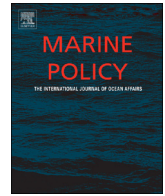




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## The Philippines context for marine tenure and small-scale fisheries

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## A B S T R A C T

The Philippines has had a long and evolving history in marine tenure and marine resource management. This ranges from traditional tenure rights to some of the first community based fisheries tenure systems in the world to a legal system which supports marine tenure. Secure marine tenure and improved governance are enabling conditions for supporting sustainable small-scale fisheries to meet multiple development objectives. This article provides an overview of the Philippines context for marine tenure and small-scale fisheries. The article discusses both government and non-governmental initiatives on marine tenure. Recommendations are made to strengthen the current legal, policy and practical context of marine tenure in the Philippines in order to support sustainable small-scale fisheries.

## 1. Introduction

Tenure refers to the relationship (whether defined under formal *de jure* law, customary law, or traditional practice) that individuals and groups hold with respect to resources on land and at sea [1,2]. Marine tenure involves establishing a set of rights and responsibilities in the marine and coastal environment as to who is allowed to use which resources, in what way, for how long, and under what conditions, as well as who is entitled to transfer rights (if any) to others and how [1–5]. Charles [5,6] states that fishery tenure is closely related to the idea of use rights - ‘the right to use’ fishery resources, as recognized or assigned by the relevant management authority, whether formal or informal.

Secure marine tenure and improved governance are enabling conditions for supporting sustainable small-scale fisheries to meet multiple development objectives if investment constraints are addressed and programming opportunities are seized. The UN FAO *Voluntary Guidelines on Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication* (SSF Guidelines) [7] highlight the important role of national governments and small-scale fishers in achieving responsible governance of tenure within an integrated and ecosystem-based approach to management. The SSF Guidelines urge States to adopt national legislation that ensures small-scale fishers, fish workers, and their communities have secure, equitable, and socially and culturally appropriate tenure rights to fishery resources, fishing areas, and adjacent land. Small-scale fishers should be granted preferential access to fish and water through the creation and enforcement of exclusive use zones. Effective and transparent mechanisms to address

resource use conflicts must be in place to protect the rights of small-scale fishers.

Small-scale fishers and coastal communities with secure rights over a given fishing area have a strong interest in organizing and acting collectively to manage their resources sustainably [2]. Tenure refers to the relationship (whether defined under formal *de jure* law or under customary law) that individuals and groups hold with respect to natural resources. Marine tenure involves establishing a set of rights and responsibilities in the coastal and marine environment as to who is allowed to use which resources, in what way, for how long, and under what conditions, as well as who is entitled to transfer rights to others and how. Formal recognition of marine tenure provides communities with the security that they can invest in and manage their fishery resources for long-term sustainability. Marine tenure needs a strong governance framework and institutions at both national and local levels to maintain secure tenure rights [8].

The responsible governance of marine tenure involves respecting the rights of small-scale fishers and fishing communities to the resources that form the basis of their social and cultural well-being, their livelihoods and their sustainable development. National legal and policy frameworks, administrative and judicial systems, effective community-based and co-management arrangements, dispute resolution mechanisms, local participation and empowerment, and strengthened institutional capacity are all key ingredients of responsible governance of marine tenure.

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systems in the world to a legal system which supports marine tenure. Government, non-governmental organizations, donors and fishers have all supported secure tenure rights for sustainable fisheries.

This article provides an overview of the Philippines context for marine tenure and small-scale fisheries. The article discusses both government and non-governmental initiatives on marine tenure. Recommendations are made to strengthen the current legal, policy and practical context of marine tenure in the Philippines in order to support sustainable small-scale fisheries.

## 2. An historical overview of marine tenure in the Philippines

The island settlers of what would become the Philippines had a long history of traditional fishing rights before the archipelago was first colonized by Spain in the 17th century. The *barangay* (village) had jurisdiction over coastal resources and fishery limits were defined by them [9]. The traditional property rights of *barangays* over fishing grounds were steadily eroded during the long Spanish colonial period, with community authority and rights superseded by state government control [10]. Lopez [11] reports that under Spanish rule, the *barangays* were eliminated as administrative entities and with them went the territorial fishing rights claimed by each village. Under Spanish law, the fisheries and other natural resources were declared to be held by the Crown. Under both the Spanish and the Americans, traditional authority and rights were superseded by municipal government control of local fishing grounds. This administrative structure of municipal authority remains in place in the country today. Despite the historical existence of traditional fishing rights and village-based management systems in the Philippines, for the most part these systems have disappeared in the country. This is not to say that traditional community-based resource management systems, and informal fisheries rights and rules systems do not exist, for localized examples can be found throughout the country [12,13].

