

Regulating Access to Fisheries

Making the Law Work: Decentralization & Rights-based Fisheries in the Philippines

by Theo Ebbers

Photo: courtesy of TD/ Audio-Visual Section

Introduction

The decentralization of fisheries management, together with increased community involvement, has in recent years been a mantra for fisheries managers and scientists. Pointing to declining and collapsing fish-stocks, they claim that conventional fisheries management approaches have failed. The new paradigm of fisheries management asserts that only the delegation of some management functions and responsibilities to fishing communities and other resource users can reverse the trend of ever-decreasing fish catches. Such community-oriented approaches focus on the establishment of locally-based fisheries management, widely considered to be the most appropriate system for the tropical small-scale fisheries typical of Southeast Asian countries (see Fikret Berkes et. al., 2001, for an example and excellent summary of community-oriented approaches to coastal and small-scale fisheries management).

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Most ASEAN countries now claim to have adopted such an approach to fisheries management. The Philippines is the most frequently cited example, and is the country with the most advanced and innovative institutional and legal framework for locally-based fisheries management. The Philippine Fisheries Code of 1998 is often seen as a model upon which the legal framework for small-scale coastal fisheries management in other countries of the region could be shaped. Only recently have some critical voices started to question the Philippines’ experiments in the decentralization of and community participation in fisheries and coastal resources management (see for example, Pollnac et al, n.d.).

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coastal resource and fisheries management projects in the Philippines have proliferated.”

This article takes a look at participatory coastal resources management approaches in the Philippines, and looks to summarize the lessons to be learned from these experiences. The article is based both on a review of relevant literature and on personal knowledge from working with coastal communities in the Philippines.

A Coastline under siege

Over the past couple of decades, participatory coastal resource and fisheries management projects in the Philippines have proliferated. Promoted by various institutions and interest groups, there is almost no coastal community left that has yet to encounter these coastal resources management activities. To paraphrase Alan White and colleagues, the Philippine coastline is “under siege” from a variety of coastal management activities, addressing “declining fisheries, mangrove forest and coral reef destruction, and poverty among coastal communities.” (White et al., n.d.).

One would expect that this surfeit of coastal management initiatives would have resulted in some observable improvements to the coastal environment in terms of fish stocks and populations, critical coastal habitats like coral reefs and mangrove forests, or poverty alleviation among coastal communities. But two recent publications on the state of fisheries and coastal resources in the Philippines (Alvarez, 2002; Green et al., 2003) paint a gloomy picture, and with catch per unit effort (CPUE) levels declining at alarming rates, “all of the Philippines’ main fish species and marine organisms... [show] severe signs of overfishing,” coral reefs and mangrove areas still experiencing further reduction.

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So have these many coastal resources and fisheries management efforts been in vain? If the overriding objectives and goals of all these coastal initiatives and efforts is the establishment of sustainable coastal fisheries and resources management systems, where have they gone wrong? Why – despite all the local and

community-based participatory management efforts – do the negative trends of declining fish catches and environmental degradation persist? Why are the few projects and initiatives that are considered successful not been replicated elsewhere?

The quest for sustainable coastal resources management systems

A closer look at the Philippines’ approach to the decentralization of coastal fisheries and management, together with its underlying policies and legal framework, will provide some tentative answers to these questions and suggest ways to increase the success and sustainability of local-level coastal zone management efforts.

Various recently published case studies attempt to identify the factors that contribute to the success of local-level participatory or community-based coastal fisheries and resources management efforts. Although the evaluation of the success of each project and management initiative needs to be conducted within its own objective framework, such as protection and rehabilitation of critical coastal ecosystems and resources, it is safe to say that the overriding objectives of most projects lies in the quest for sustainable coastal resources management systems.

The Philippines’ legal framework for coastal resources and fisheries management

The legal framework for coastal resources and fisheries management in the Philippines is comprised of several laws. The two most important of these, quoted in most of the significant literature on fisheries management in the Philippines, are the Local Government Code of 1991 and the Fisheries Code of 1998. Other important laws and regulations impacting on coastal fisheries and resources management are the NIPAS Act, the AFMA, and various other laws and administrative orders.

