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# Beyond the European seas

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The external dimension of the  
Common Fisheries Policy

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## IN-DEPTH ANALYSIS

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The external dimension of the Common Fisheries Policy provides a framework for the activities of EU vessels fishing beyond the European waters, structured around two types of arrangements: multilateral agreements for fishing on the high seas, and bilateral agreements with third countries for fishing in areas under their jurisdiction. This analysis reviews the main aspects of the external dimension and its evolution over time.

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## EXECUTIVE SUMMARY

The external dimension of the Common Fisheries Policy (CFP) provides a framework for the activities of EU vessels fishing outside EU waters. It has developed in the wake of the United Nations Convention on the Law of the Sea, which authorised the declaration of Exclusive Economic Zones where coastal states have sovereign rights over their resources, and regulated the access to resources beyond the waters under national jurisdiction, in the high seas. The CFP's external dimension has been structured around two types of arrangements: multilateral agreements for fishing on the high seas, and bilateral agreements with third countries for fishing in areas under their jurisdiction.

Multilateral agreements are based on EU membership of Regional Fisheries Management Organisations (RFMO), which have the competence to establish conservation and management measures in the high seas. Some RFMOs focus on particular highly-migratory species, notably tuna, throughout vast geographical areas (the tuna RFMOs), while others have broad mandates to manage all the fish stocks in a specific area (the non-tuna RFMOs). The EU, represented by the European Commission, plays an active role in six tuna and nine non-tuna RFMOs, out of the current 18 RFMOs worldwide.

Fisheries agreements define the rights of access of the EU fleet to fish resources in third country waters. They can be reciprocal agreements based on an exchange of fishing possibilities, as is the case for the Northern agreements with Norway, Iceland and the Faeroes Islands. Alternatively, they can involve a financial compensation paid to the third country in return for access to its fish resources, like the Sustainable Fisheries Partnership Agreements (SFPAs) with developing countries in Africa and Oceania and with Greenland. The financial compensation includes an amount dedicated to sectoral support, aiming to strengthen the capacity of the third country to sustainably manage its fisheries. SFPAs are classified into tuna agreements, which target highly migratory fish stocks (tuna and associated species), and mixed agreements, which provide access to a wide range of fish stocks, mostly coastal and demersal species (e.g. cephalopods, shrimps, small pelagic fish, demersal fish). Whereas early agreements were usually mixed, most current agreements focus on tuna species. The budget appropriations for 2015 represent €145 million (13.4% of the total CFP budget), with the major part allocated to mixed agreements (Mauritania, Morocco, Greenland and Guinea-Bissau).

The basic regulation of the reformed CFP requests that efforts are made at Union level to monitor the activities of EU fishing vessels that operate in external waters outside the framework of EU agreements. In addition, the 2012 resolution of the European Parliament on the external dimension of the CFP considers that the scope should also include other activities seeking to procure fisheries products to the EU market. Among these other aspects, the resolution refers to private agreements between EU companies and third countries, joint ventures between companies in the EU and in third countries, and EU vessels reflagging to non-EU countries. However, beyond the particular cases of joint ventures supported from the EU budget, official information on these types of activities is currently scarce.

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**List of main acronyms**

<b>CFP:</b>	Common Fisheries Policy
<b>EEZ:</b>	Exclusive Economic Zones
<b>FAO:</b>	Food and Agriculture Organization
<b>FPA:</b>	Fisheries Partnership Agreement
<b>IUU fishing:</b>	Illegal, unreported and unregulated fishing
<b>RFB:</b>	Regional Fisheries Body
<b>RFMO:</b>	Regional Fisheries Management Organisation
<b>SFPA:</b>	Sustainable Fisheries Partnership Agreement
<b>UN:</b>	United Nations
<b>UNCLOS:</b>	United Nations Convention on the Law of the Sea

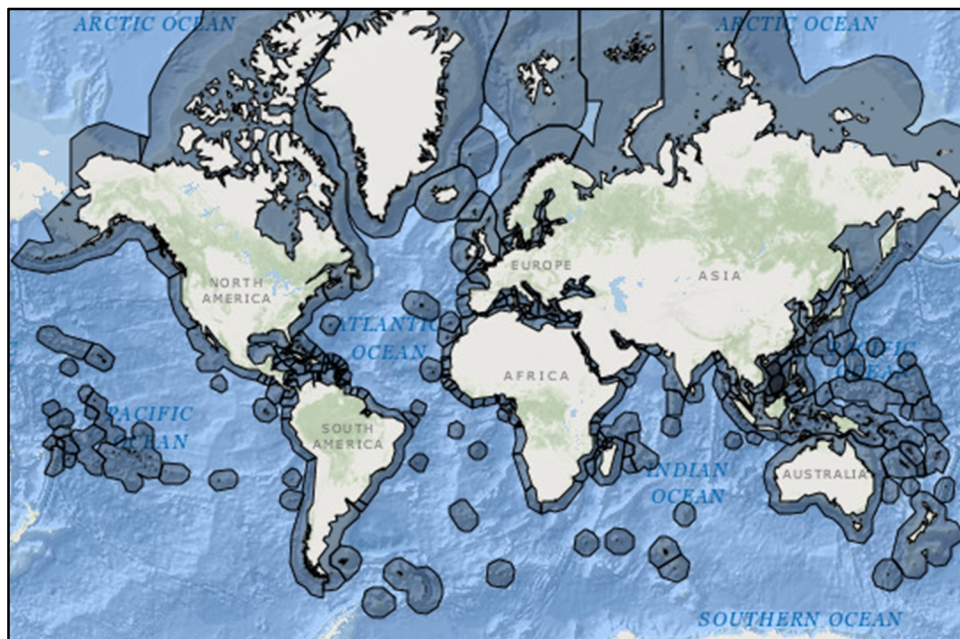
## 1. Background

Access to fisheries resources outside the territorial boundaries of any country was long free, according to the 'freedom of the sea' principle. For the first time, an obligation to conserve marine living resources at global level was enshrined in the Geneva Convention in 1958.<sup>1</sup>

The major step which fundamentally changed the management of the oceans by expanding coastal state jurisdiction over marine living resources was the United Nations Convention on the Law of the Sea (UNCLOS). This legally binding Convention was adopted in 1982, after a decade of continuous negotiations, and entered into force in 1994. Often defined as the Constitution of the oceans, UNCLOS set out the basic legal framework for the conservation and management of marine living resources, and defined the rights and duties of states with respect to the use of ocean space and resources.<sup>2</sup>

UNCLOS has restricted free access to ocean resources by authorising the formal declaration of Exclusive Economic Zones (EEZ) of 200 nautical miles, where the coastal states have sovereign rights for the purpose of exploring and exploiting the natural resources. In addition, UNCLOS has recognised the principle of freedom of fishing in the high seas (i.e. outside territorial and EEZ waters which fell under national jurisdiction), however this freedom was matched with the obligation for those engaging in fishing activities to cooperate in order to ensure the conservation of the living resources (Figure 1).

**Figure 1 – Areas under national jurisdiction and high seas**



Source: Sea Around Us Project. Areas under national jurisdiction (territorial and EEZ waters) are represented in dark grey. The remaining areas are the high seas.

<sup>1</sup> The Geneva Convention on Fishing and Conservation of the Living Resources of the High Sea was adopted following the first United Nations Conference on the Law of the Sea, which introduced the protection of the special interests of the coastal states, as well as obligations for the flag states.

<sup>2</sup> [UNCLOS](#) has been ratified by 166 states and the EU (as of October 2015). The notable exception is the United States, which did not ratify UNCLOS due to its Part XI, on a regime relating to minerals on the seabed outside any state's territorial waters. The EU has been party to UNCLOS since 1 April 1998.

