**001 PHI report: Review of policies of SSF**

**TAMBUYOG DEVELOPMENT CENTER**

**A Survey of Laws, Policies and Programs on Small-scale Fisheries in the Philippines**

**Introduction**

Small-scale fisheries (SSF) is a diverse and continuously evolving sector.[[1]](#footnote-1) A universal definition of SSF has yet to be developed. Even the FAO’s Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines) do not prescribe a standard definition of SSF. But it underscores the need to determine which activities or operations are considered small-scale to ensure transparency and accountability in the application of the Guidelines at the country level.[[2]](#footnote-2)

 In various country context, SSF is associated with a range of activities from capture fishing, processing, vending and mending nets among others. These activities provide significant contribution to food security, sustainable livelihoods and poverty alleviation of many countries, especially developing countries.[[3]](#footnote-3) It is described as a sector anchored in local communities and having historic links to adjacent fishery resources, traditions and values.[[4]](#footnote-4)

 In the Philippine context, SSF mirrors the nature, dynamics and spatial condition of municipal fisheries both capture and aquaculture. Municipal fishing involves the use of fishing vessel weighing 3 gross tons or less. Such activity is allowed within the municipal waters which covers the 15 km radius projected from the coastal area, including inland waters such as lake, rivers and streams. The coastal zone is considered the most productive, resource-rich and environmentally important ecosystem. The archipelagic nature of the Philippines makes municipal fishing a significant activity for people living in the coastal areas. It is also a major contributor to the national fisheries production.

 The sectors considered engaged in SSF in the Philippines are the fisherfolk in municipal and inland capture fishing, fishworkers in both aquaculture production and crew in commercial fishing and fish processing and the women sector who provide significant contribution to the family livelihood.[[5]](#footnote-5) They are also the social groups mostly affected by poverty, affected by the absence or lack of social protection and prone to environmental and climate change in view of the dependence of their livelihood on the access to or use of the marine and aquatic resources.

 This study focused primarily on the laws, policies and programs of the government which directly affect SSF in the Philippines, including those which have implications on SSF by reason of their broad coverage or application.

**I. Overview of the Fisheries Sector**

**A. Population**

As per the latest report available from the Department of Agriculture’s Bureau of Fisheries and Aquatic Resources, there are a total of 1,614,368 fishing operators employed. According to the Fisheries Code, a “fishing operator” is “*one who owns and provides the means including land, labor, capital, fishing gears and vessels, but does not personally engage in fishery.*”[[6]](#footnote-6) Out of that number, 226,195 are aquaculture operators, 1,371,676 are municipal operators, and 16,497 are commercial operators.[[7]](#footnote-7) Based on these premises the data suggests that there are at least 1,614,368 persons engaged in fisheries as their profession.[[8]](#footnote-8) It can be observed, however, that most of these operators are engaged in municipal fishing, with it ranking the highest among the three sectors in terms of number of operators registered.

**B. Share in GDP**

In 2017, the fishing industry has contributed to the total Gross Domestic Product 1.2% in its value at current prices during that year, and at 1.4% value at constant prices. In the agriculture, hunting, forestry and fishery industry group, it has contributed PHP 197,228,000,000 at 2017 price rate, and PHP 739,029,000,000 at constant 2000s price rate. Among the agricultural crops, livestock, poultry, agricultural activities, forestry, and fishing groups, fishing has generated the third highest income, following agricultural crops at first and livestock at second at 2017 price rate. At constant 2000s prices, however, fisheries is able to generate the second highest income, following agricultural crops at first, and followed by livestock at third.

The Philippines has produced a total of 1,126,017.30 metric tons of fish in 2017, from municipal fishing alone.[[9]](#footnote-9) Each region in the Philippines has produced as much metric tons of fish as the following:[[10]](#footnote-10)

|  |  |  |  |
| --- | --- | --- | --- |
| Region | Total | Region | Total |
| NCR | 9,051.50 | V | 125,132.98 |
| CAR | 1,151.12 | VI | 123,888.91 |
| CARAGA | 52,764.60 | VII | 59,307.99 |
| ARMM | 112,197.07 | VIII | 79,107.01 |
| I | 25,137.68 | IX | 120,803.91 |
| II | 29,597.31 | X | 44,975.43 |
| III | 44,117.17 | XI | 27,834.75 |
| IV-A | 111,260.72 | XII | 34,423.49 |
| IV-B | 125,265.66 | XVIII | - |

**C. Poverty situation**

Although the Philippines has rich marine resource, fisherfolk remain to be among the members of society who suffer from poverty. They have been consistently registered as among the sectors with the highest poverty rate throughout the years.[[11]](#footnote-11) In 2009, fishermen had a poverty incidence of 41.4%.[[12]](#footnote-12) Based on a 2014 report on the poorest basic sectors by the Philippine Statistics Authority, fishermen are among the members of the society who have the highest poverty incidence.[[13]](#footnote-13) In 2016, poverty incidence in coastal towns reached 43.2%, and it is estimated that each fisherman earns only an average of PHP178 per day, despite fisheries having a gross value added worth of PHP 1.4 Billion.[[14]](#footnote-14)

It is recognized that one of the factors contributing to the poverty among fisherfolk is the issue on unsustainable management. Many other instances make up of this issue such as depleted fishery resources, degraded fishery habitats, intensified resource use competition and conflict, unmet potential of aquaculture and commercial fishing grounds, uncompetitive fishery products, and constant post-harvest losses.[[15]](#footnote-15)

