



WWF

REPORT

EU

NOVEMBER
2019

THE STATUS AND FUTURE

OF SUSTAINABLE FISHERIES
PARTNERSHIP AGREEMENTS IN
THE SOUTH WEST INDIAN OCEAN

Report for WWF prepared
by Stop Illegal Fishing (SIF)



Acknowledgements

This report was written by Stop Illegal Fishing (SIF) in cooperation with the World Wide Fund for Nature (WWF)

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We would like to thank Marcel Kroese (WWF) and Manuel Castiano (WWF) for their comments on the report.

Funding for the preparation of this report was provided by the Norwegian Agency for Development Cooperation (Norad) for the "Sustainable Fisheries – Supporting Livelihoods, Equity, and Ecosystems in South Western Indian Ocean Communities" project.

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Published November 2019 by WWF EPO.

Front cover photograph: © Kyle LaFerriere / WWF-US
Design by www.dougdawson.co.uk
Printed by Zwartopwit, Belgium



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EXECUTIVE SUMMARY

The South Western Indian Ocean (SWIO) is located off the eastern coast of Southern Africa. The geographical and socio-economic context of the SWIO has shaped the development of both its local fisheries and international agreements, granting access to foreign fishing vessels to fish in their waters.

The Indian Ocean's tropical climate supports abundant near-shore fisheries that are mainly accessed by local fishers to meet national seafood demand, while its nutrient rich offshore waters are home to around 19% of the world's total tuna production.¹ After the Western and Central Pacific Ocean, the Indian Ocean is the second largest region in the world for tuna fishing. Around 400 to 500 industrial fishing vessels originating from Asia and Europe track and catch tuna both inside the exclusive economic zones (EEZs) of the coastal States and in the high seas beyond any single State's jurisdiction.

Since the late 1980s, the European Union (EU) has entered into bilateral fishing agreements with countries in the SWIO. These bilateral agreements, negotiated and concluded by the European Commission (EC) on behalf of all EU Members States, have evolved to become Sustainable Fisheries Partnership Agreements (SFPA). SFPAs sit within the framework of the external dimension of the EU's Common Fisheries Policy (CFP) and enable EU vessels to fish surplus stocks in the partner country's EEZ within an agreed framework of cooperation.

For SFPAs to continue to create mutual benefits for the coastal States and the EU within the changing dynamics of global fisheries, there are some challenges to overcome. These include an improved system for reporting what has been caught, better information transparency, and stronger links to the Indian Ocean Tuna Commission (IOTC) conservation and management measures (CMM).

This report outlines the SFPA mechanism and details the opportunities available to the EU and countries in the SWIO to improve their SFPAs. Alternative solutions which could be adopted in the future are also explored, such as the possibility of a regional SFPA or incorporation of broader ocean approaches, to embrace the development of sustainable blue economies within the region.

SFPAs, when transparent and well-managed, can benefit both the EU and the coastal State. To secure the future of fair and equitable SFPAs in the SWIO, the recommendations presented in this report must be taken on board in future SFPA negotiations.

1. FAO Statistical Database 2019



RECOMMENDATIONS FOR HOW TO IMPROVE SFPAs IN THE SWIO INCLUDE:

- ✓ Improve the system for EU fishing vessels to report their catches to coastal States under SFPAs, enabling coastal States to monitor fishing activities more effectively, evaluate catches and manage their fisheries;
- ✓ Increase transparency in the negotiation of SFPAs, by involving civil society and relevant regional organisations;
- ✓ Increase transparency on all access agreements made by coastal States, both public and private;
- ✓ Ensure figures used in SFPAs are relevant and credible by ensuring that the number of vessels covered is realistic, the amount available to catch is consistent with IOTC CMMs and scientific evidence, and the price per tonne is based on reasonably expected first sale values;
- ✓ Develop mechanisms, where possible, to enable fishing within disputed areas without jeopardising the resolution of the dispute or creating any other adverse effects;
- ✓ Increase the focus of SFPAs sector support to coastal States towards implementing their national development policies and strategies, including for catching and processing, with an aim to improve social and economic benefits from the fishery while ensuring sustainable development and exploitation;
- ✓ Increase recognition of regional and sub-regional processes and instruments, such as agreed minimum terms and conditions for fisheries access, towards maintaining long-term access for EU fishing vessels and improving the sustainable management of fish stocks; and
- ✓ Negotiate with countries in the SWIO region that do not have an SFPAs or have a dormant SFPAs, with the aim to secure wider access for the EU fishing vessels to available resources and to improve income for the coastal States.



THE SFPA MECHANISM



LEGAL BASIS

The legal basis for foreign-flagged vessels to access the fisheries resources of other States' EEZs is the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is the core of the legal framework for the ocean, which includes fisheries. It was famously referred to by Tommy Koh, then President of the Third United Nations Conference on the Law of the Sea, as a “constitution for the oceans”.² UNCLOS declares that each coastal State shall determine the amount of seafood that can be sustainably caught within its waters, together with its own capacity to exploit this catch. Where the coastal State does not have the capacity to harvest the entire allowable catch, it should grant access to other States to fish the surplus through agreements or other arrangements.³ This has widely been referred to as the “surplus principle” and has been interpreted by some to be an obligation. Others, however, disagree and consider no coastal State to be obligated to prove that there either is or is not a surplus of seafood catch in its EEZ.⁴ Obligation or not, most African coastal States permit foreign flagged vessels to fish in their EEZs as they do not have the national capacity to do so themselves.

The legal basis for the EC to act on behalf of EU Member States is Article 3 (1) (d) of the Treaty on the Functioning of the EU, according to which, the conservation of marine biological resources falls under the exclusive competence of the EU. Member States are therefore not entitled to individually negotiate fisheries agreements with non-EU countries, known as ‘third’ countries: only the EC, on behalf of all Member States, may undertake such negotiations.

The first ever European bilateral agreements on fisheries access with third countries started in the late 1970s. In 2002, the system of bilateral agreements underwent a change to become Fisheries Partnership Agreements (FPAs); this occurred at the same time as the Common Fisheries Policy reform.⁵ In 2013, they evolved into the SFPAs that are active today.⁶

An SFPA is comprised of various parts, namely **the Agreement, the Protocol and the Annexes** to the Protocol. This layered approach aims to make reaching an initial framework agreement easier, while leaving the details to be determined later. The SFPA is agreed between the Parties, which are the EU and the coastal State to which the SFPA relates.

2. A “Constitution For Ocean”, Remarks by Tommy T.B., 1982 available at: http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf
3. Article 62(2). United Nations Convention on the Law of the Sea, 1982.
4. WWF, NFDS, 2015. To prepare a technical rationale for supporting certain recommendations adopted at the regional meeting for developing Regional Minimum Terms and Conditions for fisheries access arrangements, 28th and 29th August in Maputo, Mozambique.
World Bank, 2014. Trade in Fishing Services, Emerging Perspectives on Foreign Fishing Arrangements; FAO, 1983. Report of the Expert Consultation on the Conditions of Access to the Fish Resources of the Exclusive Economic Zones. Rome. FAO.

5. Foundation Max van der Stoep, Fisheries Partnership available at https://www.foundationmaxvanderstoel.nl/wat_wedoen/development/cases/cases_item/tl/fisheries_partnership_agreements
6. Directorate-General for Maritime Affairs and Fisheries (European Commission), 2017. A transparent, coherent and mutually beneficial tool that enhance fisheries governance for sustainable exploitation, fish supply and development of the fisheries sector in SFPA partner countries. EU publications.

THE AGREEMENT

THE AGREEMENT

The Agreement sets out the scope and basic principles of cooperation, as well as the commitment to jointly monitor the application of the SFPA. The text of the Agreement is general and acts as a mechanism allowing for the adoption of more detailed arrangements in the form of the Protocol and its Annexes. An Agreement's duration is generally five to seven years and is automatically renewed unless notice of termination is given. This may result in a situation where an Agreement exists, but no Protocol is in force to implement them, in which case the Agreement is considered dormant.

The provisions of the Agreements made within SFPAs are very similar and the core elements usually include:

- Describing the Agreement scope based on economic, financial, technical and scientific cooperation in the fisheries sector. This is carried out with the view to promote sustainability and development of the fisheries sector in the third country, including responsible and legal fishing and the promotion of commercial partnerships;
- Providing for scientific (sometimes called statistical) cooperation;
- Providing that EU vessels may access the relevant fisheries under the jurisdiction of the third country, subject to acquiring a licence⁷;
- Establishing a Joint Committee which acts as a mechanism for cooperation between the Agreement Parties, including monitoring the implementation of the Agreement;
- Establishing the general framework for financial contributions by the EU to the third country. This is done in two parts: one for access and one for promoting responsible and sustainable fisheries in the third country; and
- Promoting cooperation between economic operators and civil society.

7. NB: The EU refers to fishing licences as authorisations in the SFPAs, but as they are more commonly called licences, this report uses the terminology "licence".



THE PROTOCOL

THE PROTOCOL

The Agreement is implemented by the Protocol, its Annexes and its Appendices. The Protocol contains one further degree of precision to the Agreement and, while the same matters are generally included in the Protocol for all SFPAs, the details differ. Generally, it is these details that are the main issues considered during the negotiation and they usually focus on the obligations of the EU and the third country. The duration of the Protocol is generally shorter than the Agreement, often lasting between four and six years, although these are becoming longer.

The matters addressed by the Protocol include:

- The number and type of EU vessels covered by the Protocol, generally purse seiners (PS) and surface longliners (LL), although the terminology may differ and size classes may be allocated for longline vessels;
- The amount to be paid annually by the EU in return for access to the maximum stated reference tonnage and the price per tonne for the EU;
- The amount to be paid annually by the EU in support of responsible and sustainable fisheries, normally earmarked for the fisheries and maritime policy of the third country and referred to as sector support;
- The price per tonne that the EU will pay for any additional catch above the reference tonnage;
- Elaboration of the general provisions in the Agreement regarding scientific cooperation, and the promotion of responsible and sustainable fisheries;
- Ability to adjust fishing opportunities by mutual agreement;
- Provisions covering new fishing opportunities and exploratory or experimental fishing; and
- Detail on legal framework, confidentiality and electronic data exchange.

