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ANALYSIS OF THE ADEQUACY OF LEGISLATIVE FRAMEWORK IN GHANA TO SUPPORT FISHERIES CO-MANAGEMENT AND SUGGESTIONS FOR A WAY FORWARD

By

MARTIN TSAMENYI, Ph. D.

Fisheries Law and Governance Consultant
Professor of Law and Director
Australian National Centre for Oceans Resources & Security
University of Wollongong, Australia

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Hɛn Mpoano

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For more information on the Integrated Coastal and Fisheries Governance project, contact: Coastal Resources Center, University of Rhode Island, Narragansett Bay Campus, 220 South Ferry Road, Narragansett, Rhode Island 02882, USA. Brian Crawford, Director International Programs at brian@crc.uri.edu; Tel: 401-874-6224; Fax: 401-874-6920.

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ANALYSIS OF THE ADEQUACY OF LEGISLATIVE FRAMEWORK IN GHANA TO SUPPORT FISHERIES CO-MANAGEMENT AND SUGGESTIONS FOR A WAY FORWARD

1. INTRODUCTION

This report has been prepared to support the implementation of the Integrated Coastal and Fisheries Governance Initiative, led by the Coastal Resources Center of the University of Rhode Island and funded by the U.S. Agency for International Development. One of the components of the Fisheries Governance Initiative is the development of an appropriate and supportive institutional framework to implement fisheries co-management in Ghana. The specific Terms of Reference (TOR) required the consultant to:

- analyse current Ghana fishery law to assess scope for implementation of co-management systems, a) as short term pilot trials and, b) on a permanent basis.
- test co-management framework from the 3rd Ghana Fisheries Dialogue meeting output against current legislation and provide a framework for moving forward based on outcomes.

Preparatory work for the report was carried out in Ghana from over a two week period from 15th - 28th February 2013. During this period, the consultant:

- Reviewed relevant policies (National Fisheries and Aquaculture Policy 2008, Draft Fisheries and Aquaculture Sector Development Plan 2010-2015 and legislation (*Fisheries Act 2002*, *Local Government Act 2003* and Local Government (Department of District Assemblies (Commencement Instrument,2009));
- Held consultations with the Fisheries Commission, Attorney-General's Department and World Bank.
- Participated in the 3rd Fisheries Dialogue (26-28 February), attended by representatives of government agencies, industry groups, legislators and non-governmental organisations.

1.1 Summary of Conclusions

Based on the analysis carried out against the TOR, the following conclusions can be drawn:

- Implementation of co-management arrangements is now universally recognised as a necessary prerequisite for a sustainable management of fisheries. One of the essential requirements for a successful co-management framework is establishing a policy and legal framework for it.
- There is sufficient policy recognition for fisheries co-management in Ghana, evidenced by the National Fisheries and Aquaculture Policy 2008, the Draft Fisheries and Aquaculture Sector Development Plan 2010-2015 and the current World Bank West African Regional Fisheries Programme. However, it will be necessary for detailed guidelines and an implementation plan to be developed by the Ministry of Fisheries and Aquaculture Development, preferably, through a Cabinet Memorandum and accompanying legislative drafting instructions to give legislative effective to co-management in Ghana.
- The existing legal framework in Ghana (*Fisheries Act 2002* (Act 625) and relevant local government legislation (*Local Government Act 1993*, Local Government (Departments of District Assemblies) (Commencement Instrument) 2009 (LI1961), is not capable of supporting a co-management framework without amendment or supplementation.

- In the short term, the *Fisheries Act 2002* can support a limited form of co-management through the establishment of fisheries advisory committees/groups without the need to amend the legislation. However, such committees/groups will have no decision-making powers.
- In the longer term, however, legislative change either through (a) amendment to the *Fisheries Act 2002* by adding a new part on co-management and (b) accompanied by an appropriate Legislative Instrument on co-management will be necessary to implement effective fisheries co-management framework for Ghana.

2. BRIEF OVERVIEW OF GHANA'S FISHERIES CHALLENGES –PAST AND PRESENT

Ghana's marine and coastal fisheries have been a consistent mainstay of the coastal economy, providing essential nutrition, income and livelihoods to many thousands of households. Yet evidence shows conclusively that governance systems are now failing to provide for future sustainability of Ghana's fisheries resources. The consequences of this for coastal communities and indeed national food security are potentially dire.

Ghana's most important fishery is for the small, highly migratory pelagics – fish that feed near the surface (principally sardinella, mackerels and anchovies). The second and lesser category of fish harvested are the demersals, species that live on, in, or near the bottom. Most alarmingly, statistics and fisher opinion point to a three-fold or greater decrease in individual catches of the critically important small pelagics by small-scale fishers over the last decade.

As elsewhere in the developed and developing world, centralised command-control systems of fisheries management have proven inadequate. Experience from multiple resources systems globally suggests that a nested, adaptive system incorporating collaborative management (co-management) with stakeholders has the best chance of turning this situation around. Such systems foster a sense of stewardship and allow for management decisions to be taken on a spatial scale most appropriate for individual resources. They facilitate critical communication pathways that promote timely response to system changes that may be rapid and unpredictable. While this approach provides a tested pathway moving towards sustainability, design and implementation will take time and considerable effort. For such a system to be sustainable it must be formulated to function effectively within the local institutional context, and be backed by support across multiple levels of government. It must be adequately financed and reinforced by an appropriate legislative framework.

Traditionally, Chief Fishermen and Chief Fishmongers in each shorefront community have been responsible for defining and enforcing the rules by which fish in their immediate area are caught and sold. With varying degrees of success they regulated the number of fishing days, the amount of fish landed and the types of fishing gear used. In 1946 the colonial government established a Department of Fisheries with the goal of maximizing catches. After Independence, the Fisheries Law of 1964 continued to promote the “development” of Ghana's fisheries by introducing new methods of fishing and providing technical support and subsidies. As overfishing became increasingly apparent, national fisheries managers attempted to regulate fishing in order to sustain this important source of food, employment and income. Some Chief Fishermen tried to institute rules restricting some types of fishing gear, but they were not supported by the courts and were sidelined. Today these traditional authorities remain respected members of fishing communities and often assume leadership roles.

In the late 1980s, the movement to decentralize government gave the District Assemblies explicit responsibility for many devolved functions including agriculture. However, the management of fisheries was largely excluded from the decentralization efforts with districts having an explicit role only in assisting the Fisheries Commission with licensing, enforcement, and establishment of cooperatives. Authority to establish district bye-laws that lay out harvest control rules was not articulated in the Decentralization Act or other legislative instruments concerning decentralization, nor in any of the Fisheries legislation.

