

## Policy Department External Policies

# POLICY COHERENCE FOR DEVELOPMENT AND THE EFFECTS OF EU FISHERIES POLICIES ON DEVELOPMENT IN WEST AFRICA

DEVELOPMENT

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## EXECUTIVE SUMMARY

### *1. Introduction*

The purpose of this study is to provide background information on and analysis of the consequences of the EU Common Fisheries Policy (CFP) on sustainable development in West Africa, and to make recommendations on ways of achieving coherence between its fisheries policies, and other policies, including development policies, trade policies and human rights and good governance policies. The countries treated in this study are the 15 countries in the Economic Community of West African States (ECOWAS) and neighbouring coastal States with which the EU has currently concluded fisheries agreements (Gabon, Mauritania, Morocco and São Tome and Principe).

EU fisheries related policies as they relate to West Africa are principally concerned with fisheries access agreements, although trade, illegal, unreported and unregulated (IUU) fishing and structural/fleet policy are also relevant. Fisheries access agreements are agreements between a coastal State and another State for the purpose of providing the fishing vessels of the latter with fishing opportunities in the waters of the former. Over the past three decades, the EU has negotiated fisheries access agreements with more than 30 countries, including several in the broader West African region.

### *2. Policy Coherence for Development*

The concept of Policy Coherence for Development (PCD) is a central element of the EU's development strategies and the governing policy framework for the present study. The term is defined as follows:

Policy Coherence for Development means working to ensure that the objectives and results of a government's development policies are not undermined by other policies of that same government which impact on developing countries, and that these other policies support development objectives where feasible.

More specifically for the EU, the 2005 European Consensus on Development defines the concept as:

... ensuring that the EU takes account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives.

Policy coherence (and PCD in particular) is for obvious reasons a desirable goal. However, for the EU, there are also legal obligations. Thus, the EU's fisheries policies must:

- be consistent with the EU's other external policies, including development, trade and human rights (Art 3 EU)
- integrate principles of environmental protection, with a view to achieving sustainable development (Art 6 EC; Art 53 Cotonou; in part Art 178 EC).
- not contradict the EU's objective of integrating developing countries into the world economy (Art 178 EC)

- not undermine the relevant EU/ACP development strategies (Art 23(d) Cotonou) nor efforts to combat poverty (Art 178 EC)
- not violate human rights, democratic principles and the rule of law (Art 1 Cotonou; in part Art 178 EC).

### 3. *Sustainable Fisheries and the Need for Conservation*

The current crisis in marine living resources has been building steadily for many decades, even as various legal and policy commitments have been agreed in order to address it. Fisheries in many parts of the world have become depleted and others are over-exploited; marine organisms not used for food are seriously threatened by destructive fishing practices, pollution, climate change and other factors; while marine ecosystems of which both form part are seriously endangered. Effective measures to conserve and effectively manage the fisheries and to halt over-fishing are urgently required.

The most recent 2006 FAO report on the state of the world's fisheries provides details of the present problem of over-exploitation, while reports by scientists explain how 90% of large predators have disappeared from the oceans and warn that all commercial fisheries may collapse by 2048. Climate change is complicating this picture, as some species are migrating to cooler waters and others may become extinct. However, the main causes of the deteriorating state of fisheries world-wide are: over-fishing, mainly driven by over-capacity and subsidies; destructive fishing practices; lack of information on which to base accurate stock assessments; mismanagement or lack of proper management; and lack of control and enforcement. Illegal, unregulated and unreported fishing (IUU) is also a major factor, especially for developing countries and in areas beyond the limits of national jurisdiction.

Information available continues to confirm that, despite local differences, the global potential for marine capture fisheries has been reached and more rigorous plans are needed to rebuild depleted stocks and prevent the decline of those being exploited at or close to their maximum potential. To maintain and increase food security, the continued improvement of conservation and management of fish stocks is essential.

Without a concerted effort towards improved fisheries resource management, current trends point to over-exploitation and the potential collapse of capture fisheries in many developing countries. This would have disastrous consequences for millions of fishers and hundreds of millions of consumers. Sustainable development depends upon the continued existence and viability of natural resources, in particular, living natural resources that support human, economic and social development. The fisheries resources must be conserved, together with the ecosystems that sustain them, in order that they may be used to support human beings and their development in perpetuity. This is why responsible fishing and sustainable fisheries should assume greater visibility and importance in the international development co-operation agenda.

### 4. *Fisheries and Sustainable Development in West Africa*

Many West African coastal States have Exclusive Economic Zones (EEZs) abundant in marine life and fish stocks, yet the region contains some of the poorest countries in the world. Yet, if appropriately managed, fishery resources in the region could contribute considerably to food security and to sustained economic development. Although conditions in these countries vary considerably, for many of them fisheries are of significant socio-economic importance. First, they satisfy nutritional needs. Second, at a local level, small-scale fishers make a substantial contribution in supporting rural

livelihoods where alternative forms of income are limited, and in rural and urban areas where access to financial capital or land is absent. Third, for some countries, fisheries make significant contributions to national economies and GDP. Fourth, for a few (Côte d'Ivoire, Ghana, Mauritania and Senegal), fisheries provide a significant source of foreign earnings from exports. From a gender equality perspective, it is relevant that women are predominant in some fishing-related activities on land and that post-harvest processing is conducted primarily by women.

However, managing the fisheries is a substantial challenge. There are a number of obstacles to the development of the fisheries industry in West Africa coastal States, some of which are linked to the EU's fisheries policy. These include: competition for resources from EU vessels, over-fishing and IUU fishing. These constraints pose a severe risk of an increase in poverty among already poor populations. Other constraints include a serious lack of governmental expertise and resources, which require a sustained effort in capacity-building and financial support to overcome.

There are several organizations in the West African region with some degree of responsibility for fisheries cooperation. Of particular importance is ICCAT, regulating Atlantic tuna fisheries, of which the EU and some West African States are members. Because the EU is a member of ICCAT, its measures are applicable to EU vessels fishing in West Africa. Most West African fisheries agreements providing tuna fishing opportunities expressly incorporate ICCAT standards. Other organizations in the region focus on fishing within EEZs. These include CECAF, an FAO advisory body open to both coastal and distant water States, and three organizations open only to coastal States: SRCF, COREP and COMHAFAT. For a number of reasons, including overlapping competences, variable membership and lack of financing, these organizations have not been able to achieve their objectives fully.

##### ***5. The International Legal and Policy Framework for Fisheries, the Environment and Sustainable Development***

Policy coherence for fisheries and sustainable development in West Africa must be analysed and applied in the context of the international legal framework. For the EU, this not only provides the legal framework in which it is obliged to operate but it also describes the standards to which it should strive if it is to maintain credible and responsible fisheries and development policies.

Many international instruments are relevant to fisheries conservation and management, fisheries development and coherence between the two. These include not only legally binding agreements, codes, plans of action and guidelines relating to fisheries, but also those relating to the protection of the environment and sustainable development, of which the conservation, management and sustainable use of fisheries form a part. The most important fisheries-related instruments are the United Nations Convention on the Law of the Sea (UNCLOS), the FAO Compliance Agreement, the UN Fish Stocks Agreement (UNFSA), the FAO Code of Conduct for Responsible Fisheries and the FAO International Plans of Action on IUU Fishing and Capacity. Also relevant are the Rio Declaration of the 1992 United Nations Conference on Environment and Development (UNCED), setting out the precautionary principle, and Agenda 21, an action plan containing provisions on ocean management and sustainable fisheries. In 2002, the World Summit on Sustainable Development (WSSD) adopted the Johannesburg Plan of Action (JPOI) that confirmed Agenda 21 and set out specific actions relating to fisheries, with target dates. In addition, the international community is now addressing development within the context of the eight Millennium Development Goals, which call for the eradication of extreme poverty through sustainable development.

The EU (through the European Community and its Member States) is committed to all of these agreements and instruments.

## 6. *The Common Fisheries Policy*

The fisheries access agreements have been a significant component of the CFP, since UNCLOS allowed an extension of fisheries jurisdiction as far as 200 miles from the coast. In order to permit the EU fleet to fish off the coast of West Africa, agreements were negotiated between the EU and African governments that provided access for the EU fleet to fisheries within the EEZs in exchange for large financial contributions. From the mid-1990s, the FAAs were criticised as exporting the problem of excess fishing capacity from Europe to Africa, hindering sustainable development through irresponsible fishing that depleted the resource, interfering with local artisanal fishing and preventing the development of a domestic African fishing and processing industry.

In the context of PCD the principal criticisms have been:

- *Absence of stock assessments*, meaning that TACs and quotas cannot be set for fish stocks;
- *Definition of fishing opportunities*, whereby fishing opportunities are fixed according to the size or number of fishing vessels, which is imprecise and difficult to control;
- *Inconsistent / inadequate technical conservation measures*, first in that the EU has not applied the same standards to the fisheries agreements that it applied under the CFP in EU waters and second that measures were not based on scientific assessment but on industry pressures;
- *Conflict with small-scale fisheries*, including competition for the same resources, both directly and indirectly; gear conflicts when vessels occupy the same fishing grounds; and destruction of sensitive habitats such as reefs and seagrass beds;
- *Support for development of domestic fishing industry*, including inadequate implementation of provisions requiring landing of catches at domestic ports, employment of local seamen and ineffective use of funds provided under agreements for developing fisheries;
- *Compliance and enforcement*, including a lack of enforcement regulations in earlier agreements and a poor record of compliance for EU vessels;
- *Ineffective institutional process*, in particular as Joint Committees, designed to oversee the agreements, rarely met.

These problems were largely recognized by the Commission when it came to review the CFP in 2002, leading to the adoption of an Integrated Framework for Fisheries Partnership Agreements. Other issues relevant to West African Fisheries were also addressed in the context of the 2002 reform of the CFP, including enhanced management and conservation measures, improved scientific advice, a reduction in fishing levels, reduction in bycatch, a fleet policy intended to reduce the fishing capacity of the EU fleet, improved enforcement of fishing regulations and an action plan to address IUU Fishing. These measures should have been applied to the EU fleet in West Africa, but they have been ineffective even in Europe.

## 7. **Fisheries Partnership Agreements**

The move from access agreements to “partnership agreements” is designed to contribute better to responsible fishing in the interests of both Parties. They are not – for the time being at least – radically different from current fisheries agreements, but are designed to be negotiated and developed through a partnership approach. The Framework was put into practice in 2003, when the EU began negotiating the new type of fisheries partnership agreements. Most West African FAAs have now been replaced by FPAs.

In its “Integrated Framework” document, the Commission stated that the move from access agreements to “partnership agreements” was designed to contribute better to responsible fishing in the interests of both Parties. In addition to payment for access, FPAs include a contribution to cover the development of a national fisheries policy and possibly the cost of scientific assessment of fish stocks, sustainable fisheries management, and monitoring and control of fishing activities, as well as the follow-up and evaluation of the agreement. The EU intends its financial contribution to be regarded as an investment for the improvement of responsible and rational fishing.

The Commission considered that the EU had to strive for sustainable fisheries both inside and outside Community waters, noting that different policies should contribute to this overall objective while following their own specific objectives:

- The specific objective of the Common Fisheries Policy is to maintain the European presence in distant fisheries and to protect European fisheries sector interests
- The specific objective of the European Development Policy is to foster developing countries capacities to exploit their marine resources, to increase local value added and to obtain the fairest price for access rights to their EEZ by foreign fleets. Other European policies like research, trade, and environment, also contributed through their own objectives to the overall objective of sustainable fisheries.

The structure of the FPAs remains similar to the previous fisheries agreements, consisting of an overarching agreement, supplemented by a protocol and annexes which detail the financial contribution, fishing opportunities and conditions. The main differences between the FAAs and the FPAs relate to the way the financial contribution is calculated and the change from targeted actions to support for defining and implementing a sectoral fisheries policy. In an effort to move beyond purely commercial agreements, and to contribute more effectively to sustainable fisheries management in the coastal state, the EU has widened the scope of the financial contribution, which is now calculated on the basis of two separate components:

- access by EU vessels to the coastal state’s fisheries;
- financial support for enhancing responsible fishing and the sustainable exploitation of fisheries resources (contribution for fisheries policy).

Other changes include scientific cooperation and review of the agreement, increased provision for vessel monitoring systems (VMS) and monitoring, control and surveillance (MCS), a social clause covering employment of seamen, sometimes an exclusivity clause covering the operations of Member States’ vessels, and the remit for broader partnership actions in the fisheries sector relating to economic, commercial, scientific and technical cooperation. The FPAs are also subject to a preparatory ex-ante evaluation to determine the overall feasibility and the costs and benefits of each agreement. Implementation is to be overseen through regular meetings by a Joint Committee. While the agreements are full of good intentions and seem on their face to respect most of the principles of sustainable fishing, it is unclear how the fisheries policy aspects will be designed and implemented.

As noted by the European Parliament, the agreements are essentially commercial in nature, since the main objective of the CFP in relation to fisheries outside of Community waters is to ‘maintain the European presence in distant fisheries and to protect European fisheries sector interests’. Thus, the FPAs are not development agreements; their primary purpose is not to develop the local fishing and processing industries in Africa or to integrate the fisheries sector into the local economy. Whether the funds provided by the EU financial contribution will achieve these developmental goals will depend on the actions of the host countries, on the provision of development assistance outside the context of the FPAs, and on whether the presence of the EU fleet and the rules for fish trade discussed in the next section hinder the development of the local fisheries sector.

Since the new agreements are very recent, it is too early to judge how they will operate in practice. On their face, the FPAs appear to respect most of the principles of sustainable fishing and there are identifiable improvements over earlier agreements. On the other hand, at this point it is unclear how the fisheries policy aspects will be designed and implemented. As the agreements are now based on a partnership approach, it can be expected that they will develop over time in the context of a policy dialogue between the EU and the host countries.

## **8. *Trade and Development***

Fisheries Partnership Agreements (FPAs) are supported by the EU's trade regime, which is structured so as to support the EU distant water fleet (DWF) by a combination of subsidies, tariff preferences for products produced in ACP countries (including some West African countries), strict rules of origin and SPS measures. The result is that EU processors can obtain their raw materials duty free, while the EU DWF can sell to ACP processors at a higher price. In this way, both EU industries (the processors and the fleet) benefit, at the cost of the development of ACP processors. New Economic Partnership Agreements (EPAs) are presently being negotiated with the ACP countries, including West African countries, but it is questionable how far this regime is being addressed to the benefit of the West African countries. It is an interesting question whether, as in the regional EPA process, regionally negotiated fisheries agreements might be in the best interests of West African countries.

## **9. *Human Rights and Good Governance***

Human rights clauses providing for 'appropriate measures' in the event that one of the partner countries violates human rights or democratic principles have been included in all non-sectoral EU trade and cooperation agreements since the early 1990s. However, a lack of coherence in the EU's external negotiating strategy has meant that human rights clauses are not included in sectoral agreements, including on fisheries. This has been a concern of the European Parliament for some time, and in a resolution of 14 February 2006, the Parliament 'call[ed] for the human rights and democracy clause to be extended to all new agreements between the European Union and third countries, both industrialised and developing, and including sectoral agreements, [and] emphasise[d] that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause. These are necessary not just to allow fisheries agreements to be suspended, but to prevent the undermining of the EU's external human rights policies in other domains.

In addition, this study considers the role of 'good governance clauses', such as the clause in the Cotonou Agreement. In that agreement the purpose of the clause is both to ensure that EU funds are allocated according to their intended purpose; and to ensure that EU funds are not used to subvert development in the recipient countries, which could contradict EU development objectives. It is suggested that consideration should be given to introducing such clauses in all agreements with developing countries that provide for financial payments, including fisheries agreements. This is both because EU funds are provided for a specific purpose and to ensure coherence with the EU's development objectives, which include anti-corruption measures.

## **10. Recommendations**

The EU is legally required under Article 3 EU to achieve policy coherence in its external activities, under Article 6 EC to integrate environmental protection requirements in its policies, with a view to promoting sustainable development, and under Article 178 EC to 'take account' of development cooperation objectives in the implementation of any policies likely to affect developing countries. In recent years, the EU Council, Commission and European Parliament have sought to apply these requirements to the EU's Common Fisheries Policy (CFP). This was a key focus of the 2002 CFP reform, and is also a feature of the new generation of Fisheries Partnership Agreements (FPAs) concluded since 2003.

However, it is too early to know how these agreements will be implemented in practice and whether they will be more effective in promoting responsible fishing and sustainable development. Moreover, there are still aspects of these agreements that remain inconsistent with other aspects of the EU's external policies. First, while the FPAs provide a significantly higher rate of return for host States than arrangements with most other distant water fleets, the value received by coastal states does not compare to that captured by the EU, including the benefits of landing and processing in the EU. Second, the continued presence of the EU fleet in West African EEZs hinders efforts to develop local fleets, both because there is not economic and physical space for both, and because the EU fleet is supported by a variety of direct and indirect subsidies. The presence of the EU fleet in West African waters is also inconsistent with environmental policy and sustainable development policy (including the conservation of natural resources), as it depletes fish stocks, compromises biodiversity, and impairs ecosystems.

The recommendations in section 10 of the study take into account its main findings on areas in which incoherence persists, and makes recommendations to bring greater consistency to the different strands of the EU's fisheries policies as they affect sustainable development in West Africa. The main areas of incoherence are between EU fisheries policy and environmental protection policy, development cooperation policy, trade policy and human rights and good governance policy.

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# 1 INTRODUCTION

## 1.1 The Issues

The purpose of this study is to provide background information on and analysis of the consequences of EU fisheries policy on sustainable development in West Africa, and to make recommendations on ways of achieving coherence between its fisheries policies, and other policies, in particular, development policies, but also trade policies and human rights and good governance policies<sup>1</sup>.

The question arises because fisheries policy has been perceived as being at odds with development policy, in particular because the Fisheries Access Agreements (FAAs) giving the European fleet access to fisheries resources in the developing countries of West Africa were originally predicated upon providing the greatest economic benefits to Europe, without regard to the sustainable development of the host country.

The FAAs were entered into to provide access for the European distant water fishing fleet (DWF) to the fisheries resources in the 200 mile Exclusive Economic Zones (EEZs) of West African countries after they extended jurisdiction and sovereign rights over the resources off their coasts pursuant to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)<sup>2</sup>. The earliest agreements simply provided cash for access, without any consideration for the conservation and management of the fisheries or the sustainable development of the host countries. The original stance of the Commission was that these were simply commercial agreements concluded with a third country in order to obtain fishing rights for EU vessels<sup>3</sup>. The aim of the Directorate-General for Fisheries (DG Fish) was to negotiate the best possible “deal” for the EU in terms money paid for access to foreign fisheries<sup>4</sup>, in order to supply sufficient fish at low cost to the EU processing industry, and to provide EU consumers with a reliable supply of high quality fish.

However, it became increasingly clear that these access agreements could be detrimental to other important principles governing EU external policies, including the principle of sustainable development. In particular, FAAs were criticized for exporting the problem of excess fishing capacity from Europe to Africa, hindering sustainable development through irresponsible fishing that depleted the resource base, potentially threatening food security, interfering with local artisanal fishing, and hindering the development of a domestic African fishing and processing industry.

This had legal implications for the EU. Since the 1993 Treaty of Amsterdam, the EU has been obliged under Article 178 of the EC Treaty to take account of development objectives in all policies affecting developing countries, which includes fisheries policies. This legal

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<sup>1</sup> Throughout this study, reference will be made to the European Union (EU) rather than to the European Community (EC) although it is the EC that has legal personality.

<sup>2</sup> The earliest EEZs and exclusive fishing zones (EFZs) were declared during the course of negotiations in the mid-1970s, when it became clear that the 200 mile zone had attracted a consensus.

<sup>3</sup> For example, European Commission, Communication on Fisheries Agreements: Current Situation and Perspectives, COM (96) 488, 30.10.1996, at pp 4-5 and Commission Answer to Written Question E-2579/98 [1999] OJ C 289/5.

<sup>4</sup> The agreements are negotiated by DG Fish and adopted by the Council by means of regulations. The European Parliament is only entitled to express its opinion after the fact. It has consistently requested information in advance of negotiations, but this has not been forthcoming.

requirement was reinforced by the 2000 Cotonou Agreement<sup>5</sup>, to which the EU and West African countries are party, and by developments in international fisheries law. Because of these legal obligations and criticism by the European Parliament, various international organisations, academics and NGOs, the EU has taken a new approach in its more recent fisheries agreements.

## 1.2 Fisheries Partnership Agreements

In December 2002, the Commission published a communication on an Integrated Framework for Fisheries Partnership Agreements<sup>6</sup> setting out principles for a new kind of fisheries agreement between the EU and developing countries, including a policy dialogue in order to improve their capacity to achieve sustainable fisheries and to contribute to their development objectives. The Council subsequently adopted Conclusions on the Integrated Framework, defining its priorities for this policy<sup>7</sup>. The Framework was first put into practice in 2003, when the EU began negotiating the new type of fisheries partnership agreements (FPAs).

To date, the EU has signed four FPAs with countries in West Africa - Cape Verde, Gabon, Mauritania, and Morocco - and has initialled three more, with Côte d'Ivoire, Guinea Bissau, São Tomé and Príncipe<sup>8</sup>. The EU is also expected to negotiate a new FPA with Guinea in 2007. While it is too early to fully evaluate these agreements, they appear to be attempting to move towards the goal of sustainable and responsible fisheries. In particular, these new FPAs include special payments to support the development of a national fisheries policy and to promote responsible and sustainable fisheries. They include undertakings concerning scientific advice and meetings of a joint committee to discuss policies and implementation.

Despite these changes in approach, there are still questions regarding coherence between fisheries and development policies. Problems that remain unresolved are the absence of reliable stock assessments, the absence of effective limits on fishing, the link between the amount of fishing and the financial contribution, the lack of development assistance and capacity-building to accompany the funding, competition between the domestic fleet and the EU fleet, and a conflict of interest for the Commission in trying to maintain the EU fleet in West African waters, to secure the best financial "bargain" for Europe, and to deliver the EU catch to Europe, at the same time as supporting the sustainable development of the host country.

Resolving these issues is important for both sides. The EU benefits from, and in some cases depends on, West African fisheries for direct and indirect employment and the supply of fish to the EU market, while West African countries depend to a varying extent upon EU fisheries agreements for basic revenue and foreign exchange earnings, for assistance to develop a sustainable fishing industry and for exports to European markets. The extent to which the continued presence of the European

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<sup>5</sup> The 2000 Cotonou Partnership Agreement applies to 79 African, Caribbean and Pacific (ACP) countries and the EC and its Member States (Romania and Bulgaria are due to ratify). It aims to alleviate poverty and to promote sustainable development and the integration of the ACP countries into the world economy. The agreement lasts for 20 years and contains a clause allowing it to be revised every five years, known as the Mid-Term Reviews. Alongside the agreement is a financial protocol. Covering each five-year period, this indicates the total resources that are available to the ACP through the European Development Fund (EDF). The ACP countries are mainly former European colonies.

<sup>6</sup> European Commission, Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, COM (2002) 637, 23.12.2002.

<sup>7</sup> Council Conclusions on a Communication from the Commission on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, 15 July 2004 (11485/1/04 Rev 1 PECHE 254).

<sup>8</sup> For a list, see [http://ec.europa.eu/fisheries/cfp/external\\_relations/bilateral\\_agreements\\_en.htm](http://ec.europa.eu/fisheries/cfp/external_relations/bilateral_agreements_en.htm).

fleet in West African waters may hinder the sustainable development of the domestic industry, even taking into account the benefits of the FPAs, remains to be determined.

## 2 POLICY COHERENCE FOR DEVELOPMENT (PCD)

The concept of Policy Coherence for Development (PCD) is a central element of the EU's development strategies<sup>9</sup> and the governing policy framework for the present study. The term is defined by the OECD as follows:

Policy Coherence for Development means working to ensure that the objectives and results of a government's development policies are not undermined by other policies of that same government which impact on developing countries, and that these other policies support development objectives where feasible.<sup>10</sup>

More specifically for the EU, the 2005 European Consensus on Development defines the concept as:

... ensuring that the EU takes account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives<sup>11</sup>.

Policy coherence (and PCD in particular) is for obvious reasons a desirable goal. However, for the EU, it is more than this: it is also a legal obligation. This obligation has a number of sources in the EU and EC primary treaties<sup>12</sup>, and in the Cotonou Agreement between the EU and the 79 ACP countries, including the countries in West Africa. The following will set out the legal framework governing PCD for the EU, and give an account of some ways in which this framework is being taken into account by the EU in its fisheries policy.

### 2.1 The Legal Framework

#### 2.1.1 EU law

Article 3 of the Treaty on the European Union (EU Treaty) states as a general principle that '[t]he Union shall ... ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies'. This general statement on consistency does not give any particular priority to the various policies it mentions. However, the Treaty Establishing the European Community (EC Treaty) stipulates that both environmental protection and development cooperation objectives are to be given priority in the formulation of any other policies, although to different degrees.

The provision on the environment is fundamental. Article 6 EC provides that '[e]nvironmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 [which includes the CFP], in particular with a view to promoting sustainable development'. In other

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<sup>9</sup> For a historical survey of the concept, see Centre for European Policy Studies (CEPS), *Policy Coherence for Development in the EU Council: Strategies for the Way Forward* (Brussels: CEPS, 2006), at pp 2-5.

<sup>10</sup> This definition was formulated at an OECD Technical Workshop in Paris on 13 October 2005. OECD, *Policy Coherence for Development: Promoting Institutional Good Practice* (Paris: OECD, 2005) at p 28 n 4.

<sup>11</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: The European Consensus [2006] OJ C 46/1.

<sup>12</sup> Treaty on European Union and Treaty Establishing the European Community [2006] OJ C321E/1.

words, the EU must ensure that its fisheries policy is environmentally sustainable. By contrast, the provisions on development cooperation are a little more elaborate, but also somewhat weaker in normative terms. Article 178 EC states that '[t]he Community shall take account of the [development cooperation] objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.'

The development objectives themselves are divided into two bundles. The first is set out in Article 177(1) as follows:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
- the smooth and gradual integration of the developing countries into the world economy,
- the campaign against poverty in the developing countries.

The second, in Article 177(2) provides that 'Community policy in [the area of development cooperation] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms', while Article 177(3) states that '[t]he Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.' The point of Article 177(3) is to go beyond the specific international legal obligations entered into by the Community, to include anything else that might be relevant. Either directly, or indirectly, Article 178 requires the EU to take into account these principles in the formulation of any policy likely to affect developing countries.

Insofar as they apply to West Africa, the EU's fisheries policies are undoubtedly policies that 'affect developing countries' within the meaning of Article 178 EC. It follows therefore that the EU must 'take into account' the objectives referred to above in implementing this policy. What 'take into account' must mean is that, at a minimum, the EU's fisheries policies, to the extent that they are likely to affect developing countries', should not contradict the objectives of its development policy.

### 2.1.2 *Cotonou Agreement*

The EU also has legal obligations under the Cotonou Agreement to achieve coherence between its development cooperation objectives and its fisheries policies. The general framework is set out in Article 1, which (echoing Article 177) states that:

The partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.

These objectives and the Parties' international commitments shall inform all development strategies and shall be tackled through an integrated approach taking account at the same time of the political, economic, social, cultural and environmental aspects of development. The partnership shall provide a coherent support framework for the development strategies adopted by each ACP State.

The implications for the EU's fisheries policy are elaborated at other stages in the agreement. Article 53 emphasises that any fisheries agreements must be sustainable, stating that [t]he Parties declare their willingness to negotiate fishery agreements *aimed at guaranteeing*

*sustainable* and mutually satisfactory *conditions for fishing activities in ACP States*<sup>13</sup>. The development aspects of such agreements are emphasised in 23(d) of the Cotonou Agreement, which provides that '[a]ny fishery agreement that may be negotiated between the Community and the ACP States *shall pay due consideration to consistency with the development strategies in this area*'<sup>14</sup>. As with Article 178 EC, this does not subordinate these agreements to EU/ACP development strategies, but requires at a minimum that any such fisheries agreement should not undermine these strategies.

Finally, the 'essential elements' clause in Article 9(2)(4) is also relevant. This provision states that:

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

While this provision is usually invoked in the context of human rights violations by ACP countries,<sup>15</sup> it also requires the EU to comply with human rights, democratic principles and the rule of law in its international policies, which include its fisheries policies.

### 2.1.3 Summary: Legal obligations to achieve PCD in the EU's fisheries policy

Putting these various obligations together, it can be concluded that the EU's fisheries policies:

- Must be consistent with the EU's other external policies, including development, trade and human rights (Art 3 EU)
- Must integrate principles of environmental protection, with a view to achieving sustainable development (Art 6 EC; Art 53 Cotonou; in part Art 178 EC).
- Must not contradict the EU's objective of integrating developing countries into the world economy (Art 178 EC)
- Must not undermine the relevant EU/ACP development strategies (Art 23(d) Cotonou) nor efforts to combat poverty (Art 178 EC)
- Must not violate human rights, democratic principles and the rule of law (Art 1 Cotonou; in part Art 178 EC).

## 2.2 EU Implementation of PCD in its Fisheries Policy

The EU has taken some steps towards meeting these obligations to achieve PCD in practice, to some extent specifically with respect to fisheries<sup>16</sup>. In June 1997, a Development Council Resolution requested the Commission to produce proposals for improving coherence, including practical procedures and regular reporting<sup>17</sup>. In its communication "Ensuring coherence and co-ordination in the European Community's Development Policy",<sup>18</sup> the

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<sup>13</sup> Emphasis added.

<sup>14</sup> Emphasis added.

<sup>15</sup> See section 7 below.

<sup>16</sup> A useful website, with timeline, on PCD is [www.eucoherence.org/](http://www.eucoherence.org/).

<sup>17</sup> Development Council Resolution on Coherence of the EC's Development Cooperation with its Other Policies, Doc. 8631/97 (Presse 183).

<sup>18</sup> COM (2000) 212 final, 26.4.2000.

Commission recognised the need to ensure policy coherence in a broad range of sectors, and to reflect development objectives in policy guidelines. Since in implementing these sectoral policies the EU could affect developing countries for good or for ill, decision-makers should have full knowledge of the indirect effects of their policies.

At the beginning of the new millennium, EU policy began to be significantly affected by the United Nations Millennium Development Goals (MDGs) and the World Summit on Sustainable Development (WSSD) held in 2002. (See section 5 below, for details.) In 2000, the European Commission published a “Communication on Fisheries and Poverty Reduction”<sup>19</sup>, which directly related fisheries policy and development policy. This communication led to resolutions by both the Parliament and the Council<sup>20</sup>. During the next two years, the Commission made an effort to take account of development policy in the reform of the Common Fisheries policy, including in the Integrated Framework for Fisheries Partnership Agreements of 2002. The Council expressed its views on the Integrated Framework in its Conclusions of 2004.

The most recent significant event was the adoption of the landmark December 2005 European Consensus on Development, jointly agreed by the Council, the European Commission and the European Parliament<sup>21</sup>. The Consensus commits the EU to increasing development assistance, together with its quality and effectiveness, and reaffirms the EU’s ‘commitment to promoting policy coherence for development, based upon ensuring that the EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives’<sup>22</sup>. This has led to a PCD Rolling Work Program<sup>23</sup>, including biennial reporting on PCD<sup>24</sup>, as well as the integration of PCD in the EU’s Africa Strategy<sup>25</sup>.

Specifically with reference to fisheries, the EU Council issued these conclusions in 2005:

The EU will continue to pay particular attention to the development objectives of the countries with which the Community will engage into bilateral fisheries agreements. Within the context of the new EU policy on fisheries partnership agreements with third countries which is being implemented since 2003, the EU will continue to encourage the conclusion of fisheries agreements in order to contribute towards rational and sustainable exploitation of the surplus of coastal States’ marine resources to the mutual benefit of both parties<sup>26</sup>.

The EU Council reaffirmed these lines in its Conclusions of October 2006, and added that:

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<sup>19</sup> COM (2000) 724 final, 8.11.2000. See also COM (2000) 212 final.

<sup>20</sup> European Parliament Resolution on Fisheries and Poverty Reduction, A5-0334/2001, 25 October 2001; Council Resolution on Fisheries and Poverty Reduction, DEVDEN 173, PECHE 238, Doc. 13938/01, 8 November 2001.

<sup>21</sup> See above at n 11.

<sup>22</sup> Ibid, para 9.

<sup>23</sup> See EU Council Conclusions on Policy Coherence for Development: PCD Rolling Work Programme 2006-2007, 17 October 2006, Doc 14075/06.

<sup>24</sup> See EU Presidency, Policy Coherence for Development (PCD) - Follow-up to October GAERC, Brussels 5 December 2006, Doc 16178/06.

<sup>25</sup> EU Council, ‘The EU and Africa: Towards a Strategic Partnership: The Way Forward and Key Achievements in 2006’, Brussels, 11 December 2006, Doc 16630/06, submitted to the European Council, 14-15 December 2006.

<sup>26</sup> EU Council Conclusions on Millennium Development Goals: EU Contribution to the Review of the MDGs at the UN 2005 High Level Event, 24 May 2005, Doc 9266/05.

Coherence between the objectives of the Common Fisheries Policy, including environmental/biodiversity goals, and the sustainable development objectives of developing countries where the Community has concluded, or intends to conclude, fisheries agreements or undertakes relevant development activities should be ensured. To this end the EU will ensure that FPAs contribute to sustainable and equitable exploitation of fisheries of third countries to the mutual benefit of both parties to the agreement and that both parties will cooperate to ensure effective management, monitoring and policy processes are in place, or under development. In doing so, the EU will seek to strengthen linkages between Community and Member States' development policy and the CFP<sup>27</sup>.

### 2.3 Views of the European Parliament

For its part, the European Parliament has also been engaged in efforts to bring PCD to the EU's fisheries policy. In 2001, it adopted a resolution on the Communication on Fisheries and Poverty Reduction<sup>28</sup> and in 2003 it adopted a resolution on the Integrated Framework<sup>29</sup>, both of which were critical of the access agreements. Two recent resolutions are particularly pertinent to the questions of the sustainable use of natural resources, including fisheries, and to sustainable development. On 1 February 2007, the European Parliament adopted a Resolution on Mainstreaming Sustainability in Development Cooperation Policies, in which it recalled that '[s]ustainable development is a cross-cutting issue that requires a strengthening of policy coherence in all sectors in order to ensure their smooth functioning' and '[s]tresse[d] that more efforts are needed to combat current unsustainable developments, particularly those giving rise to ... the depletion of fish stocks'<sup>30</sup>.

Further, on 25 April 2007, the European Parliament adopted a Resolution on a Thematic Strategy for the Sustainable Use of Natural Resources, in which it considered 'that, as various fish species are currently among the most threatened long-term resources, and as the disappearance of species may result in further ecological changes, a responsible and strict fisheries policy is called for' and that 'the Member States must implement the EU's biodiversity strategy, both in fisheries and in other fields, and, in cooperation with the Commission, must take measures to attain the objective of halting the decline of biodiversity by 2010<sup>31</sup>. The Resolution also calls on the Commission to undertake three key actions, of which one is directly relevant to PCD: 'to develop benchmark criteria for sustainable management and harvesting of biotic resources (eg wood, fish, [and] agricultural products)<sup>32</sup>.

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<sup>27</sup> EU Council Conclusions on Policy Coherence for Development, above at n 23.

<sup>28</sup> EP Resolution on Fisheries and Poverty Reduction, above at n 20.

<sup>29</sup> EP Resolution on Fisheries Partnership Agreements with Third Countries, Doc. P5\_TA(2003)0431, adopted 9 October 2003.

<sup>30</sup> P6\_TA-PROV(2007)0014, adopted 1 February 2007.

<sup>31</sup> P6\_TA-PROV(2007)0154, adopted 25 April 2007.

<sup>32</sup> *Ibid*, para 36(c).

### 3 SUSTAINABLE FISHERIES AND THE NEED FOR CONSERVATION

The conservation of fish stocks and the ecosystems that support them is essential for the sustainable use of the stocks and hence for sustainable development. The fish stocks must be protected and conserved so that they may renew themselves and continue to be harvested in perpetuity. The majority of world fish stocks are either moderately exploited, over- exploited or depleted, including the stocks off the West African coast. Urgent action is required to conserve marine resources in order to ensure their sustainable use for current and future generations and to support food security and sustainable development in the poorest countries.

