

THE EUROPEAN COMMUNITY EXTERNAL FISHERIES POLICY



Directorate-General for Fisheries
and Maritime Affairs

As part of the reform of the Common Fisheries Policy (CFP) launched on the basis of the 2001 Green Paper, the European Community (EC) identified two general objectives in the area of external relations:

- 1) to help improve world **governance** of all matters affecting the fisheries sector through effective implementation of the existing international legal framework and through the strengthening and promotion of regional cooperation mechanisms;
- 2) to implement an approach based on **partnership**, particularly with the developing countries that have concluded or are ready to conclude with the Community bilateral agreements involving a financial contribution.

The EC accordingly made a commitment to establish a new dialogue with all concerned parties:

- at Community level with all stakeholders, to strengthen the coherence of the policies concerned;
- at international level in specialised multilateral bodies and regional fisheries organisations (RFOs), particularly to further the development of strategic alliances between the EC and its partners;
- at bilateral level with third countries authorising access to surplus stocks in their waters and resources, to identify the elements required to set up a partnership for sustainable and rational exploitation of fish resources.

THE INTERNATIONAL DIMENSION OF THE COMMON FISHERIES POLICY HAS TWO MAIN OBJECTIVES:

- To maintain the presence of the European fleet in third country waters while contributes to sustainable and viable fisheries activities in those waters
- To ensure the supply of fisheries products to the Community market while respecting quality and hygiene standards and market rules



The reform of the external dimension of the CFP signalled the end of the exclusively commercial nature of fisheries agreements ('Pay, fish and leave') and the start of a new approach based on the conclusion of fisheries partnership agreements (FPAs) [see: '*Council Conclusions on Partnership Agreements*']. The FPAs must be seen as a **public and commercial investment in the mutual interests** of the EC and the coastal States. This approach also integrates the sustainable development principles agreed at the Johannesburg Summit, with particular emphasis on combatting illegal, unreported and unregulated (IUU) fishing.



REGIONAL FISHERIES ORGANISATIONS (RFOs)

Regional Fisheries Organisations (RFOs) are international bodies set up to ensure the conservation and sustainability of the fisheries resources of the high seas. The Convention on the Law of the Sea establishes the principle of freedom of high seas fishing. This freedom is nevertheless matched with the obligation for those engaging in fishing activity to cooperate to ensure the conservation and sustainability of resources. The RFOs are the main vehicle for such multilateral cooperation, providing a legal framework that can take into account the specific features and characteristics of each zone and species concerned. The coastal States, fishing States operating in the zone and fisheries bodies with an interest in fishing in the region concerned participate in the RFO's deliberations and decisions.

MORE AND STRONGER RFOs

The number, intensity of actions and importance of RFOs have risen appreciably over the last few years. The role of these organisations was initially limited to formulating opinions on matters of conservation and resource management, but has gradually been extended to management and regulation competences sometimes entering into the commercial sphere. In time, all the high seas should be covered by RFOs.

