

ROADMAP			
TITLE OF THE INITIATIVE	Commission Recommendation for a Council decision with a view to authorise the Commission to open negotiations on behalf of the European Union for the conclusion a new protocol to the Fisheries Partnership Agreement with Kenya		
LEAD DG – RESPONSIBLE UNIT	DG MARE – UNIT B3 BILATERAL AGREEMENTS AND FISHERIES CONTROL IN INTERNATIONAL WATERS	DATE OF ROADMAP	July 2015
<p>This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context and problem definition
<p>(1) What is the political context of the initiative?</p> <p>(2) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?</p> <p>(1) Sustainable Fishery Partnership Agreements (SFPA) are the external dimension of the EU's Common Fishery Policy (CFP)¹ and give access to surplus² fish resources in the Exclusive Economic Zone (EEZ) of the partner country.</p> <p>Foreign vessels can fish in the EEZ of a 3rd country either under private agreements or on the basis of an international agreement between their flag state and the coastal state. Various nations enter into fisheries agreements with developing countries, but many of the latter have neither the capacity to properly manage and control their EEZ nor the resources to develop their fishing sector and secure food supply for their population.</p> <p>The EU pays particular attention to the development objectives of the partner country and is committed to promote responsible and sustainable fisheries wherever European vessels fish throughout the world. Respect for democratic principles and human rights are essential elements of the SFPA and thus included in a specific clause.</p> <p>The EU provides to the partner country financial compensation for access to its waters and also financial assistance for the improvement of the governance framework and capacity building relating to the development of a sustainable fisheries policy (sectoral support). The EU contribution is completed by contributions paid by EU-vessel owner. As a rule, the financial assistance for sectoral support is decoupled from payments for access to fisheries resources. The allocation and management of this funding is jointly agreed between the partner country and the EU.</p> <p>Each SFPA is an exclusive agreement: once in place, EU vessels can only fish under this SFPA, and cannot enter into private agreements with the partner country. It ensures a certain level playing field and establishes minimum standards for the sustainable resource management, as it includes provisions prohibiting the granting of more favourable conditions to other fleets.</p> <p>(2) Currently, the EU has no SFPA with Kenya.</p> <p>Attempts in the mid-2000s by the EU and Kenya to sign an SFPA were not successful due to low commitment of the Kenyan administration. Recent bilateral contacts suggest that Kenya has developed a strategic interest in an SFPA. Other SFPAs/Protocols in the region have been successfully concluded.</p> <p>Currently there are private access arrangements by EU vessels with Kenya, suggesting there is also interest from EU operators to fish in Kenya.</p> <p>The purse seine fishery in the West Indian Ocean (WIO) is dominated by the activities of the EU fleet. A network of fishing opportunities in the fishing zones of all WIO countries, including Kenya, is crucial for the fleet's</p>

¹ Articles 31 and 32 of the CFP-Regulation (EU) 1380/2013 [add link]

² Art. 31 (4) CFP states that union fishing vessels shall only catch surplus of the allowable catch as referred to in Article 62(2) and (3) of the UNCLOS [add link]; for straddling or highly migratory fish stocks: [add reference to RFMO].

economic viability because of the geographical variation of fish stock abundance throughout the year as well as year on year. This geographical variation is difficult to predict. The ex-ante evaluation reported that 27 EU purse seine vessels from France and Spain have operated in Kenya between 2011 and 2013. An SFPA/Protocol with Kenya will contribute around 1% of the EU total purse seine catches and would thus be comparable with a number of other SFPAs with countries southwards of Kenya.

No EU longline vessels have been fishing in Kenya's waters, due to the threat of piracy, but with the improvement of the piracy situation, the evaluation reports potential interest for access by UK, Portuguese and Spanish vessels.

(3) The new CFP establishes mandatory ex-post and ex-ante evaluation requirements for SFPAs, which forms the basis of a possible new negotiation recommendation.³ In this way, the EU can be sure, among other things, that the fishing opportunities it can use are in line with the best available scientific advice, and will neither deplete fragile stocks, nor put its boats in competition with local artisanal fishers who depend upon coastal fisheries for their livelihoods and sustenance. As a rule, SFPAs never authorise EU vessels to fish within 12 miles of the shore.