#### 3.1 Sustainable Development

The World Commission on Environment and Development defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”<sup>33</sup>. According to the FAO, ‘Sustainable development is the management and conservation of the natural resource base, and the orientation of technological and institutional change in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations. Such development conserves land, water, plant and genetic resources, is environmentally non-degrading, ethnologically appropriate, economically viable and socially acceptable’<sup>34</sup>.

Sustainable development is usually divided into three primary aspects: economic, environmental, and social. It also has an institutional dimension, as application of the concept requires the integration of economic, social and environmental issues in decision and policymaking at all levels, including those that address traditional economic sectors and government activities, such as economic planning, agriculture, health, energy, water, natural resources, industry, education and the environment. As a people-centred concept, sustainable development must include as its main objectives progress (improving quality of life), justice, durability, stability and resilience.

In formulating the internationally agreed goals contained in the United Nations Millennium Declaration, the international community has committed itself to making a sustained effort to combat poverty and hunger. While confirming that eradicating poverty is the greatest global challenge facing the world today, the World Summit on Sustainable Development recognised that oceans and coastal areas are critical for global food security and agreed on ambitious new targets for resources management and fisheries. Fisheries can play an important economic role and contribute to sustainable development in many countries, as they are capable of providing current generations with access to food, employment, recreation and trade without compromising the ability of future generations to meet their own needs.

Sustainable fisheries depend upon appropriate fisheries conservation and management by coastal States, responsible fishing by fishers and effective control by flag States. The FAO Code of Conduct for Responsible Fisheries defines the responsibilities of coastal States, fisheries and flag States. The Code is based on the principle that: “The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation

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<sup>33</sup> World Commission on Environment and Development, *Our Common Future* (Oxford, 1987), 43.

<sup>34</sup> FAO Committee on Fisheries, cited in FAO Fisheries Technical Paper 353, *Living Marine Resources and Their Sustainable Development – Some Environmental and Institutional Perspectives* (Rome: FAO, 1995), p. 3.

and management of the living aquatic resources.” Responsible fishing means fishing in such a manner as to ensure the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. It requires controls on the amount of effort and fish caught on the basis of the best available science so as to ensure the continued viability of the fish stocks; avoidance of destructive fishing practices; avoidance of bycatch; conservation of marine biodiversity; and protection of the integrity of marine ecosystems.

### 3.2 The Crisis in International Fisheries

The current crisis in marine living resources has been building steadily for several decades, even as various legal and policy commitments have been agreed in order to address it. Fisheries in many parts of the world have become depleted and others are over-exploited; marine organisms not used for food are seriously threatened by destructive fishing practices, pollution, climate change and other factors; while marine ecosystems of which both form part are seriously endangered. Effective measures to conserve and effectively manage the fisheries and to halt over-fishing are urgently required. Sustainable development of the fishing industry and the maintenance of food security require the continued improvement of conservation and management of fish stocks, the cessation of irresponsible fishing and the elimination of illegal, unreported and unregulated fishing (IUU).

According to the FAO in *The State of World Fisheries and Aquaculture (SOFIA) 2006*, rebuilding depleted wild fish stocks is an urgent necessity. Since the 1950s, there has been a consistent downward trend in the proportion of marine fish stocks with potential for expanded production, coupled with an increase in the proportion classified as fully exploited, overexploited or depleted to almost 75 per cent. Scientists have discovered that 90 per cent of large predators have disappeared from the oceans<sup>35</sup> and warn that all commercial fisheries may collapse by 2050<sup>36</sup>. FAO considers that, despite local differences, the global potential for marine capture fisheries has been reached and rigorous plans are needed to rebuild depleted stocks and prevent the decline of those being exploited at or close to their maximum potential<sup>37</sup>.

However, global fisheries statistics conceal the severity of over-fishing in the developing countries. Although global landings from capture fisheries have been relatively stable since the late nineties, there are considerable variations in catches among regions and if China is excluded, world fisheries capture production appears to have been in decline since 1988. In addition, the quality of the fish supply has deteriorated, and ecosystems have been damaged by irresponsible fishing and degradation of the environment. Furthermore, given the gradual

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<sup>35</sup> R Myers and B Worm, ‘Rapid worldwide depletion of predatory fish communities,’ *Nature* 423, 280-283 (15 May 2003), stating that ‘[i]ndustrialized fisheries typically reduced community biomass by 80 per cent within 15 years of exploitation. Compensatory increases in fast-growing species were observed, but often reversed within a decade. ... [W]e estimate that large predatory fish biomass today is only about 10 per cent of pre-industrial levels. We conclude that declines of large predators in coastal regions have extended throughout the global ocean, with potentially serious consequences for ecosystems...’.

<sup>36</sup> B Worm, et al, ‘Impacts of Biodiversity Loss on Ocean Ecosystem Services’, *Science*, 3 November 2006, Vol. 314, no. 5800, pp. 787-790.

<sup>37</sup> Most of the information in this section is taken from FAO *SOFIA 2006*; information on the FAO website ([www.fao.org/fi](http://www.fao.org/fi)); the United Nations reports cited below; the UN report on Oceans and the law of the sea (2005), UN Doc. A/60/63 (Chapter X, Fisheries and their contribution to sustainable development); the Report for the Review Conference on the United Nations Fish Stocks Agreement, UN Doc. A/CONF.210/2006/1, and the UN report on oceans and the law of the sea (2006), UN Doc. A/61/63 (Chapter X, Ecosystem Approaches and Oceans); and OECD, *Fishing for Coherence: Proceedings of the Workshop on Policy Coherence for Development* (Paris: OECD, 2006).

depletion of stocks of larger species, production has been maintained only by intensifying the fishing effort and targeting smaller species.

Climate change is complicating this picture, as some species are migrating to cooler waters and others may become extinct. However, the main causes of the deteriorating state of fisheries world-wide are: over-fishing, mainly driven by over-capacity and subsidies; destructive fishing practices; lack of information on which to base accurate stock assessments; mismanagement or lack of proper management; and lack of control and enforcement. Illegal, unreported and unregulated fishing (IUU) is also a major factor, especially for developing countries and in areas beyond the limits of national jurisdiction.

### 3.3 Causes of Fisheries Decline

The main factor in the decline of fisheries is overfishing, that is, fishing mortality beyond the level that can maintain the productivity of the stock<sup>38</sup>. Overfishing may be defined as fishing within legal limits, but beyond biological limits. In addition to overfishing targeted species, excessive bycatch and discards, as well as damage to habitats and ecosystems, can lead to the decline and depletion of the targeted stocks. Overfishing may occur where there are no effective limits to fishing or where the limits are set too high and too many fish are taken for the resource to be able to renew itself. Without any external controls, fishers will take as many fish as their vessels can catch. Stock depletion may also occur when too many juveniles are caught before they are old enough to reproduce and insufficient spawning biomass is left.

A related problem is excessive bycatch<sup>39</sup>. Bycatch are fish or other organisms that are caught unintentionally together with the targeted species because they occur in the same areas. Bycatch may be juveniles of the targeted stocks whose fishing is prohibited, non-targeted species the fishing of which is either limited or prohibited, or non-fish species such as turtles, cetaceans and seabirds. Bycatch that is discarded back into the sea does not usually survive. Excessive bycatch may be caused by non-selective gear, inappropriate mesh sizes and destructive practices, such as bottom-trawling and dredging, which scrape the ocean floor, removing all organisms indiscriminately, as well as rocks and sediments, reducing habitat complexity and smothering bottom-dwelling organisms. This practice can also destroy the ecosystem that supports the fishery. The bycatch in shrimp trawling can be as high as 80-90 per cent. Since most bycatch is discarded dead or dying, it constitutes a waste of valuable food resources in the case of edible bycatch, or a needless and harmful destruction of marine biodiversity in the case of non-food animals. Excessive bycatch can also cause the depletion of fishery resources when non-target fish or juveniles are caught.

Numerous studies by inter-governmental and non-governmental organisations have documented the adverse impacts of fishing on living marine resources, marine ecosystems and marine biodiversity.<sup>40</sup> All fishing has effects on marine ecosystems, but the impact of overfishing on the health and productivity of marine ecosystems is an issue of increasing international concern. Even if target species are not being overfished, fishing affects marine habitats and has the potential to alter the functioning, state and biodiversity of marine

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<sup>38</sup> See, eg. Communication from the Commission on improving the economic situation in the fishing industry, COM (2006) 103 final, 09.03.2006, pp.4-5.

<sup>39</sup> K Kelleher, *Discards in the World's Marine Fisheries: an Update*, FAO Fisheries Technical Paper No. 470 (Rome: FAO, 2005).

<sup>40</sup> Inter alia, see the following UN reports and the references cited therein: Oceans and the Law of the Sea, UN Doc. A/60/63/Add.1; "Impacts of fishing on vulnerable marine ecosystems", UN Doc. A/61/154, 14 July 2006. See also information on the FAO website at: [www.fao.org/fi](http://www.fao.org/fi). The FAO Code of Conduct and the Technical Guidelines provide a useful framework for addressing the impact of fisheries on marine ecosystems.

ecosystems, through cascading effects down food webs that decrease diversity or productivity.

### **3.4 The Need for Accurate Data and Scientific Advice**

To secure sustainability in the fisheries sector, access to the resource needs to be limited and the development of fishing effort needs to be controlled. The need for limits to fishing is evident, but the determination of effective limits is difficult to achieve. The basic requirements are: 1) accurate assessments of the status of the stock, 2) accurate reporting by fishers of what and how much they have caught, 3) expert scientific advice, and 4) politicians that are willing to take that advice. All legal and policy instruments for fisheries conservation and management provide that States should adopt conservation and management based on the best scientific evidence available. Scientific advice for the conservation and management of most stocks concerned is obtained through national research institutions and/or through cooperation with other States. In areas where RFMOs regulate fishing, advice is obtained through the scientific body of the RFMO. However, without reliable data, especially from fishers, sound scientific assessments are not possible<sup>41</sup>.

Effective management decisions depend upon accurate and comprehensive reporting by fishers, as well as on scientific research in the field, not only on the status of the target species, but also on associated and dependent species, on the state of the physical environment and on the interactions among all the components of the ecosystem. The latter is essential for the application of the ecosystem approach to fisheries management<sup>42</sup>. It is only after the stocks and related species have been assessed and when existing fishing pressures are known that scientists can determine what level of fishing is sustainable and whether the current level can be maintained or must be reduced. Only rarely can fishing pressure be increased. In fact, in the past two decades, the evidence has sometimes prompted scientists to advise that all fishing should cease for stocks on the point of collapse. Unfortunately, politicians too often succumb to pressure from fishers not to reduce fishing in accordance with scientific advice<sup>43</sup>.

### **3.5 Conservation and Sustainable Management**

As fisheries resources are renewable in perpetuity if properly managed, they have the potential to contribute substantially to sustainable development. Yet, for the fisheries sector to contribute to sustainable development, it has itself to be managed in a sustainable way. Fisheries management should promote the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development. Management measures should ensure the conservation not only of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species. Fisheries management should also take account of the economic, social and cultural needs of fisheries-dependent communities, as well as the requirement of developing countries to maintain revenues from trade that are necessary for their development.

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<sup>41</sup> See Communication from the Commission on Improving Scientific and Technical Advice for Community Fisheries Management [2003] OJ C47/6.

<sup>42</sup> Ibid.

<sup>43</sup> Communication from the Commission: Fishing Opportunities for 2008, Policy Statement from the European Commission, COM (2007) 295 final, 6.6.2007.

In the absence of effective resource management, flourishing fishing activities have disappeared in rich and poor countries alike as a result of overexploitation. The first step in effective fisheries management is to develop a policy for sustainable fisheries and a management plan to achieve that goal. Limits (total allowable catch) have to be established for the harvesting of target species, as well as for bycatch. The use of unselective gear and destructive fishing practices should be prohibited. As over-arching principles, the precautionary approach and the ecosystem approach to fisheries (EAF) are essential elements of sustainable fisheries management. They must be applied during the entire process of determining and applying conservation and management measures.

### 3.5.1 *The Precautionary Approach*

The precautionary approach has a long history of being referred to in numerous treaties, policy statements and plans of action, and is generally considered to be a principle of international environmental law<sup>44</sup>. Often cited is the formulation in Principle 15 of the Rio Declaration adopted at the United Nations Conference on Environment and Development (UNCED), which led to the FAO Code of Conduct, as well as to the UN Fish Stocks Agreement<sup>45</sup>. Article 6 (1) of the Agreement requires States to apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment. Application of the precautionary approach to fisheries management is aimed at reducing the risk of overexploitation and depletion of fish stocks. The EU has accepted the precautionary approach internationally and has made it legally binding under the EC Treaty<sup>46</sup> and the Common Fisheries Policy<sup>47</sup>. The Parliament has insisted that the precautionary approach be applied to bilateral fisheries agreements<sup>48</sup>.

The use of precaution is required at all levels, including development planning, conservation and management measures, management decisions, research, technology development and legal and institutional frameworks. In practice, the precautionary approach entails the setting of reference points that signal objectives for management and threshold levels for spawning stock size and fish mortality. The objectives of management are to ensure that the fish mortality rates and the size of the spawning stock biomass are maintained at or above desired levels. The precautionary approach recognizes that “the lack of full scientific information should not be used as a reason for postponing cost-effective measures to prevent environmental degradation where there are threats of serious or irreversible damage”.

Under the ecosystem approach to fisheries, the precautionary approach is even more important than under single-species management, as uncertainty is greater. Conservative management actions should be taken until more is known about ecosystem structures and functions<sup>49</sup>. Under EAF, the precautionary approach is applicable to undesirable ecological, social or economic outcomes.

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<sup>44</sup> P Birnie and A Boyle, *International Law and the Environment* (OUP: Oxford, 2002), pp. 115-121.

<sup>45</sup> See section 5.

<sup>46</sup> Article 174.

<sup>47</sup> Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [2002] OJ L358/59.

<sup>48</sup> See, eg. Resolution on the Integrated Framework, op cit, para.6.

<sup>49</sup> FAO Code of Conduct for Responsible Fisheries and FAO Technical Guidelines for Responsible Fisheries, no 2.

### 3.5.2 *The Ecosystem Approach to Fisheries*<sup>50</sup>

In general, the term “ecosystem approach” refers to a comprehensive, science-based approach to the conservation and management of natural resources. The concept involves management based on the “best understanding of the ecological interactions and processes necessary to sustain ecosystem structure and function”. In the fisheries sector, EAF is defined as the effort “to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries”.

The goal of the ecosystem approach is to restore and sustain the functions of ecosystems, based on their health, productivity and biological diversity, and the overall quality of life through management systems that are fully integrated with social and economic goals, for the benefit of current and future generations. In relation to fisheries, the goal of the ecosystem approach to fisheries is to plan, develop and manage fisheries in a manner that addresses the multiplicity of societal needs and desires, without jeopardizing the options for future generations to benefit from a full range of goods and services provided by marine ecosystems.

An ecosystem approach to fisheries requires the use of the best scientific evidence available for the conservation and management of marine living resources. It also requires improved monitoring, not only of the status and trends of the fisheries, but also of the status of key environmental factors, habitats, endangered species and non-target and dependent species associated with the target species. The ecosystem approach should reflect due concern about the long-term effects of fishery management on marine ecosystems by restricting the environmental impacts of fishing to acceptable levels, including by reducing by-catch and incidental mortality of non-target species.

Increased focus is being placed on ways to facilitate implementation at both the regional and national levels. Because fish and ecosystems do not respect maritime boundaries, regional cooperation is essential. As the scientific understanding of ocean ecosystems is still very limited, further research is needed as well as the application of the precautionary approach in the face of uncertainty.

### 3.5.3 *Bycatch Reduction*

A number of by-catch reduction measures can be used to reduce the impact on threatened or endangered species and non-target fish species. These include modifications and/or restrictions on gear or fishing methods including mesh size restrictions, net length requirements, fishing depth requirements, minimum and maximum size limits, turtle-excluding devices, by-catch reduction devices, juvenile and trash excluder devices, requirements for reporting lost gear and restrictions on fishing during spawning seasons or at certain times of day, when threatened or endangered species are present or in areas where spawning or nurseries are known to occur. In order to monitor by-catch in areas under its jurisdiction, Canada requires all catches of authorized species to be retained, landed and reported. The European Commission has proposed a pilot project to test this approach<sup>51</sup>.

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<sup>50</sup> FAO Code of Conduct for Responsible Fisheries and FAO Technical Guidelines for Responsible Fisheries, no 4, Supp. 2.

<sup>51</sup> Communication from the Commission: A policy to reduce unwanted by-catches and eliminate discards in European fisheries COM (2007) 136 final, 28.3.2007.

#### 3.5.4 *Conservation of marine biodiversity*

Measures for the conservation of marine biodiversity include restrictions and prohibitions in relation to fishing and other marine harvesting activities deemed to affect endangered species and habitats, prohibitions relating to specific harmful practices, such as the use of trawls in certain areas, the use of explosives and harmful or poisonous substances for fishing purposes and general measures for the conservation and sustainable use of biological diversity. The opening and closing of fishing areas according to conservation needs and the establishment of marine protected areas where fishing is restricted or prohibited are frequently used tools to protect marine biodiversity. Relevant international efforts in the field include those by the EU aimed at the implementation of the Convention on Biological Diversity and the work of FAO on the application of the ecosystem-based approach. The EU is preparing guidelines for the implementation of the ecosystem approach in the management of all human activities, including fishing, affecting the marine environment.

#### 3.5.5 *Over-capacity and over-fishing*

Over-fishing is often caused by excess capacity in the fishing industry where the harvesting capacity of the fleet exceeds the amount of resource available for harvest. Excess capacity is often the result of rapid development without adequate scientific information on available yields from the resource, as well as subsidies extended to the fisheries sector in the form of capital support for vessel purchases, fuel subsidies or related tax exemptions and cheap credit. Excess capacity is also caused by open access regimes, characterized by a so-called Olympic fishery: a race by individual vessels to catch as many fish as possible, as quickly as possible. Other causes of over-fishing are uncertain scientific information and risk-prone decisions in the face of pressure to postpone economic and social hardships. While environmental factors have adversely affected some fish stocks, excessive levels of fishing capacity are believed to be the primary cause of fisheries declines. Moreover, fishing overcapacity also contributes to IUU fishing, particularly in cases where excess capacity has been exported through re-flagging to States that do not comply with their international obligations.

#### 3.5.6 *IUU Fishing*

Illegal, unreported and unregulated fishing (IUU fishing) is a serious problem world-wide, but is worst off the coasts of developing countries because of their weak capacity for surveillance and enforcement. Recent studies put the worldwide value of IUU catches at between US\$ 4 billion and US\$ 9 billion per annum<sup>52</sup>. While US\$ 1.25 billion of this comes from the high seas, the remainder is taken from the EEZs of coastal States. Losses from the waters of sub-Saharan Africa amount to at least US\$ 1 billion a year. Intense fishing activity, IUU fishing and destructive fishing practices have been destroying habitats and seriously damaging and altering ecosystems. The most common violations are misreporting and over-fishing. Illegal and unregulated fishing leads to over-fishing and stock depletion, while un- or misreported fishing results in inaccurate stock assessments that in turn lead to the setting of catch limits that might be too high to maintain the viability of the stock.

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<sup>52</sup> High Seas Task Force, *Closing the Net*, March 2006

### *3.5.7 Compliance*

The adoption of appropriate and effective conservation and management measures by coastal States and regional fisheries bodies is only half of the equation necessary to achieve sustainable fisheries. The other half is compliance by fishing vessel owners and operators. While flag States (States in which fishing vessels are registered) have exclusive jurisdiction over the activities of their vessels on the high seas, in the EEZs of other States, jurisdiction is joint. The coastal State has the authority to adopt and enforce laws concerning fisheries conservation and harvesting; however, the flag State also has a responsibility to try to ensure that those laws are obeyed. In the EU, the Community has the responsibility to incorporate into its laws and regulations all of its obligations under international agreements, while member States have to implement the law through the necessary controls over their vessels. Most countries have fishery laws and regulations that require operators to mark vessels conducting fishing operations, to maintain a logbook and to submit catch and effort reports. Many coastal States require vessels to carry vessel monitoring systems (VMS) and/or observers, as well as to submit to port inspection requirements. Still, enforcing compliance with fisheries regulations when vessels are far out at sea is not easy for either the coastal State or the flag State. This is why cooperation and assistance for enforcement is necessary, both bilaterally and regionally.

### *3.5.8 Monitoring, Control and Surveillance*

Effective monitoring, control and surveillance (MCS) measures are essential to combat destructive fishing practices, over-fishing and IUU fishing. Most regulatory authorities use a combination of the following to monitor compliance with and enforce management measures: logbooks, data collection, observers, VMS, and at-sea and port inspections. However, standards for observers, data collection, port inspectors and VMS operations are often lacking. Furthermore, developing countries frequently lack the infrastructure, technical facilities and human and financial resources for effective MCS. Very large EEZs, like some off the coasts of West Africa, are particularly difficult and expensive to monitor, as fleets of aircraft and patrol vessels are required operated by trained staff. Trained staff are also required as observers and port inspectors and to receive and analyse VMS data.

### *3.5.9 Good Governance and Public Participation*

Improved governance is critical to the success and effectiveness of any strategy to enhance the contribution of fisheries to food security and poverty alleviation. Appropriate legislation, expert and effective fisheries administrations and good governance are essential for sustainable fisheries management. Conversely, bad governance and corruption are often at the root of over-fishing, destructive fishing practices, IUU fishing and poor or no fisheries management. At the very least, bad governance does little or nothing to curb irresponsible fishing. Equally as detrimental are governments that do not appreciate the benefits that can be obtained from sustainably managed fisheries and a thriving local fishing industry. Furthermore, research has shown that many governments do not understand the current and potential contribution of fisheries to their countries' economies and sustainable development. Many experts believe that if decision-makers were better-informed about the economic

benefits of sustainable fisheries, they would make a greater effort to manage their fisheries responsibly and sustainably<sup>53</sup>.

If good governance is key, public awareness and participation are also crucial. All the international instruments and EU policy and law, including the Cotonou Agreement, require that stakeholders and civil society participate in policy-making and decisions that affect them as a matter of right. In addition, if fishers and others involved in fishing-related industries are informed about the issues and participate in decisions, they will feel a sense of ownership and be more likely to comply with any management measures.

### **3.6 Conclusions**

Without a concerted effort towards improved fisheries resource management, current trends point to over-exploitation and the potential collapse of capture fisheries in many developing countries. This would have disastrous consequences for millions of fishers and hundreds of millions of consumers. Sustainable development depends upon the continued existence and viability of natural resources, in particular, living natural resources that support human, economic and social development. The fisheries resources must be conserved, together with the ecosystems that sustain them, in order that they may be used to support human beings and their development in perpetuity. This is why responsible fishing and sustainable fisheries should assume greater visibility and importance in the international development co-operation agenda.

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<sup>53</sup> FAO, *Contribution of Fisheries to National Economies in West and Central Africa - Policies to Increase the Wealth Generated by Small Scale Fisheries, New Directions in Fisheries – a Series of Policy Briefs on Development Issues*, No. 3, 2006 (hereinafter *Contribution of Fisheries*).

## 4 FISHERIES AND SUSTAINABLE DEVELOPMENT IN WEST AFRICA

### 4.1 Introduction

The countries considered in this study are the countries in the Economic Community of West African States (ECOWAS)<sup>54</sup> plus neighbouring coastal States with which the EU has currently concluded fisheries agreements: Cape Verde, Cote d'Ivoire, Guinea, Guinea-Bissau, Gabon, Mauritania, Morocco and São Tome and Príncipe. Senegal is also included to as a State in the region whose long-standing agreement with the EU has not been renewed. A map of the countries concerned is provided in Appendix 1. The marine area broadly corresponds to FAO Statistical Area 34.

Many West African coastal States have Exclusive Economic Zones (EEZs) abundant in marine life and fish stocks. These are fed by cold ocean currents coming to the surface in certain localities (upwellings). The Canary Current, which feeds the upwellings off Mauritania and Senegal, is one of the richest marine ecosystems in the world<sup>55</sup>, and together with the Guinea Current<sup>56</sup>, supports vast marine resources.

The West African region contains some of the poorest countries in the world<sup>57</sup>. Yet, if appropriately managed, fishery resources in the region could contribute considerably to food security and to sustained economic development. Although conditions in these countries vary considerably, for many of them fisheries are of significant socio-economic importance. First, they satisfy nutritional needs. Second, at a local level, small-scale fishers make a substantial contribution in supporting rural livelihoods where alternative forms of income are limited, and in rural and urban areas where access to financial capital or land is absent. Third, for some countries, fisheries make significant contributions to national economies and GDP<sup>58</sup>. Fourth, for a few (Côte d'Ivoire, Ghana, Mauritania and Senegal), fisheries provide a

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<sup>54</sup> Benin, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, Senegal, Sierra Leone and Togo (coastal States); and Burkina Faso, Mali and Niger (landlocked States). Mauritania withdrew from ECOWAS in 2002.

<sup>55</sup> World Wildlife Fund, *The Footprint of Distant Water Fleets on World Fisheries* (Godalming, 1998), available at [http://assets.panda.org/downloads/distant\\_water5.pdf](http://assets.panda.org/downloads/distant_water5.pdf).

<sup>56</sup> Both systems are classified by the UN's Global Environment Facility as Class I, highly productive (>300 gC/m<sup>2</sup>-yr): see [www.edc.uri.edu/lme/text/canary-current.htm](http://www.edc.uri.edu/lme/text/canary-current.htm)

<sup>57</sup> Sub-Saharan Africa leads the world in the percentage of people living on less than \$1 a day: 44 per cent live in extreme poverty. United Nations, *Millennium Development Goals Report*, 2006, p 4. Most of the information in this section comes from a number of FAO documents, including: FAO, *State of World Fisheries and Aquaculture* (SOFIA) 2006; *Contribution of Fisheries*, op. cit.; *Increasing the Contribution of Small-Scale Fisheries to Poverty Alleviation and Food Security*, FAO Technical Guidelines for Responsible Fisheries, No 10 2005 (hereinafter *Small-scale Fisheries*); FAO Committee on Fisheries, *Social Issues in Small-Scale Fisheries*, COFI/2007/6, December 2006; and information taken from the website of the Fisheries Division of FAO, at [www.fao.org/fi](http://www.fao.org/fi).

<sup>58</sup> In the late 1990s, fishing contributed 5 per cent or more to GDP in Ghana, Mauritania, and Senegal (UNEP, *Africa Environment Outlook, Past, Present and Future Perspectives*, 2002, at <http://unep.org/dewa/Africa/publications/AEO-1/120.htm>). In 2006, it had risen for Senegal to 7 per cent: C Béné, *Small Scale Fisheries: Assessing Their Contributions to Rural Livelihoods in Developing Countries*, FAO Circular No 1008, 2006, at p 4.

significant source of foreign earnings from exports<sup>59</sup>. From a gender equality perspective, it is relevant that women are predominant in some fishing-related activities on land and that post-harvest processing is conducted primarily by women<sup>60</sup>.

## **4.2 Status of the Fish Stocks**

Although scientific assessments are hampered by a lack of reliable data, there is sufficient evidence for CECAF, the regional scientific advisory body, to conclude that many fish stocks in the West African region are dangerously overfished<sup>61</sup>. At its most recent meeting, held in October 2005, CECAF concluded that at least half the stocks for which information was available were over-exploited or depleted. Reductions in effort and in catch were recommended for those stocks. However, for many stocks, sufficient information to make an assessment was not available.

Stock depletion has implications for food security, employment and economic development. It reduces social welfare and undermines the well-being of populations that depend on fisheries for food and livelihoods. The diets of 2.6 billion people world-wide depend at least partly on fish as a source of animal protein. Furthermore, 250 million people earn all or part of their income from fishing and related activities such as marketing, processing, boat-building, auxiliary services and trade, or depend on those who do. Significant stock depletion means that many people will lose their livelihoods and source of food and that significant parts of the economies of some countries could be affected.

## **4.3 Fishing off the Coasts of West Africa**

There are a number of fleets fishing off the coasts of West Africa. First, fishing close to the coast, are the local artisanal and small-scale fishing vessels owned and operated by nationals of the coastal State. Second, in some EEZs, there may be vessels from neighbouring countries fishing under reciprocal agreements or informally straying across EEZ boundaries. Third, in several countries, there will be European vessels fishing pursuant to a bilateral fisheries access agreement. Fourth, there may be vessels from other countries, in particular from Russia and Asia (China, Japan, Korea), fishing under country-to-country fisheries access agreements. Fifth, there may be individual European or other vessels fishing under private agreements with the host State. In some cases, Asian vessels in a fishing association will fish under an agreement between the association and the host country. Sixth, throughout the region, there will be unauthorised vessels engaged in IUU fishing. Some vessels fishing under various agreements may be fishing in more than one EEZ, either legally or illegally.

## **4.4 Types of Fisheries**

There are two main types of fisheries: tuna and mixed. Tuna are highly valuable fish, prized both in Europe and especially in Japan. Tuna are highly migratory, regularly crossing vast distances across several maritime zones and the high seas. As they swim far out to sea, they

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<sup>59</sup> Fisheries now provide up to 50 per cent of all export earnings in Mauritania: C Touleileb, *Impact des Accords dans le contexte de la Mondialisation – Mauritanie*, Presentation at OECD, Workshop on Opportunities and Challenges of Fisheries Globalisation, 16-17 April 2007.

<sup>60</sup> A Tall, 'Obstacles to the Development of Small-Scale Fish Trade in West Africa', *Infopeche*, 2002, available at [www.unctad.org/infocomm/comm\\_docs/docs/projectp/docsgamb/gambiaper3.pdf](http://www.unctad.org/infocomm/comm_docs/docs/projectp/docsgamb/gambiaper3.pdf), at p 2.

<sup>61</sup> FAO, SOFIA 2006; Fishery Committee for the Eastern Central Atlantic (CECAF), Report of the fourth session of the Scientific Sub-Committee, 2005, FAO Fisheries Report no. 807.

are usually only caught by highly specialised foreign vessels. The small-scale fishing boats used by local fishermen do not have the power or the equipment to travel so far or to capture the fish. Mixed fisheries include large and small pelagics, demersal fish, cephalopods and shrimp. These fisheries are engaged in by both the local and the foreign fleets, although the local fishers stay closer to the coast. In most cases, the territorial sea, out to 12 miles from the coast, is reserved for the local artisanal and small-scale fleet. However, foreign vessels, either licensed or illegal, sometimes stray into the coastal zone and clash with the local fleet. As most mixed fisheries are poorly controlled, if at all, over-exploitation is common.

#### **4.5 Nutrition and Food Security**

In addition to providing employment, fisheries are considered to be critical to food security in many countries, particularly in low-income food-deficit countries. In addition to providing employment, fisheries are considered to be critical to food security in many countries, particularly in low-income food-deficit countries. The 1996 World Food Summit defined food security as follows: “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life”<sup>74</sup>. Fisheries contribute to food security by increasing available food supply and consumption (fish as food); by doing so at times when other foods are in scarce supply (continuity of supply); and by generating income for the purchase of food (fish as source of income).

The Food Summit stressed the connection between food security and the need for sustainable management of natural resources. In recent years, greater recognition of world-wide problems of poverty and food security have led to a greater emphasis on addressing these issues at the international and EU levels in the context of aid for sustainable development. According to FAO, Sub-Saharan Africa has the highest prevalence of undernourished people in the world at 32 per cent of the population. Yet, because of the proximity to rich marine resources, fish has considerable potential to contribute to food security in West Africa, both directly, by providing protein and other essential nutrients to fisheries and consumers, and indirectly, by providing a source of income to people involved in the fishing industry with which they are able buy a variety of foods.

The degree to which a population depends on fish for food varies but is often influenced by its availability, the price and availability of substitutes, and cultural and social norms. Fish provides on average 19 percent of the protein intake in developing countries, a share that can exceed 25 percent in the poorest countries and reach 90 percent in isolated parts of coastal or inland areas. Because of the relative scarcity of other forms of protein, fish contributes substantially to West African diets<sup>62</sup>, especially in coastal areas. While fish consumption per capita in Africa generally is less than half the global average (8.2 kilos compared to 16.5 kilos), this statistic reflects the lower levels of protein consumption in Africa as a whole<sup>63</sup>. Fish consumption in West Africa is twice that for the rest of Africa<sup>64</sup>. Fish account for around 50 per cent of total animal protein needs for Côte d’Ivoire, Gabon, Gambia, Ghana,

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<sup>62</sup> Even in small quantities, fish can have a significant positive impact on improving the quality of dietary protein by complementing the essential amino acids that are often present only in low quantities in vegetable-based diets. Fish also provides micro-nutrients (vitamins and minerals) and essential fatty acids.

<sup>63</sup> SOFIA 2006, pp 34-40

<sup>64</sup> *Contribution of Fisheries*, at p. 5 and SOFIA 2006. Fish provides 18.6 per cent of animal protein in Africa generally, above the global average of 15.5 per cent.

Guinea, Senegal and Sierra Leone<sup>65</sup>. Furthermore, 50 per cent of all food-fish originates from small-scale fisheries, and almost all fish from small-scale fisheries is used for food (as opposed to animal feedstuffs).

Unfortunately, if current trends continue, the future for food security in West Africa is not bright. According to FAO, the amount of fish available for food in Sub-Saharan Africa has declined since 1990<sup>66</sup>. The population has increased, while the fisheries have become depleted due to overcapacity and overfishing, as well as destructive fishing practices. Furthermore, as explained below, the local small-scale fleets compete for resources with foreign fleets, both those fishing under agreements and those fishing illegally. The large industrial foreign vessels with advanced equipment take a large proportion of the fish. In addition, the foreign fleets, including the EU fleet, usually do not land the fish in Africa, but take it back to their home ports for processing. Finally, in some countries, a considerable amount of fish taken by local fleets is exported, in order to earn much-needed foreign exchange. The consequence of all these factors is frequently less fish for local consumption, even in countries with abundant, but dwindling, resources in extensive EEZs. FAO considers that, in the near term, the contribution of fisheries to food security will decline in Africa.

## **4.6 Benefits to the Local Economy**

### *4.6.1 Small Scale Fisheries*

Small-scale fisheries are particularly important for developing countries, both for employment and for food security. Most fishers in developing countries depend on small-scale, artisanal or subsistence fishing and fish farming for livelihood and income. FAO estimates that approximately 90 per cent of the people reported as fishers may be classified as small-scale. Half of the fish used for human consumption originates in small-scale fisheries. In addition to providing a livelihood and income for persons directly involved in fishing, small-scale fisheries can have a multiplier effect on the entire local economy, through associated industries and occupations. As well as full-time “regular” fishers, many people in Africa work as part-time or seasonal fishers to supplement their income from other sources, usually farming. Many of these people live in remote rural areas where there are few other sources of income and where fishing constitutes an employment of “last resort”. Fisheries can make significant contributions to food security and poverty alleviation for fisheries and fishworkers, for their families and dependants, the local communities through purchases of goods and services, consumers, those whose income is derived from multiplier effects, and the country in general through employment, taxes and export earnings.

Small-scale fisheries can be broadly characterized as employing labour-intensive harvesting, processing and distribution technologies to exploit fishery resources. They may operate at widely different organizational levels ranging from self-employed single operators through informal microenterprises to formal sector businesses, but they all provide employment opportunities and income generation to many people in coastal and rural communities, most of whom are poor. Fishing activities, conducted full-time or part-time, or just seasonally, are usually targeted on supplying fish and fishery products to local and domestic markets, and for subsistence consumption. However, in the past 10-20 years, export-oriented production has

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<sup>65</sup> *Contribution of Fisheries* at p. 5 and SOFIA 2006 at p.36. The numbers in the two publications are not identical, as SOFIA uses more recent statistics.

<sup>66</sup> <http://www.fao.org/fi/website/FIRetrieveAction.do?dom=topic&fid=12367>.

increased in some small-scale fisheries because of globalization and the requirements of financial institutions.

