

ARTICLE

Transnational Localism: Empowerment through Standard Setting in Small-Scale Fisheries

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Abstract

In order to advance both the mapping and theorizing of transnational law, this article considers a range of tactics used by small-scale fisheries (SSFs) in Europe and North America to improve market access, political influence, and legal recognition. Transnational law enables the framing of initiatives not only as implementation practices that occur as a result of international law, but also as transnational regulation in support of SSFs. The article uses the case study of SSFs to draw attention to the rise of 'transnational localism'. This is defined as the reinforcement of local-specific approaches (reflecting local ecologies, values, and socio-economic specificities) within a transnational structure that provides support and recognition. It offers an alternative to the view that globalization necessitates global, uniform regulatory solutions. Transnational localism challenges the fascination with large certification schemes such as that administered by the Marine Stewardship Council (MSC) in fisheries governance. It implies a need to reconcile transnational challenges with heterogeneous values and community approaches. To capture the simultaneous demand for the local and transnational within transnational law, this article proposes treating the described empowerment tactics within the scope of transnational standards. This requires a rethinking of standards away from fixed technical rules that are uniformly applicable across the globe.

Keywords: Small-scale fisheries, Standards, Transnational regulation, Localism, Europe, North America

1. INTRODUCTION

This article contributes to the mapping and theorizing of transnational law. On the one hand, there is a need to depict empirically practices that take place beyond the state. On the other hand, there is a need to define law in an era during which the existing link between law and its conventional, state-based sources has arguably collapsed. The article starts from the premise that what counts as law depends largely

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on what we find in our empirical explorations, be that under the label of ‘global’,¹ ‘transnational’² or ‘postmodern’³ law, or ‘legal pluralism’.⁴ Indeed, unusual empirical constellations that are not traditionally considered ‘legal’ might be more appropriate for determining what deserves the attention of scholars of contemporary law and governance.⁵

The focus of this article is on small-scale fisheries (SSFs), a long-marginalized branch of the fishery sector. Only recently have SSFs become recognized as governance challenges. This has prompted some interest in SSFs among legal and governance scholars.⁶ The purpose of this article is to introduce aspects of SSF governance to legal audiences, and to demonstrate the case for expanding the gaze of transnational law as a means of recognizing the rise of locally centred governance frameworks and new forms of standard setting.

In recent years, SSFs in Europe and Northern America have started to use approaches that increase both their visibility and presence in the market. This has changed the governance landscape. This article presents a number of the tactics that have been deployed towards achieving strategic goals,⁷ framing them within discussions of transnationalism and the boundaries of law. In doing so, the article seeks to reflect on two interrelated aspects of transnational governance.

One is the understanding of what constitutes a ‘standard’, and of how the scope of transnational law – as a methodological approach – is contingent on the definition of ‘standard’. The practices that will be described are not, by their very nature, amenable to a universal, rigid, globally applicable ‘standard’ as we usually understand the term. In this context, the case presented here tests the readiness of transnational law to empirically capture ongoing processes.

¹ N. Walker, *Intimations of Global Law* (Cambridge University Press, 2015).

² P. Zumbansen, ‘Transnational Law, Evolving’, in J. Smits (ed.), *Encyclopedia of Comparative Law*, 2nd edn (Edward Elgar, 2012), pp. 899–925.

³ B. de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization and Emancipation* (Butterworths, 2002).

⁴ J. Griffiths, ‘What Is Legal Pluralism?’ (1986) 18(24) *The Journal of Legal Pluralism and Unofficial Law*, pp. 1–55; S. Engle Merry, ‘Legal Pluralism’ (1988) 22(5) *Law & Society Review*, pp. 869–96.

⁵ F. von Benda-Beckmann, ‘Who’s Afraid of Legal Pluralism?’ (2002) 34(47) *The Journal of Legal Pluralism and Unofficial Law*, pp. 37–82, at 82; see also B.Z. Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global’ (2008) 30(3) *Sydney Law Review*, pp. 375–411. It is hardly news that some of the finest work is from the environmental area: see, e.g., S. Wood, ‘Green Revolution or Greenwash? Voluntary Environmental Standards, Public Law and Private Authority in Canada’, in Law Commission of Canada (ed.), *New Perspectives on the Public-Private Divide* (UBC Press, 2003), pp. 123–65; N. Affolder, ‘Transnational Conservation Contracts’ (2012) 25(2) *Leiden Journal of International Law*, pp. 443–60; V. Heyvaert, ‘What’s in a Name? The Covenant of Mayors as Transnational Environmental Regulation’ (2013) 22(1) *Review of European, Comparative & International Environmental Law*, pp. 78–90.

⁶ See E. Morgera & M. Ntona, ‘Linking Small-Scale Fisheries to International Obligations on Marine Technology Transfer’ (2018) 93(July) *Marine Policy*, pp. 295–306.

⁷ The distinction between tactics and strategy is inspired by R. Knox, ‘Strategy and Tactics’ (2010) 21 *The Finnish Yearbook of International Law*, pp. 193–229 (in which he applies tactics to more short-term interventions and relates them to reform rather than revolution).

The second aspect to which the article pays attention is the awareness of the local claims of authority and sustainability impacts on local communities. The article examines spatially limited local regulatory techniques, which operate on a shared transnational pattern and with a transnational objective. The ultimate goal of individual SSF tactics is greater empowerment in the market and in law. In this, the local provenance of products and local consumption play a key role. This strategy is underpinned by more locally focused, more spatially specific, and less standardized ways of governing.

The significance of the local dimension calls into question the widespread assumption that transnational law is de-territorialized. The article thus revisits the role of geography in transnational governance, and considers how a transfer of local(ized) norms can be facilitated through a transnational process. The argument put forward is that it is time for a more local-aware dimension of governance to be captured in the legal discourse. Increasing shifts to the local should be understood as the effects of globalization processes, just as shifts to supranational modes of governance have been for the past decades.

These considerations prompt further examination of the relation of transnational law with globalization and its products. Globalization is the key driving force in the transformation of legal systems at all levels.⁸ It is often assumed that globalization is related to the spread of relatively uniform product standards and rules.⁹ Yet, local practices have introduced diverse norms and varying notions of quality. The question is how can globalization's drive for universal standards be balanced with recognition of a diversity of values? Can spatial particularities be appreciated in the regulatory pull for shared rules?

Following this introduction, Section 2 outlines the key specificities of SSF governance and introduces the substantive issues in the case study. It offers some background to SSFs, which have rarely been considered in the context of transnational law. We should also note that fisheries are rarely studied as an 'environmental' issue. Section 3 debates the long exclusion of SSFs from governance structures as a trigger for empowerment tactics. Section 4 analyzes the ways in which SSFs have recently sought recognition and market access. Section 5 discusses the possibilities for relating these tactics to legal processes. Section 6 introduces 'transnational localism' as a cross-border movement that empowers local economies and communities as norm creators in sectors other than fishery, and proposes conceptualizing it within the transnational law approach. The reasons for doing so are justified in the conclusion.

⁸ S. Sassen, 'The State and Economic Globalization: Any Implications for International Law' (2000) 1(1) *Chicago Journal of International Law*, pp. 109–16; M. Koskenniemi, 'Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization' (2007) 8 *Theoretical Inquiries in Law*, pp. 9–36; P. Schiff Berman, 'From International Law to Law and Globalization' (2005) 43 *Columbia Journal of Transnational Law*, at 485–556.

⁹ See, e.g., P. Drahos & J. Braithwaite, 'The Globalisation of Regulation' (2001) 9(1) *Journal of Political Philosophy*, pp. 103–28.

2. SMALL-SCALE FISHERY AS A PRACTICE

The notion of (artisanal) small-scale fisheries relates to a branch of the fishing industry that is juxtaposed to industrial fishing. The general impression is that fishery is a uniform sector. The literature on law and governance of the fishery sector rarely discusses the issue of who catches fish and how.¹⁰ SSFs can be defined by labour-intensiveness, operation on smaller boats (usually up to 12 metres in size) along the coastline within a limited distance from their ports, and reliance on local traditional knowledge of fishery. The sector represents an important component of individual livelihoods, ensuring food security, stimulating local economies and cultures, and typically giving a notable role to women. From an environmental perspective, SSFs are considered to be low impact. Their multiple passive fishing techniques result in minimal harm to the aquatic environment and associated species. They use less fuel per catch than large-scale industrial fleets.¹¹ They respect the biological rhythms of fish and have developed a variety of adaptive responses to resource fluctuations and other shocks and uncertainties.¹² This is particularly important in light of instability as a result of climate change and other ecological and environmental disruptions. From the consumer's point of view, SSFs are believed to deliver a higher quality product than trawler fisheries, where caught fish often become bruised and broken.