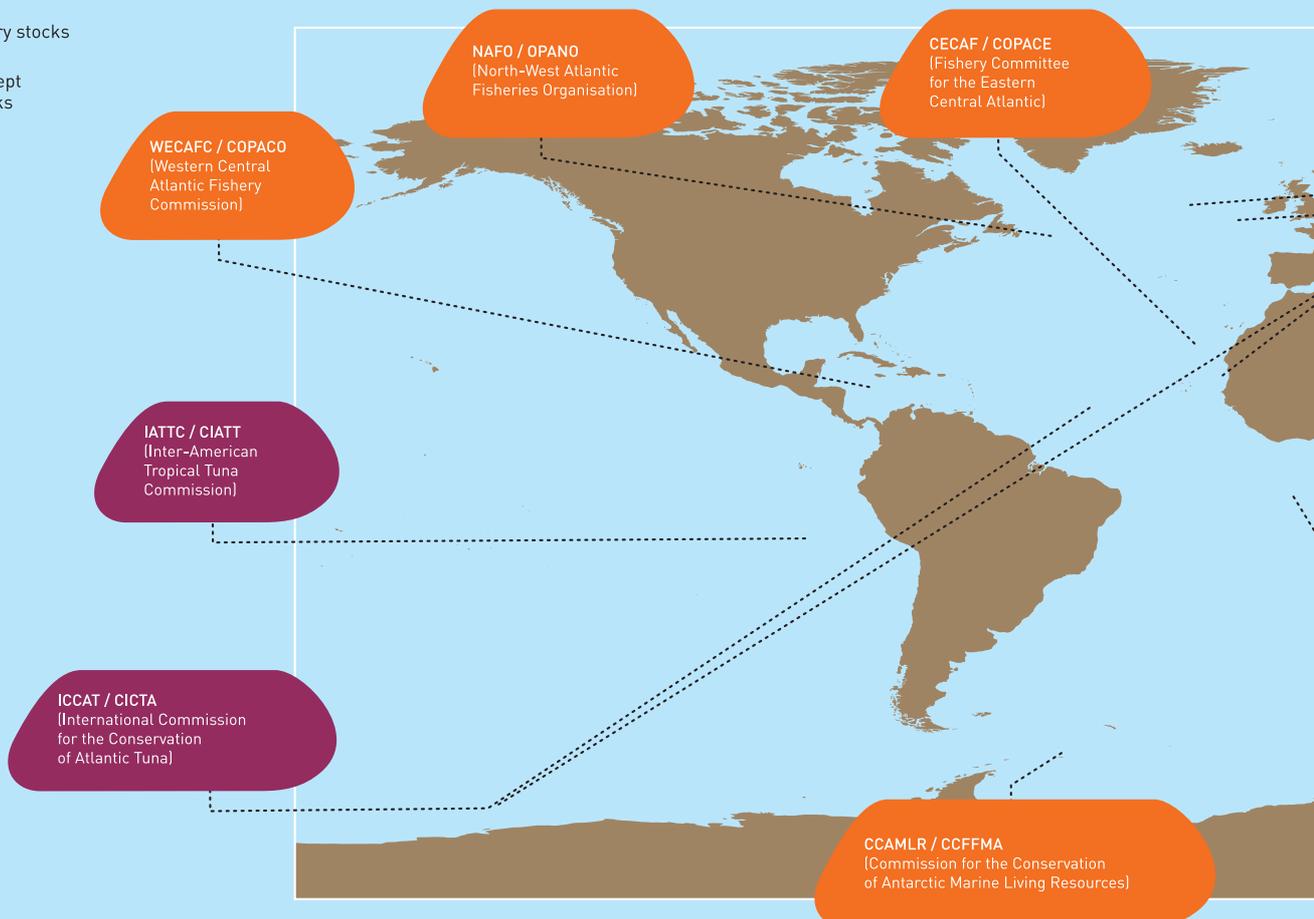
The EC is currently a contracting party to twelve RFOs (see map). It also has observer status in another two. The Community is also taking an active part in the creation of other RFOs for regions and species not yet regulated.

WHAT DO RFOs DO?

RFOs adopt management and conservation measures that determine the conditions in which fisheries resources may be exploited. There are three types of measures: management measures (TACs and quotas, number of authorised vessels, non-fishing zones and periods, etc.), technical measures (mesh size, minimum size, etc.) and control measures (inspection, control and surveillance of fishing activities, etc.). Some RFOs (e.g. ICCAT) have recently begun adopting measures on trade in fishery products.

As part of the fight against illegal fisheries certain RFOs (ICCAT, IOTC) have put in place commercial measures that are implemented in compliance with WTO agreements on a fair, transparent and non-discriminatory basis. In concrete terms, they ban imports from States that do not comply with the RFO's conservation measures.

- Highly migratory stocks
- All species except migratory stocks
- Salmon



The measures adopted by RFOs – generally on a consensual basis – are compulsory for the contracting and cooperating parties. Some are also enforceable against non-contracting parties in order to deter their vessels from endangering attainment of the objectives concerned.

A WIDE VARIETY OF RFOs

Certain RFOs cover all pelagic and demersal biological resources in their zone of competence, while others concentrate on one stock or a group of stocks, particularly highly migratory species. Their differences relate to the particularities and specific management needs of the stocks concerned. Geographical cover can be limited to the high seas or can include both the high seas and the exclusive economic zones (EEZ) of the coastal States due to the biological unity of stocks.

WHY DOES THE EC PARTICIPATE IN RFOs?

The European fleet and related interests represent for some fisheries, such as those for tuna and tuna-like fishes, one of the world's largest powers. The Community's commitment is therefore essential to the defence of its interests. The EC, moreover, has undertaken to implement responsible fisheries wherever its interests are at stake and consequently has the duty of participating in establishing the legal and economic order that is the competence of the RFOs.