Typically men are engaged in fishing and women in fish processing and marketing. Women are also known to engage in near-shore harvesting activities and men are known to be involved in fish marketing and distribution. Other ancillary activities such as net-making, boatbuilding, engine repair and maintenance, etc. can provide additional fishery-related employment and income opportunities in marine and inland fishing communities. Fishing or fish farming is often undertaken as a supplement to other economic household activities such as farming and small-scale trading. These multiple economic activities not only help to bridge the great seasonality in the abundance of fishery resources, but also insure against risks of failing production in any single activity. While often difficult to measure, the socio-economic importance of these activities is undeniable, not only because of their contribution to production and income but also as food security for the communities concerned.

Fisheries often generate significant indirect multiplier effects in coastal communities through intrasectoral interactions (e.g. between capture fisheries and other activities, such as net-making and repair, or between capture fisheries and aquaculture through the supply of fishmeal), as well as intersectoral interactions (e.g. between forestry and fisheries through the supply of timber for boat-building, or between agriculture and aquaculture through the supply of feed). Moreover, the infrastructure developed for fisheries (feeder roads, landing sites and coastal havens, water-retaining ponds) tend to trigger further economic developments in other sectors, such as tourism or agriculture.

Small-scale fisheries have significant comparative advantages over industrial fisheries, such as: greater economic efficiency (due to less expensive equipment and less need for fuel); fewer negative impacts on the environment; and the provision of more widely distributed economic and social benefits. The issue of small-scale fisheries is a permanent fixture on the agenda of the FAO Committee on Fisheries (COFI). In 2005, after a series of consultations, the FAO prepared and published guidelines on “Increasing the contribution of small-scale fisheries to poverty alleviation and food security”.<sup>67</sup> Small-scale fisheries were discussed at the 2007 COFI from a human rights perspective<sup>68</sup>. FAO members called for an international conference on small-scale fisheries.<sup>69</sup>

#### 4.6.2 *Employment*

The fishing industry provides employment for an estimated 10 million people in sub-Saharan Africa, 7 million of which are from West and Central Africa<sup>70</sup>. Most of these are employed directly as fishers<sup>71</sup> or in closely related secondary employment, such as fish processing or trade. In most cases the fisheries are small-scale and artisanal. The employment effects at the tertiary level are significant, although difficult to quantify. Included are: boat building and repairs, fuel sales, wood sales, unloading fish, breaking ice blocks, cleaning, packing and transporting fish. Many of the latter are less financially rewarding and often temporary jobs, but are considered to provide a real “safety net” for the poor<sup>72</sup>.

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<sup>67</sup> FAO Technical Guidelines for Responsible Fisheries no. 10, 2005.

<sup>68</sup> FAO, Social Issues in Small-Scale fisheries, Doc. COFI/2007/6.

<sup>69</sup> FAO Fisheries Report No. 830 FIEL/R830 (En), (advance copy), Report of the twenty-seventh session of the Committee on Fisheries, Rome, 5–9 March 2007.

<sup>70</sup> *Contribution of Fisheries*, p 2. These figures exclude Morocco, which has a large fishing industry.

<sup>71</sup> In Senegal 17 per cent of the active working population is engaged in fish-related activities.

<sup>72</sup> *Ibid*, p 4.

The post-harvest sub-sector provides women with many jobs and plays an essential role in economic and social development. Many women in West African States are powerful traders and influential business owners because of their involvement with the sector, which provides them with financial independence, social status and a means to educate their children<sup>73</sup>. In the processing sector, women make an important contribution through smoking and drying a highly perishable food source for the local market where ice-making facilities are usually lacking. In the Angolares region of São Tomé, for example, women are using innovative solar powered dryers encased in plastic to reduce infestation and wastage<sup>74</sup>.

## 4.7 Benefits to the National Economy

### 4.7.1 Contribution to GDP

Fisheries can contribute the most to national wealth through the value added to fish after the first sale through processing and trade, which account for 30-40 per cent of the gross value added (GVA), as compared with the production section, which provides 60-70 per cent<sup>75</sup>. Côte d'Ivoire has obtained the best value added for its products, in proportion to the total national catch<sup>76</sup>, because Cote d'Ivoire has a thriving tuna canning industry that depends on catches landed by the EU fleet for raw material. In contrast, São Tomé and Príncipe obtained a value added far below the average for the West African countries in the study area. This can be explained by the low purchasing power of these countries and the number of players involved in the value chain. The shorter the trade channels (between the fisherman and the retailer), the fewer the number of transactions, and the lower the possibility for creating value added. In Mauritania, the importance of industrial fisheries and the development of economies of scale have probably helped to reduce trade margins and value added per ton of fish produced through small-scale fisheries.

### 4.7.2 Exports

Small-scale fisheries can make significant contributions to national economies through the generation of foreign exchange derived from international trade. For example, export values world-wide have risen from US\$15 billion in 1980 to US\$71.5 billion in 2004.<sup>77</sup> World fish imports reached a new record of US\$74 billion. In 2004, developing countries' exported one-quarter of their total production, while their share of total exports was 48 per cent by value and 57 per cent by weight, with net receipts (i.e. deducting their imports from the total value of their exports) from fish trade increasing to almost US\$20.4 billion. In Africa, the difference between fish exports and imports in 2000 to 2003 gave an average trade balance of around US\$1.8 billion per year. Fish exports can also help national economies enter international markets, particularly in high added value segments such as crustaceans and

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<sup>73</sup> The benefits are not universal. Studies in São Tomé, for example, have shown that women begin work in processing at a young age (14 years or less), often forgoing education; a Department of Fisheries survey in the country found a 46 per cent illiteracy rate for women, compared to 19 per cent nationally. See [www.pewoceanscience.org/projects/Sao\\_Tome/intro.php?id=62-20k](http://www.pewoceanscience.org/projects/Sao_Tome/intro.php?id=62-20k).

<sup>74</sup> Sustainable Fisheries Livelihoods Programme (SFLP), *Fisheries in the Livelihoods of the Poor in West Africa: Benin* (SFLP, 2002), available at [www.sflp.org/eng/007/pub4/fd/nav.htm](http://www.sflp.org/eng/007/pub4/fd/nav.htm).

<sup>75</sup> *Contribution of Fisheries*, p 2.

<sup>76</sup> M Kebe and F Tallec, *Contribution of Fisheries to National Economies* (FAO, 2006) at p 11.

<sup>77</sup> FAO, SOFIA 2006, at p 57.

cephalopods.<sup>78</sup> However, demand for increased exports can create pressures to increase capacity and to fish unsustainably, thereby leading to overfishing and depletion of resources.

When the trade balance in fishery products is positive, as in Gabon, Mauritania and Senegal, fisheries are a net provider of currency to the national economy. When exports mainly concern high-value fish, this does not automatically threaten the supply of lower-value fish on local markets. In Senegal, for example, only 15 per cent of cheap small pelagic catches are exported (mainly to other African countries), compared to 80, 95 and 100 per cent of demersal, shrimp and cephalopod catches<sup>79</sup>. However the diversion of labour and fisheries management capacity to the higher value segment may compromise the supply of lower value fish to the local market. Even without exports, the pursuit of higher value species to supply the growing tourist industry and the middle income home market raises concerns for food security amongst poorer households in rural areas.

#### 4.7.3 *Government revenues*

Local revenues are generated from fishing licences and from taxes on fisheries-related activities paid by wholesalers, retailers and processors at the landing site and marketing stages. Taxes also applied to fishing gear, engines and fuel and represent 5-10 per cent of the value added from the first sale<sup>80</sup>. These important sources of finance can be used by local and national authorities on schools, transport and other infrastructure expenditure.

#### 4.7.4 *Migration*

In recent years, illegal migration to Europe from Africa has been a growing concern. Fishing boats with Africans seeking a better life floundering on the way to Europe are frequently reported in the press. This is a humanitarian disaster, as well as an immigration problem. Although sometimes these migrants are fleeing internal conflicts, most often they are economic refugees. Beset by poverty and hunger in their native countries, they hope to find jobs in wealthier lands. Many are fishers with little education and small prospects of employment in their native country. While there is no absolute proof, it may be surmised that at least some of these migrants are unemployed because of the fisheries in their EEZs are depleted, possibly due to overfishing and competition from foreign fleets. There is some anecdotal evidence to this effect in recent press reports.

For example, on 4 July 2007, IRIN, the news service of the UN Office for the Coordination of Humanitarian Affairs, published an interview with Senegalese fishermen (from Soumbédioune, Mbour) who have attempted the dangerous, 1448 km journey from Senegal to the Canary Islands. The interview indicates that these fishermen form part of the rising tide of illegal immigrants gambling with their lives at sea for better work, better pay, and better lives in Europe. According to the International Organisation for Migration (IOM), over 31,000 people tried to get illegally to the Canary Islands from West Africa last year. Of those, at least 6,000 died on the way. Asked why he was willing to risk his life to find work in Europe, a fisherman responded: “Look here on the beach. You can see all of these men, with their boats, and how few fish we catch after a whole day’s efforts. There’s no living off the sea these days. The fish are gone, and hard work won’t change that.” The article states that in order for things to change, the population, and especially the youth, need to believe in

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<sup>78</sup> See Appendix 2.

<sup>79</sup> *Contribution of Fisheries*, p 3

<sup>80</sup> *Ibid.*

their chances for success in Senegal. This can only happen with the further development of the country and a general change in mentality said the representative of IOM<sup>81</sup>.

## 4.8 Constraints on the Fisheries Industry in West Africa

### 4.8.1 Poverty and marginalisation

Poverty is both partly an outcome of inadequate fisheries management (resulting in depleted fish stocks, overcapacity, etc.) and a constraint in improving management. Poverty acts as a constraint where the need to conserve the stock would require limiting the number of people engaged in fishing in an environment in which they have few alternative sources of food and livelihood. In these circumstances, governments might be reluctant to act<sup>82</sup>. Fishers and their families, who are living a marginal existence, who are uneducated, in poor health, hungry, without access to social services and without access to alternative employment, are not in a position to be receptive to efforts to conserve the fishery and to manage it sustainably. The political and social marginalisation of fishers also increases their vulnerability, reducing their resilience to shocks and crises in their daily lives. Poor people in fishing communities need social development assistance in order to be able to participate effectively as partners with governments in fisheries management. Actions are needed to assist the development of fishers' organizational capacity and to introduce methods to facilitate their effective participation at local and national levels in decisions affecting the fisheries sector, their livelihoods and work conditions, in order to create a sense of ownership and accountability in the decision-making process. The contribution of fisheries to poverty alleviation and food security is therefore an integral part of the larger challenge of development<sup>83</sup>.

### 4.8.2 Lack of national fisheries policies and capacity for sustainable fisheries management

States have the primary responsibility for achieving sustainable development. They are responsible for the identification of sustainable development priorities, orientation policies, implementation of national strategies, and measures to strengthen national institutions and legal frameworks. However, many developing countries lack national fisheries policies setting out goals for sustainable fisheries and management strategies and measures necessary to achieve them. They lack national fisheries laws and a legal infrastructure to implement them. Some lack suitable fisheries administrations and institutions and personnel trained in fisheries management. Financial resources are also inadequate. However, with a substantial increase in aid, technical assistance and capacity-building, much could be done.

Some developing countries are trying to improve the national legal and policy frameworks within which small-scale fisheries operate in order to enhance their contribution to food

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<sup>81</sup> Available at: <http://www.irinnews.org/PrintReport.aspx?ReportId=73079>. See also a report by IRIN published on 3 November 2006: "SENEGAL: Migration - a mother's load"; a series of reports on African migration to Europe published on the BBC website at: [http://news.bbc.co.uk/2/hi/in\\_pictures/5335062.stm](http://news.bbc.co.uk/2/hi/in_pictures/5335062.stm) and at: [http://news.bbc.co.uk/go/pr/fr/-/2/hi/talking\\_point/5404816.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/talking_point/5404816.stm); as well as "Senegalese artisanal fisheries weep over noble fish", *afrol News/WWF*, 25 May 2007, at: <http://www.afrol.com/articles/12948>. On 5 July 2007, the World Bank published *International Migration Outlook 2007*; information available on OECD website at: <http://www.oecd.org/document/>. See also the World Bank website at <http://www.worldbank.org/> for the report "Migration Now Third Pillar".

<sup>82</sup> FAO Committee on Fisheries, *Social Issues in Small-Scale Fisheries*, COFI/2007/6, December 2006.

<sup>83</sup> FAO, *Increasing the Contribution of Small-Scale Fisheries to Poverty Alleviation and Food Security*, FAO Technical Guidelines for Responsible Fisheries, No 10 (Rome: FAO, 2005).

security and poverty alleviation. Some strategies can be tackled by fisheries-specific initiatives, while others require action by planners, policymakers and practitioners in other sectors. Strategies within fisheries include activities relating to: (a) data collection and research for strategy development; (b) reduction of vulnerability and ways to increase the added value of small-scale fishing activities; (c) resource allocation and management; (d) addressing trade-offs between short-term and long-term objectives and the impacts of different policies and strategies; and (e) measures aimed at improving governance.

Resource allocation and management may also be used to increase the contribution of small-scale fisheries to food security and poverty alleviation, particularly in overexploited stocks, by (a) improving the resource base through better resource management (e.g. reduction in destructive fishing practices) and stock rebuilding strategies (protected areas, restoration, stock and habitat enhancements); (b) allocating a greater share of resources to small-scale fisheries as opposed to industrial fisheries, including more explicit quota allocations to small-scale fisheries and the setting up of wider areas reserved for their exclusive use; and (c) providing alternative livelihoods under effective governance structures so as to reduce pressure on overfished resources. Provision of alternative livelihoods can reduce poverty in fishing communities and allow stocks to recover. Stock recovery can then generate possibilities for increased supplies of fish for human consumption; enhanced earnings in small-scale fisheries; income and employment multipliers in fishing communities; and increased national export revenues from small-scale fisheries.

#### *4.8.3 Lack of data and expert scientific advice for fisheries management*

Scientific expertise for assessment of fish stocks and advice on conservation and management measures is critical for sustainable fisheries management. Accurate reports from fishing vessels are also necessary to obtain data about the abundance of the stock, about the amount and identity of catches and about catch per unit effort. Many developing countries do not have access to reliable reports on catches or on assessments derived from surveys of the abundance of fish stocks and associated and dependent species. Such data and scientific analysis is essential for the determination of total allowable catches and the precautionary approach. There is almost no research relating to ecosystem structure and functioning, which is necessary for the application of the ecosystem approach. From a socio-economic perspective, more research is needed into alleviation of poverty in fishing communities and into ways to improve small scale-fisheries.

Unfortunately, a lack of resources and inaccurate reporting of industrial catches means that for most of these fisheries little is known about the status of the fish stocks, fishing effort and other pressures to which they are being subjected. Scientific analysis depends on the submission of accurate information from captains and vessel owners who have commercial incentives to misreport their activities with little fear of being caught.

#### *4.8.4 Lack of adequate systems for monitoring, control and surveillance (MCS)*

The weakness of the MCS systems of some developing coastal States constitutes a major constraint. Indeed, limited resources and the large size of the ocean space over which they exercise jurisdiction have hampered these countries' ability to enforce conservation and management measures against unauthorized fishing. Unauthorized fishing activities have been carried out through the use of flags of convenience, illegal fishing in the exclusive economic zone and on the high seas, and misreporting of catch. Developing coastal States dependent on access fees for their economic development are particularly vulnerable because of the effects of fee levels that are proportionate to the volume of catch.

#### *4.8.5 Lack of infrastructure and resources to enhance value-added*

The lack of raw material because of foreign fishing is a major constraint to developing a local processing industry and products suitable for trade. However, the lack of quality infrastructure in Africa is another constraint. For example, while masters are reluctant to land their vessels in Mauritania, because of the poor port facilities<sup>84</sup>, they are happy to land at highly developed Abidjan. Value added can be increased in small-scale fisheries through improved infrastructure and management of landing sites, storage facilities and market buildings; better information about markets; and enhanced processing and reduced post-harvest waste, including improved handling, processing and distribution of both by-catch and target species.

#### *4.8.6 Competition for resources*

In coastal areas, small-scale fishers frequently compete for the area and for resource itself with other sectors, i.e. for coastal land from developers, for marine parks, from tourism and nature conservation interests, energy production, shipping etc. The low social status of most small-scale fishers means that they often lose out in the battle for access and user rights.

#### *4.8.7 Poor governance*

Improved governance is critical to the success and effectiveness of any strategy to enhance the contribution of small-scale fisheries to food security and poverty alleviation. There are many reasons for the lack of development in West Africa, including widespread and long-lasting conflict, no effective government in certain periods, poor governance and widespread corruption. These are systemic problems that constrain development in general and the development of fisheries in particular. To overcome this constraint and all the others, increased finance for development assistance, assistance for institution-building and better coordination of donors is essential.

### **4.9 The Presence of Distant Water Fishing Fleets**

As noted above, there is a considerable foreign presence in West African waters, with both authorised and unauthorised industrial vessels taking large quantities of fish. Concerns have been expressed in many quarters over the possible negative effects of foreign access agreements on conservation, local supplies and equity. Some organizations have advised developing States to take progressive management measures in access regulation rather than wait for the fisheries to be overexploited. They also stress the need for consultations with all stakeholders in the sector to regulate access and manage fishing capacity through protocols and consultation mechanisms.

While the payments received for fishing rights might appear attractive to West African governments, the presence of distant water fishing vessels in their EEZs can have serious adverse consequences. These include: competition for resources between the DWF and the local fleet; overfishing; excessive bycatch; other destructive fishing practices, such as bottom trawling; IUU fishing; diversion of resources away from the host country for processing in other countries (deprivation of value-added); and possible threats to food security. These problems pose a severe risk of an increase in poverty among already poor populations.

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<sup>84</sup> Development assistance is now being provided to remedy this situation.

Although these problems can arise from all the distant water vessels fishing in West African EEZs, to the extent that they result from the EU's fisheries policy, they would appear to contradict the EU's obligation to take account of development objectives.

#### 4.9.1 *Overfishing*

As noted above, overfishing is a serious problem in West Africa. It is generally considered that the fisheries of most of these countries are depleted due to over-fishing by foreign fleets fishing under agreements and to a substantial amount of IUU fishing<sup>85</sup>.

Many fisheries in West Africa, including small-scale fisheries, are facing difficulties relating to local excess fishing capacity, unauthorized incursions by foreign fleets, unsustainable fishing practices, human-induced changes in the ecosystem, ecosystem degradation, undervaluation of catch, excessive by-catches and discards, and increasing competition between artisanal and large-scale fishing and between fishing and other types of activities. The absence of controls on the overall fishing effort and the fishing practices of local fishers and foreign fishing vessels, prompted by the inadequacy of monitoring, control and surveillance, is the root cause of such unsustainable fishing practices. These practices have adverse effects on the sustainable development and conservation of fishery resources and the economies and food security of coastal States.

Non-reporting and misreporting can also have serious consequences. Not only does this severely hamper the determination of a sustainable level of fishing, but also downgrades the agreed level of compensation provided for the national and local fishing sector in the host country. In the context of poverty reduction and food security, the lack of information given to small-scale fishers on the state of the stocks reduces further their ability to manage them sustainably and maintain a surplus. It also weakens considerably their ability to negotiate available allocations and compete with larger scale fishing operations and/or other sectors.

In addition to overfishing targeted species, excessive bycatch and discards, as well as damage to habitats and ecosystems, can lead to the decline and depletion of the targeted stocks. Bycatch and discards, particularly prevalent in shrimp fisheries using very fine mesh nets, are also a major factor in the depletion of marine resources. For example, Mauritanian cephalopod trawlers fishing in Mauritania and in Senegal were found to discard 72 per cent and 60-75 per cent of their catch, while the Senegalese mixed fleet (targeting finfish and shrimps in shallow waters) had a discard rate of 67 per cent<sup>86</sup>.

#### 4.9.2 *Conflict between foreign fleets and local small-scale fishers*

International agreements, policy declarations and the FAO Code of Conduct require the EU to protect artisanal and small-scale fisheries. Problems arise where the EU fleet targets the same species as the artisanal fleet. This may lead to conflicts between vessels and gears, competition for the same stocks, and food security issues. Frequent conflicts between the EU fleet and local fleets could lead to the conclusion that the two are incompatible. The EU fleet

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<sup>85</sup> CECAF, Report of Fourth Meeting of the Scientific Sub-Committee, op. cit. Environmental Justice Foundation, *Party to Plunder: Illegal Fishing in Guinea and its Links to the EU*, 2005.

<sup>86</sup> M Baddy and S Guenette, *The Fisheries Off the Atlantic Coast of Morocco 1959-1997*, undated, available at [www.seaaroundus.org/report/datasets/Morocco](http://www.seaaroundus.org/report/datasets/Morocco).

also affects small-scale and artisanal fishers by competing for the same fish stocks and by taking or destroying through non-selective gear, fisheries resources on which they depend.<sup>87</sup>

In some cases, EU agreements have coincided with the development of small-scale fishing in West Africa, often funded by Japanese and French donors, the EU and the African Development Bank<sup>88</sup>. This assistance in building capacity was itself incompatible with sustainable development as the increase in fishing capacity coincided with a decrease in stocks. Some national fleets are increasingly able to exploit coastal, demersal and pelagic resources and are able to travel further from the coast. Distant water fleets are therefore in direct competition with local and artisanal fleets for coastal demersals, crustaceans and cephalopods, and often outside the 12nm zone usually reserved for national fleets. For example the Senegal-EU agreement from 1990 to 2006 allowed for fishing possibilities for inshore demersal fishing and cephalopods, although the possibilities were decreased successively in 1994, 1997 and 2001, and there are suggestions that one of the difficulties in negotiating a new agreement was the reluctance of Senegal to allow further foreign fishing possibilities of these coastal demersal resources.

In recent years there has been considerable concern about the fate of small-scale and artisanal fisheries when faced with large, highly sophisticated industrial fleets. Concerns over the effects of foreign fishing on artisanal fisheries in countries such as Senegal have been a key element in the expressions of concern by NGOs about the impacts of access agreements. The main response to this issue is zoning for fishing grounds, in particular to keep foreign vessels offshore. These usually include the 12nm territorial seas, which are reserved for local small-scale fleets.<sup>89</sup> However, because of defects in MCS, vessels frequently enter into prohibited areas, coming into conflict with local fishers.

In 2001, in comments on the Commission communication on fisheries and poverty reduction, the Development Committee of the European Parliament concluded:

Thus, the signature of fisheries agreements sometimes results in competition between European fishing fleets and local small-scale fishing in the developing countries for depleting resources, thereby threatening the survival of coastal communities in the developing countries and the resources on which they depend (Senegal, Mauritania). Because some of these fleets use destructive fishing methods or too great a fishing effort for the resources available, they soon come into conflict with the small-scale fishing fleets in developing countries and are a threat to the conservation of resources.<sup>90</sup>

In addition, there can be negative impacts on development, if the “easy money” from the FPA means there is less incentive for the coastal country to develop a national fisheries fleet and if stocks are over-exploited and leave fewer opportunities for national industrial and artisanal fishers, as well as artisanal processors (who are often women).

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<sup>87</sup> In Mauritania there has been overlap between the artisanal fishery and the EU vessels both targeting octopus, and although the number of vessels has now been decreased from 55 to 43 between the previous FA (2001-2006) and the current FPA (2006-2008), Gross Reference Tonnage has increased from 16,500 GRT/year to 18,600 GRT/year.

<sup>88</sup> Jean-Yves Weigel of the Institut de Recherche et Developpement (IRD), Paris, “Impacts of Development Assistance: Lessons Learned for Better Fisheries and Aquaculture Governance”, OECD, *Fishing for Coherence*, 2006. This interesting paper suffers from a bad translation that makes it difficult to understand.

<sup>89</sup> For example, the Mauritanian FPA contains a new restricted zone for cephalopods and an extended restricted zone for surface long-liners.

<sup>90</sup> Fisheries and Poverty Reduction, op. cit.

### 4.9.3 IUU fishing

The serious impact of IUU fishing, both on the high seas and within exclusive economic zones, on the economies and livelihoods of developing countries has been described in many forums. For example, the High Seas Task Force (HSTF) report *Closing the Net*<sup>91</sup>, suggests that IUU fishing may cost sub-Saharan countries \$US1 billion per year. In countries like Guinea it is estimated that between 20 and 60 per cent of vessels fishing within the exclusive economic zone are unlicensed<sup>92</sup>. Losses from these illegal activities are estimated at US\$27 million in shrimp catches, US\$49 million in octopus catch and US\$8 million in discarded demersal fish taken as bycatch. These may be compared against income from fisheries licenses of US\$5.8 million<sup>93</sup> and US\$3 million from the bilateral fisheries access agreement with the EU. Information provided by SOCU<sup>94</sup> shows the extent of the problem in the region, with some coastal states experiencing very high levels of illegal fishing. In 2001, 60 per cent of the 2,313 vessels spotted in Guinea during 220 hours of surveillance flights were committing offences. In the same year 29 per cent of the 947 vessels spotted in Sierra Leone or 23 per cent of the 926 vessels spotted in Guinea Bissau were fishing illegally<sup>95</sup>.

### 4.10 Regional Fisheries Bodies

Regional legal frameworks and institutions are essential to successful conservation and management of fish stocks as well as to their sustainable exploitation. Through the UN Fish Stocks Agreement, the FAO Code of Conduct and numerous UN General Assembly resolutions, the international community has recognised that the best way to promote conservation and management, responsible fishing and sustainable use of marine living resources is through regional fisheries management organisations (RFMOs). RFMOs typically include both coastal States and fishing States in a particular region and adopt legally binding conservation and management measures either for a particular species, such as tuna, or for all or most species in the region. These are independent organisations. In addition, FAO has established a number of regional fishery advisory bodies that conduct scientific assessments and provide recommendations on conservation and management to member States.

There is no RFMO specifically for West Africa. However, tuna fisheries in the area are managed by an RFMO having a broader geographical scope: the International Commission for the Conservation of Atlantic Tunas (ICCAT). Scientific research and management advice are provided by the Fishery Committee for the Eastern Central Atlantic (CECAF), an FAO advisory body. The independent Sub-Regional Commission on Fisheries (SRFC) has done some good work on monitoring, control and surveillance. Two other organisations in the region are: the Regional Fisheries Committee for the Gulf of Guinea (known by its French acronym, COREP); and the Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean (known by its French acronym, COMHAFAT).

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<sup>91</sup> High Sea Task Force. *Closing the Net: Stopping Illegal Fishing on the High Seas*, 2006

<sup>92</sup> MRAG, *Review of Impacts of Illegal Unreported and Unregulated Fishing in Developing Countries, Synthesis Report*, July 2005.

<sup>93</sup> Ibid.

<sup>94</sup> The Surveillance Operations Co-ordinating Unit (SOCU) based in Banjul (Gambia) is a decentralised institution of the Sub Regional Fisheries Commission (SRFC). SRFC member States are: Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone.

<sup>95</sup> Environmental Justice Foundation, *Party to Plunder – Illegal fishing in Guinea and its Links to the EU*, 2005.

#### 4.10.1 *The International Commission for the Conservation of Atlantic Tunas (ICCAT)*

ICCAT is the international fishery management organization (RFMO) responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas<sup>96</sup>. The EU is a member, as are some West African countries with which it has a fisheries agreement: Morocco, Gabon, Cote d'Ivoire, Cape Verde, Sao Tome e Principe, Guinea. The primary objective of the Commission is to maintain populations of tuna and tuna-like species in the Atlantic Ocean (including off the West African coast) at levels that will permit the maximum sustainable catch for food and other purposes. ICCAT compiles fishery statistics from its members and from all entities fishing for these species in the Atlantic Ocean; coordinates research, including stock assessment, on behalf of its members; develops scientific-based management advice; provides a mechanism for contracting parties to agree on management measures; and produces relevant publications. Because the EU is a member of ICCAT, its measures are applicable to EU vessels fishing in West Africa. Most West African fisheries agreements including tuna fishing expressly incorporate ICCAT measures.

The ICCAT Standing Committee on Research and Statistics (SCRS) collects data on all tuna and tuna-like species in the Atlantic and conducts regular stock assessments that are communicated annually to the Commission. The Sub-Committees on By-Catch and Environment consider non-target species and the relationships of tunas and their environment. Consequently, scientific knowledge of tuna resources is substantially better than for other resources in the West Africa region.

#### 4.10.2 *The Fishery Committee for the Eastern Central Atlantic (CECAF)*

CECAF is an advisory body established by the FAO to a) facilitate the coordination of research and to encourage education and training; b) assist its members in an advisory management capacity in establishing rational policies to promote the rational management of resources<sup>97</sup>. CECAF's terms of reference are quite broad, potentially extending to most aspects of fishery development and management. These functions are implemented primarily by a Committee, composed of all CECAF member countries, which is empowered to adopt (non-binding) recommendations. The Committee receives advice from a Scientific Sub-Committee. Members include both African coastal states and distant water fishing states. The African members are: Benin, Cameroon, Cape Verde, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Morocco, Sao Tome and Principe, Senegal, Sierra Leone and Togo. The EU is a member.

CECAF has had several notable achievements, particularly in the period immediately following the extension of fisheries jurisdiction by West African coastal States.<sup>98</sup> Factors that have constrained the functioning of CECAF include a lack of funding, a lack of commitment and inadequate implementation of recommendations adopted by the Committee<sup>99</sup>. Largely due to under-resourcing and lack of data, the Scientific Committee is not able to comprehensively and accurately assess fish stocks in West Africa. At its most recent meeting in October 2006, the Scientific Sub-Committee noted that all the working groups had

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<sup>96</sup> ICCAT was established in 1969 under the International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966, 673 UNTS 63, in force, 21 March 1969.

<sup>97</sup> The Committee was established by Resolution 1/48 of the FAO Council at its 48th Session, held in Rome in June 1967.

<sup>98</sup> See CECAF, *Options for Long-Term Institutional Arrangements for Fishery Management in the Eastern Central Atlantic*, CECAF Doc. XV/2000/6, Appendix IV.

<sup>99</sup> CECAF, *ibid*, at para 8.

identified inadequate data as a major problem. In particular, there was a general lack of biological data. The Sub-Committee stated that better data on catch and effort would be necessary for more reliable stock assessment in the region<sup>100</sup>. At the same meeting, it was noted that several development-oriented projects were underway to survey the fishery resources in the West African region. The EU was funding a project on Improving Scientific and Technical Advice for Fisheries Management (ISTAM). CECAF remarked on the high number of projects being funded and implemented in the region by different agencies and expressed concern about the lack of coordination and the duplication of effort, as well as the constraints in human resources available locally.

#### *4.10.3 The Subregional Commission on Fisheries (SRCF)*

The objectives of the Commission are to harmonize the long-term policies of its members relating to the preservation, conservation and exploitation of their fisheries resources and to strengthen cooperation amongst members<sup>101</sup>. Only coastal States in the subregion may become members. Members are: Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania and Senegal. Six other coastal States in the region do not participate: Benin, Côte d'Ivoire, Ghana, Liberia, Sierra Leone and Togo. The main decision-making body is the Conference of Ministers, meeting biennially, supported by a Coordinating Committee, a Permanent Secretariat and ad hoc Working Groups. There is no scientific committee. Composed of senior fisheries officials and experts, the Coordinating Committee is the main advisory body to the Conference of Ministers. It is required to meet at least once a year<sup>102</sup>, but recently has met more regularly, around two or three times per year.

The SRCF has been successful at encouraging cooperation and harmonization amongst its Member States. Various reference documents have been created; sub-regional enforcement capacity-building and operational exercises have been developed; and in 1993, three legal instruments were adopted<sup>103</sup>. However, these have not been extensively applied and have only rarely been enforced. The minimum requirements in the convention on conditions of access have only been rarely and partially been insisted on in EU fisheries agreements.

Most recently, the SRCF has been engaged in enhancing monitoring control and surveillance in the region in order to combat IUU fishing. Considerable work is currently being done in relation to national and regional VMS, which was identified as a priority issue in the Commission's 2002-2010 Strategic Plan of Action. SRCF is also hosting ISTAM. The lack of resources has hindered the SRCF from fulfilling its potential as a sub-regional organization.

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<sup>100</sup> CECAF Report, op. cit. pp.5-6.

<sup>101</sup> Convention for the Establishment of a Sub-Regional Fisheries Commission, Dakar, 29 March 1985, in force 1989. The Convention was amended in 1993.

<sup>102</sup> Art 11.

<sup>103</sup> Convention regarding the Determination of Conditions of Access to and Exploitation of Fisheries Resources off the Coasts of the Sub-Regional Fisheries Commission Member States, Praia, 14 July 1993. Among the access conditions specified are minimum mesh sizes (Art 5 and Annex II); certain requirements relating to the marking of vessels (Art 6), communicating entry and exit, a fishing plan and, periodically, position (Art 7); landing catches in domestic ports (Art 9); taking on nationals as crew members (Art 11); and action to be taken in the case of serious infringements (Art 12). Convention on Subregional Cooperation in the Exercise of Maritime Hot Pursuit, Conakry, 1 September 1993. Protocol on Methods of Coordination of Surveillance Operations in the Member States of the Sub-Regional Fisheries Commission, 1993. No information appears to be publicly available on this Protocol.

#### *4.10.4 The Regional Fisheries Committee for the Gulf of Guinea (COREP)*

COREP was established in 1984<sup>104</sup> by an agreement that never entered into force. It has never functioned formally or regularly. Membership is limited to coastal States of the subregion comprising Congo, Democratic Republic of Congo, Gabon and São Tomé and Príncipe. The objectives are similar to those of SRCF, namely to determine a concerted attitude towards the activities of foreign fishing vessels and to give priority to the needs of the fishing vessels originating from member countries; to harmonize the national regulations with a view to having a unified regulation fixing the conditions of fishing and the control of fishing operations in the area covered by the Convention; and to collect the maximum scientific, technical and economic data on fishing operations. Although in recent years the Committee has met several times, few such initiatives have been developed.

#### *4.10.5 COMHAFAT*

The Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean (COMHAFAT), open to all States on the African Atlantic coast, was established by an international agreement in 1991<sup>105</sup>. The Conference has 13 member States, of which eleven are from the region covered by this study<sup>106</sup>. Its objectives are widely defined and include: promoting cooperation in fisheries conservation, management and development in the region, including the monitoring, surveillance and control of fishing vessels; increasing food self-sufficiency through the rational utilization of fishery resources; stimulating the national economic sectors through the direct and secondary effects resulting from fishery resources exploitation; and enhancing, coordinating and harmonizing efforts and capabilities for the purpose of conserving, exploiting, upgrading and marketing fishery resources. In practice, the Conference has a much smaller range of activities, although it has contributed to the identification of a number of projects which have been carried out or are on-going in the region, particularly in the areas of monitoring control and surveillance (MCS), the application of GIS, training on various aspects of fisheries and improvement in the legal frameworks of member countries.

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<sup>104</sup> Convention concerning the Regional Development of Fisheries in the Gulf of Guinea, Libreville, 21 June 1984, not in force. The text of the Convention does not appear to be publicly available. .

<sup>105</sup> Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean, Dakar, 5 July 1991, (1991) 19 LOSB 33, in force, 11 August 1995.

<sup>106</sup> The parties to the Convention are: Angola, Benin, Cape Verde, Congo (Dem. Rep.), Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Morocco, Nigeria, Senegal and Sierra Leone.

## **5 THE INTERNATIONAL LEGAL AND POLICY FRAMEWORK FOR FISHERIES, THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

### **5.1 Introduction**

Policy coherence for fisheries and sustainable development in West Africa should be analysed and applied in the context of the international legal and policy framework. This framework has been developed and adopted globally under the auspices of the United Nations General Assembly (UNGA) and the Food and Agricultural Organisation of the United Nations (FAO). Both the EU and its Member States have participated in these developments and the EU is a party to the relevant legally binding agreements and has endorsed the policy declarations and plans of action. For the EU, these instruments not only form the legal framework in which it is obliged to operate but also describe the standards to which it should conform if it is to maintain credible and responsible fisheries and development policies.