However, an important aspect was only partially addressed by UNCLOS: the management of highly migratory fish stocks (which regularly travel long distances through both high seas and areas under national jurisdiction) and of straddling stocks (which occur both within a country's EEZ and in the adjacent high seas). As a consequence, an implementing agreement under UNCLOS, known as the UN Fish Stocks Agreement, was adopted in 1995 and entered into force in 2001. Under this agreement, the highly migratory and the straddling stocks are to be managed by Regional Fisheries Management Organisations (RFMOs), having as members all coastal states and distant fishing states claiming to have a 'real interest' in the relevant fish stocks.<sup>3</sup>

International fisheries governance also includes a range of legal measures taken by the UN Food and Agriculture Organization (FAO), such as the Compliance Agreement (1993),<sup>4</sup> and the Port State Measures Agreement adopted in 2009 but not yet in force (as only 11 parties ratified it, out of the 25 necessary).<sup>5</sup> Non-binding FAO guidelines include the Code of Conduct for Responsible Fisheries (1995) and related action plans on sharks, fishing capacity and seabirds, as well as an International Plan of Action to combat Illegal, Unreported and Unregulated (IUU) fishing (2001), and the Voluntary Guidelines on Flag State Performance (2014).

#### **Towards a new UNCLOS implementing agreement**

The need for a new UNCLOS implementing agreement on the high seas has been discussed over the past several years. Following a commitment in the 2012 Rio+20 outcome document entitled 'The future we want' (paragraph 162), a Working Group was formed by the UN General Assembly to address the issue of the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

After a series of meetings, in January 2015 the Working Group decided to develop an international legally binding instrument under UNCLOS and recommended the establishment of a preparatory committee to outline the elements of a draft text, starting its work in 2016 and reporting to the UN General Assembly on its progress by the end of 2017.<sup>6</sup> The Working Group also recommended that the General Assembly decide on the convening and on the starting date of an intergovernmental conference to consider the recommendations of the preparatory committee and to draw up the text of the new agreement, before the end of its 72nd session (i.e. 2017-18). These recommendations have been approved by the UN General Assembly, which adopted a resolution entitled 'Development of an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction' in June 2015.

<sup>3</sup> 81 countries and the EU have ratified the [UN Fish Stocks Agreement](#) (as of October 2015). The EU is party to the agreement since 19 December 2003.

<sup>4</sup> The FAO [Agreement](#) to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

<sup>5</sup> The FAO [Agreement](#) on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA).

<sup>6</sup> The meetings of the Working Group were held on 1-4 April 2014, 16-19 June 2014 and 20-23 January 2015 at UN Headquarters.



## 2. The external fisheries policy

The Common Fisheries Policy (CFP) was introduced in the 1970s, against the backdrop of the free access to fisheries resources rapidly shrinking in the wake of UNCLOS. Many countries extended their EEZ to 200 nautical miles, which brought about 90% of the global fisheries resources under the control of coastal countries. This ended free access for the fleets of the EU Member States which had previously fished these waters. Meanwhile, many ocean areas beyond national jurisdictions came under RFMO regulation. To enable the Member States' fleets to continue their activities in these areas, the Community negotiated fisheries agreements with third countries and became part of the relevant RFMOs, which de facto launched an 'external' fisheries policy. Later on, as new Member States with specific fishing interests joined the Community, some of their bilateral agreements were also replaced by EU fisheries agreements.

### 2.1. Objectives and scope

Although the external activities of the EU fishing fleets have been a feature of the CFP from the outset, the principles of the external dimension of EU fisheries were only enshrined in the CFP basic regulation with the 2013 reform (Part VI, Articles 28-33). According to the basic regulation, the objectives of the external CFP include: development of scientific knowledge and advice; coherence with other external EU actions; sustainable and economically viable fishing activities and promotion of EU employment; EU fishing activities outside and inside EU waters based on the same principles and standards; action to eradicate IUU fishing; improving of the RFMOs performance.<sup>7</sup>

The fishing activities of EU vessels outside EU waters are subject to an authorisation procedure defined by the Fishing Authorisation Regulation (FAR), which provides the legal framework for the conditions and the management of fishing authorisations.<sup>8</sup>

Since 2007, the development of the external CFP benefits from the support of the Long Distance Fleet Advisory Council (LDAC), which advises the European Commission on questions related to the activities of the external EU fleet.

Traditionally, the external CFP has been structured around two types of arrangements, which represent different mechanisms of access to resources, but have in common the overall objective of promoting responsible fishing practices:

- Activities in the high seas, beyond areas of national jurisdiction, subject to multilateral agreements to which the EU takes part as a member of RFMOs, and
- Fishing in the EEZ of a third country, undertaken in the framework of a bilateral agreement between the EU and the third country.

However, the 2012 resolution of the European Parliament on the external dimension of the CFP considers that this scope is not broad enough, being too concentrated on bilateral agreements and RFMOs, and that it should also include other activities seeking to procure fisheries products to the EU market. Among these other aspects, the resolution refers to private agreements between EU companies and third countries, joint ventures between companies in the EU and in third countries, and EU vessels

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<sup>7</sup> Regulation 1380/2013 on the Common Fisheries Policy.

<sup>8</sup> Regulation 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters.



reflagging to non-EU countries. The resolution also supports more coherence with the EU's trade policy, which should contribute to ensuring sustainable fishing worldwide.<sup>9</sup>

## 2.2. The external fleet

The external dimension of the CFP establishes a legal framework for the activity of EU fishing vessels beyond European waters. Despite a reduced number of vessels (less than 1% of the EU total), the external fleet consists of large vessels and represents around a quarter of the total fleet capacity.<sup>10</sup> It provides more than a quarter of the EU's total catches and exceeds 90% of the EU catches in the case of tuna and related species. This fleet is highly specialised, with its vast majority fishing exclusively outside EU waters. Several segments account for most of the external fleet:<sup>11</sup>

- The tuna fleet – large purse seiners flagged mainly to Spain and France, targeting highly migratory species in tropical seas around the world.
- The fleet fishing in the North Atlantic – mainly bottom trawlers from Spain, Portugal, Germany, UK, Poland and the Baltic States, but also several pelagic trawlers from the Baltic States and Poland.
- The fleet fishing along the coast of West Africa – bottom trawlers mainly from Spain and pelagic trawlers mainly from the Netherlands, Lithuania and Latvia.
- The fleet fishing swordfish and sharks – surface longliners (from Spain, Portugal and France), including large vessels operating in the South Atlantic, the Pacific and the Indian Ocean, as well as smaller vessels operating from their bases in Outermost Regions.

## 3. Multilateral agreements

The UN Fish Stocks Agreement requires flag states to be members of an RFMO or cooperate with an RFMO, and to act within its rules, as a condition for allowing their vessels to engage in high seas fishing. The RFMOs are intergovernmental fisheries organisations that have the competence to establish fisheries conservation and management measures in the high seas, such as catch and fishing effort limits, technical measures and control obligations. The organisations are open both to countries in the region (coastal states) and countries that have an interest in the fisheries concerned. They are distinguished from regional fishery bodies (RFB), which are generally consultative or advisory bodies that do not have the power to establish conservation and management measures.

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<sup>9</sup> European Parliament [resolution](#) of 22 November 2012 on the external dimension of the Common Fisheries Policy (2011/2318(INI)).

