



Far Dwuma Nkodo

Securing Sustainable Fisheries

ISSUE BRIEF

Assessment of Ghana's fisheries laws against global guidelines on tenure rights and sustainable small-scale fisheries

Summary of recommendations for the revision of Ghana's Fisheries Act

Introduction

Small-scale fisheries are a vital source of income and food for millions of people across West Africa, employing 20 times more people than industrial fleets¹. Ghana has one of the largest small-scale fleets in the region, accounting for 11% of total artisanal canoes in West Africa² and employing over 80% of fishers in the country³. Around 10% of Ghana's population depends on fisheries for their livelihoods⁴, with 200 coastal villages reliant on fisheries as their primary source of income⁵.

Ghana's fishing sector is in steep decline. Although fishing effort by the artisanal fleet has been increasing, landings of small pelagics –and particularly *Sardinella aurita* (Round Sardinella) –have declined sharply since their peak in the mid 1990s⁶ (**Figure 1**). Incomes of Ghana's canoe fishers have declined by as much as 40% over the past 10-15 years⁷, with many local fishermen now going to sea and returning with no catch⁸. According to recent assessments, Ghana's small pelagic fishery could collapse within the next few years if there is no change to business as usual⁹.



Fishing canoes at Cape Coast landing beach.

1 Belhabib, D., Greer, K. and Pauly, D. (2017). Trends in industrial and artisanal catch per effort in West African fisheries. *Conservation Letters*. January/February 2018, 11(1), 1–10.

2 *Ibid*.

3 Republic of Ghana (2014). *National plan of action to prevent, deter, and eliminate illegal, unreported, and unregulated fishing*. Available from: http://ftp.fao.org/fi/DOCUMENT/IP-OAS/national/Ghana/NPOA_IUU.pdf.

4 *Ibid*.

5 Nunoo, F., *et al.* (2014). Marine fisheries catches in Ghana: historic reconstruction for 1950 to 2010 and current economic impacts. *Reviews in Fisheries Science & Aquaculture*, 22(4), 274–283.

6 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. http://www.crc.uri.edu/download/GH2014_SCI042_CRC_FIN508.pdf

7 Republic of Ghana Fisheries and Aquaculture Sector Development Plan 2011–2016.

8 Lazar, N., *et al.* (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.

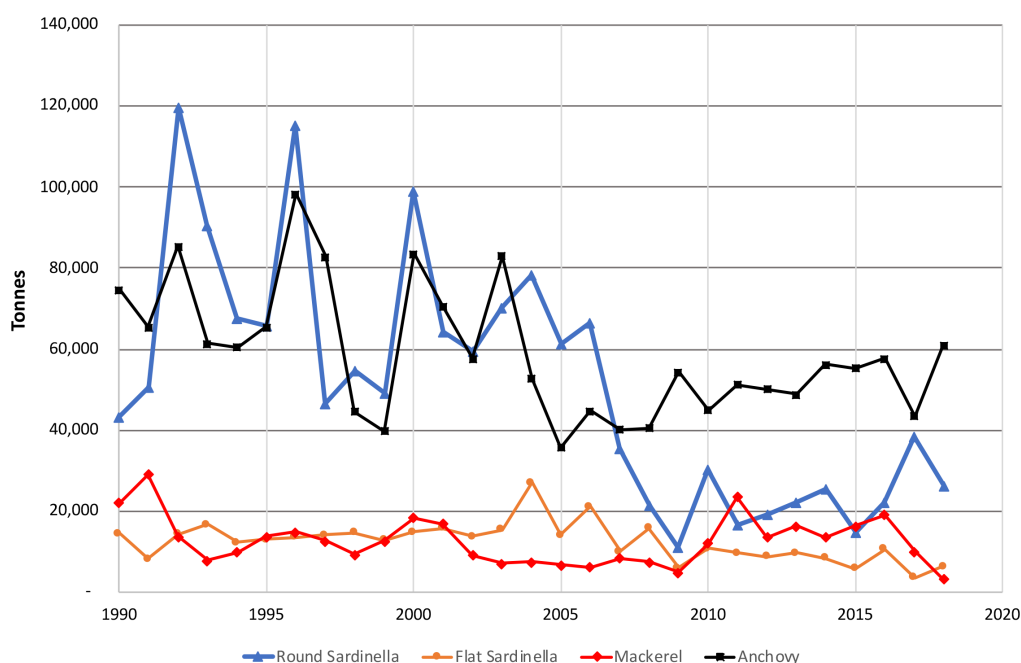
9 *Ibid*.