SSFs represent the vast majority of fisheries. The Food and Agricultural Organization of the United Nations (FAO) reports that SSFs produce two-thirds of the catches destined for direct human consumption and provide 90% of the employment in the sector.¹³ Most SSFs are located in the developing world, but they are an important living tradition in the coastal countries of the developed world. For instance, in the European Union (EU) they encompass over 80% of the fishing fleet and form an integral component of local economies.¹⁴ However, from a socio-economic perspective, SSFs face many struggles. In the developing world they are typically linked to poverty and hardship.¹⁵ In the developed world they typically

¹⁰ See J. Kolding, C. Béné & M. Bavinck, 'Small-Scale Fisheries: Importance, Vulnerability and Deficient Knowledge', in S.M. Garcia, J. Rice & A. Charles (eds), *Governance of Marine Fisheries and Biodiversity Conservation* (John Wiley & Sons Ltd, 2014), pp. 317–31.

¹¹ In order to catch roughly the same amount of edible fish as the large-scale, industrial fishing fleets, SSFs employ 25 times more people and use one quarter of the fuel: J. Jacquet & D. Pauly, 'Funding Priorities: Big Barriers to Small-Scale Fisheries' (2008) 22(4) *Conservation Biology*, pp. 832–5, at 833, referring also to R. Chuenpagdee et al., 'Bottom-Up, Global Estimates of Small-Scale Marine Fisheries Catches' (2006) 14(8) *Fisheries Centre Research Reports* (University of British Columbia, Canada), available at: <https://open.library.ubc.ca/cIRcle/collections/facultyresearchandpublications/52383/items/1.0074761>.

¹² E.H. Allison & F. Ellis, 'The Livelihoods Approach and Management of Small-Scale Fisheries' (2001) 25(5) *Marine Policy*, pp. 377–88.

¹³ See FAO, 'Policy Support and Governance', available at: <http://www.fao.org/policy-support/policy-themes/sustainable-small-scale-fisheries/en>.

¹⁴ D. Symes, J. Phillipson & P. Salmi, 'Europe's Coastal Fisheries: Instability and the Impacts of Fisheries Policy' (2015) 55(3) *Sociologia Ruralis*, pp 245–57; European Commission, Maritime Affairs and Fisheries, 'What is the Future for the Small-scale Coastal Fleet?', *Online Magazine*, Oct. 2016, available at: https://ec.europa.eu/dgs/maritimeaffairs_fisheries/magazine/en/places/what-future-small-scale-coastal-fleet.

¹⁵ J. Alfaro-Shigueto et al., 'Where Small Can Have a Large Impact: Structure and Characterization of Small-Scale Fisheries in Peru' (2010) 106(1) *Fisheries Research*, pp. 8–17.

reflect low economic profitability and have limited attractiveness for younger people.¹⁶

It is evident that SSFs reflect a close interplay of social, economic, and environmental factors. This requires a comprehensive regulatory framework. Market promotion and valorization of sustainable small-scale value chains can only partially offset the flaws of the regulatory framework. In the transnational context, regulation through the market has another challenge: ensuring that global trade does not compromise local food security in local and national markets.¹⁷ Finally, by their very nature, the features of SSFs cannot be identified through a certification process that is underpinned by uniformly applicable global rules. On the contrary, the criteria for what qualifies as an SSF are very much locally specific and so are their benefits; the SSFs in Thailand will differ from those in Malta, and SSFs differ also within the same country. This triggers a central question: what is the potential of transnational regulation for reconciling heterogeneous values and approaches in governing transnational challenges?

3. REGULATION OF SMALL-SCALE FISHERIES

Despite their market share, SSFs have traditionally been neglected in both policy and research. There is a strong interplay between the reasons for, and the effects of, the marginalization of SSFs. Governments historically have uncritically equalled improvements in technology (which have enabled vessels to fish further offshore and in deeper waters) with progress towards more efficient fishing. Fishery policies and management systems have become centralized and based on data that only large fisheries can provide.¹⁸ Moreover, financial incentives have been structured in ways that favour large-scale fleets.¹⁹ As a result, research and systematic data collection efforts have focused on industrial fishing in developed and developing countries,²⁰ which has contributed to the image of SSFs as relics of the past.²¹

International attention to the role of SSFs began to grow in the early 21st century, particularly as a result of the pioneering efforts of the FAO. The FAO promoted the visibility of SSFs for their contribution to nutrition, food security, sustainable livelihoods, and poverty alleviation in developing countries, and also as a way of highlighting other challenges in the fishery industry, such as excess capacity and illegal, unreported, and unregulated fishing.²² A milestone in giving recognition to SSFs globally was achieved

¹⁶ F. Maynou et al., 'Small-Scale Fishery in the Balearic Islands (W Mediterranean): A Socio-Economic Approach' (2013) 139 *Fisheries Research*, pp. 11–7; M. Nielsen et al., 'The Myth of the Poor Fisher: Evidence from the Nordic Countries' (2018) 93(July) *Marine Policy*, pp. 186–94.

¹⁷ T. Bjørndal, A. Child & A. Lem (eds), *Value Chain Dynamics and the Small-Scale Sector: Policy Recommendations for Small-Scale Fisheries and Aquaculture Trade*, FAO Fisheries and Aquaculture Technical Paper No. 581 (FAO, 2014), available at: <http://www.fao.org/3/a-i3630e.pdf>.

¹⁸ Kolding, Béné & Bavinck, n. 10 above.

¹⁹ Jacquet & Pauly, n. 11 above.

²⁰ Chuenpagdee et al., n. 11 above.

²¹ M. Bavinck, 'The Megaengineering of Ocean Fisheries: A Century of Expansion and Rapidly Closing Frontiers', in S.D. Brunn (ed.), *Engineering Earth: The Impacts of Megaengineering Projects* (Kluwer, 2011), pp. 257–73.

²² For references to FAO body meetings see <http://www.fao.org/docrep/007/ae534e/ae534e02.htm>.

with the adoption of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (SSF Guidelines) in June 2014.²³ The SSF Guidelines are intended to complement the 1995 FAO Code of Conduct for Responsible Fisheries.²⁴ They represent ‘a fundamental tool in support of [the FAO’s] vision to eradicate hunger and promote sustainable development’.²⁵ The real challenge is now the implementation of these guidelines. The willingness of states in this respect is untested and highly uncertain,²⁶ and the unclear legal status of the document does not help the cause.

A further recognition of the role of SSFs in fisheries governance was the adoption of the Sustainable Development Goals (SDGs) in 2015.²⁷ SDG 14 concerns oceans, and includes the target to ‘provide access for small-scale artisanal fishers to marine resources and markets’. The target itself is articulated vaguely. It has no target date, no indication of the baseline from where improvement is needed, and no clear performance indicator. Nevertheless, the target on SSFs is clearly integrated into the plan for sustainable development, and contributes to other SDGs, such as poverty alleviation (SDG 1), food security (SDG 2), and decent employment (SDG 8).

At the policy level, the ‘blue economy’ (or ‘blue growth’) agenda represents another opportunity for promoting SSFs. The SSF sector has a strategic contribution to make to sustainability, which underlies the promotion of blue growth.²⁸ Indeed, in line with the promotion of blue economies, fishery bodies have integrated SSFs in their mid-term strategies.²⁹

A more proactive governance approach with regard to SSFs is also reflected in the EU Common Fisheries Policy (CFP). In the past, and before the most recent reform, the CFP was heavily criticized for threatening the survival of EU small-scale fishing communities.³⁰ Nevertheless, the reformed CFP, adopted in 2013 and in force since 2014,³¹ has brought about a sense of improvement and for the first time includes the

²³ FAO, ‘Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication’, FAO Doc. COFI/2014/Inf.10, 9–13 June 2014, available at: <http://www.fao.org/3/i4356en/I4356EN.pdf>. See also S. Jentoft, ‘Walking the Talk: Implementing the International Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries’ (2014) 13(1) *Maritime Studies*, pp. 16–31.

²⁴ FAO, ‘Code of Conduct for Responsible Fisheries’, FAO Doc. 95/20/Rev/1, 31 Oct. 1995, available at: <http://www.fao.org/docrep/005/v9878e/v9878e00.htm>.

²⁵ FAO, *ibid.*, Foreword, p. v.

²⁶ Jentoft, n. 23 above.

²⁷ UNGA Resolution 70/1, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (25 Sept. 2015), UN Doc. A/RES/70/1, available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

²⁸ D. Pauly, ‘A Vision for Marine Fisheries in a Global Blue Economy’ (2018) 87(Jan.) *Marine Policy*, pp. 371–4; K. Stobberup et al., *Research for PECH Committee: Small-Scale Fisheries and ‘Blue Growth’ in the EU* (European Parliament, Policy Department for Structural and Cohesion Policies, 2017), available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/573450/IPOL_STU\(2017\)573450_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/573450/IPOL_STU(2017)573450_EN.pdf).