The relevant instruments include not only those relating to fisheries, but also those relating to protection of the environment and sustainable development, of which the conservation, management and sustainable use of fisheries form a part. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is a framework agreement potentially covering all activities on and in the oceans. It contains provisions relating to international fisheries, protection of the environment and assistance to developing countries, which constitute the international legal basis for fisheries agreements in the EEZ. The 1993 FAO Compliance Agreement sets out rules for States to control their vessels fishing on the high seas, while the 1995 UN Fish Stocks Agreement (UNFSA) contains detailed principles and rules for straddling fish stocks and highly migratory fish stocks, including the application of the precautionary approach and the requirement to conserve habitats, marine biodiversity and marine ecosystems.

The 1995 FAO Code of Conduct for Responsible Fisheries is a comprehensive set of principles and international standards for responsible fishing practices for all kinds of fisheries, with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystems and biodiversity. There are special provisions to take into account the interests of developing countries. The Code is supplemented by four International Plans of Action, including the International Plan of Action to Prevent, Deter, and Eliminate Illegal Unreported and Unregulated Fishing (IPOA IUU) and the International Plan of Action for the Management of Fishing Capacity (IPOA Capacity)

Also relevant are the Rio Declaration of the 1992 United Nations Conference on Environment and Development (UNCED), setting out the precautionary principle, and Agenda 21, an action plan containing provisions on sustainable fisheries. In 2002, the World Summit on Sustainable Development (WSSD) adopted the Johannesburg Plan of Action (JPOI) that confirmed Agenda 21 and set out specific actions relating to fisheries, with target dates. In addition, the international community is now addressing development within the context of the eight Millennium Development Goals, which call for the eradication of extreme poverty through sustainable development.

## 5.2 The 1982 United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea<sup>107</sup> is a framework agreement covering all activities on and in the oceans. It establishes the basic framework for coastal State jurisdiction and contains provisions relating to fisheries within the jurisdiction of coastal States and on the high seas. In particular, it defines the Exclusive Economic Zone (EEZ), which extends up to 200 nautical miles from the coast, within which the coastal State has sovereign rights over fisheries. UNCLOS outlines the rights and responsibilities of coastal States and fishing States with respect to the conservation and management of fisheries in the EEZ and elsewhere and sets out conditions of access for foreign vessels to fisheries in the EEZs of coastal States. Under article 61, coastal States have a responsibility through proper conservation and management to ensure that the living resources of the EEZ are not endangered by over-exploitation.

With respect to access by foreign vessels, the key concept is that of ‘surplus’. Coastal States are to determine both the total allowable catch (TAC) for their fisheries resources and the harvesting capacity of their fleet and are then to facilitate access for foreign vessels to fish any surplus<sup>108</sup>. A significant problem is that developing countries (including those in West Africa) often do not have the scientific and technical capacity to assess fisheries resources<sup>109</sup>. The Convention also provides guidance, but no fixed rules, on the conditions governing access by foreign fisheries. It states that such access is subject to any conservation measures and other terms and conditions established by the coastal State, and sets out a list of relevant conditions<sup>110</sup>. Many of are relevant to development issues in fisheries agreements, and the EU’s fisheries agreements reflect a substantial number of these conditions. In practice, however, coastal States have virtually unlimited discretion to determine both whether and how to provide access<sup>111</sup>. The fisheries provisions of UNCLOS form the basis, at the level of general principles, of all the international instruments to follow, both binding and non-binding, global and regional, for the conservation, management and sustainable utilisation of marine living resources. Subsequent instruments provide the detail necessary to implement the principles in practice.

In Articles 63 and 64, the Convention sets out general principles regarding the conservation and sustainable use of straddling and highly migratory fish stocks (transboundary stocks), requiring coastal States and fishing States to cooperate, either directly or through regional or subregional organisations. More detailed principles and rules regarding these stocks are found in the 1995 UN Fish Stocks Agreement.

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<sup>107</sup> UNCLOS 1833 UNTS 3; signed 10 December 1982, in force 16 November 1994. For a recent assessment of the Convention, with special reference to the EU see R Barnes et al, *The United Nations Convention on the Law of the Sea: Developments, Challenges and Perspectives*, European Parliament Study, Doc. PE 363.792 (European Parliament, 2006).

<sup>108</sup> Arts 61-2 UNCLOS.

<sup>109</sup> It is noteworthy, however, that States (including the EU, through FPAs) are increasingly emphasising the concept of surplus in negotiating fisheries agreements.

<sup>110</sup> Arts 62(2) and (4) UNCLOS.

<sup>111</sup> The coastal State’s position is strengthened further by the fact that disputes relating to its discretionary powers for determining allowable catch and harvesting capacity are exempt from the Convention’s compulsory dispute settlement mechanism.

### **5.3 The United Nations Conference on Environment and Development (UNCED)**

The 1992 UNCED, held in Rio de Janeiro, discussed issues of environment and development in all sectors and adopted a Declaration of Principles, the Rio Declaration, as well as Agenda 21, an action plan for the 21<sup>st</sup> century<sup>112</sup>. Oceans and seas are covered in Chapter 17 of Agenda 21, which contains provisions on the sustainable use and conservation of marine living resources, including paragraphs on: management related activities; data and information; international and regional cooperation and coordination; scientific and technical means; human resource development; and capacity-building. The UNCED recommended the convening of the conference that elaborated the UN Fish Stocks Agreement.

### **5.4 Convention on Biological Diversity, 1992**

The Convention provides the international legal framework for the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising from the utilization of genetic resources. In promoting the protection of ecosystems and natural habitats and the maintenance of viable populations of species in natural surroundings, the Convention also has a role in promoting sustainable fisheries. The Elaborated Programme of Work on Marine and Coastal Biological Diversity adopted by the Conference of the Parties to the Convention in 2004 contains several elements relevant to the achievement of sustainable fisheries<sup>113</sup>.

In April 2002, the Parties to the Convention committed themselves to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth. This target was subsequently endorsed by the World Summit on Sustainable Development and the United Nations General Assembly and was incorporated as a new target under the Millennium Development Goals. The EU is committed to the protection of biodiversity and the 2010 Biodiversity Target.

### **5.5 UN Fish Stocks Agreement, 1995**

The UN Fish Stocks Agreement aims to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks<sup>114</sup>. The Agreement is relevant to the EU and West African countries in a number of respects. First, the Agreement enunciates a number of general principles and comprehensive provisions for the conservation and management of fish stocks. Perhaps the most important are:

- Application of the precautionary principle (or approach) and the ecosystem principle (or approach), the requirement to conserve biodiversity and to minimise waste and bycatch

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<sup>112</sup> Agenda 21: Programme of Action for Sustainable Development, Rio Declaration on Environment and Development, Statement of Forest Principles, United Nations Sales Publication – Sales No. E.93.1.11.

<sup>113</sup> Convention on Biological Diversity, text and programme information on website at: [www.cbd.int](http://www.cbd.int).

<sup>114</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 2167 UNTS 3; signed 4 December 1995, in force 11 December 2001. For a recent assessment of the Agreement, with special reference to the EU see C Hedley et al, *Perspectives for the UN Fish Stocks Agreement*, European Parliament Study, Doc. PE 375.320 (European Parliament, 2007); see also C Hedley et al, *The Implications of the UN Fish Stocks Agreement (New York, 1995) for Regional Fisheries Organisations and International Fisheries Management*, European Parliament Working Paper Fish 112 (European Parliament, 2003).

- an emphasis on management of fisheries through Regional Fisheries Management Organisations (RFMOs) or Arrangements (RFMAs), for which a long list of functions is given;
- the requirement for a flag State to be a member of or to cooperate with an RFMO, in order to have access to the stock(s) under its management;
- a long list of responsibilities of the flag State;
- very progressive provisions on enforcement;
- provisions for the collection and sharing of data (essential for accurate stock assessments); and
- provisions for assistance to developing countries.

In recent resolutions, the UN General Assembly has called for these provisions to receive more general application.

Secondly, since a number of important highly migratory stocks (mainly tuna) are present in West African waters the general principles in the Agreement apply to fishing these stocks both on the high seas and in waters under national jurisdiction<sup>115</sup>. This applies in particular to the requirement to apply the precautionary approach, which the Agreement spells out as including a system for using biological reference points in fisheries management.

Thirdly, the Agreement obligates its parties, including the EU, to provide assistance to developing States and to take into account their special requirements. Particularly important are the vulnerability of developing States dependent on the exploitation of fisheries and the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers.<sup>116</sup> It refers to various forms of cooperation, which include enhancing the ability of developing States to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks, assisting developing States to enable them to participate in high seas fisheries for such stocks, facilitating the participation of developing States in RFMOs, and providing assistance to improve conservation, management, scientific research and monitoring, control and surveillance. Some of these forms of cooperation are included by the EU in its fisheries agreements.

## **5.6 The FAO Code of Conduct for Responsible Fisheries, 1995**

While the UN was elaborating the UNFSA, the FAO was working on a more comprehensive non-binding instrument for the better conservation, management and sustainable utilisation of marine living resources<sup>117</sup>. The 1995 Code of Conduct is a non-binding instrument that establishes principles and international standards of behaviour for responsible practices in fisheries, processing and trade, with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem

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<sup>115</sup> These include the application of the precautionary approach, basing measures on the best available scientific evidence, assessing the impact of fishing on the ecosystem and taking measures for associated species and taking into account the interests of artisanal and subsistence fishers: Arts 3, 5, 6 and 7 UNFSA.

<sup>116</sup> Arts 24-26 UNFSA.

<sup>117</sup> Although the Code is non-binding, it is based upon relevant rules of international law, and provides that it should be interpreted and applied in accordance with the LOSC, the UNFSA, the FAO Compliance Agreement (which is an integral part of the Code), the 1992 Declaration of Cancun, the Rio Declaration, Agenda 21 and other relevant declarations and agreements, as well as other applicable rules of international law.

and biodiversity. It recognises the nutritional, economic, social, environmental and cultural importance of fisheries, and the interests of all those concerned with the fishery sector. It takes into account the biological characteristics of the resources and their environment and the interests of consumers and other users.<sup>118</sup>

The Code provides principles and standards applicable to the conservation, management and development of all fisheries. It covers the capture, processing and trade of fish and fishery products, fishing operations, fisheries research and the integration of fisheries into coastal area management. The Code adumbrates a number of general principles, the first of which is that States and users of fisheries resources should conserve ecosystems: “The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living resources.”

The Code informs EU fisheries policy and is explicitly referred to in the texts of the FPAs. The following principles are particularly relevant:

6.2 Fisheries management should promote the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development. Management measures should not only ensure the conservation of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species.

6.3 States should prevent over-fishing and excess fishing capacity and should implement management measures to ensure that fishing effort is commensurate with the productive capacity of the fishery resources and their sustainable utilization. States should take measures to rehabilitate populations as far as possible and when appropriate.

6.4 Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors. States should assign priority to undertake research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with the ecosystem. In recognizing the transboundary nature of many aquatic ecosystems, States should encourage bilateral and multilateral cooperation in research, as appropriate.

6.5 States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment. ...

Paragraph 6.18 recognises the important contributions of artisanal and small-scale fisheries to employment, income and food security, urging States to protect the rights of fishers and fishworkers, especially those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access to traditional fishing grounds and waters under their national jurisdiction.

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<sup>118</sup> Text in “International Fisheries: instruments with index”, Division for Ocean Affairs and the Law of the Sea, United Nations, 1998. UN publication sales No E.98.V.11

Article 5.1, on the Special Requirements of Developing States, is also relevant, providing that the capacity of developing countries to implement the Code should be taken into account. Paragraph 2 concerns assistance to developing countries, especially in the areas of financial and technical assistance, technology transfer, training and scientific cooperation and in enhancing their ability to develop their own fisheries.

Four international plans of action have been adopted to supplement the provisions of the Code. The most relevant for this study are the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU) and the International Plan of Action for the Management of Fishing Capacity (IPOA Capacity). The EU has accepted both IPOAs and is committed to their implementation.

*IPOA IUU.* The issue of IUU fishing is of serious and increasing concern, as it undermines efforts to conserve and sustainably manage fish stocks and can cause considerable economic and social losses to coastal States, because of the lost value of stocks and lost opportunities for legitimate and responsible fishers. IUU fishing also adversely affects food security and the environment. The IPOA sets out principles and measures to be adopted by all States to combat IUU fishing and is accompanied by technical guidelines. The WSSD called on States to implement the IPOA by 2004, but the problem has increased.

*IPOA Capacity.* Over-capacity is one of the causes of IUU fishing. Fishers who cannot fish legally due to the imposition of conservation measures will fish illegally or misreport their catches. Excessive fishing capacity has contributed substantially to over-fishing, the degradation of marine fisheries resources, the decline of food production potential, and significant economic waste. Technical advances in fishing equipment and techniques after 1950 and over-optimism as to the amount of fish available led to the construction of far too many fishing vessels with superior gear that enabled them to capture enormous quantities of fish. Governments encouraged this with generous subsidies. As a result, previously rich fishing grounds in the East and West Atlantic rapidly became over-exploited and depleted. The Code provides that States should take measures to prevent or eliminate excess fishing capacity and should ensure that levels of fishing effort are commensurate with sustainable use of fishery resources.

## **5.7 Kyoto Declaration**

The Declaration and Plan of Action adopted by the International Conference on the Sustainable Contribution of Fisheries to Food Security held in Kyoto in 1995 recognized the significant role played by marine fisheries, inland fisheries and aquaculture in providing food security for the world, both through food supplies and through economic and social well-being, and declared that the international community should base policies, strategies and resource management and utilization for sustainable development of the fisheries sector on specific requirements such as the maintenance of ecological systems, use of the best scientific evidence available, improvement in economic and social well-being, and inter- and intra-generational equity. To this end, the Declaration requested States to assess and monitor the present and future levels of global and regional production and supply and demand of fish and fishery products and their effects on food security, employment, consumption, income, trade and sustainability of production, and to provide technical and financial assistance to developing countries, in particular low-income food-deficit countries and small island developing States, in order to achieve the contribution of fisheries to food security.

## 5.8 Millennium Development Goals

The eight Millennium Development Goals (MDGs) were elaborated in the context of the Millennium Declaration, adopted by the United Nations in 2000<sup>119</sup>. Almost all work at the UN, specialised agencies, and international financial institutions now refers to the MDGs, whose deadline for implementation is 2015. Fisheries are able to contribute to each of the MDGs, but three MDGs have particular relevance to sustainable fisheries policy<sup>120</sup>.

- MDG1 – eradicate extreme poverty and hunger.

It is estimated that about 50 million people dependent on fisheries are absolutely poor and rely on fisheries-related activities for their livelihoods. Furthermore, fish is an important component of West African diets accounting, on average, for around half of animal protein intake. Development strategies and foreign and domestic fisheries policies need to promote employment, supply, sustainable fisheries production and need to integrate subsistence and commercial interests.

- MDG7 – ensure environmental sustainability.

According to FAO, over half of the world's fisheries are fully exploited and a quarter is over-exploited, depleted or recovering from depletion.<sup>121</sup> Most of this depletion is caused by over-fishing and destructive fishing practices that damage ecosystems and threaten the viability of fish stocks. IUU fishing exacerbates the environmental problems, endangering the fisheries and the people that depend on them. All these problems are as prevalent in West African fisheries. The prevention of overfishing requires rational domestic and foreign fishing policies, which should take account of the wider economic and social context so that alternative sources of livelihoods can be identified and supported<sup>122</sup>.

- MDG8 – develop a global partnership for development, with targets for ... trade.

Fish is the most highly traded food commodity in the world, and fisheries trade is an important component of many West African economies, with fish products contributing more than 10 per cent of the total value of national exports in some cases<sup>123</sup>. However, the trade regimes and import regulations of the economically advanced importing countries are often not conducive to good fisheries management in developing countries and can limit, rather than promote, access to industrial countries' fish markets. Furthermore, the unintended impact of fisheries access agreements (whether formal or informal) is often over-exploitation. The implications of trade policies need to be understood, so that trade partnerships can be utilised as vehicles for development as envisaged in the MDGs<sup>124</sup>.

## 5.9 Johannesburg Plan of Implementation

The second major agenda is the Johannesburg Plan of Implementation (JPOI), adopted in 2002 by the World Summit on Sustainable Development (WSSD). The JPOI sets out specific actions relating to fisheries, with target dates. In particular, it contains a commitment to maintain or restore fish stocks to a level that can sustain continued fishing, urgently for

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<sup>119</sup> United Nations Millennium Declaration, A/Res/55/2, 18 September 2000.

<sup>120</sup> WorldFish Center, *Fisheries and the Millennium Development Goals: Solutions for Africa* (WorldFish Center, 2005).

<sup>121</sup> FAO, *SOFIA* 2006, op. cit.

<sup>122</sup> WorldFish Center, p 7.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid., p. 8.

depleted stocks and where possible, not later than 2015<sup>125</sup>. The JPOI also addresses the position of developing States in the achievement and utilisation of sustainable fisheries. Among the commitments agreed in the JPOI are<sup>126</sup>:

- assisting developing countries in coordinating policies and programmes at the regional and subregional levels aimed at the conservation and sustainable management of fishery resources and implement integrated coastal area management plans, including through the promotion of small-scale fishing activities;
- implementing the 1995 FAO Code of Conduct for Responsible Fisheries, taking note of the special requirements of developing countries;
- encouraging relevant Regional Fisheries Management Organisations (RFMOs) to give due regards to the rights, duties and interests of coastal States and to the special requirements of developing States when allocating fisheries resources;
- eliminating subsidies that contribute to IUU fishing and to over-capacity, while completing WTO efforts to improve and clarify the subsidy regime, taking into account the special importance of this sector to developing countries; and
- strengthening donor coordination and partnerships between international financial institutions, bilateral agencies and other stakeholders to enable developing countries to develop their national, regional and subregional capacities for infrastructure and integrated management and the sustainable use of fisheries.

The EU has committed itself to these objectives. As the EU Council stated in its Conclusions on 26 April 2004:

Our response to the Johannesburg Plan of Implementation (JPOI) is an integral part of the EU's efforts to support sustainable development and poverty eradication: taken together with the commitments made by the EU in the context of the Monterrey Conference and the work towards a positive outcome of the Doha Development Agenda (DDA), it is an essential element of the EU's contribution towards a global partnership for achieving the Millennium Development Goals (MDGs), the goals endorsed at WSSD and the other internationally agreed development goals.<sup>127</sup>

## 5.10 Other instruments

It is beyond the scope of this study to review every instrument relevant to fisheries management, fisheries development and coherence between the two. One other institutional process which does merit inclusion, however, is the provision of annual reports of the UN General Assembly on sustainable fisheries, and the corresponding resolution on the subject. Although the Resolutions are non-binding, they are taken seriously by States and are negotiated carefully because they represent important political statements. The latest resolution, adopted in December 2006<sup>128</sup>, requests distant-water fishing nations, when

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<sup>125</sup> Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, 4 September 2002, para. 31(a). The term used is maximum sustainable yield (MSY), possibly erroneously, as this goal would result in over-fishing and depletion.

<sup>126</sup> Ibid., paras. 30(g) and 31(c), (e), (f) and (g).

<sup>127</sup> EU Council Conclusions on World Summit on Sustainable Development, 26 April 2004, at para 2.

<sup>128</sup> UN General Assembly Resolution 61/105 on Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.

negotiating access agreements with developing coastal States, to do so on an equitable and sustainable basis, including by giving greater attention to fish processing, the transfer of technology and assistance for monitoring, control and surveillance, taking into account the forms of cooperation set out in Article 25 of the Fish Stocks Agreement; and encourages States to provide greater assistance and to promote coherence in such assistance for developing States in designing, establishing and implementing relevant agreements, instruments and tools for the conservation and sustainable management of fish stocks, including in designing and strengthening their domestic regulatory fisheries policies and those of RFMOs<sup>129</sup>. The resolution was adopted by consensus.

### **5.11 General Principles for Responsible Fisheries and Sustainable Development**

From the legal and policy instruments outlined above, it is clear that effective conservation and management are essential for sustainable fishing and for economic development. Total allowable catches must be adopted based on scientific advice and a precautionary approach; fishing capacity must be controlled; and fisheries management must apply an ecosystem approach as the integrity of the ecosystem must be maintained and biodiversity preserved, for the fish to flourish. Destructive fishing practices must be prohibited and IUU fishing eliminated. Cooperation for monitoring, surveillance and enforcement is also essential to ensure that fishing vessels conform to regulations and do not undermine conservation and management measures. Regional approaches are essential, as both fish and the vessels that pursue them frequently cross international boundaries. All the instruments agree that the special needs of developing countries must be taken into account and that assistance must be provided to develop their capacities both to manage their fisheries and to participate in fishing in their own maritime zones and on the high seas.

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<sup>129</sup> Ibid, paras 100 and 101.

## 6 THE COMMON FISHERIES POLICY

This section considers the evolution of elements of EU fisheries policies relating to Fisheries Access Agreements (FAAs) and their transformation into Fisheries Partnership Agreements (FPAs). These elements must be viewed within the context of the international legal and policy framework relating to fisheries, the environment and sustainable development, as well as the legal framework for the EU's relations with ACP countries: the Cotonou Agreement.

### 6.1 Legal Framework for Fisheries Relations with African Countries

The Cotonou Agreement and its predecessors have provided the general framework for the EU's relations with developing countries in West Africa for more than 40 years, covering both the application of development policy directly (primarily the provision of aid) and the relationship between development policy and other policies, primarily trade but also other policies, including fisheries. The first Conventions, known as the Yaoundé Conventions, were concluded in 1963 and 1969 between the original six members of the Community and many of their former (mainly French) colonies. Next were the series of Lomé Conventions, which provided the framework for development cooperation between 1975 and 2000<sup>130</sup>. In 2000, a new and somewhat different Agreement was adopted: the Cotonou Agreement.

#### 6.1.1 *Lomé Conventions*

The Lomé Conventions established a system for the provision of aid to ACP parties, provided for non-reciprocal free trade for most ACP products into the EU (including fish and fish products), and created a general framework for development cooperation in a wide-range of fields, including fisheries. The objectives of aid cooperation for fisheries were to: improve the knowledge of the fisheries environment and resources; increase the means of protecting fisheries resources and monitoring their exploitation; increase the involvement of ACP States in exploiting their own fisheries within their EEZ; encourage reasonable exploitation of those resources; increase the contribution of aquatic resources to economic growth, food security and the fight against poverty; and increase the contribution of fisheries to industrial development by increasing catches, output, processing and exports<sup>131</sup>. On the basis of these provisions, the Community funded hundreds of fisheries development projects, both in countries with which it had fisheries agreements and in those with which it did not. These projects included training, infrastructural and financial assistance, the development of artisanal fishing, port development, research assistance, the development of processing facilities, the improvement of monitoring and surveillance capacities and marketing and commerce training. These agreements (in particular Lomé III and Lomé IV) also set out the framework for fisheries access agreements between the EU and ACP States<sup>132</sup>.

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<sup>130</sup> ACP-EEC Convention of Lomé, Lomé, 28 February 1975, [1976] OJ L 25/2; in force, 1 April 1976. Second ACP-EEC Convention, Lomé, 31 October 1979, [1980] OJ L 347/1; in force, 1 January 1981. Third ACP-EEC Convention, Lomé, 8 December 1984, [1986] OJ L 86/3; in force, 1 May 1986. Fourth ACP-EEC Convention, Lomé, 15 December 1989, [1991] OJ L 229/3; in force, 1 September 1991.

<sup>131</sup> Arts 51 and 52 Lomé III and Arts 59 and 60 Lomé IV.

<sup>132</sup> A further, but separate, facet of the Community's development cooperation under the Conventions concerned international trade, including trade in fisheries products. This is discussed in Section 8.

The Conventions also addressed various matters relevant to development coherence, for example, by providing that the agreements could include measures such as obligatory landing of part of the catch, employment of ACP nationals, the taking on board of observers, the transfer of technology, research and training grants and by supporting the development of regionally harmonized arrangements for access for fishing vessels<sup>133</sup>.

### 6.1.2 Cotonou Agreement

The Lomé IV Convention expired at the end of February 2000 and was replaced by the Cotonou Agreement in June 2000. Although based on the same broad objectives, the Cotonou Agreement substantially revised a number of the basic principles and priorities of the ACP-EU relationship, including the provisions on fisheries. There were several reasons for the changes. First, the general view was that the results of 25 years of cooperation under the Lomé Conventions had been mixed. Evaluations of Community aid to the ACP countries often showed that insufficient account had been taken of the institutional and policy context in the partner country, which undermined the viability and effectiveness of cooperation. There was a perceived need for the recipient countries to have greater control of their development agendas, and to be able to determine their own priorities with greater autonomy.

Similarly, it was recognized that development aid should be more inclusive, encouraging the active participation of civil society, the private sector and other interested parties in the recipient countries. The parties also recognized the need to adapt to legal, institutional and political developments at the international level, to ensure that cooperation was consistent with principles of sustainable development and environmental protection as well as with international trade rules, including those of the World Trade Organization (WTO).

Thus, the Cotonou Agreement provides that ACP-EU cooperation is to be based on the “equality of the partners and ownership of the development strategies”<sup>134</sup> and on “participation” by all sections of society, in addition to the government of the partner country<sup>135</sup> and is to promote sustainable development and poverty eradication<sup>136</sup>. The protection of the environment is an objective of the Agreement<sup>137</sup>, and the need for ACP-EU relations to be consistent with international trade rules is also emphasized<sup>138</sup>.

## 6.2 The Common Fisheries Policy

The Common Fisheries Policy (CFP) was established in 1983 by a Council Regulation<sup>139</sup> that created a Community system for the conservation and management of fishery resources. The purpose of the CFP is to conserve fish stocks, protect the marine environment, ensure the economic viability of the European fleets and provide good quality food to consumers<sup>140</sup>. The CFP provides the framework for the management of fisheries both within the EEZs of Member States (“Community waters”) and abroad (“international waters”): in the EEZs of other countries and on the high seas. While earlier phases of the policy emphasised

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<sup>133</sup> Lomé IV, Arts 57 and 66, respectively.

<sup>134</sup> Art 2, first indent of the Cotonou Agreement.

<sup>135</sup> *Ibid*, second indent.

<sup>136</sup> These themes are emphasized throughout, but in particular the Preamble and Arts 1 and 9.

<sup>137</sup> *Ibid.*, Art. 1.

<sup>138</sup> *Ibid.*, Art. 10(2).

<sup>139</sup> Regulation 170/83 [1983] OJ L24/1.

<sup>140</sup> European Commission, DG Fisheries website ([www.europarl.europa.eu/committees/pech\\_home\\_en.htm](http://www.europarl.europa.eu/committees/pech_home_en.htm)).

increasing production, the over-expansion of the fleet and the depletion of stocks within Community waters has led to an emphasis on conservation, sustainable use and limiting access, as well as measures to protect the environment and to promote the recovery of depleted stocks. The external dimension of the CFP includes: multilateral fisheries agreements, such as the UN Fish Stocks Agreement; global policy commitments, such as the FAO Code of Conduct and the WSSD JPOI; and bilateral fishing agreements, such as those with West African countries.

Since the 2002 Reform of the CFP, its scope has been defined as: “conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag State, nationals of Member States.” The Common Fisheries Policy is to provide for coherent measures concerning:

- (a) conservation, management and exploitation of living aquatic resources,
- (b) limitation of the environmental impact of fishing,
- (c) conditions of access to waters and resources,
- (d) structural policy and the management of the fleet capacity,
- (e) control and enforcement,
- (f) aquaculture,
- (g) common organisation of the markets, and
- (h) international relations<sup>141</sup>.

### **6.3 Fisheries Access Agreements**

Fisheries access agreements are agreements between a coastal State and another State for the purpose of providing the fishing vessels of the latter with fishing opportunities in the waters of the former. The need for such agreements arose during the 1970s, when most coastal States extended their jurisdiction and sovereign rights over fisheries and other resources out to 200 miles from their coast in the form of exclusive economic zones (EEZs) or exclusive fishing zones (EFZs). This had the effect of bringing 90 to 95 per cent of commercial fisheries within the authority of coastal States with the result that the vessels of many States, including EU Member States, which had been fishing in these areas, lost their right to do so. It therefore became necessary to negotiate agreements with coastal States for access to their fisheries zones in order to maintain fishing opportunities for the EU's DWF.

Over the past three decades, the EU has concluded agreements with more than 30 countries. Some of these provide for a reciprocal exchange of fishing opportunities with neighbouring States, while the others were concluded with developing States for access for the EU fleet to their waters, in exchange for a fee. Of this latter type, approximately half were with countries in the West African region<sup>142</sup>.

These fisheries access agreements (FAAs) are an important component of the CFP. They provide fishing opportunities for certain sectors of the EU fleet; employment and income to

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<sup>141</sup> Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [2002] OJ L358/59.

<sup>142</sup> In chronological order: Senegal, Guinea Bissau, Guinea, São Tomé and Príncipe, Equatorial Guinea, Gambia, Mauritania, Cape Verde, Sierra Leone, Côte d'Ivoire, Morocco and Gabon.

EU regions dependent on fishing; and contribute significantly to the supply of fisheries products to the EU market<sup>143</sup>. Sixty percent of the fish consumed in the EU is imported, much of it from countries with which the EU has an FAA. The main beneficiaries of the agreements with West African States are fishing companies from Spain, Portugal, France and Italy. In most of the agreements, Spain is allocated the largest share of fishing opportunities. Other Member States have limited interests in some of these agreements.

### *6.3.1 Evolution of EU fisheries agreements*

The FAAs that the EU concluded with West African countries were broadly similar. The basic arrangement was the provision of fishing opportunities for the EU fleet in the waters of the host country in return for financial payments. The agreements set out the general principles for cooperation, with details on matters such as quantification of fishing opportunities, conditions for fishing operations and financial payments stipulated in periodically adopted protocols. Typically, the protocols lasted for two or three years. The compensation for access included the direct payment of a fixed sum to the Treasury of the host country, some “targeted payments” for the fishery sector, and the payment of licence fees by the vessel owners. In addition, many agreements contained provisions relating to the landing of catches in local ports, the employment of national fishermen and other conditions designed to assist the domestic fishery sector of the West African country.

These agreements became increasingly important, as the fisheries in EU waters became depleted through over-fishing and vessels had to seek opportunities in foreign waters to continue operating and to supply the EU market. At the same time, however, they became controversial, attracting criticism for an apparent lack of coherence with environment policy and development policy.

The 1990s saw the adoption of a considerable number of fisheries and environment related instruments, outlined in section 5 above. All of these were accepted by the EU and should have been integrated into the CFP, including into its bilateral fisheries agreements. However, while many elements from the international instruments were formally adopted into the CFP, they did not find their way into the FAAs. Although the later “third generation” agreements paid more attention to development issues, for example, by devoting increasing proportions of the Community financial contribution to “targeted actions”, such as scientific and technological cooperation, employment of nationals from African States, and monitoring and control, to a significant extent, this change was more apparent than real. There was little or no success in developing the local fisheries sector, in transfer of technology, capital investment, the monitoring and control of fishery activities, or in regional cooperation.

By the late 1990s, the FAAs were being severely criticised by NGOs, academics intergovernmental organisations, the Court of Auditors and even the European Parliament. Criticism centred on the socio-economic effects on African countries, the state of the fisheries and the state of the environment. The FAAs were accused of impeding, rather than furthering development; of depleting the fish stocks; and of causing harm to marine ecosystems. The third generation agreements, including targeted actions were seen as not very different from the first generation access agreements, characterised as: “pay, fish and go”. Not only did the FAAs not promote sustainable development, they were also seen as unfair, as the fee for access was only a small percentage of the value realised by the EU. In

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<sup>143</sup> In addition, in some cases, an agreement is necessary for vessels to be able to follow tuna migrating through several EEZs even where only limited quantities of fish may be caught off the coastal State.

1999 IFREMER estimated that the EU realised more than 3 times the value obtained by the host countries<sup>144</sup>.

## 6.4 Criticisms of Fisheries Agreements

The following reviews some of the major criticisms of the EU's fisheries agreements in West Africa, in particular as they relate to issues of development coherence. The information throughout this section and focuses on the operation of the agreements prior to the reform of the CFP in 2002. The comments are taken from various sources that have reviewed practice under EU fishing agreements over the past 25 years<sup>145</sup>.

Some specific criticisms of the FAAs are summarised in the following paragraphs.

1. One of the main purposes of the FAAs was to transfer excess fishing capacity to the host countries, in other words, vessels that can no longer fish in European waters, because they have depleted the stocks are now fishing in West African waters. The consequence is excess capacity in West African waters and depletion of West African stocks.
2. According to UNCLOS, foreign vessels only have to be allowed to fish in an EEZ if the coastal State has determined that there is a surplus, an amount of fish above that which fishers in the host State are able and willing to fish sustainably. However, the West African States have not made such a determination. In fact, the depletion of many fish stocks off the West African coast would indicate that there is no surplus.

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<sup>144</sup> IFREMER, *Evaluation of the Fisheries Agreements Concluded by the European Community*, 1999.

<sup>145</sup> The primary studies on which this section relies are: J Carroz and M Savini, 'Les Accords de Pêche Conclus par les Etats Africains Riverains de l'Atlantique' (1983) 26 *Annuaire Français de Droit International* 674; S Sen, *European Community Fisheries Agreements with African, Caribbean and Pacific States*, Samudra Dossier Number 4 (Brussels, International Collective in Support of Fishworkers, 1991); European Parliament, *European Community Fisheries Agreements with Third Countries and Participation in International Fisheries Agreements*, Working Paper No. 9 (Brussels, 1993); S. El Djamil Abada, 'ACP-EU fishing agreements: Accord or discord? 'Keep to the spirit' appeal by Joint Fisheries Committee' (1996) 156 *The Courier ACP-EU* 10; European Parliament, *Report on International Fisheries Agreements*, A4-0149/97, 22 April 1997; A Acheampong, *Coherence between EU Fisheries Agreements and EU Development Cooperation: The Case of West Africa*, ECDPM Working Paper No 52, (Brussels: EDCPM, 1997); House of Lords (UK), Select Committee on the European Communities, *Third Country Fisheries Agreements*, 3<sup>rd</sup> Report, Session 1996-97 (HMSO, 1997); Marine Resources Assessment Group, *Conflict and Coherence with EU-ACP Third Country Fishing Agreements: A Study Review* (Marine Resources Assessment Group, 1998); WWF, *The Footprint of Distant Water Fleets on World Fisheries* (WWF, 1998); Greenpeace, *Pirate Fishing, Plundering West Africa* (Greenpeace International, 2001); Aide à la Décision Economique (ADE), *Evaluation of the Relationship between Country Programmes and Fisheries Agreements*, Evaluation Report for the European Commission, Brussels, November 2002; WWF, *The Footprint of Distant Water Fleets on World Fisheries* (WWF, 1998); V M Kaczynski and D L Fluharty, 'European Policies in West Africa: Who Benefits from Fisheries Agreements?' (2002) 26 *Marine Policy* 75; B Gorez and B O'Riordan, *An Examination of Fisheries Relations between the European Union and ACP Countries*, Paper presented at the International Seminar on ACP/EU Fisheries Relations: Towards Mutual Benefits, Brussels, 7-9 April 2003; Greenpeace, *Illegal, Unreported and Unregulated (IUU) Fishing in West Africa*, Submission to the Technical Consultation to Review Progress and Promote the Full Implementation of the IPOA to Prevent, Deter and Eliminate IUU Fishing and the IPOA for the Management of Fishing Capacity, June 2004; B Gorez, *Policy Study: EU-ACP Fisheries Agreements*, Report for DFID, March 2005; and Greenpeace, *Witnessing the Plunder 2006: How Illegal Fish from West African Waters Finds its Way to the EU Ports and Markets* (Greenpeace, 2007). Further references, including country specific studies, are provided in the bibliography. Additional information has also been taken from the various reports of the European Parliament on the conclusion of fisheries agreements and protocols adopted under them (available on the Committee on Fisheries website: [www.europarl.europa.eu/committees/pech\\_home\\_en.htm](http://www.europarl.europa.eu/committees/pech_home_en.htm)) and from various media reports on the negotiation and operation of the agreements.