**D. Access to social services**

Recognizing the need to support the local fisherfolk, the Philippine government makes effort to alleviate the situation for citizens who rely on fishing to survive. For example, in 2013, as a result of the Yolanda typhoon, the National Anti-Poverty Commission provided fisherfolks who survived the disaster with housing and livelihood opportunities near the sea.[[16]](#footnote-16) In 2014, health care, personal, and crop insurance benefits were granted to municipal fisherfolk as an incentive to their proper registration with the National Program for Municipal Fisherfolk Registration (FishR).[[17]](#footnote-17) In 2018, the Department of Agriculture came up with the Production Loan Easy Access (PLEA), a loan program for small farmers and fishermen. It aims to provide small farmers and fisherfolk a convenient means to avail of credit.[[18]](#footnote-18)

**E. Habitat and Resources Management**

Municipal fishing is done within the municipal waters. ”Municipal waters” in the Fisheries Code, “*include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2. lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15. kilometers from such coastline. Where two (2. municipalities are so situated on opposite shores that there is less than thirty (30. kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.”[[19]](#footnote-19)*

 The coastal waters are the locus of the fishing activities of municipal fisherfolk. This is where the highly diverse and productive habitats are found such as coral reefs, mangrove forests and see grass beds.[[20]](#footnote-20) Various management intervention have been employed by the government to address the depletion and destruction of these resources such as the coastal resources management or community-based resource management. The primary objective is to protect and conserve the fishery and coastal resources through an integrated approach and community participation to the regulation of access and use of such resources.[[21]](#footnote-21)

**II. Legal Framework**

**A. 1987 Constitution**

The Constitution recognizes the important role of fisheries in the Philippine society. There are provisions therefore, that aim to protect this sector. For instance, it is provided that:

*All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.* ***In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.***

***The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.***

***The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons.***

*XXX[[22]](#footnote-22) (Emphasis supplied)*

Based on the above provision, the law treats fisheries and marine wealth as a natural resource that should be protected and its use, regulated. Although it appears that the exploitation of marine resources is very limited, the Constitution itself provides that access is to be given to subsistence fishermen in the name of social justice, acknowledging the appropriateness of this grant to the more deserving citizens of the Philippines. Thus:

*The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.[[23]](#footnote-23)*

**B. National Laws**

**1. Fisheries Code of the Philippines or RA 8550 as amended by RA 10654**

 As a policy in the Philippines, the State not only gives Filipino citizens preference, but exclusive use and enjoyment of fishery and aquatic resources.[[24]](#footnote-24) The state recognizes the food needs of its citizens, and aims for food security using as avenue the utilization, management, development, conservation and protection of fishery resources.[[25]](#footnote-25) To enforce this policy, a law was made in 1998: Republic Act 8550, also known as the “Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and For Other Purposes,” or “The Philippine Fisheries Code of 1998” in short. In 2014, this law was amended by Republic Act 10654, to further strengthen the law and make it faithful to the state policy.

 The provisions of Fisheries Code of 1998, as amended by RA 10654, covers all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile Exclusive Economic Zone (EEZ) and continental shelf; all aquatic and fishery resources whether inland, coastal or offshore fishing areas, including but not limited to fishponds, fish pens/cages; and all lands devoted to aquaculture, or businesses and activities relating to fishery, whether private or public lands[[26]](#footnote-26). This in effect defines the scope of management responsibility of the government through the Department of Agriculture.

 With its vast coverage in spatial and jurisdictional terms, the Fisheries Code intends to address resource-use conflict which is one of the major management issues in capture fisheries. It defined the rights of both the municipal and commercial fisherfolk and established the limitation of such rights as far as capture fisheries is concerned.

 The Fisheries Code as amended highlighted the need to *adopt the precautionary principle and manage fishery and aquatic resources, in a manner consistent with the concept of an ecosystem-based approach to fisheries management and integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State.[[27]](#footnote-27)*

 But the clear intent of RA 8550, as amended, is to favor the municipal fisherfolk- those persons who are directly or indirectly engaged in municipal fishing and other related fishing activities. Part of the policy declarations of said law is to protect the rights of fisherfolk and they are given priority in the preferential use of the municipal waters subject to certain limitations; to provide them support including women and youth sectors, through appropriate technology and research, adequate financial, production, construction of post-harvest facilities, marketing assistance, and other services. The protection of municipal fisherfolk against foreign intrusion shall extend to offshore fishing grounds.[[28]](#footnote-28)

 Municipal fishing under the said law refers to fishing within municipal waters using fishing vessels of three (3) gross tons or less or fishing not requiring the use of fishing vessels.[[29]](#footnote-29) And only municipal fisherfolk are allowed to undertake such activity within the municipal waters.

 However, in many literature the municipal fisherfolk is interchangeably used with the term small-scale, marginal, traditional or artisanal fisherfolk (Barut, et al: 2003). They comprise the majority of the population coastal communities and the largest source of employment municipal fisheries compared to the two (2) other sub-sector in fisheries, the commercial fisheries and aquaculture.

