AFRICAN UNION
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FOR ANIMAL RESOURCES

REVIEW OF PREVIOUS AND CURRENT FISHERIES AGREEMENTS CONCLUDED BY SOME AFRICAN UNION MEMBER STATES IN WEST AND CENTRAL AFRICA

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Review of previous and current fisheries agreements concluded by some African Union Member States in West and Central Africa

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Summary

The multiplicity of fisheries agreements between African States bordering the Atlantic Ocean and distant-water fishing countries (or their nationals) is a manifestation of the diversity of situations encountered and the need to harness each of them to the best effect. However, in the absence of an evaluation of the various agreements in force, African coastal countries are unable to assess the economic and social benefits accruing from such agreements, as well as the associated environmental impacts.

It is only tunas, out of all species targeted by longline fleets, which could potentially benefit from the regional management of access. Tunas are not the subject of strong commitment by States to relinquish their claim to sovereign rights as is the case with demersal and small pelagic resources.

Several fisheries organisations (SRFC, CPCO, COREP, COPACE, ATLAFCO), a tuna fisheries management organisation (ICCAT) and an international fisheries management organisation covering Area 47 (SEAFO) operate on the border with the Atlantic and as such, can organise (or participate in) the management of regional fisheries agreements. Given ICCAT's current mandate, it can contribute its scientific expertise to a regional initiative, while ATLAFCO, or an organisation established expressly for this purpose, can manage the access to tuna resources.

Nonetheless, the implementation of the said initiative requires the political commitment of all coastal states in the form of a Government resolution that would initiate the process of the implementation of regional fisheries agreements. The first step will consist of harmonising national regulatory frameworks and creating an AU Group of Experts that is able lay the building blocks of the initiative as well as provide support to coastal countries in order to develop their capacity to negotiate and manage agreements. The second step will comprise the political validation of the selected institutional structure, at the level of the AU, and the third step will involve institutionally implementing the process of allocating access to tuna resources and the management of agreements.

List of Abbreviations and Acronyms

AFD	*Agence Française de Développement* (French Agency for Development)
AfDB	African Development Bank
ALB	Albacore tuna (ICCAT Species Code)
ATLAFCO	Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic
AU	African Union
BCEAO	*Banque centrale des États de l'Afrique de l'Ouest* (Central Bank of West African States)
BET	Bigeye tuna (ICCAT Species Code)
CCRF	Code of Conduct for Responsible Fisheries
CITES	United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora
COPACE	*Comité des Pêches pour l'Atlantique Centre-Est* (Fisheries Committee for East Central Atlantic)
COREP	*Commission régionale des pêches du Golfe de Guinée* (Regional Fisheries Committee for the Gulf of Guinea)
CPC	Contracting Parties and Non-Contracting Cooperating Parties
CPCO	*Comité des pêches pour le centre-ouest du Golfe de Guinée* (Fisheries Committee for West Central Gulf of Guinea)
DEC	Delegation of the Economic Commission (formerly DEU before 2009)
DEU	Delegation of European Union (see DCE)
DFID	Department for International Development (British Cooperation)
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EEZ	Exclusive Economic Zone
EIB	European Investment Bank
EITI	Extractive Industries Transparency Initiative
EPA	Economic Partnership Agreement
FAD	Fish Aggregating Device
FAO	United Nations Food and Agriculture Organisation
FGEF	French Global Environmental Facility
GDP	Gross Domestic Product
GEF	Global Environment Facility
GNI	Gross National Income
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICCAT	International Commission for the Conservation of the Atlantic Tunas
IDB	Islamic Development Bank
IEO	*Instituto Español de Oceanografía* (Spanish Oceanographic Institute)
IRD	*Institut de Recherche pour le Développement* (Institute for Research and Development)
IUCN	International Union for the Conservation of Nature
KFW	*Kreditanstalt für Wiederaufbau* (German Cooperation Agency)
MCS	Monitoring, Control and Surveillance
MDG	Millennium Development Goal
MSY	Maximum Sustainable Yield
Nei or NEI	Not elsewhere included
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
PO	Producers' Organisation
PRSP	Poverty Reduction Strategy Paper
RFMO	Regional Fisheries Management Organisation (ex. ICCAT)
RFP	Regional Fisheries Organisation (e.g. CPCO, SRFC)
SCRS	Standing Committee on Research and Statistics
SEAFO	South East Atlantic Fisheries Organisation
SKJ	Skipjack (ICCAT Species Code)
SRFC	Sub-Regional Fisheries Commission
SWO	Swordfish (ICCAT Species Code)
UEMOA	*Union Économique et Monétaire Ouest Africaine* (West African Economic and Monetary Union)
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNICEF	United Nations Children's Fund
USAID	United State Agency for International Development
VMS	Vessel Monitoring System (by satellite)
WB	World Bank
YFT	Yellowfin tuna (ICCAT Species Code)

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The study area includes all African countries bordering the Atlantic Ocean, from Morocco[1] in North Africa to the South Africa, which is at the southernmost tip of the continent.

Figure 1 : African countries

Source: WorldPress[2]

[1] Although Morocco is not a member of the AU, it shares its fishery resources with Mauritania, Senegal and Cape Verde. It therefore constitutes an important component of this study.

[2] cf. https://mariajofrances.files.wordpress.com/2013/01/carte-afrique_2.jpg

The study covers the Food and Agricultural Organisation's (FAO) fishing areas 34 and 47.

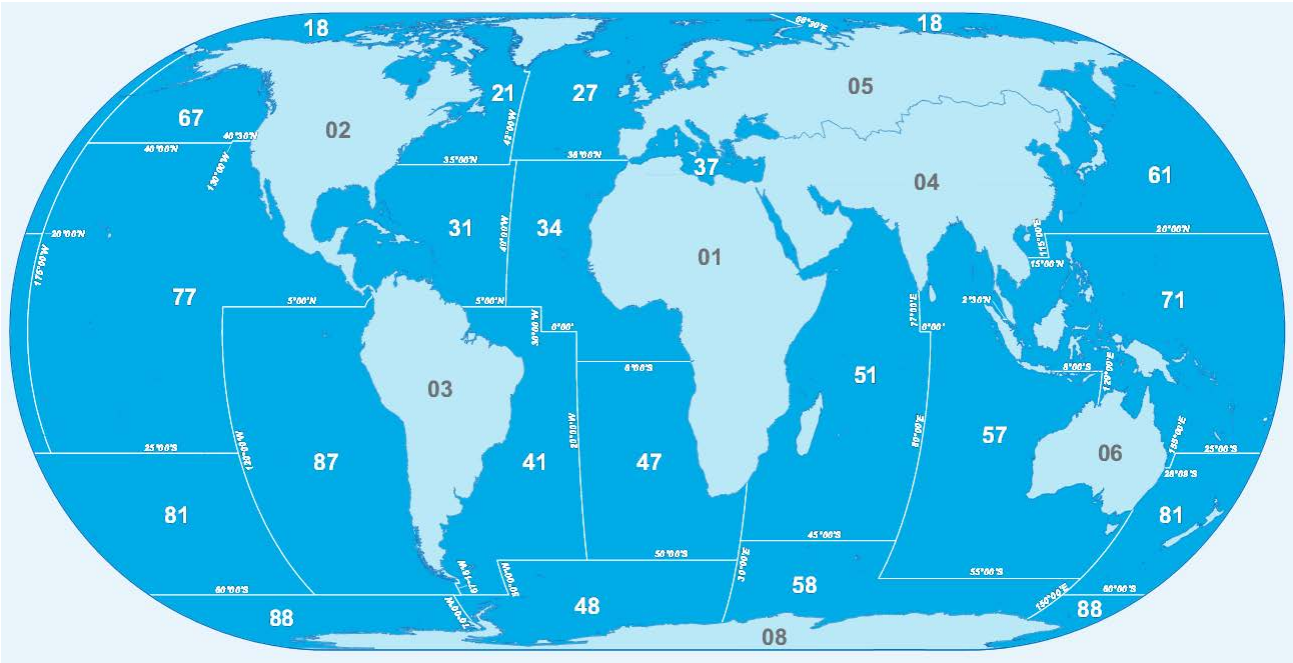

Figure 2 : FAO Fishing Areas

Source: FAO[3]

[3] cf. http://www.fao.org/3/a-az126e.pdf

Introduction

The establishment of exclusive economic zones (EEZs) in the late 1970s changed the conditions of access by distant-water fishing fleets to waters, which were, from then on, considered the jurisdiction of coastal countries. Fishing vessels had to pay access fees to the authorities of the concerned coastal countries to access fishing areas that were previously under an open access regime[4]. Three types of contracts gradually came into being: the public bilateral fisheries agreement concluded between the flag State and the coastal State, the private agreement between a producers' organisation or vessel and a coastal State (free licence and fishing convention that go beyond simple access to resources[5]) and private agreements between two enterprises (a joint venture between a national company and a foreign ship-owner and the chartering of foreign vessels by a national ship-owner). All these arrangements are referred to using the generic term «agreement »[6]. Despite the differences in their implementation, there is a common thread: the lack of transparency with regard to both their financial and fisheries aspects. Furthermore, in view of the difficulties faced by coastal States in acquiring industrial fishing fleets, the value addition of granting fishing rights to foreign vessels is increasingly being questioned. In addition, ever since the negotiation of the first fisheries agreement between Senegal and the European Union (EU) in 1979, there has been some controversy[7] surrounding the role of fisheries agreements in the development process[8] of African countries. Although these agreements constitute significant budgetary resources for coastal countries and thus contribute to the countries' economic and social development, they also seem to hamper the development of national fishing capacities.

Over and above fisheries agreements, fishing holds an important place in the economies of most African countries, and particularly those that border the Atlantic Ocean, namely Mauritania, Senegal and Ghana, and to a lesser extent Gabon, which are the four key countries that are the subject of this study. It is for this reason that the African Union, in a recently developed document which defines the Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa[9], is committed to promoting the sustainable development of national fisheries and the drafting of fisheries agreements that are equally beneficial for all parties. It notes that numerous fisheries agreements result in the significant loss of benefits for African countries due to their flawed formulation as a result of weak negotiating capacities. The relatively low involvement of fishing communities in the negotiation process contributes to the development of such agreements. In this regard, the last Conference of Ministers of Fisheries and Aquaculture held in March 2014 in Ghana recommended that fisheries agreements are negotiated at the regional level and receive technical support from regional economic communities with a view to increasing the resulting benefits for African countries.

In order to improve the capacities of African countries and regional organisations[10] in the area of negotiations and the formulation of fisheries agreements, the sharing information on the lessons learnt and good practices in countries which have implemented such agreements or are currently doing so is indispensable. The

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[4] Outside territorial waters (below the 12-mile limit) where vessels were already paying fishing fees to local or national authorities in North Africa since the 17th century.

[5] Similar to the 25-year agreement that Mauritania signed with Poly-Hondong, a Chinese company in 2011, but which has been terminated since 2014.

[6] This document has adopted the use of this generic term. The same applies to the expression «public bilateral agreement » that refers to an agreement concluded between two States.

[7] Lack of data on catches by foreign fleets, lack of transparency in bilateral negotiations between countries or distance fishing fleets and third countries as well as doubts concerning the economic and social impacts of agreements on coastal countries have contributed to shrouding the agreements in mystery and fueling controversy.

[8] Both in terms of the fisheries sector and national development.

[9] Adopted during the 23rd Summit of Heads of State and Government in Malabo, Equatorial Guinea in June 2014. The African Union received support from the European Union under the Programme Building Institutional Capacities to improve Governance in the Fisheries and Aquaculture Sector in Africa to implement this policy document.

[10] In light of this, the African Union Interafrican Bureau for Animal Resources (AU-IBAR) held to workshops in 2012 in Abidjan and Douala on fisheries agreements.

transboundary nature of fish stock including tuna[11], makes it equally important to address regional capacity building with regard to negotiating, implementing and monitoring fisheries agreements that target migratory stocks so as to ensure their optimal management. It is within this context that the consultancy has been structured with the starting point being Africa's border with the Atlantic Ocean (geographic scope of this report), to be subsequently expanded to include other regions on the continent. The ultimate goal is to develop equitable agreements, which will contribute to the sustainable exploitation of fishery resources during their implementation.

The main objective of the report is to present a situational analysis of fisheries agreements in Africa, together with key lessons learnt in the course of their implementation with a view to developing agreements that have the most appropriate geographic scale and are the most equitable. There are three specific objectives linked to the main objective. They consist of firstly conducting an evaluation of the efficiency of various types of agreements taking into account national disparities. This will be followed by an assessment of the opportunities and constraints relating to the implementation of regional agreements as well as the formulation of a number of recommendations for their development, including a structured work plan.

Among all the fisheries agreements in force in West and Central Africa, for a number of years, bilateral agreements on tuna and tuna-like species have been the most common and most significant in financial terms. They replaced the so-called mixed bilateral agreements which include both demersal resources (coastal fish, prawns and cephalopods, and pelagic resources (tunas and small pelagics)[12]. The depletion of demersal resources along the Atlantic coast has gradually led to the withdrawal of distant-water fishing fleets from African coastal waters. However, there are still some notable exceptions such as the agreement between Mauritania and the EU, whose new protocol was recently signed[13] and includes all pelagic and demersal resources, except cephalopods[14], and the agreement between Morocco and Guinea-Bissau with the EU that is smaller in scope. Tuna and tuna-like species are the only category of fish in the Atlantic being managed under the auspices of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Bilateral agreements specific to small pelagics are non-existent. Access by foreign vessels to national EEZs is done through the issuance of free licences[15], the establishment of joint ventures[16] or charters[17]. Furthermore, no regional management measures exist for catches of small pelagics, even though management plans have been developed in recent years for sardinella (SRFC and COREP) as well as for bonga fish and mullets (SRFC). This is more reason why a detailed assessment of tuna agreements is opportune as we move towards regional agreements. It is worth mention that the only agreements that are currently the subject of

[11] Tunas and tuna-like species is the generic term used by the International Commission for the Conservation of Atlantic Tunas and tuna-like species (ICCAT) which covers migratory fish like tuna, bonito, billfishes, swordfish, and sharks (the list of species was defined in 1967 when ICCAT was created and includes about 200 species, cf. http://www.iccat.int/fr/Stat_Codes.htm).

[12] They represented approximately 85% of the total number of agreements concluded between African countries and the EU in the late 1990s.

[13] The new Protocol was recently signed on July 10, 2015 in Nouakchott.

[14] Same nature as the Morocco-EU agreement.

[15] In April 2010, Senegal and Guinea-Bissau had respectively authorised about ten vessels to ply their waters in order to catch small pelagics (mainly sardinella, horse mackerels and mackerels). Their number gradually increased to 20 at the end of 2010, then 44 at the end of 2011, but it was only for a short duration in Senegal since ships were forced to stop their activities following the change in Government in March 2012. They are still operating in Guinea-Bissau.

[16] Several joint ventures exists particularly in Angola, Ghana, Namibia and Senegal.

[17] The main example is Mauritania which considerably developed this form of partnership following the collapse of the Soviet Bloc in the late 1980s.

regional management are the Pacific tuna agreements[18]. There is therefore a precedent that can be referred to.

This document is composed of three sections. The first section presents the context and main challenges facing African countries bordering the Atlantic in terms of the formulation and management of fisheries agreements, and specifically tuna agreements. The second section analyses the relevance and feasibility of the implementation of regional agreements of straddling and migratory stocks. The last section sets out recommendations for capacity building at national and regional levels, as well as proposals for a supra-national framework for negotiations and the management of regional fisheries agreements.

[18] At the regional level, the South Pacific Tuna Treaty, which has been in force since 1987 in the Pacific Ocean, allows slightly over 10 vessels (compared to 50 at the time the Treaty was developed) to fish in the EEZ of the group of Central and West Pacific nations. Since its extension has been questioned for a number of years, it was renewed for one year only (considered as a transition phase) on August 5, 2015 (cf. http://www.fpir.noaa.gov/IFD/ifd_sptt.html). At the sub-regional level, Parties to the Nauru Agreement (PNA) have defined a joint framework of action for fish stocks common to the Federated States of Micronesia, Kiribati, Marshall Islands, Palau, Papua New Guinea, Solomon Islands and Tuvalu. The first and most significant instrument is the Western and Central Pacific Purse Seine Fishery, which since 1997 has defined the modalities for access of foreign and domestic purse seine vessels to the waters of various Member States (except Tuvalu) through a mechanism to control fishing effort by distributing the number of days fished among Member States using a Vessel Day Scheme (as opposed to the number of purse seiners that was used until 2003) and the application of the increase of the fishing day fees for foreign vessels to a benchmark USD 8,000 in 2015 from USD 5,000 in 2013. The second instrument known as the Federated States of Micronesia Arrangement was developed in 1994 as a mechanism to allow vessels from Micronesia, Marshall Islands, Nauru, Palau, Papua New Guinea and Solomon Islands to reciprocally operate in the EEZ of each country.

1 Context of Fisheries Agreements with African Countries bordering the Atlantic Ocean

1.1 Brief Background and Overview

The United Nations Convention on the Law of the Sea (UNCLOS) of 1982 officially gave all coastal States the right to establish a 200-mile EEZ limit from their shorelines[19]. Article 62 of the Convention states that «The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch (…)». The said article confers a legal basis to fisheries agreements.

The notion of « surplus » alluded to in the UNCLOS text (although not explicitly defined) implies knowledge of the optimal level of harvesting and the national fishing capacity. Other than the challenges in defining the surplus for each species involved in the absence of a scientific evaluation and fisheries development plans for the majority of West African, this notion cannot be applied at country-level to pelagic fisheries, in particular tuna and tuna-like species and oceanic migratory fish that are independent of an EEZ. Although Article 64 deals with such species, it does not specify the modalities of access by foreign fishing vessels to national EEZs. In fact, it considers that for highly migratory species, the coastal State and distant-water fishing nations shall cooperate, «directly or through appropriate international organisations with a view to ensuring conservation and promoting the objective of optimum utilisation of such species throughout the region, both within and beyond the exclusive economic zone ». It therefore remains silent on the manner in which foreign fleets can access national EEZs of coastal States in respect of tuna and tuna-like species.

For countries that have longline fleets, the establishment of EEZs has been done using diverse approaches. For EU Member States, since the entry into force of the Hague Resolution in 1976[20], on the extension of fishing zones to 200 nautical miles off the North Sea and North Atlantic Coast, the negotiating mandate was transferred from the State to the European Intergovernmental Authority (European Economic Community until 1992, the European Community until 2009 and since then, the European Union[21]). This decision resulted in the conclusion of agreements between the Community and third countries either defining the terms of exchange of access rights (reciprocity) in the case of shared zones or stocks, or conditions for the purchase of access rights to fishing areas that fall under the sovereignty of States that are not members of the supranational European organisation (third-country EEZs). Fisheries agreements adopted a new legal framework following the entry into force of the European Council's decision of July 19, 2004 and for 10 years, would be referred to as fisheries partnership agreements (FPAs). From the end of 2014, they acquired a new denomination, « sustainable partnership fisheries agreements (SPFAs) ».

Eastern European countries, that were members of the Union of Soviet Socialist Republics (USSR), could access fishery resources until the late 1970s within the context of more general agreements concluded with African socialist countries (Angola, Guinea, Mauritania, etc.). Many joint ventures were created with the national shareholder being the Government itself (while the other shareholder was a fishing company from a

[19] Most African countries established their EEZs from 1977 while the European Economic Commission, by virtue of the Hague Resolution, was creating its EEZ and fisheries agreements in response to this major change concerning the sovereignty of marine resources.

[20] Council Resolution of November 3, 1976.

[21] The Treaty of Rome of March 25, 1957, which entered into force on January 1958, established the European Economic Community. It became the European Community following the entry into force of the European Union Treaty also known as the Maastricht Treaty of November 1, 1993 (signed in Maastricht on February 7, 1992). It was absorbed as a structural pillar by the European Union once the Lisbon Treaty came into effect on December 1, 2009 (signed in Lisbon on December 13, 2007). In accordance with editorial conventions (EU Inter-Institutional Style Guide), the term European Economic Community is used for acts adopted before November 1, 1993, while European Community is used for all those adopted after this date and European Union for those post December 1, 2009.

Member State of the USSR)[22]. Their chaotic operations could not withstand the collapse of the Soviet Bloc, especially since it marked the end of their access to extremely cheap fuel. The charter system gradually enabled vessels flying the flag of a Baltic State (Estonia, Latvia and Lithuania), mainly from Russia or Poland, to resume fishing operations along the African coast. Nevertheless, the integration of several Eastern European countries to the EU[23] significantly reduced the number of large capacity vessels in the Eastern European fleet. Today, it is only vessels from the Russian Federation that ply Africa's Atlantic waters. They primarily operate in markets of countries from Central Africa and the Gulf of Guinea.

The Asian continent is essentially represented in the waters of the Atlantic coast bordering Africa by Japan, China and South Korea. Japan, which was very active in tuna fishing in the 1970s and 1980s, gradually disappeared from the African Atlantic maritime scene. Some longliners, however, continue to operate off the coast of Gabon and São Tomé and Principe. At the time, Japan had entered into contractual arrangements through the National Fishing Federation (the umbrella body of Fisheries Cooperatives) that represents the entire industry and is mandated to negotiate on behalf of the Japanese Government. Agreements were signed with most African countries in EEZs where tunas migrate. Unlike Japan, China and Korea have considerably increased their presence in the Atlantic waters. The former has generally been involved in demersal fisheries and more recently, tuna fisheries using a fleet of surface longliners. All catches are destined for the Chinese market. The latter, however, has in recent years developed a fleet of longliners, along the Japanese model which consists of maintaining the quality of catches over the quantity fished. The target is the Asian market as a whole, with special focus on sushi.

Caribbean countries are also represented in the Atlantic waters. These so-called Flags of Convenience Countries (FOCs) allow foreign ships to fly their flag, including tuna vessels belonging to EU ship-owners. This is how the Netherlands Antilles, Belize, Cuba, Panama, Saint Vincent and the Grenadines have found themselves fishing in African waters. These vessels all operate under the free licencing system. Some African countries like Liberia, Côte d'Ivoire, Equatorial Guinea and Cape Verde are home to vessels whose owners, mainly based in Europe, want to either benefit from more favourable tax and organisational regimes (including labour and safety codes) or in the case of tuna vessels, seek to access the fishing quotas allocated per country by ICCAT, on the one hand, and waters of third countries which have an agreement with the EU and whose limit of the number of authorised vessels has already been attained, on the other hand[24]. These vessels operate both under free license system and sub-regional or bilateral agreements between coastal States.

The total reported catch by all fleets is about 5 million tonnes annually. Catches by African fleets rapidly increased from 2.5 to approximately 4.7 million tonnes between 1990 and 2012[25] (cf. figure below). In contrast, those of European fleets, inclusive of all countries (EU and Russia) steadily declined from 3 to 0.5 million tonnes over the same period. The collapse of the Soviet Bloc's fleets partially explains this phenomenon since they accounted for about 50% of the European total catch between 1970 and 1988. The other explanation is the gradual withdrawal of fleets of the three key European countries, namely Spain, France and Italy, whose catch decreased by over 60% between the late 1980s and 1992. The transfer of vessels from some EU Member States to FOCs also contributed to this situation. It is for this reason that Caribbean countries in late 2000 and beginning of the next decade had a catch volume of about 500,000 tonnes. Asian countries occupied a lower position in terms of the total catch as a result of the gradual withdrawal of Japan from the 1970s (the Japanese catch dropped from 250,000 to 28,000 tonnes during this period). The progressive entry of Chinese fleets (and those of the Chinese province of Taiwan) and Korean ones, to a lesser extent,

[22] Similar to other joint ventures created in the mining, forestry and agriculture sectors.

[23] The following countries acceded to the EU through the Athens Treaty of April 16, 2003: Estonia, Latvia, Lithuania, Poland, The Czech Republic, Slovania, Hungary, Cyprus and Malta. Romania and Bulgaria joined the Union on January 1, 2007 and Croatia become the 28th State of the EU on July 1, 2013, after ratification of the accession treaty signed on December 9, 2011.