THE ANNEXES

THE ANNEXES

The technical Annexes to the Protocol set out implementation and procedural aspects, including the EU vessel operators' obligations. The content of the Annexes varies between Protocols, appearing to depend to some extent on the legal framework which prevails at the time of negotiation and adoption.

The main areas covered by the Annexes generally include:

- Fishing licence requirements, including advance payment or annual fees based on a price per tonne (which usually differs from that of the EU) and a vessel reference tonnage;
- Pre-licensing conditions (which vary);
- Details on supply vessels for the purse seine vessels and annual licence fees;
- Details on/description of fishing area, which may be a complex issue as many maritime boundary disputes exist in the SWIO;
- Detail on vessel monitoring systems (VMS) and catch reporting systems;
- Requirements for transshipment and landing;
- Requirements to embark local seamen or, failing this, to pay a fee;
- Requirements to embark observers; and
- Other monitoring, control and surveillance (MCS) requirements, including entry and exit reports and inspections.

Following the Annex, there may be a number of Appendices, common among which is a fishing licence application form. As with the Annex, there is significant variance between Protocols in terms of the Appendices, with some Protocols containing only a few (including logbook sheets and reporting requirements) while others have up to nine.



KEY ELEMENTS

In the SFPA, there are some key elements that are used both for negotiation and implementation.

Reference tonnage

The reference tonnage is the principle medium used in the Protocol to calculate the annual advance payment made by the EU to the coastal State in connection with the price per tonne. The reference tonnage can be seen as the anticipated annual catch for all EU vessels fishing under the Protocol. It does not represent a quota or a limit on catch, nor is it necessarily linked to sustainable fishing practices. This lump-sum payment is guaranteed each year.

Payments for total catches above the reference tonnage are paid pro-rata at the agreed price per tonne, up to a limit of twice the reference tonnage in any given year, with the provision for further payments to be deferred to the following year(s) if the catch exceeded double the reference tonnage in a single year.

Vessel reference tonnage

The term reference tonnage is also used at the vessel level and can be referred to as the vessel reference tonnage (VRT). The VRT is used to calculate the advance payment (i.e. licence fee) made by the vessel owner to third country national authorities to cover catches up to the level of the VRT, which is calculated by multiplying the price per tonne for the vessel owner (which is different from the EU price per tonne) with the VRT. As with reference tonnage, if an individual vessel fishes the total VRT, this would be topped up with further payments at the vessel owner's price per tonne for the extra tonnes caught.

Number of vessels

A maximum number of EU vessels, usually a combination of purse seine and longline vessels, is agreed in the Protocol. For the longline vessels, this may be divided into size categories as below or above a certain gross tonnage (GT).

Price per tonne

A price per tonne of raw fish is negotiated and agreed, often varying per year and set in Euros. The price is divided between the EU and the vessel owners. This is required to calculate the advance payment made by the EU and the vessel owners in combination with the reference tonnage and the VRT. The price per tonne does not take into account the composition of species being targeted for catch.

Sector support

Within the SFPA, there is a financial contribution called 'sector support', which is used to support the fisheries and/or ocean sector and its development in the region. The activities are agreed by the Joint Committee and they are intended to provide useful support for countries to implement their national development strategies or plans in the fisheries and ocean sectors.

NEGOTIATION

The process to agree on the content of the SFPA, beginning with the Agreement and followed by the Protocol and Annexes, is called the negotiation. This takes place between the government of the third country and the EC and may take place over several months or years during different negotiation sessions.

For the EC to be mandated to negotiate on behalf of the EU for an Agreement and Protocol with a new third country, or for a Protocol with an existing third country, EU legislation requires that ex-post and ex-ante evaluations be made before a negotiation request is made. Based on those evaluations, the EC makes a recommendation to the European Council, which then decides whether to give the EC a negotiating mandate to represent the Member States in negotiations with the coastal State to reach an SFPA.⁸

The ex-post and ex-ante evaluations are prepared by independent consultants under the close supervision of the EC and are guided by the Council Conclusions of 19 March 2012. The Conclusions set out the principles and standards that apply to SFPAs, including long-term fisheries sustainability, as well as negotiating bilateral and multilateral agreements. They require the ex-post and ex-ante evaluations to provide adequate information for an assessment of the environmental, economic and social impact of an SFPA to take place. They also include an assessment of the opportunities for sustainable development of the fisheries sector and of the requirements to establish responsible fishing by the concerned coastal State.

The evaluation reports are transmitted to the European Parliament and the Council; according to the 2012 Council Conclusions, these must be made available to the EU Member States in good time before the decision authorising the EC to open negotiations is adopted. They must also be made public, usually on the relevant EU website, sometime after the recommendation to proceed with a negotiation is made. The evaluations include consultations with representatives of the EU fishing industry and interested non-governmental organisations (NGOs), both collectively as members of the Long Distance Advisory Council and separately as individual consultative bodies. The evaluation usually includes a visit to the third country for consultations with members of the fisheries sector, the national fisheries administration and NGOs.

Once the negotiating directive is provided, the EU and the third country prepare their negotiating position. The EU will have preparatory meetings with EU stakeholders, particularly representatives of fishing industries, NGOs and EU Member States. Third countries will usually prepare for the negotiation by calling preparatory meetings between their different Ministries and departments, such as foreign affairs, fisheries and trade, as well as with the fishing industry. In some third countries, there are processes for engaging with NGOs and other stakeholders, and for preparing studies or reviews to inform the development of the negotiating position. National processes vary considerably between countries, influenced by national governance processes and past experiences negotiating SFPAs or other access agreements.

The formal negotiation is usually held over several sessions or meetings until the final text of an Agreement and/or Protocol and Annexes are agreed. A negotiation may be suspended if no mutual ground for conclusion is found; it may later be reopened if agreed by both Parties.

8. Article 31(10), European Union, Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.



IMPLEMENTATION

The implementation of an SFPA is provided for in the SFPA itself, primarily in the Protocol. While wording in the Protocol is usually similar between SFPAs, each Protocol is specific to a given Agreement. All Protocols require certain steps to be taken by the EU and the third country respectively, while other steps are to be completed jointly. With regard to steps that are to be undertaken jointly, these may include:

- Implementation of sector support;
- Promotion of responsible and sustainable fishing;
- Scientific cooperation;
- Review of fishing opportunities; and
- Exploratory fishing or new fishing opportunities.

The Joint Committee, established under the Agreement, is the key mechanism through which joint implementation actions are to be undertaken, although the exact activities a Joint Committee is tasked with varies between SFPA Protocols.

One of the individual steps the EU must complete is to transfer the annual contribution agreed under the Protocol for both access and sector support.

The acquisition of fishing licences is the prerogative of vessel owners/operators, and they are under no obligation to do so.

Third countries are required to receive and process any licence applications made for EU vessels, and to issue licences where appropriate.

EU FISHING VESSELS IN THE SWIO



TUNA FISHING VESSELS

Tuna is generally caught by purse seine or longline vessels in the SWIO, although some pole and line vessels also operate in the region. Based on IOTC reports for the Indian Ocean region, EU-flagged⁹ fishing vessels are responsible for around 57% of the total catch taken by purse seine vessels and around 7% of the longline vessel catch.¹⁰

There are around 50 **purse seine vessels** operating in the SWIO, which is a decline from a high of 68 vessels recorded in 2005. Today, around 27 of these are flagged to EU Member States. Skipjack and yellowfin tuna are the two main species caught by EU purse seine vessels (making up around 90% of total catch), together with some bigeye and albacore tuna.¹¹ Purse seine vessels rely heavily on fish aggregating devices (FADs) and mainly operate from and unload their catch in Port Victoria in the Seychelles.

There are an estimated 400 **industrial freezer longline vessels** operating in the SWIO, predominantly flagged to Taiwan, Seychelles and China, with around 50 longline vessels flagged to the EU. They target bigeye tuna, some yellowfin tuna, swordfish and sharks. The main operational port is Port Louis, Mauritius.

COMPARISON OF ACCESS CONDITIONS

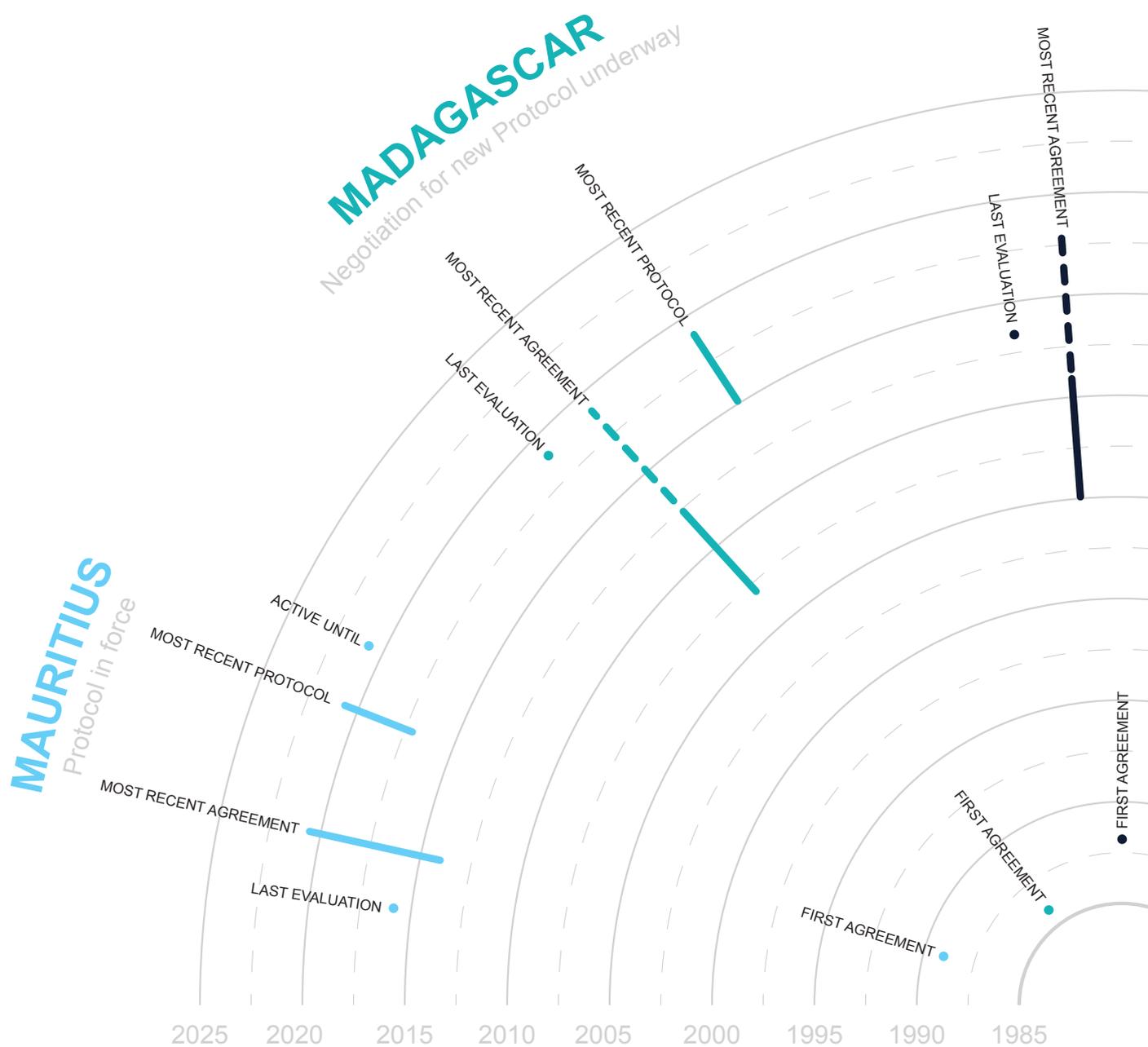
A comparison of the most recent Protocols is given in the map on pages 20-21. It details the Protocol's duration, the maximum number of fishing vessels permitted to fish under the Protocol, the EU's annual contributions, the reference tonnage, the VRT and the price per tonne for tuna caught.

