



INTEGRATED MANAGEMENT OF LAGOON ACTIVITIES IMOLA PROJECT

LEGAL SUPPORT FOR THE ESTABLISHMENT AND OPERATION OF LOCAL FISHERIES ASSOCIATIONS IN THUA THIEN HUE PROVINCE

TECHNICAL REPORT

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Rome, January 2007



PEOPLE'S COMMITTEE OF THUA THIEN HUE PROVINCE



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operation of local Fisheries Associations in
Thua Thien Hue Province**

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Executive summary

This report has been prepared for the Department of Fisheries of the Thua Thien Hue Province in Viet Nam, under the project GCP/VIE/029/ITA. The report identifies needs and issues related to the implementation of the provincial Lagoon Management Regulation which establishes local Fisheries Associations as an important player in the management of the lagoon fisheries. To this end, a set of draft bylaws for the establishment of local Fisheries Associations and a draft provincial regulation on conflict resolution and surveillance has been prepared. A simple manual on the establishment of local Fisheries Associations has also been prepared.

It is recommended that a second mission be conducted under this project by the author of this report in 2007. During such a mission, a workshop will be conducted where the draft model bylaws and draft regulation will be discussed with a view to finalize these legal instruments. Members of existing local Fisheries Associations and individuals involved in the establishment of Fisheries Association should be invited to attend, together with representatives from local and provincial authorities.

1. Introduction

The author of this report conducted a legal mission from 25 September to 2 October 2006 within the framework of GCP/VIE/029/ITA, in line with her TOR as follows¹:

- Identify needs and issues related to the implementation of regulations relevant to fisheries and aquaculture management in the lagoon, with emphasis on the role of local Fisheries Associations;
- Prepare a guideline for the establishment of local Fisheries Associations;
- Prepare a guideline for the development of fishing and aquaculture management measures to be implemented by the Fisheries Associations;
- Identify any other legal issues that should be addressed.

In addition to familiarizing herself with the work of the IMOLA project team, the author met with pertinent stakeholders, including regional and local authorities and local Fisheries Associations, see *annex 1: Mission Programme* and *annex 2: List of persons met*, for details. The main focus of these meetings was the implementation of the Lagoon Management Regulation, with emphasis on the role of local Fisheries Associations. Core issues in this regard were: a) how to facilitate the establishment of Fisheries Associations in the province, and b) how to facilitate their implementation of the Lagoon Management Regulation.

2. Background

In December 2005, the People's Committee of Thua Thien Hue Province (PPC) adopted the Regulation on the management of lagoon fisheries in Thua Thien Hue Province (the Lagoon Management Regulation). This regulation has created a new legal situation in the province as it establishes Fisheries Associations as an important player in the management of the lagoon fisheries in the province. Important features of the regulation is that it: a) delegates management powers, including the authority to adopt management measures, to officially established Fisheries Associations, and b) determines that Fisheries Associations are responsible for surveillance and resolving conflicts on the fishing grounds in the lagoon.

So far, 16 local Fisheries Associations have been officially established in the province, while at the time of writing, another two are in the process of being established. During the mission, the author had the opportunity to meet with the leadership of the associations in Loc Binh, Quang Cong and Quang Thai communes. On two occasions, representatives from the Commune People's Committee (CPC) were also present. These meetings gave the author the opportunity to be informed about the objectives and activities of the associations, the constraints they encounter, and their role in fisheries and aquaculture management. All three Fisheries Associations reported that they had adopted "regulations," a notion used by the associations to describe both bylaws and management measures implementing provincial regulations.

¹ The author of this report has been relying on English translations of Vietnamese legal texts in her work. When working with translated documents there is always a risk that some of the meaning gets lost in translation. Legal texts are particularly "vulnerable" to this, as a very high level of accuracy is required in order to get the full meaning of a text. The reader is asked to keep this in mind when reading this report.

During the mission, regulations were obtained from the two associations in Quang Cong and Quang Thai communes. Quang Thai has a set of bylaws that are basically a copy of the bylaws of the Provincial Fisheries Association of Thua Thien Hue (PFA), which again heavily draws on the Vietnam Fisheries Association (VINAFIS) bylaws. In addition to rules governing the internal management of the association, the Quang Thai bylaws also include a section with management measures related to the use of fish corrals and fish cage culture. As regards Quang Cong, they could not produce a set of bylaws upon our request, but several regulations have been adopted: Regulation on the checking body of the Fisheries Association of Quang Cong, Regulation on the use of drainage ponds and ditches for high-tide shrimp farming area and Regulation on environmental management, as well as an Announcement of the aquaculture calendar for 2006. To what extent the Fisheries Associations have been actively involved in the drafting of these regulations is uncertain – the latter two instruments seem to have been adopted by the CPC alone.

Many communes in the province today do not have any Fisheries Association. The adoption of the Lagoon Management Regulation has, however, brought about the need to assist local lagoon communities in establishing such association in a legally correct way, and to assist them in responding to the management responsibilities the Regulation has imposed on them. The legal instruments (bylaws and regulations) that the existing associations dispose of today, do, however, have several legal weaknesses.

For this reason, the development of a model bylaw, which can serve as an example when groups of people involved in fisheries and aquaculture assemble to formally establish Fisheries Associations, was identified as an urgent legal task during the mission. In this context, it was also important to clarify what the legal status of the local Fisheries Associations is, and how they are, or should be, attached to VINAFIS and PFA; an account of this is made below. Likewise, the development of a draft provincial regulation on conflict resolution and surveillance, aiming at implementing the Lagoon Management Regulation, was identified as a priority. During her analysis of the fisheries and aquaculture related legal texts, the author found, however, some aspects of the Lagoon Management Regulation problematic in light of national legislation, and an account of this is also made in this report.

The draft legal instruments (model bylaw and draft provincial regulation on conflict resolution and surveillance), together with explanatory notes, are found in appendices to this report. In addition, a simple manual on the establishment of local Fisheries Associations has been prepared, aiming at assisting local communities in the setting up of an association. The latter is also found in an appendix to this report.

3. Establishment of local Fisheries Associations

3.1 Model bylaws

According to article 4 of the Lagoon Management Regulation, Fisheries Associations at the grass roots level are “socio-professional organizations”. Decree 88/2003 of July 32, 2003, Providing for the organization, operation and management of associations (Decree no. 88), determines the conditions and procedures for establishing associations, including socio-professional organizations, in the legally correct way. This is important, as only local Fisheries Associations that are legally recognized as a socio-professional organization will be granted status as a “management agency” pursuant to the Lagoon Management Regulation. Among the conditions for being approved as an association by the local authorities, is that it has adopted its own bylaws, see article 6.

“Bylaws” are defined as rules governing the internal management of an organization². The model bylaws (appendix 2) will facilitate the process of establishing local Fisheries Associations, and care is taken that they are made in accordance with article 9 of Decree no. 88, which prescribes the contents of the bylaws of an association. This requires that the bylaws satisfy certain formal criteria, and account of this is made in the Explanatory notes that have been prepared, see appendix 3.

The model bylaws have been tailor made to meet the needs of the local Fisheries Associations. To use the PFA bylaws as a model with only a few adjustments, which is currently being done, is not adequate as the local Fisheries Associations do not have the same complex structure as the PFA. Furthermore, the objectives of the local Fisheries Association are different from the PFA, something that is also reflected in the model bylaws. Important in this context is their role as management agencies, i.e. their role in conflict resolution and surveillance, and potentially as a body adopting management measures. Equally important is the role associations play in enhancing professional development for the people living from fisheries and aquaculture in the lagoon. This objective, which was emphasized by the leadership of the associations met when the bylaws were being prepared, has also been reflected in the model bylaws.

3.2 Organisational attachment with PFA and VINAFIS

Under section 114 of the Civil Code of Viet Nam, legally established “socio-professional organizations” are legal persons:

1. A social organization or socio-professional organization which has been permitted to be established and has had its statute approved by the competent State authority, and has as members individuals or organizations that voluntarily contribute property or membership fees for the purpose of supporting the common needs of the members and purpose of the association, shall be legal persons when participating in civil relations.

