

At a Loss

As small-scale fishers in China increasingly lose the sea areas that have supported their livelihoods, it is necessary to protect fishery tenure rights

The Blue Economy has contributed to the economic development in China in the past decades. This has also resulted in over-exploitation of marine resources and damage to the marine environment. Rural small-scale fishers in some regions have also paid the cost, losing the sea areas that have supported their life. Although there might be social relief measures for the fishers, the disadvantageous situation of this new vulnerable group cannot be easily redressed. One important reason is the weak protection of small-scale fishers' tenure rights in Chinese laws and the difficulty in obtaining remedies when their interests are at odds with others interests.

In China, the State owns its territorial sea; the local governments have the power to decide on, or change the use of, the sea on behalf of the State. In contrast, rural fishers almost have no opportunities to express their opinions, even though they are a significant group engaged in fishing activities on the sea. Due to weak protection of rural fishers' rights to use aquatic resources, violations of their interests occur very often.

In some places, water areas were transferred or auctioned by the local government against the will of rural fishers. In other places, rural fishers were forced to surrender the water areas where they had practised aquaculture for long. Some water areas, including those with favourable conditions for aquaculture or for the breeding of important species, were occupied by commercial projects with no compensation or only nominal compensation to rural fishers. In all those cases, the losses rural fishers suffered were attributable to local governments' defiance of their tenure rights.

Water areas are essential for rural fishers for the life security they offer. However, the ambiguous tenure legislation in China has not provided a solid foundation for protecting rural fishers' right to use fisheries. The fisheries law stipulates ways to use water areas for aquaculture and capture fisheries, but these rights are subject to the government's authorization. According to this law, the State makes uniform plans on the use of water areas, and any unit or individual that wishes to use them for aquaculture and capture shall get relevant certificates or licences from the government before they can conduct these activities. A

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significant part of the fisheries law is about administrative control in the fisheries industry, with nearly no specific mention of the protection of fisheries operators' rights. Also, no provision regarding the effective duration of aquaculture licences and capture licences is contained in this law.

The Law on the Administration of the Use stipulates overlapping requirements on application for authorization if aquaculture and fisheries in ocean areas are involved. Meanwhile, this law also specifies that the right to use sea areas may be revoked to meet the needs of public interests or state security.

The Civil Code is somewhat advanced in the sense that it contains articles on fisheries rights in a chapter

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titled 'Usufructs'. These articles say the right to use sea areas and the right to use waters areas for aquaculture or capture fisheries, obtained in accordance with the law, are to be protected by law. It is widely noted that this law has acknowledged fisheries tenure rights as non-owners' civil property rights. However, the articles under 'Usufructs' provide no substantial protection for Chinese traditional fishers' property benefits.

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The fisheries tenure rights provided by the Chinese laws are not well-delineated. They can fall into an unstable position facing the government's administration power in fisheries operation and resource conservation. The fisheries tenure rights have long been regarded as derivatives of state ownership of water areas, and, therefore, the exercise of these rights must be subject to the running of state ownership. This kind of understanding and the resulting legislation have some downsides.

One, it can easily create excuses for public authorities to infringe on the tenure rights of rural fishers. As a result, government departments can abuse administrative power without properly considering rural fishers' rights to use water areas.

Two, it leads to the administration of water areas by multiple government departments in China. In practice, when a fisher plans to practice aquaculture in a seawater area, he usually has to first get at least three certificates from three government departments. They are: Aquaculture License Certificate, Water Surface Use Certificate, and Ship Registration Certificate.

Three, it makes fisheries tenure rights as quasi-property rights subject to administrative authorization, which cannot have independent status held by other civil rights. Even in the event

that the authorities do not take back tenure rights legally, usually rural fishers can only obey such decisions with few chances of overturning them.

To protect China's rural fishers from 'sea-loss', the key is to reform the legislative understanding of fisheries tenure rights. This kind of rights should be regarded as rural fishers' inherent and superior rights for survival. It, therefore, cannot be reliant on sources for their existence and effectiveness. On the one hand, as the Civil Code is the fundamental law in civil areas, 'Usufructs' should state more unequivocally the protection of traditional fishers' tenure rights. Relevant articles in this chapter should state more specifically that customary tenure rights of rural fishers should be prioritized, even when they run at odds with other rights.

By doing so, the courts will not judge fisheries tenure rights only upon whether an administrative licence has been issued. On the other hand, confirming the irrevocability of tenure rights during the term of tenure contracts will also contribute to the protection of traditional fishers' right to subsistence. As for rural lands, the relevant law in China states that during the term of contract, the party giving out the contract may not take back the contracted land. Likewise, later legislation in China should also confirm the irrevocability of aquaculture rights during the term of contract.

From the perspective of social development, rural fishers' loss of fisheries sea areas is not completely evitable, but the arbitrariness of such loss and the lack of relief are mainly due to the disregard for tenure rights. When the material life basis of rural fishers—the rights to the ocean—can be arbitrarily taken away by administration at any time, rural fishers will become a new vulnerable group. It is necessary to attach importance to the protection of fishery tenure rights in China.

For more

Fisheries tenure arrangement in China: Legislative ambiguity, judicial settlement conflicts, and the gap in protecting traditional fishers' rights

<https://www.sciencedirect.com/science/article/abs/pii/S0308597X23001343>

Marine Fisheries Governance in China: Low-Efficacy Policies and Future Adjustments

https://www.researchgate.net/publication/352129898_Marine_Fisheries_Governance_in_China_Low-Efficacy_Policies_and_Future_Adjustments

Impact of blue economy factors on the sustainable economic growth of China

<https://link.springer.com/article/10.1007/s10668-023-04411-6>