The Local Government Code of 1991 delegates authority to manage coastal resources to local government units (LGUs) or municipalities, which under this law are responsible for protecting the natural environment and its sustainable use. Section 149 of the Code empowers the municipalities to regulate fishing operations in coastal

or “municipal” waters. Thus, municipalities have “the exclusive authority to grant fishing privileges in the municipal waters ...” (sect. 149a), with the municipal council having the right to issue permits for aquaculture operation and municipal fishing boats (i.e. boats which are smaller than 3 GT) in municipal waters (sect. 149b).

“With these provisions, all functions and responsibilities for small-scale coastal or municipal fisheries have already been delegated to the local administrative level.”

On a wider issue, section 447 of the Code makes it mandatory for the municipal council, to “Protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming, and such other activities which result in pollution, acceleration

of eutrophication of rivers and lakes, or of ecological imbalance...”(sect 447, 1vi).

With these provisions, all functions and responsibilities for small-scale coastal or municipal fisheries have already been delegated to the local administrative level. The Philippine Fisheries Code of 1998 actually further specifies the responsibilities and management functions of the LGUs with regards to the usage of coastal waters and resources. Of special interests are the provisions regarding municipal fisheries and the establishment of Fisheries and Aquatic Resource Management Councils (FARMC) in each coastal municipality.

Of fisherfolk councils

The Fisheries Code is very clear about the roles, functions and responsibilities of the local government with regards to the management and utilization of coastal aquatic resources. These provisions of the Local Government Code and the Fisheries Code entail a total decentralization of small-scale, non-commercial fisheries management functions to the local, i.e. municipal, level. Under this law, the municipality/city has the sole jurisdiction and

The Fisheries Code’s provisions regarding Municipal Fisheries

Section 16: The **municipal/city government shall have jurisdiction over municipal waters** as defined in this Code. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy...

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council...

Section 17: **Grant of Fishing Privileges in Municipal Waters.** Duly registered fisherfolk organizations/ cooperatives shall have preference in the grant of fishery rights by the Municipal/City Council,...

Section 18: **Users of Municipal Waters.** All fishery related activities in municipal waters, as defined in this code, shall be utilized by municipal fisherfolk and their cooperatives/organizations who are listed as such in the registry of municipal fisherfolk.

Section 19: **Registry of Municipal Fisherfolk.** The LGU shall maintain a registry of municipal fisherfolk, who are fishing or may desire to fish in municipal waters for the purpose of determining priorities among them, of limiting entry into the municipal waters, and for monitoring fishing activities and/or other related purposes...

The LGU, in consultation with the FARMCs, shall formulate the necessary mechanisms for inclusion or exclusion procedures that should be most beneficial to the resident municipal fisherfolk.

Section 20: Fisherfolk organizations/cooperatives whose members are listed in the registry of municipal fisherfolk, may be granted use of demarcated fishery areas to engage in fish capture, mariculture and/or fish farming...

Section 21: Resident municipal fisherfolk of the municipality concerned and their organizations/cooperatives shall have priority to exploit municipal and demarcated fishery areas of the said municipality.



authority to manage and regulate the usage of coastal waters and resources.

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With the introduction of FARMCs, the Fisheries Code adds an element of community participation to the already localized coastal fisheries and resources management. These councils, which comprise fisherfolk and other community representatives as well as local government representatives, make suggestions on coastal

fisheries management issues and approaches to the local government. It is mandatory for the local government to consult with these councils before enacting local legislation regarding the use and management of coastal resources. Under this provision, the fisheries code ensures that fisherfolk are heard in establishing local legal frameworks for fisheries management.

The provisions of the Fisheries Code of 1998 ensure that fisherfolk representatives constitute the majority of each FARMC, increasing the chances that their concerns will be addressed as priority issues. The Fisheries Code thus not only establishes a strong co-management

The Code’s provisions on FARMCs

Section 68. Fisherfolk and their organizations residing within the geographical jurisdiction of the *barangays* (village, the administrative level below municipality), municipalities or cities with the concerned LGU shall develop the fishery aquatic resources in municipal waters and bays.

Section 69. FARMCs shall be established at the national level and in all municipalities/cities abutting municipal waters, as defined by this code. FARMCs shall be formed by fisherfolk organizations/cooperatives and NGOs in the locality, and they shall be assisted by the LGU and other government entities. Before organizing FARMCs, the LGUs, NGOs, fisherfolk and other concerned persons shall undergo consultation and orientation on the formation of FARMCs.