<sup>10</sup> The figures concerning the external fleet most often cited in Commission documents come from a 2008 study (Oceanic Développement, 2008), which provides a list of 718 vessels forming the fleet. This study defines the external fleet as all EU vessels which operate in external fisheries for at least 90% of their activity. Alternatively, the Annual Economic Report on the EU fishing fleet produced by the JRC considers the EU distant-water fleet as vessels over 24 metres operating predominantly in areas outside the North Atlantic, the Mediterranean and the Black Sea, and including the fleet in the Outermost Regions, which consisted of 298 vessels in 2013 (Joint Research Centre, 2015). In addition, a recent NGO [investigation](#) of fishing authorisations identified more than 15 000 EU vessels authorised to fish outside EU waters between 2010 and 2014. These figures are hard to compare as they refer to different criteria. A precise definition of the EU external fleet is still lacking.

<sup>11</sup> Oceanic Développement (2008), SEC(2011) 891 Annex.

### 3.1. RFMOs: types and functioning

There are now 18 RFMOs worldwide (Table 1, Figure 2), as well as 20 fisheries advisory bodies. Some of the RFMOs focus on particular highly-migratory species, notably tuna, throughout vast geographical areas, and are known as 'tuna RFMOs'. Others have broad mandates to manage all the fish stocks found in a specific area and are termed 'non-tuna RFMOs'. A number of RFMOs, such as the International Whaling Commission and the North Atlantic Salmon Conservation Organization, have very specific mandates and deal with single species. Geographical cover can be limited to the high seas, or can include both the high seas and the EEZ of coastal states due to the biological unity of the stocks. Although most shared or migratory stocks are now under management by one or more RFMOs, some gaps remain both in terms of species and area coverage, for example:<sup>12</sup>

- Straddling stocks of demersals (octopus, hake, prawns) and small pelagics (sardines, horse mackerel) along the west coast of Africa. There are consultative bodies that cover these species such as the Fisheries Committee for the Eastern Central Atlantic (CECAF) but no fully-fledged RFMOs;
- Demersal stocks (hake, octopus) in the South-West Atlantic covering stocks shared between the Falklands, Argentina and Uruguay.

RFMO measures are based on scientific and technical advice provided by a Scientific Committee and other technical subsidiary bodies to which Members' experts participate. The main RFMO body (usually a 'Fisheries Commission') generally decides by consensus of Members (or as in the case of some RFMOs, by majority voting), and the measures are subject to an ex-post objection procedure. The Conservation and Management Measures so adopted are binding on RFMO Members (except for those who objected). For the EU, this means that RFMO measures must be enacted into EU law.<sup>13</sup>

### 3.2. EU participation in RFMOs

The EU, represented by the Commission, plays an active role in nine non-tuna and six tuna RFMOs (Table 1). The key RFMOs where the EU tuna fleets operate in both the high seas and the EEZ of developing country waters are the International Commission for the Conservation of Atlantic Tunas (ICCAT) in the Atlantic, particularly along the coasts of West Africa; the Indian Ocean Tuna Commission (IOTC) in the Indian Ocean; and the Western and Central Pacific Fisheries Commission (WCPFC) in the Pacific. The EU also participates in two regional bodies which have a purely advisory status with no management mandate: the Western Central Atlantic Fisheries Commission (WECAFC) and the Fisheries Committee for the Eastern Central Atlantic (CECAF). In most cases the EU acts as a contracting party for all Member States although individual countries will also have a representative if they have overseas territories in these waters. For instance both UK and France are represented, in addition to the EU, in both ICCAT and IOTC.<sup>14</sup>

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<sup>12</sup> Oceanic Développement (2008).

<sup>13</sup> SEC(2011) 891.

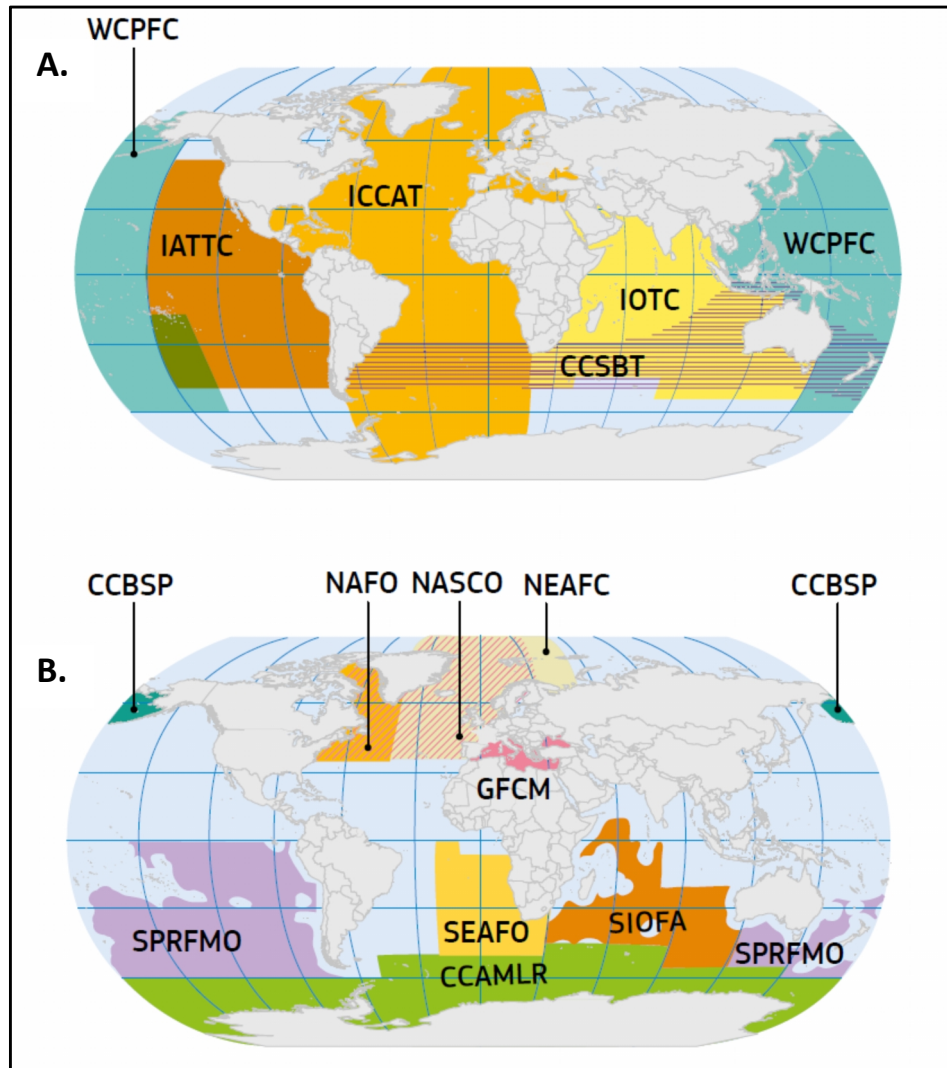
<sup>14</sup> Tindall (2010).