Fisheries Associations that have been legally approved as “socio-professional organizations,” will thus be legal persons. Being a legal person gives the local Fisheries Association *legal capacity*, which means the competence to enter into a binding contract and the like. When establishing local Fisheries Associations, it is thus important that this be done in a way that ensures that they will acquire this legal status.

In this context it is of concern whether a local Fisheries Associations should be attached to the PFA (and VINAFIS) as a “sub-association” or as a “collective member.” Important in this regard is: a) to ensure that the sub-association can retain the status as a legal person and b) to provide for the kind of arrangement that is most beneficial for the local Fisheries Associations.

Both the PFA charter (article 8) and the VINAFIS charter (article 18) provide for the establishment of sub-associations. Neither the PFA nor the VINAFIS charter does, however, say anything about the legal status of the sub-associations, and if they are separate legal persons. The establishment of organisational “components” like Congress, elected leader and elected associate leaders for sub-associations in the VINAFIS charter indicates, however, that the sub-associations could be legal persons. The same assumption can be drawn from the fact that sub-associations are supposed to “generate revenue,” which can indicate that it is to possess its own property independently from other legal persons³.

² Consequently, the model bylaws do not include any fisheries and aquaculture management measures. Both the different nature of these two types of instruments, and the fact that the procedures for adopting management measures are different from amending bylaws, makes it advisable to keep these kinds of regulations separate.

³ Under section 94 of the Civil Code, legal persons “possess property independently from other individuals and /or organizations, and bear its own liability by such property.”

The fact that the decision to establish a sub-association of the PFA is taken by the PFA Executive Board in agreement with the local authority (CPC), could, however, indicate that a sub-association is just a branch of the PFA and not a separate legal person (see the PFA charter article 8). The wording of the PFA charter is not very precise though, and could just reflect a process whereby sub-associations are approved as *affiliated associations* of the PFA. The latter would imply that a socio-professional organization, i.e. a separate legal person, is first established, whereupon the PFA Executive Board gives its approval for it to be affiliated with the PFA. This is similar to how the procedure reportedly is today. The PFA Decision of April 2005 can serve as an example. Here, the PFA decides to establish the Quong Cong Fisheries Association, but states, at the same time that the association has its "own legal status, stamp and account." This illustrates that being a sub-associations is not in conflict with being a legal person.

As regards collective membership, the VINAFIS charter allows for collective memberships of *organizations* in the fisheries sector under article 6. Being a legal person is thus a prerequisite for being a collective member. The PFA charter on the other hand, does not seem to provide for collective memberships; chapter III of the charter seems to provide for individual memberships only, see article 5.

The latter observation, in combination with the assumption that local Fisheries Associations can retain their status as legal persons if they become sub-association, favours attaching the local Fisheries Association to the PFA as sub-association. Will this arrangement be beneficial for the local Fisheries Associations also in other respects?

The PFA charter says very little about the relationship between the sub-associations and the PFA. The only substantial provisions regard the establishment (article 8) and the role of sub-associations concerning irregular reconvention of the PFA Congress (article 9).

The VINAFIS charter includes some more details under article 18: Here the sub-associations are granted the right to "select a representative to participate in the Congress of the upper levels." As there is currently no district level, this means the Congress of the PFA. (The PFA charter is, however, silent about the representation of sub-associations at the PFA Congress.) The right to be present at the PFA Congress, and supposedly also the right to vote there, are important democratic rights; it enables the sub-association to be a means through which local fishermen can channel their concerns to higher levels. Furthermore, the charter states that sub-associations shall be "under the guidance of the provincial branch." This could imply a responsibility on the part of the PFA to provide the sub-associations with technical support etc. Being legal persons also gives the sub-associations the right to withdraw from the PFA at any time if the highest ranking body of the sub-association so decides.

As regards collective membership in VINAFIS, articles 7 and 8 spell out the rights and duties of members, which includes "comments, discussion, voting, questions, criticism of the Society's operations," as well as presenting ones candidature to the Executive Committee and withdrawing from VINAFIS. The charter does not specify in what body these first mentioned rights can be used by a member, but this is supposedly in Congress. The rights of collective members seem thus to have similarities with being a sub-association – the charter is, however, quite vague in this regard.

Based on the above it seems to be an appropriate arrangement for the local Fisheries Associations to be attached to the PFA as a "sub-association" rather than as a "collective member." It allows the local Fisheries Associations to retain their status as legal persons, while at the same time giving them democratic rights in the PFA and the right to benefit from any technical support they can provide.

4. Draft Provincial Regulation on conflict resolution and surveillance

4.1 Introduction

Article 15(3) of the Vietnamese Fisheries Law provides that the Provincial People's Committees (PPC)

"(...) shall organize and promote the local residents to take part in monitoring, detection and prosecution of any violations committed in respect of fisheries activities on fishing grounds."

This means that the PPC is vested with the power to establish co-management mechanisms in fisheries MCS (monitoring, control and surveillance), by involving the local residents as participants in the conduct of MCS.

Through the adoption of the Lagoon Management Regulation, the PPC has introduced elements of such co-management, providing that local Fisheries Associations shall play a role in conflict resolution (article 8), and in the prevention of violations of the fisheries legislation (article 13). The regulation does not, however, give any details on how these activities are to be carried out by the Fisheries Associations, something that is an impediment to the implementation of the regulation. Consequently, there is a need for a regulation detailing out this.

Article 11 of the Lagoon Management Regulation provides that Fisheries Associations at the local level should develop their own "self-management rules", aimed at, *inter alia*, protecting fishing grounds, aquatic resources and the protection of the aquatic environment and management of water ways. In order to carry out their responsibilities related to conflict management and prevention of violations, the Fisheries Associations should consequently adopt their own regulations. However, as the PPC do not seem to have the right to delegate the power to adopt regulations to Fisheries Associations (see section 5), such regulations will have to be adopted by the PPC. Hence, the draft regulation regarding conflict resolution and surveillance has been prepared for the adoption by the PPC, but should be implemented by the Fisheries Associations.

The draft regulation is applicable to all conflicts related to the carrying out of fisheries and aquaculture operations within the jurisdiction of the Fisheries Association, and provides for the surveillance of these activities.⁴ These two activities are provided for in two separate chapters of the regulation and some additional comments are provided below. Explanatory notes for the draft regulation have also been prepared, see appendix 5.

4.2 Conflict resolution

As regards conflict resolution, article 8 of the Lagoon Management Regulation determines the following:

"Fisheries Associations at the local level are responsible for resolving conflicts in fishing grounds and about resources among individuals and/or household members. Only when conflict resolution fails do the authorities intervene."

Article 15(3) of the Fisheries Law does not mention conflict resolution explicitly as one of the activities local residents should take part in, but states that they shall take part in

⁴ Lack of knowledge about the exact commune boundaries and the boundaries of the Fisheries Association is, however, an impediment when the associations are to act as management agencies within their own jurisdiction. This issue should be addressed by the local authorities in order to ensure that boundaries are respected and future conflicts among neighbouring associations avoided.

“monitoring, detection and prosecution of any violations committed in respect of fisheries activities on fishing grounds.” As conflict resolution is potentially an important factor in the prevention of violations of the fisheries legislation, providing for such a mechanism seems to harmonize well with the intentions of the Fisheries Law at this point. Hence, chapter 1 of the draft regulation establishes an informal mechanism of voluntary conflict resolution, giving the members of the Executive Board of the Fisheries Association a key role as mediators. Such mediation can only find place where no violation of the fisheries and aquaculture legislation has taken place.

4.3 Surveillance

As regards prevention of violations of fisheries regulation, article 13 of the Lagoon Management Regulation states the following:

“The fishing rights in the lagoon area includes the rights and responsibilities to timely prevent acts of fishery law violation, responsibilities of protecting fishing grounds, developing aquatic resources, ensuring free access to water ways, preventing degradation of the water environment and ensuring submission of taxes to the State.”

Chapter 2 of the draft regulation determines how Fisheries Associations can control fisheries and aquaculture operations within their jurisdiction to ensure that the operations are conducted in accordance with current fisheries and aquaculture legislation. This involves keeping the area under surveillance, which is a prerequisite for effectively preventing violations of the legislation. As the Lagoon Management Regulation does not include any provision concerning the “prosecution” of these violations (see the Fisheries Law article 15(3)), this is not provided for in the regulation.