[24] Or whose protocol was not renewed, but given the exclusivity clause in the agreement does not allow EU vessels to enter contracts with the coastal State on another form of accessing fishery resources.

[25] Last year for which data are available. Source : FAO Fishstat 2015

contributed to higher volumes of catches, although the figure remained low at 150,000 tonnes per year. Whistleblowing by international NGOs[26] on illegal fishing practices, lack of catch reports, etc. from Asian fleets lead us to the assumption that these data represent the minimum volume of catches.

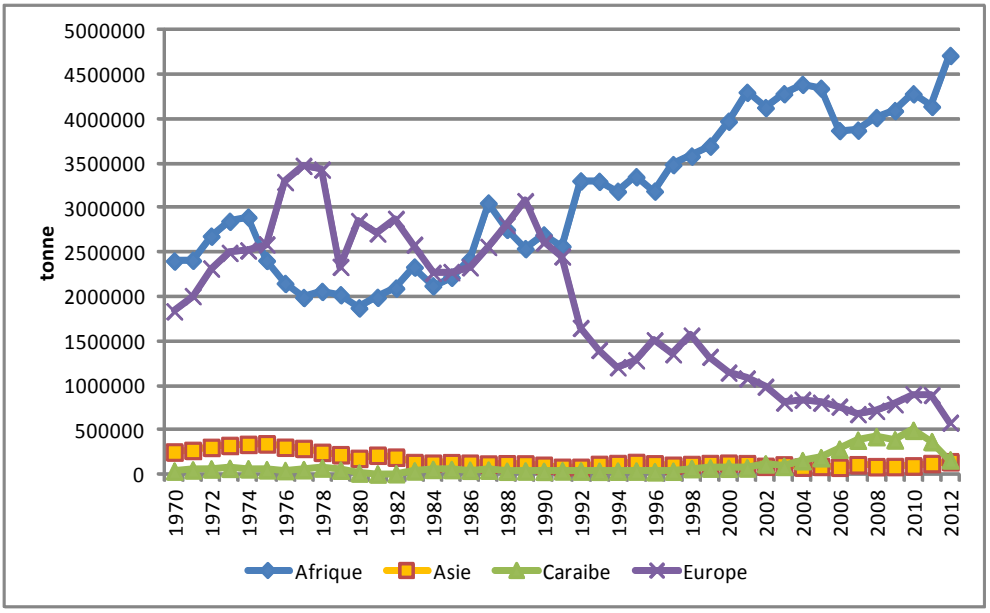

Figure 3 : Catches of vessels flying the flags of African, Asian, Caribbean and European countries in FAO Areas 34 and 47

Source: FAO Fishstat 2015

The main species fished by fleets are small pelagics (approximately 3.5 million tonnes on average over the period 1970-2012, accounting for over 65% of the total catch). Demersals and unidentified marine fish and others (comprising all groups of species whose percentage was negligible) weighed nearly 30% of the total catch, representing about 1.5 million tonnes per year, while tuna and tuna-like species represented an estimated 500,000 tonnes per year (8% of total catch).

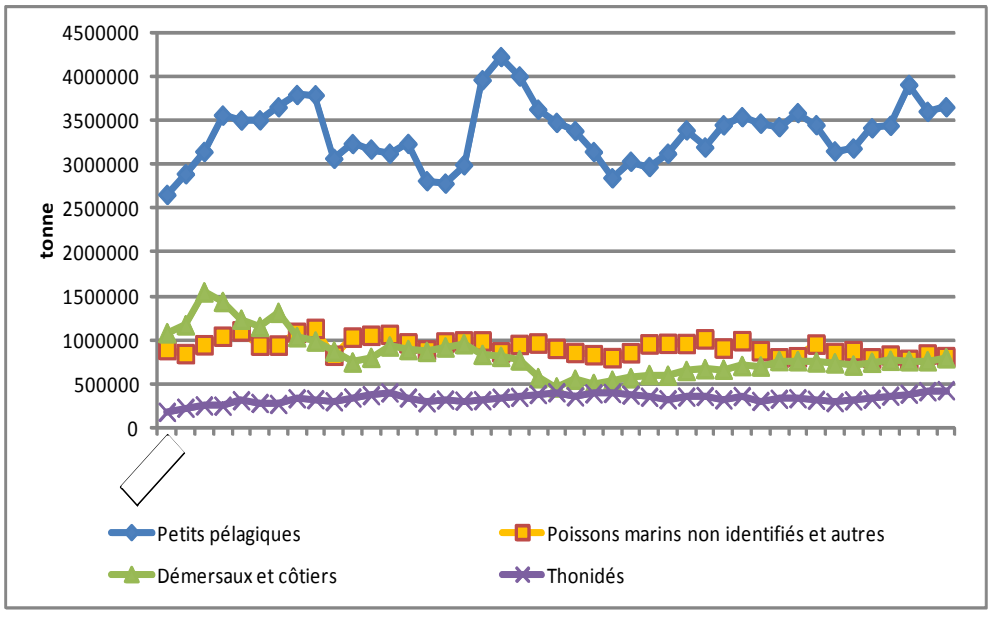

Figure 4 : Main groups of species fished by all fleets in FAO Areas 34 and 47

Source: FAO Fishstat 2015

Foreign-owned fleets primarily target tuna resources. Apart from Ghana, no other African country harvests tunas using industrial units[27]. The majority of small pelagics fall under artisanal fisheries with the exception of

[26] See recent reports by Greenpeace (www.greenpeace.org) and Environmental Justice (http://ejfoundation.org).

Morocco, Mauritania, Namibia and South Africa that own or operate industrial units (mainly national units in Morocco and South Africa with some Moroccan-Spanish joint ventures in the former through the vessel charter system and the bilateral agreement with the EU and Mauritania and within the framework of joint ventures in Namibia, mainly with Spanish vessel owners). Demersal resources are targeted by a variety of national, artisanal and industrial fleets (most joint venture companies), Asian fleets (free licenses or fisheries agreements) and EU fleets (fisheries partnership agreements). The decline of resources (the halving of catch volumes in 1970 and 1992) is a reflection of the reduction of joint ventures fleets and also the disinterest on the part of EU Member States to gain access to these resources[28].

On the whole, the share of catches in the Atlantic waters off Africa by foreign vessels gradually decreased to 16% in 2012 compared to 62% in 1976 (900,000 tonnes against 3.6 million tonnes respectively). The context is no longer one of an all-out expansion of fleets of major fishing nations like Spain and Japan nor the strategic positioning around certain segments deemed most important from an economic stand-point. Demersal fishing is completely disappearing be it in the context of bilateral agreements or joint venture companies. The fishing of small pelagics is still present through the chartering of vessels and fishing conventions as is the case with Mauritania and more recently, Gabon within the framework of a public-private partnership or the Mauritania-EU bilateral agreement (simply to meet the needs of former Soviet Bloc Member States) or joint ventures. In the case of tuna and tuna-like species, the fishing trend has continued, especially under the strategy of « re-flagging » European operators or the quest for quality by Korean ship-owners.

1.2 Review of current and previous fisheries agreements of countries bordering the Atlantic Ocean

There are several categories of agreements governing access to fishery resources in African coastal countries by foreign fleets:

- Public bilateral agreements between States or political entities are arrangements negotiated between two States or political entities (e.g. the EU) that define the terms of access by vessels to the coastal State's fishery resources. Fisheries Partnership Agreements (FPAs) developed by the EU fall in this category. This model of an agreement may involve the financial contribution of vessel owners (case of European FPAs) or otherwise (case of some Chinese agreements including the one with Mauritania).
- Private agreements between a producers' organisation (PO) or a vessel owner and a State are founded on the principle of the payment of an access fee that is determined either on the basis of the vessel's fishing capacity or the catch volume. The EU's PO tuna vessels access the EEZs of West African coastal countries that do not have an FPA with the EU through this type of arrangement.
- Private agreements between two companies comprise two main forms: a joint venture created using foreign and national capital in a fishing nation to guarantee the same conditions of access as those granted to national vessels[29] and a vessel charter agreement that enables national fisheries companies to use foreign vessels to exploit domestic resources in exchange for remuneration (fixed or variable depending on the contract).

On the Atlantic border, the first category of agreements essentially concerns the EU fleet, particularly within the context of tuna FPAs. Practically all countries whose EEZ is crossed by shoals of tuna and tuna-like species have signed a fisheries agreement with the EU (cf. section 1.3). Despite the existence of other public agreements, there is very scanty documentation on them (cf. section 1.4).

The second category is found in virtually all coastal countries (cf. section 1.5). Fishing licences issued to POs or vessels mainly relate to tuna fisheries. Longliners and tuna vessels operate in a large area as compared to

[27] Vessels operating under flags of convenience issued by an African country have not been taken into account.

[28] Except for cephalopods in Mauritania where Spanish ship-owners still manifest great interest, since their exclusion from Moroccan waters in 1998 following the non-renewal of the memorandum of understanding between Morocco and the EEC. Cephalopods were not included in the last Mauritania-EU MoU and the one signed in July 2015.

[29] Case of numerous French and Italian vessels in Senegal that formed joined ventures at the end of the 1970s to gain the same advantages as their national counterparts.

demersal trawlers and should be able to follow the movement of stocks from one EEZ to another, hence the need for multiple free licences.

The third category of agreements first manifested itself in the form of joint ventures. At the time when many African countries gained their independence, many European foreign fishing companies feared for their future and therefore decided to «nationalise » their companies based in coastal countries, transforming them into joint enterprises. Later, following the failed attempts to introduce national industrial vessels, coastal States called for the creation of joint ventures. They were essentially designed for demersal fisheries. It is only recently that a joint venture for tuna fisheries using pole-and-line boats was established in Dakar (cf. section 1.6). Some FPA protocols have a provision[30] on the promotion of this type of company, but in actual fact none has been incorporated in this context. The vessel charter arrangements are relatively limited since it is only Ghana that uses this type of agreement to enhance its fishing power, while Mauritania applies it with fleets of the former Soviet satellite states for small pelagic fishing.

There is no existing regional agreement concerning the border with the Atlantic coast in terms of access by foreign vessels to national EEZs as well as by national vessels to various sub-regional EEZs. A regional agreement may be public or private. Such agreements, however, exist in the South Pacific where some tuna agreements are managed by the Pacific Islands Forum Fisheries Agency, an organisation that brings together several Pacific countries[31]. The idea of a regional joint access system has been mooted severally since the early 1990s in West Africa, and is particularly been driven by the SRFC (cf. section 2.1).

1.3 Public Bilateral Agreements between Coastal States and the EU

1.3.1 Brief Background

Community Fisheries Agreements (CPAs) officially arose from the European Union's Council Resolution of November 3, 1976[32] on the extension, by the European Economic Community (EEC), of the limits of fishing zones to 200 nautical miles from the coast bordering the North Sea and the North Atlantic. This decision led to the conclusion of agreements between the EEC and third countries defining: 1) conditions for exchange of access rights (reciprocity) in the case of shared stocks or zones[33] or 2) the terms of purchase of access rights to fishing areas under the sovereignty of States that are not members of the EEC (third-country EEZs) [34]. Bilateral agreements between the EEC Member States and third countries have since been replaced by CFAs. Accession to the EEC by new countries with a tradition of fishing such as Spain and Portugal (in 1986) contributed to the increased number of CFAs.

Since the first CFA signed in 1977 with the United States[35], in total 31 agreements have seen the light of day, mainly with African and Indian Ocean (17) countries as well North Atlantic countries (11); only one agreement was signed with a Latin American country (Argentina) while three agreements were recently concluded with Pacific countries. Following the European Council's Resolution of July 19, 2004 which defines the policy framework for bilateral agreements that provide for financial contribution from the EU, CFAs were replaced by fisheries partnership agreements (FPAs); from late 2014 to date, they are referred to as sustainable fisheries partnership agreements (SFPAs).

1.3.2 Objectives of FPAs/SFPAs

The objective of FPAs/SFPAs is threefold. Firstly, they ensure access by EU fleets to third-country fishing zones, secondly they assist third countries to ensure the sustainable management of their resources and

[30] The failure of the agreement between the European Community and Argentina (1992-1999) spelt the end of the promotion of joint ventures as a tool to redeploy European fisheries given the huge financial losses incurred by Spanish ship-owners.

[31] Voir : http://www.ffa.int/members

[32] Hague Resolution (J.O. C105 du 07.05.1981)

[33] Case of reciprocal agreement based on the exchange of quotas. In 2013, these agreements concerned Norway and Iceland.

[34] Case of the majority of agreements based on the issuance of access rights accompanied by financial compensation.

[35] Agreement on access to surplus stocks. The United States of America had granted fishing rights to the EEC for surplus resources unexploited by American vessels.

promote the development of national fisheries and thirdly, they contribute to supplying the European market. These objectives are broken down in a more practical way in implementing protocols. The European Council[36] recently recalled, in the conclusions of its session held on March 19, 2012, that FPAs between the EU and a third country[37] would also have the following objectives:

- conserve resources and their ecosystems through the rational and sustainable exploitation of marine resources living in waters under the jurisdiction of coastal States;
- ensure economic benefits for all stakeholders;
- integrate developing coastal States into the global economy;
- strive for better global governance of fisheries;
- contribute to the promotion of respect for human rights and democratic principles; and
- take into account the interests of the outermost regions of the European Union located in the vicinity of the coastal States.

1.3.3 Current Status

In August 2015, there were 19 FPAs out of which 14 were active and 10 were specific to highly migratory species. They comprise:

- 4 FPAs with a « mixed» protocol in force targeting several groups of species (pelagics and/or crustaceans and/or demersals: Greenland, Guinea-Bissau, Morocco and Mauritania;
- 10 FPAs with a protocol in force targeting highly migratory species (tuna):
  - 6 in the Atlantic Ocean covering Cape Verde ; Côte d'Ivoire ; São Tomé et Principe, Gabon, Senegal and Liberia ;
  - 5 in the South West Indian Ocean covering Comoros ; Madagascar ; Mauritius ; Seychelles and Tanzania ;
  - 1 in the West-Central Pacific Ocean[38] covering Kiribati ;
- 5 dormant FPAs (no protocol in force) covering Gambia, Equatorial Guinea, Micronesia, Mozambique and Solomon Islands.

The European budget's allocation to fisheries agreements increased from € 5 million[39] in 1981 to € 163 million in 1990, attained € 300 million in 1997, approximately € 200 million in 2009 and € 80 million in 2015. Until recently, West African mixed or multi-species agreements were the most significant with Mauritania (totalling € 67 million per year within the framework of the protocol signed in 2012 and € 57 million in the one signed in July 2015), Morocco (€ 30 million per year for the current protocol) and Guinea-Bissau (€ 9.2 million per year). The amount budgeted for tuna agreements is much lower considering that the most significant one of all, signed with Seychelles, represents € 5.3 million annually. It is followed by Gabon (€ 1.35 million per year under the protocol signed in 2014). The bell curve trend in budgets dating back to 1980, clearly illustrates the

[36] As a reminder, this is the EU institution where Government ministers from each EU member country meet to adopt legislation and coordinate sector policies (www.consilium.europa.eu).

[37] EU Council, 2012. Council Conclusions on the Communication from the Commission on the External Dimension of the Common Fisheries Policy. March 19, 2012. 6 p.

[38] A sustainable fisheries partnership agreement or SFPA (and its protocol) is being negotiated with Cook Islands in 2015. It is a tuna agreement destined to increase fishing opportunities for 4 EU seiners in the EEZs of Pacific Island countries. cf. http://www.pina.com.fj/?p=pacnews&m=read&o=18632893695546e85e0ffbd743c155

[39] Equivalent in millions of euros for the period before the creation of the Euro in 1994.

decline of the fishing conditions for demersal species in coastal countries. It also indicates the reduction in EU fleets, including most demersal fishing units that are fast becoming obsolete[40].

1.3.4 FPAs/SFPAs between the EU and African countries

In 1979, the first fisheries agreement between the European Economic Community and Senegal was signed. Since then, 11 other agreements were concluded with countries bordering the Atlantic Ocean. All of them are still in force, except the one with Angola, denounced in 2006 due to a mismatch between the demands of both parties and one with Guinea, suspended in 2009, following the political abuses of government in power[41].

In August 2015, there were 10 FPAs with African countries on the Atlantic coast, including 8 with a protocol in force (Cape Verde, Côte d'Ivoire, Gabon, Guinea-Bissau, Liberia, Mauritania, Morocco, São Tomé and Principe and Senegal). The 2 other FPAs, signed before 2006 are dormant (Gambia and Equatorial Guinea whose protocols were nor renewed in 1996 and 2000 respectively).

The negotiation of a new protocol usually revolves around aspects regarding the fishing capacity (adjustment of the number of vessels and tonnage) and the financial contribution[42] (more specifically, the financial compensation). Generally, although parties agree or reach a compromise on the first aspect, it happens that, as was the case with Senegal in 2006, the second aspect constitutes the main source of disagreement to the extent that negotiations stall. It is for this reason that it was only in 2014 that a new protocol was concluded.

Other aspects such as clauses relating to transparency[43] or human rights[44] make negotiations drag on or significantly delay them. A case in point is the current protocol with Mauritania, which does not contain a transparency clause on the transmission to the EU of information on the fishing effort, a provision that has been the subject of lengthy discussions in the negotiation rounds[45]. The one with the Gabon was hampered by, among other things, the clause on human rights, so much so, that the renewal of the current protocol took over a year and a half (between 2012 and 2014).

Table 1 : Active FPAs/SFPAs between African coastal countries bordering the Atlantic and the EU

Country	Date of Expiry	Type	EU's annual contribution	Amount allocated to support the fisheries policy
Cape Verde	22.12.2018	Tuna	€ 550,000 / € 500,000 **	€ 275,000 / € 250,000 **
Côte d'Ivoire	30.6.2018	Tuna	€ 680,000	€ 257,500
Gabon	23.7.2016	Tuna	€ 1,350,000	€ 450 000

[40] The average age of vessels operating in Mauritania's waters at the end of 2000 was already over 25 years (cf. Report of the Islamic Republic of Mauritania's (RIM) Working Group, 2010).

[41] In line with Article 96 of the Cotonou Agreement.

[42] The financial contribution includes financial compensation (in exchange for fishing opportunities) and support to the third country's fisheries sector.

[43] The EU requests the coastal State that is a signatory to communicate the level of cumulative fishing effort in its EEZ (fishing effort of national and foreign fleets) in order to better assess the catches in the concerned EEZ as well as estimate the exploitable surplus by foreign fishing fleets.

[44] Until 2011, the human rights clause was not included as such in FPA texts and their protocols. Since then, it is part of articles 8 and 9 of the protocols and reads as follows: « In the event of activation of the consultation mechanisms laid down in Article 96 of the Cotonou Agreement owing to the violation of one of the essential and fundamental elements of human rights and democratic principles as provided for in Article 9 of the said agreement». This clause stipulates that payment of the financial contribution (access and sector support) and/or the entire protocol may be suspended in the event of a « violation of the essential and fundamental elements of human rights and democratic principles as provided for in Article 9 of the Cotonou Agreement ».

[45] It, however, contains a transparency clause on the monitoring of sectoral support.

Guinea-Bissau	23.11.2017	Mixed	€ 9,200,000 €	€ 3,000,000
Liberia	5 years*	Tuna	€ 715,000/ € 650,000/ € 585,000**	€ 357,500/ € 325,000/ € 292,500**
Mauritania	4 years*	Mixed	€ 55 million	€ 4 million
Morocco	4 years*	Mixed	€ 30 million	€ 14 million
São Tomé and Principe	22.5.2018	Tuna	€ 710,000/ € 675,000	€ 325,000
Senegal	19.11.2019	Tuna (+ Hake)	€ 1,808,000/ € 1,668,000	€ 750,000

*: The date of entry into force is unknown; **: The amount per period the protocol is in force. Source: DG-Mare

Another provision which is of great importance for the operability of EU vessels, is the so-called exclusivity clause, which does not allow, in one form or another[46], EU vessels to fish in the waters of a third country, where there is a signed SFPA, without an implementing protocol in force. Thus, EU vessels have not been able to fish in the waters of the Gambia since 1996 and Equatorial Guinea since 2000. They could not also fish in Gabon from the end of 2011 to mid-2013 between the two protocols as well as in Senegal between 2006 and 2015, in Morocco between 2011 and 2013 and in Guinea-Bissau between April 2012 and November 2014. The clause is therefore highly detrimental to the operations of EU fleets. Nevertheless, EU ship-owners have managed to counter this constraint by using vessels flying flags of convenience, which are not obliged to comply with the exclusivity clause.

1.4 Public Bilateral Agreements between Coastal States and Various Countries

Several countries have concluded bilateral fisheries agreements with West African coastal States: China, Japan, South Korea, Russia and the United States (cf. table below). Beyond the knowledge of the existence of agreements, it is extremely difficult to analyse their terms because most of them are not in the public domain, particularly those with China (Pauly et al., 2013). Overall, these agreements are not transparent and often contain controversial provisions (European Parliament, 2012).

Further, these agreements are characterised by a low level of obligation be it to the coastal State or RFMOs such as ICCAT. Catch reports are often wanting. For example, the combined catch of all Chinese vessels in West African waters was estimated at 190,000 tonnes per year representing a value of € 200 million (Mallory, 2012) [47]. Using non-official sources, Pauly et al. (2013) estimate the number of Chinese tuna vessels operating in West Africa at 23 (22 longliners and one seiner)[48] and the tuna catch at 15,000 tonnes per year between 2,000 and 2011. Catch reports from vessels flying the Chinese flag, for all species in the ICCAT zone that ranged from approximately 5,000 tonnes (2011) to 11,000 tonnes (2003) over the same period[49] are well below the estimates made by Pauly et al.

The Russian Federation signed a fisheries agreement with Morocco in February 2013 to renew the one signed in 2011 for a two-year period[50]. The agreement includes a clause on the signing on board of local seamen,

[46] Particularly through private agreements.

[47] This estimate includes all species. Tuna seem to account for a low percentage of this catch with demersals and small pelagics dominating.

[48] Out of a total number of 345 Chinese vessels in the zone (including 256 bottom trawlers).

[49] Catch reports from vessels with Chinese interests flying the flags of third parties also do not explain this difference: catch reports from third countries within the context of a joint venture with Chinese shareholding indicate a paltry figure of 500 tonnes/year.

[50] The translated text of the Agreement is available at : http://www.wsrw.org/files/dated/2011-01-01/russia-morocco_fpadraft_15.01.10_english.pdf

similar to European FPAs. This agreement is part of Russia's new strategy for fisheries agreements, based on a combination of business targets and support to the third country's fisheries sector (like FPAs). The Russian Federation also signed an agreement with Senegal that was denounced in 2012 and Guinea-Bissau in 2010 and is keen on developing one with Mauritania. However, the Russian presence is weakening in West African waters.

1.5 Bilateral Agreements between Coastal States and the Private Sector

Agreements of this type are signed between a State and a professional association, usually a producers' organisation or a vessel owner, individually. To date, several POs from Japan, Korea, China, Taiwan and the EU have fisheries agreements with West African coastal States. Many vessel owners also have fishing agreements which are often reduced to a single document: the licence defining the conditions for fishing in the coastal country's EEZ. The coastal State's regulatory framework is usually the defining element since although in some cases a formal agreement[51] is required, most times, it does not exist as such and the instrument governs the relations between the two parties is what is commonly called the foreign fishing license.

Fisheries agreements between the coastal State and the Japanese fleet are thus designed through the Japanese Federation of Fisheries Cooperatives, the Japanese Tuna Producers' Organisation (PO) or private licenses. In some instances, the Japanese PO pays fees for the admission of the vessel to the EEZ of the third country and then each vessel pays a fee amounting to 5% of the value of catches made during the fishing year or trip (the value is determined by the market prices in Japan). The monitoring and control of such agreements is difficult, besides the fact that the recipient country cannot predict the revenue it will get (Mwikya, 2006). In other words, the financial terms of the agreement are limited to the payment of an annual fee. Tuna agreements were signed with Senegal in 2007 (CRODT, 2007) in this context. Other similar agreements exist with Mauritania, Gabon and Côte d'Ivoire[52].

