

Fisheries law in action: Legal policy reforms to advance sustainable small-scale fisheries



A research project of the Environmental Law Institute – Ocean Program

Summary

Environmental law and governance research can help identify which regulatory instruments have been helpful for translating broad policy concepts of sustainable small-scale fishing (SSF) into legal language. For example, comparative legal research has helped understand that, to provide for “community-based fisheries,” the legal framework should set, among other requirements, specific obligations regarding the creation of co-management institutions, the organization of their meetings, transparent participation and voting rules, measures to avoid agency capture, adequate recording and publication of the meetings, or the creation of citizen councils with ability to impose sanctions on managers in cases of misconduct. Likewise, to introduce “adaptive management” into the legal framework, regulations should provide guidance on the frequency with which management approaches should be evaluated, and on the minimum standards that scientific methods of environmental impact assessment should meet to inform and enable regulatory decisions that ensure the protection of ecological functions, baselines, and ecosystem services.

Providing specific legal guidance can contribute to streamlining the implementation of the FAO Voluntary Guidelines for SSF. For this purpose, the ELI-Ocean research team, with support from the Oak Foundation and in partnership with Parliamentarians for Global Action (PGA), is embarking on a project to identify effective avenues and model laws for countries to achieve comprehensive policy reforms of their SSF and develop detailed governance roadmaps for strengthening rule of law in coastal fisheries management.

The project team will develop a Law and Governance Toolkit for Sustainable Small-Scale Fisheries. The Toolkit focuses on implementing successful institutional, governance, and legal approaches that are supported by SSF policy research and regulatory practice. By providing specific guidance to policymakers, the project will help overcome the obstacle of lawmakers' lack of knowledge on how to address the challenges to sustainable SSF, while establishing a roadmap for legal implementation of the FAO Guidelines.

Project Objectives

Objective 1. Define strategic objectives and a hierarchy of legal implementation

The team has selected six elements that have great potential to change fisheries governance structures and increase the opportunities for local communities to participate in fisheries management:

- 1) Tenure rights for small-scale fishing (FAO Guidelines 5.4);
- 2) Creation/enforcement of exclusive zones for small-scale fisheries (5.4; 5.7);
- 3) Participatory management systems and co-management (5.15; 5.17);
- 4) Effective monitoring/enforcement mechanisms to deter, prevent and eliminate illegal and/or destructive fishing practices (5.16);
- 5) Introduction of fisheries management regulations as conservation tools, in accordance with co-management frameworks (5.4.);
- 6) Implement spatial management, including marine spatial planning (10.2).

The first step of the project will be confirming with a broad set of experts that this selection of elements for legal reforms are those that have the highest potential for positive impact and urgently need to be addressed, as well as identifying examples of their successful legal implementation.

Objective 2. Provide legal clarity to key SSF governance elements.

The project team will perform a law and policy analysis to describe how the selected governance elements work in legal form and practice. For example, for the implementation of participatory management systems and co-management mechanisms in SSF, the team will identify examples of their employment under national laws, and describe and compare main elements and compliance mechanisms of different versions of co-management arrangements. The analysis will identify major regulatory hurdles and

knowledge gaps. ELI and PGA will conduct two expert workshops focused on a subsection of the key governance elements. Collaboration with Vermont Law School and Duke University Law School researchers and consultation with experts from sister organizations will complete the research task.

Objective 3. Develop the Law and Governance Toolkit for Sustainable Small-Scale Fisheries

There is currently no compendium on the regulatory history of ocean resources governance nor any database on the effective enforcement of fisheries regulations. With little information available, most nations' laws and regulations fail to promote fisheries sustainability, or are overly ambitious and difficult to implement. Building on the information gathered during Objectives 1&2, the project team will draft a "**Law and Governance Toolkit for Sustainable Small-Scale Fisheries**" for enabling effective regulatory and institutional implementation of sustainable coastal fisheries. The Toolkit will describe in easy to understand language a suite of recommended policy approach options. The Toolkit will be organized by descriptions of legal tools to enable guide users to determine whether, and how, they can contribute to their specific circumstances and needs. The Toolkit will also include model legal language (in English) to help implement the proposed legal approaches.

Objective 4. Disseminate the Toolkit and the findings of the research by conducting communications and outreach activities

ELI and PGA will conduct outreach and dissemination activities to ensure broad distribution of the "Law and Governance Toolkit for Sustainable Small-Scale Fisheries."

Objective 5. Building on the project findings and the Toolkit, collaborate with parliamentarians and other stakeholders in two key countries to advance legal reforms for sustainable SSF management

PGA and ELI will engage with parliamentarians in two countries to tailor the recommendations of the Toolkit to their legal frameworks. The project team will develop preferred approaches for the implementation of the Toolkit. This process involves evaluating each country's fisheries governance framework and developing potential reforms. ELI has tentatively selected Mexico and Mozambique as target countries, although specific case-study countries may vary.

Objective 6. Expand Toolkit to other key governance elements of the FAO Guidelines. Update the Toolkit as new information becomes available

The real value of the Toolkit will be its broad usage and implementation to help countries implement the FAO Guidelines and fulfill their obligations under SDG 14. For this last objective, the project team will conduct targeted activities towards ensuring the long-term impact of the SSF Regulatory Toolkit project. Activities include drafting and implementing a detailed fundraising strategy around the following four goals: (a) translating the Toolkit to key languages, at least Spanish and French; (b) continuing the work done by expanding the Toolkit to additional key governance elements of the FAO Guidelines not covered by this project; (c) utilizing outreach to PGA’s global membership to identify and engage parliamentarians in other countries interested in using the Toolkit to facilitate the implementation of the FAO Guidelines at the domestic level, and (d) ensuring that the Toolkit remains updated by monitoring global experiences of the regulatory implementation of policies for sustainable small-scale fisheries.

Project Timeline

Objective	Description	End	2019				2020			
			Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
1	Strategic objectives	3/31/19								
2	SSF governance research	1/1/20								
3	SSF Toolkit development	7/31/20								
4	Toolkit dissemination	9/30/20								
5	Case studies	12/31/20								
6	Continuation	12/31/20								