Saiko canoes landing at Elmina port in Central Region.

Competing uses of marine and estuarine resources have compounded these issues. Industrial and artisanal fishing vessels compete for space in Ghana's waters¹⁰, resulting in collisions and the destruction of fishing gear¹¹. Industrial trawlers further infringe on the rights of small-scale fishers, targeting small pelagics –the main catch of the canoe fishery –before trans-shipping the catches illegally at sea for onward sale to local markets¹². Small-scale fishers also face loss of access to landing sites as a result of coastal development, and encroachment by offshore oil development into traditional fishing grounds¹³ (**Figure 2**).

Figure 1: Total small pelagic landings by major species (Round Sardinella, Flat Sardinella, European Anchovy, Atlantic Chub Mackerel) from 1990 to 2018



Source: Scientific and Technical Working Group (2019, unpublished)

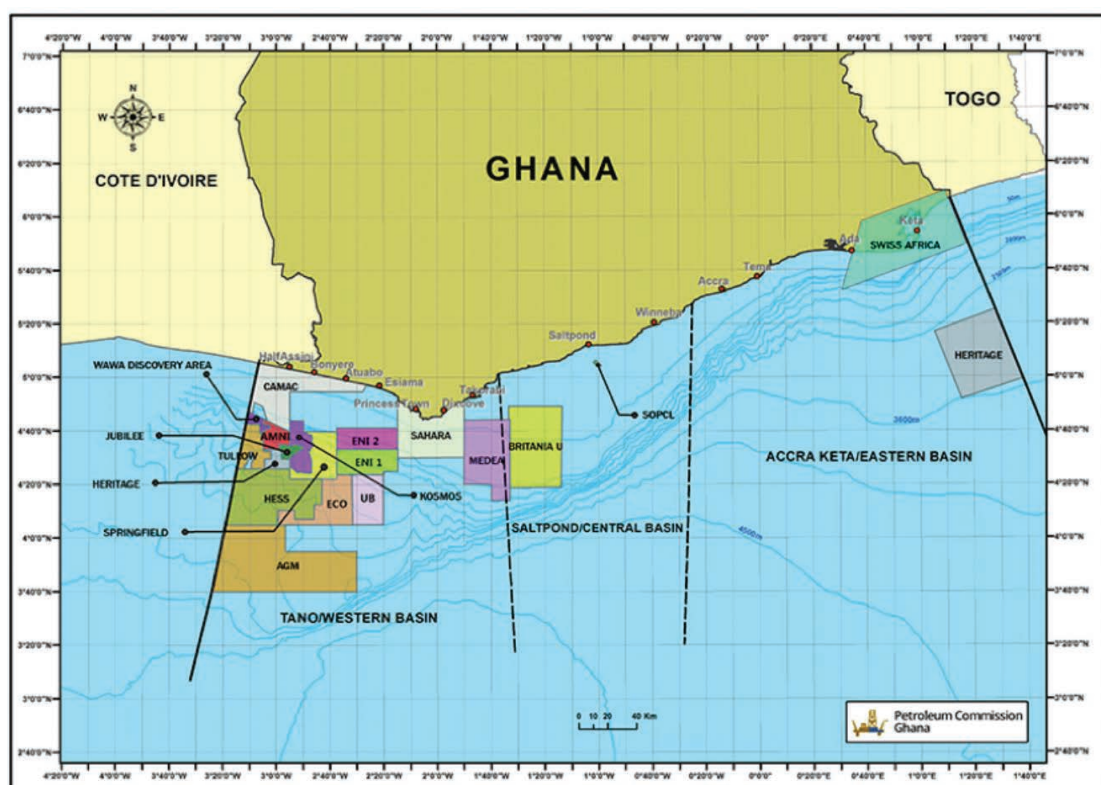
10 Penney, R., Wilson, G. and Rodwell, L. (2017). Managing sino-ghanaian fishery relations: A political ecology approach, *Marine Policy*, 79, 46-53. <https://www.sciencedirect.com/science/article/pii/S0308597X16308132>

11 A study carried out by the Far Dwuma Nkodo project in 2017 counted thousands of cases of industrial vessels destroying nets and canoes of artisanal fishermen at sea. Around 5% of these cases were reported to the Fisheries Commission, and around 1% of the total resulted in compensation for the losses incurred. According to the fishers surveyed, they are often unable to bring claims in such cases due to difficulties identifying the offending vessel.

