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Developing Effective Legal Frameworks
to support intra- and inter-regional fish trade in Africa

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Executive Summary
The legal framework for moving fish and fishery products across many countries in Africa through cross-border trade is not well understood. The level of informal cross-border fish trade is one of the measures of the extent to which traders are aware or lack of provisions of Free Trade Area, to which African Union and all regions have committed themselves. Assessment of non-tariff and regulatory barriers and their impact on transaction costs as well as limits on the movement of fish products is the best way to determine the effectiveness of the various legal instruments which have been put in place to support inter and intra-regional fish trade in Africa. Barriers to trade is a major constraint to the growth of trade throughout all Regional Economic Communities (RECs) in Africa. By imposing unnecessary costs on fish imports and exporters, these barriers unnecessarily raise prices for consumers, deter exports from taking advantage of the trade opportunities, undermine the predictability of the fish trade regime, and reduce development potential of the fisheries and aquaculture sector in Africa.

Findings generated through research by WorldFish, AU-IBAR and NEPAD indicate a lack of understanding among fish traders along the four corridors about the general import-export requirements, including minimum quality standards of products to be traded, and the sanitary and phytosanitary certifications required to move fish from the country of origin. More importantly, these traders do not understand the tax-free benefits they are entitled to as small-scale cross-border traders, under the Liberalized/Simplified Trade Regime. This contributes to a greater use of informal trade channels. There is a clear need to harmonise legal frameworks and develop a coherent continent-wide policy to guide the application of existing intra-regional fish trade legislative instruments, to maximise benefits of this important activity.

Key Recommendations
- Change the current policy narrative of informal cross-border trading as “smuggling” to a pro-poor, export-oriented trade policy;
- Assess the food safety standards and regulatory frameworks in order to develop regional harmonized standards and regulations;
- Promote safe processing methods and support value chain actors with processing technology;
- Build the institutional capacity of cross-border fish traders’ associations;
- Improve communication and cooperation among the cross-border fish value chain actors;
- Increase the transparency of import and export procedures for small-scale fish traders;
- Support consultative and evidence-based decision-making, drawing on up-to-date research;
- Use regional collaborative mechanisms to enhance cross-border trade.
Introduction

Domestic and intra-regional trade of fish in Africa is highly important, with great potential to enhance regional integration and food and nutritional security. Current factors preventing fish trade from delivering optimal social and economic benefits include:

- inadequate market and trade infrastructure;
- poor trade policy implementation;
- high transport costs;
- complex and poorly-aligned trade rules;
- unsustainable exploitation of resources to meet market challenges;
- a lack of appropriate funding for fish processors and traders, especially women;
- inadequate technology;
- tariffs and non-tariff barriers;
- poor market information.

The African Union (AU) has established a fisheries unit within the African Union Commission, the Inter-African Bureau for Animal Resources (AU- IBAR), to support region-wide coordination and reform of the fisheries and livestock sectors. Since 2005, the African governments and states have made substantial progress in restoring fisheries and aquaculture on the priority of national and regional development. At the same time, significant resources have been committed towards the sector by many development partners and development finance institutions.

Despite attention and investment received to date, there remains scope to further enhance the impact of intra-regional fish trade on sustainable food and nutritional security and poverty reduction in Africa. To support intra-regional fish trade in achieving these goals, there is a need to critically evaluate the legal framework for inter and intra-regional fish trade.

Efforts to boost intra-regional trade have become increasingly prominent elements of African regional integration and economic development agendas. Among other things, free movement of goods, services and people are the mainstay of the African Union’s Regional Economic Communities (RECs), through the creation of the Africa-wide Free Trade Area and the regional commitment, including in SADC, EAC and ECOWAS regions. These efforts seek to address issues relating to the poor regional integration through trade, including of trade-related infrastructure in the regions and to promote trade facilitation initiatives aimed at making it easier for cross-border trading in the region. However, practical application of these measures does not seem to work for fish trade. Instead, there is “integration from bottom up”, as informal fish trade is more visible. Therefore, there is a need to devise a coherent continent-wide legislative framework to guide intra-regional fish trade.
What is the current state of trade policies relating to fish in Africa?