No ex-post evaluations have been carried out so far since no SFPA with Kenya has been in place. The ex-ante evaluation for an SFPA with Kenya completed in February 2014 is based, among other on consultations with representatives of operators fishing under private agreements in Kenya. This study includes the following results, which are relevant for this initiative:

All the key target stocks of EU fleets operating in the region are assessed by IOTC as not being overfished or subject to overfishing. However, given the weaknesses in Kenyan fisheries management capabilities, and more widely in other countries in the WIO and in the functioning of regional management organisations, the key need shared by both the EU and Kenya is for continued and concerted efforts aimed at effective fisheries management and conservation.

Kenya desires to develop and better manage its tuna fisheries, in the form of both domestic and foreign catching sectors and through increases in onshore value-addition, and has developed a tuna fisheries development and management strategy and a new Fisheries Bill to do so.

For the EU purse seine fleet, access to Kenyan waters is part of its regional network of fishing opportunities, and is critical given the uncertain and migratory nature of tuna in the WIO, even if catches in certain years may be small. The use of private access agreements in Kenya provides considerable uncertainty for the EU fleet; something the fleet is keen to avoid. The improving piracy situation could encourage longline vessels to move into Kenya's waters in the future..

What are the main problems which this initiative will address?

There is an interest by EU member states to gain access to the EEZ of Kenya. Subject to an official confirmation of similar interest also from the Kenyan side, it would be necessary to open negotiations on an SFPA and Protocol. It will aim at ensuring sustainability of the resource as well as good value for money for the EU budget, while contributing to promoting good governance and economic benefits to the partner country. The EU's need is for opportunities to target highly migratory species, i.e. tuna and tuna-like species, to support its network of fishing opportunities in the West Indian Ocean.

The key need of a possible SFPA/Protocol that is shared by both the EU and Kenya is the sustainability of capture fisheries production occurring in the region and migrating through Kenya's waters. Other shared needs of both the EU and Kenya include the need for a possible SFPA/Protocol to be concluded in the spirit of fair, transparent, and equitable cooperation and respect for human rights and democratic principles, and to aim at sharing benefits fairly between the two parties. A particular need for the EU fleet is to increase the security of fishing opportunities as currently EU purse seine vessels negotiate yearly authorisations under private agreements.

Kenya's needs from a possible SFPA/Protocol include maximizing revenue and providing support for its domestic tuna sector in line with its Tuna Fisheries Development and Management Strategy and the new Fisheries Bill (i.e. support for the artisanal sector, value addition, improved MCS, etc.). Kenya also has a need that any sectoral support funding should pay particular attention to the activities identified and then either funded or not funded by the Kenya Coastal Development Project (KCDP).

³ The evaluation report will be available on the Commission's website: http://ec.europa.eu/fisheries/documentation/studies/index_en.htm

Who will be affected by it?
<p>Fishing activities under a possible SFPA/Protocol with Kenya will be carried out by Member States with fleets already operating in the West Indian Ocean and targeting highly migratory species, most notably France and Spain.</p> <p>The SFPA/Protocol will meet the needs and requirements of EU processors and EU consumers. Catches made in the West Indian Ocean by EU purse seine and longline vessels contribute significantly to the EU market.</p> <p>While recognising the legitimate desire of Kenya to support its local tuna-processing sector, given the nature of tuna fisheries in terms of the migratory patterns of fish, the infrequency of landings, and the commodity nature of the product, the EU fleet needs a free market in terms of where it lands fish in order to maximise landing prices and use efficient landings and vessel support services in different ports. Kenya provides incentives for landing and local processing of tuna.</p> <p>Beyond the financial contribution by the EU and ship-owners for access to Kenya's EEZ, there would be benefits to Kenya in terms of value-added and employment. The additional sectoral support component, commensurate with the access rights, could probably effectively and efficiently address, with the cooperation of the EU, the requirements of Kenya for the close monitoring of the fishing activities of all the industrial vessels in its EEZ. Benefits to Kenya in terms of improved capacity from fisheries management and conservation would result from the sectoral support provided under the SFPA/Protocol and represent the primary benefit to Kenya, given the shared/regional nature of tuna fisheries in the West Indian Ocean.</p>
Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
<p>The proposal relates to the conservation of marine biological resources that falls under the exclusive competence of the EU according to Article 3(1d) of the Treaty on the Functioning of the European Union (TFEU)¹. Member States are not entitled to negotiate fisheries agreement with third countries. Therefore, the subsidiarity principle does not apply. Individual organisations of fisheries operators from EU member states have concluded private access agreements. The value added of the EU intervention is explained under Section D.</p>