3. Despite a lack of accurate reporting by fishers and insufficient scientific information, it is clear that a substantial number of fish stocks off the coast of West Africa are over-exploited or depleted. While some of the problem is attributable to the activities of other fleets, it would appear that EU vessels have contributed to this situation.
4. The depletion of West African stocks has taken place, *first*, because there was no prior scientific assessment of the stocks and no scientific determination of a total allowable catch (TAC). Hence, governments and the Commission were deciding how much fish could be caught without knowing the quantity that could be taken sustainably. This is both unscientific and contrary to the precautionary principle.
5. *Secondly*, there was no effective limit on fishing under the FAAs. Instead of a TAC, the agreements provide for a limit on the number of vessels or for a maximum gross tonnage. However, the amount of fish caught depends on neither criterion independently. Obviously ten large vessels can catch more than ten small vessels, so the number of vessels is not relevant unless the size and other factors are controlled. However, even a small vessel may catch a substantial amount of fish if it has powerful motors, advanced technology and is serviced offshore. Thus, amount of fish taken depends on a large number of factors, including the size of the ship, the power of its motor and equipment, the type of equipment, the skill of the officers and crew, the type of processing onboard, whether it is bunkered offshore or has to go into port and whether it can tranship at sea instead of in port.<sup>146</sup>
6. *Thirdly*, the depletion of the stocks has also been caused by a lack of effective monitoring, surveillance and enforcement (MCS). The coastal states have not had the capacity to monitor and enforce and the EC was equally ineffective. In most cases, vessel monitoring systems (VMS) were not provided for and even when they were, the data was not transmitted in real time to the coastal State. Furthermore, in many cases the coastal State did not have the facilities to receive it. Requirements for observers were implemented only sporadically and inspections in port were rare. In fact, a recent report published by the Commission admits that surveillance and enforcement by EU flag States are very poor, even in European waters.<sup>147</sup>
7. *Fourthly*, the depletion of the stocks is also due to the extensive amount of IUU fishing in the area. Coastal States are losing a substantial quantity of fish, vast sums of money and employment opportunities, because they do not have the capacity to take enforcement measures.<sup>148</sup>
8. Fishing by DWF, including the EU fleet, has not only depleted the target stocks, but also, through excessive bycatch, it has endangered associated and dependent species and damaged the ecosystems that support the fisheries.

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<sup>146</sup> See: “Communication from the Commission to the Council and the European Parliament: Implementing sustainability in EU fisheries through maximum sustainable yield”, COM (2006) 360 final 4.7.2006, and “Communication from the Commission to the Council and the European Parliament on improving fishing capacity and effort indicators under the common fisheries policy”, COM (2007) 39 final, 5.2.2007.

<sup>147</sup> COM (2007) 167 and SEC (2007) 425 and press release of 10 April 2007, “Commission: improvements still needed in fisheries control”.

<sup>148</sup> MRAG, “Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries”, July 2005, and a large number of presentation to a series of conferences on IUU Fishing held at Chatham House in London, most of which are available at: [www.illegal-fishing.info](http://www.illegal-fishing.info) See also report by Greenpeace, “Witnessing the Plunder 2006: How Illegal Fish from West African Waters finds its way to EU Ports and Markets”, Greenpeace International, Amsterdam, 2006.

9. Provisions in the FAAs for technical conservation measures, such as mesh sizes and selective gear, varied considerably and were not consistent with the technical requirements for fishing in EU waters.
10. Local small-scale fishers have been displaced from the fisheries off their coasts by the large industrial EU vessels. Local fisheries cannot compete because they lack the advanced technology of EU vessels. These vessels not only dominate the EEZ, but also venture into the 12 mile territorial sea, which is supposed to be reserved for local fishers. There is frequently conflict between gears and competition for the same fish. This is contrary to the requirements of the Code of Conduct, which requires States to protect the rights of artisanal and small-scale fishers.
11. The consequence of the presence of the EU fleet is frequently unemployment or reduced income for local fishers.
12. In most cases, the EU fleet does not land its catch in local ports for processing, but takes back to EU ports for unloading and processing. In consequence, the benefit of the value added by port services and processing accrues to EU processors. The local West African economies and the local people lose out.
13. However, in some cases where fish were landed locally, local prices were depressed through over-supply<sup>149</sup>, thus reducing the incomes of local fishers.
14. Although most FAAs contained requirements for hiring local seamen, these could easily be avoided by the payment of a fine and in any even, the benefit was slight.
15. The local fish processing industry cannot compete with EU processors because of lack of infrastructure, capacity and technology. With respect to trade rules, the rules of origin and the sanitary regulations can be an impediment to development. The local industry needs assistance in order to develop.
16. The financial benefits of the agreements are far greater for the EU than for the developing countries. According to some estimates, the value to the EU is at least three times that to the host States<sup>150</sup>.
17. The African countries individually lack the knowledge, the diplomatic skill and the political and economic weight for bilateral negotiations to be fair. Certain NGOs, such as WWF and EDCPM have published advice for developing countries in negotiating fisheries agreements and have offered assistance in negotiations.
18. There was little monitoring or control over implementation of the agreements. Although all agreements provided for the establishment of a Joint Committee, to meet either on an annual basis or at the request of one of the parties, these met only irregularly.
19. After 20 or so years of financial compensation from the EU, including funding for targeted actions, the fisheries sector in West African countries still has not developed.
20. The FAAs were not consistent with EU development policy. Furthermore, very little was spent on EU development programmes related to fisheries and these usually disappeared upon the conclusion of a fisheries agreement.<sup>151</sup>

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<sup>149</sup> See M K Kelleher, 'Assessing the Impact of Foreign Fishing Agreements in West Africa' in B Dioh et al (eds), *Fisheries Access Agreements in West Africa* (FAO, 1997) who presents the experience of the Mauritanian Cephalopod Marketing Organisation (SMCP).

<sup>150</sup> Analysis of some recent agreements would place the balance in the EU's favour far higher.

These are very general criticisms that may not apply to specific situations.

## 6.5 Increasing Demand for Policy Coherence

In June 1997, a Development Council Resolution requested the Commission to produce proposals for improving coherence, including practical procedures and regular reporting<sup>152</sup>. The Council recognized that, in view of the increased pressure on existing fish stocks throughout the world, fishery activities in the context of the third-country agreements had to seek to use and preserve the fishing resources in a responsible and sustainable way in order to maximize the long-term contribution of fishing resources to food security. It stressed the need for an integrated policy approach to sustainable fishing in third countries, which takes into account, besides the interests of the EC, the interests of the local fishery sector, as well as the principle of sustainability of the resources. The Council emphasised the need for: 1) more data and scientific research on fishery resources; 2) full implementation of the FAO Code of Conduct and relevant UN conventions; 3) support for the strengthening of the appropriate regional organizations or mechanisms for fisheries regulation; 4) information exchanges and consultations between experts from the Commission and the Member States specialising in external fisheries and development co-operation.

To contribute to these exchanges, in 2000, the EC published a “Communication on Fisheries and Poverty Reduction”<sup>153</sup>. This elicited comments from the Development and Fisheries Committees, a report of the European Parliament and a Parliament resolution, followed by Conclusions of the Council<sup>154</sup>. The communication on poverty reduction sets out the various ways in which fisheries can contribute to combating poverty and explores avenues for taking greater account be taken of this sector in cooperation programmes. The Communication notes that the agreements hinge on the concept of “surplus stocks”, but that this assumes the availability of reliable scientific data on resources and fleet capacity. In addition, payments from the EU have not led to the development of a local fishing industry and the access by EU vessels is considered by some local communities as a real threat to traditional local fishery. The Commission acknowledges that with too many vessels in Europe and elsewhere, effective monitoring, control and surveillance is required to enforce the agreed regime for managing and exploiting the resource. The objective had to be to protect the sustainability of resources with the same vigour as in European waters. The Commission points to the need to provide assistance to administrative capacity-building for sustainable fisheries management, to consult fishing communities in developing countries on the use of EU funds, to base development programmes on ex-ante evaluations, to give serious consideration to supporting local industry, including processing and distribution networks for local consumption and to encourage the participation of civil society and host country fisheries organizations in the preparation and implementation of fisheries agreements. Each of these points raises different issues in terms of coherence between fisheries and development.

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<sup>151</sup> SF Walmsley et al, *Comparative Study of the Impact of Fisheries Partnership Agreements* – Technical Report, May 2007, prepared by MRAG for the UK’s Department for Environment, Food and Rural Affairs (DEFRA) and Department for International Development (DFID).

<sup>152</sup> Development Council, Resolution on Coherence of the EC’s Development Cooperation with its Other Policies, Doc. 8631/97 (Presse 183).

<sup>153</sup> Op. cit. See also, “The European Community’s Development Policy”, COM (2000)212 final.

<sup>154</sup> Committee on Development and Cooperation, Working Document on the developing countries: Fisheries and Poverty Reduction, Doc. No PE 303.809, 31 May 2001; Report on the Commission communication on fisheries and poverty reduction and Resolution on fisheries and poverty reduction, Doc. A5-0334/2001, 11 October 2001; Council Resolution on Fisheries and Poverty Reduction, adopted 8 November 2001, DEVGEN 173, PECHE 238, 13938/01, 14 November 2001.

In October 2001, the European Parliament adopted a resolution on Fisheries and poverty reduction that questioned the coherence between development policy and fisheries policy<sup>155</sup>. It encouraged the observance of certain principles in the FAO Code of Conduct:

- application of the precautionary principle in resource management,
- giving priority to the needs of coastal communities that engage in small-scale fishing,
- good governance of fisheries and active participation by those concerned,
- the importance of cooperation at sub-regional, regional and global level in promoting resource conservation and management...

The Parliament noted that the cost of the fisheries agreements was significantly higher than development assistance to the fishery sector in all developing countries. It questioned how the use of these funds was furthering development objectives and whether, for the purposes of poverty reduction and sustainable development, the proposals made by the Commission in this communication with a view to supporting the fishery sector in the developing countries were adequate to meet the challenges faced, namely coherence between Fisheries and Development measures and support for the sustainable development of the fishery sector in developing countries as a means of combating poverty.

In turn, the Council resolution endorsed the Commission's analysis of the fishery sector's contribution to food security and the economic importance of fisheries to developing countries. It confirmed that support for sustainable development in the fisheries sector was part of EU development policy and called on the Commission to assist developing countries to: improve governance in the sustainable development of fisheries, support the implementation of national sector programmes, support sub-regional and regional programmes for conservation and management of resources, and support national and regional efforts to combat IUU fishing. It invited the Commission to increase efforts to support civil society and to focus more closely on the major economic role played by women. It also referred to the need for scientific knowledge, taking only the "surplus", the precautionary principle, the need to protect small-scale fisheries, and the need for good governance. Finally, the Council endorsed the nine principles derived by the Commission from: UNCLOS, the UNCED Rio Declaration and Agenda 21, the FAO Code of Conduct for Responsible Fisheries and the conclusions of the 1995 Kyoto International Conference on the sustainable contribution of fishing to food security.

## **6.6 Reform of the Common Fisheries Policy and Fisheries Access Agreements**

Responding to the imperatives of responsible fishing and sustainable development agreed to in Agenda 21, the FAO Compliance Agreement, the UN Fish Stocks Agreement, the Code of Conduct for Responsible Fisheries and the WSSD, in 2002 the EU reformed the Common Fisheries Policy. This reform included important changes in fisheries agreements with third parties, which were now to promote international cooperation to ensure responsible fishing and sustainable fisheries in the waters of the partner concerned.

The 2002 reform of the CFP identified limitation of fishing effort together with limitation of catches (TACs) and technical measures as the main measures to be used in fisheries management. Furthermore, the reform called for a longer-term approach to fisheries, involving the establishment of multi-annual recovery plans for stocks outside safe biological limits and of multi-annual management plans for other stocks. The Commission launched an

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<sup>155</sup> See Report of 11 October 2001, Doc. A5-0334/2001.

Action Plan to ensure that environmental protection requirements were integrated into the CFP. This plan dealt with by-catches and discards, as well as more selective fishing gear.

Simultaneously, the criticisms of the FAAs prompted some soul-searching, leading to proposals for changes to fisheries access agreements as part of the reform of the CFP. The review process for reform of the CFP began formally in March 2001, when the Commission published a series of reports on the fisheries situation in the Community<sup>156</sup> and a Green Paper on the Future of the Common Fisheries Policy<sup>157</sup>, both of which outlined the weaknesses and difficulties of the existing CFP and presented a number of options for its reform. In addition, consultations with stakeholders were held on the future of the CFP. The reports indicated that the Commission was well aware of the problems regarding bilateral fisheries agreements. The Green Paper identified weaknesses and challenges and presented a number of options for its reform. Among the problems identified in the Green Paper were:

- insufficient scientific knowledge relating to the state of fish stocks, sustainable rates of exploitation and the mortality caused by the Community fleet;
- difficulties in determining the “surplus” of resources available for foreign fleets;
- legal deficiencies in the agreements themselves, which were inflexible and are not based on modern environmental principles, such as the precautionary approach;
- inadequate provision (legal and practical) for monitoring, control and enforcement;
- ineffective protection for third country small-scale coastal fisheries and inadequate support for the development of third country fisheries sectors; and
- problems of coherence between third country fisheries policy, on the one hand, and other aspects of the fisheries policy (such as structural policy), environmental policy and development policy, on the other hand<sup>158</sup>.

The Green Paper highlighted the need “to adapt to changing circumstances and new challenges such as the emergence of new players, the legitimate aspirations of many developing States to develop their fishing industry and the requirements of sustainable development and responsible fisheries”<sup>159</sup>.

#### 6.6.1 *Developments in 2002*

The comprehensive package of reforms proposed by the Commission in 2002 included a “Strategy for European Distant-Water Fisheries”, which was to consist of four elements:

- an Action Plan to eradicate IUU fishing<sup>160</sup>;
- an Action Plan for improving the evaluation of stocks that are accessible to Community fishermen outside Community waters, designed to promote regional and other initiatives to obtain better scientific advice on the state of the stocks, the first such initiative to be undertaken in West Africa;

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<sup>156</sup> SEC (2001) 418, 419 and 420.

<sup>157</sup> European Commission, *Green Paper on the Future of the Common Fisheries Policy*, COM (2001) 135 final, 20.03.2001.

<sup>158</sup> *Ibid*, pp 17-18.

<sup>159</sup> *Ibid*, p 17.

<sup>160</sup> European Commission, *Communication on a Community Action Plan for the Eradication of Illegal, Unreported and Unregulated Fishing*, COM (2002) 180 final, 28.5.2002.

- an integrated framework for the development of fisheries partnerships, particularly with developing coastal States, at the national and regional level; and
- a strategy to develop new strategic alliances within regional fisheries organizations, in particular with developing coastal States<sup>161</sup>.

Thus far, only the Action Plan to eradicate IUU fishing and the Integrated Framework for the development of fisheries partnerships has been adopted.

With respect to the third element, the Community initiated a move from fisheries access agreements to “partnership agreements” which would contribute to responsible fishing in the mutual interest of the Parties concerned. In addition to payment for access, the Fisheries Partnership Agreements (FPAs) would include a contribution to cover management costs, the scientific assessment of fish stocks, fisheries management, and control and monitoring of fishing activities, as well as the follow-up and evaluation of the agreement. This new contribution would be justified by the mutual interest of the two parties to invest in a sustainable fisheries policy and not just as a payment for access rights to fishing possibilities. The EU intended its financial contribution to be regarded as an investment for the improvement of responsible and rational fishing. The integrated framework and the new FPAs are discussed in Section 7.

One of the main components of CFP reform was Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>162</sup>. The Regulation declares that “The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine ecosystems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.”

In addition, the Commission proposed action plans and strategies concerning:

- the integration of environmental protection requirements into the CFP, with a view to promoting sustainable development<sup>163</sup>. The guiding principles included: prevention, the application of the precautionary approach, the progressive implementation of an ecosystem approach and the same level of commitment internally and internationally. A high level of priority was to be given to implementation of the Biodiversity Action Plan for fisheries<sup>164</sup>.
- measures to counter the social, economic and regional consequences of fleet restructuring, including the reduction of fleet capacity and social measures, the improvement of the image of the sector and support for sustainable coastal development.

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<sup>161</sup> European Commission, Communication on the Reform of the Common Fisheries Policy (‘Roadmap’), COM (2002) 181, pp. 15-16.

<sup>162</sup> [2002] OJ L358/59.

<sup>163</sup> Communication from the Commission setting out a Community Action Plan to integrate environmental protection requirements into the Common Fisheries Policy, COM (2002) 186 final.

<sup>164</sup> COM (2001) 164 final, vol. IV.

- the reduction of discards of fish by tackling the causes of discarding. The measures proposed aim to prevent catches of unwanted fish, particularly immature fish and to remove incentives for discarding<sup>165</sup>.
- the creation of a single inspection structure to ensure the pooling of Community and national inspection and monitoring resources<sup>166</sup>.
- the improvement of scientific and technical advice for fisheries managers. The Commission identified two main ways to achieve this: by reorganising the provision of scientific advice and by devoting more resources to obtaining this advice<sup>167</sup>.
- compliance with the rules of the CFP in a “Compliance workplan and scoreboard Communication”<sup>168</sup>
- To further the objectives of the Regulation on conservation and sustainable exploitation, in 2004, the Commission issued a communication on “Promoting more environmentally-friendly fishing methods: the role of technical conservation measures”<sup>169</sup>.

## 6.7 New Developments and Continuing Issues

In 2006-7, the European Commission issued a number of communications and proposals relating to the current state and future development of the CFP<sup>170</sup>. These documents also have a retrospective aspect, as they review the situation since the reform of the CFP in 2002. Many of the issues that needed addressing in 2002 remain. Indeed, due to insufficient conservation measures and continuing over-capacity of the fleet, the need for reform is even more urgent, as the fish stocks in European waters continue to decline and some are on the verge of collapse. To obtain better advice on conservation and management of fish stocks, the Commission has proposed a new Council Regulation for the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.

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<sup>165</sup> European Commission, Communication on a Community Action Plan to reduce discards of fish, COM (2002)656 final.

<sup>166</sup> European Commission, towards uniform and effective implementation of the Common Fisheries Policy, COM (2003) 130 final.

<sup>167</sup> European Commission, Improving scientific and technical advice for Community fisheries management [2003] OJ C47/06.

<sup>168</sup> European Commission, Communication on Compliance with the rules of the Common Fisheries Policy, Compliance Work Plan and Scoreboard, COM (2003) 344 final, 11.6.2003.

<sup>169</sup> COM (2004) 438 final, 21.6.2004.

<sup>170</sup> European Commission, Implementing sustainability in EU fisheries through maximum sustainable yield, COM(2006) 360 final 4.7.2006; European Commission, Improving scientific and technical advice for Community fisheries management [2003] OJ C47/06; European Commission, Communication on improving the Economic Situation in the Fishing Industry, COM(2006) 103 final, 09.03.2006; European Commission, Communication on improving fishing capacity and effort indicators under the common fisheries policy, COM(2007) 39 final, 5.2.2007; European Commission, Communication on Fishing Opportunities for 2008, Policy Statement from the European Commission, COM(2007)295 final, 6.6.2007; European Commission, A policy to reduce unwanted by-catches and eliminate discards in European fisheries COM(2007) 136 final; European Commission, Communication on improving fishing capacity and effort indicators under the common fisheries policy”, COM(2007) 39 final, 5.2.2007. European Commission, Report on the monitoring of the Member States’ implementation of the Common Fisheries Policy 2003-2005, COM(2007) 167; Press release of 10 April 2007, “Commission: improvements still needed in fisheries control”.

As stated in the communication on improving the economic state of the fishery sector, the EU fisheries industry is in a state of crisis, because of the depletion of fish stocks, higher costs (especially fuel costs), too many vessels and too few young people willing to crew the vessels. Many fishing companies are running at a loss and others could not survive without subsidies. Some are hiring foreign workers. The processing industry is in trouble because of a shortage of raw material, small size and foreign competition. The Commission is recommending that conservation measures be enhanced and reinforced and that capacity be reduced. The European Fisheries Fund<sup>171</sup> could be used for restructuring the sector and decommissioning of vessels. In addition, monitoring, control, surveillance and enforcement have to be improved to deal with violations of regulations by European vessels and more effective measures have to be taken against IUU fishing.

All these issues should be taken into account in a consideration of Fisheries Partnership Agreements. Firstly, the conservation and management measures, including the reduction in fish mortality through a reduction in fishing and the proposed bycatch controls and ban on discards in EU waters, should also be applied to West Africa. This could be done either through the FPAs or through the host countries' new fisheries policies to be developed in a "dialogue" with the EU. Secondly, improvements in the collection of data and the provision and use of scientific advice should be applied in the context of the FPAs. Thirdly, improved methods for measuring fleet capacity should be applied to West Africa and fleet capacity in Europe should be reduced to a level commensurate with sustainable fishing in European waters, so that excess capacity no longer has to be transferred to West Africa. Fourthly, improvements to control and enforcement measures should also be applied by flag States to the EU fleet operating in West Africa, and fifthly, a more effective regional approach should be adopted to combat IUU fishing.

#### *6.7.1 Improving Scientific Advice*

In April 2007, the Commission issued a proposal for a Council regulation concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy. In response to review of the existing legislation, which revealed its shortcomings, the Commission decided to substantially revise the legal framework for the collection of basic fisheries data and its use for scientific advice. The goal of the Commission's proposal is to develop long-term, well-integrated regional sampling programmes covering biological, economic, environmental and social data. The revised data collection regulation is intended to meet new demands generated by the need to move towards fisheries management (i.e. fleet- and area-based management, rather than fish stock-based) and towards the ecosystem approach to fisheries management. A significant innovation in the proposal is the inclusion of collection of environmental data with the primary purpose of monitoring the impact of fishing activity on the marine ecosystem. The new data collection system will cover all the process, from the collection of the data in ports or at sea to its use by the end-users (mainly the scientific community and advisory bodies). The draft regulation refers to the objectives of the CFP on the conservation, management and exploitation of fisheries in non-Community waters, notably in accordance with the FPAs and Regional Fisheries organisations. However, there is no specific provision relating to the FPAs or any indication of how the regulation will affect them.

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<sup>171</sup> Council Regulation 1198/2006 on the European Fisheries Fund [2006] OJ L223/1.

### 6.7.2 *Reduction in Fishing Levels*

The Commission has made clear in a number of communications and reports that the fishing sector was in serious crisis and in economic decline because of extensive overfishing. A substantial number of stocks in EU waters are depleted and some are on the verge of collapse. The level of fishing has to be severely curtailed in order to preserve and rebuild stocks and to ensure increased yields and profitability. Although Member States have a choice as to whether to reduce capacity or effort<sup>172</sup>, it seems clear that the Commission favours a far-reaching restructuring, including a reduction in capacity.

### 6.7.3 *Bycatch*

In 2002, the Commission proposed the action plan to reduce bycatch and discards referred to above. On April 2003, the Council adopted Conclusions, requesting the Commission to explore various ways to resolve this problem. Despite the implementation of a few projects, the problem remained and, indeed, increased. Recognising the seriousness of the problem, the Commission has recently issued a communication on bycatch and discards and initiated a pilot project to ban discards.<sup>173</sup> The Council has considered the matter and has deferred a decision.<sup>174</sup> Since excessive bycatch is causing significant ecological damage off the coast of West Africa, it is to be hoped that action will be taken soon and will be taken into account in the FPAs.

### 6.7.4 *Compliance control*

The Commission recently adopted a report on the Member States' implementation of the Common Fisheries Policy (CFP) during 2003-2005. The report covers both the conclusions of the Commission's inspection missions in the Member States to evaluate their control procedures, and an analysis of the implementation reports submitted by the Member States. It concludes that while significant progress was observed over the period, the control situation remained in general unsatisfactory. The Member States did not deploy sufficient human resources to ensure control of the CFP measures, they did not take adequate action to guarantee the quality of the inspections which they carried out, and only a few Member States had put in place strategies to optimise the use made of the means which were available to them.

The Commission's own inspection missions focused on a number of sensitive areas identified as representing a high risk for non-compliance. These included fisheries targeting stocks which are subject to recovery and other long-term management plans, and the use of satellite-based vessel monitoring systems (VMS). The inspection missions highlighted a number of serious shortcomings and discrepancies in the way the CFP was implemented, including lack of sufficient inspections and failure to cross-check VMS data with that recorded in vessels' logbooks. Among the consequences observed were continued use of banned gear, such as driftnets, and major discrepancies between declared and observed catches. The use of VMS was not effective, because of lack of compliance by fishermen, and by Member States' apparent reluctance to use it as a tool to manage fishing effort. As a result, effort management

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<sup>172</sup> The number of vessels stays the same, but they fish for fewer days each year.

<sup>173</sup> European Commission, A policy to reduce unwanted by-catches and eliminate discards in European fisheries, COM (2007) 136 final.

<sup>174</sup> Agricultural and Fisheries Council, 11-12 June 2007, Doc. 10169/07 (Presse 123).

rules seem to be implemented in such a way as to cause minimal disturbance to existing fishing activity.

## 6.8 Structural / Fleet policy

It has long been recognized that overcapacity is one of the central problems in the CFP. As early as 1995, it was estimated that substantial cuts in the EU fishing fleet, in some cases up to 40 per cent, were necessary to achieve a balance between available resources and fishing capacity<sup>175</sup>. The Community fleet has never been reduced to a size appropriate for the level of resources. This has had serious implications for the EU's relations with developing countries. Firstly, structural policy formerly included aid for the establishment of joint ventures and joint enterprises in third country waters. Secondly, a reduction of fishing opportunities in EU waters has led to a policy of seeking to develop fishing opportunities in third country waters<sup>176</sup>. The resulting depletion of fisheries abroad led to accusations that the EU had exported its problem of excess capacity to international waters and to the waters of third States. In fact, the Commission admitted this as early as 1991<sup>177</sup>. Moreover, the need to export capacity is implicit in the constantly repeated policy of maintaining the EU fleet in the waters of ACP countries in order to keep the fishing companies in business and support employment in the fisheries sector.

Despite revisions to the fleet policy, the problem of over-capacity remains. As pointed out by the Commission in a recent Communication, while the number of vessels has been reduced somewhat, the fishing capacity has increased due to technical advances<sup>178</sup>. It should be noted that Member States have the responsibility to take effective measures to reduce capacity. The Commission can only draw attention to the situation and make proposals. As long as over-capacity remains, so will the pressure to maintain the EU DWF in the waters of West Africa.

## 6.9 IUU Fishing

As noted above, IUU fishing is one of the primary threats to sustainability in West African fisheries, and a major challenge for fisheries and development policies in the region. IUU fishing not only undermines fisheries conservation, but also results in substantial economic losses, threatens livelihoods and food security and undermines the economic and social conditions of fishing communities and fishers.

Although the EU has addressed aspects of IUU fishing in a number of specific measures, to date the primary response has been the Community Action Plan for the Eradication of IUU Fishing, adopted by the Commission in 2002. The EU has provided considerable funding and

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<sup>175</sup> See European Commission, *Report of the Group of Independent Experts to Advise the European Commission on the Fourth Generation of Multi-annual Guidance Programmes* (DG Fisheries, 1996).

<sup>176</sup> See, e.g., European Commission, Communication on Guidelines and Initiatives for the Development of the CFP, COM (86) 302 and Council Conclusions of 11 June 1986, Bull. EC 6-1986, point 2.1.207 both of which refer to the need to find new fishing opportunities with third countries to accommodate the accession of Spain and Portugal.

<sup>177</sup> European Commission, La Toja 1991. Document 1- Fisheries agreements. Document Distributed to a fisheries seminar in the European Parliament 20-21 June 1991. Cited in: M. Earle, "Paying for Unsustainable Fisheries: Where the European Union Spends its Money", pp. 227-242 in: Lavigne, D.M. (ed), *Gaining Ground in Pursuit of Ecological Sustainability*, International Fund for Animal Welfare, 2006.

<sup>178</sup> European Commission, Communication on improving fishing capacity and effort indicators under the common fisheries policy, COM (2007) 39 final, 5.2.2007. See also: European Parliament: Draft Report on Member States' efforts during 2005 to achieve a sustainable balance between fishing capacity and fishing opportunities, Provisional 0000(INI), 15.5.2007.

technical support to MCS activities and projects in West African countries both as a component of fisheries agreements and independently. Considerable support for these programmes also derives from the national aid programmes of some Member States. In a recent report, the European Parliament acknowledged that there has been some success in such projects. However, they needed to be expanded and better coordinated with national aid agencies<sup>179</sup>. It also noted that the support and cooperation of the developing countries was not always easy to obtain<sup>180</sup>.

The Commission has announced that combating IUU fishing will be a priority in 2007<sup>181</sup>. It will produce a communication and a proposal for a regulation defining a new strategy. In a stakeholder consultation nine fields of action were identified, *inter alia*: restricting access for IUU vessels and their catches to EU ports and markets; introducing a more efficient regime of penalties for serious infringements; strengthening work of regional fisheries management organisations against IUU fishing; reinforcing the support to developing countries in their fight against IUU fishing; and increasing the synergies in the field of monitoring, control and surveillance<sup>182</sup>. On developing country cooperation, the Commission's consultation document foresees a reinforcement of current actions, focussing on increasing MCS capacities of coastal States (in particular those with which the EU has a fisheries agreement) and strengthening regional cooperation schemes.

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<sup>179</sup> European Parliament, Report on the Implementation of the EU Action Plan against Illegal, Unreported and Unregulated Fishing. Doc. A6-0015/2007, 29.1.2007.

<sup>180</sup> See the related EP resolution, calling for EU action to focus on IUU fishing in international waters and in the waters of developing countries and on the Commission and the Member States to redouble their efforts, including by assisting developing countries in their ability to monitor fishing activities in their waters and to combat IUU fishing: European Parliament resolution on the implementation of the EU action plan against illegal, unreported and unregulated fishing, 15 February 2007.

<sup>181</sup> Informal Fisheries Council: Statement by Commissioner Joe Borg, Agriculture and Fisheries Council, Luxembourg, 17 April 2007", press release on EC website, accompanied by text of statement, at [http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/com07\\_27\\_en.htm](http://ec.europa.eu/fisheries/press_corner/press_releases/com07_27_en.htm).

<sup>182</sup> European Commission, *Consultation Paper on the Initiatives Envisaged by the Commission to Improve the Fight of the European Community against Illegal, Unreported and Unregulated Fishing*, December 2006.

## **7 FISHERIES PARTNERSHIP AGREEMENTS**

As explained in the previous section, the 2002 reform of the CFO included a thorough reconsideration of the bilateral fisheries agreements between the EU and the ACP countries. At the end of December 2002, the Commission issued a Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries<sup>183</sup>, setting out its analysis and proposals. The European Parliament adopted a resolution on the subject in 2003<sup>184</sup>. However, because of the complexity and sensitivity of the issues involved, the Council discussed the question for 18 months before adopting its Conclusions in July 2004.

### **7.1 The Integrated Framework for Fisheries Partnership Agreements**

In its “Integrated Framework” document, the Commission stated that the move from access agreements to “partnership agreements” was designed to contribute better to responsible fishing in the interests of both Parties. In addition to payment for access, FPAs include a contribution to cover the development of a national fisheries policy and possibly the cost of scientific assessment of fish stocks, sustainable fisheries management, and monitoring and control of fishing activities, as well as the follow-up and evaluation of the agreement. The EU intends its financial contribution to be regarded as an investment for the improvement of responsible and rational fishing.

In the context of CFP reform, the Commission believed that as a public player in the negotiation and management of fisheries access agreements, the Community had to continue its activities in order to promote the implementation of the Code of Conduct for Responsible Fisheries and the FAO Compliance Agreement. This position was confirmed in the Council Resolution of 8 November 2001, which acknowledged the potential role of fisheries agreements in contributing to the reduction of poverty when they are designed and implemented in accordance with sustainability principles. The Commission agreed that consistency of the European external activities had to be ensured and pledged to strictly respect the “coherence” principle in the FPAs. The FPAs had to integrate the objectives of sustainable fisheries development, through the conservation and management of resources, monitoring and control and fleet management.

The Commission considered that the EU had to strive for sustainable fisheries both inside and outside Community waters, noting that different policies should contribute to this overall objective while following their own specific objectives:

- The specific objective of the Common Fisheries Policy is to maintain the European presence in distant fisheries and to protect European fisheries sector interests
- The specific objective of the European Development Policy is to foster developing countries capacities to exploit their marine resources, to increase local value added and to obtain the fairest price for access rights to their EEZ by foreign fleets. Other European policies like research, trade, and environment, also contributed through their own objectives to the overall objective of sustainable fisheries.

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<sup>183</sup> Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, COM (2002) 637, 23.12.2002.

<sup>184</sup> P5\_TA(2003)0431, Fisheries Partnership Agreements with Third Countries.

The new agreements had to take into account that the management of resources was a sensitive issue in relations with developing countries and the evaluation of the available surplus in the waters of these countries had to:

- respect the principle of ownership of the fishing policy by the Coastal State,
- be based on sound scientific advice as defined in article 62 of UNCLOS,
- be coherent with the Community objective to avoid the overexploitation of the stocks concerned, in the interest of the local populations and for the long term sustainability of their fishery sector,
- ensure fishing possibilities are in line with and based on best available scientific data,
- assess the likely environmental impact of fishing, with a view to adopting the necessary remedial measures.

Because control, monitoring and surveillance activities were weak points in the implementation of FAAs, they would be improved through partnership actions in fisheries control with the countries concerned in conformity with the lines of the reform of the CFP. The management of the fleet could cover the eventual inclusion of European DWF fleet into the fishing fleet of the partner. FPAs could provide the appropriate legal framework and financial instruments reflecting the development objectives of partners, encouraging the transfer of technology, capital and expertise by the promotion of joint enterprises between Community interests and those from the coastal states concerned. Moreover, the Community would ensure that public funds were used to support the principles of good governance by coastal States aiming to implement a sustainable fisheries policy.

The Commission aimed to strengthen developing coastal States' capacities to implement a sustainable fisheries development strategy. This policy was to be applied until the countries concerned acquired the capacity to manage their own fisheries policy effectively. For this reason, it was considered necessary to widen the scope of the Community financial contribution in order to invest in sustainable fisheries policy, not just as a payment for access rights to fishing possibilities for the benefit of European fishing enterprises. The Community financial compensation would continue while developing coastal States continued to make some of their surplus available to the Community stakeholders. Therefore, in the future, the Community financial contribution would be regarded as an investment for the improvement of responsible and rational fishing and would therefore be "based" on new considerations. This contribution mainly covers expenses linked to management costs, the scientific assessment of fish stocks, fisheries management, and control and monitoring of fishing activities, as well as expenses for the follow up and evaluation of a sustainable fishing policy.

In addition, the Commission stated that the fisheries agreements generated important, often vital, economic activities in both Europe and the coastal states, not only through the exploitation of fishing resources, but also through the development of associated activities. The positive impact of the new Partnerships agreements on the developing country's local economies would even be more important in the future. The Commission asserted that adoption of the Framework would be a major step towards reconfirming the commitment of the Community to contribute to the sustainable development of fishing activities at the international level, including at the WSSD. The need for responsible fishing was in a global context of scarcity and overexploitation of some fish stocks. The EU fleet was becoming less and less competitive vis-à-vis the fleets of new emerging fishing nations operating at lower

costs.<sup>185</sup> The maintenance of sustainable global fishing activity was threatened by flags of convenience, illegal fishing, the lack of transparent rules, the effects of direct or indirect subsidies and the development of destructive fishing practices.

