



CENTRE FOR
MARITIME
LAW & SECURITY

Pioneering Maritime Governance in Africa

**Enforcement of Beneficial Ownership Requirements
to Curb Illegal Foreign Participation in Ghana's
Industrial Fisheries Sector**



Funded by

**Vibrant Oceans
Initiative**
A program of Bloomberg Philanthropies

This policy brief is an output of a project-funded under the Bloomberg Philanthropies Vibrant Oceans Initiative. The Project titled **Enhancing Transparency in the Fisheries Sectors of Benin, Côte d'Ivoire, Ghana and Senegal**, span 2 years starting from September 2021. The overarching objective was to assess the transparency and accountability of the fisheries sectors of the four West African countries. The Project was coordinated by the Centre for Maritime Law and Security (CEMLAWS) Africa and implemented through collaborations with project partners in the respective countries.

Within the context of fisheries governance, policy frameworks, and fisheries management, the study-based project assessed the challenges of the sector and identified key areas requiring policy and institutional reforms. In this policy brief, the concept of **Beneficial Ownership** and its implication for Ghana's fisheries governance, transparency, and accountability is explored .

Beneficial Ownership as intended by Section 47(1) of the 2002 Fisheries Act (Act 625) is to safeguard Ghanaians as beneficiaries of local industrial fishing licenses both as owners and in control of the industrial fishing vessels. Recommendations made in this policy brief are intended to support effective implementation and enforcement of the beneficial ownership regime in Ghana.

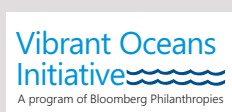
Reviewers: Kamal-Deen Ali (Project Lead), Nelson A. Ayamdoo & Rebecca K. Essamuah

Document Available on: www.cemlawsafrica.org

Cover Photo Courtesy: CEMLAWS Africa

The assessment, designations, and presentation of material in this document are solely the opinions of the coordinating team based on studies and do not necessarily imply consent by the funding organisation and related groups of the project.

Funded by



Bloomberg Philanthropies' Mission Statement

Bloomberg Philanthropies invests in 941 cities and 173 countries around the world to ensure better, longer lives for the greatest number of people. The organization focuses on five key areas: Arts, Education, Environment, Government Innovation, and Public Health.

January 2024

Introduction

Despite the seeming Ghanaian ownership of the industrial fishing fleet in Ghana, the reality is that most of these industrial fishing vessels operate under foreign ownership.

The country's industrial fishery is predominantly reserved for Ghanaians, therefore, both the legal and beneficial ownership of fishing vessels should belong to Ghanaians.

In reality, Ghanaians have actively assisted foreigners in registering fishing businesses using corporate structures to conceal the actual ownership, often through fronting schemes. Subsequently, they seek permits for importing vessels and obtain fishing licenses to exploit the fishery resources of the country.

In such schemes, not only do the Ghanaian partners or fronts lose out significantly on the economic benefits, but also the State and society lose the opportunity to use the fisheries sector for socio-economic development.

A closer observation of this trend reveals that the infiltration of foreigners in Ghana's fisheries sector is largely due to the failure to implement a beneficial ownership regime. Currently, a fishing business incorporated, or a fishing vessel registered in Ghana is typically considered to be owned by a Ghanaian, even though the Ghanaian serves as the legal owner and not the beneficial owner of the business or vessel license.

The case being made in this policy brief is that, there is an urgent need to implement and coordinate the enforcement of beneficial ownership regimes within the industrial fisheries sector. This action would not only help eliminate foreign involvement but also enable Ghana to fully harness the benefits of its coastal resources.

The problem of illegal foreign participation

Ownership of Ghana's industrial fisheries by foreign entities is occasionally outrightly denied and challenged, which is understandable given that the fishing businesses are ostensibly registered in Ghana, and the holders of fishing licenses are also Ghanaians.

However, over time, foreign participation in the fisheries has become undeniably evident. Notably, an investigation conducted by the Environmental Justice Foundation (EJF) in 2021 substantiates the claim of significant foreign involvement in Ghana's industrial fishing businesses and fleets. According to EJF's study, an estimated 90% of fishing vessels operating in Ghana's territorial waters are effectively owned by foreign companies, particularly Chinese companies.

EJF further asserts that these foreign companies utilize opaque ownership arrangements to register vessels and acquire fishing licenses to operate in Ghana's waters. Some of the vessels listed in the report were Meng Xin 3, Meng Xin 4, Meng Xin 15, Meng Xin 16, Lu Rong Yuan Yu 219, Lu Rong Yuan Yu 220, and Lu Rong Yuan Yu 968.

