

Legal analysis on the trans-shipment of fish at sea from industrial trawlers to canoes in Ghana

SUMMARY

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Key points

- Section 139 of the 2002 Fisheries Act, Act 625, empowers the Minister to make implementing regulations concerning fish trans-shipments.
- The Minister has exercised this power by enacting the 2010 Fisheries Regulations, LI 1968. Regulation 33 of LI 1968 expressly prohibits the trans-shipment of fish from Ghanaian industrial vessels to canoes.
- The Regulations serve to limit the forms of trans-shipment that the Fisheries Commission may authorise and supervise under Section 132 of Act 625.
- Trans-shipment of fish from industrial trawlers to canoes (known locally as 'saiko') has been rendered illegal since the passing of LI 1968, whether or not carried out under supervision.
- An administrative directive or other decision purporting to 'legalise' saiko under supervision cannot be used to override clear provisions of law.



Aerial view of saiko canoes landing illegally trans-shipped fish at Elmina port (closed canoes in top half of image). In 2019, EJF recorded 545 saiko canoes landing fish at Elmina port¹. An average saiko canoe lands in a single trip the equivalent of approximately 450 artisanal fishing trips².

Introduction

This briefing summarises the key findings of a legal opinion delivered by Ghanaian legal consultancy the Taylor Crabbe Initiative (TCi) to the Environmental Justice Foundation (EJF) in May 2018³. In the opinion, TCi analyses the legal framework governing the trans-shipment (i.e. transfer) of fish from industrial trawlers to canoes at sea.

The local name for fish trans-shipments in Ghana is 'saiko'. In the saiko trade, industrial trawlers transfer frozen fish to specially adapted canoes out at sea. This fish is then landed at ports such as Elmina for onward sale to local markets. The practice arose as an informal trading system, whereby unwanted fish caught by industrial vessels would be exchanged at sea for goods brought by canoes. Over time, saiko has evolved into a well-organised and lucrative industry in its own right, for which industrial vessels actively fish⁴. A recent study by EJF and its local partner, Hen Mpoano, estimated that 100,000 tonnes of fish were traded illegally through saiko in 2017, with a landed value of over US\$50 million⁵.

The legal analysis was commissioned by EJF with a view to clarifying the law on saiko, in the context of increasing public debate around the issue⁶. In November 2019, the Ghana Industrial Trawlers Association wrote to the Ministry for Fisheries and Aquaculture Development setting out its decision to suspend trans-shipment at sea until further notice in view of *inter alia* "agitations against [the practice] by the international community, international and local NGOs"⁷. The findings of this legal analysis confirm that saiko is an illegal practice and, as such, this announcement from an industry association amounts to an effective admission of criminality by its membership.



In February 2019, EJF filmed the vessel Meng Xin 10 allegedly trans-shipping fish to a saiko canoe off the coast of Elmina. Despite being prohibited under Ghanaian law, few cases are brought before the courts, and the minimum fine in the legislation is rarely applied⁸. Operators have also refused to pay the fines imposed⁹.

Findings of the legal analysis

Provisions of national legislation concerning saiko

Section 132 of the 2002 Fisheries Act, Act 625, provides that trans-shipment may take place under the 'supervision of an authorized officer', or under an arrangement approved in advance by the Council (Board) of the Fisheries Commission.

'132. Transshipment to be supervised

(1) Unless authorised in writing by the Commission, a fishing vessel shall not be used for transshipment of fish in the fishery waters without the supervision of an authorised officer or under any other arrangement and conditions approved in advance by the Council.'

The 2010 Fisheries Regulations, LI 1968, describe a number of types of trans-shipment activities that are prohibited by Ghanaian vessels and/or in Ghana's waters. This includes the trans-shipment of fish at sea from Ghanaian industrial vessels to canoes (i.e. saiko), which is specifically prohibited under Regulation 33(2).

'Transshipment of fish

33. [...]

(2) A person shall not tranship fish from a Ghanaian industrial vessel to a semi-industrial vessel or to canoes or vice-versa.'

Regulation 33 was enacted pursuant to Section 139 of the 2002 Fisheries Act. Section 139(1)(g) of the Act allows the Minister to make regulations on trans-shipment.

'139. Regulations

(1) The Minister may, on the recommendations of the Council, by legislative instrument, make Regulations [...]

(g) on catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;'

Interpretation of the law on saiko

The legal analysis is very clear that Regulation 33 limits the activities and forms of trans-shipment that the Fisheries Commission may authorise and supervise under Section 132 of Act 625¹⁰.