## **7.2 2004 Council Conclusions**

In 2004, the European Council responded with its “Conclusions on the Integrated Framework for Fisheries Partnership Agreements with Third Countries”, confirming that the EU fleet should continue to operate in the waters of third States, but that its fisheries agreements should be transformed into “Fisheries Partnership Agreements” with a view to promoting responsible and sustainable fisheries. The Council Conclusions stated that the new FPAs should:

- contribute towards rational and sustainable exploitation of the surplus of coastal States’ marine resources, in particular by preventing the overfishing of stocks which are of interest for local people; in this context due account will be taken of the coastal States’ priorities in favour of its private national sector;
- improve scientific and technical knowledge of the fisheries in question, taking into account the existing and necessary work in the field carried out at the appropriate regional level and taking into consideration the likely impact of fishing on the environment;
- contribute towards combating illegal, unregulated and unreported fishing, in particular by stepping up in a non-discriminatory fashion the management, control and follow-up measures for fishing operations;
- contribute towards strategies for the sustainable management of fisheries as defined by the coastal State, in particular by taking account of the development programmes elaborated at national and/or regional level with Community assistance in accordance with cooperation or association agreements;
- facilitate the integration of developing coastal States into the global economy, inter alia by promoting fair conditions of employment between the employees of the sector and by encouraging the creation of an environment that is favourable to private investment and to the development of a dynamic, viable and competitive private sector, notably by a framework supporting European investments and the transfer of technology and vessels; and,
- foster better global governance of fisheries at financial and political level, in particular by strengthening the capacity building of coastal States and by the fight against corruption.

## **7.3 The Post-2002 Bilateral Agreements**

In West Africa, only a few new agreements have been concluded since the adoption of the Council Conclusions in 2004. However, some new elements were included in instruments concluded after the Commission’s Communication of new policies in the 2002 CFP reform. In April 2004, the EC and Guinea adopted a Protocol to the Agreement between for the period 1 January 2004 to 31 December 2008. Since 2005, in the West African region, FPAs

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<sup>185</sup> The Green Paper on the CFP set out a clear diagnosis of the current situation of the long distant waters fleet (LDWF) policy.

have been concluded with: Cape Verde, Cote d'Ivoire, Gabon, Guinea-Bissau, Mauritania, Morocco and Sao Tome and Principe. The agreements with Cote d'Ivoire and Guinea-Bissau have not yet been published or presented to the Council for approval<sup>186</sup>. A new agreement with Guinea is expected to be negotiated in the next year or so. The 2002-2006 agreement with Senegal has not been renewed.

The structure of the FPAs remains similar to the previous fisheries agreements, consisting of an over-arching agreement, supplemented by a protocol and annexes which detail the financial contribution, fishing opportunities and conditions. The main differences between the FAAs and the FPAs relate to the way the financial contribution is calculated and the change from targeted actions to support for defining and implementing a sectoral fisheries policy. In an effort to move beyond purely commercial agreements, and to contribute more effectively to sustainable fisheries management in the coastal state, the EU has widened the scope of the financial contribution, which is now calculated on the basis of two separate components:

- access by EU vessels to the coastal state's fisheries;
- financial support for enhancing responsible fishing and the sustainable exploitation of fisheries resources (contribution for fisheries policy).

Other changes include scientific cooperation and review of the agreement, increased provision for vessel monitoring systems (VMS) and monitoring, control and surveillance (MCS), a social clause covering employment of seamen, sometimes an exclusivity clause covering the operations of Member States' vessels, and the remit for broader partnership actions in the fisheries sector relating to economic, commercial, scientific and technical cooperation. The FPAs are also subject to a preparatory ex-ante evaluation to determine the overall feasibility and the costs and benefits of each agreement. Implementation is to be overseen through regular meetings by a Joint Committee. While the agreements are full of good intentions and seem on their face to respect most of the principles of sustainable fishing, it is unclear how the fisheries policy aspects will be designed and implemented.

As noted by the European Parliament, the agreements are essentially commercial in nature, since the main objective of the CFP in relation to fisheries outside of Community waters is to 'maintain the European presence in distant fisheries and to protect European fisheries sector interests'. Thus, the FPAs are not development agreements; their primary purpose is not to develop the local fishing and processing industries in Africa or to integrate the fisheries sector into the local economy. Whether the funds provided by the EU financial contribution will achieve these developmental goals will depend on the actions of the host countries, on the provision of development assistance outside the context of the FPAs, and on whether the presence of the EU fleet and the rules for fish trade discussed in the next section hinder the development of the local fisheries sector.

Since the new agreements are very recent, it is too early to judge how they will operate in practice. On their face, the FPAs appear to respect most of the principles of sustainable fishing and there are identifiable improvements over earlier agreements. On the other hand, at

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<sup>186</sup>Requests to the Commission for copies of these agreements were refused. Their existence was announced in press releases on the website of the Directorate-General for Fisheries (DG Fish). The texts of the other agreements and a large number of related documents are available on the website under "Bilateral Agreements", at: [http://ec.europa.eu/fisheries/legislation/other/bilateral\\_agreements](http://ec.europa.eu/fisheries/legislation/other/bilateral_agreements). Some information for this report was drawn from: SF Walmsley et al, *Comparative Study of the Impact of Fisheries Partnership Agreements – Technical Report*, May 2007, prepared by MRAG for the UK's Department for Environment, Food and Rural Affairs (DEFRA ) and Department for International Development (DFID), hereinafter: MRAG, *Comparative Study*.

this point it is unclear how the fisheries policy aspects will be designed and implemented. As the agreements are now based on a partnership approach, it can be expected that they will develop over time in the context of a policy dialogue between the EU and the host countries.

**Summary of Agreements (adapted from the Comparative Study by MRAG for UK government)**

Country	Dates	Species	General Payment (euros)	Fisheries Policy (euros)
Cape Verde	2006-2011	Tuna 5000t	325,000	60,000 80 %
Cote d'Ivoire	2007-2013	Tuna 7,000t	595,000	100 per cent
Gabon	2005-2011	Tuna 11,000t	715,000	145,000
Guinea	2004-2008	Shrimp, pelagics cephalopods tuna	Increasing annually to 4.25 million in 2008,	Increasing to 1.95 million in 2008 500,000 once for MCS, SPS
Guinea-Bissau	2007-2011	Shrimp, tuna, pelagic	7 million	2.450 million = 35%
Mauritania	2006-2012*	Crustaceans demersal, pelagic, tuna cephalopods	75 million	11 million
Morocco	2006-2010	Demersal pelagic tuna	22.6 million	13.5 million
São Tomé & Príncipe	2006-2010	Tuna 8,500t	663,000	50% of total

\* The Mauritania Protocol is for two years, renewable tacitly for two additional two year periods.

## **7.4 A Preliminary Examination of the Fisheries Partnership Agreements**

### *7.4.1 The Partnership Approach*

The MDCs, the Cotonou Agreement, the Integrated Framework for Fisheries Partnership Agreements, the WSSD and the European Consensus on Development all provide for development based on the Partnership concept. As stated in the Cotonou Agreement, this implies the equality of the partners and ownership of development strategies, as well as participation by all sections of society. In accordance with this concept, the FPAs are supposed to incorporate a partnership approach, which assumes equality in power of the parties, equality of information (transparency), working together to a common goal, and equality of benefits.

Some commentators consider that the EPAs do not constitute real partnerships because there is an imbalance in power, and because there is no transparency as officials of the host country and the public are not always provided with the ex-ante and ex-post evaluation reports. In addition, FPAs do not provide for participation of fishers or civil society. Moreover, the agreements appear to be unfair, because in most cases, the value of the fish taken by the EU far exceeds the financial contribution under the agreements. For example, the Commission's proposal for a regulation to approve the 2004-2008 Protocol with Guinea states that over the three year period, the total value for the EU would be 90 million euros, while the total value for Guinea would be 13.3 million euros.

Extracts from the ex-post evaluation of the preceding Protocol revealed certain deficiencies in Guinean fisheries management as well as measures that were negotiated by the EC into the agreement to address the problems:

*-The measures introduced by Guinea for the management of fish stocks have not succeeded in preventing overfishing in the coastal zone.*

The Republic of Guinea undertakes to incorporate in its fisheries plan for the year 2004 and subsequent years during the validity period of the Protocol a provision reserving for the Guinean non-industrial fleet the fishing zone between the coast and the 20 metres isobath and, where this isobath is reached less than 12 miles from the coast, the zone between the coast and 12 nautical miles from the coast...

*- The preceding Protocols have not succeeded in improving local market supplies and food security for the population. At the same time, discards are a waste of resources.*

In order to minimise discards by European vessels, a scheme for collecting excess catches has been established. Catches collected at sea or landed shall be handed over free of charge in order to contribute towards supplying the local population.

*- Fisheries protection and control measures in Guinea are inefficient and the previous Protocols have not succeeded in reducing illegal fishing.*

In order to improve this situation, provision is made for two payments, of €500 000 and €300 000, in the first two years of the Protocol for the purchase of at least two surveillance vessels... In addition, at least €400 000 per year will be used to improve fisheries surveillance and management of the fishing effort.

*- Previous Protocols have also done little to generate local added value.*

In order to improve this situation, at least €175 000 per year will be spent on the organisation of non-industrial fishing and at least €150 000 per year on the promotion of training in the different scientific, technical and economic disciplines relating to fisheries.

*- Guinean involvement in the fisheries sector has remained largely non-industrial.*

In order to improve this situation, the two parties have undertaken to promote the setting-up of joint ventures between Community operators and Guinean operators for the purpose of jointly exploiting fisheries resources in the exclusive economic zone of the Republic of Guinea. Vessel-owners operating in the context of such joint ventures must land in Guinea all fish caught which is not destined for the European market ...

*- Regional cooperation with other West African countries has been limited.*

In order to improve this situation, at least €175 000 per year will be earmarked for the contribution to and participation by the Republic of Guinea in international fisheries organisations.

– *The lack of information on fishing in Guinea makes it difficult to carry out an accurate assessment of the activities and results of the fisheries sector.*

In order to improve this situation, a stricter licence-management system has been introduced.<sup>187</sup>

This example provides an indication of the state of fisheries management in some African countries and of the measures the Commission has proposed to address the situation. In assessing benefits, it is necessary to recognise the serious problems in governance in many of these countries and the fact that the EU provides greater benefits financially and in terms of efforts to promote sustainable fishing than do other distant water fleets in the region.

Nevertheless, the inequality of benefits remains. The EU obtains a value-added several times that of Guinea, because it: 1) exports its excess capacity to foreign waters, 2) obtains profits for fishing companies and employment for fishers, 3) secures financial benefits for EU ports and service providers to fishing vessels, 4) provides profits and employment for EU processing industries, and 5) secures an assured supply of low-cost fish for EU consumers.

#### 7.4.2 *Inequality in power*

As the European Parliament has noted, there is an imbalance in the bargaining power between the EU and the West African countries,<sup>188</sup> especially where the financial contribution comprises a large percentage of the coastal State's budget (for example 35 per cent for Guinea-Bissau)<sup>189</sup>. This has led West African governments to grant access even when the foreign fishing fleets do not contribute to poverty reduction or sustainable development<sup>190</sup>.

#### 7.4.3 *Inequality of Information*

While the Commission does conduct ex-ante and ex-post reviews on the fisheries agreements, these reports are not always shared with the developing country "partner" and are not always made public. This disparity in knowledge and understanding about fish stocks, resource, catch, by catch and discards data often means that African countries are at a disadvantage in negotiating fishing agreements and contracts.

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<sup>187</sup> Proposal for a Council Regulation on the conclusion of the Protocol defining for the period 1 January 2004 to 31 December 2008 the fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea on fishing off the Guinean coast, COM(2003) 765 final, 10.12.2003. Requests from the consultants for copies of ex-post and ex-ante reports of all the agreements were not acceded to.

<sup>188</sup> *Fisheries and Poverty Reduction*, op. cit. See also OECD, *Fishing for Coherence*, at p 16. Recently, certain NGOs, such as WWF and EDCPM have published advice for developing countries in negotiating fisheries agreements and have offered assistance in negotiations.

<sup>189</sup> It is now 38 per cent.

<sup>190</sup> *Fisheries and Poverty Reduction*, op. cit. According to press reports, last year Senegal took a different view and refused to sign a disadvantageous agreement. Report in Agritrade, <http://agritrade.cta.int>, quoting from: Walf Fadjri, 1 July 2006; Le Soleil, 11 July 2006; Le Soleil, 28 June 2006.

#### 7.4.4 *Benefits and the Value of FPAs*

The distribution of costs and benefits of fishing agreements between the EU and the coastal State provides an indication of their fairness. The FPAs are commercial, because the EU pays the African country for access to its fisheries: the EU gets fish and the coastal State gets cash. Some of the cash may be earmarked for national fisheries policy and sustainable management, but the coastal State has control over how it is used. The more general financial contribution may be used by the coastal State for any purpose. However, the amount paid for the fish is less than the market value<sup>191</sup> and the EU receives the other benefits indicated above, including the value-added from landing in EU ports and from processing in EU plants, which are the greatest benefits of all.

The goals of sustainable development are economic and social development within a healthy environment that will sustain a prosperous society for present and future generations.<sup>192</sup> Development policy requires that rich industrialised States provide technical assistance and capacity building to help developing countries to achieve these goals in accordance with their own development policies and plans, which can be formulated jointly on a partnership basis. In other words, sustainable development policy should provide benefits to the developing country, without necessarily providing any benefits to the industrialised country assisting with development. The requirement of greater economic benefits for the EU in the FPAs indicates that FPAs are not a tool of development policy and might indeed be incoherent with it.

Coastal states are theoretically able to invest the EU financial contribution into local development, for example through contributions to health, education or transport systems. However, there is no guarantee that this will happen and since the countries concerned are among the poorest in the world<sup>193</sup>, it seems that up until now, it has not happened.

For coastal states, the revenue from added-value activities, such as employment, processing and port services, could potentially be greater than the direct financial compensation payments. The benefits accruing to individual countries from fisheries vary considerably. At present, in most cases revenue from land-based activities, such as port fees, payment for repairs, profits from processing, goes to the EU. Cote d'Ivoire is an exception, in making a profit through its processing industry. In comparison, the agreement with Mauritania is one of the largest-value FPAs, yet there are virtually no landings by EU fishing vessels in Mauritania and very little processing activity. It has been estimated that approximately 10 per cent of the employment and value-added from fisheries agreements goes to the host country, with 90 per cent going to the distant water fishing fleet and EU processors<sup>194</sup>.

#### 7.4.5 *Working Together for Development*

The agreements provide for the development of a national fisheries policy and for support to sustainable fishing, as well as a Joint Committee to monitor the implementation of the agreements. However, it is not clear how the policies will be elaborated and how the Joint Committee will operate. How the EU money is to be spent is more flexible under the FPAs than the FAAs, allowing the government to identify the objectives and priorities for the

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<sup>191</sup> MRAG, *Comparative Study*, pp. 21-23. For tuna, the EU pays 2-13 per cent market value, Japan 6 per cent and the US 22 per cent

<sup>192</sup> EU renewed Sustainable Development Strategy, 2006.

<sup>193</sup> United Nations, *The Millennium Development Goals Report 2006*, pp. 4-5.

<sup>194</sup> SM Mwikya, 'Fisheries Access Agreements: Trade and Development Issues,' ICTSD, 2006.

fisheries sector policy (in consultation with the EU). While this is consistent with the partnership concept that the coastal States are to agree multi-annual guidelines and objectives with the EU, it is not yet clear what mechanisms will be used to achieve this. While consultation or participation by stakeholders is stipulated in the Cotonou Agreement and recommended in the Code of Conduct, it is not clear whether civil society and the interests of inshore fishers had not been adequately represented in the negotiations for FPAs.

It has been suggested in many fora that perhaps leaders in developing countries are not aware of the potential benefits that could be derived from developing their own fisheries industries and related land-based activities, such as processing. It has also been suggested that leaders in host countries prefer immediate cash benefits to the benefits from sustainable development, because the latter seem remote and require assistance to realise, which is not provided through the FPAs.

#### 7.4.6 *The Entitlement to Fish in West African EEZs: Determination of a Surplus*

Both international law and EU policy require that only fish surplus to coastal State capacity be caught<sup>195</sup>. In their Conclusions on the Integrated Framework, the Council confirmed this requirement. In practice, this demands a reliable determination of the status of the stocks, a determination of maximum sustainable yield and a total allowable catch (TAC), as well as a determination of the amount of fish that could be caught by local fishers to be calculated prior to the conclusion of any FPA. In 2001, the Development Committee commented that despite the requirements in the Code of Conduct to apply the precautionary principle and to take into account the interests of artisanal and small-scale fishers, too often the EU did not have an adequate analysis of the state of fish stocks in the waters of the countries in whose waters the EU fleet wished to fish. The Commission negotiated access based essentially on the demands of EU shipowners, instead of taking account of the impacts on stocks and local fishing communities<sup>196</sup>.

Even though the Commission now undertakes *ex ante* evaluations of the agreements, the results are not usually made public. Consequently, it is not possible to know whether there actually is a surplus or even whether there has been an effort to ascertain whether there is. Nevertheless, it should be noted that the press release on the Cote d'Ivoire FPA states that the fishing possibilities reflect scientific recommendations and that for Guinea state that the fishing possibilities were based on the latest scientific campaign undertaken in September 2006. However, although the amount of fishing authorised is supposed to be based on scientific assessments, because EU payments are still based on fishing effort, host governments might agree to excessive fishing in order to increase revenues even in the face of scientific warnings that fishing is already too high.

#### 7.4.7 *Non-discrimination clauses*

The FPA principle of “non-discrimination between the fleets active in a fishing zone” theoretically gives the EU fleet and the local fleet equal access to resources. While such provisions might appear to be fair, they are inconsistent with the development objectives of developing the national fishing industry and contributing to economic and social

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<sup>195</sup> Commission Communication on an Integrated Framework for Fisheries Partnership Agreements and Council Conclusions on the integrated framework.

<sup>196</sup> European Parliament, Committee on Development and Cooperation, “Working Document on the Developing Countries: Fisheries and Poverty Reduction”, hereinafter *Fisheries and Poverty Reduction*.

development. Furthermore, the superior power and equipment of the EU vessels overwhelms the local fishers and prevents them from accessing the resources on an equal basis. This is contrary to the principles of UNCLOS that give priority to the fishers of the coastal State and only authorise foreign fleets to fish in the EEZ where there is a surplus. Furthermore, the European Parliament has called for local fishers to be given priority in access for resources and in its 2004 Conclusions, the Council called for the coastal States' priorities in favour of local fishers to be taken into account.

## **7.5 Fisheries Policy and Environmental Protection Requirements**

### *7.5.1 Overfishing*

Despite some factual uncertainties, it appears that a large number of West African fish stocks are over-exploited, and reductions in fishing are required<sup>197</sup>. Evidence of depletion has in some cases led to such reductions under FPAs, but there are doubts whether these are sufficient<sup>198</sup>. Both international and European law require coastal States and fishing States to conserve and manage fish stocks so that they can be harvested sustainably for generations to come. This requires the application of both the precautionary approach and the ecosystem approach<sup>199</sup>. In order to ensure that FPAs do not contribute to over-fishing and depletion of the stocks, rigorous scientific assessments of fish stocks and effective control over fishing is necessary.

### *7.5.2 Bycatch*

As recognized by international fisheries instruments and a recent Commission Communication<sup>200</sup>, the taking of non-targeted fish (bycatch) is a significant problem. In shrimp fishing, bycatch can amount to as much as 90 per cent of the catch. Unwanted species are thrown back dead or dying into the water, a waste of potentially valuable food resources. International fisheries instruments contain requirements to minimise bycatch, yet although some FPAs contain references to bycatch, they do not provide for specific control measures<sup>201</sup>.

### *7.5.3 Restrictions on fishing effort*

FPAs do not always include effective limitations on fishing effort, or on catches. Indeed, apart from tuna, in many cases, it could be said that there are no limits at all on the amount of fish that may be taken under an FPA<sup>202</sup>. Most FPAs provide for a limit on the number of vessels or for a maximum gross tonnage (GRT). However, the amount of fish caught depends

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<sup>197</sup> FAO, *SOFIA* 2006; CECAF, Report of the fourth session of the Scientific Sub-Committee, Accra, Ghana, 24-26 October 2005, FAO Fisheries Report no. 807.

<sup>198</sup> The Mauritanian FPA still allows access for EU vessels to octopus, even though recent assessments indicate there is 31 per cent excess capacity in the fishery (CFFA, 2006).

<sup>199</sup> For the precautionary and ecosystem approaches, see sections 3.5.1 and 3.5.2 above.

<sup>200</sup> See Commission communication on bycatch and discards, *op. cit.*

<sup>201</sup> Agreements covering tuna fishing refer to ICCAT regulations.

<sup>202</sup> Quotas for tuna are adopted by ICCAT. The agreements with Mauritania and Morocco provide for tonnage limits on some mixed fisheries.

on neither criterion independently<sup>203</sup>. The amount of fish taken depends on a large number of factors, including the size of the ship, the power of its motor and equipment, the type of equipment, the skill of the officers and crew, the type of processing onboard, whether it is bunkered offshore or has to go into port and whether it can tranship at sea instead of in port<sup>204</sup>. This contrasts with the most prevalent and effective method of controlling fishing: limiting catches through the use of total allowable catches (TACs) and quotas<sup>205</sup>. The problem is that this method requires first of all a scientifically based stock assessment, a determination of a biologically and ecologically safe level of fishing, and then effective monitoring and reporting of catches, all of which are difficult for developing countries. Furthermore, fishers frequently misreport catches and most developing countries do not have sufficient capacity for monitoring, control and surveillance (MCS)<sup>206</sup>. Neither the TAC nor the GRT method is foolproof, but both depend on effective monitoring, surveillance and enforcement. African States have not had the capacity to monitor and enforce effectively and the EC has been equally ineffective, as acknowledged by the European Commission<sup>207</sup>.

All the FPAs now contain exclusivity clauses, which prohibit EU shipowners from negotiating private agreements with host countries, thereby evading the restrictions imposed by the agreements. These clauses are a positive feature of the FPAs. However, they only control EU vessels, and do not affect access agreements with other countries or with individual vessels from other countries. It is the responsibility of the coastal State to ensure that fishing by all vessels in its waters is sustainable.

#### 7.5.4 Flexibility

All FPAs provide that fishing opportunities may be revised in the light of scientific evidence. If the amount of fishing effort is reduced, the financial compensation is also reduced in proportion. While it is important for the agreements to be flexible and to be able to respond to changes in stock status, the fear of losing part of the financial compensation may cause coastal states to avoid reducing fishing opportunities, even if there are signs that the stocks are over-exploited. There are reports that one of the reasons for the non-renewal of the Senegal agreement in 2006 was Senegal's wish to reduce EU fishing effort and ban their access to coastal demersal stocks.

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<sup>203</sup> Ten large vessels can catch more than ten small vessels, but even a small vessel may catch a substantial amount of fish if it has powerful motors, advanced technology and is serviced offshore.

<sup>204</sup> Commission Communication: Implementing sustainability in EU fisheries through maximum sustainable yield, COM (2006) 360 final and "Commission Communication on improving fishing capacity and effort indicators under the common fisheries policy", COM (2007) 39 final. See also: European Parliament: Draft Report on Member States' efforts during 2005 to achieve a sustainable balance between fishing capacity and fishing opportunities, Provisional 0000(INI), 15.5.2007.

<sup>205</sup> The EU uses this method, as well as effort reduction. However, the recent communications from the Commission cited in the previous footnote indicate that effort reduction (days at sea) is not effective in limiting catches.

<sup>206</sup> For example, the FAO country profile for Cape Verde estimates that in 2002, 90 per cent of foreign vessels were registered in the EU and only 10 per cent of all foreign vessels declared their catches, and that that one of the major problems associated with foreign vessel operations is Cape Verde's lack of MCS capacity: Profile de La Peche par Pays, La Republique du Cap Vert, janvier 2004, [www.fao.org/fi/fcp/fr/CPV/profile.htm](http://www.fao.org/fi/fcp/fr/CPV/profile.htm) (original in French).

<sup>207</sup> COM (2007) 167 and SEC (2007) 425 and press release of 10 April 2007, "Commission: improvements still needed in fisheries control".

### 7.5.5 *Data Collection, Scientific Research and Fora for Discussion*

One of the improvements brought in by the new FPAs is the creation of a forum to review the state of the stocks and discuss possible changes to the level of fishing. In some cases, the FPA provides for the establishment of a Joint Scientific Committee and in others, simply a forum for discussion. In some agreements, the scientific meetings can decide upon technical measures or bycatch limits. It is to be hoped that these meetings will occur on a regular basis and that suitably qualified professionals can be found<sup>208</sup>. Coastal states need more support for stock assessment as they often lack the financial and human resources to carry out such work. Although the FPAs provide for scientific advice to guide decision-making, it is not always clear how this will be done<sup>209</sup> and there are no provisions for training scientists and no directed funding for scientific institutions. It is up to the coastal State to decide whether funds will be used for these purposes. However, in addition to money, technical and expert advice is needed to carry out the data collection, scientific surveys and analysis. Moreover, development-type assistance may be more effective than simple funding under FPAs and may provide a better framework for providing financial support, expert advice and capacity building.

This lack of scientific capacity in developing countries has been a problem for some time and the EU has had a policy of addressing the issue<sup>210</sup>. But, in addition to enhancing national fisheries research capacity, it would be desirable to strengthen the main regional body for fisheries advice (CECAF), which lacks adequate funding and reliable data<sup>211</sup>. Several development-oriented projects are underway in the West African region to survey the fishery resources, including an EU-funded project on Improving Scientific and Technical Advice for Fisheries Management (ISTAM), but these suffer from a lack of coordination, as well as constraint in locally available human resources.

### 7.5.6 *Sustainable Fisheries Management by the Coastal State*

The development and implementation of a national fisheries policy can provide substantial benefits to coastal States. Experience has shown that countries with a national fisheries policy have been more successful in managing their fisheries and extracting resource rent. These policies should be applied to all fleets fishing in the EEZ to ensure sustainable management and exploitation. The national fisheries policy would serve as the basis for the development of sustainable fisheries management by the coastal State. While FPAs have integrated a number of measures to promote sustainable management such as the exclusivity clause, biological recovery periods, by-catch limits and restriction of fishing zones, these elements are not included in all the agreements. Furthermore, the types of conservation measures that would be applied in EU waters through the CFP are not applied within developing country EEZs. More generally, an extensive and integrated programme of management measures is required for modern, effective and sustainable fisheries management. In particular, sustainable fisheries management require the application of the precautionary approach and the ecosystem approach, neither of which are referred to in the agreements. Fisheries policies should cover all the issues included in the legal and policy instruments outlined in Section 5, from scientific research, to stock assessments, determination of the total allowable catch,

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<sup>208</sup> See Proposal for a regulation on improving scientific and technical advice for Community fisheries management, *op. cit.*

<sup>209</sup> Article 3 of the recent Protocol to the Mauritanian FPA provides for a Joint Scientific Committee.

<sup>210</sup> Council Conclusions on an integrated framework, *op. cit.*

<sup>211</sup> CECAF Report, *op. cit.* pp.5-6.

conservation measures such as gear restrictions, biological rest periods, discards, the application of the precautionary approach, the ecosystem approach to fisheries, data collection, institutional frameworks, legislation, MCS and enforcement. They should also deal with development of the local fishing and processing industry, development of infrastructure and access by foreign fleets.

While the FPAs provide a financial contribution for activities ‘for defining and implementing a fisheries policy for sustainable fisheries’, how this money is to be spent is to be decided by the host country. The partnership approach under the FPAs allows the country to identify the objectives and priorities for the fisheries sector policy (in consultation with the EU). While the coastal States are to agree multi-annual guidelines and objectives with the EU, it is not yet clear what mechanisms will be used to achieve this. Furthermore, the EU has no real control over the use of the financial contribution. Development of a national fisheries policy requires a considerable amount of scientific, technical and fisheries policy expertise. It is unlikely that developing countries could successfully develop a national fisheries policy with technical developmental assistance and capacity-building. Since the development and implementation of sustainable fisheries management practices require considerable technical expertise, technical assistance and capacity-building, may be necessary for the developing country to use the money provided by the FPAs effectively<sup>212</sup>. Apparently, however, when an FPA is signed, development assistance for fisheries disappears<sup>213</sup>.

For some States, it may seem easier simply to take the money provided by the FPAs than to improve management and fisheries policy. Alternatively they might not be aware that the benefits of development would be greater than the cash received in financial contributions. They may lack the expertise to design a fisheries policy and to implement sustainable management strategies and measures. In devising these, they could benefit from greater information and from expert technical assistance. Money is not enough. Partnership should mean working together to achieve a goal.

### 7.5.7 *Compliance and Enforcement*

Lack of compliance with fishing regulations by fishing vessels and inadequate and enforcement by flag States are a problem everywhere. The recent Commission report on the monitoring by the Member States of their implementation of the CFP reveals quite serious inadequacies in monitoring, control, surveillance and enforcement. Developing countries systems are even more inadequate and EU Flag States apparently have not taken measures to ensure compliance. Fortunately, the Commission has taken special measures to assist in developing MCS measures in West African countries and the funding from the FPAs could help develop capacity, together with technical assistance.

While satellite-based vessels monitoring systems (VMS) are provided for in most agreements, all coastal States do not have the capability to use the systems. Furthermore, the reporting by vessels is done directly to flag States and only later passed on to coastal States. Observers are also provided for in the FPAs, although sometimes only on request. Since

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<sup>212</sup> The EU provides a rather limited amount of development assistance for fisheries in West Africa. Information provided by the Directorate-General for Development to L. de La Fayette indicates the following. DG DEV is consulted on the FPAs. Two regional projects are funded under the 9<sup>th</sup> EDF RIP: 5 million euros for harmonisation of legislation to begin in late 2007; 5 million euros for MCS enhancement under the SRCF. National projects comprise: 1) institutional support for fisheries management in Sierra Leone (3 million euros), 2) support for fisheries management on Senegal (6 million euros), 3) 24 million euros for cleaning up of Nouhadibou bay (Mauritania’s main port).

<sup>213</sup> MRAG, *Comparative Study*, Summary Report, p. 26.

observers on-board the vessels can provide more detailed information on the operations of the vessel, as well as scientific reports, it is important that observer programmes be implemented and that the personnel receive the appropriate training. Monitoring transshipments is important to check the level of fishing and also to prevent IUU fishing. While the FPAs provide for transshipment only in port or in designated areas, it would still be possible for vessels to evade this requirement by transshipping on the high seas. To avoid this, other forms of monitoring are necessary. In addition to VMS and observers, fisheries patrol vessels and aircraft would also be required.

#### 7.5.8 *Illegal, unreported and unregulated (IUU) fishing*

According to a 2005 MRAG report, illegal, unreported and unregulated (IUU) fishing took nearly 20 per cent of the catch in sub-Saharan African waters and was the cause of direct and indirect economic losses, adverse socio-economic impacts and environmental damage. This is not solely a practice of EU vessels, but these are involved in zone violations and poaching from protected areas, as well as misreporting<sup>214</sup>. The Commission has pledged to take strong action on IUU fishing internationally<sup>215</sup>. The issue is also being addressed by other actors, such as the Ministerial High Seas Task Force and the UK government<sup>216</sup>.

However, in some cases, IUU fishing is addressed under the FPAs themselves, as an issue requiring cooperative measures<sup>217</sup>. Effective measures to combat IUU fishing would require technical and enforcement assistance from flag States. However, programmes to address compliance generally and IUU fishing in particular would be more effective in a regional context. The FAO recently agreed to elaborate a new global agreement for port State measures to combat IUU fishing<sup>218</sup>. Regional agreements for port State measures would be required to put it into effect. This would provide a powerful toll to combat IUU fishing. Another recent initiative is the IMO proposal for the development of a West and Central African coast guard that could include fisheries and environmental patrols among its functions<sup>219</sup>. The EU should support these initiatives.

## 7.6 Development Policy

### 7.6.1 *Development of local fleets*

According to the Commission's communication and the Council's Conclusions on the Integrated Framework<sup>220</sup>, FPAs are intended to support sustainable and responsible fisheries. The first point in the Council Conclusions on an Integrated Framework of July 2004 states

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<sup>214</sup> MRAG, *Review of Impacts of Illegal Unreported and Unregulated Fishing in Developing Countries, Synthesis Report*, July 2005.

<sup>215</sup> "Informal Fisheries Council: Statement by Commissioner Joe Borg, Agriculture and Fisheries Council, Luxembourg, 17 April 2007", press release on EC website, accompanied by text of statement.

<sup>216</sup> This includes the High Seas Task Force and the UK government. See *Closing the Net*, March 2006, at [www.high-seas.org](http://www.high-seas.org).

<sup>217</sup> For example, the protocol to the FPA with Mauritania includes Chapter X: the "fight against illegal fishing".

<sup>218</sup> FAO press release "Countries agree to strengthen controls in ports to combat illegal fishing: first steps taken toward binding international agreement, 12 March 2007.

<sup>219</sup> *Report of the IMO/MOWCA Forum on the establishment of an integrated coast guard function network for West and Central African countries*, held in Dakar, Senegal, 23-25 October 2006, IMO Doc. MEPC 56/22.

<sup>220</sup> Commission Communication and Council Conclusions on an integrated framework, both op. cit.

that in contributing to the rational and sustainable exploitation of the surplus of coastal States' marine resources, due account will be taken of the coastal States' priorities in favour of its national private sector. Yet, the FPAs lead to situations that can be highly detrimental to national fishing fleets and can contribute to the overfishing of stocks in which the local people are interested. In this way, the activities of the EU fleet are incoherent with both EU fisheries policy and EU policy for sustainable development.

The development of local fleets in West African countries could assist in their goal of sustainable development. Some West African coastal States have included the development of small-scale fleets in their national development policies and in proposals for national fisheries policies. In their support for national fisheries policies, the FPAs could potentially assist in the development of a national fleet, if this goal were included in the national fisheries policy. However, these national objectives could be incompatible with DWF activities carried out under an FPA. In this respect, the EU could be in a conflict of interest situation. At a minimum, the EU fleet and local fleets could be in direct competition with local and artisanal fleets for coastal demersals, crustaceans and cephalopods, and often inside the zone usually reserved for national fleets. Thus, the FPAs could be incoherent with the potential for sustainable development through the development of a local fishing industry.

Furthermore, the FPA principle of "non-discrimination between the fleets active in a fishing zone" theoretically gives the EU fleet and the local fleet equal access to resources. While such provisions might appear to be fair, EU vessels enjoy a number of competitive advantages over local fleets, of which direct subsidies are a major part.

#### *7.6.2 Employment of local crew*

Most agreements include the requirement to employ a certain number of local crew, which provides employment to nationals of the coastal state. Some recent agreements have changed the requirement from national crew to ACP crew, giving more flexibility to EU boats but potentially fewer benefits for the coastal state. All the agreements include the "social clause" governing employment of ACP fishers on board EU vessels.

#### *7.6.3 Effects of FPAs on small-scale fishers*

The FPAs seem to be incoherent with development policy because they do not provide for the development and protection of small-scale fisheries, and in some cases directly conflict with these fisheries. International agreements, policy declarations and the FAO Code of Conduct require the EU to protect artisanal and small-scale fisheries. Problems arise where the EU fleet targets the same species as the artisanal fleet. This may lead to conflicts between vessels and gears, and competition for the same stocks can affect food security. Fishing effort licensed under FPAs and other bilateral agreements almost inevitably results in some adverse impacts on other fishing in the same waters, simply because any increase in effort reduces stock abundance and therefore catch rates. When the level of effort deployed by foreign vessels is large in comparison to the domestic fleet, the effects on catch rates can significantly reduce the viability of domestic vessels. The effects are greatest on small-scale and artisanal vessels that cannot compete with larger industrial vessels.

In recent years there has been considerable concern about the fate of small-scale and artisanal fisheries when competing with large, highly efficient industrial fleets. In 2001, the Development Committee concluded:

Thus, the signature of fisheries agreements sometimes results in competition between European fishing fleets and local small-scale fishing in the developing countries for

depleting resources, thereby threatening the survival of coastal communities in the developing countries and the resources on which they depend (Senegal, Mauritania). Because some of these fleets use destructive fishing methods or too great a fishing effort for the resources available, they soon come into conflict with the small-scale fishing fleets in developing countries and are a threat to the conservation of resources<sup>221</sup>.

The usual method of trying to avoid conflicts between local and foreign fleets is to prohibit entry by foreign vessels into the territorial sea, or similar coastal zone, which is reserved for the exclusive use of the local artisanal and small-scale fishing fleet. However, some FPAs expressly allow for fishing possibilities for inshore demersal fishing and cephalopods<sup>222</sup>. Furthermore, EU vessels often ignore zoning for fishing grounds, and venture into the territorial sea. They can do this with impunity because of deficiencies in coastal surveillance and enforcement in West African countries.