POs from South Korea, China and Taiwan have also concluded tuna agreements with several countries bordering the Atlantic coast (cf. table below). The amount of the fee is set at about 6% of the catch value, based on market prices in the main landing ports (e.g. Bangkok) (Mwikya, 2006). However, like the bilateral agreements between West African States and various countries, most arrangements of this nature lack transparency: it is a challenge getting details and especially those relating to fishing opportunities and catches. The Chinese State-owned company, Poly Hon Don Fisheries, perfectly illustrates this fact. Inn June 2011, it concluded an agreement with Mauritania that has been denounced by environmental NGOs due to the non-transparency of its terms (European Parliament, 2012).

European POs, mostly dealing with tuna, have foreign fishing licences with virtually all African countries bordering the Atlantic (except Togo, Benin and Nigeria). These commercial arrangements accompany FPA-type agreements to give access to vessels belonging to European ship-owners but flying the flag of a third country. In the event that an FPA does not exist, they are also of benefit to EU vessels. In 2013, an initiative was launched by the three tuna seiner fisheries organisations in Africa (Orthongel, ANABAC and OPAGAC) in order to model the terms of reference of these agreements on FPAs, so as to obtain a more transparent legal framework which is more rigorous administratively and legally compared to previous agreements. Currently, only one such agreement was signed by Orthongel with Guinea (cf. Ex ante Evaluation report of a possible FPA between the EU and Guinea). The Spanish operators, OPAGAC and ANABAC engaged in a similar reflection with Liberia and Sierra Leone (cf. Ex ante Evaluation Reports of a possible FPA with the EU).

1.6 Private Agreements between Two Companies

1.6.1 Joint Venture Companies

A joint venture is a legal arrangement between a national company and a foreign one with a view to creating a new private entity with its own articles of association in line with the national jurisdiction. For some vessel

[51] Specifically in Côte d'Ivoire and Sao Tomé and Principe.

[52] In 2002, an agreement was concluded between Côte d'Ivoire and the Japanese Federation of Fisheries Cooperatives without an Inter-Governmental Agreement between Côte d'Ivoire and Japan (Ivorian prerequisite for the signing of an agreement with a non-State entity). In 2013, no Japanese vessel had entered the Ivorian EEZ.

owners, such an arrangement is the only way to access fishing areas when their country does not want to conclude a bilateral fisheries agreement or the coastal country does not wish to issue foreign fishing licenses. The foreign company therefore avails vessels and logistics, while the national company provides the necessary capital for its installation in the country. After the adoption of the flag of coastal country, vessels may then operate in the national EEZ in the same way as the vessels of the national fleet. The risks for the foreign company are however higher in this form of undertaking compared to those associated with other access modes, especially since the companies are subject to the laws of the coastal State and are not bound by the legislation in force in the countries from where the capital originates.

A special form of joint undertaking, known the joint venture was developed in 1990 by the EU to reduce fishing capacity in European waters (COFREPECHE 2000). European ship-owners transferred their vessels to a third country by creating a joint enterprise while focusing primarily on supplying the European market. In 2000 in Africa, there were 27 joint ventures in Senegal[53], 8 in Mauritania, 5 in Guinea, 4 in Guinea-Bissau and 4 in Cape Verde, totalling to 67 vessels (COFREPECHE 2000). Many of them are still in business, particularly for tuna fishing. Joint ventures established with Spanish ship-owners are the majority, especially in Senegal and Mauritania (Niasse and Seck, 2011). Since 2006, they have been operating as a group of fishing companies active in third countries (Niasse and Seck, 2011).

Joint ventures have also been established between West African companies and those in countries such as Korea, China, Thailand, Turkey and the United Arab Emirates (cf. table below). However, the scanty information obtained does not shed further light on the nature and content of the joint ventures created with these countries. Only joint venture companies incorporated in Ghana have been the subject of monitoring (cf. Section 1.8).

1.6.2 Vessel Charter Agreement

The charter contract involves the provision to a fishing company in a coastal country (charterer) of one or more vessels by a foreign fishing vessel owner (lessor), in exchange for remuneration. In most cases, the vessel is registered as a national ship, although it retains its foreign flag. Chartering is a common practice because it allows a company of a coastal State to engage in fishing activities without having to invest in a fishing fleet.

Chartering can be an opportunity for vessels flying the flag of an EU Member State which can no longer access the EEZ of a country that has an agreement with the EU, but whose protocol is not in force. However, the vessels must change flags[54]. Asian countries (Korea, for example) are the largest suppliers of chartered vessels in Mauritania, especially for small pelagic fishing (cf. table below).

For tuna vessels, the charter contract has the advantage of using the quota set for coastal State rather than the one defined for the flag State (bigeye and swordfish). Tuna vessels from European capitals. registered in third countries (Belize, Curacao, Cape Verde, Ghana, Panama, etc.) seem to have been chartered by fishing companies based in Sierra Leone, Liberia, Ghana, Congo and Angola. Lack of information on this practice was a limitation to a more detailed presentation.

[53] The transfer of vessels from the EU to joint ventures was done in Senegal and Angola within the framework of the EU fleet exit schemes that authorised the transfer of capacity to a third country until 2004.

[54] FEDERPESCA, an Italian company, benefitted from access to Guinea-Bissau's EEZ prior to the FPA of 2007-2010 and had to stop its activities due to the agreement's exclusivity clause. However, 4 to 5 of the company's vessels were « deflagged », then chartered under the Senegalese flag to fish in the waters of Guinea-Bissau.

1.7 Summary of all Agreements

The table below presents all the agreements for which information exists[55]. The reading of this synthesis points to the evident diversity of contractual forms. Their coexistence reveals, above all, the capacity of States, POs and foreign vessel owners to define access modalities. This is why, for example, European tuna POs defined a model memorandum of understanding that they submit to coastal countries with which they wish to sign an agreement. The format and content of FPAs, with the exception of a few details, are the preserve of the EU. It is only in the case of free licences that the coastal State seems to have the prerogative of defining the terms of the agreement.

[55] Several agreements are not known or documented, particularly those directly negotiated between a vessel owner and the Office of the President of a coastal country.

Table 2 : Public and Private Access by Foreign Fleets to African Coastal States bordering the Atlantic[56]

Country	Public Agreement	Private Agreement	Private Licence	Investment in a Joint Venture	Vessel Charter
Morocco	Russia – sixth fisheries agreement (the first was signed in 1992) : 4 years (2013 – 2017), 10 Russian trawlers – small pelagics// text based on terms that are almost identical to EU-third–country FPAs: annual financial compensation of USD 5 million (€ 3.84 million), annual access fees paid by vessel owners based on the percentage (17.5 % for the first year) of the total value of fishery products caught, quotas of fish harvested in Year 1: for 100,000 tonnes, this would be 30% of sardines and sardinella; 70% of mackerels, horse mackerels, sword fish and anchovies; 5% of by catch (text of the agreement).	- = access mode is inexistent or lack of information	-	-	-
Mauritania	Russia : new agreement signed in 2012 (the first agreement dates back to the 1970s) Senegal (Fisheries Convention since the 1980s): last MoU signed in February 2013 for one year and for 40,000 tonnes of small pelagic fish, with the exception of the mullet, with a maximum of 300 vessels under a bi-annual licence and a fee of € 10 per tonne fished, 18 vessels (6% of the fleets) and chartered vessels that shall land in Mauritania (text of the protocol). Cape Verde : convention signed in 1995 allowing access by Cape Verdean tuna vessels ; cf. Cape Verde below (13)	China : agreement with the State-owned company, Poly Hondone Pelagic Fisheries, signed in June 2011 (1) Japan : fisheries agreement signed in 2010 with the Japanese Federation of Fisheries Cooperatives (9)	-	Japan : investment in the processing sector and funding of the artisanal fishing port	-
Cape Verde	Senegal : a fisheries cooperation convention (reciprocal agreement) was signed in 1985, while the last protocol was signed in 2004: the	Japan : 20 fishing opportunities for Japanese longliners belonging to the Japan Fishery	Panama, Belize, Curacao, Cape Verde[57], 9 Spanish seiners in 2012. Fleet (figure may vary) present since the 1990s (13)	-	-

[56] This table that presents the number of foreign fleets in EEZs in West and Central Africa is indicative and not exhaustive since the information reported is not always from cross-sources. A more in-depth investigation could confirm and refine the data. For further details and clarifications in Côte d'Ivoire, Cape Verde, Liberia, Mauritania, São Tomé and Príncipe, Senegal and Sierra Leone, refer to the evaluation reports of fisheries agreements between the EU and third countries conducted between 2012 and 2014.

Country	Public Agreement	Private Agreement	Private Licence	Investment in a Joint Venture	Vessel Charter
	number of vessels benefitting from this agreement is annually set by the Parity Committee for a maximum one-year licence, 5 Senegalese pole-and-line vessels are said to have been operating since 2009 (13)	Thon Corporation (13)	8 Chinese vessels since 2011 fishing the bigeye tuna (13)		
Senegal[58]	Mauritania : reciprocal agreements – cf. above : no protocol to access Mauritanian vessels in Senegalese waters ; Cape Verde: 1985 reciprocal agreement. In 2012, 2 pole-and-line vessels and 2 seiners (Directorate of Maritime Fisheries, Senegal) (Spanish property – cf. Cape Verde above), under a protocol signed in 2004 (automatically renewable) (convention and protocol and 22)	Japan: fisheries agreement with the Japanese Federation of Fisheries Cooperatives – dormant (16) Spain – France : 7 pole-and-line vessels flying the Spanish flag and 1 French pole-and-line vessel (access mode for the EU fleet of pole-and-line vessels in Dakar since the end of the 2006 fisheries agreement with the EU[58])	Cape Verde: see «public agreement»	Joint ventures funded by foreign capital (China, Korea, United States, Turkey, Canada, other West African countries)	-
Gambia	Senegal : a reciprocal agreement signed in 1992, new version in April 2008 – last protocol signed in 2010 (enforced in 2012 and 2013) : one year automatic renewal for equivalent periods; for industrial fishing, reciprocal fishing opportunities set in GRT/year for shrimp trawlers, cephalopod trawlers and fin-fish trawlers and tuna vessels (seiners, longliners and pole-and-line boats), sardine fishing trawlers. Bi-annual license in Gambia - Senegalese vessels active in 2012 and 2013 (a year in Senegal, but no Gambian ship active in Senegal)	Japan : fisheries agreement signed in 2002 with the Japanese Federation of Fisheries Cooperatives (3)	-	-	-

[57] Since they do not belong to a Cape Verdean company, these two vessels must pay for a foreign vessel fishing vessel.; Source : General Directorate of Fisheries, Cape Verde (2013)

[58] Senegalese legislation only authorises access by vessels flying the flag of a third country to the fishery resources in the waters under Senegalese jurisdiction sénégalaise in the following circumstances: a) a bilateral agreement with a third country or a regional economic organization to which the concerned third party belongs or b) an exceptional charter, entered into by réalisé par Senegalese nationals and fixed for one year and renewable, for tuna seiners, coastal ice pelagic purse seiners and demersal wetfish trawlers only (Fisheries Code, 1998 and Implementing Decree n°98 – 432, June 10, 1998). Between 2010 and 2012, licences were issued to small pelagics foreign fishing vessels (including Russian ones) in contravention of the law.

Country	Public Agreement	Private Agreement	Private Licence	Investment in a Joint Venture	Vessel Charter
Guinea-Bissau	Russia : an agreement is said to have been signed in April 2011 (1) Senegal: a reciprocal agreement signed in 1978. Last protocol was signed in April 2010, two years not automatically renewable, extended to June 30, 2013 (negotiations underway for its renewal): fishing opportunities: a) artisanal fishing: fishing a variety of fish - annual access by three hundred small fishing boats with less or equal to 40 hp. 50 motorised boats of between 40 hp and 60 hp and b) industrial fishing: shrimp trawlers, cephalopod trawlers, demersal fish trawlers, small pelagic fish trawlers (licence in CFA/GRT/year) and a maximum of ten tuna vessels (pole-and-line boats and purse seiners) – licence of up to a maximum of one year or three months or six months with an increase of 5% and 3% respectively). Compulsory landing of part of the catch (2.5 tonnes of fish per vessel per quarter) except for tuna. No catch limit or reference tonnage (text of the protocol and 22)	China : third agreement signed in 2010 with the Chinese National Fisheries Corporation (1)	-	Korea : investment in fisheries joint ventures (1) United Arab Emirates are said to have invested in fisheries (1)	Korea : chartering of vessels flying the flags of Russia, Mauritania Togo, Belize and Panama (1)
Republic of Guinea	China : 21 Chinese cephalopod trawlers (6)	Annual private arrangements with organisations representing the French purse seiners since 2011 (End of FPA in December 2009): maximum of 12 fishing opportunities in 2013 (12) Private agreement with the organisations representing the Spanish purse seiners or under Spanish ownership in 2013 (signature envisaged shortly - July 2013): 23 fishing opportunities including for Spanish tuna seiners (10 and 11)	For 2013 (to date) : - 47 foreign vessels (including 32 foreign seiners) (6) - EU vessels (excluding private agreements) : 10; including 1 Spanish pole-and-line vessel, 5 Spanish shrimp trawlers, I Spanish cephalopod trawlers, I Lithuanian vessel and 2 Latvian vessels fishing small pelagics (10) Non-EU vessels: Chinese (excluding public agreements) : Belize, South Korea (not exhaustive) (6)	-	-

Country	Public Agreement	Private Agreement	Private Licence	Investment in a Joint Venture	Vessel Charter
Sierra Leone	Russia : fisheries agreement signed (July 2013), last agreement dates back to 1976 (details of the agreement are not available) (15)	No private agreement with EU vessels	In 2012 :58 foreign vessels with fishing licences: • Seiners: o EU : 23 tuna seiners including 9 French and 14 Spanish ones ; o Curacao, Guatemala, Panama, Cape Verde : 8 including some that are Spanish owned; • Longliners: o Taiwan : 12 longliners • Small pelagics trawlers : o Non Sierra Leone : 0 • Fin fish trawlers: o EU : Italy, 2 o Egypt: 3 • Shrimp trawlers: o China : 10 (17)	Possible presence of a Chinese-Korean joint venture for non-tuna industrial fishing vessels (17)	-
Liberia	Currently, no bilateral agreement (14)	Private agreements with the representative of French tuna seiners and a representative of Spanish tuna seiners (including one associated with the EU) at an advanced stage of negotiations (July 2013) (14)	A moratorium on access of foreign industrial fishing vessels from January 2011 to April 2013 - interruption of the presence of French and Spanish vessels (and associated ones) since July 2012 due to their presence in 2011 and early 2012 without taking into account the moratorium and under licence not recognised by the Liberian authorities South Korea : a licenced deep sea trawler since May 2012 (14)	-	-
Côte d'Ivoire[59]	-	Japan : fisheries agreement signed in 2002 with the	Ghana : approximately 16 pole-and-line vessels and 17 seiners with Korean capital (13 and 18)	China : investment in the fisheries sector	-

[59] It is important to note the Law nº 86-478 of July 1, 1986 on fisheries stipulates that « only fishing vessels flying the flag of a State that has concluded an agreement with the Government of Côte d'Ivoire shall have access to the waters of the national EEZ», which could prevent the conclusion of a private arrangement or licence.

Country	Public Agreement	Private Agreement	Private Licence	Investment in a Joint Venture	Vessel Charter
		Japanese Federation of Fisheries Cooperatives (3)		Ivorian vessel with Korean investment	
Ghana	-	-	Seiners : • France : 5 ; • No Spanish seiners; • Belize : 4 seiners based in Tema (18)	Korea : South Korean and Ghanaian joint ventures for tuna fisheries (7) European-Ghanaian joint venture for tuna fisheries(18)	-
Togo	-	-	-	-	-
Benin	-	-	Nigeria : operational shrimp fishing boats	-	-
Nigeria	-	-	-	-	-
Cameroon	-	-	-	China : investment in fisheries (5)	-
Equatorial Guinea	-	-	Spanish seiners: 14 ; associated Spanish seiners : 9 ; French seiners not presented (18)	-	-
Gabon	Japan : Tuna Fisheries Agreement (15 vessels in 2010) (2) China: fisheries agreement signed in 1986 for 50 years (1986-2036): creation of a Chinese-Gabonese joint venture for industrial fishing in Gabon (20). Creation of joint ventures under Chinese capital for processing (Protocol signed in 2004 for two years) (2) A new protocol signed in 2013 for trawlers.	-	9 associated Spanish seiners, 5 Ghanaian seiners and 3 seiners from Belize (based in Ghana) (18)		-
São Tomé and Principe	-	Japan : fisheries agreement signed in 2008 with the Japanese Federation of Fisheries Cooperatives–Japan : 6 longliners (21)	2012 – maximum one-year licence; generally, three or six months licence : Tuna seiners : from Panama, Belize (based in Ghana), Curacao, Cape Verde and Ghana, 6 seiners in total (generally under Spanish ownership) ; Taiwan –approximately 5 licences at the end of the year ; Longliners : Japanese, see private agreement (21)	-	-

Country	Public Agreement	Private Agreement	Private Licence	Investment in a Joint Venture	Vessel Charter
Congo[60]	-	-	-	-	-
Angola	Korea : agreement signed in 2000	-	EU tuna seiners : Spanish and French and vessels flying third-country flags that are Spanish property (12)	-	-

Source : Developed by the consultants : 1) NGO : transparentsea.co ; 2) www.gaboneco.com ; 3)FAO : www.fao.org ; 4) : Cros, 2006 ; 5) http://ajafe.info 6) Centre national de surveillance des pêches, Guinée : http://www.cape-cffa.org ; 7) Oceanic Développement and MegaPesca, 2009 ; 8) Fishing vessels register in Sierra Leone, 2012 ; 9) www.allwestafrica.com 10) Directorate of Fisheries, Spain 11) Organisation representing Spanish tuna seiners ; 12) Organisation representing French tuna seiners ; 13) Ex ante-ex post evaluation report of the Protocol between the EU and Cape Verde, 2013 ; 14) Ex ante Evaluation Report on a Potential Fisheries Agreement between the EU and the Republic of Liberia, 2013 ; 15) Press, including the Kenyan Press, Africa Review « Sierra Leone signs fisheries deal with Russia », 17 July 2013 (http://www.africareview.com) ; 16) ACP Fish II Project : « Sensitisation and Popularisation Campaign on Measures under the purview of the port State », 2013 ; 17) Ex- ante Evaluation Report on a potential fisheries agreement between the EU and the Republic of Sierra Leone, 2013 ; 18) PO of French seiners ; 19) Ex- ante Evaluation Report on a potential fisheries agreement between the EU and the Republic of Côte d'Ivoire, 2012 ; 20) COFREPECHE, 2010. *Revue socio-économique et environnementale du secteur de la pêche industrielle au Gabon*. *Financement: Banque mondiale*. 224 p.; 21) Ex-ante Evaluation Report of a potential fisheries agreement between the EU and the Republic of São Tomé and Príncipe, 2013; 22) Directorate of Maritime Fisheries, Senegal.

[60] The Democratic Republic of Congo has been omitted from this table since it has a very small surface of maritime waters for tuna fishing opportunities.

1.8 Review of Fisheries Agreements in Mauritania, Senegal, Ghana and Gabon and their Effects on the Fisheries Sector and Domestic Economy

The only agreements for which tangible information exists that can be used for analysis are those between African coastal countries and the EU. These agreements and their protocols are actually published in the EU's Official Journal[61]. They are also subject to regular evaluations[62]. The data used in the evaluations were also validated during the proceedings of joint commissions annually bringing together experts of both stakeholders.

Since 1987, Mauritania has maintained its relations with the EU. Each Memorandum of Understanding has been evaluated, with the last exercise conducted in early 2014. There is, however, no recent evaluation of the economic effects associated with chartering[63]. Senegal severed its relations with the EU in 2006 by refusing to sign a new fisheries protocol. The brief Russian episode between 2010 and 2012 has not been formally evaluated, nor has the private tuna agreement in force in pole-and-line boats[64]. Ghana does not have agreements allowing access by foreign vessels to Ghanaian waters. However, all tuna processing firms have been created in the form of joint ventures and have their own fishing fleet[65]. Gabon has just renewed a tuna fisheries protocol with the EU after months of procrastination. The last official evaluation of the effects of the agreement with the EU dates back to 2011.

1.8.1 Mauritania

According to IMROP, from 2007 to 2013, industrial fishing represented between 85% and 90% of total reported catch by artisanal and industrial fishing activities (1 million tonnes in 2012). The industrial fishing of small pelagics is significant because it represented on average 820,000 tonnes over the same period, or approximately 90% of industrial fishing. EU vessels accounted for an average of 30% of the total small pelagics catch. The remaining 70% of the catch were made by strange vessels under charter. The artisanal fleet targets all species and in addition to supplying the local market, provides a substantial share of fish to be processed into flour; the production reached 70,000 tonnes in 2013. The catch of foreign ships is not landed and sold in Mauritania. Small pelagics are transhipped within the sheltered waters of Nouadhibou for onward shipping to the Gulf of Guinea countries (Nigeria, Côte d'Ivoire and Cameroon, in particular) as well as to Russia and neighbouring countries. Demersals enter into the distribution circuit of the Spanish market.

Data from the Committee for the Eastern Central Atlantic Fisheries (CECAF), a regional fishery body of the United Nations Food and Agriculture Organisation (FAO) indicate that some small pelagic stocks are overexploited (round sardinella, Cunene horse mackerel and bonga). The average biomass of cephalopods is not known and very sensitive to environmental conditions. Mauritania has reserved access to this resource mainly for national artisanal fisheries whose production is 40,000 tonnes to 50,000 tonnes/year. Coastal shrimps (maximum sustainable yield of 1,800 tonnes) and deep-water shrimps (MSY of 2,500 tonnes) are underexploited. Concerning tuna fisheries, the regional fisheries management organisation for tuna and tuna-like species in the Atlantic, ICCAT, concluded that there is a slight overfishing of the yellowfin tuna, exploitation at near-sustainable level in the case of the bigeye tuna and exploitation slightly above the sustainable level for the skipjack. In October 2013, ICCAT's Scientific Committee recommended the implementation of a new evaluation of skipjack stocks due to recent high catches off the Mauritanian coast by the EU purse seiners, using fish aggregating devices.

[61] cf : http://eur-lex.europa.eu/homepage.html

[62] cf : http://ec.europa.eu/fisheries/documentation/studies/index_en.htm

[63] The last evaluation was done as far back as 1998, and was conducted during the Fisheries and Development Working Group in Nouadhibou.

[64] Except at the biological level (cf. Chavance et al. 2012).

[65] Each tuna vessel belongs to a fisheries company that operates in the processing sector.

The just ended fisheries protocol with the EU was structured around access by 9 fishing categories to highly migratory species (tuna and tuna-like species), crustaceans, demersal fish, small pelagics and cephalopods (with no fishing opportunities allocated to the latter category[66]) for an annual total allowable catch of 326,700 tonnes and an estimated maximum of 135 fishing vessels per year. The EU's financial contribution (€ 70 million) was composed of financial compensation related to the access rights of € 67 million and sector policy support to the tune of € 3 million.

The utilisation rate of the fishing opportunities within the first 11 months of this protocol[67] was low to moderate, based on the fishing categories, both in terms of the use of licenses as well as catches. About 150,000 tonnes of fish were caught, a little less than half of the annual allowable catch set at 326,700 tonnes. The initial terms of the protocol (fishing areas and access rights) may have been one of the main constraints facing vessel owners, compounded by the uncertainty regarding the approval of the protocol by the European Parliament (lifted only on October 8, 2013). Small pelagic freezer-trawlers fished the equivalent of 42% of the annual allowable catch (129,000 tonnes out of 285,000 tonnes). Vessels from Poland, Latvia and Lithuania were the most active and accounted for the bulk of catches. The utilisation rate for tuna was extremely high considering that the catch exceeded 22,000 tonnes at the end of 2013.