²⁹ FAO, ‘Mid-Term Strategy (2017–2020) towards the Sustainability of Mediterranean and Black Sea Fisheries’, 2017, available at: http://www.fao.org/fileadmin/user_upload/faoweb/GFCM/News/Mid-term_strategy-e.pdf.

³⁰ S. Gómez et al., ‘The Decline of the Artisanal Fisheries in Mediterranean Coastal Areas: The Case of Cap de Creus (Cape Creus)’ (2006) 34(2) *Coastal Management*, pp. 217–32. Symes, Phillipson & Salmi, n. 14 above.

³¹ Regulation (EU) No. 1380/2013 on the Common Fisheries Policy [2013] OJ L 354/22.

voice of SSFs. The current CFP indeed promises to contribute to a fair standard of living for small-scale coastal fishers.³² It provides some basis for favouring small-scale, artisanal, or coastal fishers in the allocation of fishing rights³³ and financial incentives to SSFs for their development, competitiveness, and sustainability, including support for their entrepreneurial initiatives, which add value to the fish they catch.³⁴ The trend of strengthening support for SSFs in EU policy seems set to continue in the future.³⁵

A true legal and policy framework that supports SSFs is built on the integration of ecological, economic, and social aspects. This is more complex than satisfying only one criterion, such as the environmental sustainability of fisheries. It is for this reason that certain regulatory approaches that have been developed as alternatives to public policy do not necessarily represent a potential for the development of SSFs.

In this regard, eco-certification programmes – of which the largest scheme for wild-capture fisheries is the Marine Stewardship Council (MSC) – do not respond to the demands of SSFs for recognition. Indeed, their focus is on ‘sustainable fish stocks’, ‘minimizing environmental impact’, and ‘effective fisheries management’.³⁶ The MSC considers the sustainability of fisheries primarily in environmental terms. This is in line with the initial motivation for the development of this scheme in the 1990s,³⁷ although even then the exclusion of the social status of fishers, especially those in developing countries, was a criticism of the MSC, as sustainability and social issues were seen as inseparable in the discussion about reforms in fisheries governance.³⁸ Moreover, in its present implementation, it is admittedly difficult to integrate SSFs and fisheries from developing countries into the MSC system, although it does not exclude them *a priori*.³⁹ The major impediments for SSFs to MSC certification are its high costs, which do not necessarily translate into price premiums, and the requirement for quantitative data.⁴⁰ Indeed, the holders of MSC labels are mainly

³² Ibid., Recital, para. 4.

³³ Ibid., Art. 17.

³⁴ Regulation (EU) No. 508/2014 on the European Maritime and Fisheries Fund [2014] OJ L 149/1.

³⁵ European Commission, Press Release, ‘EU Budget: Commission Proposes a New Fund to Invest in the Maritime Economy and Support Fishing Communities’, 12 June 2018, available at: https://ec.europa.eu/fisheries/eu-budget-commission-proposes-new-fund-invest-maritime-economy-and-support-fishing-communities_en.

³⁶ See, e.g., MSC, ‘What Is Sustainable Fishing?’, available at: <https://www.msc.org/what-we-are-doing/our-approach/what-is-sustainable-fishing>.

³⁷ L.H. Gulbrandsen, ‘The Emergence and Effectiveness of the Marine Stewardship Council’ (2009) 33(4) *Marine Policy*, pp. 654–60.

³⁸ A. Le Sann, ‘Whose Labels? Whose Benefit?’ (1996) 15(July) *Samudra Report*, pp. 19–20; see also M. Belliveau, ‘The Mantle of “Going Green”’ (1996) 15(July) *Samudra Report*, p. 21; J. Kurien, ‘A View from the Third World’ (1996) 15(July) *Samudra Report*, pp. 22–5.

³⁹ S.R. Bush et al., ‘The “Devils Triangle” of MSC Certification: Balancing Credibility, Accessibility and Continuous Improvement’ (2013) 37(Jan.) *Marine Policy*, pp. 288–93; D.E. Duggan & M. Kochen, ‘Small in Scale but Big in Potential: Opportunities and Challenges for Fisheries Certification of Indonesian Small-Scale Tuna Fisheries’ (2016) 67(May) *Marine Policy*, pp. 30–9.

⁴⁰ M. Wakamatsu & H. Wakamatsu, ‘The Certification of Small-Scale Fisheries’ (2017) 77(Mar.) *Marine Policy*, pp. 97–103.

large industrial fleets from the developed North, while SSFs and developing countries lag behind.⁴¹

4. EMPOWERMENT TACTICS OF SMALL-SCALE FISHERIES

It is against this background that the present section highlights and analyzes the ways in which SSFs have carved out their role in the governance landscape. This section concentrates on initiatives that are developing in the European context, and makes reference to a few in North America. The selected geographical focus is not only an issue of manageability. Most of the techniques are products of segmented markets that exist in Europe and North America, but not necessarily elsewhere, and involve or are constituted by the middle and upper classes. Stronger governance frameworks, including explicit encouragement of local initiatives by public policies, are exactly what enables these initiatives to grow in the North but not in the South.

The focus on these approaches offers a fresh perspective on the empowerment of SSFs. This issue has otherwise been analyzed mostly through the lens of poverty, exclusion, and livelihood insecurity of small-scale fishers, as well as fish workers and related communities in the developing South.⁴² The purpose here is not to sideline these issues; nor is it to diminish the significance of the conflict between satisfying local food security of small-scale fishers in the South, and benefiting from export orientation.⁴³ Fishing communities are likely to suffer when their fisheries are pushed towards export rather than local markets, and when they increase the pressure on local and regional marine stocks.⁴⁴ However, this conflict is of little relevance for initiatives in the North, which are based precisely on a strong sense of commitment to local trade and local products, although for reasons other than subsistence, food security, and poverty.

Over the past years, SSFs have taken decisive actions to increase their influence on the market, and in policy making. These actions are examined below, and are presented in order of their links to the market and to regulatory structures. They show how the seafood supply chains and governance structures have been mobilized to support the objectives of SSF communities.

4.1. *Promotion, Awareness-Raising and Valorization Activities*

The most straightforward way of empowering SSFs is by promoting their products and encouraging consumers to consider what is being fished, and how it is being fished. Promotion activities often seek to target purely local links or regional synergies. The Pescados con Arte initiative, for example, gives visibility to artisanal

⁴¹ M. Pérez-Ramírez et al., 'Perspectives for Implementing Fisheries Certification in Developing Countries' (2012) 36(1) *Marine Policy*, pp. 297–302.

⁴² R. Chuenpagdee (ed.), *World Small-Scale Fisheries: Contemporary Visions* (Eburon, 2011); S. Jentoft & A. Eide (eds), *Poverty Mosaics: Realities and Prospects in Small-Scale Fisheries* (Springer, 2011); C. Béné, G. Macfadyen & E.H. Allison, *Increasing the Contribution of Small-Scale Fisheries to Poverty Alleviation* (FAO, 2007).

⁴³ C.L. Delgado et al., *Fish to 2020: Supply and Demand in Changing Global Markets* (International Food Policy Research Institute and Worldfish Center, 2003), pp. 122–9.

⁴⁴ B. Crona et al., 'Middlemen, a Critical Social-Ecological Link in Coastal Communities of Kenya and Zanzibar' (2010) 34(4) *Marine Policy*, pp. 761–71.

fishing from the coast of Cartagena (Spain). Extending its scope to the broader region, the project *Cephs & Chefs*⁴⁵ raises awareness about the link between over-reliance by Irish fleets on a few 'high-value' fish species, while under-utilizing the opportunities for other species and their link to the markets on the Iberian Peninsula.

Promotional initiatives may consist of gastronomic demonstrations in public places, restaurants, and food markets. These can emphasize the social, environmental, cultural, and culinary value of small-scale fishing. They often seek to generate interest in lesser-known species of seafood, and the products thereof, in order to reduce pressure on the most popular species. The organization of these initiatives may involve local associations, tourist offices, foundations, fishers' groups (encouraged under EU law⁴⁶), and universities, among others. Overall, this is a direct example of market interaction, and one that involves no legal rules. The proliferation of these initiatives is symptomatic of the lack of consideration of the situation of SSFs in the legal framework. These initiatives appeal to citizens to engage as responsible consumers of local or regional products.