The Fisheries Code of the Philippines defines “fisherfolk” as “*people directly or personally and physically engaged in taking and/or culturing and processing fishery and/or aquatic resources*.”[[30]](#footnote-30) “Fisherfolk Cooperative” is understood as “*a duly registered association of fisherfolk with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contribution to the capital requirement and accepting a fair share of the risks and benefits of the undertakings in accordance with universally accepted cooperative principles*.”[[31]](#footnote-31) Lastly, “fisherfolk organization” is an “*organized group, association, federation, alliance or an institution of fisherfolk which has at least fifteen members, a set of officers, a constitution and by-laws, an organizational structure and a program of action*.”[[32]](#footnote-32)

 Under the same law, small scale commercial fishing is the “taking of fishery species by passive or active gear for tr6ade, business and profit beyond subsistence or sports fishing” with passive or active gear utilizing fishing vessels of 3.1 to 20 gross tons.[[33]](#footnote-33) “Municipal fisherfolk” are those who are “*directly or indirectly engaged in municipal fishing and other related fishing activities.*”[[34]](#footnote-34) In turn, “Municipal fishing” means “*fishing within municipal waters using fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels*.”[[35]](#footnote-35)

**a. Preferential treatment of municipal fisherfolk**

Fisheries Code, as amended, is generally in favor of the marginal fisherfolks. It is expressly stated therein that local communities adjacent or nearest to the municipal waters, shall be given preference in obtaining licenses and permits to conduct fishing activities.[[36]](#footnote-36) Additionally, the Fisheries Code provides that duly registered fisherfolk organizations and cooperatives are preferred in granting fishery rights.[[37]](#footnote-37) On the matter of having permission to use public land for fishpond purposes, it is stated in law that tidal swamps, mangroves, marshes, foreshore lands and ponds suitable for fishery operations may be used by qualified fisherfolk cooperatives and associations for fishpond development. Although priority is given to current lessees of said public lands in the renewal of expired fishpond lease agreements, it is mandated by law that preference[[38]](#footnote-38) shall also be given to small and medium enterprises.[[39]](#footnote-39) Lastly, the Fisheries Code also prefers fisheries cooperatives as beneficiaries of fisheries financing facilities.[[40]](#footnote-40)

**b. FARMC representation**

The Fisheries and Aquatic Resources Management Councils (FARMCs) are given by the Fisheries Code a diverse range of responsibilities depending on their jurisdiction as a unit. For example, the National FARMC has the function of assisting in the formulation of national policies; assisting in the preparation of the National Fisheries and Industry Development Plan; and performing such other functions as may be provided by law.[[41]](#footnote-41) The Municipal and City FARMCs have the responsibility of assisting the preparation of a municipal fishery development plan; recommending the enactment of relevant fishery ordinances on a municipal level; assisting in the enforcement of fishery laws; advising the sangguniang bayan/panglungsod on fishery matters; and performing such other functions as assigned by the sangguniang bayan/panglungsod.[[42]](#footnote-42) Lastly, the integrated FARMCs have the like functions. To be specific, it is legally obliged to: assist in the preparation of the integrated fishery development plan; recommend the enactment of integrated fishery ordinances; assist in the enforcement of fishery laws; advice the concerned sangguniang bayan/panglungsod on fishery matters; and perform such other functions assigned by the concern sangguniang bayan/panglungsod.[[43]](#footnote-43)

Considering the distinct jurisdictions and responsibilities of each FARMCs, it necessarily follows that its compositions also vary. Notwithstanding this, the law demands that FARMCs shall be formed by fisherfolk organizations/cooperatives and Non-Government Offices (NGOs) to be assisted by the Local Government Unit (LGU) and other government entities.[[44]](#footnote-44) There are, however, specific members identified by law to compose of the difference FARMCs. For the National FARMC, it shall be composed of the country’s Undersecretary of Agriculture, as chairman; the Undersecretary of the interior and Local Government; five members representing fisherfolk and fishworkers; five members representing commercial fishing and aquaculture operators and the processing sectors; two members of the academe; and one representative of NGOs involved in fisheries.[[45]](#footnote-45) For the Municipal/City FARMCs, its regular members shall be the municipal/city planning development officer; the chairperson, agriculture/fishery committee of the sangguniang bayan/panlungsod; a representative of the municipal/city development council; a representative from the accredited NGO; a representative from the private sector; a representative from the Department of Agriculture; and at least eleven fisherfolk representatives, seven of which from municipal fisherfolk, one fishworker, and three commercial fishers, in each municipality or city which includes representatives from the youth and women sector.[[46]](#footnote-46) Lastly, the IFARMCs shall be composed of the following: the chairperson of the Committee on Agriculture/Fisheries of the concerned sangguniang bayan/panlungsod; the municipal/city fisheries officers of the concerned municipalities or cities; the municipal /city development officers of the concerned municipality or city; one representative from NGO; one representative from the private sector; and at least nine representatives from the fisherfolk sector which includes representatives from the youth and women sector.[[47]](#footnote-47)

**c. Post-harvest support**

Multiple post-harvest assistance to fisherfolk are available in law. For one, the Fisheries Code provides that municipal and small-scale commercial fisherfolk shall enjoy at least 10% of the credit and the guarantee funds of government financing institutions that are made available for post-harvest and marketing projects.[[48]](#footnote-48) For another it is also stated in the Fisheries Code that the government, through the Department of Agriculture shall conduct a regular study of post-harvest operations in fisheries and ancillary industries for purpose of formulating a post-harvest and ancillary industries plan.[[49]](#footnote-49) Further, it is mandated by the same law that LGUs must coordinate with the private sector, other concerned agencies, and the FARMCs in establishing post-harvest facilities for fishing communities, consistent with a comprehensive post-harvest and ancillary industries plan.[[50]](#footnote-50)