Section 74. The Municipal/City FARMCs shall exercise the following functions:

- a) assist in the preparation of the Municipal Fisheries Development Plan and submit such plan to the Municipal Development Council
- b) recommend the enactment of municipal fishery ordinances to the *sangguniang bayan/sangguniang panlungsod* (Municipal/City Council, the elected governing body of the LGU) through its committee on fisheries;
- c) assist in the enforcement of fishery laws, rules and regulations in municipal waters;
- d) advise the *sangguniang bayan/panlungsod* on fishery matters through its committee on fisheries, if such has been organized; and
- e) perform other such functions which may be assigned by the *sangguniang bayan/panlungsod*.

Section 75. The regular member of the Municipal/City FARMCs shall be composed of:

- a) Municipal/City Planning Development Officer
- b) Chairperson, Agriculture/Fishery Committee of the *Sangguniang Bayan/Sanggunian Panlungsod*
- c) Representative of the Municipal/City Development Councils
- d) Representative of accredited NGOs
- e) Representative of the private sector
- f) Representative of the Department of Agriculture; and
- g) At least eleven fisherfolk representatives (seven municipal fisherfolk, one fishworker and three commercial fishers) in each municipality/city.

framework for local level fisheries management, in which government institutions and the fishing community are tied together to manage their coastal fisheries resources, but at the same time provides a basis for a user-rights based fisheries management system. The code is very clear in that each municipality is supposed to maintain a registry of municipal fisherfolk, with only those registered being allowed to fish, and these registries being compiled in close cooperation and coordination with the representatives of each fishing community, i.e. the FARMC. This is a clear departure from the prevailing open-access system to fisheries.

“The Fisheries Code thus not only establishes a strong co-management framework for local level fisheries management (...) but at the same time provides a basis for a user-rights based fisheries management system”

So does it work?

The legal framework for fisheries management in the Philippines seems to meet most, if not all, of the major requirements for modern, innovative, small-scale coastal fisheries management. The management authority has been delegated to the local level. Mechanisms to ensure community participation are formalized. The numerous coastal resources management initiatives that have proliferated along the Philippine coastlines over the past decades now have a supportive legal framework that should enhance the probability of their success. According to a report by the Bureau of Fisheries and Aquatic Resources (BFAR), “To date, fisherfolk in 94 percent of the coastal municipalities nationwide had been organized either as a municipal or city fisheries and aquatic resource management councils,



or M/C FARMCs. Numbering 953, these councils are pursuing activities on capability building; formulation of municipal fishery ordinances; implementation of livelihood development projects; law enforcement and networking with government agencies, NGOs and other stakeholders. It is also worth noting that more and more LGUs are supporting the role of these councils in local governance.” Recent fisheries statistics published by BFAR show a small but steady increase in fish production since 2000, not only from aquaculture, but also from marine capture fisheries.

Though it is not clear whether these increases

reflect actual trends in marine capture fisheries in the Philippines or are just caused by changes in the reporting system and statistical methods, the reported boost in municipal capture fisheries may have been caused partly by the implementation of the Fisheries Code. After commercial fishing activities have been banned from municipal waters, municipal fishermen now catch what was formerly caught by commercial fishermen in these waters. Moreover, according to sources from BFAR, the catch increases in commercial fishing operations can be attributed to various bilateral agreements between the Philippines and other countries, which

allow Philippine fishing vessels to fish in those countries’ territorial waters.

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Meanwhile, open access continues

However, the reported increase in municipal capture fisheries might also be attributed to increased fishing activities in municipal waters by the growing numbers of people engaged in these fisheries. The lack of stringent measures to implement provisions of the Fisheries Code aimed at strengthening the management of fishing capacity in municipal waters strongly suggests that municipal fisheries in the Philippines is still characterized by an open access regime.

The Fisheries Code contains several provisions that aim to restrict access to municipal fisheries and to replace prevailing open access fisheries with some form of user rights and capacity management for municipal waters. The most outstanding of these are:

1. The requirement for each municipality to maintain a registry of municipal fisherfolk.
2. The restriction of fishing activities within municipal waters to boats smaller than 3 GT.
3. The option to grant demarcated areas to fisherfolk groups for fishing activities or aquaculture purposes.