4.2. *Short Supply-Chain Schemes*

Another empowerment tactic is the development of schemes that seek to produce benefits for the local environment and economies. This can be achieved by shortening the supply chain and moving fishers close to consumers. The most notable examples are local fishers' markets, which sell only locally caught fish. These schemes are starting to operate even in virtual and transnational contexts. Multilingual online platforms are now capable of simulating marketplaces that offer products (including fish) from regions closest to consumers.⁴⁷

Another example of a short supply chain is that of fish box schemes,⁴⁸ which can function in two ways. One is to follow the model of community-supported agriculture, where a membership is paid in advance for the season in order to divide the risks stemming from production more equally between producer and consumer.⁴⁹ Small-scale fishers benefit from an increased and more reliable income in return for ensuring subscribers' priority access to fresh, traceable, and high-quality products. The second route is looser, involving a weekly expression of interest for the product actually caught by the fishers. These are basically subscription services that deliver selected fish, shellfish, and other seafood directly to consumers.

Both types operate at a subnational and mostly local level, with a common pattern in the content of the boxes, such as local provenance, seasonal products, freshness, or

⁴⁵ *Cephs & Chefs* project, available at: <https://www.cephsandchefs.com>.

⁴⁶ The establishment of Fisheries Local Action Groups (FLAGs) is enabled and indeed encouraged through Regulation (EU) No. 508/2014, n. 34 above.

⁴⁷ These platforms are offered in many countries: see, e.g., *La Ruche Qui Dit Oui!*, available at: <https://laruchequiditoui.fr/fr>.

⁴⁸ See, e.g., *Fishbox* in Italy, available at: <http://www.fishbox.it>; *Pintafish*, fair fish in Belgium, available at: <http://pintafish.eu>; *Fishbox* in the United Kingdom (UK), available at: <https://www.fishbox.co.uk>; *Fishkonline* in Sweden, available at: <https://www.fiskonline.se/hem.html>; *Fish vom Kutter* in Germany, available at: <https://www.fischvomkutter.de>; *Off the Hook*, Nova Scotia (Canada), available at: <http://locecon.org/nova-story>.

⁴⁹ K.L. Adam, 'Community Supported Agriculture', National Sustainable Agriculture Information Service (ATTRA), 2006.

sustainability. Fish boxes are tailored to reflect particular local circumstances. For example, while a fish box scheme in Belgium highlights the high quality of products and the involvement of local fishers, it can also offer these as frozen products.⁵⁰ A French scheme offers only fresh products, but they can be brought in from around 1,000 kilometres away.⁵¹ A scheme based in the United Kingdom (UK) offers canned seafood products, certifying their positive environmental and social impacts.⁵²

Short supply chains enshrine a close connection and interdependence between producers and consumers who define food quality in a similar way.⁵³ Fish schemes result in fisheries and local consumers playing a key role in the creation of solutions that favour local development. They have a result in positive environmental impact and encourage sustainable consumption. In market terms, these schemes enable trustworthy exchanges of high-quality products. For many consumers, the engagement in such initiatives turns the act of buying into a civic commitment and political statement of supporting communities and local businesses. These schemes jointly rely on a loosely structured cooperation agreement that includes only a few – if any – rules. Most often, principles of trust, cooperation, and co-ownership are the key elements of such schemes.

4.3. Traceability Schemes

Traceability schemes for fisheries enable the verification and tracing of the location and application of a product. Traceability schemes are legal requirements for food safety,⁵⁴ and can also strengthen the reliability of claims with regard to human rights, labour (including health and safety), environmental protection, and anti-corruption.⁵⁵

These schemes can go beyond accumulating scientific and technical data, translating it into an easily interpretable form to make the information more accessible to buyers. For small-scale fishers, traceability schemes are potentially powerful as they are capable of capturing the differentiation between products of small-scale and industrial fishers.⁵⁶ As such, they offer an alternative to wholesale value chains, which generally disregard differences among various fish. In the market, the lower-cost fish of industrial trawlers brings down the price for fish from small-scale fisheries. Building on the knowledge of the fish source or aspects of its fishing, traceability schemes seek to improve awareness of its significance, enable consumers

⁵⁰ Pintafish, n. 48 above.

⁵¹ Fish4ever, available at: <https://fish4ever.blog>.

⁵² Label Golion, available at: <http://www.golion.fr>.

⁵³ G. Migliore, G. Schifani & L. Cembalo, 'Opening the Black Box of Food Quality in the Short Supply Chain: Effects of Conventions of Quality on Consumer Choice' (2015) 39 *Food Quality and Preference*, pp. 141–6.

⁵⁴ See, e.g., the key EU law on food and feed, which requires traceability at all stages of production, processing, and distribution: Regulation (EC) No. 178/2002 laying down the General Principles and Requirements of Food Law, establishing the European Food Safety Authority and laying down Procedures in Matters of Food Safety [2002] OJ L 31/1, Art. 18.

⁵⁵ See United Nations (UN) Global Compact, 'A Guide to Traceability: A Practical Approach to Advance Sustainability in Global Supply Chains', 2014, available at: https://www.unglobalcompact.org/docs/issues_doc/supply_chain/Traceability/Guide_to_Traceability.pdf.

⁵⁶ Fishsource, available at: <https://www.fishsource.org>; Thisfish, available at: <http://thisfish.info>.

to make informed choices, and work towards a more segmented market. Their weakness is that they are costly to develop and require strong coordination, especially in complex seafood value chains.⁵⁷ This is why they are typically established and used only in developed countries.

Traceability schemes support and give credibility to claims. They can either implement regulatory rules, or go beyond the regulatory framework. In the EU, traceability requirements are increasingly stringent and result in rather detailed compulsory labelling requirements.⁵⁸ However, certain information that is not requested by the regulatory framework would not be made available to the consumer. For instance, if the type of fishing boat is not on the list of information to be gathered, the significance of this issue would remain hidden. Here, a voluntary traceability scheme could facilitate greater choice for proactive, information-seeking consumers to support the income of small-scale fishers and their approach to fishing.⁵⁹

4.4. *Consumer Guides*

Online or printed sources, with instructions as to what kind of seafood to buy, are becoming increasingly widespread. They can draw on the traceability of a product, but do not necessarily need to do so. Advice and recommendations continue to be offered by some non-governmental organizations (NGOs).⁶⁰ However, in an interesting recent development, EU governments are increasingly endorsing NGO recommendations about sustainable seafood. In this way, EU governments have taken an active role in exposing the gaps in their own policies. This approach has been scaled up by the EU campaign ‘Inseparable’, launched in 2014. The campaign encourages consumers to eat, buy, and sell sustainable fish, and take a more active role in helping to improve the state of the oceans around us.⁶¹ It consists of positive messaging, advice, and resources on sustainability of seafood.

The EU approach recognizes an obvious gap between public policy and sustainable outcomes. It puts ‘governments and rules’ on an equal footing with consumer choices and markets. It also limits the outreach of its policy to production, but not consumption:

⁵⁷ M. Bailey et al., ‘The Role of Traceability in Transforming Seafood Governance in the Global South’ (2016) 18 *Current Opinion in Environmental Sustainability*, pp. 25–32. Indeed, most traceability schemes operate in the developed North: see Off the Hook (Nova Scotia, Canada), n. 48 above; Fishsource (North America), available at: <https://www.fishsource.org>.

⁵⁸ European Commission, *A Pocket Guide to the EU’s New Fish and Aquaculture Consumer Labels* (European Union, 2014), available at: https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/eu-new-fish-and-aquaculture-consumer-labels-pocket-guide_en.pdf.

⁵⁹ Generally, improved transparency in pricing empowers fishers to negotiate higher prices, especially for more valuable species: S.W. Purcell et al., ‘Distribution of Economic Returns in Small-Scale Fisheries for International Markets: A Value-Chain Analysis’ (2017) 86(Dec.) *Marine Policy*, pp. 9–16.

⁶⁰ Mr Goodfish offers a guide (mostly in France) of what fish to eat in each season, available at: <https://www.mrgoodfish.com/en>; Good Fish Guide (also via app), available at: <https://www.mcsuk.org/goodfishguide/search>; Seafood Watch (app); Development of iMarine fish app (AppliFish) under the project iMarine, FP7.

⁶¹ European Commission, ‘Inseparable: Find’, available at: https://ec.europa.eu/fisheries/inseparable/en/find#quicktabs-resources_tabs=0.

The way we fish affects the sustainability of seafood but so does the way we consume it. The work of European governments and institutions on improving what and how we catch our fish and reducing the associated environmental impact continues to be important. Yet the responsibility is as much on the rest of the supply chain to adapt their behaviour to promote sustainability. Any industry efforts to improve should be matched by equal engagement and participation from consumers. Sustainability is a responsibility shared between all of us.⁶²

The EU seems to set criteria for the assessment of sustainability by consumers, as well as acting on improving environmental sustainability through the CFP. This conduct is arguably contrary to its earlier decision in favour of a hands-off approach to public labels as drivers of sustainability.⁶³ The message of shared responsibility is most likely to be interpreted as an interim step, while the EU moves towards its target of the CFP reaching sustainability in fisheries by 2020.⁶⁴ In the meantime, this tactic demonstrates (the expectation of) the regulatory power of consumer guidance.