#### 7.6.4 *The local processing industry*

For coastal states, the added value generated from the processing of fresh fish could potentially be greater than direct financial compensation payments from the EU, and could contribute substantially to sustainable development, employment, and the alleviation of poverty and hunger. The benefits accruing to individual countries from fisheries vary considerably. At present, in most cases revenue from land-based activities, port fees, payment for repairs, and profit from processing goes to the EU, because the fish caught by the EU fleet is landed and processed in the EU. Cote d'Ivoire and Senegal have been among the exceptions in adding value through their processing industry. The current Protocol with Cote d'Ivoire provides for landings in the port of Abijan<sup>223</sup>. In comparison, the agreement with Mauritania (one of the largest-value FPAs) only encourages landings by EU fishing vessels through a reduction in fees.<sup>224</sup> In general, it has been estimated that approximately 10 per cent of the employment and value-added from fisheries agreements goes to the host country, with 90 per cent received by the distant water fishing fleet and EU processors<sup>225</sup>.

Some agreements require the participating vessels to land a proportion of their catch or by-catch in local ports, which should provide employment and revenue at the landing site. On the other hand, substantial landings of low value fish could deflate the price obtained at market and be detrimental to small-scale or artisanal fishers. However, there could be advantages for low-income households who could purchase fish and fish products at cheaper prices, thereby improving food security. Processors, which are mainly female, would also benefit, as they would have a greater volume of raw material to process, thereby increasing their profits. Landings of high value fish that are processed locally could boost the export values for host countries and provide employment in local processing factories and trading businesses.

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<sup>221</sup> *Fisheries and poverty reduction*, op. cit.

<sup>222</sup> Such as the Senegal-EU agreement from 1990 to 2006, although the possibilities were decreased successively in 1994, 1997 and 2001. There are suggestions that one of the difficulties in negotiating a new agreement was the reluctance of Senegal to allow further foreign fishing possibilities of these coastal demersal resources.

<sup>223</sup> Regulation 953/2005. Despite this, the Committee on Development commented that the financial compensation was not addressing development purposes, Doc. A6-0114/2005, p.18

<sup>224</sup> Council Regulation (EC) No 1801/2006, 30 November 2006, Protocol, Chapter VII.

<sup>225</sup> Mwikya, S.M., "Fisheries Access Agreements: trade and development issues". ICTSD, 2006

## 7.7 Trade Policy<sup>226</sup>

Certain EU trade policies seem to be incoherent with development policy, as they present obstacles to Africa States wishing to develop their fish processing industries and to export fish and fish products. Generally, FPAs affect international trade in fish and fisheries products, because they allow EU vessels to catch fish in African EEZs, and bring them to Europe for processing. Without the FPAs African vessels might catch the fish and deliver them to African ports and fish processors. That would increase fish trade between the EU and Africa countries, bringing greatly increased value-added to the African countries and would facilitate their integration into the world economy.

Up to the present, the trade regime with respect to fisheries has presented certain impediments to the development of the fisheries industry in West Africa. The issue of trade barriers is essentially a question of the EU deciding whether it wishes to continue to protect the EU processing industry and prevent the development of an African industry, or whether it wishes to reduce trade barriers at the same time as providing financial and technical assistance to develop the local processing industry in West Africa. If trade barriers were lowered and aid provided, EU consumers could still buy the fish products they want, but more could be processed in the region where the fish are caught.

## 7.8 Longer Term Issues

### 7.8.1 Regional cooperation and integration

FPAs are still being negotiated on a single country basis. In 2001, the Committee on Development noted that as the fish stocks move across national EEZ boundaries, from the point of view of conservation and management of the stocks, the single country approach results in over-exploitation as the EC tries to maximize the quantities of fish taken in each country. This is a particular problem in West Africa, as CECAF does not have adequate financial and scientific resources to establish the basis for the sustainable management of the stocks.<sup>227</sup> For similar reasons, the European Parliament, NGOs and occasionally even the European Commission itself have considered that fisheries agreements should be negotiated on a regional basis. In a December 2005 Communication on Policy Coherence, the Commission proposed that: “Should the Council of Ministers decide so, the current bilateral approach of FPA may be complemented, where appropriate, by a regional approach.”<sup>228</sup> In an area where both fish and vessels frequently cross national boundaries, a regional approach would appear to be logical. It may be relevant to note that the EU is committed to regional integration in West Africa and is negotiating EPAs on a regional basis.

Another option could be to gradually phase down FPAs and to manage the West African fisheries through the establishment of a new West African RFMO<sup>229</sup>. UNCLOS, the UNFSA, the FAO and the United Nations General Assembly all call for fisheries to be managed on a regional basis and for new RFMOs to be established to cover all regions<sup>230</sup>. Tuna fishing in

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<sup>226</sup> Trade issues are addressed in more detail in the next section.

<sup>227</sup> *Fisheries and poverty reduction*, op. cit.

<sup>228</sup> Commission Communication on Policy Coherence for Development: Accelerating progress towards attaining the Millennium Development Goals, COM (2005) 134 final, 1 April 2005, p.13.

<sup>229</sup> OECD, *Fishing for Coherence*, p.18.

<sup>230</sup> For example, UNCLOS, articles 63-64, UNFSA Articles 8-14, 17, 20-23, UNGA Resolution /61/105, paras. 63-75. FAO supports regional fisheries advisory bodies, sponsors meetings of regional fisheries bodies and

West Africa is covered by ICCAT; however, there is no RFMO for other (mixed) fisheries. The EU has supported the development of such organisations elsewhere; it should take the lead in establishing one in West Africa<sup>231</sup>. This organisation could be based on an expansion of an existing organisation, a merger of two or more of the organisations described in section 4, or could be developed from scratch with the old ones being wound up. Its members would include all West African coastal States and all States whose fishing vessels operate in the area. This organisation could undertake stock assessments, adopt TACs and quotas, manage the fisheries in accordance with accepted international principles, act as a forum to discuss and address common issues, adopt MSC measures and port State control and work to eliminate IUU Fishing<sup>232</sup>. Existing organisations already exercise some of these functions, but none has the authority to adopt legally-binding conservation and management measures, or MCS measures for the entire region. A further benefit would be that, if all the fishing States were involved, there would be greater transparency as to which vessels were fishing which species and with better data, and the possibility of rational and sustainable management would be greatly enhanced.

### 7.8.2 *The future of the EU fleet in West Africa*

In the long term, a successful development policy could lead to all fish in West African EEZs being taken by local fishers. This would result in a phasing-out of the EU fleet and all the other foreign fleets in the area. However, the EU fleet should not leave before the others. As pointed out by the Commission in its communication on the Integrated Framework, as well as by other knowledgeable observers<sup>233</sup>, the EU is a far better partner than the other foreign parties fishing in West African EEZs and if the EU withdrew suddenly, the gap it left would be filled by vessels from other DWF and by vessels operating under private agreements. Further, there would be less encouragement for coastal African States to develop national policies and programmes for sustainable fisheries.

Despite its oft-stated intentions to keep the EU fleet in West Africa, the EU should recognise that in the long term, this might not be possible. If West African countries develop their own fisheries sector, eventually, EU vessels would have to withdraw. Therefore, plans should be made to do this gradually to minimise inconvenience and hardship. In a way, this may already be happening. The EU has already gone through a period of restructuring since the agreement with Morocco was not renewed. Although a new agreement has been concluded, it is much smaller than the previous one. The agreement with Senegal has not been renewed, some say because there is no fish<sup>234</sup>. Other agreements have eliminated fishing opportunities

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participates in the development of RFMOs. The High Seas Task Force has called for the strengthening of RFMOs, in its report *Closing the Net*, March 2006. See also the OECD *Fishing for Coherence* report at p. 18.

<sup>231</sup> See recent press releases concerning EU support for the establishment of a new RFMO in the South Pacific, at [http://ec.europa.eu/fisheries/pres\\_corner/press\\_releases/com07\\_30\\_en.htm](http://ec.europa.eu/fisheries/pres_corner/press_releases/com07_30_en.htm) and following, under titles: “Commission looks to decisive progress on creation of Fisheries Organisation in South Pacific” (27 April 2007), “Commission tables ambitious proposal to protect marine ecosystems and fish stocks in South Pacific” (4 May 2007), “Joe Borg: decisive measures in South Pacific show progress in international governance of high seas fisheries” (8 May 2007). At the same time, the Commission deplored the failure to turn the Indian Ocean Tuna Commission (IOTC), an FAO body, into an RFMO: “Commission deeply concerned at lost opportunity to effectively combat illegal fishing in Indian Ocean”, 21 May 2007.

<sup>232</sup> See UNFSA detailed provisions on regional cooperation in Articles 8-14, 17, 20-23. See also press release by European Commission in previous note, which deplores the lack of agreement to transform the IOTC into an RFMO, in part because it could be used to combat IUU fishing.

<sup>233</sup> See *Comparative Study of Fisheries Partnership Agreements*, op. cit.

<sup>234</sup> See news stories on migration in section 4.

for mixed fisheries in order to target tuna, which is not usually fished by small-scale African fleets. The agreements still covering mixed fisheries have reduced the fishing opportunities, although perhaps not enough. This indicates that the EU is already withdrawing from fisheries that may be depleted. However, it should not withdraw from providing funding to West African countries to develop and implement a sustainable fisheries policy and their own fishing industries.

The departure of the EU fleet would obviously cause socio-economic problems in the EU, given the dependence of certain communities on fishing and would require state aid for structural adjustment<sup>235</sup>. However, the adjustment might not be as difficult now as previously believed. The latest report on employment in the EU fishing sector indicates that it is becoming more difficult to persuade young people to enter the fishing industry<sup>236</sup>, and fishing companies are hiring more non-EU seamen. Furthermore, the EU has a policy of reducing over-capacity and is committed to doing so internationally<sup>237</sup>. In recent communications, the Commission has pointed out the serious over-capacity in the EU fishing sector and the urgent need to reduce the level of fishing to conserve the stock, increase yields and improve profitability. The reduction of the fleet in West Africa could utilise the same restructuring mechanisms as those used in Europe. This would not mean less fish for European consumers, as they could buy their fresh and processed fish directly from African producers.

The continued presence and current activities of the EU and other DWFs seriously compromise the possibilities for future sustainable development of the fisheries sector and the entire economy in certain countries in West Africa. This is both because they are depleting the stocks by over-fishing and because they are hindering the development of the local industry. The EU should explore solutions for resolving the policy incoherence that would reduce the adverse effects on the fisheries and marine ecosystem and maximise the potential for sustainable development of West African coastal States.

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<sup>235</sup> OECD, *Fishing for Coherence*, p. 17.

<sup>236</sup> Study prepared for the Commission: "Employment in the fisheries sector: current situation" FISH/2004/4", by P. Salz, E. Buisman, J. Smit, B. de Vos, Final report, April 2006.

<sup>237</sup> International instruments, such as the FAO Code of Conduct, the Capacity IPOA, UNGA resolutions. Council Regulation (EC) No 1198/2006, European Fisheries Fund, OJ L 223/1, 15 August 2006; Commission Communication on improving the Economic Situation in the Fishing Industry, COM(2006) 103 final, 9 March.2006.

## 8 TRADE AND DEVELOPMENT

Fish and fish products are very heavily traded world-wide. The FAO reports that 38 per cent of fish are exported from their place of origin. The EU is the world's largest importer of fish, with 60 per cent of consumption coming from foreign waters. Fish imports from West Africa are important for the supply of fish to EU consumers and also for business at EU ports and processing plants, as most fish caught abroad by the EU fleet is landed in EU ports and processed in the EU. Fish trade is therefore a significant aspect of EU trade relations with developing countries in general and West Africa in particular. However, the way trade is managed now benefits the EU more than the developing countries and it is possible that the situation may become more difficult for developing countries in the near future.

Commentators have been critical of EU trade relations with developing countries in the fisheries sector. As with the FPAs, fish trade has been perceived as being beneficial for European private actors and detrimental to the development of ACP countries. The main problems are that, in most cases, fish caught under access agreements are not landed in African ports and are not processed in African facilities, but are delivered raw to Europe. Therefore, African countries lose the possibility of profiting from landings and from exporting value-added products. Secondly, there are number of non-tariff barriers to the import of processed fish from African countries and the tariff preferences under the Cotonou Agreement are in danger of being lost. Consequently, there have been calls for more coherence between trade policy and development policy.

The legal framework governing fish trade between the EU and West African countries consists of the agreements adopted under the auspices of the World Trade Organisation (WTO), including the General Agreement on Tariffs and Trade (GATT), and the Cotonou Agreement between the EU and the ACP countries. There are two sets of trade negotiations underway at present. At the global level, WTO members are in the midst of a new round of trade negotiations launched at their meeting in Doha in 2001. These negotiations, "the Doha Round" have been stalled for some time. For the purposes of this study, the most relevant debates are taking place on fisheries subsidies in the negotiating group on rules<sup>238</sup>. At the same time, the EU is negotiating six regional Economic Partnership Agreements (EPAs) with ACP countries to replace the regime under the Cotonou Agreement, which is deemed to be not compatible with WTO requirements.

### 8.1 Subsidies

The question of fisheries subsidies is a complex economic, environmental and political issue, which has been discussed at FAO and the WTO for many years. In general, the WTO does not allow States to subsidise industries, because subsidies lower costs and undermine competition. The question for fisheries subsidies is whether some should be banned while others are retained, and if so, how this should be done. The need to strengthen disciplines in fisheries subsidies was mentioned in the 2001 Doha Declaration, while the 2005 Hong Kong Declaration highlighted the issue:

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<sup>238</sup> For an abundance of up-to-date news and in-depth analysis, see the reports of the International Centre for Trade and Sustainable Development (ICTSD) at: [www.ictsd.org](http://www.ictsd.org) and [www.trade-environment.org](http://www.trade-environment.org). The latter site contains documents from the Regional Dialogue on Trade, Fisheries Negotiations under WTO/EU-ACP EPA and Sustainable Development in West Africa, held in Cape Verde, 19-20 June 2007.

“We *recall* our commitment at Doha to enhancing the mutual supportiveness of trade and environment, *note* that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and *call on* Participants promptly to undertake further detailed work to, *inter alia*, establish the nature and extent of those disciplines, including transparency and enforceability. Appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.”<sup>239</sup>

An assessment of fisheries subsidies is complicated by a number of issues, including the definition of subsidies, and the fact that there are direct and indirect subsidies. Nevertheless, the main issues are fairly simple. There are two main debates: the first concerns subsidies from governments to owners of fishing vessels for a variety of purposes; the second concerns payments from one government to another for access to fisheries in the latter’s EEZ<sup>240</sup>.

Regarding the first issue, payments to owners of fishing vessels, from the point of view of the WTO, some subsidies are bad because they distort competition, by lowering costs for ship-owners given government support. Such subsidies can also be detrimental for developing countries because unsubsidized vessels from developing countries cannot compete with subsidized vessels from richer countries. In addition, subsidies that result in over-capacity could lead to over-fishing or IUU fishing in developing countries’ EEZs. For this reason, NGOs are leading a campaign against industrialized countries’ subsidies for their fishing fleets. However, the situation is complicated by the fact that not all subsidies can be considered as “bad” either for conservation or for developing countries. *Bad subsidies* are those that support over-capacity, such as subsidies for building fishing vessels, for more effective fishing gear, for an increase in power, fuel subsidies, etc. These increase fishing effort, which leads to over-fishing and depletion of the fish stocks. *Good subsidies* are those that reduce capacity or fishing effort, such as subsidies for decommissioning of vessels.

There are two opposing sides in these negotiations. One group favours prohibiting all subsidies except for a short list of permitted “good” subsidies. The other group would allow all subsidies, except for a prohibited group of “bad” subsidies. The EU provides a wide range of subsidies for fisheries in the EFF<sup>241</sup>. Its position on proposals at the WTO is somewhere between the two main camps.

In addition, there is a second debate on whether payments to developing countries for access to fisheries constitute subsidies. In the case of the EU’s payment of access fees, these are considered to be subsidies because the EU pays most of the cost, which the shipowners would otherwise have to pay. EU shipowners pay less in licence fees than those from other countries. While the EU has a policy of gradually increasing the fees paid by shipowners, these still do not cover the gap in costs between shipowners’ payments and the market rate for licences. At the most recent WTO meeting concerning subsidies, the ACP countries presented a paper proposing that government to government fisheries access fees not be considered as subsidies. The EU supported this position. Although the EU could justifiably

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<sup>239</sup> WTO Ministerial Conference, Sixth Session, Hong Kong, 13-18 December 2005, Ministerial Declaration, Doc. WT/MIN(05)/DEC, Annex d Rules, available on WTO website at: <http://www.wto.org/>.

<sup>240</sup> For an excellent article on subsidies and other aspects of EU West African fisheries relations, see M. Earle, “Paying for Unsustainable Fisheries: Where the European Union Spends its Money”, pp. 227-242 in: Lavigne, D.M. (ed), *Gaining Ground in Pursuit of Ecological Sustainability*, International Fund for Animal Welfare, 2006.

<sup>241</sup> Council Regulation 1198/2006 on the European Fisheries Fund [2006] OJ L223/1.

argue that government-to-government transfers are not subsidies, the obvious way to avoid such a characterisation would be to increase payments by shipowners and to allocate the entire amount paid by the EU as a contribution to fisheries policy and the sustainable management of fisheries by the host country<sup>242</sup>. This has recently been done in the agreement with Cote d'Ivoire.

## **8.2 Market Access**

### *8.2.1 Tariffs*

Import tariffs on fish products in developed countries were reduced following the WTO Uruguay Round. However, there are still some tariff peaks and tariff escalation for processed or value-added fish products in the most important import markets. Tariff escalation means higher tariffs for processed products, as opposed to unprocessed. This discourages the development of locally-based fisheries processing capacity in developing countries as it is more profitable for fishing companies to take the fish for processing in countries where the product is finally sold.

In addition, the ACP developing countries currently benefit from preferential access to important EU markets and are concerned about the impact of an erosion of these preferences that would result from a general liberalization of fish trade. It is possible that the existing ACP preferences would disappear under the current round of trade negotiations.

### *8.2.2 Non-Tariff Barriers*

The WTO Agreements on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) are not currently negotiated as part of the Doha Round. SPS covers only food safety and health issues, whilst other technical measures come under TBT. Amongst other things, the WTO TBT Agreement seeks to ensure that:

- Technical standards and regulations do not create unnecessary obstacles to trade;
- Code of good practice is used;
- Procedures for testing should be fair and equitable;
- There is no unfair advantage for domestic products as a result of standards;
- There is transparency (i.e. notifications).

Examples of technical import requirements may include:

- Restrictions on the fish (e.g. size, presentation);
- Labelling (e.g. origin of the catch, generic marketing names, etc.) including eco-labels.

Because developing countries frequently have difficulty in meeting these requirements, capacity-building assistance is required.

In EU markets, stringent sanitary measures can present obstacles to imports from developing countries. The EU certainly has a right to protect its citizens against unsafe fish products.

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<sup>242</sup> Since the licence fees have already been set in the agreements, it has been suggested that the shipowners could reimburse the EU an appropriate amount. However, then some could not afford to continue fishing.

However, under-capitalized processing plants in Africa may find it difficult to pay for the necessary equipment and procedures and the technical knowledge may be lacking. On the other hand, the need to meet SPS and TBT standards could have positive impacts on developing fish exporting countries, by inducing them to introduce improvements in fish quality management, improvements in the quality of products on the domestic market and enhanced export potential. Developing countries need capacity-building to assist them to respond to new requirements on quality and food safety in the largest importing markets. This includes specialized training, as well as funding for equipment and upgrades to fishing boats and processing plants.

### **8.3 Relationship between EU Trade Policy and FPAs**

#### *8.3.1 Economic Partnership Agreements and their Relation to Fisheries*

The forthcoming Economic Partnership Agreements (EPAs) will have an impact on ACP countries fisheries relations with the EU. Current trading arrangements with ACP countries offer unilateral trade preferences to ACP countries (access to the EU market at 0 per cent tariff). This contravenes WTO rules, as either the EU would have to offer the same tariffs to all developing countries, or the ACP countries would have to offer reciprocal tariffs for the entry of EU goods to their markets. The EPAs are therefore being negotiated by the EU with regional groupings of ACP countries as free trade area agreements, in order to bring the EU's trading arrangements with ACP countries into line with WTO rules. There are six regional groupings: Caribbean; Central Africa; Eastern and Southern Africa and Indian Ocean; Pacific; Southern Africa Development Community; and West Africa.

#### *8.3.2 Tariff Preferences*

Fisheries Partnership Agreements (FPAs) are supported by the EU's trade regime, which is structured so as to support the EU distant water fleet (DWF) by a combination of tariff preferences for products produced in ACP countries (including some West African countries), together with strict rules of origin that limit the application of these preferences to products caught by the DWF, as opposed to non-EU DWFs. According to a senior EU tuna industry representative, the simple logic of the 'three pillars' of the interlocking nature of EU tuna policy is that: 'There is a chain of interests, if you break one (rules of origin, the tariff structure, or access) then the *whole* chain is broken'<sup>243</sup>.

The EU protects its fish processing industries by 'tariff escalation'. This involves duty free access for the raw materials used by domestic industry, and high tariffs on any products that could compete with the final product. For example, for tuna, imports of the raw material (eg whole fresh or frozen tuna) is duty free, while the standard tariffs on the processed products are high (canned tuna: 24 per cent; fresh chilled fillets: 15 per cent; frozen fillets: 18 per cent). For developing countries, all of these rates are reduced by 3.5 per cent under the 'standard' generalized system of preferences (GSP), and some exporters (Thailand, the Philippines and Indonesia) are further entitled to a modest quota at 12 per cent<sup>244</sup>. The

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<sup>243</sup> Interview with EU tuna industry representative, 2007.

<sup>244</sup> This tariff quota was the price of obtaining a waiver for the WTO-inconsistent Cotonou Agreement at the WTO Doha Ministerial Conference in 2001. For overviews see ACP, *Report of the Meeting of Tuna Manufacturers and Exporters* (Brussels: ACP, 2003) and N Xuto, 'Thailand: Conciliating a Dispute on Tuna Exports to the EC', in P Gallagher et al (eds), *Managing the Challenges of WTO Participation: 45 Case Studies* (Cambridge: CUP, 2005).

Cotonou Agreement provides for an apparent exception to this regime by providing for duty free market access to tuna processed in ACP countries<sup>245</sup>. Of the West African states, Cote d'Ivoire, Ghana and Senegal are the key beneficiaries in relation to processed tuna exports<sup>246</sup>.

### 8.3.3 Rules of Origin

In principle, duty free access appears to be good for these countries. And indeed, in West Africa, tuna processed in Ghana, Côte d'Ivoire and Senegal is the highest value product in the region<sup>247</sup>. However, the EU's trade regime uses restrictive rules of origin (the rules that determine the origin of a product for purposes of obtaining preferences), which in practice, lead to a percentage of the benefits of this additional market access being captured by the EU DWF<sup>248</sup>. Under the Cotonou Agreement, preferential access is accorded to products "originating" in ACP countries<sup>249</sup>. The key point is that the fish is considered as 'originating' in a certain country (or the EU) based upon the legal and financial status of the fishing vessel, including composition of the crew<sup>250</sup>. To meet this condition, the fish must be 'wholly obtained' by a "qualifying vessel", unless the fish is caught in territorial waters (within 12 nm from the coast). To be "qualifying", a vessel must meet the following three requirements:

- Vessel must be registered (or recorded) in and flagged by beneficiary or EC country.
- Vessel must be at least 50 per cent owned by EC or beneficiary nationals, or by a company having an EC or beneficiary head office, whose manager(s), chairman and majority of board members are nationals of beneficiary or EC countries and at least 50 per cent of company capital is held within those countries.
- Crew (including Master and officers) must be at least 50 per cent EC, ACP and/or OCT nationals.<sup>251</sup>

Therefore, even if two vessels are fishing next to each other in an ACP country's EEZ, the only vessel that can supply legally 'originating' fish is the one that meets these requirements. In theory, fish caught under these rules would include that caught by a local ACP fleet. However, most ACP countries do not have the capital required to invest in industrial fishing

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<sup>245</sup> Similar duty-free treatment for canned tuna exports is available to those countries that benefit from the EU's Generalised System of Preferences Plus (GSP+) scheme and the Everything But Arms ('EBA') initiative for least developed countries (LDCs). See Council Regulation (EC) No 980/2005 applying a scheme of generalised tariff preferences [2005] OJ L169/48.

<sup>246</sup> Others are Fiji, Kenya, Mauritius, Madagascar, Papua New Guinea, Senegal, Seychelles, Solomon Islands.

<sup>247</sup> For an overview of the tuna canneries in Ghana and Senegal see IDDRA, *Analysis of the Impact of Opening up the EU Import Market for Canned Tuna on ACP Countries* (IDDRA, 2004)

<sup>248</sup> Fisheries rules of origin have long been a source of contention in EU-ACP trade relations. See for example the critical comments in the early 1980s by the UK Select Committee of the Houses of Commons on Overseas Development on this issue in J Ravenhill, *Collective Clientalism: The Lomé Conventions and North-South Relations* (New York: Columbia University Press, 1985) p. 169.

<sup>249</sup> Rules of origin for the 'Preparatory Period' (2000-7) of ACP-EU trade relations are provided in Annex V of the Cotonou Agreement. For non-technical definitions see L Campling et al, *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime*, (Honiara: Forum Fisheries Agency, 2007), available at [www.ffa.int/node/891#attachments](http://www.ffa.int/node/891#attachments), Chapter 6.

<sup>250</sup> Most proposals on the EU-side (ie the Commission and industry) for reform of EU fisheries rules of origin both for proposed EPAs and for the GSP schemes foresee the deletion of the current crewing requirements. The commercial rationale is to reduce operating costs for the EU DWF. The extent to which this reform will impact on future FPA negotiations is unknown.

<sup>251</sup> The vessel ownership and crew criteria may be cumulated across multiple signatories to Cotonou.

vessels, and even if they did, those vessels would find it difficult to compete against the EU DWF for three main reasons.

*First*, as noted above, EU DWFs receive significant fisheries subsidies which lower their costs and which can add to their fishing capacity, to the point that local fleets cannot compete.

*Second*, as outlined above, Cotonou rules of origin for fish are very strict and highly complex. It is therefore only in very rare cases (i.e. Ghana) that duty free market access is available to fish products produced from fish caught by an ACP fleet<sup>252</sup>. This means that ACP tuna processors generally have to buy fish from the EU DWF if they wish to gain duty free market access for their processed products. This limits the competitiveness of ACP processing industries, as (by contrast to EU processors) they cannot use cheaper fish sourced elsewhere for their products if they wish to obtain duty free market access. Moreover, because the EU distant water fleet is aware of the tariff preference available to ACP processors, they charge a price premium to ACP-based processors, thereby capturing a percentage of the value of the Cotonou preference<sup>253</sup>.

*Third*, the ACP fleets would have to meet the EU's stringent sanitary and phytosanitary (SPS) requirements. Specifically, the EU requires freezer and factory vessels to be registered and approved by the local Competent Authority (which is in turn registered and monitored by DG SANCO)<sup>254</sup>. The EU position on SPS is non-negotiable as the health and safety of EU consumers is justifiably paramount. However, the implementation and monitoring costs of these increasingly strict SPS measures for fish and fish product exports are very high, especially for poverty-stricken West African states and small and medium-sized enterprises (SMEs) based there. In fact, several analysts have pointed out that SPS measures can be used to protect high-cost EU producers from low cost imports, and thus act as non-tariff barriers (NTBs)<sup>255</sup>. The EU has recognised the costs to the ACP of meeting these SPS measures and responded by establishing the Strengthening Fishery Products Health Conditions in ACP/OCT Countries (SFP) programme<sup>256</sup>, which has a budget of €6.6 million (the vast majority of which is funded out of the 8<sup>th</sup> EDF). However, the major complaint by ACP officials and industry regarding SFP is that the procedures for accessing funds are very difficult and that applications to the SFP have a very slow turnaround speed because of its very limited number of staff<sup>257</sup>.

The result is that EU tuna processors can obtain their raw materials duty free, while the EU DWF is able to sell to ACP processors at a higher price. In this way, both EU industries (the processors and the fleet) benefit, at the cost of the competitive development of ACP processors. In short, restrictive rules of origin for fish have structurally limited the

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<sup>252</sup> This includes those EU-owned vessels that are flagged and registered in ACP states.

<sup>253</sup> See also L Block and R Grynberg, 'EU Rules of Origin for ACP Tuna Products' in S Bilal and R Grynberg (eds), *Navigating New Waters: A Reader on ACP-EU Trade Relations* (London: Commonwealth Secretariat, 2007).

<sup>254</sup> Regulation 853/2004 on Specific Hygiene Rules for Food of Animal Origin [2004] OJ L226/22.

<sup>255</sup> See for example, OECD, *Analysis of Non-Tariff Barriers of Concern to Developing Countries*, OECD Trade Policy Working Papers, No 16 (Paris: OECD, 2005).

<sup>256</sup> SFP (Strengthening Fishery Products Health Conditions in ACP/OCT Countries) is a five-year programme financed by European Development Fund on behalf of the ACP countries and the OCT (Overseas Territories and Countries): competent authorities, test laboratories, the fish industry and small-scale fisheries. The aim of the programme is to improve the sanitary conditions for fishery products as food for human consumption so as to increase the income of those countries by developing trade and optimal use of available resources. Details on the SFP programme are available at <http://www.sfp-acp.eu/EN/index.htm>.

<sup>257</sup> Interviews with African and Pacific fisheries officials and industry and EC officials, 2006-7.

development of fish processing plants and all important economies of scale in ACP processing facilities.

## **8.4 Reforms**

This situation is in the process of being reformed in two fora. First, tariffs on fish products are subject to negotiation with the context of the WTO Doha round of negotiations, and may be reduced if this round reaches a conclusion. Second, and more immediately, the trade regime set out in the Cotonou Agreement is due to expire on 31 December 2007, by which time it is supposed to be replaced by Economic Partnership Agreements (EPAs). Six EPAs are under negotiation and intended to be applied by 1 January 2008. Two of these six are relevant to Western Africa:

- CEMAC: Members of the Central African Economic and Monetary Community plus São Tomé
- ECOWAS: Members of the Economic Community of West African States plus Mauritania

The impetus for negotiating these agreements was the need for WTO-compatible trade arrangements with the ACP countries (primarily involving reciprocal trade liberalization), the EPA negotiating process has been used as a springboard for a range of reforms. The two most relevant are: negotiations on rules of origin, and the delinking of any negotiations on fisheries access agreements.

### *8.4.1 Rules of origin*

Article 37(7) of the Cotonou Agreement commits the EU to ‘improving current market access for the ACP countries’, including ‘a review of the rules of origin’. However, reform of Cotonou fisheries rules of origin must take account of the symbiosis between the interests of the EU fleet/processing industry and the ACP-based processors. On the one hand, if reformed rules of origin lead to the commercial collapse of the EU processing industry, the intra-EU justification for the maintenance of high tariffs declines with it. It is probable that the EU is less likely to defend ACP trade preferences in this area because there is no direct benefit to the EU itself. On the other hand, if ACP processors continue to be restricted by fisheries rules of origin and are unable to improve their ability to source fish from a wider range of suppliers, they will remain unable to develop economies of scale so as to compete against low cost producers in Southeast Asia when their preference is eventually eroded. This outcome would negatively impact the prospects of industrial upgrading under the Cotonou trade preferences. For these reasons, West African EPA groups are calling for improved fisheries rules of origin. In the short term reform is unlikely because of the relationship between the EU fleet and ACP-based processors.

However, the EU’s long-term developmental priority in West Africa should be to facilitate the local exploitation and processing of African fish, for example, by supporting the development of small-scale and semi-industrial capacity. Interestingly, a recent study by the US International Trade Commission (USITC) found that, while several African processed fish exporters depend upon the EU DWF for supply of raw product, at the same time:

... by catching such large amounts of fish in waters just beyond the reach of local fishermen, large foreign-flag harvesters may deplete the availability of fish to such

local fishermen, thereby inhibiting the development of the SSA [sub-Saharan African] country's own harvesting capacity.<sup>258</sup>

#### 8.4.2 *De-linking of negotiations on fisheries partnership agreements*

The EPA negotiating process is remarkable for not taking any account of access by EU distant water fleets to ACP EEZs, including in West Africa. This has an institutional explanation, as DG Fish is solely responsible for access agreements. However, in at least two major respects, the lack of connection is detrimental to West African interests. First, it has effectively removed one of the few concrete negotiating advantages available to those ACP states with rich marine resources. It also contradicts the FAO Code of Conduct (Article 11.2.7), which states that: "This principle ["States should not condition access to markets to access to resources"] does not preclude the possibility of fishing agreements between States which include provisions referring to ... trade and access to markets." This is a clear example of policy incoherence in the relationship between the EU's external fisheries and trade relations. However, it must be stressed in parallel that, despite the explicit objective of several ACP states to utilise EU fisheries access as a bargaining chip in EPA negotiations and as a mechanism to facilitate regional integration, this should not preclude environmentally sustainable harvesting, or inhibit West African capacity for domestic fisheries development.

Second, contrary to the EPA process, which is designed to facilitate regional integration<sup>259</sup>, the EU has rejected efforts by ACP countries in East Africa to negotiate fisheries access agreements on a regional basis<sup>260</sup>. If it is true that regional integration facilitates development, as the EU consistently claims, this rejection of the possibility of regional access agreements would seem to contradict Article 23(d) of the Cotonou Agreement, which states that '[a]ny fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area' (Cotonou, Article 23(d)).

#### 8.4.3 *Sanitary and Phytosanitary Measures*

The EU has acknowledged the problematic and costly nature of the implementation and monitoring of its SPS measures for the ACP, not least through the creation of Strengthening Fishery Products Health Conditions in ACP/OCT Countries (SFP) programme. However, in order to improve the fisheries development possibilities of EU trade preferences and to counter accusations that EU SPS measures act as non-tariff barriers against low-cost imports, the EU should consider how to better use funds to facilitate SPS-compliance and related capacity building in West Africa.

### 8.5 Conclusions

The commercial and developmental importance to West Africa of preferential market access under both the Lomé Conventions and the Cotonou Agreement cannot be under-estimated.

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<sup>258</sup> USITC, *Sub-Saharan Africa: Factors Affecting Trade Patterns of Selected Industries* (Washington DC: USITC, 2007), at p 81.

<sup>259</sup> For a statement that EPAs are intended to encourage the ACP countries 'to base their integration into the world economy on regional economic integration', see European Commission, *Economic Partnership Agreements – Start of Negotiations* (Brussels: EC, 2002), at p 5.

<sup>260</sup> Interviews with ACP and EU officials, 2005, 2006 and 2007.

However, it is clear that EU commercial interests benefit from the tariff escalation associated with processed fish products. Moreover, in terms of policy coherence for development, the Cotonou rules of origin for fish are often a distinct commercial disadvantage to West African exporters. Therefore, while it is too late to redress the policy incoherence between DG Trade and DG Fish in relation to the possibility of facilitating regional fisheries access arrangements with West Africa in the context of proposed EPAs, in the final months of EPA negotiations the European Parliament should take an active role in advocating improved fisheries rules of origin for West African states.

## 9 HUMAN RIGHTS AND GOOD GOVERNANCE

### 9.1 Human Rights Clauses

#### 9.1.1 General policy

Since the early 1990s the EU has included a so-called ‘human rights clause’ in all non-sectoral trade and cooperation agreements with third countries (of which there are now over twenty), and including the Cotonou Agreement<sup>261</sup>. These clauses differ between agreements, but they have two essential aspects. First, an ‘essential elements’ clause states that human rights and democratic principles are an essential element of the agreement. Second, a ‘non-execution’ clause provides that in the event that one of the parties fails to comply with its obligations under the agreement, the other party may take ‘appropriate measures’. This is understood to mean the suspension of obligations under the agreement, although increasingly such ‘appropriate measures’ are taking the form of ‘positive measures’ involving human rights activities in the territory of the third country.