In the mid-90s, externally funded projects worked with government agencies in forestry, water and fishery systems to establish co-management institutions. The largest of these

projects was the World Bank funded 'fisheries sub-sector capacity building project' initiated in 1997. This project created 133 Community Based Fishery Management Committees (CBFMCs) along the ocean coast. However, these institutions were not effective and little evidence of this effort remains today. The result is that enforcement of any regulation for many decades has been weak or non-existent and the evidence of severe overfishing has become ever more visible. The formulation of fisheries policy and regulations as well as monitoring and enforcement have remained with central authorities and the management system is top-down. Today Ghana's fisheries are in crisis. Already severely depleted, pelagic stocks could collapse and this would bring a massive crisis that would dramatically affect all coastal communities and the nation as a whole.

Ghana's experience since the colonial era underscores what is being learned from the management of fisheries in other regions of the world. In cases where there are many fishermen, many species and multiple modes of fishing, top-down management does not work. Those who are most affected by fisheries management rules must participate in shaping and adjusting the rules. Responsibility and authority must be distributed. International experience confirms that solutions built around principals of *adaptive co-management*, while difficult to design and implement, are most likely to be effective and sustainable.

3. FISHERIES CO-MANAGEMENT AND LEGAL REQUIREMENTS

This part of the Report defines the concept of co-management in fisheries and provides the necessary legal requirements for its implementation in practice. The discussion is intended to provide the theoretical foundation for the analysis in the rest of the Report.

3.1 Concept of Co-management in Fisheries

Co-management, also referred to variously as participatory management or collaborative management, is an “approach to management in which the government shares certain authority, responsibilities and functions of managing the fisheries with resource users as partners.”¹ Such participatory arrangements have varying degrees of intervention by the government and may include delegation or transfer of some management responsibility to resource users with technical advice or assistance from the government. The form of partnership will depend on the desired long-term fisheries management objectives to be achieved, but these objectives must be clearly established at the outset.

The imperative for fisheries co-management arises from the lack of capacity in fisheries agencies to successfully regulate what goes on in widely dispersed fishing grounds under their jurisdiction. Indeed, “the delegation of fisheries management and allocation of decisions to the local level may be more effective than the management efforts which distant, under-staffed and under-funded national government fisheries agencies can provide”.² Some of the recognised benefits of co-management arrangements in fisheries include:

- greater reliability and accuracy of data and information;
- more suitable and effective regulations;
- enhanced acceptability of and compliance with management measures;
- reduction in enforcement costs;
- reduction in conflicts; and
- strengthening of commitment to and participation by stakeholders.

3.2 Underlying Policy Framework

The starting point for the development of a legal framework for fisheries co-management arrangements is a national policy framework. The national policy framework provides the basis for legislative proposals and development and subsequent institutional development. The national policy framework should clarify responsible local institutions and delegation of management functions/responsibilities to the local levels. It is also important the policy is coupled with appropriate awareness building activities to ensure understanding among stakeholders concerned and facilitate the implementation of the co-management framework.³

3.3 Creating Legal Space⁴ for Fisheries Co-Management

A necessary prerequisite for a successful co-management framework is establishing a legal framework for it through some form of legislation. Based on Kuemlangan⁵ Box 1 below

¹ The Southeast Asian Fisheries Development Centre (SEAFDEC), *Regional Guidelines for Responsible Fisheries in Southeast Asia: Supplementary Guidelines on Co-Management Using Group User Rights, Fishery Statistics, Indicators and Fisheries Refugia*, 2006, p.A10.

² Robert S. Pomeroy, Community-based and co-management institutions for sustainable coastal fisheries management in Southeast Asia, 27 (1995) *Ocean and Coastal Management*, p.144

³ SEAFDEC, p. A8

⁴ The phrase is borrowed from Blaise Kuemlangan, “Creating Legal Space for Community-based Fisheries and Customary Marine Tenure in the Pacific: Issues and Opportunities,” *FAO/Fish Code Review No. 7*, FAO, Rome 2004.

⁵ Ibid

presents the key elements for the legal framework underpinning a co-management framework.

Box 1. KEY ELEMENTS OF A LEGAL FRAMEWORK FOR FISHERIES CO-MANAGEMENT

- Elaboration of basic principles relating to co-management which are not in conflict with fundamental national laws;
- Capability of existing inside the larger legal framework and be linked with sovereign authority, which is the State;
- Clear identification of groups or units of management;
- Clear definition of management boundaries;
- Provision for site-specific delegation of some management responsibility to the identified group or unit, either on an indefinite basis or for a definite period;
- Clear definition of powers given to designate co- management units with clear rule-making and rule enforcement powers;
- Establishment of clear rules by which the group can interact with government institutions;
- Security of tenure and protection of the resources being managed by the group from trespass and criminal behaviour of outsiders;
- Clear articulation in the compliance framework of the different roles and functions of the various co-management units, including enforcement functions.

4. ANALYSIS OF NATIONAL POLICY FRAMEWORK FOR CO-MANAGEMENT IN GHANA

This part of the Report investigates the extent to which there is an adequate policy framework in Ghana to support the development and implementation of co-management arrangements for fisheries management.

4.1 National Fisheries and Aquaculture Policy 2008

The most current and comprehensive national fisheries policy in *Ghana is the Ghana National Fisheries and Aquaculture Policy* (2008). This Policy outlines four key objectives to improve fisheries management and to accelerate aquaculture development in Ghana. These objectives are:

- Management of fisheries, conservation of aquatic resources and protection of their natural environment;
- Promotion of value addition in the fisheries sector;
- Establishment of the basis required for aquaculture development; and
- Establishment of an enabling environment for sustainable fisheries and aquaculture development.