12 Known as "saiko" fishing, these activities are prohibited under Ghanaian law, yet have increased at major landing sites in recent years: EJJ and Hen Mpoano (2019). Stolen at sea. How illegal 'saiko' fishing is fuelling the collapse of Ghana's fisheries: <https://ejfoundation.org/reports/stolen-at-sea-how-illegal-saiko-fishing-is-fuelling-the-collapse-of-ghanas-fisheries>

13 According to Ghana's Shipping (Protection of Offshore Operations and Assets) Regulations 2012 (LI 2010), fishing is not permitted within a 500-metre radius of oil installations (Section 1(3)).

Figure 2: Oil concessions in Ghana's Exclusive Economic Zone (EEZ)¹⁴



Source: Petroleum Commission website

The Government of Ghana has committed to rebuilding the nation's fisheries through key measures set out in the 2015-2019 Fisheries Management Plan¹⁵. The national fisheries law framework is also undergoing a revision to ensure emerging challenges are addressed and to bring Ghana's laws into line with international standards. This process offers a crucial opportunity to ensure principles of sustainable management and good governance are enshrined within Ghana's fisheries laws and future policies.

As the Government moves forward with these reforms, guidance may be sought from internationally agreed best practices on the responsible governance of tenure of fisheries resources, and on securing small-scale fisheries in the context of national food security. These best practices are set out in the following international soft law instruments, which represent the current global consensus on these issues, following extensive consultation and engagement around the final texts:

- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)¹⁶
- Voluntary Guidelines on Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines)¹⁷



Hook and line fishers landing their catches at Elmina.

¹⁴ According to the website of the Petroleum Commission, the Offshore Activity Map is a constantly updated record of offshore activities including awarded and relinquished acreages, contractors etc. As at March 2018, the website noted seventeen (17) active Petroleum Agreements, all of which are for offshore concessions mostly in the Western Basin.

¹⁵ Republic of Ghana (2015). *Fisheries Management Plan of Ghana: A National Policy for the Management of the Marine Fisheries Sector 2015-2019*. <https://mofad.gov.gh/fisheries-management-plan-of-ghana-2015-2019/>

¹⁶ <http://www.fao.org/tenure/voluntary-guidelines/en/>

¹⁷ <http://www.fao.org/voluntary-guidelines-small-scale-fisheries/en/>

International guidelines on fisheries tenure governance and small-scale fisheries

The Voluntary Guidelines on the Responsible Governance of Tenure

The VGGT were unanimously endorsed on 11 May 2012 by the UN Committee on World Food Security. They provide comprehensive guidance to governments, civil society and the private sector on how to promote responsible governance of tenure of fisheries resources, and an authoritative point of reference for states amending or adopting laws on the tenure of land, fisheries and forests.

The concept of “tenure”, in the context of the VGGT, may be defined as the way that land, fisheries and forests are held or owned by individuals, families, companies or groups¹⁸. The rules of tenure define how access is granted to use and control these resources, as well as associated responsibilities and restraints¹⁹. The VGGT are based on the central guiding principle of recognition and respect for all forms of “legitimate tenure rights” whether or not formally recorded, encompassing both:

- Rights that are legitimated or recognised through law, such as ownership rights or licence agreements.
- Informal rights, legitimated through broad social acceptance even without legal recognition, such as customary rights on state land, or traditional fishing grounds not formally recognised by law²⁰.

The VGGT call on States to:

- Promote laws that provide recognition of informal tenure
- Safeguard legitimate tenure rights against threats and infringements
- Promote and facilitate enjoyment of legitimate tenure rights
- Provide access to justice to deal with infringements of legitimate tenure rights
- Provide prompt, just compensation where tenure rights are taken for public purposes
- Prevent tenure disputes, violent conflicts and corruption.