While the frameworks and elements included are similar, it is evident that the Seychelles Protocol is by far the most significant in terms of reference tonnage at 50,000 tonnes per year. Madagascar is the second most noteworthy SFPAs with 15,750 tonnes (although this Agreement is not currently active), while Mauritius holds the smallest Protocol at 4,000 tonnes per year. The relationship between the number of vessels covered, the EU contributions, the vessel owner's contribution, the reference tonnage and VRT are discussed in the following chapters.

9. NB: In this report, "EU-flagged" is used to imply a fishing vessel flagged to one of the EU Member States.

10. Calculated using the 2017 figures from the IOTC online query service, available at <https://iotc.org/oqs>

11. European Union, 2018. National Report to the IOTC Scientific Committee (SC), IOTC-2018-SC21-NR05_Rev1.



KENYA

SFPA: NONE
 LAST EX-ANTE EVALUATION: FEBRUARY 2014
 STATUS: NO SFPA, NO NEGOTIATION

TANZANIA

SFPA: NONE
 LAST EX-ANTE EVALUATION: FEBRUARY 2014
 STATUS: NO SFPA, NO NEGOTIATION

SOMALIA

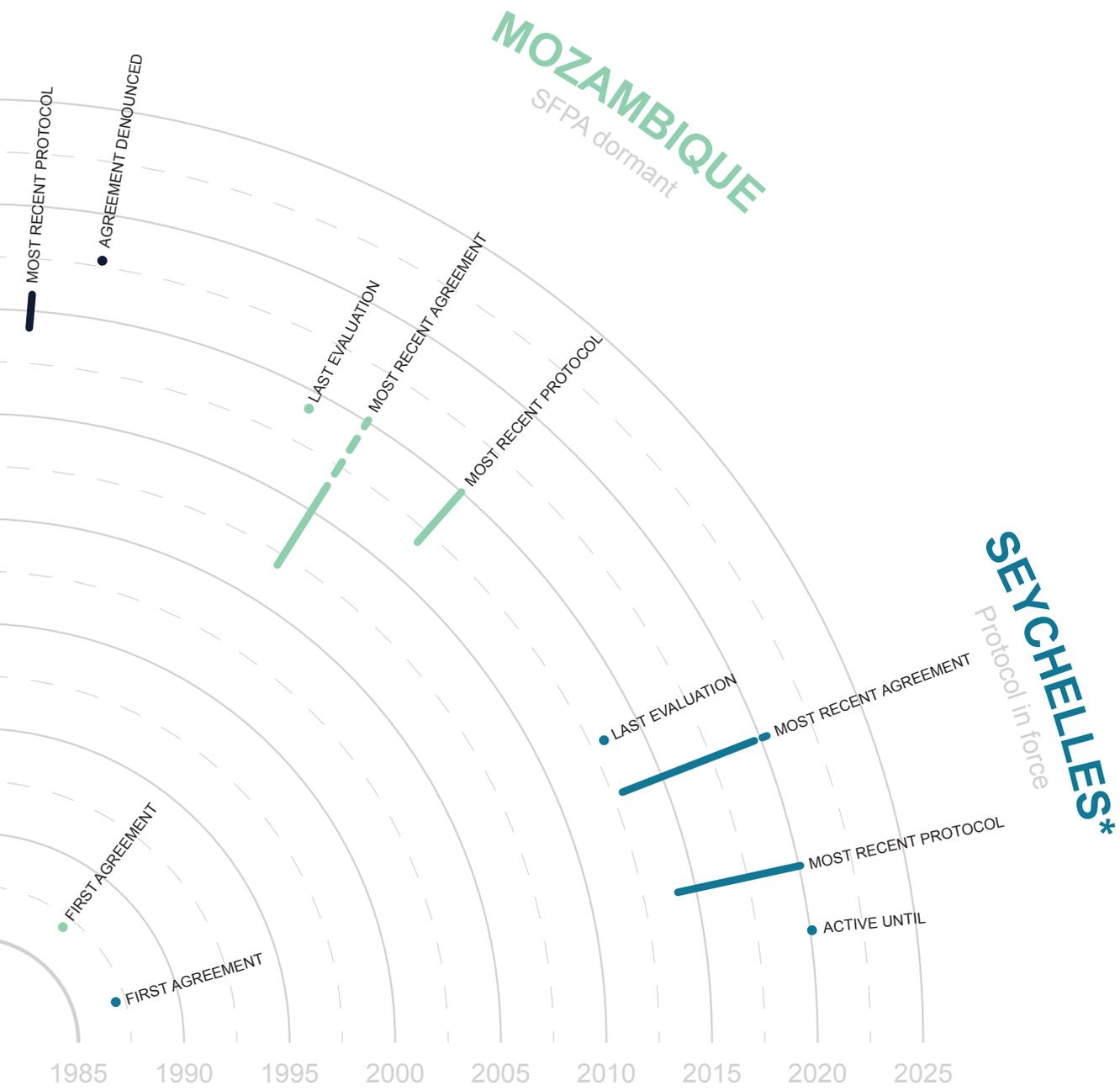
SFPA: NONE
 LAST EX-ANTE EVALUATION: NOT DONE
 STATUS: NO SFPA, NO NEGOTIATION

*The main study behind the data presented in this report was completed in June 2019; on 22 October 2019, the EU and Seychelles concluded negotiations for a new SFPA and a new Protocol for the next six years.



ROS

May 2018



ACCESS BY EU FISHING VESSELS TO SWIO COASTAL STATES' EEZs

The first bilateral fisheries agreement between the EU and a country in the SWIO was with Madagascar in 1986, followed by agreements with Mozambique and Seychelles (1987), Comoros (1988) and Mauritius (1989). Within the SWIO, only tuna SFPAs are in place with the EU; there are no multi-species Agreements. The current status of SFPAs with the SWIO countries, in alphabetical order, is:

Comoros

The last Protocol between the EU and the Comoros expired on 31 December 2016. Negotiations for its renewal were concluded in March 2016. As a result of the illegal, unreported and unregulated (IUU) fishing practices relating to the Comoros at that time and with the Comoros being listed as a non-cooperating country in the fight against IUU fishing activities in the Council Decision 2017/1332 of 11 July 2017, the EC did not seek a conclusion of the legislative procedures related to a new Protocol. EU-flagged vessels, therefore, have not been permitted to operate in Comorian waters since 1 January 2017. The Agreement was the first ever to be denounced by a European Council Decision, which occurred in May 2018.

Kenya

Although no bilateral Agreement has been concluded with Kenya, informal communication between staff from the EU's Directorate-General of Maritime Affairs and Fisheries (DG MARE) and officials from Kenya took place on the fringes of the annual IOTC meeting in May 2013 and indicated that Kenya was interested in a possible Agreement with the EU. Following this, an ex-ante evaluation was prepared in 2014 to assess the benefit and value in progressing with negotiations. Although the evaluation was positive, to date, there has been no request to the European Council to begin a negotiation. Kenya has issued direct licences for up to 27 EU purse seine vessels to fish in their EEZ in recent years, but very few have taken up this opportunity, possibly due to piracy risks from Somalia.

Madagascar

The first bilateral fisheries agreement was in 1986 and seven Protocols were applied between 1986 and 2006. A new SFPA came into force in 2007 for a period of six years and has had two Protocols, the latest being from January 2015 to December 2018. In anticipation of the end of the Protocol, on 25 April 2018, a proposal recommending a Decision from the European Council to open a new negotiation for an SFPA with Madagascar was submitted by EC. This negotiation is currently underway but faces challenges such as the recent elections in Madagascar and the consequent readjustments occurring within the government. The negotiation is taking place under close scrutiny by civil society groups, which are requesting both Parties for greater transparency and more cooperation with civil society groups. The next round of negotiations is anticipated for the beginning of 2020.

Mauritius

Mauritius and the EU concluded their first bilateral fishing agreement in 1989 and the relationship continued uninterrupted until the expiration of the 2003–2007 Protocol. Following this, due to a lack of common ground between the two Parties on an acceptable Agreement, there was a period when EU vessels obtained private authorisations from Mauritius to fish within its EEZ. In 2011, exploratory talks began, leading to a new Agreement and Protocol being concluded in February 2012. This was followed by a Protocol from January 2014 to 2017, which has since been superseded by a Protocol signed on 26 April 2017 for four years.