**Table 1 – Regional Fisheries Management Organisations (RFMO)**

<b>Acronym</b>	<b>RFMO</b>	<b>Year established</b>	<b>Mandate</b>	<b>EU participation</b>
<a href="#">CCAMLR</a>	Convention on the Conservation of Antarctic Marine Living Resources	1982	Non-tuna	Yes
<a href="#">CCBSP</a>	Convention on the Conservation and Management of the Pollock Resources in the Central Bering Sea	1994	Non-tuna	Yes
<a href="#">CCSBT</a>	Convention on the Conservation of Southern Bluefin Tuna	1994	Tuna	Yes
<a href="#">GFCM</a>	General Fisheries Council for the Mediterranean (now Commission)	1952	Non-tuna	Yes
<a href="#">IATTC</a> and <a href="#">AIDCP</a>	Inter-American Tropical Tuna Commission	1950	Tuna	Yes
	Agreement on the International Dolphin Conservation Program	1999		Yes
<a href="#">ICCAT</a>	International Convention for the Conservation of Atlantic Tunas	1969	Tuna	Yes
<a href="#">IOTC</a>	Indian Ocean Tuna Commission	1996	Tuna	Yes
<a href="#">IPHC</a>	International Pacific Halibut Commission	1923	Non-tuna	No
<a href="#">IWC</a>	International Whaling Commission	1946	Non-tuna	No
<a href="#">NAFO</a>	Northwest Atlantic Fisheries Organization	1979	Non-tuna	Yes
<a href="#">NASCO</a>	North Atlantic Salmon Conservation Organization	1983	Non-tuna	Yes
<a href="#">NEAFC</a>	North East Atlantic Fisheries Commission	1982	Non-tuna	Yes
<a href="#">NPAFC</a>	North Pacific Anadromous Fish Commission	1993	Non-tuna	No
<a href="#">PSC</a>	Pacific Salmon Commission	1985	Non-tuna	No
<a href="#">SEAFO</a>	South East Atlantic Fisheries Organization	2003	Non-tuna	Yes
<a href="#">SIOFA</a>	South Indian Ocean Fisheries Agreement	2006	Non-tuna	Yes
<a href="#">SPRFMO</a>	South Pacific Regional Fisheries Management Organisation	2009	Non-tuna	Yes
<a href="#">WCPFC</a>	Western and Central Pacific Fisheries Commission	2004	Tuna	Yes

Data source: Elaboration on European Commission and RFMO data.

**Figure 2 – Coverage of RFMOs in which the EU participates: A. Tuna RFMOs, B. Non-tuna RFMOs**



Source: European Commission.

The EU financial contribution to RFMOs is currently around €6 million per year, representing the compulsory financing as established by the internal regulation of various RFMOs. In addition, a voluntary contribution of nearly €8 million covers specific actions to support e.g. preparatory work on new international fisheries organisations, control and surveillance programmes and scientific work.<sup>15</sup>

### 3.3. Performance

While RFMOs are generally acknowledged to play a critical role in the global system of fisheries governance, there has been increasing recognition of the need for RFMOs to improve their performance. Performance reviews have been conducted for a number of RFMOs, and it was proposed that independent and transparent reviews be carried out in a consistent manner for all RFMOs, with a view to making them accountable to the wider international community.<sup>16</sup>

<sup>15</sup> The voluntary contribution is provided through a European Maritime and Fisheries Fund budget line, unlike the compulsory contributions to RFMOs and the fisheries agreements, which have a separate budget line.

<sup>16</sup> Global Ocean Commission (2014).

The main concern over the RFMO performance is that they have not reversed the general trend of decline in international fish stocks experienced for several decades. According to the FAO, nearly 66% of the straddling stocks for which the state of exploitation is known are overexploited, depleted or recovering and 23% are fully exploited. Of the tuna and tuna-like stocks for which the state of exploitation is known, 30% are overexploited or depleted and 53% are fully exploited. With respect to the shark species with a known state of exploitation, more than 60% are potentially overexploited or depleted.<sup>17</sup>

Various factors are cited as responsible for preventing the RFMOs from fulfilling their duty of sustainable conservation and management of fish stocks:<sup>18</sup>

- Overcapacity is considered an important driver of overfishing in areas managed by RFMOs, often associated with capacity-enhancing subsidies of the developed countries' fishing fleets.<sup>19</sup> This problem can be worsened by the legitimate wish by many developing countries to participate in RFMOs, which raises the issue of RFMOs' mission to allocate fishing opportunities on an equitable basis.
- Lack of compliance and control has undermined the role of RFMOs in fisheries management. The responsibility for compliance and control lies ultimately with flag states which may be unwilling (the issue of flags of convenience) or unable (due to lack of capacity, especially in developing states) to properly control their fleets and ensure compliance with RFMO conservation measures.
- The conservation and management measures adopted by RFMOs often do not strictly follow the scientific advice. In this respect, two main problems must be highlighted. Firstly, the consensus model of decision-making which prevails in many RFMOs renders it impossible to adopt any measure to which even one contracting party objects. Secondly, the scientific advice delivered is often marred by uncertainty, due to lack of timely data and extensive research.

### 3.4. Convergence with fisheries agreements

The management of resources under the RFMOs sometimes converges with measures under fisheries agreements, in particular in terms of activities of the fleets and provision of scientific advice. Many fleets tend to shift their activities between RFMO and fisheries agreements waters in the pursuit of the most profitable fisheries, and thus any change in the management or fishing opportunities in one area will have a direct impact on the other. In addition, scientific advice developed by some of the RFMOs, most notably those regarding tuna (such as ICCAT, IOTC and WCPFC), usually also serves for assessment of the stocks fished under the fisheries agreements in the waters of specific RFMO members. This is due to the fact that the management measures adopted in those RFMOs either apply also to the EEZs of these members, as their Convention areas cover both high seas and territorial waters (ICCAT, IOTC), or that measures adopted in national EEZs should be compatible with RFMO measures due to the highly migratory nature of the stocks in question (WCPFC).

Therefore, decisions taken at RFMO level have a direct impact on the fisheries in the EEZs, including those under the agreements. In this respect, the issue of compatibility of measures adopted by RFMOs with measures adopted in EEZ of developing coastal

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<sup>17</sup> UN Department of Public Information (2010).

<sup>18</sup> SEC(2011) 891.

<sup>19</sup> Chatham House (2007).

states raises a delicate balancing exercise between internationally agreed measures for the high seas and sovereign rights of developing states.<sup>20</sup>

#### 4. Bilateral fisheries agreements

Fisheries agreements define the rights of access of the EU fleet to fish resources in the EEZ of third countries through a bilateral arrangement.<sup>21</sup> They differ according to the partner involved. A distinction is made between:

- Reciprocal agreements, which concern an exchange of fishing possibilities between the EU and third countries and do not involve any financial contribution on the part of the EU, nor any licence fee to be paid by the ship owners. This category includes the agreements with Norway, Iceland and the Faeroe Islands, and is also known as 'Northern agreements' (see box).

##### Northern agreements

EU fishing activities in the north-east Atlantic and the North Sea are closely related to those of neighbouring countries: Norway, Iceland and the Faeroe Islands. Many of the targeted stocks are shared across boundaries, whereas different fishing fleets are not necessarily interested in the same stocks. Reciprocal agreements have thus occurred as a solution for managing stocks and exchanging quotas. These agreements are important to certain EU fleets, in particular from Denmark, Ireland and Scotland.<sup>22</sup>

The fisheries agreements with Norway and the Faeroe Islands were developed and signed in 1977 and entered into force in 1981, whereas the agreement with Iceland was signed in 1992 and came into force in 1993. They were initially established for ten years, with subsequent tacit renovation for periods of six years (unless a notice of termination is given).<sup>23</sup>

The agreement with Norway is the most important of this type, covering quotas worth over €2 billion. The quotas to be exchanged are negotiated annually, following consultations between the parties which result in non-binding Agreed Records. No formal negotiating agreement is necessary for the Commission to conduct the annual consultations. The Agreed Records are neither concluded by the Council, nor do they require the consent of the Parliament.<sup>24</sup>

- Agreements involving financial compensation, signed with third countries which concede part of the use of their resources, in return for financial compensation borne by the EU budget and licence fees paid by the ship owners. The agreements with developing countries in West Africa and in the Indian and Pacific Oceans and the agreement with Greenland come under this category.

The following sections focus on the latter type of agreement.

<sup>20</sup> SEC(2011) 891.

<sup>21</sup> Over the past three decades, the EU has negotiated agreements with more than 30 countries. Former fisheries agreements with European neighbouring coastal states, most of which are now EU Member States, are not included in the present analysis.