The VGGT, although non-binding, still hold considerable legal significance, with certain elements reflecting existing international law principles²¹. For example:

- The provisions on compensation, consultation and free, prior and informed consent (FPIC) are broadly in line with international human rights jurisprudence.
- The provisions on gender equity are consistent with the Convention on the Elimination of all forms of Discrimination Against Women²².
- The standards of transparency and government integrity are broadly in line with the United Nations Convention Against Corruption²³.

Furthermore, implementation of the VGGT can be a crucial step towards the realisation of the right to adequate food recognised by Article 11 of the International Covenant on Economic, Social and Cultural Rights²⁴.

The final text of the VGGT is the product of two years of extensive consultations across multiple regions and diverse stakeholder groups, reaching almost 1000 individuals from over 130 countries. Following their endorsement, the VGGT received high-level expressions of support from the United Nations General Assembly, the Rio+20 Conference and the G20, lending the guidelines significant political authority²⁵. In the years since the Guidelines were endorsed, they have inspired policy and legal reforms in a number of countries²⁶.

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries

The SSF Guidelines were endorsed by the 31st session of the FAO’s Committee on Fisheries (COFI) in 2014 and recognise the key role played by small-scale fisheries in ensuring food security and eradicating poverty. The Guidelines take a human rights-based approach to securing socially, economically and environmentally sustainable small-scale fisheries, building on the Code of Conduct for Responsible Fisheries adopted in 1995²⁷.

18 FAO (2016). *Responsible governance of tenure and the law. A guide for lawyers and other legal service providers*. Governance of Tenure Technical Guide No. 5. FAO, Rome.

19 FAO (2015). *Implementation of the Voluntary Guidelines on the Responsible Governance of Tenure and on Sustainable Small-Scale Fisheries in the Fisheries and Aquaculture Legislation of Sierra Leone: Analytical Assessment Report*. FAO, Rome.

20 FAO (2016). *Responsible governance of tenure and the law. A guide for lawyers and other legal service providers*. Governance of Tenure Technical Guide No. 5. FAO, Rome.

21 *Ibid.*

22 New York, 18 December 1979. Ghana ratified the convention on 2 January 1986.

23 Adopted by the UN General Assembly on 31 October 2003, by resolution 58/4. Ghana ratified the convention on 27 June 2007.

24 The covenant entered into force on 3 January 1976. Ghana ratified the covenant in 2000.

25 FAO (2016). *Responsible governance of tenure and the law. A guide for lawyers and other legal service providers*. Governance of Tenure Technical Guide No. 5. FAO, Rome.

26 <http://www.fao.org/tenure/activities/fifth-anniversary/en/>

27 FAO (2015). *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. At a glance*. FAO, Rome.

The Guidelines provide guidance on the development and implementation of laws and policies relating to small-scale fisheries, including on the responsible governance of tenure and sustainable resource management. They take into account the VGGT, providing fisheries-specific provisions on certain tenure issues addressed in the VGGT at cross-sectoral level²⁸.

In this regard, the SSF Guidelines call on States and other actors to:

- Ensure correct processes and procedures for the identification, recognition, protection, allocation and management of tenure issues in fisheries, with particular attention to vulnerable and marginalised groups.
- Responsibly manage aquatic ecosystems and biodiversity, including through participatory approaches such as co-management and improved cooperation.

The SSF Guidelines also provide guidance on inter-sectoral issues, such as social development; employment and decent working conditions; value chain, post-harvest and trade; gender equality; and disaster risks and climate change²⁹.

The first draft of the Guidelines was developed through a participatory and consultative process that directly involved more than 4,000 representatives of small-scale fishing communities, civil society organisations, governments, regional organisations, and other stakeholders from more than 120 countries³⁰.

Background to the legal assessment

In April 2018, the implementing partners of the European Union-funded Far Dwuma Nkodo project, the Environmental Justice Foundation (EJF) and Hen Mpoano, together with the United Nations Food and Agriculture Organization (FAO) and Ministry for Fisheries and Aquaculture Development (MoFAD), organised a roundtable meeting to examine how implementation of the VGGT and SSF Guidelines could help to address some of the challenges facing Ghana's small-scale fisheries sector in the context of the on-going reform of the national fisheries law framework³¹.