Since the Minister has exercised his/her power to enact the 2010 Fisheries Regulations¹¹, which set out the implementing rules for the 2002 Fisheries Act¹², only those forms of trans-shipment that are not expressly prohibited under the Regulations may be considered legal if supervised by an authorised officer. As saiko is prohibited in the Regulations, the legal analysis concludes it cannot be authorised or supervised.

"Where the form of transshipment is explicitly barred [by the Regulations] then the commission and the council are precluded from authorising or supervising such transshipments."

– Legal analysis, page 6

In other words, the trans-shipment of fish at sea from industrial trawlers to canoes (saiko) has been rendered illegal since the passing of the 2010 Fisheries Regulations¹³, whether or not carried out under supervision. An administrative directive or other decision purporting to 'legalise' saiko under supervision cannot be used to override clear provisions of law.

The full version of the legal analysis may be viewed on the EJF website at:

<https://ejfoundation.org/reports/legal-opinion-on-transshipment-in-ghana>



Saiko is pushing Ghana's coastal fisheries to the brink of collapse, threatening the livelihoods of over two million people. Industrial trawlers catch fish specifically for the illegal saiko trade - species such as sardinella that are reserved for artisanal fishers¹⁴. The fish is then sold back to local fishing communities for profit. Scientists predict the collapse of the sardinella fishery if there is no change to business as usual¹⁵.

Endnotes

- 1 According to in situ monitoring by EJF.
- 2 EJF and Hen Mpoano (2019). *Stolen at sea: How illegal 'saiko' fishing is fuelling the collapse of Ghana's fisheries*.
- 3 Taylor Crabbe Initiative (TCi) (2018). *Legal opinion on transshipment in Ghana*. Submitted by TCi to EJF, May 2018.
- 4 EJF and Hen Mpoano (2019). *Stolen at sea: How illegal 'saiko' fishing is fuelling the collapse of Ghana's fisheries*.
- 5 *Ibid*.
- 6 See, for example: Abrante, K.B. (12.10.18), 'Saiko fishing gets green light to officially operate in Ghana', *Ghana News*, accessed 5.3.20: <https://www.ghananews.co.uk/2018/10/12/saiko-fishing-gets-green-light-to-officially-operate-in-ghana/#>; Anon (23.8.19), 'I never asked fishermen to engage in 'saiko' - Fisheries Minister', *GhanaWeb*, accessed 5.3.20: <https://www.ghanaweb.com/GhanaHomePage/business/I-never-asked-fishermen-to-engage-in-saiko-Fisheries-Minister-774587>; Trent, S. (28.8.19), 'The Minister Is Right: For The Sake Of Ghanaians And Its Fisheries, Saiko Must Stop', *Modern Ghana*, accessed 5.3.20: <https://www.modernghana.com/news/952314/the-minister-is-right-for-the-sake-of-ghanaians.html>; Baidoo-Tsibu, G. (5.12.19), 'Ghana: Saiko is sacrilege', *Fisheries Committee for the West Central Gulf of Guinea*, accessed 5.3.20: <https://fcwc-fish.org/our-news/ghana-saiko-is-sacrilege>; 'Illegal Fisheries Practice - News Desk on JoyNews (3-3-20) - Sector Minister encourages transshipment or SAIKO', *JoyNews*, accessed 5.3.20: <https://www.youtube.com/watch?v=zR08oQUQvVo>
- 7 Letter dated 15 November 2019 from the Ghana Industrial Trawlers Association (GITA) to the Minister of Fisheries and Aquaculture Development concerning the "Suspension of transshipment of fish at sea from industrial trawlers to canoes".
- 8 EJF and Hen Mpoano (2019). *Stolen at sea: How illegal 'saiko' fishing is fuelling the collapse of Ghana's fisheries*.
- 9 Anon (1.26.20). 'Trawlers operating illegally continue to dodge fines in Ghana', *Maritime Executive*, accessed 10.3.20.
- 10 Legal opinion at p.6
- 11 Legal opinion at p.7
- 12 *Ibid*.
- 13 Legal opinion, at p.6
- 14 EJF and Hen Mpoano (2019). *Stolen at sea: How illegal 'saiko' fishing is fuelling the collapse of Ghana's fisheries*.
- 15 Lazar, N., Yankson K., Blay, J., Ofori-Danson, P., Markwei, P., Agbogah, K., Bannerman, P., Sotor, M., Yamoah, K. K., Bilisini, W. B. (2018). *Status of the small pelagic stocks in Ghana and recommendations to achieve sustainable fishing 2017*. Scientific and Technical Working Group. USAID/Ghana Sustainable Fisheries Management Project (SFMP). Coastal Resources Center, Graduate School of Oceanography, University of Rhode Island. GH2014_SCI042_CRC 22 pp.