The above four policy objectives of the are underpinned by a number of operational principles, many of which recognise the cardinal role played by the development and implementation of co-management at various levels to address the range of challenges facing the sustainable management of Ghana's fisheries resources. The key aspects of the Fisheries and Aquaculture Policy on co-management are summarised below:

- The development and implementation of national fisheries management plans, consistent with the FAO Code of Conduct for Responsible Fisheries, as well as pursuit of integrated rural development and coastal area management models. These will place emphasis on among other things, (i) emphasis on effort control based on knowledge of stock fluctuations; (ii) a precautionary approach to accommodate the range of interests; (iii) a zonal approach to the allocation of user rights on behalf of communities; (iv) recognition of the diversity of interests, resolution of conflict in the fisheries and increase in public awareness; and (v) a strong commitment to co-management (p.11)
- The Department of Fisheries has adopted a process of decentralisation of fisheries management, allowing for “the co-management of fisheries through increased active participation of fisherfolks and constitutes a departure from strictly to-down approach to fisheries management” (p.12).
- It noted that: “A large number of fishing communities have established their Community Based Fisheries Management Committees (CBFMC) whose by-laws have been gazetted or are in the process of obtaining legal recognition. The CBFMCs are intended to enforce national fisheries law and local by-law as appropriate... Significant work is still required for these mechanisms to become fully operational even if they form the backbone of a robust policy for fisheries co-management and conservation” (p. 12).
- Two of the key national development priorities and general principles include recognition that: (a) “decentralised and community-based institutions play a key role in co-management and development”; and (b) support for “stakeholder participation at

community and industry level as regards to fisheries management and sector development” (p.16).

- One of the operational objectives of Policy Area No. 1 (Management of fisheries conservation of aquatic resource and protection of their natural environment) is: “To improve the effectiveness of stakeholder institutions and mechanisms for co-management” (p.18).
- Operational Objective 1 under the Fisheries and Aquaculture Policy (2008) is: “To establish specific management and conservation measures based on regular assessment of the status of fisheries and their aquatic environment.” Promoting co-management is identified as one of the courses of action for implementing this operational objective. Thus the Policy aims to:
 - *Pursue current efforts to establish decentralised and community-based fisheries management through the establishment of CBFMS and District Fisheries management Committees (DFMCs) in all fishing communities.*
 - *Assess the strengths and weaknesses of such an approach with the communities and seek ways of achieving their more involvement in fisheries management and conservation.*
 - *Promote the involvement of NGOs in supporting the process of fisheries co-management or as a component of other livelihood support provided.*
 - *Promote fishing arrangements for co-management.*
 - *Establish measures to sustain and support the CBFMCs and DFMCs.*
 - *Educate fishing communities to help raise awareness and sensitise them on property rights and co-management (p.21).*

4.2 Draft Fisheries and Aquaculture Sector Development Plan 2010-2015

The *Draft Fisheries and Aquaculture Sector Development Plan 2010-2015* sets explicit operational targets to implement the Fisheries and Aquaculture Policy 2008. The Draft Development Plan recognises the critical role co-management plays in sustainable fisheries management by noting that:

Evidence from around the world indicates that fisheries management regimes only work effectively if they have the support of fishers and their communities. After all, the outcome of a fisheries management regime is simply the sum of all the actions of every single fisher in the fishery (p.35).

Particularly in relation to the canoe sector, the Draft Plan noted:

Licensing is only the first step towards the establishment of responsible management practices within the canoe sector. Once the number and identity of fishers in a particular site is established, the conditions exist for the development of local codes of practice governing fishing places, times, methods as well as the potential for some collective investments in added value fish handling and marketing initiatives. This is an evolutionary and local process but some lessons from unsuccessful community management initiatives can be absorbed to encourage it.

Briefly, these lessons appear to be:

- Community fisheries management initiatives do not work if there is open access. The primary focus of many canoe communities is on getting rid of competitive effort from pair trawlers and light fishers rather than developing local management practices.
- Community fisheries management initiatives do not work if they are burdened with expectations to manage a wide agenda of social and community development issues. Communities become dysfunctional if there are too many non-fishers involved. They also undermine the traditional status of the chief fisherman.
- Community fisheries management initiatives do not work if they lack technical support and financial resources. In the medium term, funding must come from fishers themselves, which means that fishers must see some obvious benefits from these groups or committees (p.36).

4.3 The West African Regional Fisheries Programme

Another indication of policy support for co-management is the World Bank funded West African Regional Fisheries Programme. Component 1 entitled *Good Governance and Sustainable Management of the Fisheries* “aims to build the capacity of the Government and stakeholders to develop and implement policies through a shared approach that would ensure that the fish resources are used in a manner that is environmentally sustainable, socially equitable and economically profitable”. One of the four sub-components of the project is: strengthening fisheries management, including fishing rights and stakeholder-based management.⁶

4.4 Scope of the National Policy Framework to Implement Co-Management

From the analysis above, it can be concluded that there is sufficient policy recognition for fisheries co-management in Ghana, evidenced by the *National Fisheries and Aquaculture Policy 2008*, the *Draft Fisheries and Aquaculture Sector Development Plan 2010-2015* and the current World Bank West African Regional Fisheries Programme. However, it will be necessary for detailed guidelines and an implementation plan to be developed by the Ministry of Fisheries and Aquaculture Development, preferably, through a Cabinet Memorandum and accompanying legislative drafting instructions.

⁶ p.7 of Project Appraisal Document)

5. ANALYSIS OF THE EXISTING LEGISLATIVE FRAMEWORK IN GHANA

This section analyses the *Fisheries Act 2002* (Act 625). The role of local governments in fisheries co-management is discussed in Section 5 of this Report.

Generally, fisheries legislation provides the primary framework for fisheries management, and for that matter, the implementation of fisheries co-management. The most current fisheries legislation in Ghana is the *Fisheries Act 2002* (Act 625). There are no explicit provisions in the *Fisheries Act* mandating the implementation of fisheries co-management. Although a number of provisions of the Act provide some rudimentary framework for the implementation of some aspects of co-management, it should be noted that these provisions, analysed below, are not designed to implement co-management and consequently cannot readily and effectively support an effective co-management framework. These provisions are clarified below:

5.1 Functions of the Fisheries Commission

Section 2(1) of the *Fisheries Act 2002* specifies the functions of the Fisheries Commission. One of the functions identified is “in collaboration with District Assemblies with fishing communities, ensure the enforcement of the fishery laws, including by-laws made by the relevant District Assemblies”.

5.1.1 Analysis

On the face of it, it would appear that section 2(1) of the *Fisheries Act* decentralises some fisheries enforcement functions to District Assemblies. It would also appear that District Assemblies have power to make fisheries by-laws under a relevant legislation. These two assumptions, are however, not supported by analysis of the *Fisheries Act 2002* and the *Local Government Act 1993*.

In practical terms, section 2(1) of the *Fisheries Act 2002* has two important limitations which diminish its usefulness in supporting delegation of some fisheries enforcement functions to District Assemblies.