Following that meeting, EJF and Hen Mpoano, in collaboration with lawyers from the Taylor Crabbe Initiative (TCi)³², undertook an assessment of Ghana's current fisheries law framework and related legislation for alignment with the principles of the VGGT and SSF Guidelines. The guiding principles of the VGGT and SSF Guidelines include:

- Equity and equality
- Consultation and participation
- Transparency and accountability
- Economic, social and environmental sustainability, including the precautionary principle and the ecosystem approach to fisheries.

The aim of the legal assessment was to identify the most appropriate means by which key principles of the VGGT and SSF Guidelines could be implemented in Ghana's law and policy framework, and provide concrete recommendations that may be considered in the process to amend the 2002 Fisheries Act. The assessment benchmarks the current fisheries law framework and related legislation against key elements of the VGGT and SSF Guidelines, under the following headings:

1. Recognition and respect for tenure right-holders and their rights
2. Safeguarding of legitimate tenure rights against threats and infringements
3. Sustainable development and tenure right-holders
4. Social development, employment and decent work
5. Gender equality
6. Natural disaster risks and climate change
7. Policy coherence, institutional coordination and collaboration
8. Access to justice

28 FAO (2015). *Implementation of the Voluntary Guidelines on the Responsible Governance of Tenure and on Sustainable Small-Scale Fisheries in the Fisheries and Aquaculture Legislation of Sierra Leone: Analytical Assessment Report*. FAO, Rome.

29 FAO (2015). *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. At a glance*. FAO, Rome.

30 *Ibid*.

31 EJF, Hen Mpoano, UN FAO, MoFAD (2018). Roundtable to discuss the international guidelines on the responsible governance of tenure and the relevance for Ghana's fisheries sector. *Meeting Report*. April 2018.

32 <https://www.taylorcrabbegh.com/>

This follows the approach taken by FAO in its assessment of implementation of the VGGT and SSF Guidelines in the fisheries and aquaculture legislation of Sierra Leone, published in 2015³³.

In March 2019, EJJ and Hen Mpoano organised a consultation with stakeholders in the small-scale fisheries sector, as well as representatives from government, academia, civil society organisations, and development partners, to review the main findings of the legal assessment and agree on the recommendations. These recommendations were then translated into amendments to the current legal framework by the lawyers at TCi, for submission to the Ministry for consideration in the drafting of the future fisheries Act and implementing Regulations.

Summary of key recommendations from the legal assessment

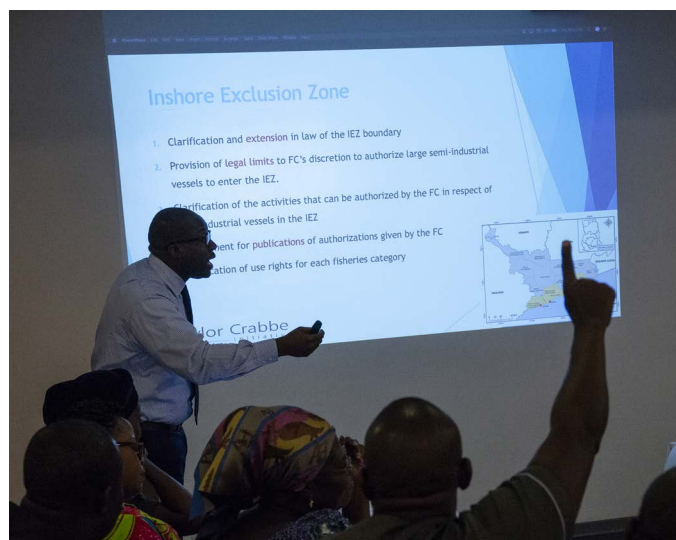
This section provides a summary of some of the key recommendations arising from the legal assessment as agreed during the consultation meeting held in Accra in March 2019. The full version of the legal assessment, which includes a number of additional recommendations that were not discussed during the consultation³⁴, is available at the following link, along with the benchmarking matrix and proposed amendments to the 2002 Fisheries Act. The recommendations are grouped into ten broad categories for ease of reference.

1. Inshore Exclusion Zone (IEZ)

- Clarify and extend in law the boundary of the Inshore Exclusion Zone (IEZ) reserved for artisanal fishers to reflect the current pattern of fishing activities by the artisanal and semi-industrial fleets³⁵.
- Clarify that foreign fishing vessels and industrial fishing vessels may not be used for fishing inside the IEZ.
- Limit the discretion of the Fisheries Commission to authorize semi-industrial vessels to enter the IEZ and clarify the specific activities that may be authorized.
- Require the Commission to publish all authorisations granted to carry out fishing activities within the IEZ stating the period of the authorization and permissible activities.