Mozambique

The first bilateral fisheries agreement was agreed in 1987, but there have since been periods when EU fishing vessels operated in this EEZ on private licences. More recently, there was a Protocol from 2007 to 2011; the latest Protocol was from 2012 to January 2015. In September 2014, the EU and Mozambique met in Maputo to launch the negotiation for the renewal of this Protocol before it expired; however, the negotiation was hampered by challenges and, to date, no new text has been agreed. In early 2019, Mozambique's Minister of Fisheries was reported to have said that the negotiation stopped due to a lack of agreement on transparency clauses which would enable Mozambique to improve the monitoring of catches by EU vessels. In late 2018, the Minister said that the EU wished to reinitiate negotiations and that Mozambique was open to resuming them as well.

Seychelles*

The first bilateral fisheries agreement was signed in 1984 and there were a series of successive Protocols from 1987 until 2006. In 2005 and 2006, negotiations began and an SFPA was agreed and took effect from 2 November 2007. A Protocol was then put in place for three years for the period of January 2011 to January 2014; this was superseded by a new Protocol from January 2014 to January 2020. In the Protocol from 2011 to 2014, there is an interesting key difference to most Protocols in that a flat rate fee was payable for purse seine vessels by the vessel owners to the Seychelles authorities for licences to fish, instead of the usual advance payment and price per tonne. The normal system of an advance and a price per tonne was reincorporated into the Protocol from 2014 onwards. The Seychelles Protocol is by far the largest in terms of tonnes of fish and payment value in the SWIO (see map on pages 20-21).

Somalia

Somalia has a highly productive EEZ, which formed a thriving fishery in the past. In recent decades, due to civil conflicts, there were few remaining fishing vessels operating legally in Somalia. However, following internal agreements, the Federal Government issued tuna licences for the 2019 fishing season to 31 Chinese longline vessels to operate in the Somali EEZ. Although no purse seine vessel owners have yet acquired licences, Somalia held informal consultations with potential stakeholders in May 2018 in the side-lines of the IOTC annual meeting in Thailand; these meetings included EU industry vessel representatives for both EU-flagged vessels and EU-operated but Seychelles-flagged vessels. Based on historical fishing experiences, there is a potentially high level of interest from EU vessel owners to fish in Somali waters, if issues of safety and security can be overcome.

Tanzania

Tanzania has not had a bilateral Agreement with the EU, but in the 2013 IOTC meetings they expressed interest in such an Agreement. An ex-ante evaluation was prepared in 2014 to assess if there was benefit and value in progressing with negotiations. Although the evaluation was positive, there has been no formal negotiation request to the European Council to date. Tanzania licenced up to 27 EU vessels to fish before 2016 and one vessel obtained a licence in 2017, but reportedly did not fish in Tanzanian waters. Since then, no EU vessel owners have taken licences, reportedly due to the local licencing conditions. Of particular concern for vessel operators are the requirement for pre-fishing inspections, the need to have local observers and local crew on board, the requirement to offload bycatch in a Tanzanian port and the financial requirements such as a levy per tonne of fish caught in addition to the licence fee.

SFPAs IN THE SWIO

MAURITIUS

Dec 2017 – Dec 2021

Vessels covered

40 Purse Seine | 45 Longline

EU contribution for annual access

€220,000

EU contribution for annual sector support

Fisheries policy: €220,000

Maritime policy & ocean economy:
€135,000

Vessel owner annual advance

Purse Seine: €8,500

Longline > 100 GT: €4,125

Longline < 100 GT: €2,050

Reference tonnage

4,000

Vessel reference tonnage

Purse Seine

2017-2019: 130.8 | 2020-2021: 121.4

Longline > 100 GT

2017-2019: 63.5 | 2020-2021: 58.9

Longline < 100 GT

2017-2019: 31.5 | 2020-2021: 29.3

MADAGASCAR

Jan 2015 – Dec 2018

Vessels covered

40 Purse Seine

32 Longline > 100 GT

22 Longline < 100 GT

EU contribution for annual access

2015-2016: €866,250

2017-2018: €787,500

EU contribution for annual sector support

Fishery resources and fisheries policy:
€700,000

Vessel owner annual advance

Purse Seine

2015-2016: €11,400

2017-2018: €13,300

Longline > 100 GT

2015-2016: €3,600

2017-2018: €4,200

Longline < 100 GT

2015-2016: €2,400

2017-2018: €2,800

Reference tonnage

15,750

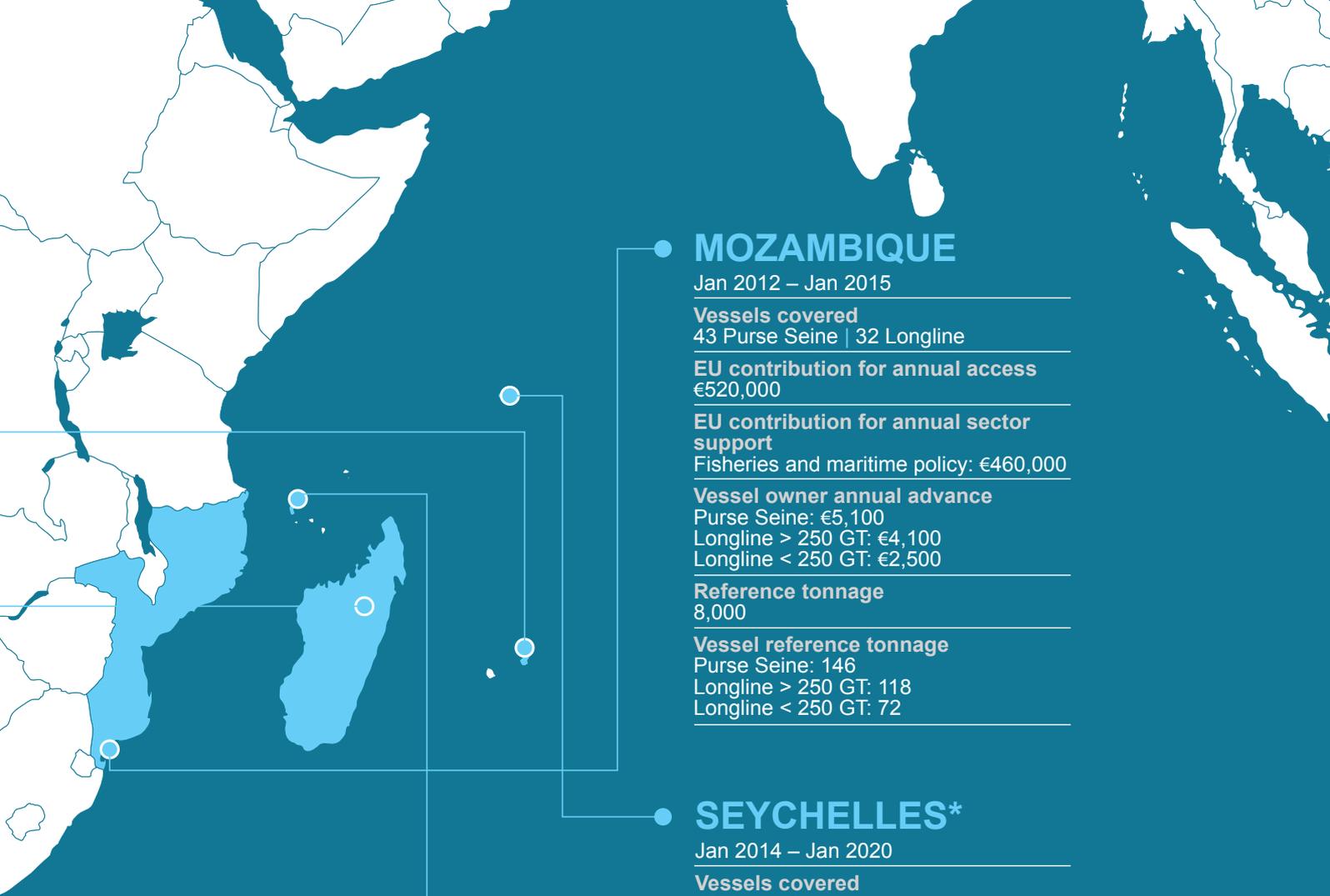
Vessel reference tonnage

Purse Seine: 190

Longline > 100 GT: 60

Longline < 100 GT: 40





MOZAMBIQUE

Jan 2012 – Jan 2015

Vessels covered
43 Purse Seine | 32 Longline

EU contribution for annual access
€520,000

EU contribution for annual sector support
Fisheries and maritime policy: €460,000

Vessel owner annual advance
Purse Seine: €5,100
Longline > 250 GT: €4,100
Longline < 250 GT: €2,500

Reference tonnage
8,000

Vessel reference tonnage
Purse Seine: 146
Longline > 250 GT: 118
Longline < 250 GT: 72

SEYCHELLES*

Jan 2014 – Jan 2020

Vessels covered
40 Purse Seine | 6 Longline

EU contribution for annual access
2014-2015: €2,750,000
2016-2019: €2,500,000

EU contribution for annual sector support
Fisheries and maritime policy:
2014-2015: €2,600,000
2016-2019: €2,500,000

Vessel owner annual advance
Purse Seine
2014: €38,500 2015: €42,000
2016: €45,500 2017 & 2018: €49,000
2019: €52,500

Longline > 250 GT
2014: €6,600 2015: €7,200
2016: €7,800 2017 & 2018: €8,400
2019: €9,000

Longline < 250 GT
2014: €4,950 2015: €5,400
2016: €5,850 2017 & 2018: €6,300
2019: €6,750

Reference tonnage
50,000

Vessel reference tonnage
Purse Seine: 700
Longline > 250 GT: 120
Longline < 250 GT: 90

COMOROS

Jan 2014 – Dec 2016

Vessels covered
42 Purse Seine | 20 Longline

EU contribution for annual access
€300,000

EU contribution for annual sector support
Fisheries policy: €300,000

Vessel owner annual advance
Purse Seine: €4,235
Longline: €2,475

Reference tonnage
6,000

Vessel reference tonnage
Purse Seine: 77
Longline: 45

The price per tonne is included in the Protocol and the division of this between the EU and the vessel owner is shown in Table 1. The figures in blue indicate when the vessel owners pay the same as or more than the EU, which has been more common in Protocols coming into force since 2015. The table also shows the total price per tonne paid to the third country, ranging between €100 and €125.