A year after the publication of EJF's report, the Ministry of Fisheries and Aquaculture Development (MoFAD) acting in consent/collaboration with the Fisheries Commission (FC), published the list of vessels in good standing as of June 2022, including these trawlers.

Scheming to evade compliance

As alluded to earlier, evasive corporate schemes and fronts have enabled foreigners to have access to Ghana's fisheries sector. In doing so, several schemes are adopted, all aimed at getting around the law.

Bareboat Charters

The registration and licensing of fishing vessels that are on bareboat or demise charters is permissible. It is important to distinguish between three types of charters (literally hiring) – time charter, voyage charter, and bareboat charter.

Time charter involves hiring a ship for a specific duration, while a voyage charter pertains to a designated voyage. Both have a commonality – the ship or part of it is chartered for a particular voyage or for a set time period. The charterer would have authority to direct the ship's route but the owner of the ship retains possession of the ship through the employment of its master and crew, also continues to provision the ship.

In contrast, a bareboat charter is effectively the charter of the vessel without the complement of its crew and provisioning. The defining feature of a bareboat charter is the relinquishment of the ship's possession by the owner to the charterer (in this context, the Ghanaian company). This provision in the law is specifically designed to allow Ghanaians to lawfully make use of demise charters to exploit fisheries resources. It can be compared to a person who rents a shop on long-term basis and would have had the opportunity to run his or her own business to maximize profits and benefits.

Although the law provides the bareboat charter regime as a good means of empowering local fishers and solving key issues, including concerns over control and beneficial ownership, it is unclear from practices in the industry how much is being used. It seems the regime is being avoided because of beneficial ownership requirements. If used at all, the players are not complying with the legal regime of bareboat charters.

Environmental Justice Foundation, *At What Cost? How Ghana is losing out in fishing arrangements with China's distant water fleet*, available at <https://ejfoundation.org/resources/downloads/Briefing-beneficial-ownership-revenue-Ghana-China.pdf>.

Hire Purchase & Mortgage Agreements

Registering and licensing vessels acquired through hire purchase or mortgage are likewise permitted, based on the anticipation that the Ghanaian party will eventually become the vessel's outright owner. In both legal instruments, the vessel is purchased on credit and the purchase price paid in instalments over a period. Until the vessel is fully paid for, the title and ownership of the vessel is not transferred to the purchaser. Regarding a mortgage, the vessel serves as collateral to secure the repayment of the purchase price.

In the context of the hire purchase agreements employed within Ghana's fisheries scheme, there is frequently a lack of documentation indicating instalment payments for the purchase price of the vessel. Instead of a definitive transfer of title and ownership to the Ghanaian purchaser, there is often a frequent alteration in the vessel's name and ownership. Subsequently, a supposed new hire purchase agreement is crafted, leading to the vessel's registration under an incorporated Ghanaian business name which facilitates the acquisition of a fishing license.

Similarly, the modus operandi in the use of a mortgage instrument involves entering into a loan agreement between the Ghanaian and the foreign company, utilising it to secure funding for either the initial financing or refinancing of the acquisition of fishing trawlers intended for operation in Ghana. The tenure of the loan is stated to be ten years.

As security for the loan, the fishing trawler is mortgaged to the supposed foreign lender. However, instead of advancing the loan facility to the Ghanaian to purchase the fishing trawler, the foreign company imports the trawler into Ghana and subsequently operates the trawler under the registration and license of the Ghanaian.

Instead of making instalment payments towards the liquidation of the purported loan facility, the Ghanaian is required to pay for all the fish that is landed for subsequently re-sell. To secure this arrangement, the trawler is arbitrarily and prohibitively priced by the foreign partners making it impossible for the loan to be redeemed. Also, all technical and operational specifications of the fishing trawler is set in a foreign language that will make it difficult for Ghanaians to take over its operation if the possibility ever presented itself. Evidence of instalment payments for the fishing vessel would be lacking. If payment would be made at all, payment is spread over a long time to enable the foreign crew to stay in Ghana. Towards the end, the foreign crew jump onto to a new vessel with similar evasive arrangements while the fishing vessel is possibly transferred to another Ghanaian front. Fishing trawlers are also easily taken away from Ghana without due diligence.

If these setups were an authentic ship mortgage, Section 50 of the *Ghana Shipping Act 2003*, would mandate the agreement's registration as such. However, this never transpires in these schemes because the involved parties merely employ pseudo-legal instruments to realise their objectives.

The purported agreement does not meet the criteria of a mortgage. Under Ghana's Shipping Act, a mortgage is established for a registered ship. This starkly contrasts with the current practice where a supposed mortgage is crafted before the trawler's registration.

Lack of Due Diligence

Upon submission of the necessary documentation to the MoFAD/FC which *prima facie* establishes the business as Ghanaian-owned, there is no physical verification or validation of the information to establish if the Ghanaian party is both the legal and beneficial owner of the fishing vessel, beyond what the scheme purports.