<sup>22</sup> The bilateral agreements are complemented by multilateral relations, either through arrangements within the regional management body (NEAFC), or through cooperation between relevant coastal states. However, the recent disputes with Iceland and the Faroe Islands, generated by the failure of the negotiations between coastal states to set commonly agreed quotas for mackerel and herring, raised concerns over the unsustainable management of these stocks.

<sup>23</sup> For a review of the Northern agreements, see World Bank report (2014).

<sup>24</sup> European Commission, [Answer](#) to Parliamentary question.



## 4.1. Evolution

The agreements involving financial compensation establish a bilateral legal framework for activities of EU fishing vessels in the waters of third countries which do not fully exploit their fish stocks themselves. They ensure that all EU vessels are subject to supervisory and transparency regulations. From the outset, these agreements were purely commercial in nature, as they aimed to safeguard the activities of the Member States' fishing fleets in the third country's waters, in return for a financial contribution. Their conclusion was not guided by a comprehensive policy and negotiations were conducted on a case by case basis within the general framework of the CFP.<sup>25</sup> Criticised for the 'fish, pay and go' attitude, in particular in relation to developing countries, they have been reshaped into fisheries partnership agreements (FPAs) by the 2002 CFP reform, to include a development dimension, e.g. through clauses related to monitoring, local processing and employment of local crew. The 2004 Council Conclusions on an integrated framework for fisheries partnership agreements with third countries provided the procedural mechanism to guide the establishment of the new FPAs.<sup>26</sup>

Further revision of the agreements was introduced by the 2013 reform, which renamed them sustainable fisheries partnership agreements (SFPA) and brought several principles into law: the agreements should be of mutual benefit to the Union and to the third country concerned; the standards for EU vessels fishing in EU waters should also apply to fishing outside EU waters; the agreements can target only surplus of the allowable catch, as referred to in UNCLOS. At the same time, a clause concerning respect for human rights is now included in all protocols to fisheries agreements. SFPAs also include an exclusivity clause, i.e. if the EU has a fisheries agreement with a third country, EU vessels cannot operate in the third country's waters outside the framework of this agreement, even when no protocol is in force.<sup>27</sup>

After the EU's fisheries agreements with Senegal and Guinea-Bissau were launched in 1980, anticipating the adoption of UNCLOS, the number of EU fisheries agreements increased steeply to 17 in 1991. Subsequently, their numbers have oscillated between 14 and 17 (Figure 3). Between 2009 and 2013, however, the total number of agreements decreased to 11, due in some cases to difficulties in approving (e.g. Morocco, Micronesia) or reaching an agreement (e.g. Gabon), but also due to political instability in the countries concerned (e.g. Guinea, Guinea-Bissau). Currently there are 13 active agreements (Figure 4).<sup>28</sup> A new SFPA with Liberia and a new protocol with Mauritania, initialled in June and July 2015 respectively, have been submitted to the Parliament for consent, and several other procedures are in progress. Most of the EU's fisheries agreements have been signed with countries located along the west coast of Africa, in the south-western Indian Ocean and in the western Pacific (Figure 4).

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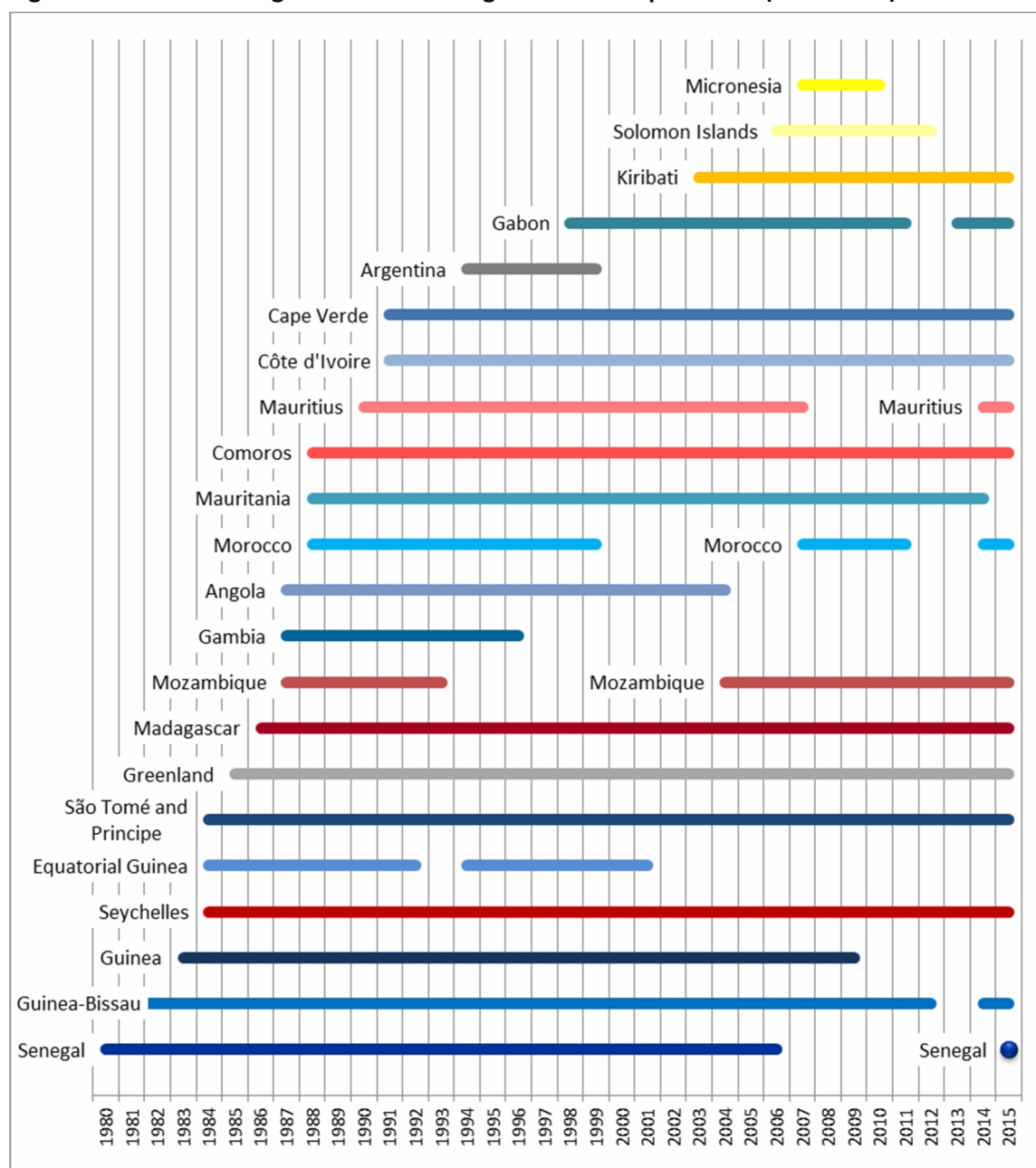
<sup>25</sup> Witbooi (2008).

<sup>26</sup> [Council Conclusions 11485/1/04](#).

<sup>27</sup> On 9 October 2014, The European Court of Justice issued a ruling which extended the application of the exclusivity clause to chartered EU vessels ([Case C 565/13](#)). The Court gave a strict interpretation of the clause, by excluding any possibility for EU vessels to carry out fishing activities without the intervention of the competent EU authorities, and thus forbidding EU vessels, even chartered, to fish outside an existing agreement.

<sup>28</sup> As of October 2015. The latest state of the bilateral agreements is indicated on the [site](#) of the European Commission.



