



Legal considerations in responses to COVID-19 to mitigate the risk of disruption to fisheries and aquaculture food systems

This policy brief supplements the policy briefs issued by the Food and Agriculture Organization of the United Nations (FAO) on 10 April namely *Legal considerations in the context of responses to COVID-19 to mitigate the risk of food insecurity* and *How is COVID-19 affecting the fisheries and aquaculture food systems*. It reviews emergency laws adopted by states in response to COVID-19 and recommends what could be considered as advisable legal responses or in reviewing the emergency laws that negatively impact on the fisheries and aquaculture sector in terms of restricting the production (fishing and aquaculture operations), supply and movement of fish and fish products, economic and social protection, in particular the protection of the most vulnerable including migrant workers, small-scale fishers including indigenous peoples' and ethnic minorities who are dependent on fisheries for their subsistence, and women's access to employment which is fundamental to protect their livelihoods and their food security needs as well as that of their families.

WHAT WE KNOW

Countries respond to COVID-19 by taking measures, through emergency legislation, to halt or minimise its spread. These measures include, among others, home confinement, travel and movement restrictions and temporal closure of businesses. However, emergency measures are causing disruptions in transportation, migration, trade, and labour, and are affecting the supply chain for fish and aquatic foods at local, and global scale. In a context of fisheries and aquaculture, the measures adopted may cause potential shortages and disruptions in the fish food supply chain, and consequently interfering with the human right to food including nutrition.

Although there is no scientific evidence that COVID-19 affects fish as a living resource, the fisheries and aquaculture sectors are subject to indirect impacts. Consequently, the livelihoods of fishers and fish farmers will be adversely impacted and by extension food insecurity and malnutrition for the populations that rely on fisheries and aquaculture for food and income generation.

This is particularly evident for women who occupy most of the low-revenue jobs in the fisheries sector (FAO, 2018).¹ With insecure employment conditions, women are at greater risk of losing their income, affecting the well-being of their children, households and communities as a whole.

KEY CONSIDERATIONS FOR LEGISLATIVE RESPONSES TO COVID-19 IN THE FISHERIES AND AQUACULTURE SECTOR

Even though many jurisdictions classify food businesses as essential services which are therefore exempt from the application of emergency measures, many countries overlook the need to continue production and to maintain supply value chain that sustains the food business and access to food. For example, a review of emergency legislation including directives that were adopted as immediate responses COVID-19 revealed that while certain jurisdictions such as the United Arab Emirates, lifted the pre-COVID-19 fishing ban on some species to allow fishers to catch fish during COVID-19 crisis, others have suspended the fishing season or landing of products from fishing vessels for an indefinite period. Other jurisdictions have placed general prohibitions or closures to all fishing activities, to fishing activities for targeted species or access to water bodies. Not only would these measures impact the supply of fish for food (and feed) but it introduces uncertainty to the period of suspension and does not commit the relevant authorities and hold them accountable for the review of the measures and the introduction of less stringent conditions where required after the lapse of a specific period.

In addition to classifying as essential the food business, it is imperative that the emergency legislative responses ensure the continued movement of fish and fish-products, inputs needed in the sub-sectors (like nets for capture fisheries, and feed and fingerlings for aquaculture operations), and allow all people involved in the fisheries and aquaculture sectors to continue operations with due regard to the observation of physical distancing and sanitary requirements to protect the health and safety of the workers. The review of COVID-19 related emergency legislation shows that certain jurisdictions have adopted measures that allow the movement of fish products and extended periods of production and related processes to absorb or make up for disruptions caused by the sudden imposition of emergency laws. These measures are complemented by an early or accelerated resumption of fisheries and aquaculture operations as well as the enterprises that support fisheries and aquaculture (e.g. feed production and supplies for aquaculture).

Emergency legislation should also ensure appropriate linkages between specific measures providing economic and financial support to the fisheries and aquaculture sector, and social protection measures aiming to protect the most vulnerable to food insecurity or avoid putting in place measures that add to the suffering of small artisanal fishers. Fish and fish products should be considered in institutional procurement and food assistance programmes, as a way to support local production, reduce or avoid food loss and waste, and ensure food intake of fish as a key protein of high nutritional value for the most vulnerable. At the same time, emergency legislative measures should facilitate safe transactions and protect fishers' and fish farmers' access to production inputs.

¹ FAO estimates that women occupy a significant part of the fisheries workforce, representing half of the entire world labor force in this sector. Women comprise 15 percent of the harvesting workforce, 70 percent of the aquaculture workforce, and somewhere between 80 and 90 percent of the seafood processing workforce. In Africa and Asia, women also represent 60 percent of seafood traders and retailers.