Other post-harvest support is expressed in law in the form of export and import regulation. As per the Fisheries Code, export of fishery products shall be regulated whenever the same affects domestic food security and production. Local biodiversity is also sought to be maintained and protected to ensure sufficiency of domestic supply. Importation is only allowed when certified as necessary according to the Department of Agriculture. The local biodiversity is protected by the law through prohibition of exporting the endemic species.[[51]](#footnote-51) Trade related measures in relation to exportation and importations are also mandated in law as part of post-harvest support for the fisherfolk. It is stated in law that the Department of Agriculture shall set the standards for all fishery transactions, and that all fish products shall meet the quality standards set by the same.[[52]](#footnote-52)

**d. Resettlement Areas**

According to the Fisheries Code, certain areas of the public domain shall be reserved for the settlement of municipal fisherfolk. The Department of Agriculture is mandated to establish a fisherfolk settlement area near fishing grounds.[[53]](#footnote-53)

**e. Fisherfolk Registration.**

The registration of fisherfolk is mandated by the Fisheries Code which requires the LGUs to maintain a registry of municipal fisherfok for the purpose determining priorities among them, limiting entry into the municipal waters and for monitoring and regulating fishing activities. This should be done annually or as necessary in consultation with the FARMC, The registration should also include the type of gears sued and other boat particulars.[[54]](#footnote-54)

 In January 2014, the Bureau of Fisheries and Aquatic Resources (BFAR) launched the National Program for Fisherfolk Registration.[[55]](#footnote-55) The Fisherfolk registration of FIshR generated important information from the fisherfolk such as their age, number of children, fishing equipment used, and what aspect of the fishing industry they are engaged in e.g. fishing, fish selling, seaweed farming and aquaculture. This will enable the government to provide the necessary basic services need by fisherfolk.[[56]](#footnote-56)

 But for purposes of regulating access to fisheries, the FishR is intended to determine the bases for priority access among municipal fisherfolk to engage in fisheries activities; for management, regulation, conservation and protection; and establish comprehensive fisheries information. It should be noted that registration is not equivalent to a permit or license, such should be obtained by the registered fisherfolk or operator.[[57]](#footnote-57)

**f. Integrated Management of Fisheries**

 In terms of managing the fisheries and aquatic resources, management intervention by LGUs should be consistent with the concept of an integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State.[[58]](#footnote-58) The Fisheries Code, as amended, provides that the management of contiguous fishery resources such as bays which straddled several municipalities, cities, and provinces, shall be done in an integrated manner and not based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management.[[59]](#footnote-59)

**g. Strategic Action Against Public Participation (SLAPP)**

 The law aims to avoid the abuse of existing legislation to frustrate the proper execution and implementation of the Fisheries Code. It provides a mechanism to punish vexatious suits stifling legal recourse sought through the fisheries code to protect the interest of those for whom the Fisheries Code was made – the fisherfolk in particular. As per the relevant provision in law, such actions will be considered as a “Strategic Lawsuit Against Public Participation” (SLAPP).[[60]](#footnote-60) Once determined to be so, it will be proceeded summarily, and if dismissed, it shall be with prejudice to the author of the SLAPP and the court may award damages under a counterclaim.

**h.** **Regulation and prohibition of activities within municipal waters**

The Fisheries Code provides for various regulatory measures on access to fishery resources and for its protection and conservation. Prohibitions relevant to fishing within municipal waters are as follows: imposition of the passive gears as the type of gear allowed for fishing within municipal waters;[[61]](#footnote-61) imposition of Harvest Control Rules and Reference Points in a fishery management area or fishery;[[62]](#footnote-62) declaration of closed season by BFAR or through the LGUs which is considered as a serious violation;[[63]](#footnote-63) prohibition on unauthorized fishing such as fishing without license or commercial fishing in municipal waters;[[64]](#footnote-64) prohibition on destructive fishing methods such as the use of explosives, noxious substance or electricity,[[65]](#footnote-65) fine mesh nets, ban on *muro-ami*, other methods and gear destructive to coral reefs and other marine habitat;[[66]](#footnote-66) use of super light or fishing light attractor;[[67]](#footnote-67)protection against mangrove conversion;[[68]](#footnote-68) and protection of endangered species[[69]](#footnote-69) among others.

**2. Agriculture and Fisheries Modernization Act (RA 8435)**

Through Republic Act 8435, “An Act Prescribing Urgent Related Measures to Modernize the Agriculture and Fisheries Sectors of the Country in Order to Enhance Their Profitability, and Prepare Said Sectors for the Challenges of the Globalization Through an Adequate, Focused and Rational Delivery of Necessary Support Services, Appropriating Funds Therefor and for Other Purposes,” also known as the “Agriculture and Fisheries Modernization Act,” the government aims to empower the fisheries sector so that the same is able to develop and sustain itself.[[70]](#footnote-70) Said law seeks poverty alleviation, social equity, food security, rational use of resources, global competitiveness, sustainable development, people empowerment, and protection from unfair competition.[[71]](#footnote-71) The Agriculture and Fisheries Modernization Act has the following objectives:

*a) To modernize the agriculture and fisheries sectors by transforming these sectors from a resource-based to a technology-based industry;*

*b) To enhance profits and incomes in the agriculture and fisheries sectors, particularly the small farmers and fisherfolk, by ensuring equitable access to assets, resources and services, and promoting higher-value crops, value-added processing, agribusiness activities, and agro-industrialization;*

*c) To ensure the accessibility, availability and stable supply of food to all at all times;*

*d) To encourage horizontal and vertical integration, consolidation and expansion of agriculture and fisheries activities, group functions and other services through the organization of cooperatives, farmers' and fisherfolk's associations, corporations, nucleus estates, and consolidated farms and to enable these entities to benefit from economies of scale, afford them a stronger negotiating position, pursue more focused, efficient and appropriate research and development efforts and enable them to hire professional managers;*