- First, the current by-law making powers of District Assemblies under the *Local Government Act* do not extend to fisheries management issues, as fisheries has not been decentralised. The *Local Government (Department of District Assemblies) (Commencement) Instrument, 2009* (LI1961) only empowers District Assemblies to contribute to the enforcement of fisheries legislation and education, without giving them any rule-making powers. In other words, no corresponding powers have been given to District Assemblies under the *Local Government Act* to make and enforce fisheries management related by-laws.
- Second, enforcement powers under the *Fisheries Act* can only be exercised by “authorised officers” who are given police powers. Currently, the list of “authorised officers” is limited to (a) personnel of the Enforcement Unit of the Fisheries Commission; (b) personnel of the Ghana Navy; (c) air crew and personnel of the Air Force deployed for fishery duties; (d) officers of the Water Research Institute; and (e) fishery officers of the secretariat of the Commission (Section 95(2)). The Minister responsible for fisheries has power to appoint, in writing, any public officer as an authorised officer; however, no official from District Assemblies has been appointed an “authorised officer”. To enable District Assemblies to play a role in the

enforcement of the *Fisheries Act*, it will be necessary for specified officers of a District Assembly to be appointed as “authorised officers”.

5.2 Development of Artisanal Fisheries

Under Section 51(1) of the *Fisheries Act 2002*, the Fisheries Commission is required to protect and promote artisanal and semi-industrial fishing. Among the actions that should be taken to promote artisanal fishing include the following:

- provision of extension and training services;
- registration of artisanal fishing vessels and any class of related fishing gear
- exemptions for certain fishing activities from some requirements such as licensing and payment of fees as determined by the Minister;
- promotion of the establishment and development of fishing, processing and marketing co-operative societies;
- promotion of the development of artisanal fishing landing facilities;
- establishment of reserved areas for fishing activities of artisanal and semi-industrial fishing vessels;
- giving of priority to artisanal and semi-industrial fishing in the allocation of fishing licences or quotas;
- promotion of joint venture arrangements, technology transfer agreements and transfer of technology and experience.

5.2.1 Analysis

The functions of the Fisheries Commission relating to the development of artisanal fisheries, enumerated above, can form part and parcel of a co-management framework in Ghana, if established. However, on their own, they do not provide a co-management framework.

5.3 Application for Fishing License for Artisanal Fishing Vessels

Under Section 53(1) of the *Fisheries Act 2002*, the Fisheries Commission may direct that an application shall be routed through the District Assembly of the locality where the applicant intends to operate the canoe.

5.3.1 Analysis

Section 53(1) does not empower District Assemblies to process applications. Even if the policy intention was to enable District Assemblies to receive and process artisanal fisheries licenses, there would need to be clear provisions setting out the guidelines and the terms and conditions governing such processing of applications. As currently drafted, District Assemblies would appear to be no more than post boxes for the receipt of applications. Processing and approval would still be the responsibility of the Commission. Further, Section 53(1) is discretionary and will require some administrative arrangements between the Fisheries Commission and relevant District Assemblies.

5.4 Collaboration with other State Agencies

Under section 42(3) of the *Fisheries Act 2002*, the Commission is required to collaborate with such State agencies as the Commission considers appropriate for the implementation of each fishery plan. The list of such State agencies is not provided, thus leaving the Commission a large degree of flexibility in this regard.

5.4.1 Analysis

On the face of it, section 42(3) of the *Fisheries Act* would appear to allow the Fisheries Commission to develop relations with other agencies (e.g. District Assemblies) to implement the Act. However, inter-agency collaboration should be distinguished from co-management.

5.5 Fishery Plans

One of the functions of the Fisheries Commission under section 2(1) of *Fisheries Act 2002* is to “prepare and keep under continual review plans for the management and development of fisheries in waters under the jurisdiction of Ghana.”

Under Section 42 of the *Fisheries Act*, a fisheries plan may relate to a specific water area or specified species of fish and must (a) be based on the best scientific information available; (b) ensure the optimum utilization of the fishery resources but avoid over exploitation and (c) be consistent with good management principles.

Under Section 43, the Commission is required to develop fishery plans for the fisheries. Each fishery plan must cover eight issues, namely:

- identify the fishery resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;
- assess the present state of exploitation of each resource and taking into account relevant biological, social, and economic factors, determine the potential average annual yields from the resource;
- specify the measures to be taken to promote the development of the local fishing enterprises, both industrial and artisanal;
- determine the amount of the fishery resource to be made available to license foreign fishing vessels;
- specify the conservation measures to be enforced to protect the resources from overexploitation;
- indicate the research necessary to enhance management of the fishery resource;
- specify the information and other data required to be given or reported for effective management and development of fisheries; and
- take into account relevant artisanal fishing methods or principles.

Section 44 of the *Fisheries Act* deals with consultation process and approval of a fishery plan. Under Section 44(1) in developing fishery plans, the Commission is required to carry out such consultations as it considers appropriate with organizations, authorities and persons affected by the fishery. Significantly, under section 44(3), each fishery plan or review of such a plan shall be submitted to the Minister who shall submit it to the Cabinet for approval before coming into force at a time specified in the approval. Section 44(4) requires the Minister to publish in the *Gazette* and other mass media the effective date of implementation of an approved fishery plan.

5.5.1 Analysis

A fishery plan could be used to implement aspects of co-management. For example, it could allow for establishment of fisheries co-management committee, can designate fishery management units, can allow for some form of use rights or management access. However, as currently drafted, the fishery plan process is not adequate to deliver a co-management framework.

- The fishery plan is very prescriptive in terms of the matters to be taken into account in developing a plan and does not allow for flexibility to reflect different situations;
- The plan making and approval process is very centralised and cumbersome. The Act requires that all plans to contain certain content and must be approved by the Fisheries Commission, the Minister and Cabinet (e.g. even a small lagoon management plan that is community managed would have to be approved by the Minister and Cabinet. Likely creating a log jam or significant time delays in getting numerous community-based plans legally adopted).
- Consultations in the development of a fishery plan are at the discretion of the Fishery Commission. There is no requirement to take into account the views of groups consulted.

6. THE ROLE OF LOCAL GOVERNMENT IN FISHERIES CO-MANAGEMENT

A common approach to the implementation of co-management in fisheries in many parts of the world, especially in Asia-Pacific, is through decentralisation of some fisheries management functions to local government units. Through such decentralisation, local government institutions provide the framework to support the implementation of co-management, particularly at the community (local) level. As seen from analysis of the *Fisheries Act* above, a number of references have been made in the Fisheries Act to the role of District Assemblies in the management of Ghana's fisheries. Consequently, this part of the Report analyses the *Local Government Act 1993* to determine the extent to which fisheries management functions in Ghana have been decentralised.