LEGAL MEASURES TO PROTECT ALL STAGES OF THE FISHERIES AND AQUACULTURE SUPPLY CHAIN

Legal measures should benefit both local and international markets to ensure access to food for all, and in particular for local communities who depend on fisheries activities, either as a source of income generation or as direct means for access to food intake and protein. Legislative measures should avoid unnecessary or prolonged suspension or closures of fishing and aquaculture operations such as suspension of the fishing season or fishing licenses or restrictions of international trade, and should ensure the movement of products, fishers and aquaculture migrant workers. Regional fishery bodies could take action in providing incentives for the promotion of regional cooperation to facilitate the supply of fish and seafood in regional markets.

The following considerations are informed by a review of state emergency legislative practice that supports or impact on fisheries and aquaculture and their contribution to ensuring access to food and measures which sustain these food production systems that contribute to livelihoods as well as for nourishment.

To mitigate the disruptions in the fisheries and aquaculture supply chain at local, regional and global level, legislation, subject to the application of physical distancing and other safety and sanitary measures, may:

- designate fishers, processors, and distribution workers and aquaculture workers as *essential workers* as they provide food to the nation and the world through fish and fish product trade;
- establish exceptions to travel restrictions for temporary migrant workers in fish/seafood and aquaculture sector and the enterprises that support the sectors;
- ensure the expeditious processing of visa for temporary, seasonal foreign labour for the harvesting and processing of fish from capture fisheries and aquaculture;
- subject the established temporary emergency measures such as the closure of fishing seasons or suspension of authorizations to fish to a regime of periodic review and modification, including the lifting of suspensions which are informed by experience and information available at the time of the review.
- review as soon as possible earlier indefinite suspensions or closures measures to allow for regular review including extending the fishing season or fish farming period to make up for earlier suspensions or closures;
- establish measures for continued access to, and cooperation from officials at, ports, rail, and border crossings to maintain sales;
- extend the validation expiry date for licenses and other authorizations to fish where these authorizations lapse just before, during or soon after the emergency period;
- extend authorizations, permits, subsidies for aquaculture operators, and processing structures, hatcheries and feed mills;
- facilitate access to fish ponds or aquaculture production facilities (inland and marine);
- ensure access to fish feed, fingerlings (fish seed) and other critical inputs (e.g. drugs, vaccines etc.);
- allow for variations in aquaculture general operational measures and disease and surveillance control programmes including, for example, extending the productive period, extending stay in collection centers, postpone planting and extending planting periods;
- facilitate permits for informal fish trade while ensuring compliance with the necessary protective equipment and sanitation requirements;

- provide incentives to the fishing industry to redirect the fish to local communities during the COVID-19 lockdown and beyond;
- reinforce the duty of competent authorities to ensure transparent market information in the fisheries sector by:
 - i) assigning powers to request the provision of data from actors in the chains of production, distribution, retailing and other forms of intermediation for monitoring prices and to regulate the system during crises to avoid abuses, and
 - ii) requiring competent authorities to publish the prices of fish and fish products to safeguard the well-being of the most vulnerable consumers;
- recognise as legal, new and climate-smart low-cost technologies (e.g. e-commerce using ICT platform) to facilitate the interface between the supply (producers/fishers) and demand (consumers);
- allow the continuing operation or early and accelerated resumption of production that supports the aquaculture industry such as feed production and processing enterprises to ensure the aquaculture products in holding areas or facilities are harvested and sold. In allowing resumption of fishing activities, there should be consultation with operators and workers (including women) on the most effective organizational schemes to resume work;
- establish public purchase of surplus supplies to be used for schools, hospitals and other establishments during the crisis.

LEGISLATIVE MEASURES TO REDUCE THE ECONOMIC BURDEN ON THE FISHERIES AND AQUACULTURE SECTOR

Legislation should protect income in the fisheries and aquaculture sector as a whole, focusing in particular on the most vulnerable groups by providing financial support and specific measures to reduce the economic burden of fisheries and aquaculture activities.

To protect income and ensure access to financial support, legislation may declare the pandemic as a disaster and:

- establish measures to support fishers and aquaculture farmers for the temporary cessation of fishing activities, reduction of production and additional costs caused by the COVID-19 outbreak;
- provide financial compensation for employers and workers who maintained their activities but who are being affected by the general fall in first-sale prices;
- provide immediate and short-term government support to relieve vulnerable households of the cost of new compliance measures to ensure the health and safety of workers and their communities;
- facilitate access to credit and micro-finance facilities with reduced interest rates, flexible loan repayment plans, and options for the restructuring of loans and related payment schedules;
- provide subsidies to small businesses in the fishing and aquaculture industry for protecting employee salaries and encouraging them to keep staff on the payroll;
- establish exceptional measures in light of difficulties such as not being able to sustain cash flows by suspending certain financial obligations or extending deadlines for fishers and fish farmers such as repayment of loan facilities, payment of rent, permit or licence fees, utilities, real estate tax, and mortgages;

- establish grants for maintenance to keep vessels in good working order especially where a vessel is a subject of quarantine orders;
- establish mechanisms to ensure coordination between authorities responsible for fisheries development and governance, and institutions in charge of social protection to ensure fishers' coverage by social protection measures.