B. Objectives of the initiative
What are the main policy objectives?
<p>The main policy objectives of the SFPA are:</p> <ul style="list-style-type: none"> • To contribute towards resource and environmental sustainability through rational and sustainable exploitation of living marine resources of the partner country • To provide the EU long distance fleet with access to fishing grounds in the fishing zone of Kenya and protect the employment linked to it • To support the development of a sustainable fisheries sector in Kenya, in line with the development objectives of both the EU and the partner country • To contribute to the fight against illegal, unreported and unregulated (IUU) fishing
Do the objectives imply developing EU policy in new areas?
No.

C. Options
<p>(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered?</p> <p>(2) What legislative or 'soft law' instruments could be considered?</p> <p>(3) How do the options respect the proportionality principle?</p>
<p>(1) The following options and related sub-options could be considered:</p> <p>Option 1: No SFPA [no EU action]</p> <p>Option 2: Recommendation of a new SFPA and protocol</p> <p>(2) <i>Treaty rules related to the negotiation of international agreements will apply.</i></p> <p>(3) <i>n.a.</i></p>

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

Option 1

This option represents the status quo and the alternative instrument to having an SFPA/Protocol, i.e. No SFPA/Protocol, with EU vessel owners or their representative organisations free to negotiate on an annual basis private access agreements to fish in Kenyan waters. In this case, access costs would continue to be based on a yearly vessel fishing authorisation fee and royalties paid by EU vessels would be based on the actual level of catches made. The advantage of this option is that no EU public funding will be engaged and that the bulk of the administrative burden will be for the EU member states.

The fishing activities of EU vessels will continue to be responsible and framed by the conservation measures of the competent regional organisation IOTC, the national legislation of Kenya and the relevant EU regulations. In that sense there is no risk that activities of EU vessels will impact negatively on sustainability in the absence of an SFPA/Protocol.

The drawbacks of this Option compared to Option 2 are that:

- EU SFPA/Protocols set the highest standard in terms of governance and sustainability to the benefit of the partner country ie Kenya. For example the provisions on monitoring and control of fishing activities, as well as the clauses on social standards of crew on board EU vessels would represent a useful benchmark for Kenya for its fisheries relations with other partners.
- No Joint Committee would be established to guide, monitor or evaluate the access granted, and to enable the strengthened cooperation between the EU and Kenya by means of fruitful exchanges on good fisheries governance.
- No security of access for EU vessels as private agreements are annual and SFPA Protocols are on average of at least 3 year duration;
- No requirement for EU vessels to employ local or ACP fishing crew; and
- Financial contributions would be only for access not for fisheries sector policy support, thus reducing the funding available to Kenya for maintaining stocks at sustainable levels of exploitation.