Even though there is a requirement to declare the ownership status of a fishing vessel presented to the Ghana Maritime Authority (GMA) for registration or licensing under the *Ghana Shipping Act*, the use of corporate structures and fronting makes it difficult to verify and authenticate the information.

Ghana's Fisheries is Reserved for Ghanaians

With exception to the tuna fisheries sector, there is an outright prohibition against foreign ownership and participation in industrial fisheries. In tuna fisheries, foreign participation is permissible provided the Ghanaian beneficially owns equal or majority shares in the partnership or enterprise established for the business.

Sections 46 and 47 of the *Fisheries Act* emphasise three crucial criteria for granting licenses for industrial fishing:

- Industrial fishing without a license is expressly prohibited.
- Industrial fishing licenses, barring exceptions for tuna fisheries and bareboat charters, are exclusively issued to vessels that are Ghanaian-owned. In the case of tuna fisheries, a license might be granted to a vessel not wholly owned by Ghanaians, provided a Ghanaian holds at least half of the vessel's shares.
- The Act draws a clear line between mere legal ownership of a company's shares and its beneficial ownership or control over the vessel. Simply holding shares (even 100% of them) does not automatically equate to beneficial ownership. A vessel eligible for an industrial fishing license must be under the beneficial ownership of a Ghanaian. Even if an individual is not the beneficial owner of shares, they might still exert significant control over the registered or licensed vessel. It's crucial to ascertain who has control over the vessel or the license holder.

When seeking to register vessels for fishing, the *Ghana Shipping Act* likewise emphasises the need for Ghanaian ownership of the vessel. Section 2 of the Act stipulates that a ship shall be registered as a Ghanaian ship if it is owned by a Ghanaian natural person, a Ghanaian registered company or partnership or as a joint venture with a foreigner or foreign company. Section 4 (2) mandates proof of ownership prior to registration. The registration process commences with the submission of the declaration of ownership together with the certificate of survey for the ship indicating details such as name and address of the applicant for registration, nationality or incorporated status, place and time of built, whether the ship was previously registered outside Ghana, and its previous name.

With respect to granting an industrial fishing license to a chartered foreign vessel, Section 66 of the *Fisheries Act* sets stringent conditions. Only a Ghanaian registered company may enter into a charter agreement for the use of foreign fishing vessel and the charter agreement must be submitted to the FC for approval.

It is observed that the *Fisheries Act* likely anticipated the problem of fronting at the time of its enactment. Unfortunately, the full rigour of this aspect of the *Fisheries Act* was not implemented in the *Fisheries Regulation, 2010 (LI 1968)* nor in practice. In significant part, Regulation 2 of *LI 1968* merely demands the incorporation documents or certificate of registration of an industrial vessel of the applicant without demanding beneficial ownership information. Renewal of fishing licenses under Regulation 23 equally failed to demand beneficial ownership information.

The statutory form (Form A) used to apply for fishing license only solicits information regarding the name, nationality, and shareholding percentages of the parties involved. Whether the shareholders are also the beneficial owners of the shares or otherwise is not inquired in the Form A.

Form A, without making provision for the supply of beneficial ownership information, has been used for years to register and licensed fishing vessels, and not even after the insertion of beneficial ownership requirements in Regulation 24A of the *Fisheries (Amendment) Regulations, 2015 (LI 2217)*. Regulation 24A (2)(e) requires an applicant seeking to register fishing vessel as a Ghanaian fishing vessel to provide information that includes the names, address and details of the beneficial owners and operations of the fishing vessel. At this point, Form A ought to have been amended to require beneficial ownership information but has yet to be updated.

The *Guidelines for the Registration and Licensing of Fishing Vessels (Industrial and Semi-Industrial) in Ghana* prepared in November 2013 to assist industry players and investors also omitted the requirement to provide beneficial ownership information. These guidelines are still effective regardless of the omitted requirement.

Given that Ghanaian beneficial ownership and control of the industrial fisheries are central to the rationale of the *Fisheries Act*, it is inadequate to continue placing greater emphasis on just legal ownership as evidenced by incorporation documents, to the neglect of ultimate beneficial ownership and control of a fishing vessel or license holder.

It is a misconception to assume that knowing the shareholders of a company is enough to identify its beneficial owners or those who control the company. For instance, a special purpose company could be incorporated in Ghana with nominees or a Ghanaian corporate shareholder whose shares may be owned by a non-Ghanaian and presented as the Ghanaian company for fishing vessel registration or license.