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The establishment of registries of municipal fisherfolk is intended to limit the number of people engaged in municipal fisheries, by allowing only those who are registered to fish. This could be an important first step towards freezing the number of fishers active in municipal waters at current levels, and possibly to even reduce that number. The data available

from BFAR could be interpreted as proof that these provisions of the Code are actually working. According to the Philippine Fisheries Profiles, the number of municipal fishermen has remained exactly the same since 1989, with a total of 675,677 people engaged in municipal fisheries.

However, with the Fisheries Code only in effect since 1998, these published data rather suggest that such a registry of people engaged in fishing does not actually exist, and the data simply has not been updated since 1989.

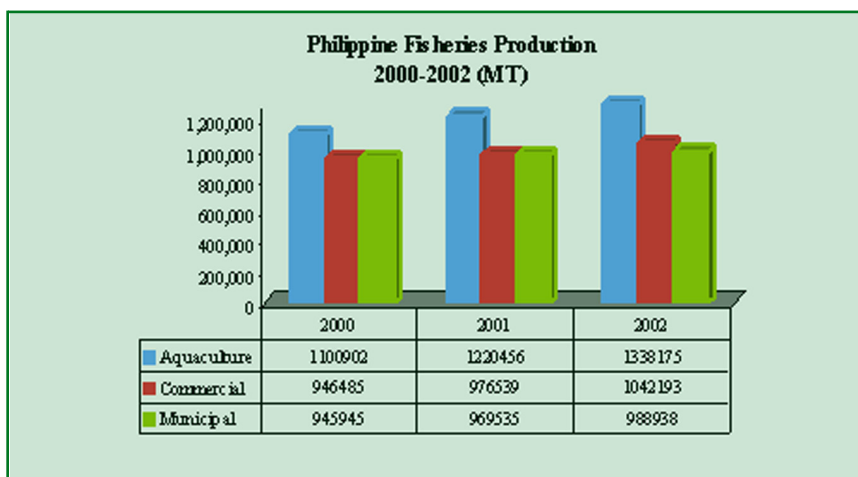
Recognizing the full authority of the municipality over its water areas, the Code requires the municipality to consult with FARMCs when formulating necessary mechanisms for inclusion or exclusion procedures **most beneficial to the resident municipal fisherfolk**. With this provision, the fishing community actually has the means, through the FARMCs, to determine who is included in the registry and allowed to fish, and who is not allowed. The fisherfolk usually realize that it might be “most beneficial to the resident municipal fisherfolk” not to further increase the number of people engaged in fishing activities in municipal waters. Yet, the expression “most beneficial to the resident municipal fisherfolk” is usually interpreted in such a way that any form of exclusion is seen as detrimental to municipal fisherfolk’s interests, and eventually the local government unit will have

to decide on what is most beneficial to municipal fisherfolk: inclusion in the registry, rather than exclusion.

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Even the exclusion of boats larger than three GTs from municipal waters does not represent an effective



mechanism to reduce and manage fishing capacity in municipal waters, since the municipality will find it difficult, if not impossible, to exclude anybody from fishing.

The lack of alternative opportunities and incentives to discourage someone from registering as a municipal fisher has contributed at least to some extent to the continuation of open access. It has also rendered futile

Number of people engaged in municipal fishing activities in the Philippines		
	1989	1990 to 2001
municipal	675,677	675,677
commercial	56,715	56,715
aquaculture	250,000	258,480
Total	982,392	990,872

Source: BFAR Fisheries Profiles

any attempts at controlling fishing effort, through the establishment of community fishing rights in the form of TURFs. While registered municipal fishers may have an effective means of exclusion, and are thus able to limit the number of people allowed to fish in designated fishing areas, they cannot prevent non-group members from engaging in fishing activities outside these designated areas. Moreover, non-group members who are still part of the local fishing community may resist the establishment of such designated areas, as they could lose access to parts of their traditional fishing grounds.

Community participation through FARMCs – a double-edged sword

While the fishing community in a municipality may agree to freezing the current number of fisherfolk, it seems rather unlikely that they would agree to any further reduction in their right to fish, since this might lead to a reduction in income generated by fishing.