The threat of Japanese encroachment moved the government to finally pass a Fisheries Law in 1932, restricting commercial fishing activities to American and Filipino-owned corporations. For the first time, municipal waters were defined as up to 5.5 km from shore; municipal governments now had authority to grant licenses to commercial fishers within these waters. The 1960s and 1970s saw a period of industrialization [14]. In the 1960s, the Philippine government, aided by Japanese advisors, undertook intensive infrastructure, technology, extension and credit programs through the Fisheries Development Program to ‘develop’ the industry [15]. In the early 1970s, the country fell under Martial Law and the centralized government control of fisheries was further reinforced through Presidential Decree (PD) 704, otherwise known as the Fisheries Act of 1975. Under PD 704, fisheries management is the responsibility of the government, both national and municipal. The management measures (mainly through regulatory instruments) undertaken by the government during this time, however, were ineffective in promoting the sustainable development and management of the country’s fisheries. In the mid-1970s, in response to decreasing unit catch of small-scale fishers, the government embarked on fishery policies and development programs concentrated on ‘use orientation,’ that is, increasing production and exploitation of the resource base. In the 1980s, the government continued to support the needs of the sector through the Expanded Fish Production Program (EFPP) from 1983 to 1987. In the small-scale fisheries sector, the strategy of the program was geared towards enabling the small fishers to venture into deeper waters by equipping them with more efficient boats and fishing gears. The underlying assumption was that the fishery could support increased fishing effort, despite expert opinion as early as 1980 that it could not. Ironically, it was during this period (1984–1988), that there was a decreased rate in coastal fish production of 1.3% a year, compared to the increasing rate of 6.1% in the preceding five years from 1979 to 1983 [16,17]. Overfishing decreased returns to fishers and conflicts over resource access and use increased [18]. The problems in the

fishery continued to worsen throughout the late 1980s and early 1990s. The management (mainly through regulatory instruments) and development (increased fishing effort) measures undertaken by the government were still ineffective in promoting the sustainable management and development of the country’s fisheries. It was realized that with the increasing rate of deterioration of natural resource systems in the Philippines, there was no way the country could pursue a pathway of sustainable development.

The right to use fishery resources for subsistence is enshrined in the Philippine Constitution. The ocean area of the Philippines is an open access resource. Management of local fishery resources is considered not only a responsibility but also a right. Though this right is more enthroned to the local government rather than fishing communities by the Fisheries Code, it is evident that the spirit of the law is to devolve powers to manage the coastal resources to the fishers. The legal framework does not clarify/define the designated tenure area or the management mechanism for governance.

The 1998 Fisheries Code is considered a breakthrough in fisheries legislation because it “reinforces” the management of municipal waters originally devolved through the 1991 Local Government Code from national to local governments. Organized community members are given the opportunity to formally participate in management efforts through, among others, the Fisheries and Aquatic Resources Management Councils (FARMCs). Legal instruments, such as the Certificate of Ancestral Domain Title and Mangrove Stewardship Contracts, now also exist to give coastal communities a semblance of tenure security. These instruments likewise encourage communities to take charge of resource management planning and implementation. Tenure rights are imperative in ensuring that fishing communities obtain permanent, exclusive rights over the resources in a specific area, that fickle politics or legislation will not eventually deprive them of the long-term benefits of their management efforts [19,20].

Case studies in the Philippines have shown that when user rights are specified and secure, there is a change in the behavior and attitude of the resource user towards conservation, and a much greater chance that sustainability will be achieved and maintained [21,22].

## 3. Marine tenure and national laws and policies

The marine tenure and fisheries management narrative has undergone several transitions in the Philippines, as outlined by the following broad themes [23]:

- 1970s-early 1980s: Command and control
- 1980s: Community-based management
- 1980s–1990s: Coastal resource management
- 1990s: Co-management
- 2000s: Integrated fisheries management
- 1990s–2000s: Marine protected area management
- 2010s: Ecosystem approach to fisheries management (EAFM)

Starting in the 1960s, alternative methods of resource use and management were explored in an attempt to reverse the negative trends of resource degradation in the Philippines. Consequently, there has been a shift to forward-looking policies and strategies that advocate ‘resource management’ over a ‘use orientation’ through community-based initiatives to rehabilitate, conserve and protect the resources based on use and enhancement of local knowledge, skills, responsibility and accountability [24]. The irrigation sector was the first to evolve an institutional development scheme for mobilizing the active participation of water users in 1968. People-oriented programs in the forestry sector started in the early 1970s [25]. Community-based coastal resource management (CBCRM) started in the mid-1980s. To date, well over 1000 CBCRM projects have been implemented by government, NGOs, fishing communities, and academic and research institutions. No country in the world has the range of experience with CBCRM and co-

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