An inquiry of the shareholding structure of the special purpose company would not reveal the beneficial owners of the special purpose company. The layers of ownership can be structured to obscure actual control and beneficial ownership. Likewise, the legal owner of the share may not have the means to acquire the legal entity or has insufficient experiences to justify ownership of the vessel company or license. These examples strongly suggest the use of front arrangements or the existence of a beneficial owner, but it may elude the MoFAD/FC in the absence of beneficial ownership information. Enforcing beneficial ownership of the industrial fisheries requires at least the request for beneficial ownership information and subsequently validating the information to ensure that incorporation as a conduit for foreign participation in the country's industrial fisheries sector is eliminated.

However, because beneficial ownership information is not requested in the processes and procedures for fishing vessel registration and licensing, it is inevitable that the Fishery License Evaluation Committee would not assess, validate, or authenticate information relating to the beneficial ownership and control of prospective applicants. It is axiomatic that evaluation of an application would be based on information provided and therefore information that is never provided would not be evaluated.

Conclusion and Recommendations

It is evident that greater economic benefits accrue to the country when the industrial fishery is beneficially owned by Ghanaians. Apart from the Ghanaian beneficially owning registered fishing vessel and by implication deriving maximum benefit, it is in the spirit of the law that Ghanaians (person or company) would also be conscious to ensure conservation and management of fishery resources. The current practices for registering fishing vessels, and by extension, obtaining fishing licenses, underscore both the letter and spirit of the law.

To address the issue of using Ghanaian fronts, opaque schemes or special purpose vehicles to register and license foreign fishing vessels to operate in Ghanaian waters, the MoFAD/FC and GMA must institute measures that truly reveal the beneficial ownership of the industrial sector.

With beneficial ownership of the sector as the objective, care must be taken to ensure that industrial fishing licenses are granted to only beneficial Ghanaian owners. Also instructively, beneficial ownership provisions of the *Companies Act, 2019 (Act 992)* can facilitate the investigation, validation, and authentication of beneficial ownership in the fisheries sector. Beneficial ownership under the *Companies Act* requires compulsory registration and declaration of beneficial ownership of companies during incorporation and operation.

Beneficial ownership under the *Companies Act, 2019* looks at the persons who, though not recognised as legal owners of a company, exercise significant control over or receive financial benefits from the company. Beneficial ownership extends to persons on whose behalf a transaction is conducted or other forms of legal arrangements are made, whether formal or informal. A company is required to both declare, at the time of registration, the beneficial owners of shares, and to keep a register of beneficial ownership and file annual returns. The Registrar of Companies is also obliged to record details and particulars of beneficial ownership into the Beneficial Owner's Register. Thus, when this function is well coordinated between the Registrar of Companies, the Ghana Maritime Authority and the Fisheries Commission, front companies and opaque schemes would be eliminated in the industrial fisheries sector.

To enforce beneficial ownership in the sector, the following specific recommendations are proposed:

- 1.** There is a need to amend paragraph 2 of Schedule A (Regulation 3(2) of *LI 1968*) which requires the applicant providing information on shareholding to additionally include beneficial ownership information.
- 2.** Beneficial ownership information of applicants for vessel registration and licenses should be evaluated and investigated. Greater scrutiny is required for corporate shareholders and multi-layered ownership schemes because they can be obfuscating.
- 3.** The Fishing License Register must contain updated entries on beneficial ownership.
- 4.** Renewal of registration and licenses should be subject to declaration of beneficial ownership. Since beneficial ownership is dynamic, information must be consistently provided from incorporation through to dissolution stages, and regularly assessed.
- 5.** Guidelines or regulations for the submission of beneficial ownership information must be developed. The data required by the Registrar of Companies could serve as a baseline, but additional industry-specific information necessary to identify the beneficial owners of a vessel should be defined and requested from applicants.
- 6.** Given that industrial fishing is primarily reserved for Ghanaians, the MoFAD/FC must collaborate with the Registrar of Companies to regulate the registration of business entities involving foreign participation. Should beneficial ownership information reveal foreign involvement, the entity's eligibility for fishing vessel registration and licensing should be called into question, and registration for such business should be withheld.



About CEMLAWS Africa

The Centre for Maritime Law and Security (CEMLAWS) Africa is an independent, non-governmental organisation that seeks to promote ocean governance and maritime security in Africa. Fisheries policy, management assessments, and related institutional analysis form a critical thematic area undertaken by the Centre.

CEMLAWS Africa combines research expertise, policy understanding and practical insights to deliver responses to maritime issues through law and policy analysis and advice, training and capacity-building, collaboration, and guided deliberations. www.cemlawsafrica.org

Follow Us:

  @CEMLAWS_Africa

Location: No. 27 Kofi Annan Avenue, North Legon

E-mail: info@cemlawsafrica.com

2024