LEGAL MEASURES TO PROTECT SPECIFIC GROUPS AND PERSONS

The COVID-19 pandemic exacerbates the pre-existing conditions of inequality of those already exposed to food insecurity, and those who are already vulnerable in precarious working conditions as a result of marginalization discrimination and gender in the fisheries sector. Marginalized and vulnerable women, especially those in the small-scale fisheries and aquaculture value chain, might remain invisible and might not benefit from the emergency responses to COVID-19. Legislative responses should incorporate a human rights-based approach to ensure mechanisms for active, and meaningful participation of women and vulnerable groups in all COVID-19 response planning and decision-making processes affecting the fisheries and aquaculture sector, and to protect them against loss of income and food shortages. Legislation should establish specific measures to protect and respect indigenous peoples and ethnic minorities, consulting the emergency responses with their traditional governance mechanisms, respecting free prior and informed consent and avoiding any discriminatory practices that might affect any group, including those already infected by COVID-19.

To protect small-scale and artisanal fishers and fish businesses, legislation may:

- prioritize small-scale fishers' access to key small-scale line fish species by establishing limits to commercial trawlers' (offshore and inshore) access to those same fishing areas;
- allow small-scale fishers and fish businesses to sell the fish locally in a traditional way and to continue to be open for business subject to respecting physical distancing and other safety measures;
- provide incentives for fishing companies to redirect their cold-chain to support small-scale fishers and producers to sell their fish to centrally-placed market locations including, for example, providing transport for food to reach markets;
- use institutional local procurement as a leverage mechanism to ensure small-scale fishers' supply to government facilities and social programmes (food assistance, school feeding, etc.) to protect their livelihoods;
- establish measures to promote information campaigns targeting small-scale fishers to encourage them to dry, smoke, salt (dry and wet) or process to extend the shelf life and provide nutrient-rich protein to poor communities during a lockdown.

To protect indigenous peoples and ethnic minorities in the fisheries and aquaculture sector, legislation may:

- include indigenous peoples' representatives, leaders and traditional authorities in emergency response mechanisms dedicated to COVID-19, and in decision-making processes affecting the *fisheries and aquaculture sector*, both during the outbreak as well as in the aftermath;
- respect, and reinforce whenever requested, voluntary isolation and self-imposed quarantine established by indigenous peoples' communities in the implementation of their right to self-determination (FAO, 2020c);

- establish exemptions to quarantine and restrictions of movement for traditional or aboriginal/artisanal fishers to ensure that indigenous peoples who depend on fishing for their subsistence are able to engage in fishing activities and access markets for income generation;
- provide measures to support indigenous entrepreneurship and cooperatives in the fisheries and aquaculture sector to strengthening indigenous peoples' livelihoods and local economies in the context of relief and recovery policies and programmes (IASG, 2020);
- provide for ways to obtain the Free Prior and Informed Consent (FPIC) of indigenous peoples for measures affecting indigenous peoples in the context of government's response to COVID-19, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international treaties, with due observance of social distance and sanitary requirements;
- expand emergency food assistance in due respect of the cultural dimension of food for indigenous peoples;
- where legislation is required for any government budgeting matters, allocate specific funds to support indigenous peoples in the context of the emergency response to COVID-19, and ensure monitoring mechanisms to verify that the budget allocated benefit targeted indigenous groups;
- ensure indigenous peoples communities' access to health services and sanitary equipment including masks and gloves;
- ensure equal access to social protection measures targeting the most vulnerable groups and in particular indigenous women in informal and low revenue jobs in the fisheries sector;
- disseminate information related to the emergency response in indigenous languages;
- allow for flexibility in administrative requirements to facilitate indigenous peoples' access to funds allocated;

Legislative measures to protect and support women in the fisheries and aquaculture sector

Gender-sensitive legislative responses in the fisheries and aquaculture sector may:

- establish mechanisms to provide sex-disaggregated data to ensure a socio-economic assessment of the impact of COVID-19 on women in the fisheries and aquaculture sector to ensure adopting gender-responsive emergency measures, and to design gender-equitable fisheries and aquaculture policies in the aftermath (FAO, 2015);
- establish mechanisms to ensure women's access to information, and equal participation in all COVID-19 response planning and decision-making processes affecting the fisheries and aquaculture sector including women and women's organizations;
- establish incentives for flexible forms of employment and reduced working hours in the fisheries-related businesses to allow both men and women in the fisheries and aquaculture value chain, to share the care of children while schools are closed. Women benefitting from flexible work arrangements should be entitled to full wages and social security;
- establish support and mitigation measures targeting women economic activities (FAO, 2020a) in the fisheries and aquaculture sector to protect their livelihoods, and recover from the crisis derived from COVID-19 pandemic, ensuring equitable access to productive resources, inputs and services, including financial services, training, market linkages and preferential access to relief funds, loan mechanisms and credit;

