

The Right Form of Rights

Deliberations at the 4SSF Conference at Bangkok seemed to offer hope for a shift away from the customary simplistic thinking on rights-based management in fisheries

The Global Conference on Small-scale Fisheries (officially titled “Securing Sustainable Small-scale Fisheries: Bringing Together Responsible Fisheries and Social Development”, and abbreviated as 4SSF), co-organized by the Food and Agriculture Organization of the United Nations (FAO) and the Department of Fisheries, Thailand, from 13 to 17 October 2008, at Bangkok, will surely go down in history as signalling an end to the simplistic approach to rights in fisheries.

For long, the simplistic view held that fishery managers could solve problems merely by handing out the right to fish to whomsoever they pleased. This perspective did not really differentiate those who are allocated fishing rights, be they fishers,

social, economic and human rights. Figuring out the right form of rights requires an understanding of all this, something that the simplistic view ignores.

The simplistic view is popular with those promoting property rights in fisheries. It has dominated the ‘rights-based management’ paradigm, the subject of many treatises and conferences. The result has been the excessive promotion of one form of rights—individual transferable quotas (ITQs)—which is remarkably unsuitable and damaging to small-scale fisheries.

Unfortunately, FAO, the principal organizer of the 4SSF Conference, has been party to these simplistic confluences on rights-based management, the worst example perhaps being the various ‘FishRights’ conferences it has facilitated. However, it is not only FAO that has been at fault. Academics—including myself—have been writing fairly thoughtlessly about ‘rights-based management’, though admittedly taking a reasonably broader approach that avoids the worst of the simplistic thinking. But that’s still not enough. Frankly, too many of us have been caught up in an overly narrow approach to rights in fisheries.

So when we talk about access rights and management rights, let us do it within the context of social, economic and human rights—of individuals and communities.

corporations or communities: All will be well as long as rights are just handed out—so goes the simplistic view.

Despite the element of credibility in that view—that if fishers have secure access to their fisheries, they will find it worthwhile to take care of the resources and hence management is more likely to succeed—it misses some key ingredients. Among these are: the different forms of rights (to access the fishery, to take part in management); the various holders of rights (fishers, communities); the frequent occurrence of pre-existing rights in many locations; and the need to link fishing rights with

Basic premise

So how do we move to a bigger, better, non-simplistic vision of rights? First, let’s consider the term ‘rights-based management’. True, this expression has been misused, but let us look at those two words to examine what they really mean. Surely, the basic premise behind them is that fisheries management needs to take place in the context of rights—all the various forms of rights.

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What then are the rights to be considered? Given their mandate, fisheries agencies may be inclined to focus only on so-called 'use rights' over access to the fishery. That is where the attention has been focused, and it is worthy of some attention. But we need a broader vision of rights; so we will have to add social, economic and human rights to the picture—rights that are fundamental and cannot be given out or taken away by governments. To this we ought to add a focus on collective, or community rights, which may work particularly well in some small-scale fisheries, but which have received too little attention. Management rights need attention too—the right to be involved in managing a fishery (as in co-management). Finally, let's not forget that along with rights come responsibilities. Why not talk then about 'responsibilities-based fisheries management'?

The broader view of rights in fisheries is then a multi-faceted mix that, in its entirety, can be good for small-scale fisheries, good for communities, and good for the sustainability of coastal ecosystems. Moving out of the simplistic mode of thinking into a broader view of rights can, and will, have a big impact—just as how challenging the equally simplistic 'tragedy of the commons' thinking has moved us ahead over the past couple of decades.

So when we talk about access rights and management rights, let us do it within the context of social, economic and human rights—of individuals and communities. Let us recognize that rights may already be in place; there are certainly many documented cases of this in small-scale fisheries. And let us move towards the 'bigger picture' that comes with the realization that the fisheries 'silo' really must connect to broader policy and legal frameworks, and to the well-being of coastal communities, in order to address, in a holistic way, the many issues facing small-scale fisheries. For example, ensuring access rights to subsistence fishing in coastal communities may serve food-security goals, and incorporating post-harvest aspects in rights discussions may help

reinforce the rights of women involved in marketing fish.