5. Some problematic aspects of the Lagoon Management Regulation

5.1 Introduction

Some aspects of the Lagoon Management Regulation, and the implementation of it, seem problematic in light of national legislation and are discussed in more detail in this section⁵. The conclusions drawn here have been reflected in the draft legal instruments that have been prepared.

5.2 Delegation of management powers

The Lagoon Management Regulation provides for the delegation⁶ by the PPC, through the District People’s Committee (DPC), of management powers to local Fisheries Associations by granting them “fishing rights.” According to article 13 of the regulation, “fishing right” is a

⁵ In addition to discussing these issues with Mr Vinh Binh, Deputy Director of Department of Fisheries (DOFI) in Thua Thien Hue Province, the author had the chance to discuss with Dr Thao, current director of the Personnel Department of the Ministry of Fisheries (MOFI) and former director of the Legislation Department of the same ministry.

⁶ Article 5 of the Lagoon Management Regulation provides for the delegation of management powers in a more general way, stating that *“The State delegates management of fisheries resources in certain areas of lagoon to fisheries associations at the grassroots level. On that basis fisheries associations properly and creatively regulate the fisheries activities of their members, ensuring the harmony among members and between members and associations and the whole society.”*

right that gives the Fisheries Association the power to manage lagoon fisheries in the following way⁷:

"The Provincial People's Committee delegates power to the People's Committees of Lagoon Districts to issue the fishing rights to fisheries associations at the village and commune levels in certain water bodies in their designated area based on the quantity and types of fishing gear, fishing seasons and aquatic species.

The fishing rights in the lagoon area include the rights and responsibilities to timely prevent acts of fishery law violation, responsibilities of protecting fishing grounds, developing aquatic resources, ensuring free access to water ways, preventing degradation of the water environment and ensuring submission of taxes to the State."

Article 11 of the Regulation provides that the Fisheries Associations have the right to adopt management measures:

The State encourages fisheries associations at the local level, based on the State Law, to develop their "self-management rules" detailing community rules and aimed at protecting fishing grounds, aquatic resources and other issues such as protection of the aquatic environment and management of water ways and collection of fisheries tax, etc.

Reportedly, the Fisheries Association in Vinh Phu commune has been designated a pilot commune for the implementation of the "fishing rights" system, and is currently being prepared for being granted this right. It was explained to the author of this report, that as the system is not fully implemented yet, several Fisheries Associations have adopted management measures despite not having been granted "fishing rights." In the future, only Fisheries Associations that have been granted "fishing rights" will hold management powers, including the right to adopt management measures as stipulated in article 11 of the regulation.

This raises the question of PPC's delegation powers. What management powers are stipulated for the PPC in the Fisheries Law? Does the PPC have the right to delegate these powers and can it delegate these to Fisheries Associations?

The Lagoon Management Regulation was adopted by the PPC pursuant to article 15(3) of the Fisheries Law. The article is one of the few that provides for elements of community based management and determines that:

"The provincial People's Committees shall have responsibility to issue rules of fishing grounds in rivers, lakes, lagoons and other natural waters under its jurisdiction in accordance with the guidance of the Ministry of Fisheries; shall organize and promote the local residents to take part in monitoring, detection and prosecution of any violations committed in respect of fisheries activities on fishing grounds."

To issue "rules of fishing grounds" is a broad mandate that implies that the PPC has a certain degree of discretion when making rules on fisheries operations management in the province – though within the framework of governing factors like the state master plan for fisheries, the total available catch, the licensing system, banned gear etc. The question that follows is whether the PPC has the right to delegate the power to issue such rules further. This is what has been done in article 11 of the Lagoon Management Regulation, which stipulates that the Fisheries Associations shall develop their own "self-management" rules aimed at protecting fishing grounds etc. A valid legal point would be that the PPC can only delegate this power to a subordinate body which is under the political instruction of the PPC (like the CPC), and only if the law so provides. Neither of these criteria are fulfilled in this case, and it is therefore assumed that the PPC has gone beyond its mandate when delegating the power to issue management measures to the Fisheries Associations.

Concerning PPC's competence to "organize and promote the local residents to take part in monitoring, detection and prosecution of any violations committed," this is a provision encouraging the PPC to introduce co-management in monitoring, control and enforcement

⁷ The issue of fishing right and collective property rights is discussed in section 5.3.

of fisheries. This has been provided for in article 8 (conflict resolution) and article 13 (prevent acts of fisheries law violation, protecting fishing grounds) of the Lagoon Management Regulation. In light of what has been said above about delegation, the PPC, and not the Fisheries Associations, is the body that holds the necessary regulatory powers to adopt regulations regarding this. The Fisheries Associations should, however, play a crucial role in implementing such regulations.

5.3 The property regime in fisheries

Regarding the ownership of the fisheries resources in Vietnam, the Vietnamese Constitution provides in article 17 that:

"rivers and lakes (...), wealth lying underground or coming from the sea (...) and all other property determined by law as belonging to the State, come under ownership by the entire people."

A state property regime in fisheries is reflected in the Fisheries Law, article 3:

"Fisheries resources shall be subject to the ownership of the people and under the integrated management of the State. Organizations and individuals shall have rights to exploit the fisheries resources as provided for by legislation."

A state property regime in fisheries means that the state has the sovereign rights to explore and manage the fisheries resources. The exploitation of the fisheries resources is today exercised by granting licenses to individuals and organizations, see article 16 of the Fisheries Law. Small scale fishermen (individuals fishing by fishing vessels with tonnage smaller than 0, 5 tons or not using fishing vessels) are, however, exempted from the licence requirements. An open access regime thus exists for these fishermen, something that means that this group freely can harvest the fisheries resources. Most fishermen in the lagoon belong to this latter category.

The introduction of a collective property regime in fisheries would mean that a local community (e.g. through a Fisheries Association) holds the exclusive right to access and harvest a resource. The right can take different forms, such as the right to harvest a particular stock, the right to fish in a particular area, or the right to use a certain type of vessel. The community would usually also hold management powers of the resource. As per today, the Fisheries Law do not provide for any collective property right system whereby the state vests the exclusive right to harvest a resource in a local community. What the Fisheries Law do provide for, is only some elements of community based management, by prescribing that local communities should have the right to participate in fisheries management, namely in monitoring, control and enforcement, see article 15(3).

Despite the lack of legal authority in the Fisheries Law, reportedly there exist a *de facto* collective property regime in the lagoon, whereby local communities (sometimes through a Fisheries Association), exercise exclusive rights to fish or conduct aquaculture within their jurisdiction. Outsiders who do not belong to the community are excluded from these activities, or are considered as intruders if they attempt to fish in the area. This collective property regime is mixed with an element of a *de facto* private property regime, whereby villagers with fixed gear and fish ponds exercise "property rights" over their site – a "right" that reportedly is transferable. These *de facto* "rights" are, however, not enforceable in Vietnamese legislation and can thus be legally challenged.

The concept of "fishing rights" in the Lagoon Management Regulation seems to intend to introduce a kind of collective property regime in lagoon fisheries, by granting specific rights to harvest to Fisheries Associations. Article 13, paragraph 1, provides that:

"The Provincial People's Committee delegates power to the People's Committees of Lagoon Districts to issue the fishing rights to fisheries associations at the village and commune levels in certain water bodies in their designated area based on the quantity and types of fishing gear, fishing seasons and aquatic species."

It was explained to the author that only when Fisheries Associations have been granted “fishing rights” in a water body in their area, can fisheries be legally conducted (with the exception of sport fishing and “small fishing jobs,” see article 21.) Hence, the fishermen will have to establish a Fisheries Association, which then will have to be granted “fishing rights,” before they can fish legally. Similarly, if the “fishing rights” are revoked from the association (see article 19), all fishing activities will be considered illegal in the area in question. It was explained, however, that this will not be enforced until the system of issuing “fishing rights” is fully implemented.