*e) To promote people empowerment by strengthening people's organizations, cooperatives and NGO's and by establishing and improving mechanisms and resources for their participation in government decision-making and implementation;*

*f) To pursue a market-driven approach to enhance the comparative advantage of our agriculture and fisheries sectors in the world market;*

*g) To induce the agriculture and fisheries sectors to ascend continuously the value-added ladder by subjecting their traditional or new products to further processing in order to minimize the marketing of raw, unfinished or unprocessed products;*

*h) To adopt policies that will promote industry dispersal and rural industrialization by providing incentives to local and foreign investors to establish industries that have backward linkages to the country's agriculture and fisheries resource base;*

*i) To provide social and economic adjustment measures that increase productivity and improve market efficiency while ensuring the protection and preservation of the environment and equity for small farmers and fisherfolk; and*

*j) To improve the quality of life of all sectors.[[72]](#footnote-72)*

 The establishment of Strategic Agriculture and Fisheries Development Zones (SAFDZ) is the key implementing mechanism of AFMA. It refers to areas identified for p production, agro-Processing and marketing activities to help develop and modernize, either the support of government, the agriculture and fisheries sectors in an environmentally and socio-cultural sound manner.[[73]](#footnote-73)

 Its implementation however, was beset with lack of resources of the government and the its accompanying credit, fiscal and trade incentives were not attuned to the level of development of the marginalized farmers and fisherfolk.[[74]](#footnote-74) It was also hampered by the non-observance of the allocation of its components as provided in the law and also plagued by institutional and governance weakness such as corruption.[[75]](#footnote-75)

**3. NIPAS Law**

RA 7586, as amended by RA 11308, is the Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining Its Scope and Coverage, and for Other Purposes. It is more commonly known as the “National Integrated Protected Areas System Act of 1992,” or simply the NIPAS Law. Said law is a countermeasure to the continuous depletion of marine resource, among others, due to unsustainable fishing practices.[[76]](#footnote-76) The state recognizes that the increase in population is tantamount to a greater resource exploitation that creates the urge to ensure environmental protection for the sake of the next generation of the Filipino people.[[77]](#footnote-77) Hence, the law creates a system of protected areas which will be conservation areas where management regimes will be implemented by the local government units.[[78]](#footnote-78)

**4. Executive Order No. 533: Integrated Coastal Management Policy**

 E.O 533 s.2006 mandates among others the mainstreaming of Integrated Coastal Management (ICM) programs into the national and local governments’ planning and socio-economic development programs and allocating adequate financial and human resources for implementation. It also highlights the role of provincial government in providing technical assistance, training, enforcement and information management in support to municipal and city ICM. Inter-LGU collaboration shall be maximized in the conduct of activities related to sustaining the country’s coastal and marine resources.[[79]](#footnote-79)

**5. Remedies to protect access to fisheries resources**

Through AM No. 09-6-8-SC, the Supreme Court of the Philippines has promulgated the Rules that will govern the procedure in civil, criminal, and special civil actions in courts involving the enforcement or violations of environmental and other related laws.[[80]](#footnote-80)

A unique feature that this set of rules provide is the writ of kalikasan, which is a remedy available to a person “*whose right to a balanced and healthful ecology is violated, or threatened with a violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.”[[81]](#footnote-81)*

Additionally, in this set of Rules is where the concept of a continuing mandamus was first introduced. A “continuing mandamus” is a remedy available “*when any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law,*” so that a person aggrieved thereby “*may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations.”[[82]](#footnote-82)*

Lastly, the Rules also makes available a Temporary Environmental Protection Order (TEPO), which is similar to a temporary restraining order in cases where a petitioner prays for an Environmental Protection Order. The TEPO becomes appropriate when the petition for an Environmental Protection Order involves a matter of extreme urgency and grave injustice and irreparable injury is present.[[83]](#footnote-83)

**6. DOLE DO. 156-16**

 To further protect the interests of fishworkers, the Department of Labor promulgated through Department Order No. 156-16 the Rules and Regulations Governing the Working and Living Conditions of Fishers on Board Fishing Vessels Engaged in Commercial Fishing Operation. Salient features of the said DO include the terms and conditions of employment of fishers, their compensation scheme, rules on occupational safety and health, provision of social protection benefits, and the implementation of a livelihood and support program. The policy upheld by the government in the implementation of this DO relates to the regulation of the relations between fishworkers and their employers consistent with the rights of labor and the rights of enterprise; the guarantee and respect the free exercise of commercial fishers to unionize for bargaining and mutual aid and protection; and the insurance that vessels used in fishing are compliant with safety standards, and that occupational safety and health standards are also observed. [[84]](#footnote-84)

**III. Government Programs in Support of Small-Scale Fisheries**

**A. National Anti-Poverty Commission**

Various government programs have been implemented to support small scale fisheries. The National Anti-Poverty Commission (NAPC) came up with the Integrated Community Food Production (ICFP) Program to to make nutritious food readily available among poor families, and to increase their income through engaging in social enterprise on production of fish, among other products.[[85]](#footnote-85) According to the rules and guidelines of the ICFP program, the NAPC shall provide technical assistance through coaching and mentoring to the Local Government Units and beneficiaries in the proposal, making, implementation, monitoring and evaluation of the program.[[86]](#footnote-86)