The significance of the price per tonne and the evolution of who pays this amount is assessed in the following pages.

Table 1: Price per tonne (€) of seafood and the division of EU/vessel owner in Protocols since 2012

Year	MAURITIUS			MADAGASCAR			
	EU	Vessel Owners	Total	EU	Vessel Owners	Total	EU
2012							
2013							
2014	65	35	120				50
2015	65	35	120	55	60	115	50
2016	65	35	120	55	60	115	50
2017				50	70	120	
2018	55	65	120	50	70	120	
2019	55	65	120				
2020	55	70	125				
2021	55	70	125				

● The EU pays more than the vessel owner ● The vessel owner pays the same as or more than the EU

COMOROS

MOZAMBIQUE

SEYCHELLES

Vessel Owners	Total	EU	Vessel Owners	Total	EU	Vessel Owners	Total
		65	35	100			
		65	35	100			
55	105	65	35	100	55	55	110
55	105				55	60	115
55	105				50	65	115
					50	70	120
					50	70	120
					50	75	125



UTILISATION OF SFPAS

Catch

The figures published by the EU in SFPAs ex-post evaluations suggest that EU vessels, generally, do not catch the full reference tonnage agreed in the Protocols. Table 2 provides the total catch for all reported EU vessels in a given year within the relevant third country's EEZ. The reasons for this difference between the reference tonnage and the reported catch may be related to: a deliberately high estimation of the reference tonnage in the Protocol, possibly to allow for annual variations in the location of tuna during their migration; the lack of tuna available within a specific EEZ during that year; a lower number of vessels taking up licences than anticipated; inaccurate or incomplete reporting; poor historical data; or an alternative reason.

The utilisation of 40,545 tonnes in the Seychelles EEZ is above 75% of the reference tonnage; in all other EEZs, it is on average below 50%.

Table 2: Measuring utilisation of SFPAs through the use of reference tonnage

State	Relevant reference tonnage	Total reported catches by EU vessels	Utilisation of reference tonnage %
Mauritius	5,500 during 2014-2015	2014: 510 2015: 489	8-9% <i>average 9%</i>
Madagascar	15,750	2015: 5,280 2016: 7,415 2017: 10,314 2018: 7,669	34-66% <i>average 49%</i>
Comoros	6,000	2014: 378 2015: 2,210	6-37% <i>average 22%</i>
Mozambique	8,000	2012: 1,156	14%
Seychelles	52,000 in 2011	2011: 40,545	78%

Note: figures taken from the ex-post reports of the Protocols

- High catch of reference tonnage noted in SFPAs (more than 75% of agreed tonnage)
- Medium catch of reference tonnage noted in SFPAs (25%-75% of agreed tonnage)
- Low catch of reference tonnage noted in SFPAs (less than 25%)

Vessels

Table 3 shows that the agreed maximum number of vessels is higher (often around 50% more) than the actual number of EU vessels that take up licences in recent Protocols.

Table 3: Measuring utilisation of SFPAs by uptake of vessel licences

GR: Gross tonnage PS: Purse seine LL: Longliner

State	PS covered in Protocol	No of PS vessels taking a licence	Average % uptake	LL covered in Protocol	No of LL vessels taking a licence	Average % uptake
Mauritius	41	2014: 27 2015: 30	65-73% average 69%	45	2014: 18 2015: 16	35-40% average 37%
Madagascar	40	27 (all years)	67%	32 LL > 100 GT 22 LL < 100 GT	LL > 100 GT 2015: 9 2016: 12 2017: 8 2018: 7 LL < 100 GT 2015: 15 2016: 16 2017: 16 2018: 17	LL > 100 GT 22-38% average 28% LL < 100 GT 68-77% average 72%
Comoros	42	2014: 27 2015: 28	64-67% average 65%	20	0 (all years)	0%
Mozambique	43	2012: 20 2013: 11	26-47% average 37%	32	2012: 12 2013: 9	28-37% average 33%
Seychelles	48	2011: 21 2012: 22	44-46% average 45%	6	0 (all years)	0%

Note: figures taken from the ex-post reports of the Protocols, the number of vessels covered in the Protocol corresponds to the Protocol in force at the time of the catches reported, therefore in the case of Mauritius and Seychelles not the current Protocol.

- High uptake of vessel licences (more than 75%)
- Medium uptake of vessel licences (more than 25% less than 75%)
- Low uptake of vessel licences (less than 25%)



THE IMPACTS OF SFPA_s IN THE SWIO



IMPACTS FOR THE EU

Access to resources

Four EU Member States – Spain, France, Portugal and Italy – have industrial tuna fishing vessels in the SWIO and are interested in securing fishing grounds for their vessels in this region. The EU vessel owners aim to secure a network of fishing licences to follow tuna throughout the season and catch the desired size and/or species composition. Although a licence will permit a vessel to fish within the EEZ for several months or, more commonly, the whole year, vessels generally only spend a number of days or weeks within an EEZ before moving on.

While the vessel owners would ideally have access to all EEZs, in practice, they balance the costs related to each licence against the benefits. Costs may include the direct financial costs incurred for an advance fee or price per tonne, as well as other indirect costs such as requirements for: pre-fishing inspections, off-loading catch in specific ports, complying with reporting and monitoring requirements, employing local seamen or embarking observers. Ultimately, the vessel owner's cost/benefit analysis will determine if they take up a licence, either under an SFPAs or privately. Private licences can be granted under various circumstances, including to a vessel partially owned by a foreign company, or when a licence is provided directly by the State when there is no SFPAs. When the requirements become too costly, cumbersome or inconvenient for the vessel owners, they will omit a country's EEZ from their regional fishing strategy and fish in the high seas or other, more cost beneficial EEZs.

Securing and protecting this access is an objective of the SFPAs for the EU. Securing an SFPAs also establishes minimum standards for sustainable resource management, as it includes provisions that prohibit granting more favourable conditions to other foreign fleets, resulting in a certain level playing field. SFPAs also secure longer-term, multi-year access which can be beneficial to vessel owners at a time when coastal States are known to change private licence conditions quite regularly, adding uncertainty and increased costs for adapting to new requirements or paying higher prices.

Currently, with two Protocols in force (one for the highly important EEZ of the Seychelles and the other for the less important EEZ of Mauritius), the SFPAs mechanism secures access to around one third of the tuna caught by EU vessels in the SWIO (see Table 4). The access granted by SFPAs provides long-term security and has more fixed terms and conditions, making it more reliable. It could be argued that the lack of SFPAs in the majority of other SWIO EEZs reinforces the benefits of the secure, multi-year access provided by these two Protocols.



Table 4: Tuna catches by EU purse seiners in the SWIO

Area	Contribution of zone to total catch		Months of year in zone	
	French vessels	Spanish vessels	French vessels	Spanish vessels
Mauritius EEZ	4%	1%	February-March	February-March
Madagascar EEZ	1%	3-5%	May-July	May-July
Mozambique EEZ	2%	2%	March/April	March/April
Comoros EEZ	1%	1%	March/April	March/April
Seychelles EEZ	35%	30%	November-February	December-February
Mayotte EEZ	5%	1-2%	April	April
Kenya EEZ	1%	1-2%	May-July	May-July
Tanzania EEZ	1%	1-2%	May-July	May-July
High seas	50%	50-55%	August-October	August-November

Source: EU vessel owners, but variable over time due to some EEZs not being accessible.

Improved flag State performance

EU Member States are obliged to maintain oversight of their flagged vessels when fishing outside of their national jurisdiction to ensure that all applicable rules and regulations are applied. The SFPAs framework is a mechanism that requires and monitors vessel owners and operators for compliance to acceptable standards and follows the reporting requirements set out in the Protocol. This, in turn, supports the objectives of the CFP in ensuring that EU fishing activities in foreign countries are based on the same principles and standards as those applied under EU law, something which is more difficult to monitor under private licence arrangements. Thus, SFPAs provide a benefit to the EU in assisting its Member States to operate as compliant flag States.

Value for money

For the EU, calculations of overall value for money for SFPAs are made in the ex-post evaluations. These include aspects of utilisation, seafood catches and number of vessels taking up licences. The calculations include upstream benefits of vessel maintenance, provisions to vessels, ships agencies and employment related to these areas, as well as the downstream benefits of processing, transportation, marketing and, again, the related employment. The provision of fish to EU markets and consumers, in particular of canned tuna which is the dominant tuna product from purse seine catches, is viewed as an important element of the overall value for money of the SFPAs. The complex calculations are made to justify the subsidy paid by the EU for private vessel owners to access these fisheries and to demonstrate good value for money for the EU budget. Many of the related benefits would accrue without the SFPAs, but the reliability of these may be less secure.

The amount paid by vessel owners under an SFPAs as an advance for a licence is compared to the amount that would be paid in the absence of an SFPAs for annual access in 2017 (Table 5). It should be noted, however, that an exact comparison is not possible, as the terms and conditions vary considerably. At best, they give an indication of the trend, which is that if no additional price per tonne is paid, vessel owners obtain access more cheaply than they would if no SFPAs existed. The difference is essentially paid by the EU in their annual advance payment to the third country.

This system of shared contributions for access between the vessel owners and the EU that makes it cheaper for the vessel owner has a range of benefits – some for the vessel owner themselves, such as increasing the potential for profit, while others are shared. These may include making it easier for vessel owners to maintain higher employment standards which benefit the welfare of the both the EU and other nationality workforce on board EU-flagged vessels. Another shared benefit is that this reduced input cost could be translated to reduced sales prices, which may affect processors, retailers and ultimately consumers, by keeping prices (artificially) low.