This assumption is partially supported by Pollnac’s analysis of factors influencing the sustainability of integrated coastal management projects in the Philippines, in which he concludes, that “there is a negative relationship” between community involvement and the success of coastal management projects. His

study suggests that “while ICM (Integrated Coastal Management) decisions made by project staff are positively associated with an ICM project sustainability indicator (post-project improvement in resources), decision making by a project-related, village association has a negative impact.” Often, the community may consider the future productivity of coastal fisheries resources to be less important than the current income and employment opportunities provided by the resources. In this case, it might be useful that the FARMCs’ role is defined by the Fisheries Code as simply that of a consultative body. The Municipal Council, as the local legislative body, is required to consult with the FARMCs in all matters pertaining to coastal (municipal) fisheries management, but nowhere is it mandated that the council has to follow the recommendations of the FARMC.

On the other hand, restricting the FARMC to the role of an advisory body to the local government may often lead to a situation in which coastal fisheries management initiatives taken up by the community are not translated into local legal regulations because the Municipal Council does not agree with these initiatives.

“Often, the community may consider the future productivity of coastal fisheries resources to be less important than the current income and employment opportunities provided by the resources.”

To make the Fisheries Code working, taking into consideration the strengths and weakness of community participation into fisheries management, it is necessary that FARMCs and their respective municipal government actually come and work together in formulating local rules and regulations on how to use coastal resources. To make this happen, several conditions must be met:

- 1. The political will on both the FARMC/ community side and the municipal government side.** Often, local political differences manifest themselves in the relationship between the FARMC and the municipal government. Although the Fisheries Code states explicitly that FARMCs should be non-political, usually they are formed along political alliances either with the current local government or with the opposition. Thus, the dependence on the local government to formulate and enact local ordinances regulating the use of local coastal resources usually leads to a situation in which local political considerations gain priority over environmental

and resource sustainability concerns. Issues like the registry of municipal fisherfolk, the partial opening of municipal waters to commercial fishing, the protection and conservation of critical coastal habitats such as mangrove forests and coral reefs, the enforcement of rules and regulations regarding destructive and illegal fishing methods and so on, are all turned into local political issues, to be resolved (or not resolved) on the basis of the political benefits the local government expects to gain from its decisions.

“the dependence on the local government to formulate and enact local ordinances regulating the use of local coastal resources usually leads to a situation in which local political considerations gain priority over environmental and resource sustainability concerns.”

2. Assuming the political will is there, financial capacity is needed to meet the challenges of coastal fisheries and resources management. Recent studies by Pollnac, White, Christie and others suggest that many local community-based coastal resources management projects in the Philippines fail in terms of sustainability because a regular source of funding is lacking. These projects are often supported and funded by outside agencies, and are usually stopped when the outside funding dries up.

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If the municipal government has the political will, it would be willing to allocate an annual budget not only for the functioning of the FARMC but also for the implementation of the commonly developed

changes in resource and fisheries management practices. Through the annual allocation of dedicated budget, coastal fisheries and resources management could be institutionalized and become sustainable aspects of the local government administration.

3. Often, coastal municipalities do not have any qualified fisheries personnel. With coastal fisheries and resources management and the necessary budget allocation becoming a political issue, the municipality can employ fisheries development officers in their respective agricultural offices and charge them with advising the municipal government and the FARMC on the best course for sustainable fisheries management.

Conclusion

The politicisation of coastal fisheries management issues represents the biggest threat to the translation of the spirit of the Fisheries Code into sustainable fisheries management practices. But it also offers coastal fisheries managers and coastal communities the opportunity to advance toward sustainable fisheries management systems at the local level. To make

good use of this opportunity, intensive lobbying of local decision makers and government representatives is required. If they succeed in making coastal fisheries and resources management a priority political issue and demonstrate to local legislators and decision makers the potential economic, social and therefore political benefits of specific coastal fisheries and resources management measures, the local political establishment is more likely to take the provisions of the Fisheries Code seriously and actually make this law work.

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That this approach can function has been demonstrated in various coastal resources management projects around the Philippines, in which local governments are strongly involved in changing local resource use patterns and fisheries management practices in close cooperation with the community, because there are positive incentives in the form of publicity and political gains from these activities.



Further Reading

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About the author

Theo Ebbers (Ph.D) is currently working with SEAFDEC Training Department (TD) as training advisor on coastal management and extension methodologies, and with SEAFDEC Secretariat as expert on innovative approaches for the management of small-scale fisheries. His field of expertise is with Integrated Coastal Area Management and Development, and Participatory Planning Approaches.