**B. 4Ps**

The Pantawid Pamilyang Pilipino Program, more commonly known as “4Ps” is a government program that grants the poor Filipinos cash grants. It aims to improve the health, nutrition, and education of children through the said cash grants.[[87]](#footnote-87) There has been contemplations that the 4Ps would be amended to provide farmers and fisherfolk grants similar to those provided to the current program beneficiaries. It is acknowledged that farmers and fisherfolks are among the poorest in the Philippine community, yet they are not included as beneficiaries of the 4Ps. Seeing that the 4Ps was extended to PUV drivers, further extensions of the program to include fisherfolk is being considered. [[88]](#footnote-88)

**C. Philippine Development Plan**

 In the Philippine Development Plan for the years 2017-2022, it is projected that fisherfolk will be given priority in accessing economic opportunities. Towards that end, the government adopts the following strategies:

* Improvement of agriculture, forestry, and fisheries productivity within the ecological limit;
* Increase of agriculture, forestry, and fisheries-based enterprise;
* Increase the stakeholders’ access to value chains;
* Increase farmers’ and fisherfolk’s access to innovative financing;
* Increase agriculture, forestry, and fisheries stakeholders’ access to technology; and
* Increase and protection of the access of small farmers and fisherfolk to land and water resources.[[89]](#footnote-89)

Through these strategies, the government hopes that the fisherfolk and other marginalized subsectors are included as active participants and beneficiaries of development opportunities and economic progress.

**D. Sustainable Development Goals- No one will be left behind**

The United Nations came up with the 2030 Agenda for Sustainable Development, also known as the “Sustainable Development Goals” in its 2015 General Assembly under a pledge that “no one will be left behind”. The Sustainable Development Goals (SDG) is a plan of action that aims to address poverty eradication in all its forms through 17 goals specifically defined by the assembly.[[90]](#footnote-90) The United Nations Development Program (UNDP) has the task of implementing the goals in the SDG by focusing on such issues as poverty alleviation, democratic governance, peacebuilding, climate change, disaster risks, and economic inequality.[[91]](#footnote-91) In relation to fisheries, the following goals become relevant:

* Goal 2.3: By 2030, the agricultural productivity and incomes of small-scale fishers would have been doubled.
* Goal 14.4: By 2020, regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans.
* Goal 14.5: By 2020, conserve at least 10 per cent of coastal and marine areas.
* Goal 14.6: By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing such subsidies.
* Goal 14.7: By 2030: increase the economic benefits to least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism; and
* Goal 14.b: Provide access for small-scale artisanal fishers to marine resources and markets, among others.[[92]](#footnote-92)

In the Philippines, a Comprehensive Post-Harvest, Marketing and Ancillary Industries Plan for the years 2018-2022 is developed by the Bureau of Fisheries and Aquatic Resources (BFAR). It serves as a guide to mitigate post-harvest losses by providing strategies towards that end. In the same plan, the UN SDG is specifically acknowledged, and its goals are adopted by the BFAR.[[93]](#footnote-93)

**E. Blue Finance**

Blue finance is an organization whose goal is to design and implement investment mechanisms for the conservation of marine ecosystems.[[94]](#footnote-94) In the Philippines, Blue finance is planning to execute a project in North Oriental Mindoro marine protected area networks. In 2018, it made a site visit and sought the approval of their project with local authorities.[[95]](#footnote-95) At current, they are still awaiting approvals. The blue finance organization seeks to help marine protected areas in North Oriental Mindoro to restore marine biodiversity, improve the dive tourism industry, create significant job opportunities and provide protection from sea level rise, flooding, and drought.[[96]](#footnote-96)

**F. National Fisheries Development Plan**

As per the Fisheries Code, as amended, the Bureau of Fisheries and Aquatic Resources (BFAR) shall prepare and implement a Comprehensive National Fisheries Industry Development Plan (CNFIDP) which it did in 2006. The CNFIDP serves as a framework to guide the development and long-term sustainability of benefits derived from fisheries. It contains elements on physical infrastructure support, expansion activities, marketing assistance, resource rehabilitation, and habitat restoration.[[97]](#footnote-97)

**G. Climate Adaptation and Mitigation**

The Philippines has been responsive to climate change. A number of laws have been legislated to mitigate and adapt to the harmful effects of climate change. With application to fisheries, for example, the Agriculture and Fisheries Modernization Act has provisions which take into account climate disturbances; the Clean Water Act has provisions on water quality management; the National Environmental Awareness and Education Act of 2008 promotes awareness on the role of natural resources in economic growth; and the Climate Change Act created the Climate Change Commission which serves as the policymaking body of the government on matters that concern climate change.[[98]](#footnote-98)

**E. People’s Survival Fund**

 RA 10174 is an amendment to Climate Change Act of 2009 or RA 9729.[[99]](#footnote-99) It provides for the creation of a financing mechanism to enable the government to address the problem of climate change. One of the uses of the fund is to support adaptation activities of local governments and communities.[[100]](#footnote-100) Coastal and marine resources are among the climate-sensitive sectors that should be prioritized by the Climate Change Commission in terms of providing access to climate financing for adaptation activities of the LGUs and communities.[[101]](#footnote-101) The law mandates the participation of vulnerable and marginalized groups among others, in the identification, monitoring and evaluation process of the adaptation projects to be supported by the fund.[[102]](#footnote-102)

**IV. Local Governance of Small-Scale Fisheries**

**A. Policy framework on local autonomy**

Provisions on local governance of small scale fisheries are invariably provided under Local Government Code of 1991 (LGC of 1991). The local autonomy granted to local government units (LGUs) by the said national law created the legal infrastructure for the local governance of small-scale fisheries. One of its policy objectives is to provide the LGUs with meaningful local autonomy to enable them to be self-reliant and effective partners for the attainment of national goals by instituting a responsive and accountable local government structures with decentralized powers, authority, responsibilities and resources.*[[103]](#footnote-103)* The LGUs are divided into province, city, municipality and barangay.