**Figure 3 – EU fisheries agreements involving financial compensation (1980-2015)**

Data source: Based on European Commission data. The horizontal lines show the periods when an active fisheries agreement was in place for the respective countries (based on the date of effect). Interruptions of less than one calendar year are not indicated. The agreements in West Africa are shown in shades of blue, those in the south-western Indian Ocean in red and those in the western Pacific in yellow.

## 4.2. Procedures

SFPAs are negotiated by the Commission on behalf of the EU. Prior to the negotiation, the Commission generally carries out an external evaluation which includes an assessment of the state of the stocks concerned. The stocks and the size of the surplus are assessed on the basis of data collected by joint scientific committees set up in the framework of SFPAs and/or by the relevant RFMOs. Once negotiations with the third country are concluded, the Commission puts forward a proposal. With the consent of the European Parliament, the Council decides on concluding an agreement (which sets up the legal framework) and its protocol (which contains the concrete details of the fishing opportunities for EU vessels and the financial contribution to be paid by the EU). An agreement is defined as 'active' when it has a protocol in force, and 'dormant' when it has not. EU vessels are not allowed to fish in third country waters under the regime of dormant agreements.

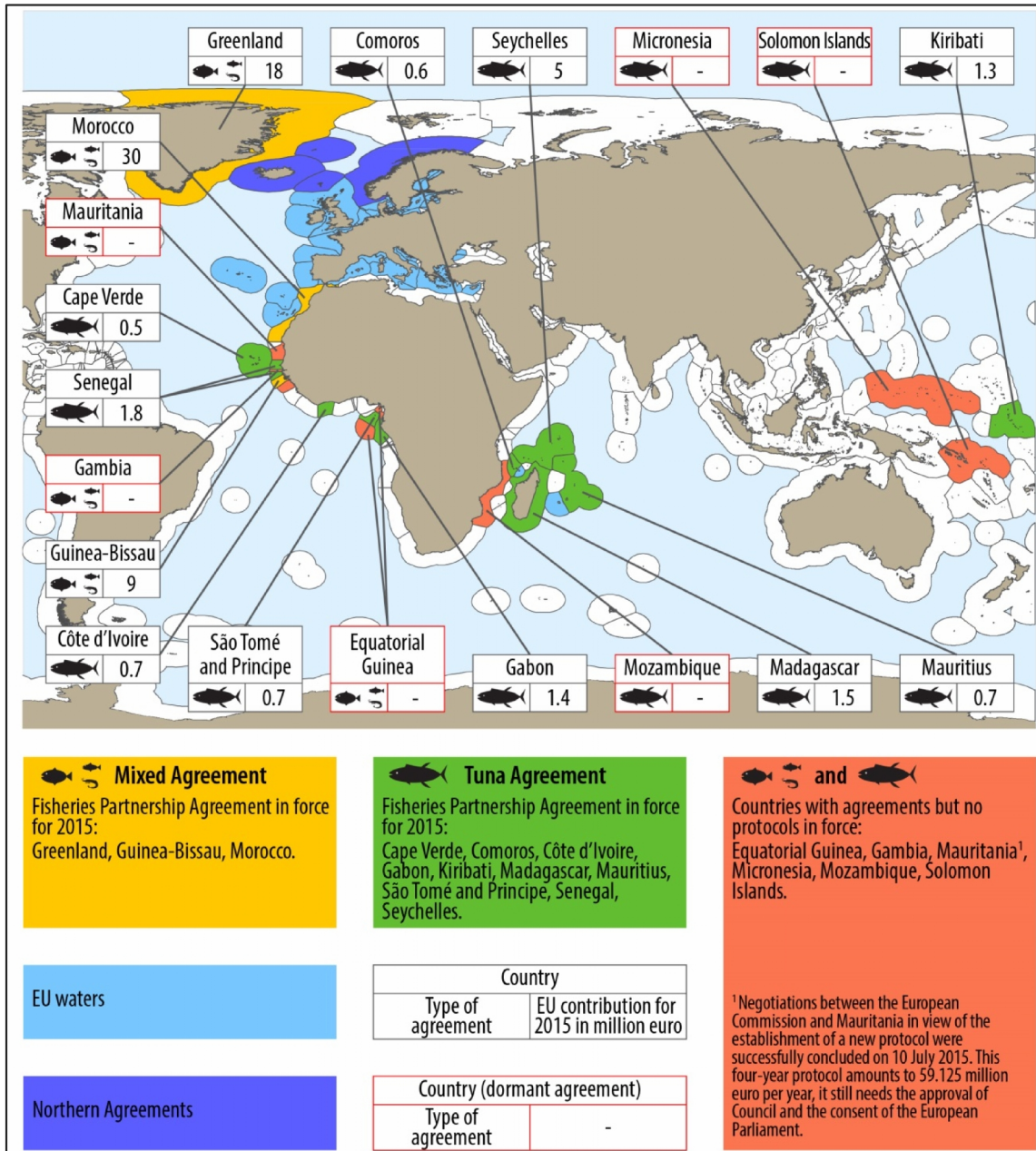
**Table 2 – The role of the parties involved in fisheries agreements**

Party	Main responsibilities
Council	Gives the Commission a mandate to negotiate an agreement; adopts the agreement.
Parliament	Consent requested for an agreement to be concluded; must be fully and promptly informed while agreements are drafted, negotiated and adopted.
Commission	Negotiates the agreements; takes care of the administrative, financial and technical management.
Third countries	Negotiate the agreements; in charge of control and supervision in their ports and EEZ.
Member States	Flag state responsibility over application of control measures and other provisions of the fisheries agreements.
Ship owners	Payment of licence fees; compliance with the specific conditions of the agreement (e.g. landing part of the catches in the third country, taking on board local fishermen).

Data source: Elaboration on European Commission data.

## 4.3. Types

SFPAs are classified into tuna agreements, which target highly migratory fish stocks (tuna and associated species), and mixed agreements, which provide access to a wide range of fish stocks, mostly coastal and demersal species (e.g. cephalopods, shrimps, small pelagic fish, demersal fish). Whereas early agreements were usually mixed, most current agreements focus on tuna species (Figure 4). In general, the pelagic species targeted by the tuna agreements, located offshore, are less exploited by local fisheries, in contrast to the demersal species targeted by mixed agreements.

**Figure 4 – Location of the EU fisheries agreements (2015)**

Source: European Court of Auditors (2015). Map based on Flanders Marine Institute (2015), MarineRegions.org.

