taking into account the special needs and interests of small-scale artisanal fisheries, local communities and indigenous peoples to meet human nutritional and other development needs;
  - (c) implement, in particular in developing countries, mechanisms to develop mariculture, aquaculture and small-scale, deep-sea and oceanic fisheries within areas under national jurisdiction where assessments show that marine living resources are potentially available;
- (d) strengthen their legal and regulatory frameworks, where appropriate, including management, enforcement and surveillance capabilities, to regulate activities related to the above strategies;
  - (e) take measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation;
  - (f) develop and promote the use of environmentally sound technology under criteria compatible with the sustainable use of marine living resources, including assessment of the environmental impact of major new fishery practices;
  - (g) enhance the productivity and utilization of their marine living resources for food and income.
- 17.81. Coastal States should support the sustainability of small-scale artisanal fisheries. To this end, they should, as appropriate:
- (a) integrate small-scale artisanal fisheries development in marine and coastal planning, taking into account the interests and, where appropriate, encouraging representation of fishermen, small-scale fishworkers, women, local communities and indigenous peoples;
  - (b) recognize the rights of small-scale fishworkers and the special situation of indigenous peoples and local communities, including their rights to utilization and protection of their habitats on a sustainable basis;
  - (c) develop systems for the acquisition and recording of traditional knowledge concerning marine





living resources and environment and promote the incorporation of such knowledge into management systems.

17.93. States individually, or through bilateral and multilateral cooperation and with the support of relevant international organizations, whether subregional, regional or global, as appropriate, should encourage and provide support for developing countries, inter alia, to:

(b) create training opportunities at national and regional levels to support artisanal (including subsistence) fisheries, to develop small-scale use of marine living resources and to encourage equitable participation of local communities, small-scale fish workers, women and indigenous peoples.

17.94. Coastal States, with the support of relevant subregional, regional and global agencies, where appropriate, should:

(b) provide support to local fishing communities, in particular those that rely on fishing for subsistence, indigenous peoples and women, including, as appropriate, the technical and financial assistance to organize, maintain, exchange and improve traditional knowledge of marine living resources and fishing techniques, and upgrade knowledge on marine ecosystems;

(c) establish sustainable aquaculture development strategies, including environmental management in support of rural fish-farming communities.



# ANNEX IV

## PROVISIONS ON INDIGENOUS PEOPLES' RIGHTS RELEVANT FOR THE INTERPRETATION OF THE CODE

### ILO Convention No. 169 concerning Indigenous and Tribal Peoples<sup>72</sup>

#### Article 6

1. In applying the provisions of this Convention, Governments shall:
  - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
  - (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
  - (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic,

social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

#### Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

<sup>72</sup> International Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169), June 27, 1989, 72 ILO Official Bull. 59, entered into force Sept. 5, 1991, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

## UN Declaration on the Rights of Indigenous Peoples

### Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

### Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

### Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.





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