To get started, let us push for a re-defining of 'rights-based management' in fisheries. Every time we hear someone promoting fishing rights, or rights-based management, let us ask them whether they are speaking of the full range of rights that has to be considered, or whether they are still talking simplistically...

And now to look back on the 4SSF Conference. I had the opportunity to put forward the above thoughts early in the conference. Admittedly, my 'prediction' was as much a hope as anything, but that hope arose from two key realities. First, the conference itself was structured in a manner that lent it the potential to make progress. Of the three main themes of the conference itself, two focused on rights: (i) access rights and (ii) the links of fishing rights with human rights. This set the scene for progress in broadening the vision of rights in fisheries.

Civil Society Workshop

Second, a majorly successful event took place before the conference began—the Civil Society Preparatory Workshop organized by fisherfolk organizations, non-governmental organizations (NGOs) and other civil society organizations. Over a hundred people

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Panel session at the 4SSF Conference in Bangkok. The Conference was structured in a manner that lent it the potential to make progress

from around the world succeeded in developing a statement on the policies and directions needed to improve the well-being of small-scale fisheries worldwide. The consensus document that they ironed out galvanized the main conference, and will undoubtedly be used in later discussions on many fronts. A key element of the Statement was the need to factor in social, economic and human rights into our thinking on fishery rights.

Progress at the 4SSF Conference was not all smooth. The first day focused largely on access rights, and, to some extent, management rights, but not on building the linkages to human rights and community rights. The second day turned to post-harvest and trade aspects. While these are certainly relevant to small-scale fisheries, the emphasis on them did not really

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advance the agenda of developing a broader vision of rights. The third day of the conference, however, managed to bring everything together, as it were, and one could sense the palpable energy in the air as a strong set of plenary speakers and excellent discussions synthesized the ideas on rights into a package that could potentially move things forward.

On the final, fourth day of the conference, a panel of diverse participants spoke positively of the progress made thus far. By then, fisher organizations were already beginning to move to the next step of consolidating and presenting their positions to the forthcoming meeting of the FAO Committee on Fisheries (COFI) early in 2009. (The ups and downs over the course of the week-long conference were well documented in an impressive newsletter, *Daily Rights*, produced by the civil society group, and available at <http://sites.google.com/site/smallscalefisheries/>).

Will all that happened at Bangkok lead to a transformation in thinking on

fishery rights? Will there be success in moving beyond the simplistic thinking that has become commonplace in too many quarters? Such a paradigm shift will be a challenge, no doubt, but I feel more confident about my prediction about the end of simplistic thinking in rights-based fisheries management, having seen momentum in the right direction. In particular, the 4SSF Conference has, hopefully, once and for all, institutionalized a recognition of the need to:

- connect fishery rights to social, economic and human rights;
- take into account traditional or pre-existing rights;
- pay attention to community-level rights and local stewardship opportunities;
- broaden perspectives to include post-harvest aspects; and
- look beyond the fishery 'silo' in addressing rights.

Now the momentum needs to be maintained—through research and documentation of the conceptual advances in connecting the various forms of rights, through ongoing interactions between fisher organizations and FAO (notably to prepare for the 2009 COFI meeting), through the linking of rights to broader frameworks such as the ecosystem approach to fisheries, and through an evolution, particularly at the national level, of comprehensive multi-sectoral approaches to rights. The coming months will surely be critical in making progress. 

For more

www.fao.org/DOCREP/003/X7579E/X7579E00.HTM

Use of Property Rights in Fisheries Management - FAO

www.icsf.net/icsf2006/uploads/publications/dossier/pdf/english/issue_82/ALL.pdf

Sizing Up: SAMUDRA Dossier

sites.google.com/site/smallscalefisheries/newsletter

Daily Rights Newsletter