Table 5: Access cost paid by EU vessel owners through SFPAs or privately

Country	Purse seine		Longline	
	SFPA	Private	SFPA	Private
Comoros	€4,235	€40,000	€2,475	€25,000
Mauritius	€8,500	€30,000	€4,125	€45,000
Mozambique	€5,100	€19,500-24,000	€4,100	€18,000-22,000
Seychelles	€38,500-52,500	€95,000	€6,600-9,000	€19,000

Note: these figures are for annual access as anticipated for foreign vessels in 2017

IMPACTS FOR SWIO COUNTRIES

Revenue

As mentioned above, all SWIO countries sell access to the tuna that migrate through their EEZs; only the Seychelles has a significant industrial fishing fleet, although all of these vessels are foreign owned and operated but flagged to the Seychelles. Receiving payment for access has, over the years, been a crucial element in national strategies to maximize the economic benefits offered by the tuna stocks, due mainly to the coastal States' limited skills at this type of fishing, a lack of access to adequate capital, and limited access and knowledge about global markets. These factors have made it difficult, overall, for SWIO countries to grow their own industrial fishing fleets.

Payment from the EU for access to resources in the SWIO region through SFPAs is a fixed figure stated in the Protocol and, while the amount may vary by year, it is paid annually for the duration of the Protocol. This secure income to the coastal States' governments over a number of years has provided an often useful alternative to the uncertain and possibly irregular income derived from individual licences.

The current change in payment structure to shift responsibility to the vessel owners (as indicated in Table 1) means that the EU would pay less of the price per tonne than the vessel owner, which is also anticipated to decrease further over time in new Protocols. This has implications for third countries as it reduces the lump sum payment, while the cumulated amount received from vessel owners will depend on the number of vessels taking up licences each year, which is not certain or guaranteed in the same way as the EU contribution. The number of vessels anticipated or indicated in the Protocol is not linked to the actual number of EU-flagged vessels active in the SWIO, nor is it realistic, resulting in a lower income from the vessel owners to the third countries than anticipated (see Table 3).

On the whole, over the years of the recent Protocols, if the EU and vessel owner contributions are considered together and compared with the private licence fees, the coastal States that have SFPAs have benefited from a higher level of secure income in comparison to an uncertain income from individual vessel owners with no guaranteed payments.



Sector support

Sector support provides financial assistance to domestic fisheries and ocean sectors in line with national strategies. The effect that sector support will have on the third countries in the SWIO depends on the amount agreed, the implementation of support, the efficiency and effectiveness of support, as well as the goals of the relevant national policies for which the support is provided. Thus, impact will vary between countries. Although criticised by some due to linking development support to commercial access and the leverage this may give the EU in monitoring the SFPAs, sector support is often seen as an added benefit and an element which makes SFPAs worthwhile for the coastal State.

Examples of the positive impact sector support has provided to the Seychelles include two port facility developments: one at Ile du Port Zone 14 to improve servicing for purse seine vessels, and the other at Providence Fishing Port Zone 6 which services local semi-industrial fleets composed of longline, schooner and whaler vessels.¹² These examples demonstrate that sector support does indeed benefit multiple stakeholders including the government (port fees and services sold to foreign industrial purse seiners), local fishers and their communities (improved facilities to off-load catches in an efficient manner), as well as benefits to foreign vessel operators (improved port infrastructure for landing catches).

Embarkation of crew

The objective of engaging local crew to the EU vessels, a requirement of all SWIO Protocols, has had mixed results and mixed benefits for the coastal States. This requirement is often requested by the coastal State as it shows a tangible benefit of SFPAs (i.e. employment opportunities), however, the financial and strategic benefit of this clause is often minimal. The level of employment has had a small impact and, although if done correctly, employment could lead to a means of increasing local capacity, it appears to have had limited impact in this respect. When it is not possible to embark the requisite number of crew, there is an alternative provided in all but one of the most recent Protocols¹³ – namely the payment of a specified amount as compensation for a failure to meet the embarkation requirement. In most cases, this amount is a daily rate of EUR 20, however in the case of Mauritius, it is the monthly wage that would have been paid had a crew member been engaged. According to representatives of EU purse seine operators, while not necessarily employing crew from the SPFA countries, they do employ a significant number of Malagasy and other African nationals (e.g. Senegal, Côte d'Ivoire) on their vessels that are fishing in the SWIO.

Secondary employment and benefits

Seychelles and Mauritius are upper-middle income countries, Kenya is a lower-middle income country and all the other SWIO countries are low income countries. This suggests that maximising direct revenue would be a primary need for low income countries like Madagascar, while the Seychelles and Mauritius may not prioritise revenue as the main criteria for maintaining an SFPAs; these countries may instead be able to focus more on strategic, longer term objectives. In this respect, the only processing plants for tuna in the SWIO are in Mauritius, Seychelles and Madagascar, which are all countries with SFPAs in place, although Madagascar's Protocol is being re-negotiated.

In 2017, approximately 91% of processed tuna exports from Mauritius, 99% from Seychelles and 98% from Madagascar were sent to the EU. This directly benefits the EU in terms of nutritional and economic value, and provides employment and other benefits to the countries where the factories are located, as well as to the owners of these factories. Princes Tuna in Mauritius has been 100% owned by the Mitsubishi Corporation since 1989, while Indian Ocean Tuna in the Seychelles is 40% owned by the government of the Seychelles and 60% by Thai Union Europe, showing how widely dispersed these benefits will be shared. The SFPAs encourage interactions between EU operators and local enterprises in these seafood hubs, such as through services for vessel repairs, supply to the cannery, and provisions of goods and other services. This provides a level of income and value-addition that benefits the coastal States through positive economic and social impacts for the country, including upstream (e.g. ship repairs and provisions) and downstream (e.g. fish processing) services.

12. Seychelles Fishing Authority website:
<http://www.sfa.sc/index.php/sections/project-management>

13. NB: The most recent Protocol with Mozambique did not contain such a provision.

SOCIAL, ENVIRONMENTAL AND ECONOMIC CONSEQUENCES IN THE SWIO

Regional cohesion and creating a level playing field

Although the framework of the SFPAs, if negotiated consistently across the region, may offer opportunities for consistency and improving transparency in the terms and conditions of access agreements, this has generally not been achieved. The negotiations and the figures agreed in Protocols have generally been more generous to the key players for the EU in the SWIO and not aimed to bring all States on a level playing field. This is demonstrated in the price per tonne negotiated in the Protocols (see Table 1). Although, theoretically, the difference between EEZs may be due to expected species composition or other reasons, with no supporting information on how the calculations were made being shared between the EU and the coastal State or publicly available, it is not evident why these rates vary. Today, only two Protocols are in force in the two most affluent countries of the SWIO, these are also the two countries with the main processing plants for tuna destined for the EU market. This situation may fuel tensions between the mainland coastal States and the island States rather than enhance regional coherence and could result in fishing effort relocating to the EEZs of countries with SFPAs for the EU vessels.

Impacts on stocks and sustainability

The IOTC¹⁴, the regional intergovernmental organisation responsible for the management of tuna and tuna-like species in the Indian Ocean, indicated that most of the stocks of skipjack, bigeye and albacore are in a fairly good state, but raised ongoing concerns about yellowfin tuna at their most recent Scientific Committee meeting in late 2018. While these stocks are targeted by EU vessels, for the coastal countries of East Africa, the stocks that are of most concern are the coastal or neritic tuna species. These are an important species group for commercial coastal fishing and small-scale fisheries, but the lack of catch data and information for these species has resulted in a resource gap for reliable modelling or stock assessment.

All of the most recent Protocols in the SWIO contain provisions which acknowledge the IOTC Recommendations and Resolutions. The IOTC adopts CMMs covering topics as diverse as gear restrictions and catch limits for specific species. According to the reported catches under the SFPAs, most of the species harvested are those rated as neither overfished nor currently subject to overfishing. However, one of the most important species in terms of weight caught by the EU-flagged vessels is yellowfin tuna, which is both overfished and currently subject to overfishing according to the IOTC. Indeed, the importance of yellowfin tuna to the EU in terms of weight caught is confirmed by the annual national reports of the EU to the IOTC,¹⁵ according to which, yellowfin tuna accounted for approximately 37% of EU catches in 2017.

In 2016, the IOTC adopted Resolution 16/01, replaced by 17/01, in turn replaced by 18/01; these resolutions all require(d) Parties to reduce their catches of yellowfin tuna based on their reported 2014 catches. The reduction required varies between gear types and only applies to those gear types which have reported harvests over 5,000 tonnes in 2014. As an IOTC member, it could be argued that the reduction requirements apply to the EU as a whole; or, as the EU is not a flag State, the reduction requirements could be applicable to each EU Member State individually. The latter is what is currently being applied, which results in France and Spain having to reduce their purse seine catches of yellowfin by 15% of the 2014 catches.

14. See www.iotc.org

15. NB: Although they are called national reports, the EU submits these jointly for all Member States.



EU legislation which specifies total allowable catches of yellowfin in the IOTC area for Member States is also in place. In 2017, the total allowable yellowfin catch for the EU in the IOTC area was 77,698 tonnes.¹⁶ In 2017, this was surpassed according to the EU's 2018 national report to the IOTC, which reported that the purse seine catch was 86,820 tonnes of yellowfin. In 2018, the EU purse seine vessels stopped fishing before the end of the year, reportedly due to applying the yellowfin catch restrictions.

Sector support provided within the SFPAs is often used to encourage improved MCS of national and foreign fishing vessel activities to support the fight against IUU fishing. The progress in improved MCS by coastal States benefits the region as a whole in efforts to reduce illegal fishing. The adequate ability of both the EU flag States and coastal States to monitor fishing vessels and ensure compliance with all CMMs is critical for robust fish stocks. The Protocols have high demands for MCS measures and, when fully applied, have a positive impact on sustainability.

Finally, SFPAs contain a principle to foster scientific cooperation between the EU and coastal States, and to promote transparency and sustainability for management of fishing resources. It is not clear how far this cooperation has been supported by the SFPA mechanism, but having the principle embedded in the Agreements does provide an opportunity for further action.