6.1 Fisheries and Decentralisation in Ghana

Before analysing Local Government legislation to determine the extent to which it incorporates co-management principles, it is necessary first to discuss the treatment of fisheries in Ghana's decentralization effort.

The *Local Government Act 1993* (Act 462) is the principal legislation in Ghana establishing local government in order to give effect to Article 241(3) of the 1992 Constitution⁷. At the core of Ghana's decentralisation is the power to create District Assemblies by legislative Instruments to determine the composition of District Assemblies and their functions. Section 10 of the *Local Government Act* specifies the deliberative, legislative and executive functions to be performed by District Assemblies.⁸ None of these functions relate directly to fisheries management. However, under section 10, District Assemblies can perform "any other functions provided for under any other enactments (section 10(3)(i)). It is therefore important to examine the extent to which other enactments assign specific functions to District Assemblies.

Additionally, section 12(2) of the *Local Government Act* provides that the instrument establishing a District Assembly may confer additional functions in the Assembly and may provide for the relationship between that Assembly and the regional coordinating council. It is therefore necessary to ascertain whether additional functions have been conferred on District Assemblies by (a) the instrument establishing District Assemblies or (b) by any other enactments. Analysis of the relevant instrument establishing District Assemblies reveals that no fisheries management related functions conferred on District Assemblies under the *Local*

⁷ This Article of the Constitution provides as follows: "Subject to this Constitution, a District Assembly shall be the highest political authority in the district, and shall have deliberative, legislative and executive powers.

⁸ These functions include: the preparation and submission through the regional co-ordinating council (i) of development plans of the district to the National Development Planning Commission for approval, and (ii) of the budget of the district related to the approved plans to the Minister responsible for Finance for approval; formulation and execution of plans, programmes and strategies for the effective mobilisation of the resources necessary for the overall development of the district; promotion and support of productive activity and social development in the district and removal of any obstacles to initiative and development; initiation of programmes for the development of basic infrastructure and provision of municipal works and services in the district; responsibility for the development, improvement and management of human settlements and the environment in the district; responsibility for co-operation with the appropriate national and local security agencies, for the maintenance of security and public safety in the district; ensuring the ready access to Courts in the district for the promotion of justice; initiation, sponsorship or carrying out studies that are necessary for the performance of a function conferred by the Local Government Act or by any other enactment; and perform any other functions provided for under any other enactment.

Government (Department of District Assemblies) (Commencement) Instrument 2009 LI 1961).

6.2 Additional Functions conferred on District Assemblies by the Instrument Establishing District Assemblies

The *Local Government Services Act 2003* has been given effect to by the *Local Government (Department of District Assemblies) (Commencement) Instrument, 2009 (LI1961)*. Under the *Local Government Act, 1993*, decentralised Departments at the district level are to cease to exist and reconstituted to form new departments. Section 164 of the *Local Government Services Act 2003* gives power to the Minister responsible for Local Governments to determine by Legislative Instrument when the old Departments cease to exist and the new amalgamated ones come into force.

The Fisheries Department was not listed under the *Local Government Services Act 2003* as one of the Departments delegated from the 8th Schedule to the *Local Government Act*. The Department of Fisheries was also omitted from all the Schedules to LI 1961, with the result that fisheries management is not a decentralised function.⁹ At the same time, however, under the Third Schedule (Regulation 4 of LI 1961), the functions of the Department of Agriculture in the District cover a number of fisheries-related functions, including:

- “participate in the education and enforcement of legislation on fisheries” (Regulation 4(6)(h));
- “promote the formation of viable fishermen associations and assist in fish farming” (Reg. 4(6)(i); and
- “assist the construction, rehabilitation and maintenance of fish landing sites” (Reg. 4 (6) X).

Section 79 of the *Local Government Act* empowers a District Assembly to make by-laws for the purpose of a function conferred on it by the *Local Government Act* or any other enactment. A by-law may:

- Specify a penalty (fine not exceeding 200 penalty units or a term of imprisonment not exceeding 6 months or to both the fine and the imprisonment);
- In the case of continuing offences, specify a further penalty not exceeding one penalty unit for each day on which the offence is continued after written notice of the conviction has been served on the offender.

All by-laws made by a District Assembly are subject to Ministerial approval and subsequent Gazettal.¹⁰

6.3 Analysis

The conclusion that can be drawn from analysis of local government legislation is that fisheries management is not decentralised under Ghana’s local government system. It follows that current local government legislation in Ghana is not capable of providing a framework for the implementation of some aspects of fisheries co-management. Based on best international practice, in order to achieve co-management through decentralisation, the policy

⁹ See Explanatory Note accompanying LI 1961’ p.iv.

¹⁰ *Local Government Act*, s. 80

and legislative framework for both fisheries and local government must reflect the cross-linked elements specified in Box 2 below:

Box 2. LEGISLATIVE REQUIREMENTS FOR FISHERIES CO-MANAGEMENT THROUGH DECENTRALISATION

- Fisheries management functions in specified areas and fisheries must be decentralised through both the fisheries legislation and local government legislation;
- Both fisheries and local government legislation must specifically delegate fisheries management powers to local government over a specifies area, including body of water and resources;
- Both local government and fisheries legislation must clearly identify the law making (by-laws) and enforcement functions of local government.

The experience of the Philippines is a good illustration of the above cross-linkages between fisheries legislation and local government legislation to achieve decentralisation of fisheries functions to implement fisheries co-management. Relevant parts of the Philippines legislation are reproduced in Appendix 1 for information.

7. THE SUGGESTED FISHERIES CO-MANAGEMENT FRAMEWORK FOR GHANA

Discussions at the 3rd National Fisheries Dialogue agreed on a desirable framework for fisheries co-management in Ghana. This framework is based on three scales of management as follows:

- Framework at National Scale.
- Framework at the Regional Scale.
- Framework at the Local Scale.

The essential elements of each of these scales of co-management are described briefly below.

7.1 National Scale Co-management Framework

The national scale co-management framework will cover pelagic fisheries and will require the establishment of a National Pelagics Fisheries Management Committee (with possibility of creating sub-committees for small pelagics and large pelagics). National management framework and rules will be developed by the Ministry of Fisheries and Aquaculture Development and Fisheries Commission, in collaboration with the national committee/committees. Enforcement of the rules will also be at the national level.