For EU vessel owners, Mauritania's EEZ is economically advantageous. All segments, except for fresh fish counted as small pelagics, recorded a gross operating profit. The number of jobs created by the activities of EU vessels has also been significant with over 550 jobs on board, including 130 for Mauritanian nationals, in addition to about 970 jobs on shore. Overall, the FPA has generated 1,500 jobs. In terms of public investments, the FPA has proved less attractive given the assumptions used to estimate the economic performance of the EU fleet operating in Mauritanian waters. Every Euro of financial compensation creates direct value added of € 0.80 in the catch segment and a total value added of approximately € 1.7 with only € 0.9 ploughed back into the EU. It is important to note that every Euro originating from public funds invested by the EU results in a turnover of around € 2.12 when the financial contribution is taken into account.

1.8.2 Senegal[68]

Access by foreign vessels is limited to fishing fleets flying the flags of States that have signed bilateral agreements with Senegal or foreign vessels operating under a charter agreement. The number of industrial fishing licences has fallen by half since 2001. The issuance of inshore demersal fishing licences has been frozen since 2006. Other than the black hake which is not fully exploited (stock of two deep-sea species mainly found on the continental shelf slope between 100 and 500 m north of Senegal and shared with Mauritania), other non-tuna species fished in Senegalese waters are either fully exploited or risk overexploitation.

On November 20, 2014, Senegal and the EU signed a new sustainable fisheries partnership agreement and the implementation protocol. The main focus of 5-year agreement and its protocol is tuna and to a lesser extent, hake. It provides for a decreasing financial contribution from € 1.8 million to € 1.6 million in the last year. This contribution includes sector support of an annual amount of € 750,000 to promote responsible fisheries. The charges will gradually increase from € 55/tonne to € 70/tonne in 2019. For hake, the charges will remain fixed at € 90/tonne. The annual advance which tuna seiners with a fixed tonnage of 250 tonnes are expected to pay will gradually increase from € 13,750 to € 17,500; for pole-and-line vessels (fixed tonnage of 150 tonnes) from € 8,250 to € 10,500, while trawlers will be subject to an advance of € 500 per quarter. The

[66] The historically significant cephalopod fisheries made catches of about 25,000 tonnes between 1994 and 2012. However, because of the fragility of the status of octopus stocks, and because of the willingness of Mauritania to reserve these fisheries for its national fleet, the Parties decided not to renew the fishing opportunities for the fishing category targeting cephalopods under the framework of the current fisheries protocol.

[67] The evaluation of the implementation of the protocol only covered 11 months in 2013 due to the need to bring to the attention of the European Parliament the ongoing evaluation of the protocol to validate the Commission's request to engage in negotiations for a new protocol. The evaluation of the protocol was conducted about 1 year before its expiry date.

[68] Most of this presentation has been sourced from Defaux et al. (2014), *Évaluation prospective de l'opportunité d'un accord de partenariat dans le secteur de la pêche entre l'Union européenne et la République du Sénégal (sous le Contrat cadre MARE/2011/01 - Lot 3, contrat spécifique 5).* Brussels, 114 p.

reference tonnage of 14,000 tonnes of tuna and 2,000 tonnes of hake. It is envisaged that the evaluation of this agreement will be conducted in early 2018.

Senegal has also concluded several bilateral fisheries agreements with States, including neighbouring countries: Mauritania, Gambia, Cape Verde and Guinea-Bissau. Talks have been ongoing for several years with Guinea and Sierra Leone to conclude a fisheries agreement. Regarding countries outside the African continent, the agreement with the Russian Federation was suspended in March 2012 following the change of President of the Republic and the establishment of a new government. The agreement with Japan has been dormant given that the protocol has not been renewed since 2004.

Table 3 : Fisheries Agreements concluded by Senegal with other States

Country	Signing of the Fisheries Agreements	Signing of the Implementing Protocol currently in force
In force		
Mauritania	2001	2013
Cape Verde	1985	2004
Gambia	2008	2010
Guinea-Bissau	1978	2012 extension to the end of 2013
EU	Nov. 2014	Nov. 2014
Dormant		
Japan	1991	Protocol not renewed since 2004

Source: V. Defaux (2014)

Until recently and following the non-renewal of the protocol within the framework of fisheries agreement between the EU and Senegal in 2006, in principle, vessels from EU Member States were no longer allowed to operate in waters under Senegalese jurisdiction (exclusivity clause).

However, a contingent of European pole-and-line tuna vessels based in Dakar continued to fish in Senegalese waters since and suppled two fish canning plants. This was made possible through the signing of a fisheries protocol between the Senegalese Ministry of Fisheries and the owners of European pole-and-line vessels based in Dakar. In 2013, the fisheries protocol authorised eight European tuna pole-and-line boats (7 Spanish and 1 French) to ply Senegalese waters for a period of 6 months[69].

From a legal perspective, this protocol proved problematic since it was based on a questionable interpretation of the Senegalese legislation. Furthermore, it was not applied in full compliance with the provisions of the current fisheries agreement between the EU and Senegal. The provisions of article 16 of the 1998 Maritime Fisheries Code provide that « fishing vessels flying foreign flags shall be authorised to operate in the waters under Senegalese jurisdiction either under a fisheries agreement between Senegal and the flag State or the organisation representing this State, or when chartered by Senegalese nationals ». The Senegalese Government considered that the organisation of European pole-and-line vessels represents the flag State. However, doubts have been cast on the legality of this interpretation. Moreover, the agreement contravenes the provisions of article 4 of the fisheries agreement signed in 1980 which states that « [T] he exercise of fishery activities in Senegal's fishing area by the Community's vessels shall be subject to the possession of a licence issued at the Community's request by Senegalese authorities»[70]. Fishing licence applications were made by European vessel owners without going through the EU. Moreover, it seems increasingly difficult to justify the conclusion of this fisheries protocol because of its exceptional nature. Since 2006, the protocol was

[69] The latter were subject to the obligation to land all their catches, fresh or frozen, in Dakar (this requirement does not apply to Senegalese pole-and-line vessels). They were required to sell their catch firstly to canneries, followed by tuna processing companies and lastly the local market (this requirement also does not apply to Senegalese pole-and-line vessels). They may be authorised to export the excess catches that have not been sold locally. The selling price of landed tuna was defined by a Price Committee since 2013 on the basis of the average price FOB from Abidjan (Côte d'Ivoire) and Tema (Ghana) less an amount equivalent to 90 euros handling costs. The licence fee was set at CFA F 95,000 per GRT per year. From 2006-2012, prices were discussed by the Price Committee, but in practice, they were set by the Senegalese authorities.

[70] During this period, fisheries agreements did not contain the exclusivity clause.

renewed annually for a six-month period which became the norm rather than the exception. Also, although the renewal of the agreement had not been an issue nationally since the Senegalese Government was a shareholder of the main national cannery, the situation changed when the plant was purchased by Dongwon, a South Korean firm, notwithstanding the fact that the State still holds 10% of the company's shares. Since then, the renewal of this agreement faced growing hostility from Senegalese professionals in the sector, including GAIPES. The signing of the new fisheries agreement with the EU in November 2014 put an end to this unclear situation.

1.8.3 Ghana

Fisheries agreements with Ghana, involving distant-fishing vessels, are in the form of joint ventures. Ghana has made it possible for foreign vessels to fish in its EEZ, provided that at least 50% equity is held by the Government of Ghana, a Ghanaian citizen or company. The law also stipulates that 75% of seafarers on ships covered by such agreements shall be Ghanaian (Anang E.R et al., 2002).

Ghana's EEZ is located in the migration routes of the main Atlantic tuna species (skipjack, yellowfin and bigeye tuna). With the development of purse seiners during the late 1990s recording catches of between 60,000 and 80,000 tonnes, Ghana has become one of the major players of the tropical tuna fishing industry operating in the eastern Atlantic Ocean alongside Spain.

Coastal activities, including handling and processing have increased over the past two decades. Political instability in Côte-d'Ivoire, the neighbouring country, from 2004 to 2011, significantly contributed to promoting Tema as one of the main tuna fishing ports on Africa's Atlantic coast. Distant-water fishing fleets flying Spanish and French flags, for example, often land their catches in the port of Tema.

Despite this successful development, Ghana's tuna industry has not been able to implement a strict policy to meet international standards relating to fisheries and the Government failed to execute an effective action plan to curb illegal, unreported and unregulated (IUU) fishing. Consequently, in March 2013, some European countries (mainly the United Kingdom) banned Ghana's tuna imports, citing the lack of adequate controls to counter illegal and unregulated tuna fishing in its waters. The temporary import ban affected the Ghanaian fishing industry, leading to financial losses estimated at € 15 million in 2013. Since then, the industry has been able to provide full guarantees of compliance with international rules against IUU fishing and exports have regained their normal level.

Another major setback to the Ghanaian fishing industry since January 1, 2013 is the closing of fishing areas in the Gulf of Guinea in the months of January and February of each year for activities using fishing aggregating devices (FADs). This area is the main fishing zone for Ghanaian purse seiners, which could not operate for the first two months of 2014 (cf. Section 2.1).

The Ghanaian tuna processing industry is mainly supplied by raw materials from national vessels, two seiners and pole and line-boats. The former supply tuna (skipjack and yellowfin) for canning, while the latter provide raw materials for high-value canned fish and tuna loins.

The Ghanaian tuna fishing fleet is owned by about 10 companies, namely Afko Fisheries Company, Trust Allied Fishing Limited, Rico Fishing Company Limited, DH Fishing Company, Panofi Company Limited, TTV, World Marine Company, Agnes Pack Fish Company Limited and G-L Company Limited. These companies own almost 30 vessels, 16 of which have been approved by the EU.

The three main commercial processing units are based in Tema. They include Pioneer Food Cannery Ltd. (PFC), Myroc Foods Ltd, and COSMO (which took over Ghana Agro-Food Company). These companies buy most of the tuna industrial catch, processing it into tuna flakes, chunks and canned tuna that are mainly for export. The three companies have a total annual processing capacity of 120,000 tonnes.

Pioneer Food Cannery (PFC), formerly owned by Mankoadze Fisheries and its partners, Star-Kist, became a wholly owned HJ Heinz Company in 1994, mainly involved in tuna processing and canning for export. Today, PFC Limited, the producer of Star-Kist, John West, Petit Navire Tuna and other quality tuna products, and the Ghanaian subsidiary of MWBrands (Marine World Brands), is currently under Thai Union Frozen Products (TUF) PCL. Following expansion and foreign direct investments (FDIs) of more than USD 10 million in training

and the modernisation of the production plant, its capacity grew from 50 tonnes per day with 500 employees in 1994 to 160 tonnes per day in 1996 and it is currently capable of handling 240 tonnes per day. PFC's new target is to grow the capacity of its unit to 300 tonnes in 2014. The company is a leading supplier of top quality brands such as John West, Tesco, LIDL, REWE, Petit Navire, Mareblu and Royal Pacific canned tuna to markets in the EU and Star-Kist tuna to the ECOWAS market. The company also sells tuna in the local market under the brand name of Star-Kist. The company adds 95% value to tuna landed in Ghana. It provides direct employment to over 1,800 Ghanaians with a fivefold economic multiplier effect.

Myroc Food Processing Company Limited is a German/Ghanaian corporation, established in the mid-2000s, with a production capacity of 100 tonnes per day. It has more than 800 employees. The company has been exporting its entire production, but since difficulties that arose in March 2013 concerning access to the EU market, the company is trying to invest in the domestic market as well as markets of neighbouring countries such as Nigeria. Since it belongs to a free zone company, Myroc is authorised to sell at least 30 percent of its products in the Ghanaian market, while exporting the remaining 70 percent. In this regard, the company is in the process of getting registration with Nigeria's National Food and Drug Administration and Control Agency to explore the possibility of exporting to this country.

COSMO is a new company that renovated the Ghana Agro-Food Company site in 1991 and began its operations in mid-2013. It is a limited liability company whose shareholding is divided between a Taiwanese company and two Korean ones, including Panofi Company Ltd. Its production capacity is currently about 60 tonnes a day and its entire production, tuna cans under the Atlantic Royal brand, is destined for the local market. COSMO is currently expanding, developing a subsidiary company called Esteban that will occupy a production site next to COSMO. This new plant will focus on tuna loins as well as sashimi and other high quality products. It will use high-tech modern tuna processing techniques of ultra-low temperatures of <60 degrees Celsius. The added value of these products is very high due to high sale price. COSMO received an export permit in February 2014. It will soon begin to export to European and American markets.

Tuna processors buy the bulk of their raw materials from companies that are related such as TTV, PCF, Panofy and COSMO. These companies all belong to the same group. Other quantities of tuna are bought by tuna fisheries companies.

Generally, employment is the tuna chain stands at approximately 6,500 workers distributed as follows:

- Fleet: 1,100
- Enhancement: 3,200
- Upstream: 1,500 and Downstream: 700

Upstream employment is composed of workers in the fishing fleet and factories involved in goods and services. Downstream employment concerns people dealing with the distribution of products, marketing and transportation, etc.

The annual value addition generated by the tuna industry is estimated at € 100 million. The catch value is about € 91 million, while the direct added value of the sector's catches is almost € 35 million. The processing sector whose sale value is € 120 million generated value addition of € 44 million.

1.8.4 Gabon

Gabon's industrial segment has relatively few vessels flying the flag of Gabon (35% of the total in recent years). Other vessels fly several types of flags, including flags of convenience and Asian flags (China and Korea). Gabonese law does not impose its national flag on licenced vessels; the only condition to access is the incorporation of a joint venture with national shareholding of at least 33%. The main reason given for the lack of attractiveness of the national flag is the exorbitant tax payable upon naturalisation (import tax plus VAT). Among the 45 foreign flags operating in Gabon, 23 are actually based in Gabon in the sense that they land their catch there, whereas the rest of the vessels land their production outside the country's ports. At the end of the day, only about 50% of the industrial fishing production is actually landed in Gabon.

The tuna agreement with the EU is considered to be extremely important because it generates catches of about 10,000 tonnes per year for the EU tuna fleet. The absence of a protocol in 2012 and 2013 deeply affected the operations of the fleet which would regularly move to Gabonese waters in April and stay there for a few weeks (with more or less marked stays in the EEZ of São Tomé and Principe) before heading back to the Gulf of Guinea (landing and refuelling in Abidjan) and then make their way to the waters bathed by the Canary Current. The lack of landing catches and few Gabonese seamen on board EU vessels has resulted in very low economic benefits for Gabon.

The new 3-year protocol exclusively covers tuna fishing. The financial contribution is € 1.35 million, of which 1/3 is meant to encourage sustainable fisheries within the framework of the national fisheries policy implemented by Gabon. The fee to be paid by the vessel owners was € 55 per tonne caught until the end of July 2014, and subsequently, € 65. Access fees are € 13,750 per year for tuna seiners and pole-and-line vessels. The tonnage is 20,000 tonnes/year. The fishing opportunities are as follows: 27 tuna seiners (15 for Spain and 12 for France) and 8 tuna pole-and-line boats (7 for Spain and 1 for France).

Besides the fisheries agreement with the EU, Gabon has signed only one other fisheries agreement with Japanese interests. This agreement allows access of up to 30 longliners for a period of 3 months. It is part of the broader framework of bilateral cooperation with Japan, which is the main source of external aid to the national fisheries sector outside the EC/Gabon agreement. In 2013, only 4 Japanese vessels took a license under this agreement.

1.9 Advantages and Disadvantages of Different Types of Agreements

Distant-water fishing nations and African coastal countries use different strategies to exploit fishery resources based on the objectives of the fisheries sector and national development, in general. Fisheries agreements constitute one of the possible solutions that meet some of the goals of coastal countries and long-distance fleet countries. The issue at hand is to assess to which extent this form of arrangement (and its variants) between the two parties is consistent with maximum efficiency in the sense of a better allocation of resources and better distribution of benefits accruing from this cooperation. In light of the foregoing, fisheries agreements are the privileged place of coordination between the flag State (PO or vessel owner) and the coastal country. Being the *de facto* contracts to access resources, they can be analysed from the perspective of the theory of contracts. A contract has three key objectives: ensure coordination; ensure the enforcement of promises; and sharing the fruits of cooperation.

1.9.1 Various Contractual Clauses

In order to organise an exchange, a contract defines the rights and duties of each party and coordinates assets. It is composed of a series of clauses developed within the context of an uncertain and imperfect transaction environment[71] (Brousseau, 1993).

1.9.1.1 Coordination Clause

A contract is the response to the limited rationality of agents[72]. It must describe the two co-contracting parties and their characteristics, the objective of the exchange and the means to achieve it. The raison d'être of fisheries agreements is the exploitation of fishery resources by two contracting parties, namely the distant-

[71] New institutional economics emerged in the mid-1970s; its best known representative is Olivier Williamson, recipient of the economics prize in honour of Alfred Nobel in 2009. This school of thought brings a new dimension to the explanation of the environment in which a transaction occurs. The future loses its certain (or probabilistic) nature that is typical of neoclassical theories to make room for uncertainty (the impossibility to determine characteristics of the future). In the fisheries sector, for example, the current actions of humankind on fishery resources taint future operations with uncertainty. Finally, neo-institutionalists address perfect information, real neoclassical informational signals that dictate the way forward in terms of production and trade. It is substituted by incomplete and unevenly distributed information among economic agents.

[72] In an uncertain environment, individuals (natural persons) or institutions (legal entities) have rational or « procedural » behaviour as defined by Simon (1970). Agents implement strategies, based on their means, to achieve a situation which for them seems the best. For example, the strategy of distant fishing nations is to access resources whereas the strategy of third countries is to develop resources.

water fishing nation (PO or vessel owner), which comes with a fishing force and the third country which avails its resources. Authority is « decentralised» since each member has the power to define and renegotiate fisheries agreements[73]. The parties consensually determine the target species: multiple species and tuna. Since it is not possible to determine *ex-ante* the volume of resources that foreign vessels will harvest, the contract is generally defined in terms of the number of vessels and/or in GRT, catch rates and mesh size (some protocols refer to catch limits). It further defines all the modalities for the operation of foreign vessels[74] in time and space to access to the resources in the form of allocation of fishing zones for each type of fishery and the duration of each fishing license (3, 4, 6 months, 1 year, etc.) with biological rest periods to be adhered to (for example Morocco, Mauritania and Senegal for octopus fishing). In this case, the contract may be deemed « complete[75] » since it specifies the states of nature related to the performance of the contract. However, it does not absolutely guarantee the outcome. The expected outcome is actually a speculation based on past results and some probability of continuity. In other words, the expected gain is primarily a result of the catch volumes[76] through the application of the contract; in the case of the renewal of a protocol, on past fisheries data; in the case of a new agreement, on biological assessments; and in the case of the EU on the *ex-ante* evaluation of the opportunity to negotiate an agreement with the coastal countries[77].

1.9.1.2 Supervision Clause

This clause is mainly intended to safeguard the security of co-contractors by guaranteeing the reliability of their partner. Mechanisms to ensure the enforcement of promises are necessary in the drafting of contracts to avoid the risk of opportunistic behaviour[78] by actors. The agreements will, for example, require foreign vessels to report their catch at the end of each trip or exit from a zone. They will define on-board observer schemes and inspection and control procedures. In reality, supervisory measures are aimed at monitoring the correlation between the type of fish in the hold and the type of license issued. Knowing that the capture of coastal demersals is subject to the highest licencing fees, it is tempting for a vessel owner to apply for deep-sea demersal license (cheaper) and focus its efforts on cephalopods and coastal demersals. The total allowable catch is, as such, a safeguard against potential divergences.

The supervision clause also applies to the coastal State. The main fear of the negotiators representing distant-water fleets is paying access fees while the coastal State scales up the sale of free licences or enters into public bilateral agreements for the same resources (recent examples of the agreement between Mauritania and the Chinese vessel owner and the arrangement between Senegal and the Russian Federation; see above). Such a situation is all the more damaging since the resources in question present exploitation levels that are at the limit of biological disruption. It is therefore implicit in the fisheries agreement that the coastal country grants some exclusivity of exploitation of resources mentioned in the protocol to the State (or the political entity like the EU) with which it is contracting. However, there are slippages in this implicit condition when the distant-water fleet State considers that because it has paid a huge sum for access to its vessels, it has priority over all vessels which pay much less or nothing at all for access rights. When engaging with West African coastal states, the EU has sometimes taken the shortcut of «I pay more so I have priority rights » both with other foreign and national fleets. This financial argument has particularly been put forward when West

[73] In theory, since in practice the decision-making power of the third country is weakened due to the imperatives of the national public budget (see below).

[74] Ranging from the number of seamen on board and the landing obligations, if necessary.

[75] Unlike the so-called incomplete contracts or quotas for which there are gaps regarding states of nature. In other words, these contracts do not list, a priori, every possible eventuality that may arise during the implementation of the contract, and ensuing consequences.

[76] And secondly, the price. Although in many cases, fishing strategies are determined by the price of the species in the usual sale market. In this case, the price becomes the first element.

[77] Evaluations conducted in 2013 and 2014 for Guinea, Senegal, Sierra Leone, Liberia, Kenya and Tanzania.

[78] Actors are individualistic and their decisions seek to maximise their individual utility above all. This could be to the detriment of the partner involved in the contract. This is referred to as opportunism.

African coastal States demand compliance with biological rest periods for coastal demersals and especially cephalopods (several times in Mauritania since the late 1990s). It is reflected, for example, in the recently signed protocol between Mauritania and the EU in the obligation to make available to the EU both catch data, as well as the registration of fishing licenses to foreign vessels.

1.9.1.3 Risk Sharing Clause

The exploitation of fishery resources is subjected to environmental hazards, competitive factors and externalities[79] from other fishing vessels as well as the abilities of the vessel's captain (known as experience). Under normal circumstances, the contract is an instrument to fight the risks linked to an economic activity. To the extent that the results are not guaranteed (nobody knows what will be fished) and the third country is assured of financial contribution regardless of the results of production of community vessels, there is a bias which leads to the perception that fisheries agreements are insurance-type contracts.

In such contracts, Agent X enters into a contract with an insurer referred to as the "Principal" in the Agency Theory. To reduce risks, Agent X gets an insurance, whose amount largely depends on the history of the agent, in other words his propensity to have a car accident, for example. In our case, fisheries agreements are insurance contracts that guarantee access to resources, which can be likened to a comprehensive insurance policy. The table below allows to consider fisheries agreements from the angle of an insurance policy with the major difference being that the Principal (coastal State) does not bear the risk relating to the contract since resources under the contract are not facing a biological risk.

Table 4 : Fisheries Agreement compared to an Insurance Policy

Category	Insurance	Fisheries Agreement
Agent	Guard oneself against the risk of an accident	Distant-water fishing nation : ensures access to resources (The Agent bears the risk)
Principal	Insure oneself against risks associated with an accident and its consequences in exchange for (The Principal bears the risk)	Coastal State : authorises access to resources in exchange for compensation (the only risk is the collapse of resources, which however does not call into question the current protocol)

Source: Consultant

Given the unknowns regarding catches and the real impossibility[80] of monitoring catches, players decide *ex-ante* on how to share the uncertain benefits or losses. In the case of FPAs, for example, the risk is fully borne by the EU and the European vessel owners who cover all the losses, on the one hand, and on the other hand, reap the benefits. The EU pays the third country *ex ante* through financial compensation and the vessel owner pays a lump sum amount at the time of acquiring the license. Fees are determined based on the tonnage of trawlers and the quantities caught in the case of tuna[81]. The monitoring of tuna catches seems much easier in theory since the vessels have an observer on board[82]. In the case of charters, landing is usually subjected to control which limits the risk of underreporting. For example, an agent of the *Société mauritanienne de*

[79] These externalities are mainly the discarding of undesired species by other vessels (example for shrimp fishing vessel that discards juvenile groupers (Thiof).