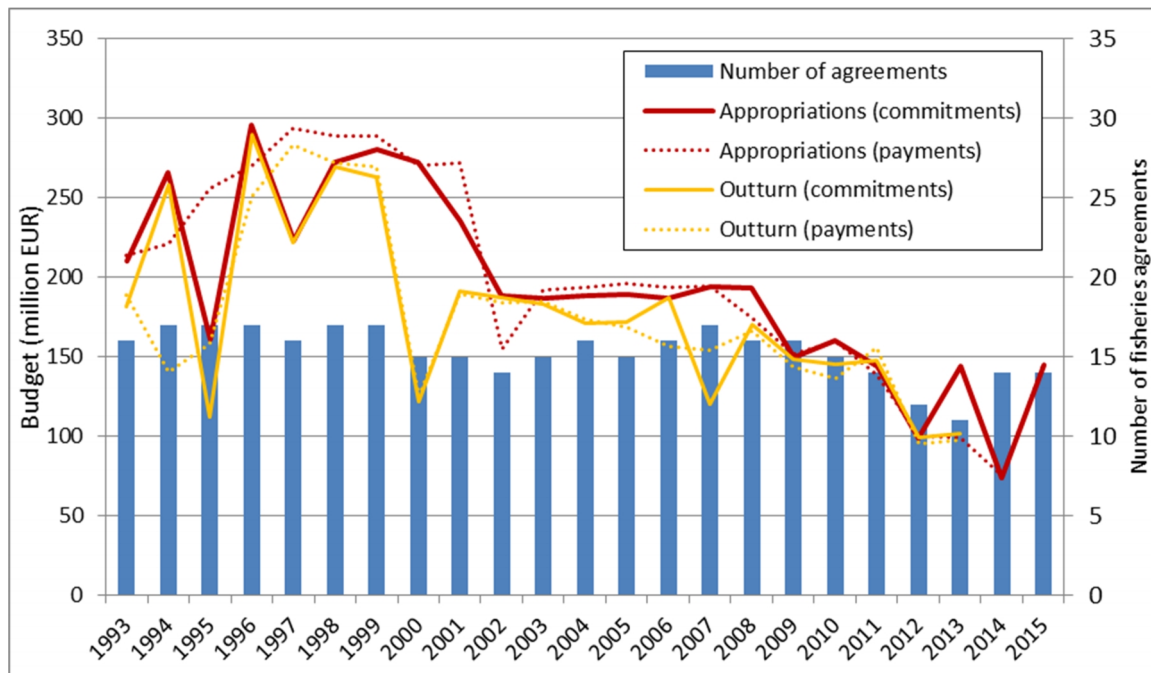
#### 4.4. Budget

Through the fisheries agreements, the EU pays third countries a financial contribution comprising two different elements: a payment for access rights to the country's EEZ, and a financial aid known as sectoral support. Following the 2013 CFP reform, this sectoral support is to be decoupled from payments for access to fisheries resources. Sectoral support, which represented on average 24% of the total EU contribution, aims to strengthen the administrative and scientific capacity of the third country and the sustainable management of its fisheries, as well as monitoring, control and surveillance activities.<sup>29</sup> In addition to the financial contribution charged to the EU budget, the ship owners pay licence fees for access to resources. The cost of some of the measures provided for in the agreements, such as the presence of observers on board or the recruitment of local crews, is also borne by the ship owners.

<sup>29</sup> SEC(2011) 891.

The EU budget allocated to fisheries agreements increased from ECU11.5 million<sup>30</sup> in 1980 to a record €295.8 million in 1996, corresponding to nearly 34% of the total fisheries budget<sup>31</sup> (Figure 5). After the peak of the late 1990s the level of investment has declined, following the end of the 1995-99 agreement with Morocco, which was the most expensive fisheries agreement ever (around €125 million per year).<sup>32</sup> The budget appropriations for 2015 represent €145 million, i.e. 13.4% of the total CFP budget. Mixed agreements cover the major part of the budget: Mauritania (€59 million per year for the new agreement), Morocco (€30 million), Greenland (€17.8 million) and Guinea-Bissau (€9.2 million). In contrast, each tuna agreement involves less than €2 million per year, with the exception of the Seychelles agreement (around €5 million).

**Figure 5 – Evolution of the EU budget for fisheries agreements (1993-2015)**



Data source: Based on data from [Budget On-line](#). No correction was applied for inflation.

#### 4.5. Performance

According to the Commission,<sup>33</sup> fisheries agreements have had a significant effect in securing the supply of processing plants and creating employment at EU and third country level, in particular as regards the catches by tuna vessels. They have represented job opportunities on board, both for fisheries-dependent areas of the EU and for the partner countries. Since their revision in 2002, they have contributed to improving implementation of fisheries policies in the partner countries, through support of activities in areas such as science, monitoring, control and surveillance, and infrastructure. The fisheries agreements can support decisions taken at the level of RFMOs and favour enhanced regional cooperation initiatives between the different partner countries. In addition, the transparency of EU's fisheries agreements is widely recognised, in particular in comparison with the agreements of other major fishing countries, or with alternative types of access arrangements for EU vessels.

<sup>30</sup> European units of account.

<sup>31</sup> The figures in this paragraph refer to budget appropriations (commitments).

<sup>32</sup> World Bank report (2014).

<sup>33</sup> SEC(2011) 891.

Nevertheless, fisheries agreements have long been a very controversial topic, notably as regards access to developing countries' waters, and a substantial body of literature has explored their effectiveness. The views on the agreements vary widely, from a source of benefits for coastal countries which import 'fish-harvesting services' for resources that otherwise they could not use,<sup>34</sup> to a 'free lunch' for the EU fishing and processing industry,<sup>35</sup> with various degrees of criticism in between. The concerns over the EU's fisheries agreements which are expressed regularly mostly regard:<sup>36</sup>

- inequitable benefit sharing, with the majority of economic benefits accruing to European industry
- limited capacity of developing countries to accurately assess the surplus resources available for foreign fleets, and thus agreements targeting stocks for which biological surplus production cannot be ascertained scientifically, leading to overfishing and resource depletion
- the cost reducing contribution from the EU budget for access to fishing rights, which constitutes the majority of the payments to the host country, operating as a subsidy for the fishing industry
- most fishing possibilities being defined not as catch quotas but as numbers of authorised vessels or vessel size (measured in gross registered tonnage), which allows the EU fleets to harvest an indefinite volume of resources for one prefixed payment
- weak monitoring capacity of developing countries, which prevents effective control and surveillance of the fleets operating in their waters
- conflict with local small scale fisheries, in particular in the case of mixed agreements which target coastal and demersal stocks
- underutilisation of fishing possibilities by EU fleets, which results in the EU budget paying for resources actually not fished
- lack of reliable, consistent and complete data on actual catches made by the EU fleet, with significant differences among the data provided by the Member States, the Commission and the ex-post evaluations
- lack of accountability and effectiveness of the sectoral support, with problems of absorption capacity in recipient countries and a backlog of unspent EU funding in certain agreements; in other cases sectoral support which is too small to have any real impact
- export of overcapacity from the EU to developing countries
- under-declaration of catches and targeted exploitation of by-catch species not included in the agreements.

#### 4.6. Joint ventures in fisheries agreements

In parallel with the traditional bilateral agreements discussed above (also known as 'first-generation agreements'), a distinct category of 'second-generation agreements' was defined in the mid-1990s. This type of agreement aimed to set up joint ventures between EU fishing companies and local partners in a third country, through which EU fishing vessels were transferred to the fleet of the third country and were allocated fishing opportunities in its waters. The creation of joint ventures received financial

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<sup>34</sup> World Bank report (2014).

<sup>35</sup> Le Manach et al. (2013).

<sup>36</sup> This section summarises criticisms from a wide range of sources, including impact assessments, EP reports, special reports of the Court of Auditors, academic literature and NGO reports.



support from the EU. Reflagging of these vessels implied that the coastal country became responsible for the management of these vessels. The main agreement of this type was signed with Argentina and was active in 1994-99, allowing the transfer of 32 vessels whose catches were almost entirely exported to the EU (95%). The EU financial contribution to this agreement was €162.5 million over five years.<sup>37</sup> However, the impact of this type of agreement was judged as limited, and the trend towards privatisation was criticised as involving decreased EU management responsibility, accountability and public scrutiny.<sup>38</sup>

Some other agreements with third countries may have included provisions related to creation of fisheries joint ventures. As an example, the Agreement on fisheries between the Community and the United States, commonly cited as the first EU bilateral fisheries agreement with a third country (signed in 1977 and prolonged in 1984), required EU vessels to engage in joint ventures with American companies in exchange for fishing rights.<sup>39</sup>

## 5. Other aspects of the external dimension

According to the reformed CFP, 'efforts shall be made at Union level to monitor the activities of Union fishing vessels that operate in non-Union waters outside the framework of Sustainable partnership agreements' (Regulation 1380/2013, Art. 31). In addition, as mentioned in section 2, the 2012 European Parliament resolution on the external dimension of the CFP considers that it should also include other activities such as private agreements between EU companies and third countries, joint ventures between companies in the EU and in third countries, and EU vessels reflagging to non-EU countries.