7.2 Regional Scale Co-management Framework

At the regional levels, Regional co-management Committees will be established for marine demersal fish for each of the four coastal Regions in Ghana. Implementation of this will require the designation by the Fisheries Commission of marine demersal co-management units at each regional level, supported by the establishment of Regional Demersal co-management Committees. Management planning and approval will be devolved to regional representative of the Fisheries Commission at the regional level. Each regional plan will have its own set of rules. There will also be no requirement to have national rules consistent across all four management plans. However, regional rules cannot contravene national laws or regulations such as a ban on use of carbide or fine mesh nets. Enforcement of the regional rules would be national through the Fisheries Commission and Marine Police units within each region.

7.3 Local Scale Co-management

The local scale co-management framework will cover all lake, lagoon and estuarine fisheries. The key aspects of the local scale management framework will include the following:

- The establishment of Local Fisheries Management Areas and corresponding co-management units and Management Plans by Regional Directors of the Fisheries Commission at the request of groups.
- For overlapping boundaries, the Fisheries Commission will be mandated to designate boundaries and designate management areas under which co-management committees will be charged with developing a plan.
- Local fisheries co-management plans will be developed by each group, with support from the Regional Director of the Fisheries Commission and approved by regional Director following technical review. Such plans can be adopted by district councils by incorporating them into their medium term development plans and incorporating a

spatial component to the fisheries management plans that can be incorporated as a as a “local plan” as part of the district spatial planning procedures, if these exist.

- Members of a particular group can set non-discriminatory conditions which would also apply to non-group members. They can also charge fees for access.
- Rule-making and rule enforcement at the local management scale will take place through local by-laws made by each group and enforced either as District Assembly by-laws or as Fisheries Commission by-laws.
- To avoid the long process of approvals by District Assemblies and the Fisheries Commission, once a local co-management committee is established and its plans are approved, that committee would be responsible for reviewing the plan annually and making changes to the rules or management measures as necessary to manage resources sustainably. The changes will be formally recognized in law through Gazette notices or can through public notice in a local newspapers.

8. ASSESSMENT OF SCOPE OF CURRENT FISHERIES LEGISLATION TO IMPLEMENT THE RECOMMENDED CO-MANAGEMENT FRAMEWORK

This part of the Report examines the scope of the existing legislative framework in Ghana to implement the proposed co-management framework suggested by the 3rd Fisheries Dialogue and outlined above. The analysis will answer two specific questions:

- What is legally possible now within the existing legislation?
- What legislative changes are required in the longer term to implement the recommended co-management options?

8.1 What is Legally Possible Now?

The *Fisheries Act 2002* (Act 625) can support a limited form of co-management, as discussed below.

8.1.1 Establishment of Fisheries Advisory Groups/Committees

The provisions of the *Fisheries Act 2002* can be utilised to establish of advisory groups to support fisheries management on a limited scale without the need to amend the legislation. Under section 7 of the *Fisheries Act*, the Fisheries Commission may co-opt any person as an adviser at its meetings. Section 9 of the *Fisheries Act* allows the Commission to appoint such Committees, comprising members of the Commission and non-members of the Commission, as it deems necessary for the discharge of its functions. Based on the two provisions above, three possible Advisory Groups/Committees that may be established are:

- National Pelagics Advisory Committee;
- Regional Advisory Committee for Marine Demersals; and
- Local Advisory Committees in designated local areas.

The limitation of using the current provisions of the *Fisheries Act* to establish Advisory Groups/Committees is that such Groups/Committees will have no decision-making powers.

8.1.2 Implement Co-management through the Development of Fishery Plans

The *Fisheries Act 2002* (sections 42-44) requires the development of fishery plans which must deal with specific issues and be based on consultation. Co-management frameworks may be used to support the development and implementation of such fishery plans. Each fishery plan could have an advisory group, representing the key stakeholders in the fishery.

There are two inherent shortcomings in utilising the fishery plan process to establish co-management groups.

- The advisory groups established for the purpose of implementing the fishery plans will have to be committees of the Fisheries Commission and will have no decision-making powers. ***If the intention is to have decision-making groups as opposed to advisory groups, then new legislation will be required.***
- More significantly, section 44(3) of the *Fisheries Act* requires that: “Each fishery plan or review of such a plan shall be submitted to the Minister who shall submit it to the Cabinet for approval; and the plan shall come into force at a time specified in the approval”. This requirement for cabinet approval makes fishery plans top-down management and inconsistent with co-management principles. ***In practice, this will mean that every local level fishery plan will require cabinet approval.***

8.2 Longer-term Legislative Changes Required

In the longer term, legislative change can be undertaken either through (a) amendment to the Fisheries Act 2002 by adding a new part on co-management or (b) accompanied by an appropriate Legislative Instrument on co-management through the Regulations power under the Fisheries Act 2002. This will be necessary in the longer term to implement the outcomes of the Third Fisheries Dialogue. The content of each of these legislative options will be explained below.

8.2.1 Amendments to the Fisheries Act 2002/New Act

Appropriate amendments to the Fisheries Act 2002 or the enactment of a new Act will be required to specify co-management groups and to specify the broad principles of co-management.

8.2.2 Establishment of Co-management Groups

Amendment to the *Fisheries Act 2002* is necessary to establish co-management groups at different levels:

- At the national level, amendment to the *Fisheries Act* will mandate the Minister to establish a National Pelagic Management Committee with specific management powers.
- At the regional level, amendment to the *Fisheries Act* will mandate regional representative of the Fisheries Commission to establish fisheries management units and committees within the Districts in his region, with specific management, rule-making and rule-enforcement powers.
- At the local level, amendment to the Fisheries Act will make provision for voluntary (opt-in) requests by local groups to establish local co-management committees for lakes/estuaries/lagoons.

8.2.3 Basic Principles Governing co-Management Groups

Amendment to the Fisheries Act will set out basic national principles which will guide the establishment, composition and functioning of each scale of co-management, leaving out specific details to each group to work out during the establishment of the co-management units. The core principles will cover issues such as:

- Membership, tenure of office of members, chairperson (there is need for the membership to be representative in terms of user groups and gender, traditional authority), but not prescriptive.
- Decision-making powers granted to the co-management units.
- Co-option of other agencies and non-governmental organisations and institutions as appropriate for technical support.
- Roles and responsibilities of the Fisheries Commission, such as provision of extension services for the purpose achieving management objectives, assistance with coordination with other agencies and technical review and endorsement of local management plans prior to approval.

8.3 Legislative Instrument

Section 139 of the Fisheries Act 2002 makes provision for the Minister on the recommendations of the Fisheries Commission by legislative instrument to make Regulations prescribing measures for the management of fisheries as the Minister considers appropriate.