[80] It is so real that even developed countries cannot monitor catches.

[81] Based on the reference volume derived from the arithmetic mean of catches during the three years of the protocol. Currently, the fee is € 25 per tonne fished. .

[82] It does not prevent underreporting or false catch reports. The main challenge is that most catches are made outside national EEZs. Since borders sometimes are hazy, it seems difficult to distinguish what was fished outside the EEZ from what was harvested inside. This problem lies at the heart of discussions between the EU and Seychelles (cf. Seychelles Report).

commercialisation du poisson (SMCP) is present in Las-Palmas during the docking of chartered small pelagic vessels to report the volumes of each species landed.

1.9.1.4 Importance of Allocating Assets and their Specificity

In all relationships involving the production or exchange of goods, economic agents make available their own assets to the coalition. The bargaining power of the agents is dependent on the nature of their assets. Thus, if an agent exchanges a « common » asset (owned by other individuals) with another agent who owns a very specialized asset, the latter will have the upper hand in negotiating the contract and will turn it to his favour.

Until the mid-2000s, the specificity of assets of distant-water fishing nations was the fact that vessels plying the West African waters (excluding tuna fleets), because of their historical presence and often the reason for their construction, were attached to this coast and its hidden resources. The vessels were in fact relatively old (over 30 years on average for shrimp trawlers) and designed in most cases for West African waters and resources well before the development of fisheries agreements. In other words, these vessels had no future outside these waters in which they currently operate[83]. Such specificity represented a handicap for the EU. The impossibility of redeploying this fleet to other waters or resources constituted a « path dependence » phenomenon, where the past tended to justify decisions made in the present and legitimise *de facto* public commitments of support to the fleet through fisheries agreements. The end of the agreement between Morocco and the EEC in November 1999 not only showed to what extent the Spanish fleet that was present in Spanish waters was almost entirely dependent on such access, but also that it was impossible to exercise the same trades in Community waters: neither the sea conditions nor the resources are similar. Many ships were then downgraded. The non-renewal of the protocol to the agreement between Senegal and the EEC in 2006 marked the end of another part of the distant demersal fleet operating in Senegalese waters for many years. Today the specificity of the EU fleet is relative, since it only concerns demersal vessels operating in Mauritania.

West African coastal states, on their part, displayed the specificity of their assets. The majority of fishery resources that are greatly valued by foreign vessels are absent from temperate waters (coastal demersals[84], octopuses, sardines and big tuna). This specificity combined with the relative scarcity of these resources, which are so rare that they are threatened with depletion, gives a special meaning to the negotiation of fisheries agreements and as such, grants negotiating power to coastal countries. However, this bargaining power is often undermined by the simple fact that all the African coastal countries bordering the Atlantic have more or less similar resources creating some competition between them in order to benefit from fisheries agreements. Therefore what was previously an advantage for negotiation has ceased to be one in the absence of no regional coalition. The possibilities of redeploying the assets of distant-water fishing nations to neighbouring countries also contribute to the loss of negotiating power among coastal States. The position of free rider that depicts the current position of African countries bordering the Atlantic coast vis-à-vis the EU and other distant-water fishing countries, is therefore detrimental to the country negotiating as well as all countries in the region.

The tuna agreements perfectly illustrate the previous point. Difficulties accessing the waters of African countries and falling yields in the late seventies contributed to the relocation of the French and Spanish tuna fleets to the Indian Ocean[85]. For many years, the tuna component in multi-species agreements was not even the subject of negotiations as the EU had a dominant position concerning the possibilities of redeploying its fleet to other fishing areas. The agreement with Kiribati and later with Micronesia in the South Pacific further strengthened the EU's position by limiting the specificity of its tuna assets and making them less dependent on access to areas of the Atlantic and Indian Ocean. The turnaround occurred in the late 2000s with acts of piracy

[83] The most striking example was given by crab boats from Breton for pink spiny lobster fishing which were denied access to Mauritanian waters were unable to reconvert: their hold was so well suited to transporting live lobsters from the banks of Mauritania to Bretagne that it was unimaginable.

[84] Except flatfish like sole for example.

[85] Refer to the Background Report for the history of the development of tuna fleets in West Africa and the Indian Ocean.

in the Indian Ocean: vessel owners sought to reposition themselves in the Atlantic Ocean. The number of tuna agreements with the countries bordering has since then continued to increase[86] (for example, the very recent agreement with Liberia).

The second aspect related to the specificity of assets belonging to coastal countries bordering the Atlantic is the existence of a capital budget from the Ministry of Fisheries, which almost depends entirely on funding from fisheries agreements. EU agreements, for example, all have a support fund for the sustainable development of the national fisheries sector. It is used to finance the purchase of equipment, training, monitoring and research. From the late 1990s to mid-2000s[87], the agreement with the EU represented 90% of the capital budgets of Senegal, Guinea and Guinea-Bissau, 75% of those of Mauritania, Cape Verde and Gabon (with amounts set aside for specific actions). Various technical development partners, including the Japanese and French Cooperations, essentially complement these investment budgets.

This indicates a certain dependence on Community fisheries agreements public funds for the development of the fisheries sector. In other words, without fisheries agreements, there will be little or no development of the national fisheries sector. This is an important point because in contractual terms it means that the Ministry of Fisheries of the coastal State risks seeing the investment budget disappear if the fishing agreement is not renewed. The situation is more paradoxical because to support the development of national fisheries, the coastal State must conclude fisheries agreements. The Ministry of Fisheries finds itself in a situation where it depends on agreements which compromises its negotiating capacities. Without an agreement, the power to intervene in the fisheries sector is very low or even inexistent. Yet at the policy (internal) level, it is indispensable that the Minister of Fisheries demonstrates the capacity to invest and implement projects. This is an essential aspect of the agreement between the EU and every coastal country in the sense that the freedom of action and manoeuvre when negotiating is greatly reduced due to the financial dependence of Ministries of Fisheries vis-à-vis European agreements.

1.9.2 Choice of Contract

As mentioned above, the fisheries agreement between the distant-water fishing nations and coastal countries can be perceived as a contract between two entities deliberately united with a view to advancing their own interests. If a distant-water fishing nation and a third country freely enter a contract, it is because it brings benefits to both. The benefits to one party may be greater compared to the other party. It is not necessary that the two parties derive equal benefits[88]. The choice of contract in this instance becomes very relevant because it is from it that agents will try to maximise their utility function (satisfaction or benefit). At the analytical level, the choice of the contract as a tool must be considered in relation to its overall efficiency.

Moreover, the surplus resulting from the conclusion of the contract (in the form of revenue made from the catch sales) that micro-economists call « organisational quasi-rent» may differ depending on the type of contract. Basically, what concerns the two parties is the practical modalities of sharing of the fruits of the agreement. We alluded earlier to the disputes in coordination clauses, particularly in the case of the failure of negotiations for a new fisheries protocol between the EU and Morocco and Senegal, and will now present fisheries agreements in light of sharing the rent they generate.

1.9.2.1 Organisational Quasi-Rent

According to E. Brousseau (1993), the principle of sharing of organisational quasi-rent is the key challenge for any organisation. The agreement between the distant-water fishing nation and the third country generates a productivity surplus, which by definition, is not attributable to either co-contracting party: without resources, there are no catches and without vessels there are no catches. Cooperation is therefore inevitable so that both

[86] The number of authorisations per protocol, after the significant increase during the piracy crisis, has been stable for a several years.

[87] No recent data available.

[88] The notion of benefits is relative since each one defines a benefit based on one's experience and reference framework. Benefits should be considered from a self-reference perspective and are therefore subjective.

parties can derive some benefits. Through the implementation of a specific kind of coordination, each party is a witness to the increased productivity of these resources.

However, what distinguishes the classical framework for the generation of rent and its distribution from that of fisheries agreements is the fact that somehow the fruits of cooperation are granted under cover of the financial contribution to third countries even before vessels commence their fishing activities (except in the case of the charter). In a way, the distribution of quasi-rent is done before it is generated. The following table illustrates the revenues generated from agreements by European vessel owners (in the form of direct value added), compensation amounts and some indicative ratios.

Table 5 : Sharing the gross direct value added between the EU and the coastal State

	Period	Direct Value Added in € millions	% Costal State	% EU	% Other ACP countries	Average cost of a tonne of fish caught (€/t)				Return on public investment
						Cost	Borne by the EU	Borne by vessel owners	Initial Cost	
Cape Verde	2011-2012	2.71	17%	71%	11%	177	120	57	100	4.20
Sao Tomé and Principe	2011-2012	0.45	31%	56%	13%	1010	841	171		0.46
Côte d'Ivoire	2007-2010	1.98	18%	82%	0%	215	169	46		2.70
Mauritania	2013	48.8	44%	50%	6%	Non calculated since it is a multi-species agreement				0.39

Source: Ex-ante and Ex-post Evaluations of Memorandum of Understanding between EU and countries mentioned in the left column[89]. Calculations were done using the same method. The figures are therefore comparable.

Some fisheries agreements are very beneficial to coastal countries because they earn more than the value of the resources fished in their EEZs. Through tuna agreements, Sao Tomé and Principe gets 10 times more than the amount stipulated in the protocol, which is € 1,010 compared to € 100; Côte d'Ivoire gets more than double the amount and Cape Verde, more than half. For the same type of agreement (virtually identical protocols) the economic impact may vary in coastal countries based on the catch of foreign vessels (the rule is as follows: the more the fleet operates towards the reference tonnage limit, the lower the cost and the more a vessel operates towards its fixed tonnage limit (without exceeding it) the more the lower the cost). The value of the resources harvested, however, needs to be distinguished from the value of the benefits generated by this exploitation. Since these benefits vary from one unit to another in terms of catch, but also operating costs and salaries, it is difficult to give an exact figure of the benefits accruing to the foreign vessel owners in Africa's Atlantic waters.

It is interesting to note that the most significant agreements in monetary terms are those for which negotiations are the most disputed: one of the reasons lies in the fact that the coastal countries feel that their rights have been curtailed because they earn a small percentage of the value of the resources fished within the EEZ, 44% for Mauritania, for example, yet this ratio could be greater if actual landings took place, followed by on-site fish processing (the same applies to other agreements).

It is equally important to assess the return on public investment for distant-fishing fleet nations. The agreement between Cape Verde or Côte d'Ivoire and the EU is clearly beneficial for the EU because every Euro invested generates € 4.20 and € 2.70 respectively in creating value addition for the EU. On the contrary, the ratio is unfavourable for the EU under the agreements it has with Mauritania and São Tomé and Principe (€ 0.39 and € 0.46 respectively). This, among other things, explains the reluctance of Parliament to renegotiate the agreement with Mauritania on the same financial terms.

[89] All available on the DG-MARE site: http://ec.europa.eu/fisheries/documentation/studies/index_en.htm

A comparison between the value generated by a foreign vessel and national vessel operating in similar conditions may give an idea of the interest of a fisheries agreement for coastal countries. We refer to the study on third-country strategies which consist of « doing » (manning and owning a fleet), « getting things done» (conventional fisheries agreement) or « doing by getting things done» through joint ventures. The problem is that currently no coastal State has conducted a comparative study, which involves collaboration by foreign fishing vessels through the sharing of accounting data (not possible). The impasse relating to comparison and the exact measure of benefits arising from fisheries agreements to each party requires drafting a contract with a prior definition of the conduct of foreign vessels and lump sum amounts calculated on a basis other than the catch value. The basic method used for licence type and GRT, now referred to as GT[90], may be a way to circumvent the difficulty of measuring rent. Nonetheless, the use of such a base presupposes a link between the type of licence, the vessel's tonnage and the vessel's profitability. In sum, it was the rule of the thumb for European negotiators to consider that € 1,000/GRT/year constituted a basis of calculation to avoid the use of creative accounting[91].

The advantages and disadvantages of each type of agreement or relevance is done by making reference to the extent to which the agreement, as an economic and social instrument, complies with the objectives set out *ex ante*. It is important to point out that in over thirty years of existence, fisheries agreements have not changed much. Routine took over in the old agreements to the extent that protocol renewals, even when criticised, become increasingly effective. Negotiators from both sides claim to have become more seasoned and consider spending less time on minor points. The routine is, in this respect, an economic coordination mechanism whose main objective is to reduce transaction costs. Organisational investments by both parties for the establishment and monitoring of fisheries agreements are transformed after several years or protocols into routine elements. In addition, trust contributes to the establishment of routine processes. There are many entries into fishing zones even before the application for a licence has been received by the coastal State's Ministry of Fisheries. Added to this trust is the increasing adherence to regulations on zoning, mesh size and by catch[92]. The current implementation of public bilateral fisheries agreements is not faced by major organisational and administrative challenges for both parties. In this regard, they demonstrate their organisational relevance as a cooperation management tool.

The transition from an insurance contract, as is currently the case, to a quasi-rent sharing contract calls for the imposition of a system articulated around the distribution of quasi-rent. It is therefore necessary to put in place highly effective control systems. At present, all this is inconceivable despite significant efforts by countries to acquire means of control[93]. The coordination and supervision clauses of fisheries agreements make the latter appear to be the most effective tools currently because they mitigate the risk of opportunism that is inherent in a catch report at the end of a fishing year. The operability of the agreement is therefore demonstrated in the face the plethora of slippage risks posed by the establishment of a system based on rent sharing *a posteriori*.

However, the stumbling block is that the financial dependence of Ministries of Fisheries on public investments in the national fisheries sector casts some doubt on the real freedom wielded by coastal States' negotiators. It is no doubt one of the harshest criticisms regarding the nature of the current bilateral agreements. The provision of an investment budget to the Ministry of Fisheries whose funding is mainly sourced from fisheries agreements to which it is a party is a paradox that must be addressed if real objectivity is to be achieved in the negotiations.

Lastly, the rigidity of contract terms leaves little room for the principle of the spatial and temporal variability of resources. The reasoning is mechanical: for as much GRT or GT, there are as many catches. Unfortunately,

[90] Gross Tonnage. Before the unit was the Gross Registered Tonne (GRT).

[91] This rule applied to many agreements, for example: Senegal, 12,000 GRT/year and 12 million/year between 2004 and2006.

[92] Under agreements between a coastal country and the EU, the application for a licence follows the process: Vessel owner (Agent) → DG-Fisheries → EU Delegation in the coastal country → Ministry of Fisheries → EU Delegation → DG-Fisheries and Vessel Owner (Agent).

[93] Efforts by the SRFC with support from the Luxemburg Cooperation met numerous challenges of an institutional nature and others (linked to following vessels in the waters of third countries) which made all attempts to control outputs futile.

resources do not obey mechanical laws and have unpredictable biological responses. Without getting into the argument on the available demersal species surplus, it would be interesting to take into account variations in time and space of resources within one or more ecosystems in order to make the fishing-catch relationship more in line with the evolution of the resources. To this end, it would be important to promote a regional approach for species that are part of ecosystems beyond national EEZs (cf. Section 2.2).

The review of negotiation clauses in public bilateral agreements, such as those with EU, has shown the extent to which there is a financial dependency between the coastal country's Ministry of Fisheries and fisheries agreements. The majority of investments are made using funds from fisheries agreements with the EU (supplemented by various international development partners). Under such circumstances, it is very difficult to respect the principle of contractual freedom. This point is particularly important because it can be linked to the issue of the definition of surplus. From the moment a coastal State negotiates an agreement, it is deemed that the latter considers that there is a surplus of resources that can be assigned to a foreign fleet. What happens in a situation where all the scientific evidence shows and demonstrates the lack of surplus even as the Government of the coastal State negotiates an agreement? The answer probably lies in the dependence of various Ministries of Fisheries, and especially their dependence in terms of public investment budgets in the fisheries sector.

Although public bilateral fisheries agreements generate organisational rent, this is to the detriment ecosystems. Discard rates are in fact a contradiction of any claim of compliance with the Code of Conduct for Responsible Fisheries, which is always recalled in the memoranda of understanding (e.g. shrimp trawlers category). This finding also applies to the fleets of coastal countries. It is only the artisanal sector, which operates with very selective fishing gear that seems to limit anthropogenic damage. The difficulties of limiting access to the resources, which is currently the case, and particularly in Mauritania, have lowered the capacity to protect the marine environment.

In general, there is a symmetry of operations among foreign vessels within the framework of agreements as well as coastal States' industrial and artisanal vessels: both fish for the European market and to a lesser extent, the Japanese market (for national fleets). In other words, no industrial fishing vessel operates to supply African markets, with the exception of pelagic vessels of Eastern Europe and the Russian Federation. Although the development of national industrial fishing based on the mandate to produce for export purposes makes this a legitimate situation, it is different in the case of artisanal fishing, whose development was intended to supply the domestic market and encourage increased domestic consumption of fish. The West African artisanal fishing has become a master in high value fish production due to its short trips and selectivity of its gear, enabling it to offer high quality products to the international fresh and frozen markets and putting it in direct competition with industrial fishing. The inexorable truth is that what has ensued is a reduced range of products offered to local consumers at higher prices making demersal species too costly for the budgets of African households. What should be done to counter market forces that target seafood? In the last thirty years, national public policies, mainly due to the implementation of structural adjustment programmes, have sought to consolidate public finances and maintain a sufficiently high growth rate to try to achieve economic take-off. The results have not been favourable. The integration of poverty reduction in the macroeconomic policies of African countries is commendable, but in fact reveals an institutional framework that is headed for the same impasse caused by structural adjustment programmes: spurring growth through the exports of raw, natural products.

In the context of one-track thinking, fisheries agreements may seem to be a panacea to the many liquidity problems of highly indebted countries, especially at financial breaking point both nationally and internationally. In terms of the national contribution to the fisheries sector, the agreements are poor: apart from jobs created, there is no spill-over effect on the processing and marketing industry. The protection of marine jobs, but mainly onshore employment in regions heavily dependent on fisheries in Europe, explains the repeated refusal of the EU and other distant-water fishing nations to insist that ships land and develop fishery resources using the infrastructure in coastal countries.

In addition, although the agreements are somewhat effective in terms of national policy, in that they are major public revenue source and extend over a substantial period of time (3-5 years), it is evident that in their current

form they are detrimental to both the fisheries industry of the coastal State and the marine ecosystem as a whole. The question that then comes to mind is of an ethical nature. Is it legitimate for a political entity to negotiate fisheries agreements with a coastal State which has very little freedom of cooperation? And whose effects on ecosystems are not neutral? The quest for coherence between policies on national development, the development of the fisheries sector and fisheries agreements is expected to reduce the wastage generated by conflicts and tap the existing synergies between these policies. This can be associated with the quest for a form of governance to maximise collective welfare.

1.10 Evaluation of the Negotiating Capacity of African countries bordering the Atlantic Ocean

Despite improvements in recent years in the capacity of African countries to negotiate fisheries agreements[94], a lot remains to be done to acquire sharp intervention skills. The biggest obstacle to overcome is the almost total lack of evaluation of the effects of various agreements on the domestic fisheries sector and the country's economy. While the EU regularly assesses its agreements, as a prerequisite to get the endorsement of the European Parliament to undertake negotiations on a new protocol, no African country is engaged in a similar approach. The few evaluations made are sporadic and are limited to biological aspects. Although the minutes of the joint committees within the framework of agreements with the EU allude to some elements of assessment, the fact remains that they are once again of a biological nature[95].

So how is it feasible for a country to grant fishing rights and set prices without having detailed knowledge of the rent generated and the percentage share to adopt? And even before this, how is it possible for the same country to know whether or not to mobilise domestic sources (doing) rather than getting things done by foreign vessels[96]? In the absence of economic and financial evaluations, no response can be given.

Beyond the limited preparation prior the negotiations by teams from the Ministry of Fisheries in each of the coastal country bordering the Atlantic, the fisheries agreement is negotiated either by the Ministry of Finance or directly by the Office of the President. The possibility of intervention by the Ministry of Fisheries is greatly reduced. And this is especially so, since there is no report that exists which provides evidence to recommend a particular approach or guidelines to be followed during negotiations on the format and substance of the agreement. In other words, in the absence of one's own indicators for the evaluation of each arrangement, the negotiating capacity of the Ministry of Fisheries and more generally, of the coastal State will remain weak.

Many workshops to build the coastal countries' negotiating capacity have been organised in the past, particularly under a programme led by the SRFC and IUCN between 2009 and 2012 (following a similar programme implemented by IUCN between 2007 and 2008[97]). They had very little effect on improving national negotiating skills[98] because they remained too theoretical and only covered the main principles of negotiation, they have had on the improvement of national competence.

The lack of means to evaluate fishery resources is another obstacle (a corollary to the first) in the negotiation of agreements. Several countries do not have fisheries research unit able to carry out stock assessments. In

[94] Qui s'apparence bien plus, à la lecture des comptes rendus de réunions, à des tentatives d'améliorer ce qui est proposé par l'autre partie que de

[95] In many cases, the coastal country uses the evaluation conducted for the EU as a basic document for negotiation. It is often the only document that presents official data.

[96] For example, in the case of cephalopod fisheries in Mauritania, the argument made by the Mauritanian party for not granting licences in this fishery to EU vessels was very stiff competition against national vessel owners However, there is no purely national cephalopod vessel as the existing ones belonging to joint ventures. It would be interesting to carry out an in-depth analysis to compare what a catch of a tonne of octopus captured by a Sino- Mauritanian or Korean-Mauritanian vessel and EU vessel brings to Mauritania.

[97] It resulted in, among other things, the drafting of a guide to negotiating fisheries agreements and the establishment of a database containing over 1,000 references on fisheries agreements.

[98] By way of illustration, the SRFC organised a workshop dedicated to improving negotiating skills for agreements in November 2010 in Freetown, Sierra Leone. Another workshop was held eight months later in the same city with more or less the same national audience. It emerged during this second workshop that the theoretical and practical knowledge of the participants was very low and, in any case. insufficient to undertake any negotiations.

the case of São Tomé and Principe, for example, the last stock assessment was conducted in 1984. Since the application of the precautionary principle in relation to the potential surplus was not part of the approach used by all distant-water fishing countries, it follows that the sale of licences or conclusion of agreements took place without any biological justification to prove the existence of a surplus.

For African coastal States, the monitoring of agreements is just as problematic as negotiations. Very few Fisheries Departments have accurate knowledge of what is happening in real time in their EEZs. The knowledge of vessel activity is carried out a posteriori (if at all). Moreover, such accounting is often based on the catch reports submitted by the distant-water fishing nations and not by the catch reports from their own vessels as is generally provided for in the MoU. Fisheries Departments therefore appear to have very little control over the daily implementation of the agreements. The lack of surveillance and sea response contribute to this state of affairs.

Generally, the capacity of a country to negotiate fair fisheries agreements is strongly correlated with its ability to manage its own fisheries. This does not depend on a particular predisposition or a specific training, but more broadly on an appropriate structural environment. The creation of such an environment begins with the registration of fisheries agreements in a fisheries resources exploitation strategy[99]. No African country on the Atlantic coast has such a strategy paper. The agreements, in all their forms, are perceived by the coastal State, as a simple way to generate revenue and, for the Ministry or Department of Fisheries, as a convenient mechanism of obtaining an investment fund[100].

1.11 Key Lessons Learnt and Good Practices

One of the main lessons is that African coastal countries have learnt over time is that fishing agreements are, despite their similarities, all different from each other and the effects on both marine ecosystems as well as the development of the domestic sector or the contribution to the national economy depend on how fishermen operate in the EEZ, including their compliance with good fishing practices.

Another lesson that coastal countries are beginning to grasp is that they are now being requested to show accountability to ensure the smooth implementation of the agreement. This implies, first, that they must demonstrate, using scientific evidence, that there really is a surplus, which can be harvested by a foreign fleet. Second, it means that the trend of selling fishery resources to anyone without consideration of the cumulative capacity of the fleets in operation will soon be a thing of the past, whether in the context of public or private agreements, since States and vessel owners are now asking for exclusivity guarantees or more modestly, knowledge of the fleets present (updated with each change of location).