Regional integration has a long history in Africa. There have been recent efforts to strengthen Regional Economic Communities (RECs) across the continent, as African countries strive to achieve economic growth through regional integration. These regional blocks usually harmonise their trade policies for increased benefits from fish trade. Recent analysis of trade effects of the various RECs on regional fish trade revealed that the formation of the Southern African Development Community (SADC), Economic Community of West African States (ECOWAS), East African Community (EAC), and Arab Maghreb Union (AMU) have effectively enhanced fish trade flows and contributed to gross trade creation for fish[^3]. Findings show that EAC has increased intra-regional fish trade between its members. It is seen that deep economic and social integration have positively affected fish trade in this block.

Results generated through the FishGov and FishTrade projects emphasise the importance of harmonising the legal environment to increase the benefits derived from fish trade[^3]. Analysis of trade policy as it relates to fish, using the African regional trade groupings, has identified a lack of policy frameworks specific to the fish sector in Africa and thus a failure to address industry-specific aspects of fish trade[^4].

Many policies aim to reduce or eliminate import duties, but are not harmonised among the different trading blocks. In the absence of effective domestic tax collection capacity, many national governments rely heavily on trade taxes. This is likely to inhibit progress on trade tariff harmonisation. The ongoing lack of harmonisation and enforcement of trade policies and sanitary regulations among African States, along with corrupt practices and harassment at check points, continue to hamper the development of intra-regional trade in fish and fishery products. Consequently, cross-border fish traders adopt informal trade routes.

Why do cross-border fish traders use informal trade routes?

Informal cross-border traders apply “tactics” in order to navigate international borders and export fish products. Some of the notable “tactics” identified in the ECOWAS region include bribing border officials, collectively bulking their merchandise in order to afford the cost of transport and adopting multiple nationalities to make it easier to cross the borders (Anoh et al 2016). Beyond socioeconomic factors, findings from Malawi and Zambia indicate that the legislative environment plays a role in facilitating informal cross-border fish trade[^5]. Informal fish traders in Malawi report that requirements to obtain a sanitary certificate and import/export permit are among the reasons that deter them from trading through formal channels. Cross-border traders are required to possess a sanitary certificate to transport consignments from one country to another via formal border routes.

In Malawi, a sanitary certificate is issued by the Department of Fisheries for a fee of 5000 Malawian kwacha (US$9) and is renewed monthly. The issuing of the certificates from a single central location in Lilongwe requires traders to travel a minimum distance of 150 kilometres from their
border posts. The certificate fee, travel costs and other expenses deter traders from obtaining certification, and many pursue informal trade channels. Similarly, cross-border traders are also required to have an import/export permit, obtained from importing and exporting nations. Fees vary between countries due to differences in institutional arrangements.

It has been shown that a lack of alignment of trade policies and other requirements between Malawi and its neighbouring countries also contributes to the use of informal fish trade routes. This was found to relate to the frequent double taxing of traders using formal trade routes on both sides of border posts for Malawi and Zambia, and the limited awareness of tax requirements among traders.

What are the current barriers to meeting standards for inter-regional fish trade?

The current policy narrative identifies informal cross-border trading as “smuggling”, however, the context of informal cross-border trade symbolises innovation and entrepreneurship, rather than an illegal activity that is evading tax. Besides, most cross-border fish traders, especially women, profit and use the income for the betterment of their households livelihoods, just as is the case with any formal pro-fish (export-oriented) trade.