The Lagoon Management Regulation does also introduce compulsory membership in Fisheries Associations for individuals who want to participate in lagoon fisheries (see article 3). Practice in existing Fisheries Associations today is that only fishermen belonging to the commune or village in question are eligible for membership. The consequence of this is that access to the lagoon fisheries is limited to members – residents of the local communities – only.⁸

The Lagoon Management Regulation do also excludes new entrants from the lagoon fisheries under article 1(4), something that is practiced in the lagoon today.

The *de facto* collective property regime that exists in the lagoon today, seems thus to be somehow “codified” in the Lagoon Management Regulation by restricting the right to fish to members of local Fisheries Associations or members of the village. However, the existence and introduction of a collective property regime is founded on an unsound legal basis. First, because it has no legal authority in national legislation, and secondly, because it is in conflict with the open access regime that exists for small scale fishermen. And as the PPC is not given a clear mandate in the national legislation to introduce a collective property regime, this can not be prescribed in provincial legislation either. The future introduction of a collective property regime will consequently have to be provided for in national legislation, preferably in the Fisheries Law.

In order to facilitate the introduction of community based management in the lagoon fisheries, in line with the intention of the Lagoon Management Regulation, legalizing a collective property regime is a crucial step. Experience has shown that if you want to make local communities fully dedicated to the task of managing the fisheries resources in a sustainable way, granting them collective property rights, and not only management powers, is vital. This is so because a local community will only have an incentive to manage the fisheries resources in a sustainable way if they know that they will benefit from it in the long run. If outsiders are free to harvest the surplus that the local community has put efforts into attaining, and subsequently cause the depletion of the stocks, this incentive will vanish. This is exactly what is likely to happen when management powers are granted to a community within the framework of an open access regime. So, until the law grants collective property rights to local communities, the current “property regime” in the lagoon will keep on being an *ad-hoc* regime without legal foundation and which can be challenged any time.

6. Conclusions and recommendations

Based on the input from the stakeholders and the IMOLA project team, and an analysis of the current legislation, a set of draft “Guidelines” for the establishment and operation of local Fisheries Associations has been prepared, with the following components:

- Manual on the establishment of Fisheries Associations – appendix 1.

⁸ Compulsory membership can prove to be problematic in light of the principle of freedom of association as provided for in article 69 of the Vietnamese Constitution.

	IMOLA Project Office	Nguyen Ngoc Song, Chairman of the High Tide Fisheries Association of Quang Cong Commune. <u>Afternoon:</u> Working in the IMOLA project office
Friday 29/09	Visit to Quang Thai Commune IMOLA Project Office	<u>Morning:</u> Meeting with Mr Dung, Chairman, Mr Le, Vice Chairman and Mr Cuong, Secretary of Trung Lang Village Fisheries Association in Quang Thai Commune. <u>Afternoon:</u> Working session with Mr Vin Binh and Mr Stefano Albisinni.
Monday 02/10	IMOLA Project Office Departure to Hanoi	<u>Morning:</u> Working in the IMOLA project office <u>Afternoon:</u> De-briefing with Mr Sarti, Mr Van Duijn and Mr Albissini in the IMOLA project office.

Annex 2 – List of persons met

The IMOLA project:

Mr Massimo Sarti, Chief Technical Advisor
Mr Hoang Ngoc Viet, National Project Director / Director of DOFI
Mr Nguyen Quang Vinh Binh, National Deputy Project Director / Deputy Director of DOFI
Mr Arie Pieter van Duijn, Socio-economist
Mr Stefano Albisinni, Legal consultant
Mr Le Xuan Hoang, Interpreter
Ms Phuoc Lai, Project secretary

The Ministry of Fisheries, Hanoi:

Mr Dinh Xuan Thao, National Project Director, Head of Personnel Department of the Ministry of Fisheries (MOFI)

Department of Fisheries (DOFI) of Thua Thien Hue Province:

Mr Hoang Ngoc Viet, Director/ National Project Director IMOLA
Mr Nguyen Quang Vinh Binh, Deputy Director/ National Deputy Project Director IMOLA

Local Authorities:

Mr Hien, Aquaculture Engineer, the People's Committee of Thua Thien Hue Province.

Mr Le Tuy, Chairman, the People's Committee of Loc Binh Commune
Mr Luong He Vinh, Vice Chairman, the People's Committee of Loc Binh Commune
Mr Bui Dung, officer in charge of fisheries issues the People's Committee of Loc Binh Commune

Mr Nguyen, member of the People's Committee of Quang Cong Commune

Fisheries Associations:

Mr Huynh Van Dau, Chairman, Fisheries Association of Loc Binh Commune.

Mr Nguyen Ngoc Song, Chairman, High Tide Fisheries Association, Quang Cong Commune.

Mr Dung, Chairman, Trung Lang Village Fisheries Association, Quang Thai Commune.

Mr Le, Vice Chairman, Trung Lang Village Fisheries Association, Quang Thai Commune.

Mr Cuong, Secretary, Trung Lang Village Fisheries Association, Quang Thai Commune.

Others:

Mr Nguyen Dinh, Vice Director, Board of Management of the Hung River Projects.

Ms Suu, Center for Social Studies and Humanities, University of Hue.

Mr Tho, Center for Social Studies and Humanities, University of Hue.

Mr Nhan, Center for Social Studies and Humanities, University of Hue.

Annex 3 – List of consulted legislation and regulations

National:

1. The Viet Nam Constitution of 1992.
2. The Viet Nam Fisheries Law of 2003.
3. The Civil Code of Viet Nam.
4. Decree no. 128/2005/ND of 11 October, 2005, Providing for sanctioning of administrative violations in the fisheries domain.
5. Decree no. 88/2003 of 32 July 2003, Providing for the organization, operation and management of associations.

Provincial:

1. Regulation no. 4260/2005/QD-UBND on the management of lagoon fisheries in Thua Thien Hue Province.
2. Decision no. 3677/QD-UB on the approval of the overall planning of the management and exploitation of fishery resources of the lagoon system of Thua Thien Hue Province towards 2010.
3. Regulation no. 3014/2005/QD-UBND on the environmental management of centralized shrimp culture areas in Thua Thien Hue Province.
4. Regulation no. 1321/QD-UB on the functions, responsibilities, mandates, structures and organization of the Department of Fisheries.
5. Decision of the PPC on the establishment of Thua Thien Hue Fisheries Association (2003).

Appendix 1

Manual on the establishment of local Fisheries Associations

Basic requirements for the establishment of a local Fisheries Association:

1. A socio-professional organization is established pursuant to Decree no. 88/2003 of July 30, 2003 Providing for the organization, operation and management of associations. The President of the PPC (CPC) shall permit the establishment and approve the bylaws of the association.
2. The association is approved as a sub-association of the PFA and the VINAFIS by the PFA Executive Board and the CPC.

Steps to be taken to establish a local Fisheries Association:

1. Members of a fisheries village or commune contact the Commune People's Committee (CPC) or the Provincial Fisheries Association (PFA) with a pledge that they assist in organizing a meeting for the purpose of establishing a local Fisheries Association.
2. The PFA (or the chairman of the CPC) will call a meeting, where all individuals and households doing capture fisheries and/or fish farming in the village or commune are invited to attend. In order to establish a local Fisheries Association, five¹ or more "eligible members" must agree to do so.
3. The formal establishment of the Association requires that a set of bylaws are adopted by the founding members (see the model bylaws). This will be testified through a protocol from the meeting, which should include the names and signatures of the founding members. An Executive Board should also be elected.
4. A formal request to become a socio-professional organization will then have to be filed with the CPC by the elected Chairman of the Association². The request will include the adopted bylaws, together with the protocol from the establishing meeting.
5. Once the socio-professional organization has been legalized, a formal request to become a sub-association of the PFA (and the VINAFIS) will have to be filed with the PFA. This decision will be taken jointly by the PFA and the CPC.

Steps to be taken to establish an interim local Fisheries Association:

6. If no establishing meeting has been organized, a request from five eligible members to establish an interim local Fisheries Association of the PFA can be submitted to the CPC. The CPC will together with the PFA reach an agreement on the establishment of an interim Fisheries Association, which includes the setting up of a provisional Executive Board.
7. The temporary Executive Board of the Fisheries Association will, within half a year, call a meeting for the formal establishment of the local Fisheries Association, with the adoption of bylaws, the election of Executive Board, etc.
8. The steps provided for above will then have to be followed.