The third lesson that countries are now learning is that competition for access to their fishery resources will decrease over time. EU countries are gradually reducing their fishing capacity in African countries, be it in the form of joint ventures or demersal fishing vessels operating under the guise of public agreements. Since the late 1990s, the strategy to use the presence of Asian ships, to enable coastal States to showcase real competition and raise the stakes in negotiations with EU, in particular, is on the decline. The reason is that Asian demersal fishing vessels have been causing unprecedented havoc, by flouting the basic rules of conduct. As a result, their presence is less appreciated in African waters and the argument of their presence can no longer be used as an excuse to inflate the stakes when dealing with other distant-water fishing countries in terms of cost of access and modalities for the implementation of the agreement. Coastal countries have thus been forced to review their demands downwards. It is only the lack of transparency of negotiations with many Asian fishing companies that explains their continued fishing activities. The transparent procedure used in oil transactions, in this respect, should be applied in the area of fisheries agreements.

[99] Even if modalities to access foreign vessels are institutionalised and codified.

[100] All countries that have concluded agreements with the EU find it difficult to disburse the amounts from the support fund for the sustainable development of the national fisheries sector, which shows both the lack of activity planning (in a strategy) and structural dysfunctions. Mauritania, for example, under the 2012-2014 protocol, in order to benefit from the support fund, had to disburse the amount of support granted under the previous protocol.

The fourth lesson that countries are assimilating is that gone are the days of individually negotiated agreements in the face of the gradual imposition of the concept that the issues of management of fishery resources are at the level of their ecosystems (be it the conventional way, nono-species or multi-species within the ecosystem approach). The reluctance of countries to go ahead is still very high for major straddling stocks of small pelagics[101]. However, the reluctance is less for stocks of secondary interest or specific interest to artisanal fishing[102]. This is an encouraging sign and the marks the advent of a regional strategy for the management of all resources relating to fisheries agreements.

In terms of best practices, we must especially remember the commitment to safeguard national interests and the landings of catches of foreign vessels in national ports. Mauritania has once again refused access by the EU to cephalopods. While the previous protocol mentioned this fishery category, without any reference tonnage (free for the Mauritanian Government to propose later), it does not seem to exist at all in the new protocol[103] signed on July 10, 2015. The cephalopod vessels operating under joint ventures in Mauritania (especially Korea and China) land all their catch at the port of Nouadhibou and sometimes, Nouakchott. It is these landings and their trade with European and Asian countries which are the reason for the existence of the *Société mauritanienne de commercialisation de poisson* (SMCP), a State-owned corporation that has a monopoly on the sale of frozen demersal species. It is therefore essential for Mauritania to keep cephalopod fleets flying its national flag in operation to avoid the collapse of the State company.

The obligation of landings, as well as the signing on of national seamen[104] on foreign vessels, has been a source of permanent conflicts in the public and private agreements. Coastal States are somehow trying to impose a landing clause. In reality, it has never been satisfactorily applied since in most cases a landing consists of make a transhipment. The commitment of the coastal State on this aspect is to ensure that the port sector benefits as well as those upstream working on packaging, processing and marketing. However in the absence of strong incentives, foreign vessels continue to operate on the principle of transhipment, which is financially more profitable. Only Cape Verde has succeeded in recent years to develop the landing of tuna and tuna-like species (especially sharks) through the modernisation of its infrastructure, improved conditions for landing and increased international maritime routes. New processing plants are increasingly being constructed at the Port of Mindelo. Coastal countries can therefore emulate the example of Cape Verde in order to influence the strategies of foreign vessels of operating in a vacuum and ensure that fisheries agreements are beneficial to the national fisheries sector.

[101] Mauritania, for example, systematically blocks any regional progress in this regard, since its Fisheries Department considers that sardinella and horse mackerels, which migrate from Guinea-Bissau in the south to Western Sahara in the north, constitute national rather than regional resources.

[102] Like for the Bonga fish and mullet, species for which a development plan within the SRFC space is being drafted.

[103] The protocol is not yet public.

[104] As well as observers.

2 Towards Regional Agreements

The successful implementation of agreements negotiated and managed at a regional scale rests on a number of prerequisites. The first is of course the willingness of States to delegate some of their powers to a supranational organisation. The review of the agreements in the previous chapter indicates that there is a consensus that only tuna resources can be the subject of a regional agreement. This is, however, not the case for demersal and small pelagic resources targeted by industrial fisheries, but seems acceptable for small pelagic resources that are of significance to artisanal fishing. In view of the above, SRFC is in the process of developing a Bonga management plan and will continue with its efforts to draft one for the yellow mullet. COREP is also trying to develop a small pelagics management plan, which is still currently in draft form. The second prerequisite is the ability of fisheries management organisations (RFMOs) and fisheries organisations (SRFC, CPCO and COREP) to take on board such a large project for tuna fisheries. The next section aims to shed light on this point and highlight the main constraints and opportunities regarding its implementation.

2.1 Review of RFMOs and RFOs

Regional Fisheries Management Organisations (RFMOs) are international bodies established by countries with fisheries interests in a specific geographic area. Some organisations are responsible for managing all the fish stocks in a given area. Others focus on highly migratory species such as tuna, operating within vast geographical areas. RFMOs consist of the so-called « coastal » countries, located in the region concerned, and countries with an interest in the fisheries of this region. Although some RFMOs play a purely advisory role, the majority have the power to set limits on catches and fishing effort, define technical measures and monitor the implementation of obligations.

The tuna fisheries management framework in West Africa is built on several levels of jurisdiction or geographic scales: 1) international through international conventions; 2) the Atlantic Ocean, with the International Commission for the Conservation of Atlantic Tunas (ICCAT); 3) regional, through regional fisheries organisations (RFOs) involved; and 4) national, through the domestic regulations of coastal countries.

The monitoring and surveillance of fishing vessels is another fisheries management dimension conducted by many stakeholders, including the EU, with regard to vessels of its Member States and coastal States for fishing activities in their EEZs. In the latter case, there is clear overlap of various jurisdictions. The EU, like a number of development partners, provides tangible support to improve the fisheries management in West African coastal States, through the implementation of regional or national projects.

2.2 International Tuna Fisheries Management Framework[105]

The main international fisheries conventions and agreements are: 1°, the United Nations Convention on the Law of the Sea (UNCLOS) of 1982; 2°, the FAO Compliance Agreement of 1993; 3°, the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995; 4°, The FAO Port State Measures Agreement of 2009.

2.2.1 United Nations Convention on the Law of the Sea (UNCLOS) of 1982

The Convention facilitated the establishment of Exclusive Economic Zones (EEZs) by coastal States within the limit of 200 nautical miles. All coastal countries in the region have ratified UNCLOS (some very recently like Morocco in 2007 and Liberia in 2008). For many countries, the EEZ boundaries, however, remain unclear and in some cases, have still not been submitted to the UN Office for Legal Affairs in order for them to be internationally recognized (for example, Côte d'Ivoire). The European Union ratified the Convention in 1998.

2.2.2 FAO Compliance Agreement (FAOCA) of 1993

Most of the information in section has been taken from the report entitled « Evaluation ex-post du protocole de l'accord de partenariat dans le domaine de la pêche entre l'Union européenne et la Côte-d'Ivoire », cf : http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012/cote_ivoire_2012_fr.pdf

The FAO Compliance Agreement of 1993 which seeks to promote compliance by fishing vessels in the high seas with international conservation and management measures entered into force in 2003[106]. The agreement was ratified by the EU in 1996 and six West African States (Morocco, Cape Verde, Senegal, Ghana, Benin and Angola; see summary table below).

2.2.3 UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks

The agreement on the conservation and management of fish stocks moving both within and beyond the EEZ (straddling stocks) and highly migratory fish stocks[107] (UNFA) entered into force in 2001. It marks a decisive step in establishing a global legal regime for the conservation and sustainable exploitation of migratory fish stocks such as tuna. However, currently only four West African states have ratified the agreement (Senegal, Guinea, Liberia and Nigeria); the EU ratified it in 2003 (cf. summary table below). The latter also adopted: 1) Council Regulation 973/2001 laying down technical measures for the conservation of certain stocks of highly migratory species[108]; 2) Council Regulation 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish[109].

2.2.4 FAO Port State Measures Agreement of 2009

In 2011, the EU approved the Port State Measures Agreement to prevent, deter and eliminate illegal, unreported and unregulated fishing (initiated by FAO in 2009). This agreement will enter into force one month after the accession of the 25th member[110]. None of West African States has at the moment ratified the Agreement (cf. summary table below).

2.2.5 Non-Binding Tools

The Code of Conduct for Responsible Fisheries[111] adopted by the FAO Council in 1995. A voluntary instrument, the Code of Conduct is an international benchmark for the formulation of fisheries policy. Its principles are universal and widely adopted or endorsed by national and regional fisheries policies.

Under the Code of Conduct, international plans of action have been developed by FAO. They apply to all States, entities and fishermen. They target a specific aspect of fisheries management. Currently, there are four international plans of action:

- International Plan of Action for Conservation and Management of Sharks (IPOA-Sharks) ;
- International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity) ;
- International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fisheries (IPOA-IUU) ; and
- International Plan of Action for Reducing the Incidental Catch of Seabirds in Longliners (IPOA-Seabirds).

Other than Morocco that has adopted the first three plans of action, very few other countries bordering the Atlantic Ocean have taken the IPOAs into account (cf. summary table below).

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[106] FAO Legal Office (FAOLEX), April 2012: http ://www.fao.org/Legal/index_fr.htm.

[107] cf. The text of the Agreement on the United Nations site can be found at:
http ://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm

[108] Council Regulation (EC) n° 973/2001 of May 14, 2001 laying down technical measures for the conservation of certain stocks of highly migratory stocks

[109] Council Regulation (EC) n°1936/2001 of September 27, 2001 laying down control measures applicable to fishing for certain highly migratory stocks

[110] More specifically after the submission of the legal instrument establishing the ratification, acceptance, approval or accession to the Agreement with the Director General of FAO. In April 2013, while 21 States had signed the agreement, only three had ratified it (Chile, Norway and Uruguay), only the European Union had approved it and 2 countries acceded to it (Myanmar and Sri Lanka).Source : FAO Legal Office (FAOLEX) : http ://www.fao.org/Legal/index_fr.htm

[111] http ://www.fao.org/fishery/code/fr

2.2.6 Adoption and Ratification of International Agreements by West African Countries

All West African countries have ratified[112] UNCLOS (some recently), but as mentioned above, only three action plans have been adopted (cf. table below). Only Senegal and Namibia have ratified the FAOCA and UNFA. However, almost all countries are directly affected by these treaties, either because they operate from industrial vessels flying the national flag fishing beyond national waters (Senegal, Ghana, Nigeria, Angola, Namibia, for example) or they open up their waters to foreign vessels often fishing shared resources managed by RFMOs such as ICCAT and SEAFO[113], or lastly, they have industrial fishing ports or stringent control measures are required.

Table 6 : Ratification of International Conventions and Adoption of Plans of Action

	Ratification of International Conventions				Plans of Action		
	UNCLOS	UNFA	FAOCA	PSMA	IUU	Capacity	Sharks
Morocco	2007	no	2001	No	√	√	√
Mauritania	1996	no	no	No	√	no	no
Cape Verde	1987	no	2006	No	no	no	no (draft)
Senegal	1984	1997	2009	non	no (draft)	no	√
Gambia	1984	no	no	No	√	no	no
Guinea-Bissau	1986	no	no	no	no	no	√
Guinea	1985	2005	no	no	no	no	√
Sierra Leone	1994	no	no	no	no	no	no
Liberia	2008	2005	no	no	no	no	no
Côte d'Ivoire	1984	no	no	no	no	no	no
Ghana	1983	no	2003	no	no	no	no
Benin	1997	no	1999	no	√	no	no
Togo	1985	no	no	no	no	no	no
Nigeria	1986	2009	no	no	-	-	no
São Tomé-&-P.	1987	no	no	no	no	no	no
Cameroon	1985	no	no	no	√	no	no
Equatorial Guinea	1997	no	no	no	no	no	no
Gabon	1998	no	no	no	no	no	no (draft)
Congo	2008	no	no	no	no	no	no
DR Congo	1989	no	no	no	no	no	no
Angola	1990	no	2006	no	no (draft)	-	-

N.B. : UNCLOS : United Nations Convention on the Law of the Sea ; UNFA : United Nations Agreement on Straddling Fish Stocks and Highly Migratory Stocks ; FAOCA : FAO Compliance Agreement ; PSMA : Port State Measures Agreement; IUU : Illegal, Unreported and Unregulated Fishing; - : no information ; Source : Failler P. et G. Hosch (2012)

While, in general, few African countries bordering the Atlantic Ocean have signed international agreements, the situation is more mixed regarding the adoption of action plans. Two reasons can be put forward to try to

[112] By signing a convention, in principle, a State expresses its intention to become a Party to the convention. The signing in no way prejudices (ratification or otherwise) how the State intends to follow up the application of the convention. It is only the ratification of the convention by the State that makes it binding.

[113] The South East Atlantic Fisheries Organisation is an RFMO that manages fish stocks in international waters south of the equator (cf. map in section 2.2).

explain such low enforcement rates: firstly, the need to reformulate fisheries policies (or for some countries to develop one) and design national action plans for each area of intervention (IUU, capacity, sharks) and secondly, the lack of priority given to these aspects. All three plans of action for sharks for Senegal, Guinea-Bissau and Guinea were developed as part of a support program for the management of shark fisheries in West Africa[114].

2.3 Tuna Fisheries Management Framework in the Atlantic: International Commission for the Conservation of Atlantic Tunas (ICCAT)

Created in 1969, ICCAT is the organisation responsible for the management of tuna fisheries (tuna and tuna-like species). Its jurisdiction covers the entire Atlantic Ocean, from east to west and latitudes 70°N to 50°S[115].It includes the Mediterranean, the Black, the North, the Baltic, and the Caribbean Seas as well as the Gulf of Mexico. It thus covers SEAFO and several RFOs in West Africa such as CCPO, COREP, SRFC, ATLAFCO and CECAF. But ICCAT is the only organisation specialised in managing highly migratory species, including tuna.

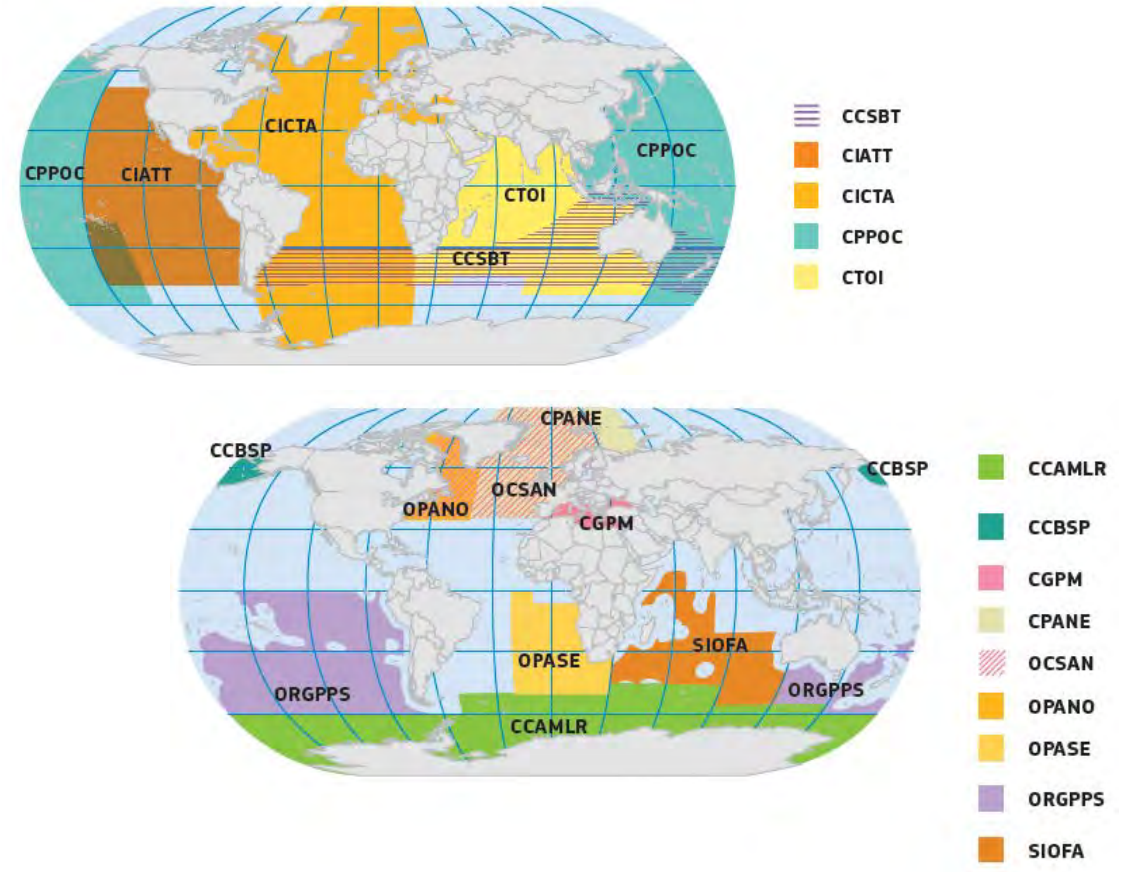

Figure 5 : Jurisdiction of RFMOs managing highly migratory species (above) and other fish stocks (below)

Source : DG-MARE[116]

The EU has been a member since 1997. Prior to the EU's accession to the organisation, its Member States such as Spain, France and Portugal were contracting parties[117]. Thirteen countries of the African Atlantic coast

[114] For more details, see : http://spSRFC.org/PSRA+-+Requins/PSRA+Requins+-+Contexte

[115] Its secretariat is based in Madrid.

[116] http://ec.europa.eu/fisheries/cfp/international/rfmo/index_fr.htm

[117] France is still a contracting party of ICCAT on behalf of St. Pierre and Miquelon, a French overseas Territory, associated with the European Union (cf. www.iccat.es).

are members, namely South Africa (date of entry as a member: 1967), Ghana (1968), Morocco (1969), Côte d'Ivoire (1972), Angola (1976), Gabon (1977), Cape Verde (1979), São Tomé and Principe (1983), Equatorial Guinea (1987), Republic of Guinea (1991), Namibia (1999), Senegal (2004), Nigeria (2007), Sierra Leone (2008) and Mauritania (2008). Among the countries included in the scope of this study, Liberia is the only one that is not member of ICCAT.

2.3.1 Development and Compliance with Management Measures

ICCAT Member States adopt conservation and management measures for highly migratory fish. Resolutions and recommendations are subsequently made and include: 1) the total allowable catch (TAC) per species, based on advice from the SCRS; 2) coordination of research, including collection and statistical analysis of fisheries data; 3) regional observer programs; 4) collection and exchange of information on tuna fisheries activities (including IUU activities).

Two levels of compliance are applicable to contracting parties on ICCAT management measures. The first level concerns the resolution urging parties to adhere to the rules, without requiring strict compliance with same. The second, which is binding, deals with recommendations, which requires CPCs to comply with the stipulated rules, but also to take all measures necessary for the proper implementation and monitoring of the said rules in their EEZs and on board vessels flying their flags on the high seas. Any Member States which violate these recommendations, will be liable to sanctions on their fleets[118] or trade activities, including a ban on any tuna importations from the offending States[119] or trade restrictions.

ICCAT management measures can be divided into two groups: the first, concerns measures to prevent IUU fishing; the second brings together technical fisheries management measures (TAC, limitation of fishing effort or capacity, minimum size, etc.).

2.3.2 Measures against IUU Fishing

Measures to prevent IUU fishing include:

- publication of IUU lists (recommendations 11-18) and positive lists (09 - 09);
- monitoring of fishing operations via satellite[120] using the vessel monitoring system (VMS) (03-14), reports (03-13; 11-01) and on board observers[121] during the area/time closures for bigeye and yellowfin tuna (11-01) ;
- documentation of trade which requires that any exchange of goods transaction is the subject of a certified notification for bigeye tuna and swordfish (03-19); it ensures traceability of products from catch to the final destination; and
- control of transhipments by prior notification of the operation in a port (05-06) and the presence of observers on board during the operation (10-10).

[118] « CPCs that do not report Task I data [annual catch per species, region, flag, zone-EEZ and high seas; number of vessels by size, device, zone], including zero catches, for one or more species for a given year, in accordance with SCRS data reporting requirements, shall be prohibited from retaining such species as of the year following the lack or incomplete reporting until such data have been received by the ICCAT Secretariat.» Paragraph 3 of ICCAT Recommendation 11-15.

[119] For example, Resolution n°00-16 aimed at prohibiting the imports of tuna and tuna-like species from Equatorial Guinea in CPCs: «Contracting Parties take appropriate measures, consistent with provisions of the 1998 Resolution, to the effect that the import of Atlantic bigeye tuna and its products in any form from Equatorial Guinea be prohibited, effective from the time this Recommendation enters into force.» (ICCAT, 2000)

[120] Since 2004, ICCAT has requested that all data on tuna fishing vessel satellite monitoring (all flags) is transmitted every 6 hours to national fisheries monitoring centres- requirement for vessels of 24 meters length overall- (Recommendation 03–14). Discussions are ongoing to move to a higher level of frequency, possibly every two hours.

[121] The observation of fisheries consists of having an independent observer on a fishing vessel during an operation on the ship. It aims to verify compliance of fishing activities with a set of elements (e.g. monitoring catch reports, monitoring transmission of data at the entry/exit of fishing zones, monitoring of discards and bycatches, transhipment and actions of vessels in case of major discards and bycatches). The observer may also play a scientific task of collecting data on specific species.

All these measures, generally known as monitoring, control and surveillance (MCS) are detailed in Section 3.3 below.

2.3.3 Technical Measures

The main technical management measures applied to tuna fisheries address catch limits, fishing effort (through the number of vessels) and the temporary closure of certain fishing areas (cf. table below). They are unique to each species.

Table 7 : Management Measures adopted by ICCAT

Stocks	Regulations in force	Comments
Yellowfin Tuna	Effective fishing effort not to exceed the 1992 level of 110,000t TAC	Rec. N°11-01 (effective since 2012) Rec. n°93-04
	No fishing with natural or artificial floating objects in January or February in the area between the African coast, 10°S, 5°E and 5°W	
	Specific limits on the number of pole-and-line vessels and/or seiners for a specific number of fleets, the number of longliners for China, Taiwan, Philippines and Korea	Rec. N°09-01, para. 1 of Rec. n° 06-01 and Rec. n°04-01
	Closure to purse seiners and pole-and-line vessels in November of the area 0 ° -5 °N and 10° -20 ° W	
Bigeye Tuna	Bigeye tuna TAC of 85,000 tonnes for 2012-2015	
	Number of vessels must be less than the 1991-1992 average	Rec. N°09-01, para 1 of Rec. N°06-01, Rec. N°04-01,
	Longliners limited to China, Taiwan, Philippines, Korea, EU (269), Japan	
	Limited number of purse seiners Panama, EU (34) and Ghana	
	No fishing with natural or artificial floating objects in January or February in the area between the African coast, 10°S, 5°E and 5°W	Rec. N°10-01 and Rec. N°11-01
	Closure for purse seiners and pole-and-line vessels in November of the area 0° -5°N and 10° -20°W	Rec. N°11-01
		Area/time closure area on FADs[122]
Skipjack	No special regulations	Seasonal closures of areas for bigeye and yellowfin tuna are implemented to limit the catch of skipjack juveniles
Swordfish	North : Minimum size 125/119 cm LJFL (lower jaw fork length)	Rec. N° 11-02
	South: Country-specific TACs	

[122] According to Recommendation n°11-01 by ICCAT, fishing for, or supported activities to fish for bigeye and yellowfin tunas in association with objects that could affect the fish aggregation, including FADs, shall be prohibited from January 1 to February 28 every year in the area between the African coast to the north, parallel to 10°S latitude for the southern limit and meridians 5° W longitude and 5°E longitude for the western and eastern limits respectively (ICCAT 2011a)

Stocks	Regulations in force	Comments
	Minimum size 125/119 cm LJFL	Rec. N° 12 –01

Source: ICCAT, 2012a

For bigeye tuna, a recommendation of the fixed ICCAT catch limits and defined the allocation of allowable catch by country[123] (cf. table below). The catch limit is not applicable to ICCAT Member states with annual catches of bigeye tuna, not exceeding 2,100 tonnes[124]. Thus, countries with low fishing power can still develop fishery targeting bigeye. For the vessels of the countries whose catches are close to the total allowable, this principle could explain the choice of deflagging of EU vessels in favour of open registry flags[125] (such as Belize, Cape Verde and the Netherlands Antilles) (see table below).