 The decentralization of the management of the fisheries from the national government to the LGUs was given impetus by the LGC of 1991 and but was further elaborated by the Fisheries Code of 1998, as amended.

 The delegated police power to LGUs through the general welfare clause of LGC of 1991 also provide a broad policy framework for local governance of small-scale fisheries, although couched within the clause on protection of the right of people to a balanced ecology*.*[[104]](#footnote-104)

**B. Local legislation**

This should be taken together with the local legislative powers granted to local legislative councils or local sangguniang bayan or panglungsod on fisheries management, such as the power to impose penalties against dynamite fishing and other destructive forms of fishing;[[105]](#footnote-105) establishment, maintenance, protection, and conservation of communal forests and watersheds, tree parks, greenbelts, mangroves;[[106]](#footnote-106) and pass ordinances for the delivery of basic services[[107]](#footnote-107) such as on extension services and research related to fisheries and aquaculture among others.[[108]](#footnote-108)

**C.** **Access to fishery resources**

The municipal/city government has the jurisdiction over municipal waters, which is defined as:

Municipal Waters" include not only streams, lakes and tidal waters within the municipality, not being the subject of private ownership and not compromised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of the respective municipalities.[[109]](#footnote-109)

 The Fisheries Code of 1998 which was amended by RA10654 is consistent with the definition of the municipal waters under LGC of 1991, save for the exclusion of the protected areas defined under Republic Act No. 7586 (the NIPAS Law) and inclusion of the phrase “*including off-shore islands and fifteen kilometers from such coastline*”

 The power of the municipal/city governments over the municipal waters include the exclusive authority to grant fishery privileges.[[110]](#footnote-110) Such power is exercised through the adoption of local ordinance by the Sagguniang Pangbayan/Panglungsod. The privilege that may be granted are: allow the grantee to erect fish corrals, oyster, mussel, or other aquatic beds, or bangus fry within a specific demarcated zone within in the municipal waters subject to the preferential treatment to the organizations or cooperatives of marginal fishermen;[[111]](#footnote-111) gather, take or catch bangus fry, prawn fry or *kawag-kawag* fry among others; [[112]](#footnote-112)and issue license to for the operation of fishing vessel weighing 3 gross tons or less.[[113]](#footnote-113)

**D. Law enforcement**

The local chief executives (LCEs) of a city/municipal government are explicitly mandated under the LGC of 1991 to enforce local fishery ordinances within their respective jurisdiction and this include the conservation of mangroves.[[114]](#footnote-114) They are likewise authorized to issue the appropriate executive orders for the proper enforcement and execution of laws and ordinances.[[115]](#footnote-115) Such enforcement power of the LCEs act as the deputized representatives of the National Police Commission, formulate the peace and order plan for their own municipality or city, and implement that plan, upon its approval, and exercise general and operational control and supervision over the local police in their respective municipalities.[[116]](#footnote-116)

 Although the members of the Philippine National Police are primarily responsible for fishery law enforcement within the municipal waters, most coastal municipal/city governments have deputized community members as bantay-dagat (BD) or sea guardian to complement the enforcement of fishery laws.

 The role of the BD is necessary and crucial in the protection and management of coastal and fishery resources in the Philippines. This is especially true for enhancing the participation of local communities for the promotion of environmental protection and conservation. The resources of the State in its efforts to conduct effective law enforcement are limited, and the BD have effectively complemented and supplemented the State’s capacity.[[117]](#footnote-117)

**E. Establishment of locally managed Marine Protected Areas (MPAs**)

The NIPAs Law provides the national framework in establishment of protected areas in the country. Under the regime of RA 8550 as amended by 10654 and in harmony with RA 7160, LGUs are able to establish marine protected areas (MPAs). MPA is a defined area area of the sea, established and set aside by law, administrative regulation or any other effective means in order to conserve and protect a part of or the entire enclosed environment through the establishment of management guidelines.[[118]](#footnote-118) The establishment of MPAs by LGUs is intended to address a number of fisheries management issues such as over-fishing, protection and management of marine and fisheries resources, and regulation of access among others.

 In Verde Island Passage (VIP) alone, which is considered as the center of the center of shore fish marine biodiversity,[[119]](#footnote-119) there are about 50 locally managed MPAs, with a total area of approximately 22,582.57 sq. maters. These are found in the provinces of Batangas, Marinduque, Romblon, Occidental Mindoro and Oriental Mindoro.[[120]](#footnote-120)

 Locally managed MPAs usually covers a number of critical habitats such as mangrove forests, corals, seagrass beds.

**F. Joint undertaking of LGUs for small-scale fisheries management**

The joint undertaking and cooperation of coastal municipalities/cities is mandated by the 1987 Constitution. It provides that local government units (LGUs) *may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law*.[[121]](#footnote-121)

 This policy framework is further amplified in the LGC of 1991. It provides that *LGUs may group themselves, consolidate, or coordinate their efforts, services, and resources for purposes commonly beneficial to them. In support of such undertakings, the local government units involved may, upon approval by the sanggunian concerned after a public hearing conducted for the purpose, contribute funds, real estate, equipment, and other kinds of property and appoint or assign personnel under such terms and conditions as may be agreed upon by the participating local units through Memoranda of Agreement*.[[122]](#footnote-122)

 LGUS *may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people*.[[123]](#footnote-123)

**V. Women in small-scale Fisheries**

 Fisheries refers to all activities relating to the act or business of fishing, culturing, preserving, processing, marketing, developing, conserving and managing aquatic resources and the fishery areas, including the privilege to fish or take aquatic resource thereof.[[124]](#footnote-124) In all of these activities, women are involved although fishing is still considered a male-dominated undertaking.