16. Annex IK. European Union, Council Regulation (EU) 2017/127 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.



WAY FORWARD



CHALLENGES

There are a number of external and internal challenges that the system of SFPAs, as a mechanism for securing fishing access, faces going forward. Some of these are considered below:

Reporting seafood catches

Ensuring that EU vessel reporting is accurate is a joint challenge and obligation for the EC as a partner of an SFPA, for a given EU Member State as the flag State, and for the coastal State. For the EU Member State, they are obliged to ensure that their vessels report all catches by species so that they can accurately report to the IOTC and so the EC can, in turn, accurately report to the coastal State under the SFPA. Accurate reporting is crucial as the cost of access is linked to the amount of fish caught, which is measured against the SFPA's reference tonnage and VRT. As the amount caught increases, so does the cost. This system of measuring costs may act as an incentive to underreport catches taken within EEZs. Underreporting is not unheard of within the EU fleet, as the EC has previously accused EU Member States of underreporting catches and exceeding fishing quotas.¹⁷

Coastal States also wish to know how much and what type of fish are caught in their EEZs to assist planning the sector's development, to ensure that CMMs are applied and to monitor if either the VRT or the reference tonnage is reached. For example, in the Seychelles Protocol, the Seychelles authorities are required to "monitor the development of the fisheries by EU vessels to ensure appropriate management of the reference tonnage of 50,000 tonnes per year." However, the Seychelles has limited capacity to monitor at-sea activities by means of cameras or on-board observers, to monitor all off-loadings and transshipments, and to cross-check these figures against logbooks, factory figures, exports, etc. This lack of ability to verify catches has led to concerns regarding EU vessel reporting and has resulted in a loss of confidence in the EC and EU Member States by some SWIO States. For example, the Mozambican Minister responsible for fisheries recently voiced concerns regarding misreporting under SFPAs, noting the lack of EU interest to work with them to address this.

Transparency of access agreements

The current system of SFPAs exists within a wider landscape of legal and political arrangements that can support or threaten the SFPA mechanism, while political interference or influence on SFPA negotiations and implementation also are likely to have an impact.

The EU, in terms of negotiation and implementation of bilateral fisheries access agreements, is relatively more transparent and abides by the rule-of-law more than many other key distant-water fishing nations active in the SWIO. For example, the EU publishes SFPAs and their Protocols and the ex-post and ex-ante evaluations. While this is viewed positively by many, there are those who view it as an obstacle as these formal systems reduce opportunities for personal gain via corrupt means and methods.

The lack of historical correlation between the maximum number of vessels offered access to fish in the SFPAs and the number of vessels actually fishing in the SWIO has not helped to showcase transparency from the EU; this is especially true when viewed in light of the recent capacity limitations and the overall wish to reduce the number of vessels operating in the SWIO, particularly with respect to yellowfin tuna. Coupled with the complicated process for calculating the price to be paid by vessel owners and by the EC for access to fisheries, the lack of coherence between VRT and the reference tonnage simply makes the negotiation process more opaque and open to criticism.



Public reporting on all access agreements and licence allocations would improve visibility on environmental, social and economic impacts of fishing, while supporting a more level playing field in the SWIO region. In West Africa, the SFPAs with Mauritania which concluded in 2015 and is one of the most recent SFPAs worldwide, is an example of this provision to make all agreements with foreign vessels publicly available.

Lastly, a lack of civil society representatives as observers in the negotiation and on the Joint Scientific Committees has been voiced as a concern from civil society groups who consider their role to be valuable for assessments on the Protocol's environmental impacts and for proposing ways to adapt its implementation according to collected data. Equally, the lack of any representatives from regional organisations in the negotiation limits coherence between Protocols and is a lost opportunity for the coastal State and the EC to address regional concerns and to find solutions to these challenges.

Maritime boundary disputes

Where States disagree regarding the delimitation of maritime boundaries, overlapping claims of jurisdiction or sovereignty may arise over the area concerned. Such disputes affect the SFPAs mechanism in various ways. This includes difficulties in calculating fair access fees, due to the variable size of the area available for fishing, and the estimation of historical catches taken within a coastal State's jurisdiction. There are also MCS implications, such as the question of reporting requirements in disputed areas.

Maritime disputes can be aggravated by certain activities, including industrial fishing. It is therefore imperative that any existing and relevant maritime disputes be acknowledged and discussed during the SFPAs negotiation. Disputing States may reach an agreement or make arrangements specific to fisheries within the disputed area. This could include plans for joint management or the application of a fisheries boundary while the dispute is being settled. If such an arrangement or agreement exists, an SFPAs with one of the disputing States could secure access to the disputed area, provided the agreement or arrangement is complied with. This would avoid jeopardising the settlement of the dispute and allow proper recording and reporting of operations and catches with a view to sustainably managing stocks.

Where no agreement or arrangement has been reached by the disputing States, the dispute should be acknowledged within the SFPAs negotiation and vessels operating under the SFPAs should avoid the area. This will prevent aggravation of the dispute, possibly undermining security, as well as the jurisdiction and sovereignty of the disputing States.

Subsidies and the WTO

The cost of access by EU vessels to third countries is borne by the EU and the vessel operator, a situation viewed by some as a subsidy for vessel owners, which places the SFPAs mechanism in a potentially precarious position. There are ongoing discussions regarding the subsidisation of fishing activities by governments within the World Trade Organization (WTO). The WTO Members have committed to reach a conclusion on the matter by 31 December 2019, with the current discussion focusing on three areas: subsidies for fleets targeting overfished stocks, subsidies that contribute to overfishing and subsidising IUU fishing activities.¹⁸ The EU fleet in the SWIO would fall within the first category of subsidies, as well as possibly the second and allegedly the third category. With WTO negotiations aimed at prohibiting all three subsidy categories, the existing SFPAs mechanism may face considerable challenges and difficulties from 2020.

17. See <https://www.france24.com/en/20080624-eu-bans-bluefin-tuna-fishing-eu-tuna>

18. WTO members consider new draft texts in second cluster of fisheries subsidies meetings, available on the WTO website: https://www.wto.org/english/news_e/news19_e/fish_01mar19_e.htm Accessed on 25 March 2019.

IOTC management issues

There are additional challenges faced by the SFPA mechanism of securing access with respect to allocations within the IOTC; this is a sensitive and unsettled issue which has been discussed over many years. In February 2018, the 4th session of the Technical Committee on Allocation Criteria (TCAC) met in the Seychelles. While two proposals were tabled at that session, it was agreed that simulations needed to be run before a decision could be taken. Ahead of the 5th session of the TCAC, both proposals were updated and resubmitted. One proposal was submitted by the EU while the other was submitted by various coastal States including Comoros, Kenya, Mozambique, Seychelles and Tanzania. The proposals differ greatly on one crucial point: the attribution of historical catches taken in EEZs. While the coastal States maintain that all catches taken within an EEZ must be attributed to the State that the EEZ belongs to, the EU maintains that only 10% of catches are to be attributed to the coastal State with the remaining 90% attributed to the flag State. The existence of these conflicting views may, in the future, affect SFPA negotiations.

Further, the IOTC regulates the use of FADs and support vessels, a fact relevant to most EU catches in the SWIO which are taken by purse seine vessels that use FADs and support vessels. Increased limitations on this type of fishing due to controls on FADs and support vessels may have implications for profitability by indirectly increasing the number of days spent fishing, together with other consequences which will need to be addressed in the negotiation and implementation of the SFPA. For instance, provisions in the Protocols may have to change and be based less on negotiation than they currently appear to be: for example, the use of figures (e.g. reference tonnage, VRT, number of vessels, etc.) may all be affected by IOTC resolutions.

The IUU Regulation

Implementation of the EU legislation addressing IUU fishing, the so called IUU Regulation, while not directly part of the SFPA mechanism poses a challenge to the EU in ensuring that it achieves its objective within the SWIO. If a third country is identified as engaging in IUU fishing activities (i.e. 'red carded' by the EU), one consequence is that no SFPA negotiation may commence and an existing SFPA could be cancelled or denounced, with EU-flagged vessels no longer permitted to enter private licencing agreements with the identified State.¹⁹ However, the IUU Regulation does not address EU owned and/or operated vessels that are flagged to non-EU States other than the identified State. These vessels may therefore access the waters of a 'carded' State and the catch may be exported to the EU. This is important in the SWIO, as a considerable number of EU-owned purse seine vessels are flagged to the Seychelles and, as noted above, Comoros was 'red carded' in 2017. From the information available, Comoros granted access to 14 Seychellois flagged fishing vessels in February 2019, all of which have Spanish vessel owner associations as their registered foreign operator (either ANABAC or OPAGAC²⁰).

19. Article 38. European Union, Council Regulation (EU) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

20. Some sources listed the operator as AGAC, which falls within OPAGAC.



OPPORTUNITIES

The EU is not the only party interested in securing fisheries agreements or access to fishing with SWIO States. With global fish stocks in an increasingly poorer condition, distant water operators will continue to compete with one another for access rights. For the EU to continue to secure access to the region, some opportunities for improvements to the SFPAs are available. These are discussed below:

Strengthening coastal State engagement in the tuna fishery

Following years of selling licences to foreign vessel owners for access to tuna resources within their EEZs, all SWIO States have developed strategies and plans to increase their involvement in the tuna fishery and the benefits they gain, often linked to plans for an improved blue or ocean economy. All SWIO States have identified the potential to optimise economic growth by developing their domestic abilities to catch, process and market tuna. Assistance to implement such policies by third countries has been provided through the sector support of SFPAs, and this is a key area to improve or increase further in the future.

Traditionally, sector support was set at a similar level to the access contribution, but with the access contribution through advance payments from the EC being reduced in future SFPAs, due to the vessel operator paying a larger share, it will be important to ensure that the sector support component is not also diminished. Maintaining a good level of support to wider fisheries and ocean policies of the coastal State and, where possible, to regional policies is important to the coastal States, the region and other stakeholders such as civil society and NGOs.

In the future, ensuring a balanced partnership which is focused on development and prosperity for both the EU and the third country is likely to be more sustainable for all parties. This may include securing long term fishing access for EU fleets in a highly competitive industry, while increasing economic and social development for the coastal States. Achieving such a partnership will require a more balanced negotiation with increased transparency and an emphasis on more cooperative interaction.

A key component of the shift to increased coastal State engagement in their own fisheries should be active assistance to third countries with the development of their own infrastructure, including national fleets, processing facilities and industry, as well as other downstream businesses. These developments could be linked to EU engagement and involvement in investment and capacity development.