A specific legislative Instrument dealing with fisheries co-management will be required, on the basis of section 139 of the Fisheries Act 2002 to give practical effect to the broad co-management units at each of the three scales of management.

In addition to a need for amendment for the act itself, an LI is needed to provide more operational regulations for how the act amendment provisions get implemented. In practical terms, the act will need to be amended first before the LI is implemented. To avoid delay and loss of initiative, the two process can be worked on in parallel, but adoption would have to be sequenced with amendment of the act first, followed by the LI.

8.4 Procedure for Legislative Development

Initially, the project canvassed the possibility of developing draft amendments to the *Fisheries Act* or drafting an LI to implement the outcomes and conclusions of the 3rd National Fisheries Dialogue. However, following extensive consultations before and during the Fisheries Dialogue, it became clear that a better strategy would be to develop a set of principles that would be incorporated into a Cabinet Memorandum and later as drafting instructions to support legislative development.

Amendment to the *Fisheries Act*, a new Act or the development of an LI to implement the outcomes of the Fisheries Dialogue can be a complex process; thus, a clear understanding of the procedures required is therefore necessary from the outset. The summary below, produced from the presentation by Miss Regina Djokoto, Assistant State Attorney of the Attorney-General's Department at 3rd Fisheries Dialogue, outlines the procedure required to (i) amend the *Fisheries Act* or develop a new Act to give effect to co-management and (ii) develop an LI on co-management.

8.4.1 Procedure for Amending the Fisheries Act/New Act

The following outlines the process of amending the Fisheries Act or adopting a new Act to incorporate provisions on co-management.

- The process for the enactment of an Act of Parliament begins with a request for policy approval from the Cabinet for the proposed legislation by the Ministry concerned which in this instance is the Ministry of Fisheries and Aquaculture.
- The request must be in the form of a Cabinet Memorandum setting out the purpose of the memorandum, the background for the legislation, issues for consideration by Cabinet, inter-departmental or Ministerial consultations that have been held with bodies or agencies of relevance, financial considerations supported by a statement that the Ministry of Finance has been consulted, employment considerations, if any, whether or not there is existing legislation, whether amendment or new legislation is required; and the recommended action to be taken by Cabinet.
- The Cabinet Memorandum must be presented by the sponsoring Minister to the Cabinet under cover of a letter to the Secretary to the Cabinet signed by the Minister concerned.
- After consideration of the memorandum, Cabinet approval is communicated in a letter signed by the Secretary to the Cabinet to the sponsoring Minister and copied to the Attorney-General and Minister for Justice. his letter gives direction for the preparation of the legislation concerned. It is useful if a copy of the Cabinet memorandum is attached to the Cabinet approval to the Attorney-General because the explanatory memorandum that goes with each Bill in accordance with article 106 of the

Constitution is prepared by the legislative drafters on the basis of the Cabinet memorandum for policy approval.¹¹

- The drafting instructions should follow the contents of the Cabinet memorandum and should include objectives intended to be achieved by the Bill, reports on the matter including any relevant legal opinions, References to existing legislation, indication of any consequential amendments, transitional or savings provisions required, prospective commencement date if required; and the name of the schedule officer in the Ministry, Department or Agency who is to liaise with the Legislative Drafting Division of the Attorney-General's Department.
- The draft Bill is prepared by the Legislative Drafting Division of the Attorney-General's Department in close collaboration with the sponsoring Ministry through the schedule officer. After consultation between the Legislative Drafting Division and the sponsoring Ministry, the Bill is finalised. Upon finalisation, the draft Bill is submitted to the sponsoring Ministry with an Explanatory Memorandum attached in accordance with article 106 of the Constitution.
- The draft Bill with the memorandum unsigned is then submitted by the sponsoring Minister to Cabinet to seek approval for the Bill to be laid before Parliament. The Secretary to the Cabinet communicates the approval of Cabinet to the Attorney-General and the sponsoring Ministry. After that, arrangements are made by the Legislative Drafting Division for the printing and publication of the Bill in the *Gazette* for the statutory fourteen day period as stipulated in Article 106 (2) of the Constitution.
- The Bill is then laid in Parliament by the sponsoring Minister and goes through the Parliamentary process of passage into an Act of Parliament.
- It is assented to by the President and comes into force after it has been published in the *Gazette* in accordance with article 106 (11) of the Constitution.

8.4.2 Procedure for LI

The procedures for developing an LI to implement fisheries co-management in Ghana are as follows:

- Policy proposals developed by the implementing authority and submitted to the Attorney-General's Department, with drafting instructions.¹²
- After proposals for the subsidiary legislation have been received from the sponsors, the draft Regulation will be prepared by the Legislative Drafting Division in collaboration with the sponsoring Ministry through the schedule officer.
- In accordance with article 11 (7) of the Constitution, the draft Regulation must be published in the *Gazette* on the day it is laid before Parliament and come into force on the expiration of twenty-one sitting days unless Parliament annuls the Regulation by the votes of not less than two-thirds of the members of Parliament before the expiration of the twenty-one days.

¹¹ The significance of the Cabinet approval is that it authorises the sponsoring Minister through the schedule officer to issue drafting instructions to the Legislative Drafting Division of the Attorney-General's Department

¹² Subsidiary legislation which are procedural in nature often do not require prior Cabinet approval before they are submitted to the Attorney-General's Department. The only exception is, the instruments that have financial implications for the State or are by the nature of their contents likely to indicate a policy shift or drastic change in an existing situation require Cabinet approval and must therefore be submitted for prior Cabinet approval before drafting begins.

9. CONCLUSION

The next steps in the legislative process would need to focus on two aspects:

- Collaboration with the Fisheries Commission, the Ministry of Fisheries and Aquaculture Development and the Attorney-General's Department to draft the necessary Cabinet Memorandum for the required changes to the Fisheries Act; and
- Collaboration with the Fisheries Commission, the Ministry of Fisheries and Aquaculture Development and the Attorney-General's Department to develop the necessary drafting instructions for (a) amendments to the Fisheries Act and new LI to implement the outcomes of the 3rd Fisheries Dialogue.

Appendix 1 Extracts from Philippine Fisheries Code and Local Government Code

Philippine Republic Act 8550 or the Philippine Fisheries Code of 1998

ARTICLE I MUNICIPAL FISHERIES

SEC . 16. Jurisdiction of Municipal/City Governments. - The municipal/city government shall have jurisdiction over municipal waters as defined in this Code¹³. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters. The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same. The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipality/city council. The management of contiguous fishery resources such as bays which straddle several municipalities, cities or provinces, shall be done in an integrated manner, and shall not be based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management. The Integrated Fisheries and Aquatic Resources Management Councils (IFARMCs) established under Section 76 of this Code shall serve as the venues for close collaboration among LGUs in the management of contiguous resources.