¹ See article 8 of the Provincial Fisheries Association (PFA) bylaws.

² Decree no. 88/ 2003 prescribes a more cumbersome process whereby a 'board canvassing for establishment of associations' has to be approved by the authorities before a dossier of application for the establishment can be submitted.

Appendix 2

**MODEL BYLAWS FOR LOCAL FISHERIES ASSOCIATIONS IN
THUA THIEN HUE PROVINCE**

CHAPTER 1 - GENERAL PROVISIONS

Article 1 – Name

The name of the Association shall be the Fisheries Association of {...} village/commune.

Article 2 – Legal status

The Fisheries Association of {...} village/commune is a sub-association of the Provincial Fisheries Association of Thua Thien Hue Province (PFA) and of the Vietnam Fisheries Association (VINAFA).

The Fisheries Association of {...} village/commune is a public socio-professional organization with separate legal personality, its own stamp and account. [Its headquarters is in {...} village in {...} commune.]

The Chairman of the Executive Board of the Fisheries Association is the legal representative of the Association.

Article 3 – Objectives

The Fisheries Association has the following objectives:

1. to assemble individuals that participate in fisheries or aquaculture with a view to enhance professional development while ensuring a sustainable use of the natural resources;
2. to raise the awareness of its members and disseminate information on national and regional fisheries and aquaculture legislation and policies;
3. to promote technology transfer and professional and economic cooperation among members;
4. to assist members in accessing credit opportunities for the purpose of professional development;
5. to act as a management agency in its jurisdiction, with the rights and duties provided for in national, provincial and local legislation, [and as appropriate, adopt and implement local fisheries and aquaculture management measures].

CHAPTER 2 – MEMBERSHIP

Article 4 – Membership

Any individual [over the age of {...}] [or household], living and participating in fisheries or aquaculture in {...} village/commune, can become a member of the Fisheries Association of {...} village/commune.

Members who have paid their annual dues shall have the following rights and privileges:

1. Exercise the right to vote on all matters to be decided by the Congress;
2. Be elected or appointed to any position in the Fisheries Association;
3. Participate in all deliberations during meetings of the Fisheries Association;
4. Have the use of all the facilities of the Fisheries Association;

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5. Examine all the records or books of the Fisheries Association during business hours;
and
6. Participate in the activities sponsored by the Fisheries Association.

[As regards household memberships, only one member of the household will have the right to be appointed to any position in the Association at a time.]

Article 5 – Membership fee

All members [and member households] shall pay a yearly membership fee which will be decided by the Congress.

Article 6 – Operational fees

All members [and member households] shall pay operational fees. The fee shall be levied on any crop or catch at a rate decided by the Congress.

Article 7 – Honorary membership

Honorary membership can be awarded by the Congress to persons who have contributed long and valuable service for the enhancement of the objectives of the Fisheries Association.

Honorary members shall be entitled to all rights and privileges of the Fisheries Association, except the right to hold office in the Association.

Article 8 – Suspension or exclusion

The Executive Board can, upon the approval of [two-thirds] of its members, suspend or expel, depending on the gravity of the case, a member of the Fisheries Association if he or she:

1. is convicted of any offence of the Fisheries law or any subordinate legislation;
2. is convicted of any offence of bribery or corruption;
3. has seriously violated these bylaws or any management measures adopted by the Fisheries Association; or
4. has caused adverse impacts on the environment and the aquatic resources.

A member that is suspended or excluded has the right to appeal the decision to the Congress. The Congress may decide to suspend or exclude a member upon the approval of [two-thirds] of the members.

CHAPTER 3 - BODIES OF THE FISHERIES ASSOCIATION

Article 9 – Bodies of the Fisheries Association

The Fisheries Association has the following bodies:

1. The Congress
2. The Executive Board

The Executive Board can establish sub-groups according to gear type, farming activity etc. as the need may be.

CHAPTER 4 - THE CONGRESS

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Article 10 – Meetings

The Congress is the highest ranking body of the Fisheries Association and shall be held [before the 1st of March] each year.

All members shall be called to the Congress by the Chairman of the Executive Board with four weeks notice within the locality of the Fisheries Association. Any proposals from members on issues to be decided upon by the Congress have to be received by the Executive Board two weeks before the date of the meeting. The agenda of the meeting as set by the Executive Board will be made available no later than one week before the meeting.

The agenda of the Congress may be modified upon request of any member of the Congress and upon approval of a majority of the members of the Congress present at the meeting.

A quorum for a meeting of the Congress shall be two-thirds of the members.

Upon request of two-thirds of the members of the Executive Board, or half of the members, the Chairman of the Executive Board shall call an extraordinary Congress to discuss any issue that has been raised.

One representative of the PFA [and one representative of the Commune People's Committee (CPC)] has the right to attend the Congress. The representative has the right to participate in the deliberations during the meeting, but does not have the right to vote.

Article 11 – Functions

Each Congress elects a chairman, a secretary, two members of the election panel and two members to sign the protocol.

The Congress shall make decisions related to the following items:

1. Annual report and financial statement for the last operational year;
2. Budget for next operational year;
3. Proposed activities for next year;
4. The membership fee;
5. The level of operational fees;
6. [Adoption or amendment of management measures as provided for in national, provincial and local fisheries and aquaculture regulations;]
7. Election of members of the Executive Board [every second Congress];
8. Election of delegate(s) to the Congress of the Provincial Fisheries Association;
9. Amendments of these bylaws;
10. The disbursement of an amount of money from the Fisheries Association Fund that exceeds the level set by the Congress;
11. Award honorary memberships;
12. Any proposals received from members;
13. Any other proposals from the Executive Board.

A protocol shall be made from the meeting of the Congress and shall be duly signed by two members.

Article 12 – Voting

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All decisions by the Congress are made by simple majority, unless otherwise stated in these Bylaws. [In the event of an equality of votes, the Chairman shall have a casting vote.]

Each member of the Congress shall vote only once. [As regards household memberships, each household will designate one member of that household that votes on its behalf.]

Voting shall be secret and conducted in the manner that has been determined by every Congress.

The election panel shall be responsible for recording and counting the votes.

CHAPTER 3 – THE EXECUTIVE BOARD

Article 13 – Composition and terms of office

The Executive Board is the governing body of the Fisheries Association between the meetings of the Congress.

The Executive Board shall consist of the following five [seven] members who are elected by the Congress for period of [two] years:

1. Chairman
2. Vice Chairman
3. Secretary
4. Treasurer
5. 1 [3] Commissionaires

A member of the Executive Board shall not serve for more than [three] consecutive terms upon the expiry of which he or she shall not be eligible for re-election within the next [two] years.

Article 14- Functions

The Executive Board has the following responsibilities:

1. Promote the objectives of the Fisheries Association and implement its bylaws;
2. Implement the decisions and resolutions adopted by the Congress;
3. Prepare annual working programs to be presented to the Congress for approval;
4. Prepare annual budgets to be presented to the Congress for approval;
5. Report annually to the Congress on the activities of the Fisheries Association, together with a financial statement for the last operational year;
6. [Make proposals to the Congress on the adoption or amendment of management measures as provided for in national and provincial fisheries and aquaculture regulations;]
7. Implement fisheries and aquaculture management measures, including mechanisms for monitoring, control and enforcement;
8. Make proposals to the Congress on amendments of these Bylaws;
9. Establish sub-groups, as the need may be;
10. Prepare guidelines for the use of money from the Fisheries Association Fund, and dispose of the funds pursuant to these guidelines as adopted by the Congress;
11. Raise funds for the running of the Fisheries Association and the conduct of its activities;
12. Make decisions on the suspension and exclusion of members in line with article 8;
13. After each Congress, submit the annual report, the revised accounts and the protocol from the Congress to the PFA and the CPC for information.

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Article 15 – Meetings and voting

The meetings of the Executive Board shall be held [once a month], at such time and place as the Chairman of the Executive Board may determine.

A quorum for a meeting of the Executive Board shall be [two-thirds] of the members.