Option 2

The SFPA/Protocol will provide access to EU vessels to Kenya's EEZ to fish for highly migratory species, i.e. tuna and tuna-like species with purse seine vessels and with longline vessels targeting swordfish and shark, with smaller catches of tuna. While the SFPA will have duration of 6 years and will be subject to automatic renewal, the Protocol will be for a shorter initial period. The fishing access costs will be based on vessel authorisation fees, and a minimum reference tonnage with guaranteed payments per tonne for catches over the reference tonnage. The advantages of this option compared to Option 1 will be:

- An SFPA/Protocol will help deliver the shared need of both the EU and Kenya of resource conservation and environmental sustainability as well as support for human rights and democratic principles as preconditions for functioning of the agreement
- A Joint Committee made up of representatives of both parties will meet regularly to guide and manage the implementation of the SFPA/Protocol; the EU could also provide capacity-building and hands-on training to Kenya.
- Financial contributions for fishing access to be made by both the EU and EU vessel owners in line with the CFP reform principle of increased share of access costs being born by the EU vessel owners ;
- Incentives provided by Kenya, if economically viable for the EU fleet, to employ local or ACP fishing crew, resulting in employment and growth opportunities in the host country and therefore indirect value added; and
- Specific EU public financial contribution for fisheries sector policy support considering that funds currently generated by Kenya from private access fees are destined for the central treasury and does not appear to be ploughed back into fisheries governance.

The added value of EU/DG MARE involvement in an SFPA/Protocol comprises coherence, synergies and the avoidance of duplication with other donor activities and government policy/strategies in terms of the sectoral support funding provided; coherence with EU-linkages with Kenya, for example development policy/funding; support for regional efforts by IOTC and other regional organisations aimed at improving tuna fisheries management, i.e. improvements in MCS, reductions in IUU fishing; the likely requirement to have EU vessels employ Kenyan or ACP crew (or to pay an additional financial contribution if they do not); and a strengthened

<p>role of the EU within IOTC under option 2 i.e. an SFP/Protocol would contribute to strengthening the role of the EU in the region.</p>
<p>Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?</p>
<p>Option 1</p> <p style="padding-left: 40px;">No</p> <p>Option 2</p> <p>Additional workload for negotiating and monitoring the implementation of the SFP/Protocol and the activities of EU vessels will be shared between the EU and relevant member states. For the EU institutions this will be absorbed by existing resources. For EU Member States, most notably the Spanish, French, UK and Portuguese administrations, existing staff in institutions would also be expected to be involved i.e. these responsibilities would not require the hiring of new staff or additional staff costs. However, some slight additional operational budgets might be required to attend meetings.</p>
<p>(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (2) When will the IA work start? (3) When will you set up the IA Steering Group and how often will it meet? (4) What DGs will be invited?</p>
<p>(1) There will be no impact assessment, but an ex-ante evaluation has been carried out. (2) not relevant (3) + (4) A steering group, composed of officials from appropriate Commission services has been set up and has been involved at all relevant stages of the evaluation; it will also provide input to the negotiation itself.</p>
<p>(1) Is any option likely to have impacts on the EU budget above € 5m? (2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>(1) The opening of negotiations has no direct financial impact. However, depending on the outcome of these negotiations, EU budget shall be impacted, to an extent that will be reflected in the Council decisions related to provisional application and conclusion of the protocol. (2) An ex-ante evaluation has been carried out, as required in Article 31 (10) CFP-Regulation 1380/2013.</p>

E. Evidence base, planning of further work and consultation

- (1) What information and data are already available? Will existing IA and evaluation work be used?
- (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (4) Is any particular communication or information activity foreseen? If so, what, and by when?

(1) Information on the SFPAs are available on the DG MARE website:

http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm

Specifically with regard to Kenya, the ex-ante evaluation of a possible SFPA carried out by an external consultant provides additional information on the situation in Kenya fishing activities in the region, state of the stocks etc.

(2) None

(3) The evaluation was completed in February 2014

(4) The evaluation has been published on the Commission's website:

http://ec.europa.eu/fisheries/documentation/studies/kenya/index_en.htm

Which stakeholders & experts have been or will be consulted, how, and at what stage?

Negotiation will be prepared and conducted in close coordination with the Council and the European Parliament. In addition, stakeholders (fishing sector, civil society and member state administrations) have been consulted during the evaluation process through interviews and will be associated to the formulation of negotiating positions through technical meetings organised by the Commission.

¹ Consolidated version of the [Treaty on the Functioning of the European Union](#)