SEC. 17. Grant of Fishing Privileges in Municipal Waters. - The duly registered fisherfolk organizations/cooperatives shall have preference in grant of fishery rights by the Municipal/City Council pursuant to Section 149 of the Local Government Code: Provided, That in areas where there are special agencies or offices vested with jurisdiction over municipal waters by virtue of special laws creating these agencies such as, but not limited to, the Laguna Lake Development Authority and the Palawan Council for Sustainable Development, said offices and agencies shall continue to grant permits for proper management and implementation of the aforementioned structures.

SEC. 18. Users of Municipal Waters. - All fishery activities in municipal waters, as defined in this Code, shall be utilized by municipal fisherfolk and their cooperatives/organizations who are listed as such in the registry of municipal fisherfolk. The municipal or city government, however, may, through its local chief executive and acting pursuant to an appropriate ordinance, authorize or permit shall and medium commercial fishing vessels to operate within the ten point one (10.1) to fifteen (15) kilometer area from the shoreline in municipal waters as defined herein, provided, that all the following are met:

- a. no commercial fishing in municipal waters with depth less than seven (7) fathoms as certified by the appropriate agency;
- b. fishing activities utilizing methods and gears that are determined to be consistent with national policies set by the Department;

¹³ The Local Government Code (R.A. No. 7160) included in its definition of "municipal waters" inland waters and marine waters up to fifteen (15) kilometres from the coastline (Section 131 (r)) and gave municipalities/cities exclusive authority to grant fishery privileges in municipal waters.

- c. prior consultation, through public hearing, with the M/CFARMC has been conducted; and
- d. the applicant vessel as well as the ship owner, employer, captain and crew have been certified by the appropriate agency as not having violated this Code, environmental laws and related laws.

In no case shall the authorization or permit mentioned above be granted for fishing in bays as determined by the Department to be in an environmentally critical condition and during closed season as provided for in Section 9 of this Code.

SEC. 19. Registry of Municipal Fisherfolk. - The LGU shall maintain a registry of municipal fisherfolk, who are fishing or may desire to fish in municipal waters for the purpose of determining priorities among them, of limiting entry into the municipal waters, and of monitoring fishing activities and/or other related purposes: Provided, That the FARMC shall submit to the LGU the list of priorities for its consideration.

Such list or registry shall be updated annually or as may be necessary, and shall be posted in barangay halls or other strategic locations where it shall be open to public inspection, for the purpose of validating the correctness and completeness of the list. The LGU, in consultation with the FARMCs, shall formulate the necessary mechanisms for inclusion or exclusion procedures that shall be most beneficial to the resident municipal fisherfolk. The FARMCs may likewise recommend such mechanisms.

The LGUs shall also maintain a registry of municipal fishing vessels by type of gear and other boat particulars with the assistance of the FARMC.

SEC. 20. Fisherfolk Organizations and/or Cooperatives. - Fisherfolk organizations/cooperatives whose members are listed in the registry of municipal fisherfolk, may be granted use of demarcated fishery areas to engage in fish capture, mariculture and/or fish farming: Provided, however, That an organization/cooperative member whose household is already a possession of a fishery right other than for fish capture cannot enjoy the fishing rights granted to the organization or cooperative.

SEC. 21. Priority of Resident Municipal Fisherfolk. - Resident municipal Fisherfolk of the municipality concerned and their organizations/cooperatives shall have priority to exploit municipal and demarcated fishery areas of the said municipality.

SEC. 22. Demarcated Fishery Right. - The LGU concerned shall grant demarcated fishery rights to fishery organizations/cooperatives for mariculture operation in specific areas identified by the Department.

SEC. 23. Limited Entry Into Overfished Areas. Whenever it is determined by the LGUS and the Department that a municipal water is overfished based on available data or information or in danger of being overfished, and that there is a need to regenerate the fishery resources in that water, the LGU shall prohibit or limit fishery activities in the said waters.

SEC. 24. Support to Municipal Fisherfolk. - The Department and the LGUs shall provide support to municipal fisherfolk through appropriate technology and research, credit, production and marketing assistance and other services such as, but not limited to training for additional/supplementary livelihood.

SEC 25. Rights and Privileges of Fishworkers. - The fishworkers shall be entitled to the privileges accorded to other workers under the Labor Code, Social Security System and other benefits under other laws or social legislation for workers: *Provided*, That fishworker on

board and fishing vessels engaged in fishing operations are hereby covered by the Philippine Labor Code, as amended.

Republic Act 7160 or the Local Government Code 1991

SECTION 149. Fishery Rentals, Fees and Charges. - (a) Municipalities shall have the exclusive authority to grant fishery privileges in the municipal waters and impose rentals, fees or charges therefore in accordance with the provisions of this Section.

(b) The Sangguniang Bayan¹⁴ may:

(1) Grant fishery privileges to erect fish corrals, oyster, mussels or other aquatic beds or bangus fry areas, within a definite zone of the municipal waters, as determined by it: Provided, however, That duly registered organizations and cooperatives of marginal fishermen shall have the preferential right to such fishery privileges: Provided, further, That the Sangguniang bayan may require a public bidding in conformity with and pursuant to an ordinance for the grant of such privileges: Provided, finally, That in the absence of such organizations and cooperatives or their failure to exercise their preferential right, other parties may participate in the public bidding in conformity with the above cited procedure.

(2) Grant the privilege to gather, take or catch bangus fry, prawn fry or kawag-kawag or fry of other species and fish from the municipal waters by nets, traps or other fishing gears to marginal fishermen free of any rental, fee, charge or any other imposition whatsoever.

(3) Issue for the operation of fishing vessels of three (3) tons or less for which purpose the Sangguniang bayan shall promulgate rules and regulations regarding the issuances of such licenses to qualified applicants under existing laws.

- Provided, however, That the Sanggunian concerned shall, by appropriate ordinance, penalize the use of explosives, noxious or poisonous substances, electricity, muro-ami, and other deleterious methods of fishing and prescribe a criminal penalty therefore in accordance with the provisions of this Code: Provided, finally, That the Sanggunian concerned shall have the authority to prosecute any violation of the provisions of applicable fishery laws.

¹⁴ Local Council