Table 8 : Distribution of total allowable catches of Bigeye Tuna

Member States	Annual Catch Limits for the period 2012-2015 (tonnes)
China	5,572
EU	22,667
Ghana	4,722
Japan	23,611
Panama	3,306
Philippines	1,983
Korea	1,983
Taiwan	15,583
Total	**79,427**

Source: ICCAT, 2011a

For yellowfin tuna, the catch limit of 110,000 tonnes, is not accompanied by a breakdown by country despite the proven risks of overexploitation affecting this species. Only the limitation of the number of vessels from certain countries is effective. There are special management measures being currently implemented for the skipjack. For swordfish belonging to the North Atlantic stock, the total allowable catch is set at 13,700 tonnes for 2012 (idem for 2013). The TAC for southern swordfish stock is set at 15,000 tonnes for 2012. In all, the total allowable catch for swordfish is 28,700 tonnes.

Beyond these catch limit measures, since January 2013 ICCAT has imposed a ban on fishing using artificial FADs in the area between latitudes 5°West and 5°East, during the first two months of the year[126]. All vessels over 20 m must also carry observers/inspectors during this period and transmit the data to ICCAT.

[123] Part III of Recommendation 12-03 on the bigeye tuna recovery plan.

[124] This explains the difference between the TAC, set at 85,000 tonnes and the TAC that is allocated to Member States in the table above.

[125] The open registry flag also known as a «flag of convenience», corresponds to the facilitated registration of a vessel in a country which allows foreign owners to place their vessels under their jurisdiction. Vessel owners choose this flag because of its less binding nature in terms of tax, safety of the ship or labour laws to which the crew is subjected, for example.

[126] Northern Limit: African Coast; Southern Limit: Parallel 10º South Latitude; Western Limit: Meridian 5º West Longitude; Eastern Limit: Meridian 5º East Longitude.

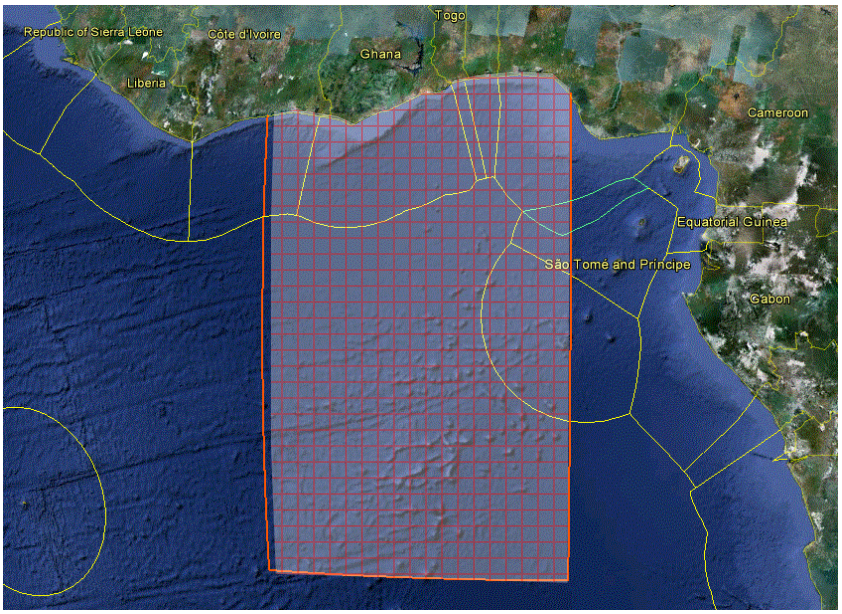

Figure 6 : Closed area for fishing of bigeye and yellowfin tuna as from 2013

Source: Personal findings inspired from ICCAT [127] (background of map from *Google Earth*)

This measure led to the closure of a large part of the Gulf of Guinea for all fishing using FADs, for 2 months. While this has resulted in additional costs related to boarding observers, it also runs the risk of causing a drop in annual catches of vessels[128] that usually ply this area at the beginning of the year[129].

2.3.4 Catch Reports

Despite progress in communication equipment (and the gradual adoption of electronic logbooks), data transmission challenges remain. Until recently, Ghana was regularly singled out by ICCAT because of the lack of data transmission. The EU example shows that this is still a matter of contention. Data collection relating to EU vessels plying areas outside EU waters is done according to Regulation EC n° 1006/2008[130] (EU 2008b) which however does not explicitly require a mandatory report from EU Member states fishing vessels flying the Commission flag when fishing on the high seas, and in third country fishing areas (in other words, they are active without being under the purview of a fisheries partnership agreement with the EU). This is why certain data relating to activities by longliners are not available to DG-MARE. Consultations[131] are underway to revise this regulation, which would address lack of data exchanges, by making it more suitable to monitoring catch capacities; much easier by clarifying the tasks of the Commission and Member States and; more consistent with regulations applicable to EU vessels in European waters and the various regulations on IUU fishing and control of fishing activities. EU Member States are not under any obligation to transmit data and the Commission has no powers to demand for data.

Catch data are transmitted to the national authorities in two ways: first by vessels during entry and exit from the fishing zone of the coastal countries, since they must declare[132] their cargo and position as they cross EEZ frontiers (outer boundary of the fishing area); second, for EU vessels in particular, during the counting of

[127] www.iccat.es

[128] It will have severe potential effects on Ghana fleet, operating almost exclusively FAD fishing and whose EEZ will be completely closed to FAD fishing for 2 months (if the Ghanaian fleet applies the new ICCAT measures, which has never been the case so far).

[129] The effects of the closure will not be known until September 2013.

[130] Council Regulation (EC) n° 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94.

[131] See : http ://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/far/index_fr.htm

[132] Report through official channels (via the European Union Delegation in Gabon) and directly to electronic mail address of the Department of Fisheries.

annual catches transmitted by vessel owners to the Fisheries Department through official channels[133] (to calculate, for vessels operating under public agreements, additional payments in the event that tonnage is exceeded). On the whole, and for a while now, both types of transmission are being used, in line with the text of the protocol, although the use of electronic logbooks[134] would improve the monitoring of fishing activities and would reduce delays by several months in reconciling data on catches[135]. The lack of harmonisation of the EEZ boundaries of several countries by research organisations that validate catch data (IEO for Spain and IRD for France) leads to uncertainty as to the allocation of catches along the boundary of the EEZ. For example, along the border of the EEZ of São Tomé and Principle and that of Gabon (cf. Figure below).

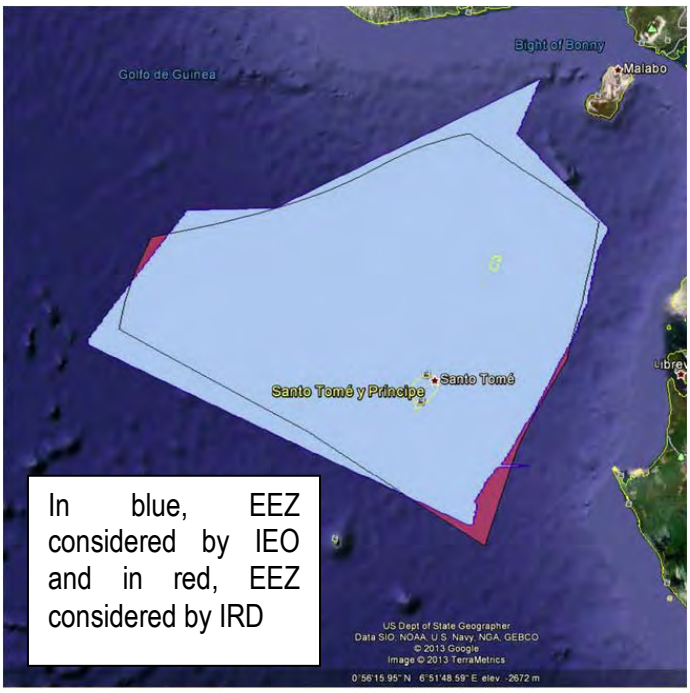

Figure 7 : EEZ of São Tomé and Príncipe according to the research institutions, IEO and IRD

Source: ICCAT

2.3.5 Monitoring, Control and Surveillance

Monitoring, control and surveillance (MCS) of fishing vessels targeting tuna is the responsibility of coastal States and the vessels' flag State. They are implemented in the EEZs of coastal States through the application of national legislation by coastal States, in accordance with the international tuna fisheries management framework[136], enacted by ICCAT. On the high seas, monitoring, control and surveillance of tuna vessels is under the responsibility of the flag State, in line with the international tuna fisheries management framework (when the flag State has ratified these conventions).

[133] In the absence of an electronic logbook, transmission is performed annually by grouping data from representative tuna organisations (Orthongel, OPAGAC, ANABAC) to EU Member States – flag States after the validation of catch data by their research institutions (IRD, IEO), which are then transmitted to Member States and to the Department of Fisheries of the coastal country by the European Commission.

[134] It is a European regulatory requirement for tropical tuna purse seiners since January 2012: electronic logbooks are still difficult to use because the software provided based on the technical specifications of each Member State need to be adapted to the operation of seiners. Their use should be made effective gradually.

[135] According to the minutes of the Joint Committee on January 25 and 26, 2012, during the first months of the current protocol, the conformity of two types of transmission had been questioned by the Department of Fisheries of São Tomé.

[136] In the event that a third country has ratified international conventions or applies a fisheries agreement with a country or fishermen's association whose terms comply with the conservation and management measures of these conventions.

The monitoring, control and surveillance (MCS) framework in the Atlantic region is defined by ICCAT. It includes the registration of vessels, geo-localised monitoring (satellite), control, observation and monitoring and documentation of catches[137]. More specifically, as regards:

- Registration: all vessels over 20 metres authorised to fish in the Convention Area shall be registered in a register of vessels. The register shall be administered by ICCAT and be open to consultation by all ICCAT Member States
- Vessel monitoring system by satellite (VMS): the installation satellite tracking equipment (devices[138]) is mandatory on all vessels over 20 metres operating in the Convention area to allow the reporting of the geographical location of vessels by their flag States
- Control: Inspections are conducted by inspectors at the port of ICCAT Member States, who are responsible for verifying the compliance of operations with ICCAT conservation measures (no inspection at sea is provided for). Inspections are applicable to all catches of species under ICCAT's mandate[139]. Member States may send their own inspectors to monitor the landings of their vessels in foreign ports. For ships of ICCAT non-Member States landing in a port of a Member State, an inspection shall be conducted to verify that the landed catch was fished outside the jurisdiction of the ICCAT area.
- Observation: Since January 2013, ICCAT requires the presence of an observer on each vessel during closed periods for fishing skipjack and bigeye tuna using drifting FADs (cf. Table 2 above). The coverage of all surface fishing vessels of over 20 metres in length has been effective since 2014. In addition to ensuring compliance with the application of the closure, observers are meant to collect data on bycatch and discards.
- Monitoring and Documentation of Catches: ICCAT coordinates the annual monitoring of Member states' catches in the region. Additional provisions on marketing and monitoring regarding some species in the region have been developed (bigeye, swordfish, etc.).
- IUU Activity: ICCAT maintains a list of vessels presumed to have engaged IUU fishing within the jurisdiction of the Convention. The inclusion of a vessel on the IUU fishing list will result in a ban on the marketing of products caught by such a vessel, especially on the European market.
- Sampling Programme at the Port: This enables the collection of fisheries data on three tropical tuna species. From 2015, the programme must be implemented in all landing or transhipment ports, in order to collect data on fishing trips taking place during the two-month time-period of closure of fishing with drifting FADs. As of 2014, the data and information collected under this programme must be reported to ICCAT, with at least a description of the following elements, by country and after each quarter: variety of species, landings by species; catches landed by size and weight.

Beyond difficulties faced in data collection or even in MCS, the ICCAT review indicates that an operational mechanism is already in place for the collection, processing and issuance of management advice and the overall supervision of activities by tuna vessels. ICCAT is the therefore the ideal scientific and technical pillar on which a regional management body for tuna fisheries can be built.

2.4 Regional Fisheries Organisations, Initiatives and Committees

There are three regional fishing organisations co-existing within the maritime space governed by the Ministerial Conference on Fishing Cooperation among African States Bordering the Atlantic (ATLAFCO) which comprises 22 countries on the Atlantic coast, from Morocco in the north to Namibia in the south:

[137] See the Compendium of management recommendations and resolutions adopted by ICCAT for the conservation of Atlantic tuna and tuna-lie species. (ICCAT ; 2012b) : http ://www.iccat.int/Documents/Recs/ACT_COMP_2012_FRA.pdf

[138] The device is equipment on board the vessel that transmits « VMS » or « AIS » data (cf. Section 2.5.2).

139. In case of violation of measures in place by a vessel flying a flag other than that of an ICCAT Member State, a report co-written by the vessel's captain and the inspector will be sent to the flag State and ICCAT. If the violation is committed by a vessel of the fleet of a Member State, the procedure in the State of the landing port is applied.

- Sub-Regional Fisheries Commission, with headquarters in Dakar (SRFC) ;
- Fisheries Committee for the West Central Gulf of Guinea, with headquarters in Tema (CPCO) ;
- Regional Fisheries Committee for the Gulf of Guinea, with headquarters in Libreville (COREP).

None of these three organisations has a mandate for direct management of fisheries resources. Their roles are limited to networking by their Member States and the support of the latter in order to contribute to the sustainable national and transboundary management of their fisheries resources. Such action is confined to waters located within the EEZ of coastal States (cf. summary table below). Their technical and financial resources are modest and depend for the most part, on projects they are hosting, since contributions from Member States are not sufficient to defray their operating costs. As a result, their impact is considerably determined by their capacity to mobilise cooperation funds[140].

Other than these regional organisations, there is the Fishery Committee for the East Central Atlantic (COPACE) that has advisory capacity and the recent African Union (AU) West African Fisheries Governance Initiative.

[140] A review of the strengths and weaknesses of these three organisations was conducted by the AU in 2014. However, since the report was not available at the time this document was being drafted, some information that could have enriched the text was, as a result, not taken into consideration.

Table 9 : Summary Presentation of ATLAFCO, SRFC, CPCO and COREP

	COMHAFAT	SRFC	CPCO	COREP
Creation	1989	1985	2006	1984 (2007 ECCAS)
Jurisdiction	FAO Fishing Areas 34 and 47 – the latter stretches to the southern tip of the Namibian EEZ	EEZ of Mauritania, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, and Sierra Leone	EEZ of Liberia, Côte d'Ivoire, Ghana, Benin, Togo and Nigeria	EEZ of São Tomé and Principe, Cameroon, Gabon, Congo, and the Democratic Republic of Congo
Mandate & mission	COMHAFAT mainly sets out to achieve the following : a) promote and strengthen regional cooperation on the development of fishing activities ; and b) coordinate and harmonize efforts and capacity of stakeholders towards better conservation and exploitation of water resources	CSRP sets out to strengthen policies in matters of cooperation and coordination among member states	The overall objective is to guarantee sustainable development of water resources within the scope of the CPCO convention	COREP assists member States in protecting and developing fishery resources as well as in promoting the development of aquaculture, in order to maximise the exploitation of potential in aquatic areas and guarantee the welfare of the majority of inhabitants
Strategic Plan	2012-2015 (work in progress)	2011-2015	2011-2020	2009-2015 not yet available
Areas of Intervention	1. Conservation and exploitation of fishery resources 2. Evaluation conservation of the highly migratory species 3. Monitoring, surveillance and control of fishing vessels 4. Developing fisheries production and production tools 5. Marketing of fishing products 6. Planning and funding the fisheries sector 7. Social condition of marine fishermen 8. Strengthening technical and professional capacity 9. Enhancing scientific marine research 10. Protection and conservation of the marine environment	1. Promotion of innovative approaches in managing fisheries 2. Establishing a system to capitalise on knowledge in the fisheries sector in the sub- region 3. Strengthening cooperation and collaboration with other organisations involved in fisheries 4. Improving internal governance within SRFC 5. Strengthening mechanisms to harmonise fishing policies and legislation 6. Supporting stakeholders in the sustainable exploitation of fishery resources 7. Promoting SFRC's image and efforts among stakeholders	1. Rebuilding and maintaining huge fishery resources through political reforms, cooperative regulatory planning, good governance and improving institutions. 2. Developing and establishing an appropriate management framework* 3. Enhancing the capacity of artisanal fishermen and other operators from Member states to be able to create sustainable livelihoods for their communities. 4. Strengthening national capacity building for follow - up, control and surveillance for efficient, lucrative and sustainable fishing ** 5. Enhancing cooperative research***	No information available

*: which ensure that fishery resources are exploited sustainably, that intra-regional and international trade in fish and fish products are improved, and that a maximum of economic and social advantages are secured from fishing. ** : and institute mechanisms for effective regional cooperation in the MCS, and the implement the law prohibiting illegal, unregulated and unreported fishing (IUU) in the Fisheries Committee of West Central Gulf of Guinea; *** : and ensure that decisions related to the management of resources are based on sound knowledge, scientific methodology and the most accurate information available. Source: Failler P. and G. Hosch (2012)

2.4.1 Fisheries Committee of West Central Gulf of Guinea (CPCO)

The Fisheries Committee of West Central Gulf of Guinea (CPCO) is a regional fishing organisation (RFO) created in 2007 and of which countries of the Gulf of Guinea are members [141] (Benin, Côte d'Ivoire, Ghana,

[141] Member States of the RFO are presented in Table 2.1 (error in French text) Figure 8 below.

Liberia, Nigeria, Togo; see map below). CPCO is a consulting and exchange organisation, charged with creating conservation and management measures for water resources. RFOs like CPCO do not enjoy the status of RFMOs and therefore cannot issue binding measures. However, it may engage Governments to harmonise national fishery policies. It also serves as a platform for exchanges between Fisheries Departments in countries in the sub-region.

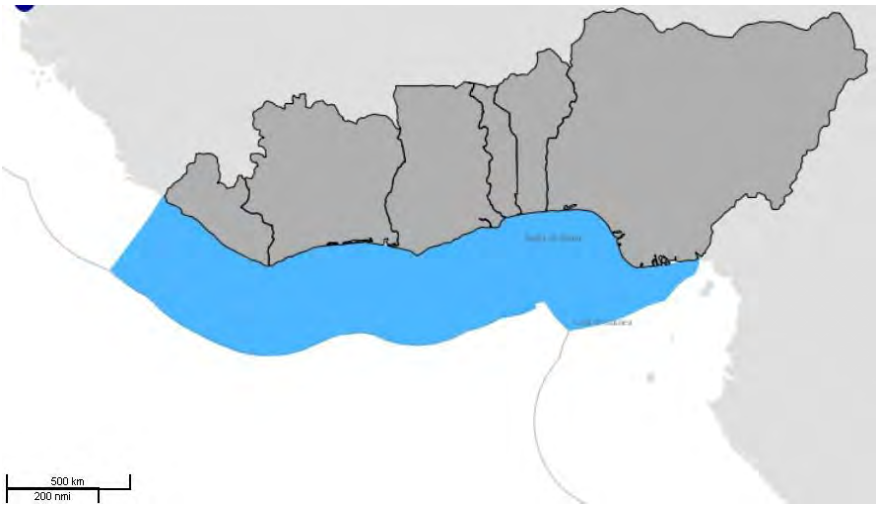

Figure 8 : CPCO Jurisdiction (blue) and Member States (grey)

Source: FAO[142]

The CPCO plans to be active vis-à-vis IUU fishing activities in the Gulf of Guinea (all flags, including those of tuna fishing). A series of initiatives such as the development of a register of « friendly » ships and IUU in the Gulf of Guinea is ongoing[143]. This register could be shared with other fisheries organisations in neighbouring regions and compared with other existing lists of regional fisheries organisations (such as ICCAT, for example).

2.4.2 Regional Fisheries Committee for the Gulf of Guinea (COREP)

Established by the 1984 agreement, COREP is a sub-regional organisation comprising five Member States (Cameroon, Republic of Congo, Democratic Republic of Congo, Gabon, São Tomé and Principe). It covers the EEZ of its Member States (see figure below). As with the CPCO, its mandate does not allow it to take binding measures against its Member States. The initial objectives of COREP were the harmonization of national policies and fisheries management frameworks, particularly for straddling stocks, and collection and analysis of data for the sustainable exploitation of fisheries resources.

COREP also plays a role with respect to inland fisheries, as well as aquaculture. This gives the SRFO (sub-regional fishing organisation) the status of a hybrid organisation whose mission is not limited solely to capture fisheries.

[142] cf. Presentation of RFOs on the FAO site: http ://www.fao.org/fishery/rfb/en

[143] cf. CPCO site: http ://www.fcwc-fish.org/

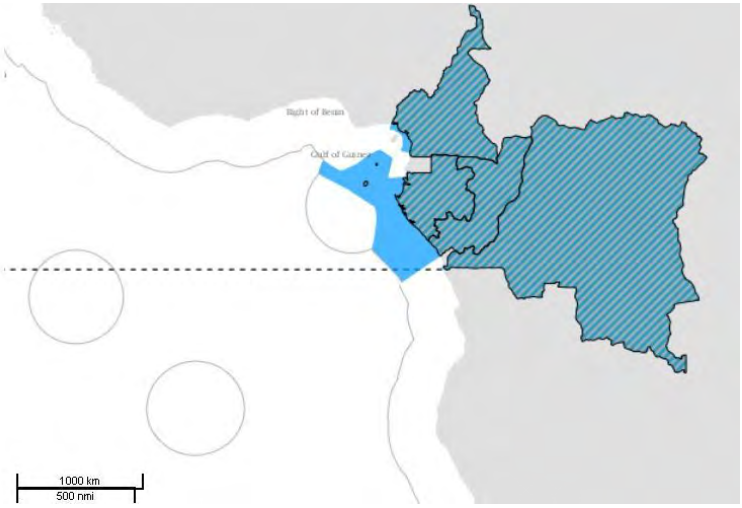

Figure 9 : COREP jurisdiction (blue) and Member States (shaded area)

Source: FAO[144]

In 2008, COREP developed a strategic action plan spanning 2009-2015, in order to offer partners a framework for the formulation of joint programs or support projects. At the time, the intention was to provide support to Member States for fisheries development projects without necessarily taking charge of organising the harmonisation of fisheries management or data collection in the region.

In February 2013, the Ministers of Fisheries from COREP Member States met in Kinshasa to take stock of the implementation of resolutions adopted in 2008, at last ministerial meeting. The conference, which concluded that there was an extremely low level of implementation, was also meant to take measures towards reviving the Committee, which has been dormant for several years.

2.4.3 Sub-Regional Fisheries Committee (SRFC)

Created in 1985, SRFC is an RFO which brings together 7 countries of the West African sub-region (Mauritania, Senegal, The Gambia, Guinea-Bissau, Guinea, Sierra-Leone and Cape Verde). It sets out to harmonise the national policies of its Member States in matters of conservation and sustainable exploitation of water resources as well as strengthen regional cooperation.