- establish social protection measures to protect women including cash transfers to increase purchasing power at the household level in order to protect the right to food of the most vulnerable groups including women and children. When social protection programs are already in place make sure marginalized and vulnerable women and other vulnerable groups in the sector (elderly, children, migrant workers) are eligible and are appropriately targeted.
- promote employment stability and transition from informal to formal arrangements to support women's income-generating opportunities and labour-market participation during the COVID-19 pandemic and in the aftermath, ensuring to close the gender pay gap between men and women occupying equivalent positions in the fisheries and aquaculture sector.

To protect migrant workers, legislation may:

- expand temporary work permits and ensuring safe mobility within and across countries for fisheries and aquaculture workers including workers of enterprises that support the sector e.g. workers in feed production and processing establishments;
- where the crew of fishing vessels are also migrant workers, ensure they are not prohibited from embarkation and disembarkation from fishing vessels;
- ensure that all workers in the fisheries and aquaculture sector can enjoy their rights to decent work in accordance with the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at work and particularly the right to occupational safety and health as described in the ILO Work in Fishing Convention No. 188
- ensure that contracts of migrant workers in the fisheries and aquaculture sector are not terminated in the case of illness or containment measures;
- regularize fisher migrants present in the territory and grant temporary work permits to all;
- ensure occupational safety and health measures are accessible to all migrants and seasonal workers;
- ensure migrant fish-workers' access to health services and social protection measures in the context of COVID-19 response, regardless of their residency, migratory or working status and make information on such programmes available in relevant languages;
- for migrant fish-workers on return, establish measures to protect them against discriminatory practices and stigmatization as carriers of COVID-19, and establish hotlines to ensure accessible mechanisms for complaint (FAO, 2020e).

TOWARDS THE FUTURE

Countries have adopted measures through legislation to respond to the impact of the COVID-19 pandemic on fisheries and aquaculture sectors. It is noted that most countries have in place the *classic* procedure of declaring an emergency based on the emergency powers legislation or similar law or directly based on the constitution.

The practice of states relating to emergency legislation in response to COVID-19 indicates that fisheries and aquaculture are considered as important food production sectors and there are measures put in place that generally ensure continuity of fisheries and aquaculture operations or for access to fish for food. However, much more could be done in terms of protection, through legislation, of livelihoods and access to fish food, particularly for small scale and subsistence fishers and other vulnerable groups. There are also indications that certain measures imposed through legislation have not been well thought out which have resulted in negative impacts some of which could be disastrous. Examples of such measures include lifting of bans put in place to

protect fisheries resources, the closure of fisheries to small scale fishers but allowing only a small number to fish leading to civil unrest and demonstrations by small scale fishers who were already experiencing difficulties and the relaxing of labour laws and related measures put in place to protect workers' safety, health and working conditions which may lead to abusive practices by employers.

FAO's review of COVID-19 emergency and sectoral legislation found that the interests of women are not specifically protected in emergencies considering their presence and role in those sectors. Similarly, the rights of indigenous peoples, even where mentioned, do not go beyond the minimum legal requirements of international treaties. Therefore, it is recommended that sectoral legislation, when catering for emergencies like the COVID-19 pandemic should incorporate a human rights-based approach, including gender-sensitive provisions to address the specific circumstances of women in the fisheries and aquaculture sectors. For example, in fisheries and aquaculture sectors, the emergency legislation should protect the rights and interests of female fisher-workers throughout the value chain to mitigate the impacts of the pandemic on rural women and to build gender-equitable policies in the fisheries and aquaculture sector in the aftermath.

Months into the COVID-19 pandemic and as the global community begins to turn its attention to the aftermath of the pandemic and the future, there must certainly be a commitment to reviewing the collective and country-specific responses, including legislative action to address the health and safety concerns and to mitigate the impact of the pandemic and to extract valuable lessons from the experience with a view to doing better in the future. It is noted that there is not much right now in terms of fisheries and aquaculture specific legislation and other food and agriculture sector legislation regarding general emergencies or which anticipate emergencies by identifying and preserving measures that are established for ordinary times for conservation of fisheries resources or to protect the rights of small scale fishers, among others. For the future, Governments should adopt a human rights-based approach in developing legislation to respond to emergencies, emulate legislation which had positive consequences while drawing lessons from the negative impacts of current emergency legislation. Sectoral legislation which anticipates disasters and emergencies by having a dedicated set of emergency responses provisions, designating fisheries and aquaculture and other food production sectors as essential to ensure continuity of production, will contribute to a world better prepared for future disasters.

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