However, beyond the particular cases of joint ventures previously supported from the EU budget (see box), official publicly-available information on this type of activities is currently scarce. However, EU fleets are known to be involved in a number of joint ventures with third countries. A 2010 report provides a snapshot of the fisheries joint ventures with a high degree of EU ownership which registered EU vessels in third countries. The report indicates 379 joint venture vessels, most of them registered in countries from Africa (237 vessels, mainly in Morocco, Senegal, Namibia, Mozambique and Angola) and South America (123 vessels, mainly in Argentina, Chile and the Falkland Islands).<sup>40</sup> National data on Spanish fisheries joint ventures currently indicate 120 enterprises with more than 320 vessels, distributed in 24 countries.<sup>41</sup>

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<sup>37</sup> IFREMER (1999), Court of Auditors (2001). Several current EU Member States also had this type of agreement with the EU prior to their accession (Estonia, Latvia, Lithuania).

<sup>38</sup> Court of Auditors (2001), Kaczynski and Fluharty (2002).

<sup>39</sup> EC [press release](#). The joint ventures were required to involve either buying American vessels' catches or purchasing processed or semi-processed fisheries products.

<sup>40</sup> Tindall (2010) citing the Commission Staff Working Document, 'A diagnosis of the EU fisheries sector: Sector development and CFP instruments', (2009).

<sup>41</sup> [CEPPT Cluster de Empresas Pesqueras en Países Terceros](#), downloaded in September 2015.

### EU subsidies for joint ventures in fisheries

In a line of thinking similar to the 1990s second-generation agreements, an EU scheme for subsidising joint ventures in fisheries functioned between 1990 and 2004, with a view to reducing the capacity of the fishing fleets in EU waters while still continuing to supply seafood to European markets. This scheme provided subsidies to EU ship owners who permanently transferred their vessels to a third country, by creating joint ventures with local operators. In so doing, the vessels in question lost their right to fish in EU waters and to benefit from fishing opportunities offered by EU fisheries agreements.

The scheme supported the creation of 152 joint ventures up until 2000, and the transfer of 241 vessels, in return for financial aid of €291 million provided by the EU and by the Member State where the fishing boat was originally registered. Subsidised joint ventures were set up in 28 countries, almost all of them in Africa and in South and Central America. Most vessels were transferred to Senegal, Angola and Argentina. Although around two thirds of the vessels went to countries which already had a fisheries agreement with the EU, in some cases the subsidised joint ventures opened access to resources of countries or territories which did not allow fishing by foreign fleets (e.g. Namibia and the Falkland Islands).<sup>42</sup>

This is also the case for chartering of EU vessels by coastal countries. The chartering countries usually have certain fishing rights but lack the means to exploit them, or they wish to stabilise the supplies to the processing factories onshore, and thus authorise their national operators to charter foreign vessels. Chartering may cover a number of different arrangements, but generally refer to either a demise (or bareboat) charter which involves only the vessel, or a time charter which concerns both the vessel and its crew as a package. Unlike joint ventures, chartered vessels usually keep their flag of origin. However, some coastal countries may require all chartered vessels to reflag.<sup>43</sup>

Besides these private-to-private fisheries arrangements, EU companies can enter into private agreements with the government of a coastal state, if there is no FPA with an exclusivity clause in place for that state. Member States are not obliged to inform the Commission of these agreements, and public information on this issue is, at best, anecdotal. A 2008 study provides a list of private agreements 'presumed to have been concluded', which covers almost entirely the west African coast from Mauritania to Namibia, and includes several other countries in Africa (Somalia, Kenya, Tanzania, Libya) and South America (Brazil, Ecuador, Columbia, the Falkland Islands).<sup>44</sup>

Concerns over the regime of private agreements have been discussed recently, in the context of updating the Fishing Authorisation Regulation.<sup>45</sup> The consultation documents which accompany the preparation of this revision pointed out that the quantity and quality of the data on fishing authorisations that the Member States are required to provide to the Commission was highly variable, and that some data has proved to be unreliable. This was mainly the case for fishing in third countries' waters outside the framework of a Fisheries Partnership Agreement, and in areas of high seas not covered by RFMOs.<sup>46</sup> The consultation has identified private agreements as a major

<sup>42</sup> Cofrepeche (2000).

<sup>43</sup> e.g. New Zealand as from May 2016 (World Bank report, 2014).

<sup>44</sup> Oceanic Développement (2008).

<sup>45</sup> The Commission will soon put forward a new proposal. For an implementation [appraisal](#) of this process see Schrefler (2015).

<sup>46</sup> European Commission (2013b), [Consultation document](#) on the possible revision of the fishing authorisation regulation (FAR) and [Draft roadmap](#).



problem to be tackled, and outlined the necessity of imposing rules for fisheries activities under the private authorisations, consistent with those already applied for the EU fleet under bilateral agreements. Currently, for fishing in external waters not falling within the scope of a bilateral agreement or RFMO, the fishing authorisation regime only applies to vessels exceeding 24 metres in length. In the same context, repetitive reflagging has also been shown to represent a significant concern due to the lack of control over vessels alternating their flag, with a number of EU vessels reflagging to a third country to continue their activity, then back to a EU flag and the rights and benefits involved.

## 6. Conclusions

The external dimension of the CFP has developed from the necessity to ensure a framework for continued activities of the highly specialised long distance fishing fleets of the Member States, subsequently integrating the interests of the new Members which have joined the Community. The bilateral fisheries agreements in particular have come a long way from the initial purely commercial relations with third countries, evolving over the years to increasingly emphasise sustainability and promote a partnership approach.

New developments are changing the backdrop to the EU's fishing activities beyond its waters. Relations with the northern partners, which had long been relatively smooth, have been challenged by the disputes for sharing the stocks of mackerel and herring. This questioned the stability and the effectiveness of the common management of fish stocks under changing climate and migration paths. Meanwhile, the partnership agreement negotiations are expanding to new fishing grounds, with a number of procedures now in progress concerning entirely new arrangements.

A special report of the Court of Auditors which evaluated the management of the fisheries agreements by the Commission has been recently released. The Court found that some improvements were needed, in particular as regards regular underuse of the paid fishing possibilities, monitoring of catch data and licencing process not sufficiently robust, unclear conditions for eligibility to sectoral support for the local fisheries, and a need for better coordination with other EU development policies. The Court provided recommendations in relation with these weaknesses, which need to be addressed.

At global level, a new UNCLOS implementing agreement on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction is planned to be elaborated over the coming years. It will be only the third such agreement since the adoption of UNCLOS (after the 1994 agreement on deep seabed mining and the 1995 Fish Stocks Agreement), and is intended to respond to the need for a comprehensive global regime to better address the problems undermining the use of the biological resources in the high seas.

At EU level, the forthcoming Fishing Authorisation Regulation will aim to provide an updated legal framework for the conditions and the management of authorisation of the external activities of the EU fleet, in consistency with control and IUU policies, and address key issues such as repetitive reflagging and regulating private agreements of the EU fleet outside EU waters. Last but not least, the European Parliament is preparing an initiative report on common rules with a view to the application of the external dimension of the CFP.

The future EU external fisheries policy is expected to adapt to these changing circumstances and demands.

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The external dimension of the Common Fisheries Policy provides a framework for the activities of EU vessels fishing beyond the European waters, structured around two types of arrangements: multilateral agreements for fishing on the high seas, and bilateral agreements with third countries for fishing in areas under their jurisdiction. This analysis reviews the main aspects of the external dimension and its evolution over time.

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