2. Canoe registration/licensing

- Clarify the requirements/procedure for the registration and, if relevant, the licensing of artisanal canoes, including the grounds for approving or refusing registration/a licence and provision for reviewing decisions and appeals.
- Clarify and ensure consistency between the respective roles of the Fisheries Commission and the District Assemblies in the registration and licensing process, promoting a collaborative approach.
- Provide for the establishment of a publicly accessible registry of all artisanal vessels, containing the particulars of the vessel and applicant, and period of validity of registration.



Stakeholders provide inputs at the consultation meeting.

3. Landing sites for artisanal fishing

- Develop mechanisms to facilitate the granting of preferential access for small-scale fishers to landing sites and land on which on-shore fish processing facilities are situated.
- Provide for District Assemblies, in conjunction with fishing communities, to designate areas as public landing sites for exclusive use by small-scale fishers, processors and traders.

4. Fisheries co-management and development of fishery plans

- Require the Fisheries Commission to develop a fishery plan, which specifies conservation measures to protect the resources from over-exploitation, including through measures to address over-capacity across all fishing fleets.
- Provide a clear procedure for the review and revision of fishery plans developed by the Commission.
- Provide for the mandatory consultation of potentially affected stakeholders in the development of fishery plans, including associations representing the interests of small-scale fishers, processors and traders.
- Require that the preparation of fishery plans be based on the guiding principles of equitable access and redistributive reform, and that fisheries are managed according to the precautionary principle, as well as ecosystem and integrated coastal zone management approaches.
- Provide a mandate to the Minister to make regulations for the establishment of co-management arrangements.

5. Participation and transparency

- Amend the composition of the Fisheries Commission board to specifically include representatives of civil society organisations working on fisheries, women's associations and small-scale fisher representatives, as nominated by those organisations.

³³ FAO (2015). *Implementation of the Voluntary Guidelines on the Responsible Governance of Tenure and on Sustainable Small-Scale Fisheries in the Fisheries and Aquaculture Legislation of Sierra Leone: Analytical Assessment Report*. FAO, Rome.

³⁴ Due to time constraints, where recommendations were considered to be of secondary importance or had less direct impact on the daily operations of small-scale fishers, processors and traders present at the consultation.

³⁵ The IEZ is currently defined as the coastal waters between the coastline and the 30-metre isobath or the 6 nautical mile offshore limit, whichever is farther (Schedule referred to in Section 81(1) of the Fisheries Act 2002).

- Appoint a multi-stakeholder advisory body to advise on the Commission's performance of its functions, including in respect of the development of fisheries management plans, policies and legislation, conclusion of access agreements and any other decision affecting the livelihoods of small-scale fishers.
- Clarify the situations in which the Commission board and multi-stakeholder advisory body must be consulted and where the advice of these bodies is binding.
- Specify the procedure for the development of advice by the Commission board/advisory body.
- Provide a legal basis for small-scale fishers to contribute to monitoring, control and surveillance (MCS), including reporting on vessels engaged in illegal fishing activities, and an obligation on small-scale fishers to provide data for MCS and catch statistics.
- Require the Commission to publish information on enforcement action undertaken by the Fisheries Enforcement Unit (FEU), including in response to reports submitted by the general public.

6. Regulation of industrial fishing

- Require the Fisheries Commission to publish or give notice of all applications for fishing licenses submitted by operators of industrial and foreign vessels, and details of all licenses issued.
- Establish a mechanism for the provision of inputs from stakeholders and for such inputs to be taken into consideration in deciding whether or not to grant the licence for industrial or foreign vessels.
- Require parliamentary approval for the allocation of licenses or fisheries rights to large industrial or foreign vessels³⁶.
- Ensure regulations are in place to prohibit the activities of industrial vessels that undermine the sustainable management of fisheries (e.g. saiko).