A more innovative approach would help to progress this type of balanced partnership – one that does not distinguish between the development aspect (sector support) and the business aspect (access payment), but rather finds ways to create innovative business based win-win solution for both Parties, the region and for stock and ocean sustainability.

Building stronger regional cooperation

The SFPAs mechanism offers an opportunity to improve fisheries management coherence in the SWIO; this can strengthen sustainable fisheries and ocean governance by linking them to regional management policies and negotiations. This requires mutual trust and stronger partnerships, as discussed above, but it would facilitate a better exchange of information and best practices between the EU and coastal State governments, the private sector and NGOs nationally and regionally both in the EU and in the SWIO. This would improve sustainability and governance in the region, and may provide a means to maintain long-term access to the region for EU vessels.

Regional management could be better linked to fisheries agreements through an alliance and strategy for access between the EU and a group of coastal States. This would require the strategy to be developed in cooperation with one or more of the regional processes or mechanisms. To date, this has not been given any priority, which is a major weakness and missed opportunity. Consideration of regional inter-governmental organisation and NGO partners in this process may be a useful option to build cooperation and identify a pathway forward.

THE IMPORTANCE OF REGIONAL MINIMUM TERMS AND CONDITIONS

The 2014 Maputo Declaration between Mozambique, Tanzania and Kenya reflects the concerns of these countries with respect to access by foreign vessels. The minimum terms and conditions (MTCs) include the requirement for the reference tonnage to be calculated to the mutual benefit of the coastal State, the distant water fishing nation and the current sustainability status of the resources in question. This necessitates a transparent formula.

The Declaration also requires that compensation from agreements are based on the market price of seafood product and the costs of management. In SFPAs today, the price is linked to a price per tonne, but there is no open formula for calculating or agreeing this. The need to have pre-fishing briefings and inspections in the ports of the partner States is an issue that is often challenging for EU vessel operators, but is requested by the third countries. This is an area where a regional approach may enable some streamlining of this requirement, for example supporting inspections in one regional port, rather than in all countries. This type of regional approach could also be applied to the compulsory landing of bycatch in the ports of third countries to find a more acceptable solution for all.

Aside from offering an opportunity for cooperation with regional processes, making reference to and complying with regional standards could be included in the SFPAs. For example, including aspects of the South West Indian Ocean Fisheries Commission's (SWIOFC) Minimum Terms and Conditions for Access and the Southern African Development Community (SADC) Regional Monitoring, Control and Surveillance Coordination Centre's (MCSCC) Charter principles regarding observers, transparency in access agreements and vessel registry would improve awareness and potentially coherence with these regional standards.

Improving credibility of SFPA figures

The number of vessels and the reference tonnage should be considered in light of one another such that when the reference tonnage is divided by the number of vessels or weight of various vessels by category, the resulting VRT is what one could realistically expect vessels to harvest, based on previous accurate data. The number of vessels that are listed in the Protocol needs to be realistic with respect to the number of vessels fishing in the region and take the capacity reduction requirements of the IOTC into account. It is therefore not acceptable to include figures for more vessels than are currently operating, with consideration given to reducing this number in light of sustainability concerns. The practice of inflating this figure creates false hopes for the coastal States, distorts the calculations of VRT and advance payments, impacts on the true division (or percentage) of payments between the EC and the vessel operators, and casts a level of mistrust over the negotiation process.

The price per tonne should be calculated based on reasonably expected first sale values, with some consideration to the expected or historical catch composition between species, to determine and agree a sensible market-related price per tonne. An incremental increase or mechanism for calculating changes in product value should be more transparent and based on published market information. A publicly known and discussed formula for calculations within the SFPA is required or, at minimum, a rationale as to how the figures are obtained should be presented. This would enable more meaningful negotiations based on stock assessments, IOTC CMMs, and third country ambitions for harvesting the resources.



Access to new EEZs

As Kenya and Tanzania have not had an SFPA and the Mozambique Agreement is dormant, the Maputo Declaration process discussed on page 36 may offer a platform and an opportunity for joint-cooperation and negotiation with these three countries.

The current tendency for the EU to work closely with the Indian Ocean Commission with respect to fisheries issues in the SWIO, while being logical in respect to the Protocols with Seychelles and Mauritius in addition to the location of the tuna processing factories, may not offer the best opportunities to develop closer relationships with the African mainland countries. An example is Somalia, which will be of increasing interest in the future, due to its highly productive EEZ and reducing concerns of piracy. The Maputo Declaration countries have already expressed an interest in embracing Somalia into any future development of the Declaration, offering a further opportunity to discuss SFPA options with all four countries concurrently. Increasing cooperation with mainland African countries through the appropriate intergovernmental arrangements, such as the SADC or the SWIOFC would therefore be beneficial to both the EU and coastal States.

ALTERNATIVES

When an SFPA is in force, an exclusivity clause ensures that no EU-flagged vessel may access the relevant fisheries in areas under the national jurisdiction of the third country outside of the SFPA system. In other words, when there is an SFPA, EU vessels are prohibited from fishing in the third country waters outside of what has been agreed. However, when no SFPA is in place, alternatives do exist and further options could be developed in the future as a means of securing access to the fisheries in the region. Examples include:

Public versus private agreements

Some comparisons between SFPAs with private licence agreements in terms of economic impact have been made but making these types of broader comparisons is complicated. While a public agreement is held exclusively between governments or governmental bodies, such as between the flag State and the relevant coastal State, a private agreement is made between a non-public person (legal or natural) or entity (such as an association) and the government of the relevant coastal State. Private agreements tend to lack transparency compared with SFPAs and fail to offer the monitoring mechanism of the Joint Committee.

However, EU Regulation 2017/2403 on the sustainable management of external fishing fleets requires EU Member States to communicate information to the EC related to private access agreements and other related arrangements. This includes, for example, chartering or reflagging of an EU-flagged fishing vessel. The information submitted would become public and support improved transparency and monitoring of EU engagement in external fishing, demonstrating an example of good practices for other distant water fishing nations.

Joint ventures or reflagging

Joint ventures between EU-flagged vessels and companies in third countries may be an option to secure access to the EEZ of countries in the SWIO. These would include benefit/profit sharing mechanisms and likely have demands related to the management of vessels and the extraction of seafood resources. These may include stipulating where catches are landed, processed and even sold. While, this may be a useful model for fishing companies and may allow for alignment to national policies and regulations, it may not ensure the supply of fish into the EU market in the same manner provided by SFPAs.

Alternatively, EU vessel owners can decide to reflag their vessels to a coastal State to ensure that they maintain access to the EEZ, as was done by Spanish vessel owners who reflagged to the Seychelles. This option, while securing access to the resource and alternative tax regimes for the vessel owner, has less apparent benefits for the coastal State and the EU. The coastal State will require increased MCS capacity to ensure oversight of the new vessel, which will need to be balanced against the risks of lack of compliance, together with the social and economic benefits derived from such arrangements. The EU will no longer have flag State oversight over its operators and the now foreign-flagged fishing vessel.

Regional SFPA

Currently, SFPAs in the SWIO are exclusively bilateral, as has been the case since the first agreements for access were concluded between the EU and SWIO States in the 1980s. That being said, the possibility of regional SFPAs has not gone unconsidered and is discussed above. The benefits of redesigning the SFPAs in the SWIO in this manner could include addressing issues of sustainability and balancing dominance between the two regional blocks (the EU and the SWIO), rather than between the EU and individual countries. This would deliver a more coherent partnership that can address management and sustainability of regionally shared resources with an appropriate regional mechanism.

Oceans approach

Another alternative would be to develop SFPAs into agreements that embrace the broader concepts of the blue or ocean economy and its sustainable growth. The foundation of this is sustainable use of the ocean, a concept that would serve as a good basis for cooperation and, as discussed, increased cooperation over broader areas which are expected to benefit both Parties of an SFPA or all Parties if a regional agreement is concluded. Including a more integrated approach to cooperation by, for example, incorporating other sectors linked to the ocean where there are joint interests for the EU and the coastal State (such as maritime transport, seafood processing, bio-prospecting or renewable energy), may offer social, economic and environmental benefits to all partners. In practice, this could deliver greater investment and engagement in joint ventures to support the development of industry, appropriate technology and capacity for improved use of the ocean.

LIST OF ACRONYMS USED IN THIS REPORT

Acronym	Full name
AGAC	Association of Large Tuna Freezers (Spain)
ANABAC	National Association of Tuna Freezer Vessel Shipowners (Spain)
CFP	Common fisheries policy
CMM	Conservation and management measure
EC	European Commission
EEZ	Exclusive economic zone
EU	European Union
EUR	Euros
FAD	Fish aggregating device
GT	Gross tonnage
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, unreported and unregulated fishing
LL	Longliner
MCS	Monitoring, control and surveillance
MTC	Minimum terms and conditions
NGO	Nongovernmental organisation
OPAGAC	Organisation of Producers of Frozen Tuna (Spain)
PS	Purse seiner
MCSCC	Monitoring, Control and Surveillance Coordination Centre
SADC	Southern African Development Community
SFPA	Sustainable fisheries partnership agreement
SIF	Stop Illegal Fishing
SWIO	South West Indian Ocean
SWIOFC	South West Indian Ocean Fisheries Commission
TCAC	Technical Committee on Allocation Criteria
UNCLOS	United Nations Convention on the Law of the Sea
VMS	Vessel monitoring system
VRT	Vessel reference tonnage
WIO	Western Indian Ocean
WTO	World Trade Organization
WWF	World Wide Fund for Nature



100%
RECYCLED



THE STATUS AND FUTURE OF FISHERIES PARTNERSHIP AGREEMENTS IN THE SOUTH WEST INDIAN OCEAN

30 years

The first bilateral fisheries agreement between the EU and a country in the SWIO was with Madagascar in 1986

1/5

The Indian Ocean's offshore waters are home to 19% of the world's total tuna production



400-500

Up to 500 industrial fishing vessels originating from Asia and Europe track and catch tuna in the South West Indian Ocean

57%

Fishing vessels flagged to an EU country are responsible for more than half of the total tuna catch taken by purse seine vessels in the Indian Ocean



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