A majority of actors involved in inter-regional fish trade in the four major trade corridors of Africa do not understand the requirements for minimum quality standards and for sanitary and phytosanitary certifications to move fish from the country of origin. In the Western corridor, it was also found that few fish traders were aware of the ECOWAS Trade Liberalisation Scheme, or the COMESA Simplified Trade Regime, which allow for free movement of fish below a certain value threshold (e.g. value less than US$1,000) within the region, provided the appropriate certificates have been obtained. This limited awareness of requirements and opportunities is suggested to be due to (1) ineffective dissemination of information, and (2) low levels of formal education. Levels of illiteracy among cross-border fish traders have been reported at 35% in Ghana and 55% in Côte d’Ivoire — and as high as 80% among female traders.

Market access has been shown to be hindered by traceability requirements and a lack of product labelling. Processors often have a low level of understanding of the potential food safety hazards associated with fish and fishery products, and of appropriate processing methods and packaging materials to reduce these hazards. Handling of traded fish in all the corridors has been observed to be very poor, including the nature of shelters used to store products.

A lack of basic infrastructure for handling fresh fish (such as electricity, cold rooms, ice blocks and refrigerated vehicles) also limits trade of fresh fish in all the African corridors. It has been shown that poor post-harvest handling, including processing, the quality of products and their shelf life were compromised by long transit distances from sources to markets. A majority of cross-border fish traders reported that the use of poison for fishing had affected storage of cured fish products.
How can legal frameworks be used to support intra- and inter-regional fish trade in Africa?

There is a need for the development of pro-poor trade policies that could have direct development impact at the household level. From the field studies, it is clear that intra-regional informal fish trade is a well-organised entrepreneurial activity throughout Africa. Therefore, this type of trade, if well structured, has the potential to contribute to regional economic development, and enhance the lives of Africans. However, intra-regional informal fish trade remains largely invisible to policy-makers and hence, little is invested by governments.

Countries should put in place legal frameworks for trade facilitation or enhancers in order for RECs to achieve full regional integration through trade. Policies to facilitate regional trade, while ensuring quality standards to promote health and safety, are the shared responsibility of national governments and Regional Economic Committees. Institutional, regulatory and policy constraints are major factors currently affecting regional cross-border trade. There is therefore a need for legal frameworks that will enable operators to understand strategies to meet import-export regulatory requirements, product quality standards, reduce food safety hazards and safeguard the health of processors.

Policies should create a legislative environment that promotes responsible fish trade by:

- **Simplify and harmonise documentation, rules and procedures, and customs formalities** as embodied, for example, in the SADC, COMESA and EAC protocols on trade liberalization and the Green Pass;

- **Encouraging regional standardisation and harmonisation of processing techniques** in the four trade corridors to produce processed fish products of uniform and high quality that will comply with international food safety standards and further promote fish trade;

- **Put in place and implement legal frameworks that remove trade retardation bottlenecks**, especially rent-seeking practices and malpractices at borders and multiple checkpoints, and roadblocks;

- **Within the framework of sanitary and phytosanitary regulations, promote safe processing methods and** supporting value chain actors with **processing technology** to improve the shelf-life of the products, including through Public-Private Partnerships (PPP);

- **Improving market infrastructure** (including electricity, water and cold storage facilities) for major landing sites, **and transportation systems** to ensure that the products reach the end market in good condition and timely.

- **Put in place legislation framework that recognizes informal cross-border fish traders, and build the institutional capacity of these cross-border fish traders’ associations** to support them to take advantage of market opportunities beyond national borders;
• **Increasing the transparency of import and export procedures** for small-scale fish traders;

• **Promote the Best Management Practice approaches around the One-Stop Border Posts** (OSBPs) by including fish products in the OSBP procedures.

• **Supporting consultative and evidence-based decision-making** though relationships with universities, research institutions, fish traders’ associations, and regional bodies;

• **Using regional collaborative mechanisms to enhance cross-border trade** in fish, for example using the ECOWAS policy dialogue process for fisheries;

• **Implementing registration and certification policies to support vertical integration** along the value chain (including across borders), which conform to minimum agreed standards of safety and governance.
References


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