4.5. *Creation of Novel Standards*

A number of concrete standards and labels indicate unique understandings of sustainable fisheries. They respond to a demand for labels that summarize large amounts of information in a simple sign.⁶⁵ Many actors are involved in these processes, and various results flow from their interaction. Standardization may be initiated and deployed by fishers themselves in the form of a label applied to the product.⁶⁶ The label can demonstrate the inclusion of a producer into a civil society network or movement,⁶⁷ or into a government-supported certification scheme (not necessarily exclusive to small-scale fisheries).⁶⁸

The level of precision in these standards varies. The platform used by French small-scale fishers labels fish that are ‘caught by a vessel under 12 metres long, using passive gear: lines, nets or pots’.⁶⁹ A UK business supports ‘small boats, local fishing and good methods ... that [do not] create damage to sea life’, preferring ‘local boats fishing carefully, not far from their port of origin, paying and treating their workers

⁶² European Commission, ‘Inseparable: Know’, available at: https://ec.europa.eu/fisheries/inseparable/en/know#quicktabs-about_page_quick_tabs=1.

⁶³ European Commission, ‘European Commission Adopts Ecolabelling Report’, 18 May 2016, available at: https://ec.europa.eu/fisheries/european-commission-adopts-ecolabelling-report_en.

⁶⁴ Regulation (EU) No. 1380/2013, n. 31 above, Art. 2.

⁶⁵ SUCCESS Project, ‘Report on Possibilities for the Improvement of the Internet Communication on Seafood Products’, version D2.3, available at: <http://www.success-h2020.eu/app/download/5811057471/D2.3.pdf>.

⁶⁶ See Label Golion, available at: <http://www.golion.fr/marquage-et-tracabilite>. Developments under the initiative titled ‘Synepesca’ demonstrate a similar direction in Spain.

⁶⁷ The Slow Food Foundation for Biodiversity has issued ‘Guidelines for Seafood’ (similar to those in respect of other areas of food production, available at: <https://www.fondazione Slow Food.com/en/what-we-do/slow-food-presidia/guide-lines>), but these are currently not available.

⁶⁸ P. Moye, ‘Private Certification versus Public Certification in the Environmental Arena: The Marine Stewardship Council and Marine Eco-Label Japan Fisheries Certification Schemes as Case Studies’ (2010) 43(2) *Vanderbilt Journal of Transnational Law*, pp. 533–64.

⁶⁹ See CORDIS, ‘A National Label for Small-Scale Fisheries Products: One Way to Improve Competitiveness’ (2017), available at: https://cordis.europa.eu/news/rcn/128505_en.html.

well, [preferring] small-scale artisan boats and local packing whenever possible and [support for] fair pay and workers' rights'.⁷⁰ A transnational network opts for 'good, clean and fair fish'. This is a slogan that encompasses a focus on fresh, local, and often neglected species that are not overfished. These species must be caught in the right season and be the right size. They must be caught using sustainable methods which involve local communities, use less transport and less packaging, and which are geographically traceable and respect animal welfare.⁷¹ In comparison with well-known MSC certification processes, these standards are underpinned by simpler certification processes.

These alternative standards seek to highlight the quality of the management techniques employed by SSFs. They are underpinned by traditional knowledge and ways of ensuring a healthy state of ecosystem functions that support fisheries' productivity.⁷² Their approach is to switch from controlling 'how many' fish are caught to determining restraints on how, when, and where fish are caught. Their management measures – including protection of spawning and nursery areas, limiting access, closing seasons, and limiting sizes of fish – have proved to be successful, especially when combined with other approaches to reduce vulnerability.⁷³ These include, for example, pursuing diversified livelihood strategies and mobility between sectors.⁷⁴ Some schemes explicitly express opposition to the MSC.⁷⁵ They claim that the particularities of the fishing and management approaches of SSFs require specific types of standardization, labelling, and market recognition.

4.6. *Geographical Indication*

Another option for recognizing the efforts of SSFs is the use of the geographic indication (GI) tool, which is enshrined in EU law and international trade law.⁷⁶ As with other labelling schemes, the purpose of invoking GI is to ease communication between producers and consumers regarding product characteristics – in this case, the product's close link to a specific geographic area. The EU's justification of GI highlights an interplay between markets and culture. It posits that a competitive advantage for producers, and their contribution to the EU's living cultural and gastronomic heritage, can be ensured only when they are rewarded fairly for their efforts.⁷⁷

⁷⁰ Fish4ever, 'Sustainability', available at: <https://fish4ever.blog/sustainability>.

⁷¹ Interview with a representative of the Slow Food Foundation (25 May 2018).

⁷² J.A. Wilson et al., 'Chaos, Complexity and Community Management of Fisheries' (1994) 18(4) *Marine Policy*, pp. 291–305.

⁷³ *Ibid.*

⁷⁴ Allison & Ellis, n. 12 above.

⁷⁵ P. Foley & E. Havice, 'The Rise of Territorial Eco-Certifications: New Politics of Transnational Sustainability Governance in the Fishery Sector' (2016) 69 *Geoforum*, pp. 24–33.

⁷⁶ Regulation (EU) No. 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs [2012] OJ L 343/1. This aggregate number does not differentiate between various levels of protection: see European Commission, 'Quality Labels', available at: https://ec.europa.eu/agriculture/quality_en; and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Marrakesh (Morocco), 15 Apr. 1994, in force 1 Jan. 1995, Arts 22–24, available at: http://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

⁷⁷ Regulation (EU) No. 1151/2012, *ibid.*

According to one GI-registered SSF, the primary motivation for GI usage was as a tool for gaining recognition of traditional, unique fishing techniques and to protect a sensitive lake that is ecologically very productive.⁷⁸ This drive was even stronger than the desire for improved market access. The expectation was that the ecological protection of the lake and its fisheries would also attract more young people to the threatened tradition. Some years after GI recognition, it was noticed that its most positive impact was a contribution to the EU-wide conversation on artisanal fisheries. They have not yet benefited from a premium price. The label is used as a way of differentiating their products from the rest of the market, and to defeat a developmental project on the lake.

The breadth and accessibility of this regulatory tool suggests that its use may increase in the future. So far, 46 fish, molluscs, and crustaceans from the EU, from both marine and inland fisheries, have been registered as products with geographical protection.⁷⁹

4.7. *Self-Regulation*

Another SSF empowerment tactic is to (co-)design laws over a relevant territory in order to co-create and ensure co-ownership in the fishing outcome. By developing self-regulation or supporting the adoption of local legislation that affects SSFs, they contribute to a better organization of the sector. Measures might involve giving preferential fishing rights to commercial fishers who are resident in the area,⁸⁰ determining closure times,⁸¹ implementing spatial planning measures including the establishment of marine protected areas,⁸² and determining other forms of environmental protection to preserve resources. This kind of approach is a step in the direction of strengthening self-governance, self-responsibility among fishers, and regionalization.⁸³

4.8. *Political Mobilization for Influencing Legislation*

One of the various ways of improving the conditions for SSFs is to influence policy outcomes. Since 2012, representation of SSFs in EU decision making has been ensured by the Low Impact Fishers of Europe (LIFE). This is an advocacy group of local SSF organizations and is also a registered lobby group to the European Parliament, with an office in Brussels. LIFE's objective is to promote sustainable fishing, support its members, and provide a voice for them in EU decision making.⁸⁴

⁷⁸ Interview with a representative of the Snowchange Cooperative (12 Apr. 2018).

⁷⁹ European Commission, Agriculture and Rural Development, 'Database of Origin and Registration', available at: <http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=pL0hLqQLXhNmFQyF11b24mY3t9dJQPflg3xbL2YphGT4k6zdWn34%21-370879141>.

⁸⁰ See the efforts by the Irish Islands Marine Resource Organization, referred to in *LIFE Newsletter*, Feb. 2018, available at: http://lifeplatform.eu/wp-content/uploads/2018/03/Newsletter_february_EN.pdf.

⁸¹ Annual Meeting of Fischereischutzverband Schleswig-Holstein 17-18/02, referred to in *LIFE Newsletter*, Feb. 2018, *ibid*.

⁸² E. Cirino, 'A Grass-Roots Movement to Create Marine Protected Areas', *Oceans Deeply*, 6 June 2018, available at: <https://www.newsdeeply.com/oceans/articles/2018/06/06/a-grass-roots-movement-to-create-marine-protected-areas>.

⁸³ M. Salomon & K. Holm-Müller, 'Towards a Sustainable Fisheries Policy in Europe' (2013) 14(4) *Fish and Fisheries*, pp. 625–38.

⁸⁴ See LIFE Platform, available at: <http://lifeplatform.eu>.

Moreover, because of its transnational nature, LIFE seeks to act as an enabling tool for SSFs to influence national policies and legislation.