All decisions by the Executive Board are taken by simple majority. [In the event of an equality of votes on any matter, the Chairman shall have a casting vote [in addition to his or her deliberative vote.]]

Article 16 - Vacation of office

A member of the Executive Board shall vacate his or her office if he or she:

1. is suspended or excluded from the Fisheries Association as provided for in article 8;
2. is convicted of any offence for misuse or embezzlement of any money deposited in the Fisheries Association Fund;
3. is absent from three consecutive meetings without leave of the Chairman of the Executive Board;
4. exercises undue influence on any other member of the Executive Board or any member of the Congress; or
5. resigns by written notice to the Chairman of the Executive Board.

Article 17 - Remuneration

A member of the Executive Board shall not be paid any remuneration, allowance or compensation.

CHAPTER 5 – THE FISHERIES ASSOCIATION FUND

Article 18 – Establishment of Fund

It is hereby established a Fisheries Association Fund.

Article 19 – Financial resources

There shall be deposited into the Fisheries Association Fund:

1. membership fees;
2. operational fees;
3. grants from the government or local authorities, international organizations or non-governmental organizations;
4. a percentage of the natural aquatic resources exploitation taxes levied by the Fisheries Association as decided by the Commune People's Committee;
5. [any access fees levied on non-community members;]
6. [money paid in respect of fines for any breach of management measures or fisheries regulations reported by the Fisheries Association to the competent law enforcement officer;]
7. such other monies that may be generated or otherwise received by the Fisheries Association pursuant to existing legislation;

Article 20 - Use of monies

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Monies deposited in the Fisheries Association Fund shall be used only for the following purposes:

1. enhance the development of the fisheries and aquaculture sector in the jurisdiction of the Fisheries Association;
2. provide the necessary means for the Fisheries Association to fulfil its obligations and duties under the current fisheries and aquaculture legislation;
3. [implement management measures adopted by the Fisheries Association;]
4. grant loans and financial assistance to members for the purpose of professional development.

Article 21 – Administration of the Fund

The Fisheries Association Fund shall be administered by the Executive Board in accordance with guidelines adopted by the Congress.

CHAPTER 6 - FINAL PROVISIONS

Article 22 – Withdrawal

The Congress may decide to withdraw the Fisheries Associations as a sub-association of the the PFA and the VINAFIS upon approval of [two-thirds] of the members of the Congress.

Article 23 – Conditions for dissolution

The Congress may decide to dissolve the Fisheries Association upon approval of [four-fifths] of the members of the Congress.

Article 24 – Assets

In case of dissolution, the assets belonging to the Fisheries Association shall be at the disposal of the PFA and used to promote the objectives of the PFA in the jurisdiction of the dissolved Fisheries Association.

Article 25 – Entry into force – amendments

The Congress of the Fisheries Association of {...} village/commune in the province of Thua Thien Hue, adopted these bylaws on the {...}. The establishment of the association and its bylaws were approved by the [CPC] on the {...}. The Fisheries Associations became a sub-association of the PFA and the VINAFIS upon the joint decision of the Executive Board of the PFA and the CPC on the {...}.

Amendments to these Bylaws, other than to the provision on the dissolution of the Association, are adopted by [two-thirds] of the members of the Congress. Amendments of the provision regarding the dissolution of the Association are adopted by [four-fifths] of the members of the Congress. Amendments shall enter into force upon the decision of the PFA [and the CPC].

Appendix 3

Explanatory notes – Model Bylaws for local Fisheries Associations

CHAPTER 1 - GENERAL PROVISIONS

Article 2 – Legal status

The article provides for the legal status of the Fisheries Associations. The association has status as a legal entity, which means that it has legal capacity. The latter implies that it has the competence to enter into a binding contract and the like. The association is an affiliated association (sub-association) of the PFA and of VINAFIS, and recognizes both the PFA and the VINAFIS bylaws.

The Chairman of the Executive Board of the Fisheries Association is the legal representative of the Association.

Article 3 – Objectives

The provision reflects the whole range of objectives a local Fisheries Association shall achieve. Item 5 is included to reflect the role Fisheries Associations have been given as management agencies in the Lagoon Management Regulation. Apart from the latter item, the objectives are similar to the objectives listed in the VINAFIS, PFA and Quang Thai bylaws.

CHAPTER 2 – MEMBERSHIP

Article 4 – Membership

The article stipulates that only individuals living and participating in fisheries or aquaculture in the relevant village or commune can become members of the Fisheries Association in that village or commune.

It has to be decided whether only individuals can be members, or if households shall be allowed a collective membership. The bylaws of VINAFIS, PFA or Quang Thai FA do not explicitly provide for this kind of membership, but it is practiced in local Fisheries Associations today. The model bylaws provides for both options. As regards the rights and privileges of household memberships, it is stipulated that a) only one member of the household will have the right to be appointed to any position in the association at a time, and that b) during the meetings of the Congress, each household will designate one member of that household that votes on its behalf (see article 12).

The concept of “unofficial membership” is not provided for in the draft bylaws. This is provided for in the Quang Thai bylaws, but not in the VINAFIS or the PFA bylaws. However, as these members do not enjoy any rights and privileges, it is difficult to see any real purpose of this kind of membership.

Article 5 – Membership fee

It is suggested that the membership fee should be fixed by the Congress and not by the Executive Board which is a reported practice today. This decision should be an autonomous decision and not to be vetoed on by the CPC or the PFA, as the members themselves should be able to make the best judgment of how much they are able to pay.

Article 6 – Operational fees

Pursuant to current practice in several Fisheries Associations, the right to levy crops or catch should be provided for in the bylaws. As with the membership fee, the rate should be decided by the Congress.

Article 8 – Suspension or exclusion

The article determines the grounds for being suspended or excluded from the Fisheries Association. Being convicted for an offense under the Fisheries law and regulation, or bribery and corruption should be grounds for suspension or exclusion. The same goes for having seriously violating the bylaws and any adopted management measures. This is in line with the VINAFIS and the PFA bylaws. In addition, item 4 has been included to reflect article 12 of the Lagoon Management Regulation.

Neither the VINAFIS nor the PFA bylaws identify the procedures for suspension or exclusion of members. The model bylaws establish the Executive Board as the body that has the right to suspend or expel members, and gives the member the right to appeal the decision to the Congress.

It can be debated whether to be "criticized" or "warned" shall be a form of reaction provided for in the bylaws, as is done in the VINAFIS and the PFA bylaws. If a person is convicted for any offense as listed in item 1 and 2, or has committed infractions as stated in item 3 or 4, to be criticized or warned seems as a too lenient reaction and should not apply in these cases. This could be more suitable in a case where a member of the Executive Board is absent from meetings, see article 16.

CHAPTER 3 - BODIES OF THE FISHERIES ASSOCIATION

Article 9 – Bodies of the Fisheries Association

When establishing bodies and their functions within the local Fisheries Associations, it has to be taken into consideration that these associations have a different structure and size than VINAFIS and PFA. Thus, establishing all the bodies as provided for in the latter association's bylaws does not seem necessary for an organization with 50-200 members. Hence the model bylaws provides for the establishment of only two permanent bodies - the Congress and the Executive Board.

The model bylaws provides that the Congress and the Executive Board of the FA meets once a year and every month respectively. It is recognized, however, that there could be a need for all members to meet at a more frequent basis than once a year. Within the two-body structure there can still be arranged member meetings, upon the initiative of the Executive Board or a group of members, but these meetings will not have the competencies of the Congress. In addition, the model bylaws provides for extraordinary Congress to be held, see article 10.

CHAPTER 4 - THE CONGRESS

Article 10 – Meetings

According to article 18 of the VINAFIS bylaws, the Congress of a sub-association shall be held every year, hence this is reflected in this article. This is in contrast to the Quang Thai which provides that the Congress shall meet twice in every five years. As the Congress is the only meeting point for all members, it seems appropriate that it assembles once a year.

It is suggested that one representative of the PFA have the right to attend the Congress, but with no right to vote. Such attendance will allow the PFA to be kept updated with developments at the grass roots level and will consequently make the PFA better equipped to support the local associations in their efforts to meet their objectives. The same argument could justify the right of one representative of the Commune People's Committee (CPC) to attend, but this could prove more controversial as it can be argued that the authorities should not interfere with the internal matters of the associations. Besides, the CPC could nonetheless be invited by the Executive Board to attend the Congress.