 The participation of women fisheries is not direct in that they do not come on board the fishing vessels to conduct the fishing activity itself. This does not discount their participation in fisheries, however, as they are able to perform other fisheries activities although limited to ones that may be done near-shore, mostly because in fishing communities, they need to remain within household premises so that they can attend to their responsibilities at home. In addition to near-shore activities known to be participated in by women, they also perform other significant pre- and post-fishing doings like net mending, sorting fish upon landing, fish vending, trading, market retailing, and processing and preservation.[[125]](#footnote-125)

The Fisheries Code, as amended does not provide any specific recognition of the role of women in fisheries but recognizes the representation of the women sector in various levels of FARMC, from national down to barangay level.[[126]](#footnote-126)

 RA 9710 or the Magna Carta of Women provides a broad policy framework for the recognition of the rights of women at levels of policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development.[[127]](#footnote-127)

 It refers to fisherfolk to those who are *directly or indirectly engaged in taking, culturing, or processing fishery or aquatic resources. These include, but are not to be limited to, women engaged in fishing in municipal waters, coastal and marine areas, women workers in commercial fishing and aquaculture, vendors and processors of fish and coastal products, and subsistence producers such as shell-gatherers, managers, and producers of mangrove resources, and other related producers*.[[128]](#footnote-128)

 The Philippine Government as the primary duty bearer to protect the human rights of women i is mandated to *(a) Refrain from discriminating against women and violating their rights; (b) Protect women against discrimination and from violation of their rights by private corporations, entities, and individuals; and (c) Promote and fulfill the rights of women in all spheres, including their rights to substantive equality and non-discrimination*.[[129]](#footnote-129)

 These duties extend to all state agencies, offices, and instrumentalities at all levels and government-owned and -controlled corporations.[[130]](#footnote-130) Under the law, women in marginalized sector such as in fisheries are entitled to a broad range of rights such as the right to food, right to resources for food production, right to housing, right to decent work, right to livelihood, credit, capital, and technology; right to education and training; right to representation and participation; right to information and right to social protection.[[131]](#footnote-131)

 All levels of the government, including the LGUs are mandated under the law to *adopt gender mainstreaming as a strategy to promote women's human rights and eliminate gender discrimination in their systems, structures, policies, programs, processes, and procedures*.[[132]](#footnote-132) Gender mainstreaming *refers to the strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. It is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programs in all areas and at all levels*.[[133]](#footnote-133)

**VI. Conclusion**

 The SSF as mirrored by municipal fisheries in the Philippines are adequately supported and covered by the 1987 Constitution and existing national laws, policies and programs.

 Notable among these national laws is the Fisheries Code of 1998, as amended. It provides for the management, utilization and conservation of Philippine fisheries in the context of ensuring food security, poverty alleviation and rational use of resources among others.. The law provides significant regulatory measures for municipal and commercial fishing, including aquaculture production, although preferential treatment is given to municipal fisherfolk. Representation of municipal fisherfolk, fish worker and women sector in FARMC from national to barangay level enable them to be involved in policy-making affecting the fishery sector. Municipal fisherfolk and the fishworkers are granted with specific rights and privileges intended to address their economic, social and environmental vulnerabilities.

 Another significant national legislation on municipal fisheries is the Local Government Code of 1991 in view of the autonomy and jurisdiction over municipal waters given to LGUs. A responsive and accountable local governance of LGUs is crucial in addressing the vulnerabilities of both the people and fishery resources within the scope of SSF. Local legislations provide site-specific regulations and rules on access to as well as for the protection and conservation of coastal and fishery resources. Locally managed MPAs and community-based law enforcement through bantay-dagat are just a few examples.

 The existing Environmental Rules and procedure although general in application are relevant to SSF particularly in identifying legal remedies for violation of specific provisions of the Fisheries Code and the protection of environmental right of individual and communities.

 There are national laws of general application but are nonetheless relevant to SSF such as the Climate Change Act and NIPAs Law. Programs affecting the SSF draw primarily from existing national legislations and from international platform such as the SDGs.

 Although the Fisheries Code, provides for the representation of women sector through the FARMC, recognition of the rights and protection of women in fisheries is provided by the Magna Carta on Women. It mandates the mainstreaming and implementation of broad national policy framework on the recognition and protection of the human rights of women on all aspect of governance, development planning and program implementation across the various sectors which include the fisheries sector.

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|  |  |  |
| --- | --- | --- |
| Micro | less than | P 1,500,001 |
| Small | P1,500,001 | P15,000,000 |
| Medium | P15,000,001 | P60,000,000 |

"The above definitions shall be subject to review and adjustment by the said Council *moto* *proprio*or upon recommendation of sectoral organization(s) taking into account inflation and other economic indicators. The Council may use as variables the number of employees, equity capital and asset size." [↑](#footnote-ref-39)
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44. *Id.,* Sec. 69. [↑](#footnote-ref-44)
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46. *Id., S*ec. 75. [↑](#footnote-ref-46)
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49. *Id., S*ec. 58. [↑](#footnote-ref-49)
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51. *Id., S*ec. 61. [↑](#footnote-ref-51)
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