4.9. Summary

While diverse, we are able to see some patterns in the various initiatives. They demonstrate the ways in which a bottom-up approach can be mobilized in marketing SSF products and activities. The actions of SSFs point to the weak elements of the regulatory framework, and target it directly and indirectly via the market. These actions show how the market can be a tool for rectifying the lack of representation, provided that governance frameworks remain strong. Access to the market by SSFs is crucially determined by regulation. Yet, a running theme is the indispensable interdependence between healthy marine ecosystems, socio-economic benefits for fishers, and their political representation.

Although reflective of local practices, these initiatives have a strong transnational character. Facing similar patterns of marginalization by public regulation and challenges in accessing the market, while sharing a culture of civic engagement, small-scale fishers across borders have a similar starting point. A few more or less structured networks capitalize on these similarities.⁸⁵ These networks provide a platform for the exchange of experience and approaches among local players. However, the influence of such networks extends beyond supporting their members.

Transnational networks and movements play a crucial role in moving environmental practices across borders.⁸⁶ In an increasingly networked world, they have an implicit regulatory role.⁸⁷ The fact that locally constituted practices communicate with each other across borders, and are seen as coordinated, adds a level of visibility and credibility to them locally. They are 'explicitly linked to territorial social and regulatory relations of production on the one hand and transnational relations of governance on the other'.⁸⁸ The observation that local and transnational attributes are in a close interplay challenges the existence of the binary between top-down and bottom-up approaches.

5. WHAT DOES IT HAVE TO DO WITH LAW?

The initiatives presented above can certainly be conceived as marketing approaches of small-scale fishers, as innovative ways of conducting business using their catches. In the development context they can also be seen as demonstrations of the social and political exclusion of small-scale fishers.⁸⁹ However, they are also directly related to existing regulation and governance of fisheries.

⁸⁵ Ibid.; Slow Food International (operating through its local branches), available at: <https://www.slow-food.com>.

⁸⁶ N. Affolder, 'Looking for Law in Unusual Places: Cross-Border Diffusion of Environmental Norms' (2018) 7(3) *Transnational Environmental Law*, pp. 425–49.

⁸⁷ A.-M. Slaughter, *A New World Order* (Princeton University Press, 2005).

⁸⁸ Foley & Havice, n. 75 above, p. 24.

⁸⁹ C. Béné, 'When Fishery Rhymes with Poverty: A First Step Beyond the Old Paradigm on Poverty in Small-Scale Fisheries' (2003) 31(6) *World Development*, pp. 949–75; E. Pinkerton & R. Davis,

Some unease could arise from describing these methods as legal tools and innovations in a traditional legal setting. A more enabling point of view is offered by transnational law as a ‘methodological lens through which we can study the particular transformation of legal institutions in the context of an evolving society’.⁹⁰ Rather than insisting on the form of certain norms, it allows us to focus on actors, norms, and processes.⁹¹ Reflecting on the role of law in the empowerment process of SSFs might precisely test the utility and contours of transnational law. This approach arguably represents not so much a theory but ‘an attempt to theorize what we find empirically as law beyond the state, and a theoretical conceptualization of law after the breakdown of methodological nationalism. Transnational law describes a starting point, not an endpoint, of thinking about law’.⁹²

The sights of transnational lawyers have expanded into the arena of global governance, based on the recognition that law reaches beyond state-issued ordinances.⁹³ Indeed, we seem to find law everywhere and a certain normative activity is rarely identified as ‘not law’. Scholars have been better at drawing attention to the law’s successes in its transnational dimension than at pointing to social phenomena that develop as substitutes for it.

Capturing contemporary processes has proceeded with marginal attention to the definition of the key concept: law. Contouring the scope of the discipline has been side-tracked. Legal anthropologists and sociologists and pluralist legal scholars offer different visions of law.⁹⁴ Klabbers approaches the difficulty of distinguishing law from non-law by suggesting a resort to ‘presumptive law’, under which ‘normative utterances should be presumed to give rise to law, unless and until the opposite can somehow be proven’.⁹⁵ His proposal is an explicit invitation for curiosity towards

‘Neoliberalism and the Politics of Enclosure in North-American Small-Scale Fisheries’ (2015) 61(Nov.) *Marine Policy*, pp. 303–12.

⁹⁰ P. Zumbansen, ‘Defining the Space of Transnational Law: Legal Theory, Global Governance and Legal Pluralism’ (2012) 21(2) *Transnational Law and Contemporary Problems*, pp. 305–36; V. Heyvaert & T.F.M. Etty, ‘Introducing Transnational Environmental Law’ (2012) 1(1) *Transnational Environmental Law*, pp. 1–11, at 2.

⁹¹ Heyvaert & Etty, *ibid.*

⁹² R. Michaels, ‘Globalization and Law: Law Beyond the State’, in R. Banakar & M. Travers (eds), *Law and Social Theory* (Hart, 2013), pp. 287–303, at 303.

⁹³ N. Krisch & B. Kingsbury, ‘Introduction: Global Governance and Global Administrative Law in the International Legal Order’ (2006) 17(1) *European Journal of International Law*, pp. 1–13; A. von Bogdandy, P. Dann & M. Goldmann, ‘Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities’, in A. von Bogdandy et al. (eds), *The Exercise of Public Authority by International Institutions* (Springer, 2010), pp. 3–32.

⁹⁴ For legal anthropology and sociology, see Griffiths, n. 4 above; S. Falk Moore, ‘Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study’ (1973) 7(4) *Law & Society Review*, pp. 719–46; S. Engle Merry, n. 4 above. For discussions of legal pluralism, see R. Cotterrell, ‘Transnational Communities and the Concept of Law’ (2008) 21(1) *Ratio Juris*, pp. 1–18; B. Kingsbury, ‘The Concept of “Law” in Global Administrative Law’ (2009) 20(1) *European Journal of International Law*, pp. 23–57; W. Twining, ‘General Jurisprudence: Understanding Law from a Global Perspective’ (Cambridge University Press, 2009), p. 131.

⁹⁵ J. Klabbers, ‘Law-Making and Constitutionalism’, in J. Klabbers, A. Peters & G. Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press, 2009), pp. 81–125, at 115.

norms, to be judged for their legal characteristics in retrospective. This is in line with inclusive, though varied, definitions of ‘regulation’.⁹⁶

It is with this approach that the question of the legal nature of proposed SSF initiatives is reframed in this article into one of examining them for the benefit of legal audiences. Bringing these initiatives within a legal analysis has clear benefits, even if they are not conceptualized in legal terms. Affolder defends the same position in her exploration of transnational conservation contracts: ‘[F]ocusing on agreements as legal texts draws attention to the fact that these contracts are not simply isolated agreements, but rather part of the wider architecture of transnational law’.⁹⁷ The SSF is approached in this article with the same rationale: as a case study that reveals more structural biases and patterns.

Two ways of treating SSF initiatives are proposed in the following sections. One is of a more reductionist nature, considering the initiatives as applications of the existing regulatory rules. The alternative is a more enabling lens, which frames these initiatives as sources of regulation of SSFs and outlines the direction in which transnational regulation is developing its potential.

5.1. Implementation of Regulation

SSF initiatives represent examples of potential tools for small-scale fishers and fish workers, to be used alongside government actions. The FAO Guidelines anticipated various tools to tackle the challenges facing SSFs, including protection of human rights, tenure rights, and improved market access. The Guidelines are addressed primarily to governments, who have agreed to some rather ambitious language. For example, governments have committed to:

where appropriate, grant preferential access of small-scale fisheries to fish in waters under national jurisdiction, with a view to achieving equitable outcomes for different groups of people, in particular vulnerable groups. Where appropriate, specific measures, inter alia, the creation and enforcement of exclusive zones for small-scale fisheries, should be considered. Small-scale fisheries should be given due consideration before agreements on resource access are entered into with third countries and third parties.⁹⁸

These and other measures indicate a trend towards deploying participatory approaches in designing and implementing management measures, and in regulating access of SSFs to resources. However, apart from actions that depend primarily on governments, the Guidelines also go a long way towards empowering SSFs in ways that are separate from state intervention. In that respect, the FAO Guidelines mention associations of fishers, strengthening support in the post-harvest

⁹⁶ C. Scott, ‘Analysing Regulatory Space: Fragmented Resources and Institutional Design’ [2001] *Public Law*, pp. 329–53; J. Black, ‘Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a “Post-Regulatory” World’ (2001) 54(1) *Current Legal Problems*, pp. 103–46; J. Black, ‘Critical Reflections on Regulation’ (2002) 27(1) *Australian Journal of Legal Philosophy*, pp. 15–49; V. Heyvaert, ‘The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation’ (2017) 6(2) *Transnational Environmental Law*, pp. 205–36.

⁹⁷ Affolder, n. 5 above, p. 446.