In accordance with article 19(3) of the Decree no. 88/2003 of July 30, 2003 Providing for the organization, operation and management of associations, an extraordinary Congress can be called on the request of half of the members or to-thirds of the members of the Executive Board.

Article 11 – Functions

The provision reflects what powers the Congress shall have. As the highest ranking body all important decisions regarding the Fisheries Association and the implementation of its mandate are vested in this body.

Each Congress will have to constitute itself and approve the agenda. Furthermore, it has to elect a chairman, a secretary, two members of the election panel and two members to sign the protocol.

Item 7 provides for the adoption and amendment of management measures, and hence reflects that Fisheries Associations have been given the mandate to adopt and amend management measures as provided for in the Lagoon Management Regulation, article 11¹. However, under the Fisheries Law it is doubtful whether the PPC has the right to delegate the power to issue such rules to the Fisheries Associations and such a provision would consequently be contrary to the current legal regime. If the Fisheries Associations in the future are granted the right to adopt management measures, this power should be vested in the highest ranking body of the association, namely the Congress.

Item 8 provides that the Congress should elect delegate(s) to the Congress of the Provincial Fisheries Association. This is in line with article 18 of the VINAFIS charter which provides that sub-associations at the grass roots level should “select a representative in the congress of the upper levels (if applicable).” As there currently is no district level, this means the Congress of the PFA. The PFA charter is, however, silent about this issue.

CHAPTER 3 – THE EXECUTIVE BOARD

Article 13 – Composition and terms of office

A provision restricting the terms of office to three consecutive terms has been included to prevent that the same members are appointed to the Executive Board for an unlimited time. Furthermore, it is suggested that the Executive Board is elected every second year – a period that should balance the need for continuation with the need for change within the body.

Article 14 – Functions

The provision sets out the responsibilities of the Executive Board. If management measures are to be adopted, the EB will have to play a pro-active role by proposing these. The article also stipulates that the Executive Board should implement fisheries and aquaculture management measures, including mechanisms for monitoring, control and enforcement. What concrete actions the Executive Board can take in this regard depends, however, on the fisheries legislation at any given time.

Article 15 – Meetings and voting

It is suggested that the meetings of the Executive Board be held once a month. This is in line with the bylaws of the Quang Thai Fisheries Association.

¹ Article 11 reads as follows: “The State encourages fisheries associations at the local level, based on the State Law, to develop their “self-management rules” detailing community rules and aimed at protecting fishing grounds, aquatic resources and other issues such as protection of the aquatic environment and management of water ways and collection of fisheries tax, etc.”

Article 16 – Vacation of office

The provision determines the grounds for dismissal of any member of the Executive Board.

To be “criticized” or “warned” has not been included as a reaction. To get a warning or being criticized for being absent from meetings might be superfluous as the member will be dismissed only after being absent three times in a row. As to item 2, the gravity of this kind of behaviour seems to justify dismissal without any prior warning.

Article 17 – Remuneration

It is proposed that members of the Executive Board shall not be paid any remuneration, allowance or compensation. In the initial phase of Fisheries Association establishment, and probably for years to come, such a compensation scheme will not be sustainable given the limited resources of the associations.

CHAPTER 5 – THE FISHERIES ASSOCIATION FUND

Article 18 – Establishment of Fund

This provision requires that every Fisheries Association establishes a fund in which monies to be granted, contributed or donated to the association would be deposited.

Article 19 – Financial resources

As the resources of the Fisheries Association will to a large extent depend on the member’s willingness and ability to pay membership fees and operational fees, alternative sources of income have been provided for. Some of these sources of income, like item 5, 6 and 7, can, however, only be collected if existing legislation allows for this, something that will have to be verified at the time of adoption of the bylaws. As to item 4, this source of income is provided for in the Lagoon Management Regulation.

Article 20 - Use of monies

The article determines for what purposes the Fisheries Association Fund legally can be used. The article it is designed to ensure that the money will benefit the whole fisheries and aquaculture sector in the local community of the Fisheries Association. To avoid any misuse of the funds, it is proposed that the Congress adopts guidelines for its use, see article 21. Furthermore, the Executive Board will for each Congress have to give a financial statement of the Fisheries Association for the last operational year, see article 14(5).

Article 21 – Administration of the Fund

In order to execute their daily work, the Executive Board shall be the body administrating and thus disposing of funds. However, to make sure this is done in a transparent and orderly manner, the bylaws provides that the EB shall elaborates guidelines for its use, see article 14, which shall be approved and adopted by the Congress.

CHAPTER 6 - FINAL PROVISIONS

Article 22 – Withdrawal

As an affiliated association to the PFA and the VINAFIS, the Congress may decide to withdraw the Fisheries Associations as a sub-association. It is suggested that this be done upon approval of two-thirds of the members.

Article 23 – Conditions for dissolution

The bylaws determine that the Congress may decide to dissolve the Fisheries Association upon approval of four-fifths of the members. The competent authority (the Commune People Committee) should not have this power, as this would be in conflict with the freedom of associations as provided for in article 69 of the Vietnamese Constitution.

The competent authority should, however, have the power to withdraw the management powers from a Fisheries Association – e.g. in a case where the Fisheries Association proves unfit to take its responsibilities or is abusing its powers. This does not regard the internal management of the association, and should thus not be provided for in the bylaws.

Article 24 – Assets

It is proposed that in case of dissolution, the assets belonging to the Fisheries Association shall be at the disposal of the PFA and used to promote the objectives of the PFA in the jurisdiction of the dissolved Fisheries Association.

Article 25 – Entry into force – amendments

The establishment of a local Fisheries Association requires that:

a) It is established pursuant to Decree no. 88/2003 of July 30, 2003 Providing for the organization, operation and management of associations. According to article 15 of the Decree, the President of the PPC shall permit the establishment and approve the charters of associations. This is a criteria for becoming a legally established association. It seems, however, that this authority in practice is being exercised by the CPC, something that has been reflected in the article.

b) It is approved as a sub-association of the PFA and the VINAFIS by the PFA and the CPC. Pursuant to article 8 of the PFA Charter, “the decision to establish a communal FA is taken by the PFA Executive Board in agreement with the local authority.”

The conditions that have to be filled in order to a) to give the associations legal status as an association and b) give them status as a sub-association of the PFA, are consequently reflected in this article.

The article furthermore specifies that amendments of the bylaws, other than regarding dissolution, must be adopted by two-thirds of the members of Congress. By contrast, the VINAFIS and PFA bylaws allow for such amendments with a simple majority. However, the status of the bylaws as the “constitution” of the association implies that amending them should require an absolute majority.

As the Fisheries Associations are sub-associations of the PFA, amendments to the bylaws should not be contrary to the interests and objectives of the PFA. Consequently, it is suggested that amendments should only enter into force upon the decision of the PFA. As the CPC is the authority approving the bylaws in the first place, their approval could also be considered necessary for amendments.

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Appendix 4

PROVINCIAL REGULATION ON CONFLICT RESOLUTION AND SURVEILLANCE BY LOCAL FISHERIES ASSOCIATIONS

Chapter 1 - Conflict resolution

Article 1

Local Fisheries Associations are responsible for resolving conflicts that arise between two or more individuals related to the conduct of fisheries and aquaculture operations within the area of jurisdiction of the Fisheries Association.

Conflict resolution is understood as mediation, carried out by a member of the Executive Board of the Fisheries Association (the mediator), with a view to resolve a dispute between two or more individuals in a situation where no violation of the fisheries and aquaculture legislation has taken place.

Mediation can not take place between the conflicting parties unless they mutually agree to this.

Article 2

In case of a conflict, one of the conflicting parties should contact a member of the Executive Board of the Fisheries Association so that he can mediate between them. The mediator shall assemble the conflicting parties as soon as possible with a view to reconcile them.

If the conflicting parties do not reach an agreement, the mediator shall bring the case before the Executive Board, who shall attempt to reconcile the parties.