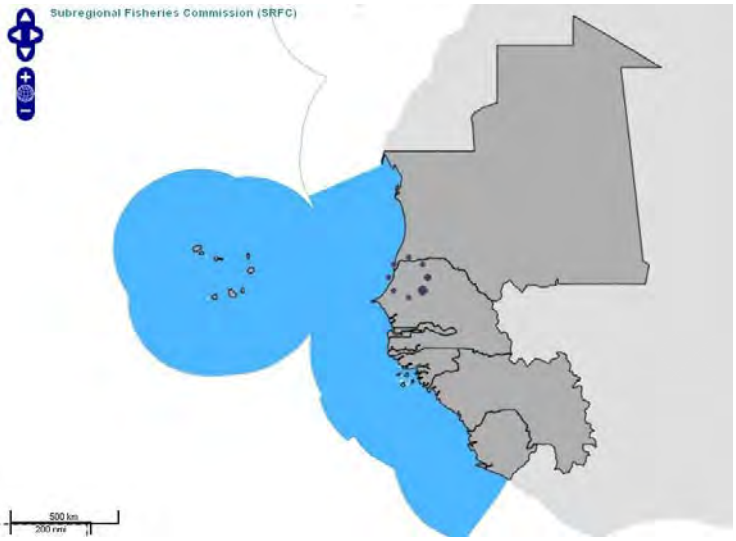

Figure 10 : SRFC jurisdiction (blue) and Member States (grey)

Source: FAO[145]

[144] http ://www.fao.org/fishery/rfb/en

[145] http ://www.fao.org/fishery/rfb/en

SRFC brings together Ministers of Fisheries and cannot issue any binding measures at regional level. In 2011, it drafted a strategic plan, targeting as priority, the need to capitalise on knowledge, regional cooperation and exchanges, harmonisation of fisheries legislation and support to stakeholders in fisheries management (SRFC, 2011). Regarding, fisheries management, emphasis was laid on regional management of shared stocks, (the drop in bycatches (sharks in particular), the fight against IUU fishing as well as the institution of coherent fisheries development policies.

SRFC equally contributed to the capacity building of coastal States in negotiating fisheries agreements[146]. In this regard, a document defining the steps and procedures for negotiations, was drafted, and a website was created[147] (Mfodwo, 2008). In the wake of a regional workshop held in Senegal, in 2007, in each of the seven countries of the Committee, there was a national workshop organised bringing together all stakeholders between 2009 and 2011, in order to improve the skills of all and sundry in negotiating fisheries agreements.

2.4.4 Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic (ATLAFCO)

ATLAFCO is an inter-governmental cooperation organisation that brings together 22 States bordering the Atlantic coast, stretching from Namibia in the south to Morocco in the north. Its mission is directly in line with international cooperation to improve the sustainable fisheries management framework of Member States. ATLAFCO's mandate includes the following, inter alia:

- promote and strengthen regional cooperation in fisheries development;
- develop, coordinate and harmonise efforts and capacities of Member States towards the conservation and exploitation of fisheries resources;
- revive the all the national economic sectors on the basis of the direct and induced impact that could result from the exploitation of fisheries resources.

In 2012, in a bid to increase its capacity and strengthen its visibility before Member States, ATLAFCO decided to restructure and overhaul its Executive Secretariat so as to position the institution as a key actor in regional fisheries cooperation in Africa.

2.4.5 Fishery Committee for the East and Central Atlantic (COPACE)

COPACE was created in 1967. Its jurisdiction overlaps with the FAO Major Fishing Area 34 (cf. map below). According to its constitution (amended in 2003), the aim of the Committee is to «encourage the sustainable exploitation of marine resources within its jurisdiction, through adequate management and development of fisheries and fishing operations». Thus, the Committee uniquely plays an advisory role and as such, it makes and gives non-binding recommendations and advice to its members, particularly on management measures[148]. Although it does not directly participate in the tuna management process, it is highly involved in that of small pelagic fish, directly related to the big ocean pelagics. The Committee is increasingly playing the role of a fisheries research coordinator in the West African region.

[146] Under an IUCN programme.

[147] www.accordsdepêche.com

[148] Not binding of they are not domesticated in national legislations.

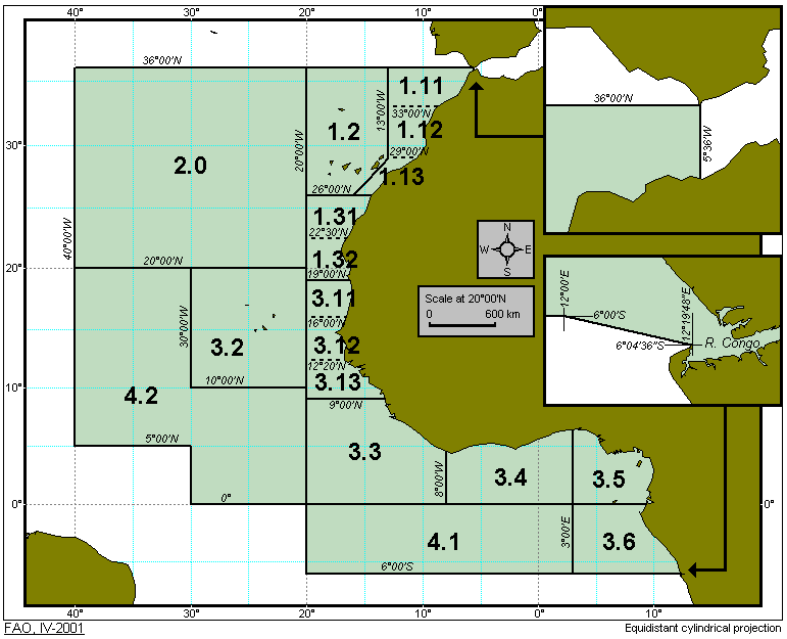

Figure 11 : FAO Fishing Area n°34

Source: FAO[149]

An independent COPACE performance evaluation, conducted in 2011, recommended that the EEZ of Angola that is within the scope of the Committee, should be geographically covered by the Committee, (since, in any case, COPACE assessments already cover it) and that this area is included within the internal confines of the national EEZs, (thus excluding international waters; COPACE, 2012).

Some countries as well as the EU, wish to strengthen the role of this RFO in the scientific expertise process regarding the stock evaluation of small pelagic and demersal species, in line with the position held by the African Union within the framework of its strategy for a Panafrican fishing policy. In this vein, to lend a binding dimension to recommendations made by COPACE, the Committee needs to change its status from an RFO to an RFMO (a fisheries management body): in addition to the support from the EU and other Member States, such a change demands the drafting of a strategy and clear time frame. Furthermore, it requires a huge amount of groundwork to convince the different stakeholders; and beyond the change in status, the issue of the financial sustainability of the organisation will have to be addressed.

2.4.6 South-East Atlantic Fisheries Organisation (SEAFO)

SEAFO is a South-East Atlantic fisheries management inter-governmental organisation. Its aim is to ensure the long-term conservation and sustainable exploitation of all types of marine resources (excluding tunas) and the protection of marine ecosystems which are home to these resources. Its area of intervention is the FAO Major Fishing Area 47, excluding the EEZ of coastal States in the region (cf. figure below). The organisation comprises a commission, scientific committee, committee to enforce compliance with standards as well as the organs of the Secretariat.

[149] www.fao.org

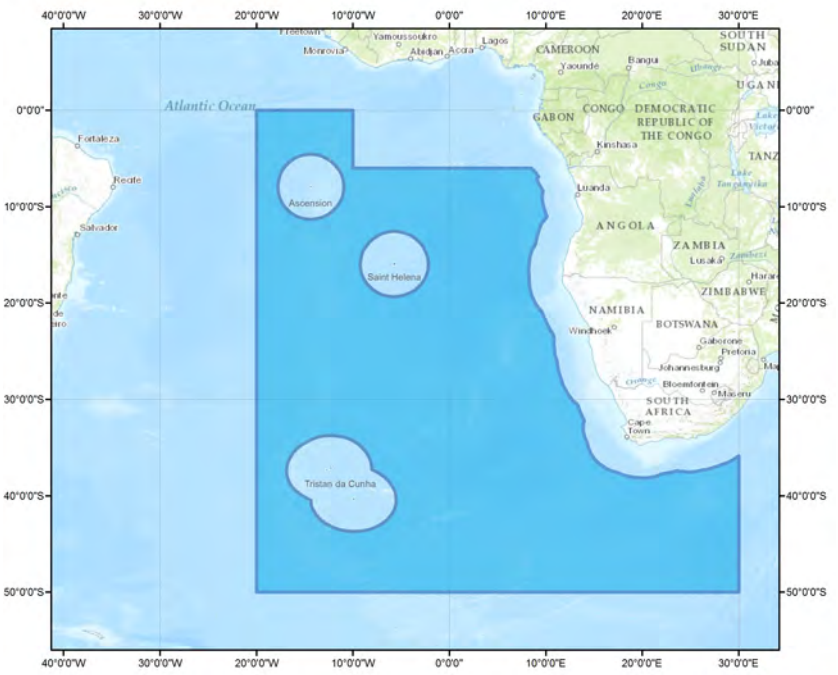

Figure 12 : SEAFO's jurisdiction

Source: FAO[150]

2.4.7 African Union Initiative for the Coherence of Fisheries Policies

At the continental level, the African Union intends to improve the coherence in the management of fisheries on the Atlantic coast. In 2012, it initiated discussions to define a framework that is conducive for coherence in African fisheries policies as well as for the drafting of a Panafrican fisheries policy (AU, 2012). The said framework should enable the harmonisation of various levels of management in fisheries management, from national to international levels. It is completed by a strategy to reform the African fisheries through an African Fisheries Partnership (AFP) within the technical arm of the AU, the New Partnership for Africa's Development (NEPAD)[151].

2.5 National Fisheries Management Framework

Some African countries bordering the Atlantic Ocean, have a fisheries management framework, namely, a fisheries policy and management plans (cf. table below). Once the framework is in place, they can subsequently include new international legal instruments, especially action plans to fight IUU fishing, overcapacity or port measures. In addition to these measures that are drawn from a strictly national background or a national domestication of international instruments (national action plans), there are those issued by ICCAT on tunas. As such, you will find that a number of national and regional measures are applicable in the EEZs of coastal States.

Many national legal frameworks, especially the Fisheries Act, were enacted before the Code of Conduct and the major international fisheries treaties. They are therefore ill suited to accommodate innovative and modern provisions enshrined in these instruments. Recently adopted legal frameworks (post 1995), are more likely to incorporate the main provisions of the Code of Conduct, FAOCA and UNFA. And yet, no updating has been done since the PSMA was opened for signing.

[150] www.fao.org

[151] Ultimately the AU may act as coordinating body for fish management on the continent. The ORP (CSRP, CPCO and COREP) will become regional surveillance centres, while COPACE will be in charge of scientific evaluation of small pelagic and demersal species.

Table 10 : National Fisheries Policy Framework and the Adoption of Plans of Action (as a reminder)

	Fishing Policies	Fisheries Act	National Plans of Action		
			IUU	Capacity	Sharks
Morocco	√	1973 (2011)	√	√	√
Mauritania	√	2000 (2007)	√	No	No
Cape-Verde	√	2005	No	No	No (draft)
Senegal	√	1998	No (draft)	No	√
Gambia	√	2007	√	No	No
Guinea-Bissau	No (draft)	2011	No	No	√
Guinea	√	1995	No	No	√
Sierra Leone	√	1994	No	No	No
Liberia	No	1976	No	No	No
Côte d'Ivoire	√	1986	No	No	No
Ghana	No (draft)	2002	No	No	No
Benin	√	1973	√	No	No
Togo	√	1998 (under review)	No	No	No
Nigeria	-	1992	-	-	No
São Tomé and P.	√	2001	No	No	No
Cameroon	No	1994	√	No	No
Equatorial Guinea	√	2007	No	No	No
Gabon	√	2005	No	No	No (draft)
Congo	No (draft)	2000	No	No	No
DR Congo	No (draft)	1937 (under review)	No	No	No
Angola	-	2004	No (draft)	-	-

Source: Failler P. and G. Hosch (2012)

Given the fact that ICCAT's regulatory framework is generally stricter or more detailed than that of the West African countries, the fleets of ICCAT Member States are *de facto* in compliance with national legislation. Sometimes, however, national provisions are stricter or remain in force nationally although they have repealed at the ICCAT level[152]. National authorities can use these legal provisions, which are often unknown, against operators and if necessary, apply sanctions.

2.6 Opportunities and Challenges in Developing Regional Agreements

To begin with, the opportunity of negotiating regional agreements, falls directly in line with AU's current vision vis-à-vis fisheries management, which consists of applying the principle of subsidiarity. The most appropriate decision-making level, defined on the basis of the geographical distribution of a targeted species, is therefore that towards which the decision-making organs should lean. Without delving into details, the level moves from the national or binational (for the majority of demersal species[153]), to the sub-regional (small pelagic species) to the regional (tuna and tuna-like species). The prerogative of negotiating and managing agreements should be incumbent on an organisation created at the ideal level. While sub-regional fishing organisations (SRFC, CPCO and COREP) can play a part with regard to demersal species and even more, for small pelagic species, apart from ICCAT, only ATLAFCO has a mandate across the Atlantic coast, without necessarily having any

[152] This the case in Côte d'Ivoire where Article 1 of Order n° 141 of March 19, 1970 on tuna fisheries regulations impose a maximum weight for tuna caught, landed or transhipped in Ivorian waters yet ICCAT does not have resolutions and recommendations that explicitly mention the minimum size of the yellowfin, bigeye or skipjack tunas. The Order is still in force in Côte d'Ivoire, since SICOSAV, responsible for the sanitary and hygiene conditions of fisheries products uses it, although it is not systematically applied (cf. Evaluation Report of the EU-Côte d'Ivoire FPA).

[153] Some demersal species stocks are shared between two, but rarely among three countries.

powers when it comes to management[154]. Consequently, there is an organisation in charge of managing tunas alongside a ministerial organisation to strengthen cooperation in fisheries development (cf. respective mandates above). In addition, for a couple of years now, ATLAFCO has been transmitting information from African countries to ICCAT and vice versa[155]. It organises preparatory meetings prior to each annual ICCAT meeting, thereby allowing for the definition of common positions on a number of points[156]. However, since Morocco is not part of the AU, this could be a hindrance.

An additional opportunity is the relative good health of the bulk of tuna stocks. This means that the tuna vessels will want to continue fishing in the South-East of the Atlantic Ocean in the years ahead. The EEZs of coastal countries will therefore preserve their present attractive potential. The demand for access to resources, is not going to decline as was the case with demersal fish.

The first challenge that needs to be addressed is the current lack of political will to entrust the management of fisheries agreements to a sub-regional organisation. Meanwhile, no country can claim any property rights over migratory and transboundary resources, whatsoever. There are two reasons for this. First of all, the coastal countries believe that they enjoy many more advantages in negotiating individually rather than collectively, through the intermediary of a supra national organisation. Secondly, they are convinced that in this manner, they have control over what is happening in their EEZs, even if the MCS resources of virtually all countries are insufficient for such coverage.

The second significant challenge stems from the absence of a binding legal framework. Although Article 62 of UNCLOS defines the access modalities of foreign vessels into the EZZ of a coastal country for resources it is in charge of managing and their optimal use, Article 63, addresses transboundary resources, and Article 64 pertains to highly migratory fish species, they are silent on the manner in which coastal countries and distant-water fishing nations should agree on regulating access of vessels into national EEZs. Nevertheless, this legal vacuum should not be a pretext for passivity. Concerning this specific issue, countries in the Pacific have organised themselves within the framework of the Parties to the Nauru Agreement (PNA) laid out within the Palau arrangement (access modalities for foreign vessels into the EEZ of Member States) and that of the Federated States of Micronesia (defining access modalities into EEZs of various member States to vessels of other Member States). While the West and Central Pacific Fisheries Commission (WCPFC)[157], the equivalent of ICCAT, issues scientific opinions and makes recommendations on management, PNA is in charge of allocating allowable fishing efforts among Member States, expressed in fishing days[158] (vessel day scheme). It is left to them to grant these rights to foreign vessels within their EEZs or to allocate them to their national fleets. Access to foreign vessels to operate within EEZs of Member States stands at USD 8,000/day since the beginning of 2015 (it was previously at USD 5,000/day). Political will is the tool that will overcome the two main challenges mentioned above.

[154] COPACE covers only FAO Area 34 and SEAFCO covers FAO Area 41 without the EEZs of coastal countries.

[155] Thanks particularly to the Japanese Fisheries Fund which enables funding of ATLAFCO activities.

[156] In addition to understanding the stakes, the aim is to better defend the respective positions of coastal countries.

[157] See : http://www.fao.org/fishery/rfb/wcpfc/en

[158] Until 2013, the allocation of the fishing effort was done by the number of vessels.

3 Recommendations

3.1 Institutional Needs

Institutional needs go beyond the threshold of simply improving capacity in the negotiation of fisheries agreements (as stated above in Section 1.10). They cover the national fisheries management system in its entirety. Research centres in virtually all countries bordering the Atlantic Coast are ailing on account of aging staff and insufficient budgetary allocations to accomplish the tasks expected of them (tasks assigned back in the 1980s, at the time when they were assisted by scientific foreign aid agencies from several countries[159]). On the whole, fisheries administrations are grappling with more or less the same challenges. Cooperation projects and programmes are increasingly carrying out the work that should naturally be done by the national administrations (MCS, registration of vessels, creation of protected areas, etc.).

In this context, as opposed to what happened in the past, it is therefore difficult to imagine that organising workshops to train senior fisheries administration staff in negotiating skills would be the best manner to handle the issue of fisheries agreements, without addressing the issue of the efficient exploitation of water resources in the EEZ of each coastal State[160]. At the time, improving negotiating skills was viewed as a way of securing the fairest prices for the resources. And yet, in the absence of in-depth analyses, be it of activities by national or foreign fleets and their reciprocal advantages and disadvantages, no contextualisation is possible, and worse still, a definition of what constitutes a fair price. In other words, it was and is still impossible to imagine the format and substance of a fair agreement. As a result, for as long as the Parliament of each coastal State does not demand for an evaluation of the current protocol to obtain the authorisation to launch negotiations for a new one, no change in the attitude or practices of coastal States should be expected. Consequently, the first institutional need is to generate, in each coastal State, an institutional and regulatory framework that is binding, to ensure that the agreements are part of the strategy for the exploitation of fisheries resources under their jurisdiction.

The second institutional need is the creation of an AU Group of Experts with the mandate of advising coastal States during negotiations on fishing agreements. It will be composed of experts from the fields of environment, but especially economics and law. In addition to intervening at the very start of the negotiation process, (support in conducting diagnostic studies, projections including an assessment of the environmental, economic and social viability[161] of possible options) and during the negotiations (examining the various aspects of draft agreement), such a group will be responsible for conducting the on-site training of a number of persons, involved either directly or indirectly in the negotiations, and drawn from research centres and administrations. Lastly, some work in terms of periodic follow-up on each protocol will be organised by the Group of Experts. The creation of such a working group will therefore have the advantage of enabling each coastal State to have concrete support in the management of agreements, in the short term, and the development of human resources in each country using practical case studies, in the medium term.

The third institutional need involves applying the principle of total transparency vis-à-vis fisheries agreements. On this score, the AU can act as a catalyst towards the institution of simple mechanisms for the publication of all information concerning fisheries agreements in each State. For its part, and as was done by São Tomé and Principe, each country could publish the nominative allocation of fisheries, as well as the cost of fishing licences on its official Government website.

[159] Notably from ORSTOM (subsequently known as IRD).

[160] By taking the pains to carefully assess the positive and /or negative contribution of each fleet towards the health of the marine ecosystems (especially fishing practices and equipment used), to the welfare of the populations (local market supplies) and to the national economy (wealth creation, particularly value added and employment).

[161] Expressed in the cost/benefit concept of fishing activities towards society. The term society here covers the environmental, economic and social dimensions by referring to what society as a whole will obtain as benefits or costs, once vessels are operating in a fishing area (See: http://www.ird.fr/ecostproject/doku.php?id=ecost&do=backlink).

The fourth need, which may be met by sub-regional fisheries organisations, has to do with harmonising national legislations so as not to only lift legal obstacles to the putting in place of common measures across the sub region, but above all to develop common management tools. The example of transhipment at sea, that is authorised by some States[162], and prohibited by others, considerably curtails the joint capacity of African States in the fight against IUU fishing. The same holds when it comes to MCS where the absence of harmonised national legislations undermines every serious national initiative in the fight against IUU fishing and automatically, the promotion of responsible fisheries.

It is therefore a matter of exploring different avenues in order to increase the intervention capacity of countries in fisheries management and, by so doing, their capacity to negotiate and follow up fisheries agreements.

3.2 Draft Framework for Operations for the Development of Regional Agreements

Drafting a framework of operations for the development of regional agreements consists, first and foremost, of clearly stating the facts on their nature, namely the objectives, content and format. Their objectives, as stated above, should focus on a fishery resource for which no country lays any specific sovereignty claims, and only tunas fall in this category. Their content and format go hand in hand and may be defined using the principle of preferential treatment for access to tuna resources. The more a fleet contributes to the socio-economic growth of coastal States[163] while having a minimum destabilising effect on the entire ecosystem[164] (societal cost/benefit concept), the more it benefits from a reduction on the entry price. As such, there can be different types of agreements, ranging from the simple free license, to the multilateral public agreement[165]. The case of chartering and joint ventures (incomplete sentence in the French text)

The allocation of fishing rights may be approached from two different angles (with variants). The first has to do with relying on the prevailing practice in the Pacific Ocean, namely an allocation of fishing efforts between parties to the convention (and it is left to them to in turn allocate parts or all this effort to foreign fleets according to the daily fishing mechanism (DFM) at a price agreed upon by all the parties. The second consists in using a mechanism for the allocation of efforts (DFM or another one for catches made accompanied by a single or gradual payment schedule) to establish some accountability in fishing efforts by foreign ships in the EEZ of each coastal State by so doing, to pay dividends to each coastal State. It is still too early to talk about the pros and cons of these two mechanisms (others may be added). An in-depth analysis of various options should be undertaken, as part of the process to give agreements a regional dimension.

Furthermore, this will entail defining a work plan as proposed in the table below.

[162] See the recent report of *Transparent Sea* : http://ejfoundation.org/sites/default/files/public/ejf_transhipments_at_sea_web_0.pdf

[163] Developing the fishing sector (more jobs on board), managing fisheries (observers, scientists), improving the food coverage, job creation on the mainland without forgetting (incomplete sentence in French text)

[164] As a result of environmentally friendly fishing practices.

[165] Bilateral public agreements will be modified into public multilateral agreements.

Table 11 : Draft Work Plan

Action	Time Frame	Comments	Partnership for its implementation
Government resolution for the implementation of regional agreements	2016	Translate the political will of AU Members States into a resolution in order to launch the process of signing regional agreements	AU and Member States
Harmonisation of national regulatory frameworks	2016-2018	Fulfil a number of requirements including the harmonization of national legislations and developing a concerted framework for intervention (MCS)	Three sub-regional fisheries committees and ATLAFCO
Establishment of an AU Group of Experts on fisheries agreements	2016 (activities from 2016 to 2018)	The Group of Experts will lead all activities towards implementing regional agreements. Its first task will be to conduct a societal cost/benefit assessment of fishing fleets in operation (2016). Its second task (alongside the first) will be to study the feasibility of managing regional fisheries agreements through an organization like ATLAFCO (or another, created specifically to that end) in collaboration with ICCAT (scientific component and global management of resources). Its third task will be to study access modalities and submit a proposal on joint organisation.	AU-IBAR and all stakeholders (fishing countries, vessel owners and coastal States).
Decision by AU Member States on implementing regional agreements	2018/2019	Approval of the institutional set-up and the technical and financial modalities.	AU and Member States
Development of regional agreements	2019	Negotiation and management (monitoring, evaluation) of regional agreements.	Body in charge of managing regional agreements

Source: Consultant

Technical and calendar modalities may be defined with more precision, once the political decision to move forward has been taken. However, in the interim, it may be worthwhile to produce a number of background documents in order to federate the idea of regional agreements. For example, it may just be the right time to present a succinct review of the societal cost/benefit ratio concept of some fleets, a draft technical, legal and institutional feasibility study of the creation of an organisation to manage regional fisheries agreements - all in a bid to illustrate how important it is, to embark on this path. The activities described in the table above, will subsequently be fleshed out.

4 References

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