⁹⁸ FAO, n. 23 above.

phase, value chains, and especially regional trade as equally important approaches. The initiatives described above are also fulfilling the EU's vision of the entrepreneurial actions of small-scale coastal fishers, which the EU seeks to support through its financial instrument for fisheries.⁹⁹

5.2. *Initiatives as Standard-based Regulation*

The fact that SSF empowerment tactics reflect ideas enshrined in rules – whether soft (the FAO Guidelines) or hard (the EU CFP) – could be the sum total of their legal relevance. However, it is argued that the SSF empowerment tactics also amount to a form of regulation as a ‘sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behaviour-modification’.¹⁰⁰ The empowerment tactics described above jointly demonstrate the existence of a defined standard for the practice of fishing that is commonly understood as SSF; they are a diffusion of that standard.

The standard may not work for the facilitation of trade across the globe, for harmonization in service provision, or for reducing unnecessary costs associated with conflicting requirements.¹⁰¹ Nevertheless, the SSF standard is being deployed to demonstrate the credentials of those invoking it, and to reinforce a few key values that are associated with existing SSF practices across national borders. It is important to recognize that the SSF standard is not only a tool for recognizing individual products (i.e., fish), but is also a tool for appreciating the process (i.e., fishing) as conducted by SSFs. In that aspect, the SSF standard should be treated as a ‘process and management system’ standard, of which the most renowned example is the International Organization for Standardization (ISO) 9000 series on quality management and quality assurance within companies and institutions.

If the regulation is performed with sufficient authority,¹⁰² this subjective criterion can be fulfilled by reference to the transnational practices, or to public acknowledgement of the standard. The most obvious of these is the invocation by the EU of consumer guides, branding schemes, and the value of ‘fresh’ and ‘local’ in its ‘Inseparable’ campaign.¹⁰³ This campaign is an acknowledgement of the direct relevance of the SSF activities in regulation. This kind of public promotion of the SSF

⁹⁹ Regulation (EU) No. 508/2014, n. 34 above, Art. 68.

¹⁰⁰ Black (2002), n. 96 above, p. 26; see also Heyvaert, n. 96 above, p. 208 (who emphasizes that regulation can also seek to stabilize, rather than simply modify behaviour, prefers to have a more open-ended list of influencing mechanisms, and highlights the significance of authority and persistence in the exercise of regulation).

¹⁰¹ J. Morrison & N. Roht-Arriaza, ‘Private and Quasi-Private Standard Setting’, in D. Bodansky, J. Brunnée & E. Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2007), pp. 498–595, at 500.

¹⁰² Heyvaert, n. 96 above, pp. 208–9.

¹⁰³ European Commission, ‘Inseparable: Buy’, available at <https://ec.europa.eu/fisheries/inseparable/en/buy>.

empowerment initiatives, and the glorification of consumer influence, speak in favour of considering these initiatives in the framework of law.

The standard established and defended by SSFs is a kind of industry-group standard as opposed to a standard contingent on third-party certification,¹⁰⁴ although the SSF standard differentiates itself from the dominant form of a standard. Escaping the opaque standard-setting process, it is developed from traditional practices. Its limited technical and highly flexible nature contrasts with detailed, technical, and numerical aspects that a contemporary idea of a standard may invoke. The SSF standard also departs from the low accessibility of many standards, which nowadays require experts not only to read and understand them, but also to implement them. The SSF standard is short and easily understood, drawing attention to the multifaceted nature of the SSF existence and to its embeddedness in specific local practices. Based on the SSF experience, two visions of a 'standard' can be differentiated: the standard as a technical benchmark and the standard as an empowering tool.

6. TRANSNATIONAL LOCALISM AND TRANSNATIONAL LAW

The growing demand for SSF recognition also speaks of the significance of territory in global governance. As such, SSFs upset the heavy-rooted assumption of the de-territoriality of transnational law.

Scholars of law and globalization have uniformly treated territory as increasingly less important in our lives, and in the international system.¹⁰⁵ We are told that transnational law is about weakened territoriality, a diminished role of borders and geographical distance, and growing significance of virtual clouds.¹⁰⁶ Transnational regulation is said to threaten the link between law and geography, both through the blurred origin of its activity and the diffuse impact of its application.¹⁰⁷ For lawyers, the globalized age has been heavily translated into an interest in activities where territory is less important or ceases to matter entirely, such as cyberspace regulation, e-commerce taxation, and intellectual property rights. These activities have come to dominate the agenda and conceptions of transnational law.

However, this is a skewed picture that is produced through a (geographically and thematically) biased research focus.¹⁰⁸ The power of globalization to collapse borders and transcend traditional state-centred world systems has inhibited lawyers' alertness to normative noises that have moved in very different directions.

¹⁰⁴ Morrison & Roht-Arriaza, n. 101 above, p. 498.

¹⁰⁵ D. Bethlehem, 'The End of Geography: The Changing Nature of the International System and the Challenge to International Law' (2014) 25(1) *European Journal of International Law*, pp. 9–24.

¹⁰⁶ P. Schiff Berman, 'Globalization of Jurisdiction' (2002) 151(2) *University of Pennsylvania Law Review*, pp. 311–545.

¹⁰⁷ Heyvaert, n. 96 above, pp. 211–3.

¹⁰⁸ M. Shapiro, 'The Globalization of Law' (1993) 1(37) *Indiana Journal of Global Legal Studies*, pp. 37–64, at 37–8.

6.1. *The Rise of Transnational Localism*

Stepping away from law, interdisciplinary dialogues have developed an interest in the impact of globalization on reinforcing the local. The notion of ‘glocalization’ is offered to refer to the process whereby institutional and regulatory arrangements shift from the state level, both upwards to supra-national or global scales, and downwards to local scales. Simultaneously, economic activities and networks become more localized and transnational.¹⁰⁹ The rise, or revival, of ‘the movement in support of government policies and economic practices oriented toward enhancing local democracy and local ownership of the economy’¹¹⁰ as a countertrend (or a parallel) to the supra-nationalization, is almost unexplored in legal studies. Extremely diverse local practices of the same phenomena that result from the multifaceted character of globalization do not find a proper expression in legal concepts.¹¹¹

Yet, contemporary initiatives, such as those involved in SSF empowerment, highlight rather than diminish the role of territory and local values in attempts at cross-border rule making. In doing so, they debunk the myth of transnational law as de-territorialized and delocalized. Claims about local provenance of products, and demands for them, strengthen the need for the creation and implementation of norms that enable local exchanges. Transnational localism consists of deploying local-specific standards to ensure benefits for local economies and democracies within and beyond the local contexts. It is embedded in an understanding of the transnational nexus of trade, human rights, and food security, alongside a conscious preference for the local.

Transnational localism reflects a diversity of values in today’s world. Despite the globalization in trade over the last few decades, the differences in values are being strengthened, not flattened.¹¹² Transnational localism also enshrines a value statement. The surge of preferences for local products is a way of resisting converging trade patterns, and the loss of communities, traditions and artisanal production, in addition to measurement in terms of universal indicators. The food sector and agri-food chains are an obvious area for the projection of these values,¹¹³

¹⁰⁹ E. Swyngedouw, ‘Globalisation or “Glocalisation”? Networks, Territories and Rescaling’ (2004) 17(1) *Cambridge Review of International Affairs*, pp. 25–48, at 25.

¹¹⁰ D.J. Hess, *Localist Movements in a Global Economy: Sustainability, Justice, and Urban Development in the United States* (The MIT Press, 2009), p. 2.

¹¹¹ See A. Basu (ed.), *The Challenge of Local Feminisms: Women’s Movements in Global Perspective* (Routledge, 1995).

¹¹² This is an assessment of the global business and social environment through a survey of over 1,400 company leaders from 83 countries: PricewaterhouseCoopers, ‘19th Annual Global CEO Survey: Redefining Business Success in a Changing World’, Jan. 2016, p. 9, available at: <https://www.pwc.com/gx/en/ceo-survey/2016/landing-page/pwc-19th-annual-global-ceo-survey.pdf>.

¹¹³ N. Parrott, N. Wilson & J. Murdoch, ‘Spatializing Quality: Regional Protection and the Alternative Geography of Food’ (2002) 9(3) *European Urban and Regional Studies*, pp. 241–61; J. Clapp & D. Fuchs, *Corporate Power in Global Agrifood Governance* (The MIT Press, 2009); T. Mutersbaugh & D. Klooster, ‘Environmental Certification: Standardization for Diversity’, in S. Lockie & D. Carpenter (eds), *Agriculture, Biodiversity and Markets: Livelihoods and Agroecology in Comparative Perspective* (Earthscan, 2010); GO-Science, *Foresight. The Future of Food and Farming: Challenges and Choices for Global Sustainability. Final Project Report* (Government Office for Science (London), 2011).

alongside local retailing and energy production.¹¹⁴ Few, if any, have been adequately examined by lawyers. The implications of transnational localism for transnational law have been under-explored.