Any witness or other person that can provide information relating to the conflict shall be invited by the Executive Board to make his or her statement.

If the conflicting parties do not reach an agreement in the meditation meeting convened by the Executive Board, the members of the Executive Board shall, if the conflicting parties agree, find a solution to the conflict.

Chapter 2 – Surveillance

Article 3

Local Fisheries Association are responsible for keeping under surveillance all fisheries and aquaculture operations within the area of jurisdiction of the Association.

The purpose of the surveillance is to ensure that fishing and aquaculture operations are conducted in conformity with the fisheries and aquaculture legislation, and to prevent acts of violations of these.

Article 4

The Executive Board of the Fisheries Association is responsible for planning and initiating the surveillance operations. The conduct of surveillance operations shall rotate between all members of the Fisheries Association over the age of [20], or between the established sub-groups of the Fisheries Association. Surveillance operations shall be conducted on a frequent and regular basis.

Only a member of the Fisheries Association that is on surveillance duty shall conduct surveillance operations in accordance with this regulation.

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Article 5

The surveillance operations shall be conducted in an effective manner, causing as little nuisance as possible for the person and activities being subject to surveillance.

A person being subject to surveillance, shall facilitate the inspection of the fishing and aquaculture operation he or she is conducting, including vessels or aquaculture installations, fishing gear or equipment, records and fish.

Article 6

In case of the detection of a violation of the fisheries and aquaculture legislation, the member on surveillance duty shall request the violator to stop his illegal activities.

In case of the detection of an activity that may lead to a violation, the member on surveillance duty shall promptly stop the illegal activity by neutralizing or confiscating gear and equipment, or by any other lawful means. This shall be done in manner that causes as little damage to the gear and equipment as possible, and shall not involve the use of physical force towards the violator or other persons.

Article 7

After detecting a violation of the fisheries and aquaculture legislation, the member on surveillance duty shall record in writing the following information: the name of the violator(s) (if known); the time and date of the violation and the actions that were taken by the member on surveillance duty, if any.

The member on surveillance duty shall promptly report the matter to the correct authority for further legal procedure.

The member on surveillance duty shall also report the matter to the Executive Board of the Fisheries Association, who shall keep a record of violations. [The record shall not include the names of the violators.]

Article 8

Any confiscated gear and equipment shall promptly be handed over to the authority in charge of sanctioning the violation in question.

Chapter 3 - Final provisions

Article 9

The fulfillments of duties in accordance with this regulation shall not be remunerated. Costs related to the implementation of this regulation will be refunded from the Fisheries Association Fund.

Article 10

Only a local Fisheries Association that have been formally established and given management powers as provided for in provincial regulations will have the right to implement this regulation.

If a local Fisheries Association proves unfit to take its responsibilities in accordance with this regulation or is abusing its powers as provided for in this regulation, the Commune People's Committee shall withdraw the Fisheries Association's right to implement this regulation.

Appendix 5

Explanatory notes – Provincial Regulation on conflict resolution and surveillance for local Fisheries Associations

Conflict Resolution:

Article 1

The article determines that the Fisheries Association should be responsible for solving conflicts not only between its own members, but between any two or more individuals as long as the conflict relates to the conduct of fisheries and aquaculture operations within the area of jurisdiction of the Fisheries Association.

The article defines what is understood by conflict resolution, and emphasizes that this can only take place where no violation of the fisheries and aquaculture legislation has taken place. The reason for this is that conflicts related to violations of current legislation have to be dealt with by the authorities that are in charge of investigating and sanctioning against violations.

The article provides that mediation can only take place when all the conflicting parties agree to this, thus establishing this as a voluntary mechanism. It has to be discussed, however, if a mandatory mechanism is preferred instead.

Article 2

In order to give the mediator authority, it is suggested that only members of the Executive Board of the Fisheries Association, by virtue of their official status, have this role.

If a single member of the Executive Board does not succeed in reconciling the parties, the case shall be brought before the whole Executive Board. This creates a second chance for the conflicting parties to reach an agreement.

It is proposed that witnesses, or other relevant persons, be invited to the mediation of the Executive Board with a view to clarify the case.

If the parties do not reach an agreement, it is determined that the Executive Board shall find a solution to the conflict. However, as it is stipulated that mediation is a voluntary mechanism, such a decision can only be reached by the Executive Board if this is agreed to by the conflicting parties.

If the conflicting parties do not reach an agreement, or act contrary to an agreement or an Executive Board decision, the conflict resolution has failed. As there are no legal means for the Fisheries Association or the Executive Board to enforce an agreement or decision, any further proceedings must hence be brought before the formal mechanisms for conflict resolution, if appropriate.

Surveillance:

Article 3

The provision establishes that the Fisheries Association is responsible for conducting surveillance activities in its jurisdiction and states the purposes of this activity.

Article 4

The article provides that all members shall participate in the surveillance activities and hence collectively carry the burden of putting in place a surveillance system for the

benefit of the whole community. This should also make each member more conscious about the problems related to violations of the fisheries legislation.

The Executive Board of the Fisheries Association is responsible for planning and initiating the surveillance operations. It shall ensure that surveillance operations are carried out by the members, preferably by establishing a list with the names, time and date for the conduct of the operations. Ideally, surveillance operations should be conducted daily. Only members that have reached a certain age should conduct these operations, and it is proposed that this age be 20.

The article specifies that only members on surveillance duty shall conduct surveillance operations with the rights and duties provided for in this regulation. Designating individuals in this way will render the members more responsible once they are on duty and also help to prevent power abuse. This does not, however, prevent people from helping in enforcing the legislation by contacting the police, or a member on surveillance duty, when he or she becomes aware of a violation.

Article 5

The provision establishes that a person being subject to control, has a duty to facilitate the inspection of the fishing and aquaculture activity that he or she is conducting. This duty to collaborate is necessary to enable the members on surveillance duty to do a satisfactory job.

The surveillance of fishing grounds could be done by patrolling by boat the waters of the jurisdiction of the Fisheries Association.

Article 6

In conformity with the Lagoon Management Regulation, article 13, the provision determines that the Fisheries Association has a duty to "timely prevent acts of violation of the fisheries and aquaculture legislation." This means that the member on surveillance duty has the right *to stop an activity that may lead to a violation*, and not to stop the continuation of a violation.

It is believed that neutralizing or confiscating gear and equipment is the most practical way to prevent illegal activities from occurring, but the regulation is not exhaustive in this regard.

The attempt to stop the illegal activity shall not involve the use of physical force towards the violator or other persons. If the activity cannot be stopped without using force, the attempt to stop the activity should be discontinued.

Article 7

The article determines that a record with the name of the violator, the time and date of the violation and any actions that were taken shall be made by the member on duty. He or she shall then promptly report the matter to the police. The information shall also be reported to the Executive Board of the Fisheries Association as the "coordinating unit".

It is proposed that the Executive Board keeps a record of violations, as it is believed that this will be a useful tool when planning the association's surveillance activities and evaluating the efforts made. It is proposed that in line with principles of privacy, the record shall not include the names of the violators.

Article 8

The article determines that confiscated gear and equipment shall be promptly handed over to the agency in charge of sanctioning administrative violations. By virtue of Decree no. 128/2005/ND providing for sanctioning of administrative violations in the fisheries domain, this agency has, in addition to the competence to impose administrative

sanction on violations of fisheries regulations, also the competence to impose additional sanctions, like confiscation of fishing gear and equipment.

Final provisions:

Article 9

The article provides that the members should not be paid for participating in surveillance activities or for acting as mediators. In the initial phase of the implementation of the regulation, and probably for years to come, such a compensation scheme will not be sustainable given the limited resources of the Fisheries Associations. However, costs related to the implementation of this regulation, like petrol for patrolling activities, will be refunded from the Fisheries Association Fund.

Article 10

In order to give the local authorities control over the management activities within their jurisdiction, only a Fisheries Association that have been formally established and given management powers as provided for in provincial regulations should have the right to act as a management agency.

As a security measures, the article provides that the Commune People's Committee has the right to withdraw the management powers provided for in this regulation if the Fisheries Association proves unfit to take its responsibilities or is abusing its powers.