The Cotonou Agreement has a particularly elaborate form of the human rights clause, which was somewhat revised in 2005. The Cotonou Agreement differs from the standard model in a number of respects, of which two are particularly relevant<sup>262</sup>. First, the Cotonou Agreement establishes formal mechanisms for political dialogue and consultation prior to the taking of appropriate measures. Second, the Cotonou Agreement contains additional essential elements clauses on ‘good governance’ and compliance with obligations concerning weapons of mass destruction (on which see below)<sup>263</sup>.

The human rights clause under the Cotonou Agreement has been used on numerous occasions, usually to suspend (or reallocate) development aid. On one occasion, the EU suspended its obligation to impose no restrictions on any payments between residents of the Community and Zimbabwe in order to allow for a freezing of funds of certain listed members of the Zimbabwe government<sup>264</sup>. However, other than this example, the EU has not used human rights and democracy clauses as a basis for imposing trade sanctions of any type under the Cotonou Agreement.

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<sup>261</sup> See, generally, L Bartels, *Human Rights Conditionality in the EU's International Agreements* (Oxford: OUP, 2005), L Bartels, *Human Rights and Democracy Clauses in the EU's International Agreements*, European Parliament Study, 2005 and the European Parliament Report on the human rights and democracy clause in European Union agreements (Rapporteur: Vittorio Agnoletto), A6-0004/2006, 23 January 2006.

<sup>262</sup> There is also an Internal Agreement between the Member States on the use of this clause, which is not repeated for other agreements containing human rights clauses: [2000] OJ L317/376.

<sup>263</sup> Art 9(3)(2) together with Art 97; and Art 11b(1) together with 11b(6) Cotonou Agreement.

<sup>264</sup> Council Decision 148/2002 concluding consultations with Zimbabwe [2002] OJ L50/64, inter alia suspending Art 12 of Annex II of the Cotonou Agreement; necessary for the application of Council Regulation 310/2002 [2002] OJ L50/4, itself implementing Common Position 145/2002 [2002] OJ L50/1.

### 9.1.2 Sectoral agreements

The policy of including human rights and democracy clauses in agreements with third countries was set out in a Commission Communication of 23 May 1995<sup>265</sup>. At a General Affairs Council meeting on 29 May 1995, the Council approved ‘a suspension mechanism which should be included in Community agreements with third countries to enable the Community to react immediately in the event of violation of essential aspects of those agreements, particularly human rights.’<sup>266</sup> This mandate is broad, but a lack of coherence in the EU’s external negotiating strategy has given rise to a practice of failing to include human rights clauses in sectoral agreements on textiles, coal and steel, and fisheries. This has been a concern of the European Parliament for some time. In a Resolution on the human rights and democracy clause in European Union agreements on 14 February 2006, the Parliament:

Call[ed] for the human rights and democracy clause to be extended to all new agreements between the European Union and third countries, both industrialised and developing, and including sectoral agreements, trade and technical or financial aid, along the lines of what has been done with the ACP States; [and] emphasise[d] that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause<sup>267</sup>.

The Parliament reiterated its position in its 2007 Resolution on the Annual Report on Human Rights in the World, when it ‘[drew] the attention of the Council and the Commission to, in particular, the need to systematically include a human rights clause in all new-generation sector-based agreements such as trade agreements so as to further foster the promotion, protection and realisation of human rights within the aims of those agreements.’<sup>268</sup> These statements are unequivocal: to the extent that it has the power, the Parliament is not prepared to countenance new sectoral agreements which do not contain a human rights clause. The Parliament’s power is admittedly limited in respect of fisheries agreements, where it possesses no more than a right of consultation<sup>269</sup>. In practice, therefore, Parliament may not be able to enforce this policy. Nonetheless, it is important to make clear its stance on the matter.

Associated with this issue is the possibility that a fisheries agreement may be suspended under a human rights clause either in the Cotonou Agreement or any human rights clause concluded under a relevant EPA. The standard wording of these clauses provides for appropriate measures ‘in accordance with international law’. Under international law, there is no barrier to the suspension of a treaty with a country in response to that country’s violation of another international obligation, even when contained in another treaty. This means that even if no human rights clause is included in new fisheries agreements, there remains option

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<sup>265</sup> Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries, COM (95) 216, 23 May 1995; see also Communication Communication on the External Dimension of the EU’s human rights policy: From Rome to Maastricht and Beyond, COM (95) 567, 22 November 1995.

<sup>266</sup> EU Council, 29 May 1995.

<sup>267</sup> European Parliament resolution on the human rights and democracy clause in European Union agreements [2006] OJ C290E/107, paras 8 and 10 (emphasis added).

<sup>268</sup> European Parliament resolution of 26 April 2007 on the Annual Report on Human Rights in the World 2006 and the EU’s policy on the matter (2007/2020(INI)), P6\_TA-PROV(2007)0165, para 128.

<sup>269</sup> Fisheries agreements are concluded under Article 37 EC, which provides for qualified majority voting. The Parliament was denied the right of assent under Art 300 (which provides for assent in cases of agreements with ‘significant budgetary implications’) in Case C-189/97, *Parliament v Council (EC/Mauritania Fisheries Agreement)* [1999] ECR I-4741.

for suspension of these agreements in accordance with a human rights clause otherwise applicable between the parties.

However, for the sake of legal security, and for the sake of policy coherence, it is undoubtedly preferable for human rights clauses to be included in all new Fisheries Partnership Agreements, in accordance with the stated wishes of the European Parliament.

## 9.2 Good Governance Clauses

For some years, the EU has also sought to introduce ‘good governance’ clauses into its trade and cooperation agreements. This practice dates from the 1999 EU-South Africa Trade, Development and Cooperation Agreement, in which the parties affirmed their attachment to the principle of good governance<sup>270</sup>, and in the Cotonou Agreement, concluded the following year, the parties agreed that ‘appropriate measures’ might be taken in the event that there was a case of serious corruption ‘when the Community is a significant partner in terms of financial support to economic and sectoral policies and programmes’<sup>271</sup>. The EPA negotiating directives also make reference to the inclusion of a similar commitment in these agreements<sup>272</sup>.

As a rule, the financial contribution paid under the FPAs is entirely unregulated. For example, Article 2(1) of the Protocol to the FPA with Cape Verde sets out an annual amount of financial compensation, comprising €325,000 for access and €60,000 ‘for the support and implementation of initiatives taken in the context of the Cape Verde sectoral fisheries policy.’ It is also noted that ‘[t]his specific amount shall be an integral part of the single financial contribution defined in Article 7 of the Agreement.’ Article 7 of the Protocol states that

Eighty percent (80 per cent) of the total amount of the financial contribution fixed in Article 2 shall be allocated each year to the support and implementation of initiatives taken in the context of the sectoral fisheries policy drawn up by the Government of Cape Verde.

The controls on the spending of this money are weak. Article 2(6) states that ‘[s]ubject to Article 6, the Cape Verde authorities shall have full discretion regarding the use to which this financial contribution is put.’ (Article 6 concerns force majeure, which is not relevant.) In other words, it would appear both that Cape Verde is under an obligation to spend 80 per cent of the full sum on sectoral fisheries policy initiatives, and that it has full discretion in the spending of the full sum (including the €60,000 share for sustainable development). This is somewhat contradictory. But even on the view that there is a fixed obligation to spend the specified proportion of the funds on fisheries policy initiatives, the EU has barely any way of ensuring that this takes place. At most, Article 31(1) of the FPA states that:

Application of this Agreement may be suspended at the initiative of one of the parties in the event of a serious disagreement as to the application of provisions laid down in the Agreement.

This could potentially, though not with certainty, be used in cases of serious corruption. However, there are sufficient ambiguities both as to the extent of any obligation to spend the money on fisheries policy initiatives, and on this enforcement clause, to justify the inclusion

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<sup>270</sup> Art 2 EU-SA TDCA.

<sup>271</sup> Art 9(3) and 97 of the Cotonou Agreement.

<sup>272</sup> EU Council, Directives for the Negotiations of Economic Partnership Agreements with ACP Countries and Regions, Doc 9930/02, Annex 1.

of a more effective good governance clause along the lines of the clause in the Cotonou Agreement. A more delicate question is whether such a good governance clause should cover only the proportion of the financial compensation package that is devoted to specified initiatives (80 per cent in the case of Cape Verde) or whether it should extend to the total sum, even if this goes into general revenue. Here the arguments between national sovereignty, on the one hand, and the EU's potential involvement in corrupt practices, are more finely balanced.

In sum, it is recommended that consideration should be given to the inclusion of new fisheries agreements of a clause, similar to that in the Cotonou Agreement, making good governance an essential element of the EU's fisheries agreements. Such a clause should at least apply to any targeted funds, and possibly to the total sum paid under the financial compensation package. This is both to ensure that EU funds are allocated according to their intended purpose and to ensure that EU funds are not used to subvert development in the recipient countries, which could contradict EU development objectives.

## 10 RECOMMENDATIONS

The EU is legally required under Article 3 EU to achieve policy coherence in its external activities, under Article 6 EC to integrate environmental protection requirements in its policies, with a view to promoting sustainable development, and under Article 178 EC to ‘take account’ of development cooperation objectives in the implementation of any policies likely to affect developing countries. In recent years, the EU Council, Commission and European Parliament have sought to apply these requirements to the EU’s Common Fisheries Policy (CFP). This was a key focus of the 2002 CFP reform, and is also a feature of the new generation of Fisheries Partnership Agreements (FPAs) concluded since 2003.

However, it is too early to know how these agreements will be implemented in practice and whether they will be more effective in promoting responsible fishing and sustainable development. Moreover, there are still aspects of these agreements that remain inconsistent with other aspects of the EU’s external policies. First, while the FPAs provide a significantly higher rate of return for host States than arrangements with most other distant water fleets, the value received by coastal states does not compare to that captured by the EU, including the benefits of landing and processing in the EU. Second, the continued presence of the EU fleet in West African EEZs hinders efforts to develop local fleets, both because there is not economic and physical space for both, and because the EU fleet is supported by a variety of direct and indirect subsidies. The presence of the EU fleet in West African waters is also inconsistent with environmental policy and sustainable development policy (including the conservation of natural resources), as it depletes fish stocks, compromises biodiversity, and impairs ecosystems.

The following takes into account the main findings of this study on areas in which incoherence persists, and makes recommendations to bring greater consistency to the different strands of the EU’s fisheries policies as they affect sustainable development in West Africa. The main areas of incoherence are between EU fisheries policy and environmental protection policy, development cooperation policy, trade policy and human rights and good governance policy.

### 10.1 Partnership

#### *Recommendation 1*

In accordance with the legal requirements on fishing only the surplus fish<sup>273</sup>, before any agreement is concluded or extended, there must be reliable determinations of the status of the stocks, the maximum sustainable yield, the total allowable catch<sup>274</sup>, and the amount of fish that could be caught by local fishers. No fishing should take place until these determinations are made. The EU should not take any fish if local fishers are able and willing to take all the total allowable catch and there is no surplus.

#### *Recommendation 2*

West African States should be assisted in gaining a clear idea of how they can fully benefit from their fisheries resources, developing their own effective fisheries management capacity, supporting institutions, and value-added infrastructure, especially on-shore processing, where

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<sup>273</sup> Commission Communication on an Integrated Framework, op. cit.

<sup>274</sup> See Commission Communication on Implementing sustainability in EU fisheries through maximum sustainable yield, COM (2006) 360 final, 4.7.2006.

appropriate. Where the EU wishes to enter into fisheries agreements, it should be able to demonstrate that the agreements can provide benefits to the developing country as well as to the EU.

### ***Recommendation 3***

All information and evaluation reports concerning FPAs should be made public and be provided to the negotiating team of the West African country concerned well in advance of negotiations for a new FPA or Protocol, so that the information can be taken into account. Such reports should contain evaluations of the respective benefits of the FPAs to the EU and the host country.

## **10.2 Environmental Protection and Sustainable Fishing**

### ***Recommendation 4***

In principle, sustainable fisheries management in West Africa countries should be based upon both the precautionary approach, and the ecosystem approach to fisheries, as is required in European waters.

### ***Recommendation 5***

Action on bycatch and discards should be implemented in West African waters under existing FPAs, and future FPAs must contain provisions to reduce bycatch and eliminate discards.

### ***Recommendation 6***

When developing data collection, scientific surveys and monitoring permit, restrictions on fishing effort should be based on the amount of fish to be taken (total allowable catch) and on gear type, not on the number of vessels or on their tonnage. In the interim, tonnage and power should be used as more accurate indicators than the number of vessels<sup>275</sup>.

### ***Recommendation 7***

The EU should take the initiative in helping West African countries to coordinate scientific research projects in the area, and should ensure that its own vessels to provide accurate data to research programmes.

### ***Recommendation 8***

Together with other donors, the EU should help to improve CECAF's research capacity, including through a significant amount of funding.

## **10.3 Compliance and Enforcement**

### ***Recommendation 9***

Reinforced efforts should be made to improve MCS capacity in African Coastal States as soon as possible.

### ***Recommendation 10***

The EU should continue to support national and regional measures to combat IUU fishing off the coast of West Africa, including in the proposed new legislation. It should also support the elaboration of the new FAO global instrument on port State measures, the creation of a

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<sup>275</sup> See communications from the Commission on maximum sustainable yield and the on improving fishing capacity and effort indicators under the common fisheries policy”

regional coast guard for West and Central Africa, as proposed by IMO and the development of a regional scheme on port State measures in West Africa.

#### **10.4 Development Policy**

##### ***Recommendation 11***

The EU must take account of the interests and development needs of West African countries when negotiating and implement FPAs.

##### ***Recommendation 12***

Increased development and capacity-building assistance should be provided to West African countries for developing a national fisheries policy, research capacity in fisheries science, fisheries management capacity, human resources training, MCS and enforcement capacity, as well as general fisheries governance, through coordination of EU development programmes, national development programmes of EU Member States and programmes of international organisations and NGOs. These should be coordinated or integrated with any FPAs to ensure that funds are effectively utilised for fisheries policy and development purposes. FPAs should always be complemented by development assistance and capacity-building.

##### ***Recommendation 13***

Priority access should be reserved for the national fleet of the coastal State, especially small scale and artisanal fishers. In accordance with Article 61 of UNCLOS, other developing States in the region could also be given priority.

##### ***Recommendation 14***

EU shipowners should not be subsidised and should pay the market price for licences in West African EEZs. Moreover, subsidies that support over-capacity should be terminated and greater incentives provided to reduce over-capacity.

##### ***Recommendation 15***

(a) Rules of origin: The rules of origin for trade should be reviewed and amended to end privileges for the EU fleets that impede West African processors efforts to increase production and buy and sell at a competitive price.

(b) TBT and SPS measures: Technical and financial assistance must be granted to build capacity to help West African countries meet EU requirements concerning technical barriers to trade and, in particular, sanitary and phytosanitary standards.

##### ***Recommendation 16***

The EU should cooperate with host countries to find ways to minimise conflicts between the EU fleet and local small-scale and artisanal vessels. The EU should control its own vessels to ensure that they do not violate regulations and do not come into conflict with small-scale local fleets.

##### ***Recommendation 17***

(a) Provisions for the improvement of local processing facilities should be considered within the multi-annual plans negotiated by the Joint Committees. Where appropriate, a proportion of the compensation package should be ring fenced to assist in the development of local processing and trading facilities.

(b) Joint venture operations established to provide processing, marketing and trading services should be encouraged and should be monitored by both the coastal state and the EU.

## **10.5 Human Rights and Good Governance Policy**

### ***Recommendation 18***

Food security and sustainable livelihoods must be a primary concern of the EU in all aspects of its fisheries policy relations with West Africa, including its fisheries trade policies.

### ***Recommendation 19***

In accordance with international obligations, the Cotonou Agreement and EU policy, the EU should encourage the host countries to inform and consult local populations and fishing organisations about proposals to negotiate FPAs and Protocols and implementation of national fisheries policies under the FPAs.

### ***Recommendation 20***

All new fisheries agreements should include a human rights clause consistent with EU policy, and along the lines of human rights clauses included in the EU's non-sectoral trade agreements.

### ***Recommendation 21***

Consideration should be given to the inclusion of new fisheries agreements of a clause, similar to that in the Cotonou Agreement, making good governance an essential element of the EU's fisheries agreements. Such a clause should at least apply to any targeted funds, and possibly to the total sum paid under the financial compensation package.

## **10.6 Longer Term Issues**

### ***Recommendation 22***

The EU should consider negotiating a regional fisheries partnership agreement. This could contain common provisions in the main text, supplemented by national protocols addressing the specific development requirements of each State.

### ***Recommendation 23***

The EU should consider supporting, and possibly leading, the development of a Regional Fisheries Management Organisation (RFMO) for West Africa to conserve and manage the non-tuna fish stocks, as it has in other regions of the world.

### ***Recommendation 24***

The EU should consider planning for a gradual phasing out of its fleet off the coast of West Africa, while building up African capacity for sustainable management, providing assistance for developing the local fleet, and local processing industries, including a provision for mandatory landings.

## LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific
CBD	Convention on Biological Diversity
CECAF	Fishery Committee for the Eastern Central Atlantic
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean
COREP	Regional Fisheries Committee for the Gulf of Guinea
CFP	Common Fisheries Policy
DWF	distant water fleet
EC	European Community
ECOWAS	Economic Community of West African States
EEZ	Exclusive Economic Zone
EFF	European Fisheries Fund
EPA	Economic Partnership Agreement
EU	European Union
FAA	fisheries access agreement
FAO	Food and Agriculture Organization of the United Nations
FIFG	Financial Instrument for Fisheries Guidance
FPA	fisheries partnership agreement
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
HSTF	High Seas Task Force
ICCAT	International Commission for the Conservation of Atlantic Tunas
ILM	International Legal Materials
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
ITLOS	International Tribunal for the Law of the Sea
IUU	illegal, unreported and/or unregulated
JPOI	Johannesburg Plan of Implementation
LDC	least developed country
MAGP	Multi-Annual Guidance Programmes
MCS	monitoring, control and surveillance
MDG	millennium development goal
MSY	maximum sustainable yield
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal
PCD	Policy Coherence for Development

RFMA	Regional Fisheries Management Arrangement
RFMO	Regional Fisheries Management Organisation
RoO	rules of origin
SOCU	Surveillance Operations Coordinating Unit
SOFIA	State of World Fisheries and Aquaculture
SPS	sanitary and phytosanitary measures
SRCF	Sub-Regional Fisheries Commission
TAC	total allowable catch
TBT	technical barriers to trade
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFSA	United Nations Fish Stocks Agreement
UNTS	United Nations Treaty Series
VMS	vessel monitoring system
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

## APPENDICES

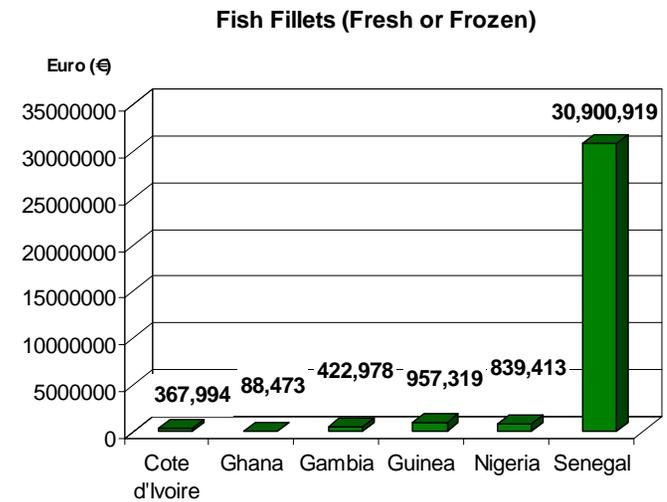
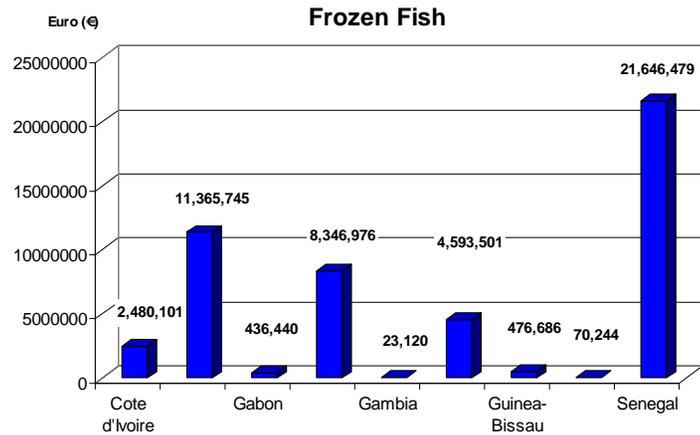
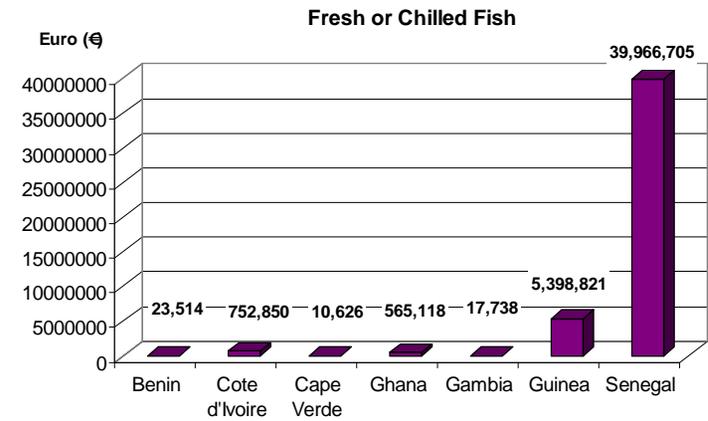
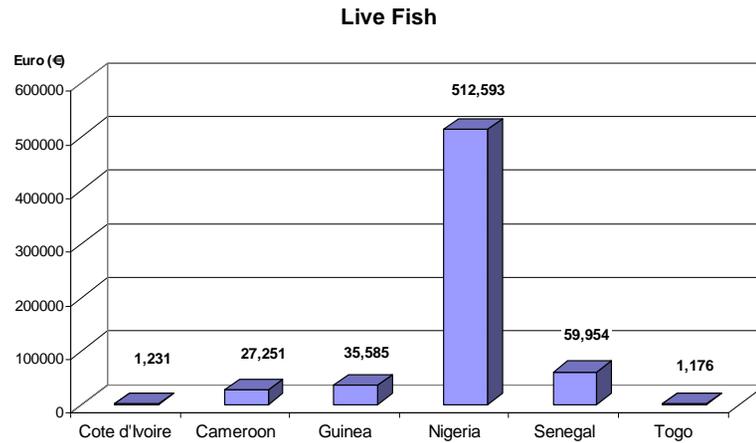
### Appendix 1: Map of West Africa

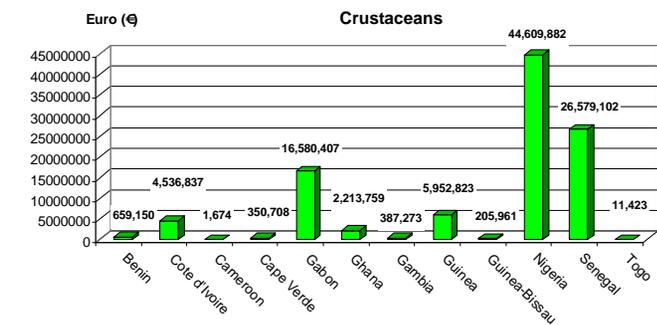
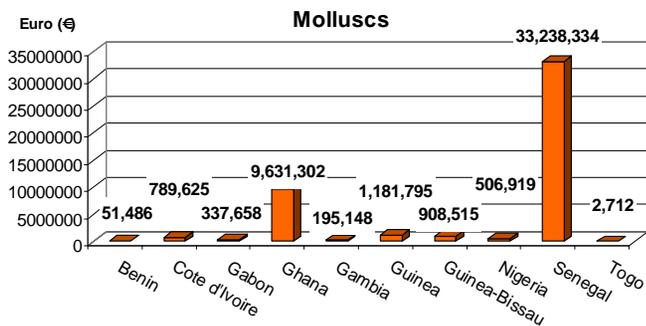
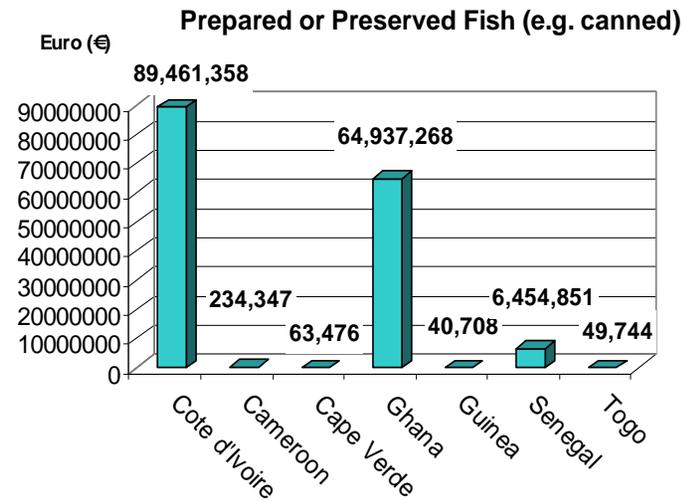
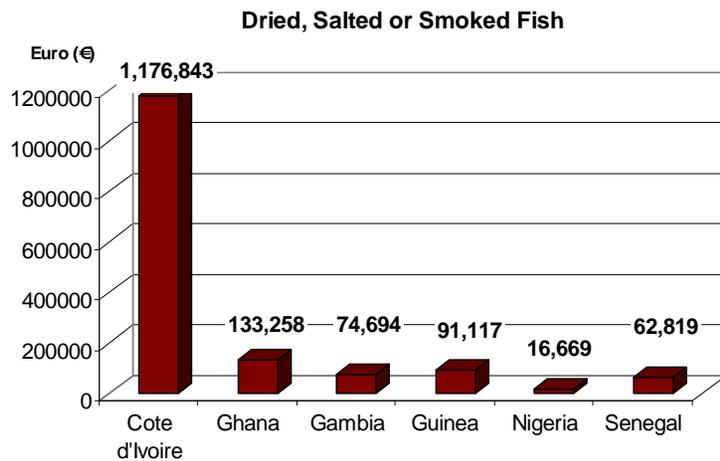


Source: FAO, *Contribution of Fisheries to National Economies in West and Central Africa – Policies to Increase the Wealth Generated by Small-scale Fisheries, New Directions in Fisheries No 3* (Rome: FAO, 2006), at p 13 (modified).

Note: This map does not include Morocco, which is within the scope of this study.

## Appendix 2: West African Exports of Fish and Fish Products to the EU in 2006 (in Euro)





Source: Eurostat Trade Database <<http://fd.comext.eurostat.cec.eu.int/xtweb/>>

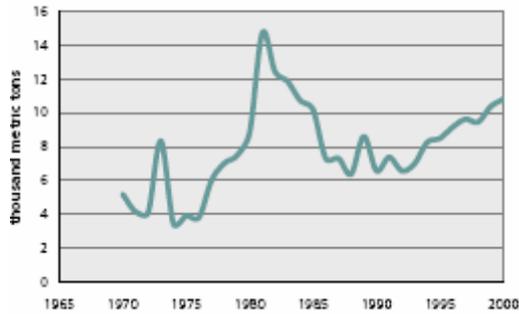
	Cape Verde	Cote d'Ivoire	Gabon	Guinea	Guinea Bissau	Mauritania	São Tomé & P	Senegal	Sub-Sah. Africa	ME & N Africa	World
<b>Coastal Statistics (2000)</b>											
Length coastline (a)	1,121	797	2,019	1,615	3,176	1,268	269	1,327	63,124	47,282	1,634,701
per cent of pop'n within 100kms of coast	100	40	63	41	95	40	100	83	X	X	39
Area of continental shelf (kms <sup>2</sup> ) (b)	2,883	8,630	36,846	49,670	37,191	28,370	744	21,033	987,021	786,509	24,285,959
Territorial sea (to 12 nm) (kms <sup>2</sup> )	59,868	12,287	19,624	14,233	19,535	19,455	15,530	11,495	871,895	649,740	18,816,919
Claimed EEZ (kms <sup>2</sup> )	742,438	157,379	180,676	96,973	861,670	141,334	142,563	147,221	7,866,074	2,015,990	102,108,403
<b>Fisheries production</b>											
Average annual catch (metric tonnes)											
Marine fish (2000)	10,821	69,618	36,581	87,513	4,800	33,076	3,500	377,968	X	2,461,334	84,411,066
Molluscs & crust'ns (1997)	40	394	1,873	8,553	1,336	24,055	25	27,539	140,424	175,995	12,055,801
<b>Fish consumption and trade (2000)</b>											
Per capita food supply from fishery products (kg/pers)	22	15	50	13	3	9	14	28	8	8	16
Fish protein as per cent of total protein supply	9	9	19	7	2	4	9	13	6	3	6
<b>Annual trade in fishery products</b>											
Imports (000 US\$)	617	132,146	7,151	14,585	283	661	240	1,539	778,886	718,161	60,008,337
per cent change since 1980	7613	70	-29	247	-5	902	X	-93	-3	134	275
Exports (000 US\$)	838	128,876	16,372	25,030	3,767	73,736	7,252	260,327	1,642,028	1,406,134	54,570,489
per cent change since 1980	-59	127	2,499	X	6	566	X	151	X	X	258
<b>Fishing effort</b>											
People employed in fishing and aquaculture (2000)	5,183	19,707	8,258	10,707	2,500	7,944	1,988	55,547	1,995,694	824,800	36,116,329
Docked vessels 1995-8 (c)	77	62	24	19	6	166	25	176	X	16,466	1,297,017

### **Appendix 3: Fish Production and Trade in West Africa**

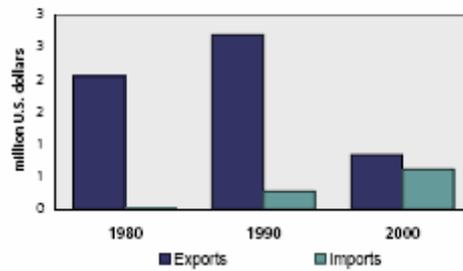
Source: World Resources Institute website: retrieved 4.4.07; Footnotes: a. Figures should be interpreted as approximations. Estimates may differ from other published sources; b. Up to 200 meters depth. c. Data for the most recent available year in the listed range; X: figures not available

## Appendix 4: Fish Production and Trade in West Africa (Pt 2)

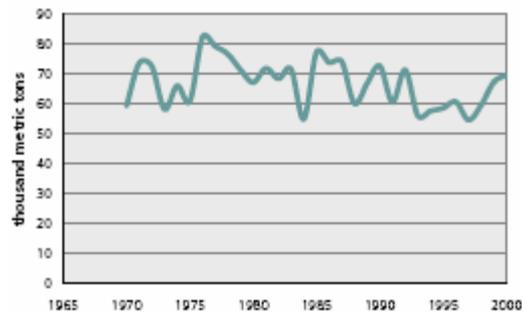
Average Annual Capture of Marine Fish, Cape Verde



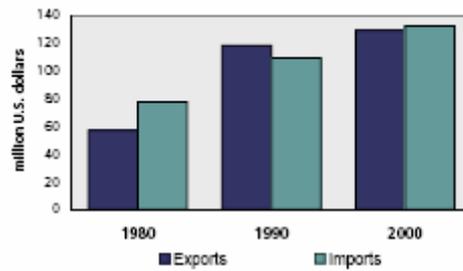
Trade In Fish and Fisheries Products, Cape Verde, 1980-2000



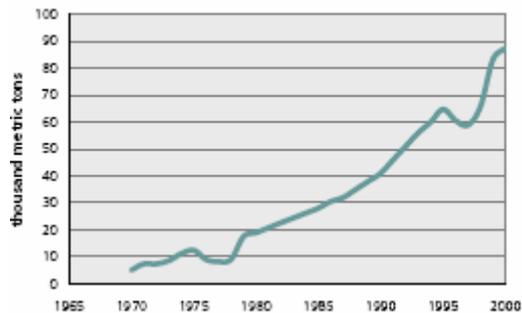
Average Annual Capture of Marine Fish, Côte d'Ivoire



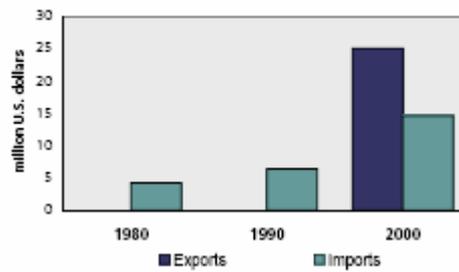
Trade In Fish and Fisheries Products, Côte d'Ivoire, 1980-2000



Average Annual Capture of Marine Fish, Guinea



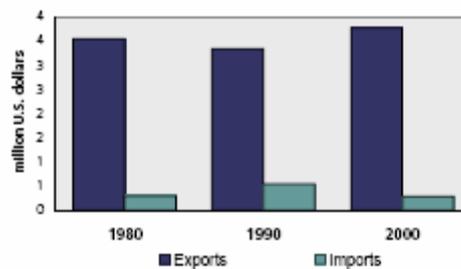
Trade In Fish and Fisheries Products, Guinea, 1980-2000



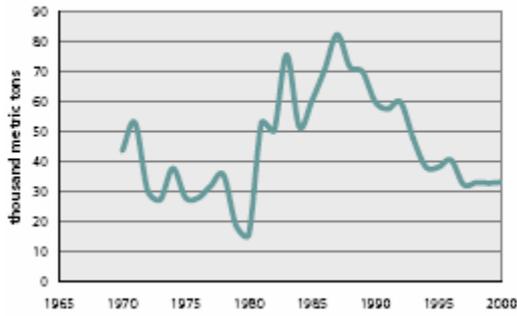
Average Annual Capture of Marine Fish, Guinea-Bissau



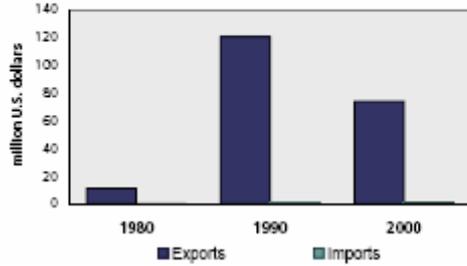
Trade In Fish and Fisheries Products, Guinea-Bissau, 1980-2000



Average Annual Capture of Marine Fish, Mauritania



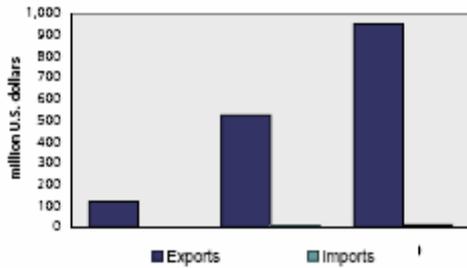
Trade In Fish and Fisheries Products, Mauritania, 1980-2000



Average Annual Capture of Marine Fish, Morocco



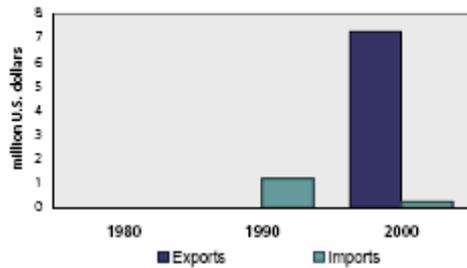
Trade In Fish and Fisheries Products, Morocco, 1980-2000



Average Annual Capture of Marine Fish, Sao Tome & Principe



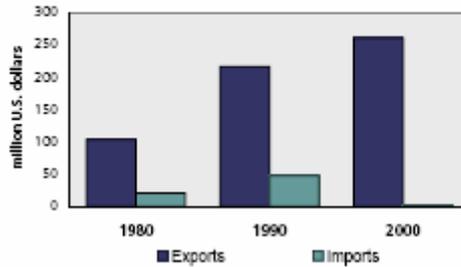
Trade In Fish and Fisheries Products, Sao Tome & Principe, 1980-2000



Average Annual Capture of Marine Fish, Senegal



Trade In Fish and Fisheries Products, Senegal, 1980-2000



Source: World Resources Institute website: retrieved 4.4.07

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