7. Large-scale developments, access agreements and compensation

- Provide for the mandatory consultation of potentially affected stakeholders prior to concluding fishing access agreements and other large-scale developments that may affect small-scale fisheries.
- Provide an obligation to negotiate compensation for losses of fishing opportunities for those who depend on fishing for their livelihoods, as a result of human interventions.
- Specify processes for small-scale fishers to obtain compensation in case activities or development decisions unnecessarily affect their livelihoods.
- Clarify the situations for which Fisheries Impact Assessments should be mandatory, including provisions on public hearing, access to information and stakeholder participation in the process.

8. Access to justice and the settlement of disputes

- Provide effective and informal dispute settlement mechanisms to ensure that all resource users, in particular small-scale fishery interests, have access to judicial and administrative bodies to resolve disputes.

- Establish a specialized magistrate court for fisheries and matters related to small-scale fisheries.
- Establish a fund to support small-scale fishers, vulnerable and marginalized people in fisheries to ensure access to justice.
- Provide a specific task of the Fisheries Commission to provide capacity development and support access to justice, particularly for small-scale fishers, processors and traders.

9. Gender equality

- Require the inclusion of a representative of women's associations (fish processors and traders) in the Fisheries Commission board.
- Ensure fisheries legislation is consistent with national gender policies.
- Specify that the Fisheries Development Fund be applied to provide technical assistance to women in fisheries, including fish processors and traders.
- Require the hearing and participation of women in fisheries potentially affected by development decisions and management plans.
- Provide for processes for women in fisheries to obtain compensation where development decisions affect their livelihoods.

10. Climate change

- Provide for small-scale fishery stakeholder representatives to be heard and involved in climate change matters affecting fisheries.
- Ensure measures related to climate change adaptation support take the needs and interests of small-scale fishers into account.



Fish processors, Bawjiase market, Central Region.

³⁶ Article 268 of the 1992 Constitution of the Republic of Ghana.

Conclusions

The VGGT and SSF Guidelines together enshrine principles of human rights and dignity; non-discrimination; respect for culture; gender equality and equity; consultation and participation; transparency and accountability; economic, social and environmental sustainability; and holistic and integrated approaches to resource governance.

These principles are in line with the guiding principles set out in Ghana's 2015-2019 Fisheries Management Plan, namely the equitable distribution of benefits; the use of the precautionary approach in management; participation, public accountability and transparency; the limitation of adverse environmental impacts; and the ecosystem approach to fisheries.

The VGGT and SSF Guidelines can thus provide valuable guidance for the implementation of the Management Plan, informed by internationally agreed best practice. They address aspects of governance relevant to the challenges faced by Ghana's small-scale fishing sector, such as:

- How to approach fishing access agreements and large-scale development, so that the impacts on small-scale fisheries are effectively assessed, taken into account and compensated.
- How to manage conflicts between users, including providing guidance on dispute resolution and access to justice.

- How to ensure access to fishing grounds and coastal zones for small-scale fishers is sustained in the face of competing priorities, including through the recording and protection of informal tenure rights.
- Provision of guidance on legal and policy reforms, to provide for participatory, transparent, and inclusive decision-making processes, which involve vulnerable and marginalized groups.
- Provision of a legal basis for co-management, including the role of communities in monitoring, control and surveillance.

Both the VGGT and SSF Guidelines have been subject to extensive consultation worldwide, and reflect a global consensus on responsible tenure governance and securing sustainable small-scale fisheries. Ensuring decision-making is in line with the guidelines can therefore help to secure broad-based support from stakeholders, increase the perceived legitimacy of legislation and promote voluntary compliance with fisheries laws.

The well being and livelihoods of Ghana's coastal communities depend on the secure and equitable access to fisheries resources. Ensuring alignment of fisheries laws and policies with the VGGT and SSF Guidelines, through implementation of the above recommendations, would provide a robust basis for achieving this vision, and ensure that Ghana's fisheries continue to provide benefits for generations to come.



Artisanal fishers landing fish at Gomoa Fetteh.

The **Environmental Justice Foundation (EJF)** and **Hen Mpoano** are working in partnership under the **Far Dwuma Nkodo – Securing Sustainable Fisheries** project, with financial support from the **European Union** and the **German Federal Ministry for Economic Cooperation and Development (BMZ)**. The Far Dwuma Nkodo project is a three-year project to secure greater environmental sustainability and social equity in Ghana's fishery sector.

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