6.2. *Transnational Regulation of Transnational Localism*

The idea of focusing attention onto locally oriented actors is certainly compatible with the mainstream perspective of transnational law. The exploration of private authority within the larger processes of transnational regulation and governance can accommodate the phenomenon of empowered local private actors as norm-generating communities in place of nation states.¹¹⁵ The interaction between private and public players in the creation, enforcement, and dissemination of international norms is well accepted.¹¹⁶ What seems to be missing is a closer, more explicit engagement with the local-specific regulatory attempts in global governance.

The preliminary task in conceptualizing the local in transnational law is to capture it epistemologically. This starts by reflecting on whether the regulatory vocabulary is sufficiently wide to include the local expressions of authority and norms. Developing more nuanced discourses should be possible from within the legal discipline. De Sousa Santos has convincingly shown how certain social movements are unable to engage with the discourses we employ because they are conceptually disenfranchised.¹¹⁷ Building on that view, we need to be aware that the notions of certification, chain of custody, and similar concepts are not shared by everybody, although their efforts may also be aimed at building trust systems.

It is plausible that technically and bureaucratically minded certification programmes are not conducive to the participation of SSFs, which rely on alternative constructions of knowledge. The established concepts for constructing sustainability – either harvest-centred Maximum Sustainable Yield¹¹⁸ or the industry-driven MSC schemes¹¹⁹ – are not those with which SSFs operate. What legal or regulatory literature identifies as an alternative to the flawed public policy is not actually a viable alternative for SSFs.¹²⁰

¹¹⁴ Hess, n. 110 above.

¹¹⁵ P. Schiff Berman, 'A Pluralist Approach to International Law' (2007) 32(2) *Yale Journal of International Law*, pp. 301–29, at 304.

¹¹⁶ H.H. Koh, 'Transnational Legal Process' (1996) 75(1) *Nebraska Law Review*, pp. 181–207, at 183–4.

¹¹⁷ B. de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Routledge, 2015).

¹¹⁸ E. Hey, 'The Persistence of a Concept: Maximum Sustainable Yield' (2012) 27(4) *The International Journal of Marine and Coastal Law*, pp. 763–71; A. Al Arif, 'Legal Status of Maximum Sustainable Yield Concept in International Fisheries Law and Its Adoption in the Marine Fisheries Regime of Bangladesh: A Critical Analysis' (2017) 32(3) *The International Journal of Marine and Coastal Law*, pp. 544–69.

¹¹⁹ S. Ponte, 'The Marine Stewardship Council (MSC) and the Making of a Market for "Sustainable Fish"' (2012) 12(2–3) *Journal of Agrarian Change*, pp. 300–15; M. Hadjimichael & T.J. Hegland, 'Really Sustainable? Inherent Risks of Eco-Labeling in Fisheries' (2016) 174 *Fisheries Research*, pp. 129–35.

¹²⁰ G. Auld et al., 'The Emergence of Non-State Market-Driven (NSMD) Global Environmental Governance: A Cross-Sectoral Assessment', in M.A. Delsmas & O.R. Young (eds), *Governance for the Environment: New Perspectives* (Cambridge University Press, 2009), pp. 183–218; M. Sutton, 'Harnessing Market Forces and Consumer Power in Favour of Sustainable Fisheries', in T. Pitcher, P. Hart & D. Pauly (eds), *Reinventing Fisheries Management* (Springer, 1998), pp. 125–36;

One way of ensuring that transnational local attempts are present in the mapping of transnational law is to include them in the conceptions with which we operate. This article proposes treating the empowerment tactics described within the scope of transnational standards. This would require a rethinking of transnational standards away from precise fixed rules that are applicable across the globe in exactly the same way. Numerical precision and technical accuracy might need to be replaced, or complemented, with a more descriptive approach that is identified informally and in a social context. This is not necessarily a call for disregarding ongoing standardization, but rather for its reconceptualization, which endorses difference.

The diversity of actors, processes, and norms that will be captured has a substantial impact on transnational law. As Heyvaert points out, the choice of whether to include a social phenomenon into the existing or new conception of law and regulation is not only conceptual, but also deeply political.¹²¹ The consideration of SSF activities as standards will impact upon their influence in the future governance. Currently, a trend of clustering collective standards is picking up. Efforts have been made in the past decade to harmonize transnational private and public standards and merge ‘a number of frontrunner schemes and the organizations backing them to jointly address the challenges their self-created regulatory systems face and produce greater coherence among their efforts’.¹²² Against this background, the decision of widening the notion of a standard, and treating SSF activities as a standard, will determine the ability of SSF efforts to compete with the harmonizing trend.

7. CONCLUSION

This article has sought to expand the picture of the transnational legal landscape beyond the charm of governance by international organizations, NGOs, and private actors, which produce universalizing authority claims. Scholars of environmental governance and legal theory have long been fascinated by the rise of transnational private regulation, especially certification schemes for sustainable seafood such as the MSC, with a transnational origin and global application. The notion of transnational private regulation, as an alternative to (inter)state regulation, has been shaped around large, corporate, or non-governmental industry-size schemes. They have been studied in their dynamics with public regulation and continue to be discussed as an uncontested signpost for its improvement.¹²³

D. Constance & A. Bonnano, ‘Regulating the Global Fisheries: The World Wide Fund, Unilever, and the Marine Stewardship Council’ (2000) 17(2) *Agriculture and Human Values*, pp. 125–39; M. Karavias, ‘Interactions between International Law and Private Fisheries Certification’ (2018) 7(1) *Transnational Environmental Law*, pp. 165–84.

¹²¹ Heyvaert, n. 96 above, p. 236.

¹²² B. Derckx & P. Glasbergen, ‘Elaborating Global Private Meta-Governance: An Inventory in the Realm of Voluntary Sustainability Standards’ (2014) 27 *Global Environmental Change*, pp. 41–50, at 41.

¹²³ E.g., L.H. Gulbrandsen, ‘Dynamic Governance Interactions: Evolutionary Effects of State Responses to Non-State Certification Programs’ (2014) 8(1) *Regulation and Governance*, pp. 74–92; Karavias, n. 120 above.

Yet, the image of the governance space as consisting of international law and these large multi-stakeholder standards is factually incomplete. This article has presented the ways in which small-scale fishers seek to provide an alternative to current governance principles, and to achieve the same objectives as those dominant certification schemes, which are limited to the developed North. The efforts discussed amount to regulatory techniques, involving both the market and direct regulation to promote small-scale fishers' understanding of sustainability. This increases their voice in economic and political fields. The empowering tactics presented reject a globally uniform implementation, and instead highlight the diversity of local ecologies, socio-economic circumstances, and values. Despite fostering the credibility of local specificities, these tactics find support and recognition in transnational coordination. This article has pointed to the organizing principle of matching the demand for the local and transnational at the same time, naming it 'transnational localism'. It is an alternative vision to the belief that globalization necessitates globally uniform regulatory solutions. Fisheries are but one area where its rise can be observed.

Transnational localism implies a need to reconcile heterogeneous values and transnational challenges. This is clearly a regulatory task that first requires conceptualizing the phenomenon within transnational law. This article has proposed recognition of the empowering tactics of SSFs as a factor contributing to the creation of an 'SSF standard'. Doing so enables us to appreciate a uniform recognition of SSF regulation across borders, while allowing for a great variety of local needs and approaches. However, the 'SSF standard' is more descriptive and less technical in its instruction than a typical 'standard'. In other instances, other legal categories might require expansion.

The continuous widening of the scope of categories of a legal nature causes discomfort in some,¹²⁴ but there is no doubt about the need for the discipline to expand its gaze to capture empirical observations. Transnational law is developing in response to the puzzles and challenges of governing transnational challenges. It should not have an exclusionary effect by narrowing its horizon. Rather than excluding the phenomena from its analysis, what can be debated is the role of transnational regulation in relation to locally specific circumstances. Transnational localism and a related theorizing of transnational law do not imply the demise of the transnational, but rather a growing need to take better account of (a variety of) local approaches within it.

¹²⁴ The well-known debate in international law revolves around 'soft law': see J. Ellis, 'Shades of Grey: Soft Law and the Validity of Public International Law' (2012) 25(2) *Leiden Journal of International Law*, pp. 313–34, at 313; M. Koskenniemi, *Sources of International Law* (Routledge 2000), the four contributions in Part II 'Relative Normativity', pp. 123–250. See also a critical reflection on the use of the notion of 'a court': J. Penca, 'Escaping from Law, Appealing to It: The Experience of a Civil Society Tribunal', in A. Follesdal & G. Ulfstein (eds), *The Judicialization of International Law: A Mixed Blessing?* (Oxford University Press, 2018) pp. 45–63.