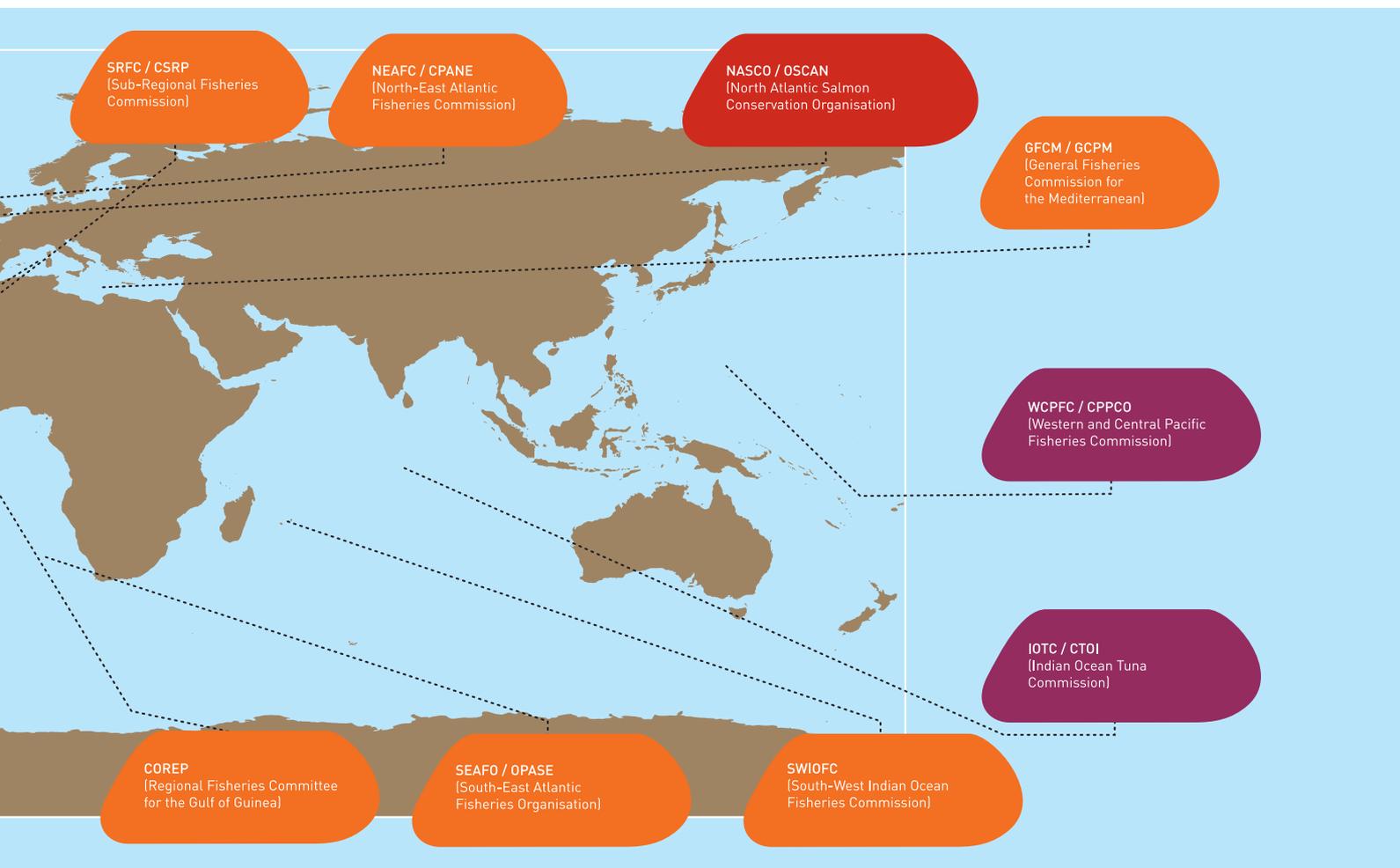
WHAT IS THE EC'S STRATEGY WITHIN RFOs?

The EC aims to maintain coherence between the measures adopted by these organisations and its other initiatives and to ensure compliance with the objectives and principles of the CFP, namely responsible and sustainable management of resources, while advocating the long-term interests of the fisheries industry and the employment it creates.

The multiannual approaches to stock management defended by the EC reflect this strategy, for example. Similarly, to deal with the problem of IUU fishing, the EC attaches priority to the promotion of control and inspection schemes.

HOW DOES THE EUROPEAN COMMISSION GUARANTEE THE EC'S PARTICIPATION IN THE WORK OF RFOs?

The European Commission, which has exclusive competence for fisheries policy, represents the EC in RFOs. It is assisted by the Member States. The EC's positions are adopted in coordination with the representatives of the Member States prior to the annual meeting of each RFO or on location, to address the questions that naturally arise at these meetings. The European Commission also involves on numerous occasions representatives of the sector (fishermen and fish processors) as well as other stakeholders, in particular scientists and non-governmental organisations.



THE MAIN MULTILATERAL CHALLENGES

THE INTERNATIONAL FISHERIES LEGAL ORDER AND MULTILATERAL COOPERATION MECHANISMS

The foundations of both RFOs and bilateral cooperation mechanisms and agreements reside in the main principles of international fisheries governance laid down by the law of the sea. This body of rules includes binding texts as well as voluntary instruments that nonetheless constitute an essential reference.

Binding texts include the 1982 United Nations Convention on the Law of the Sea and the 1995 Agreement on Straddling and Highly Migratory Fish Stocks. Another important instrument is the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. Important voluntary instruments include the Code of Conduct for Responsible Fisheries, adopted by the FAO in 1995, and all the International Action Plans implemented pursuant to the Code (see 'Legal Framework').

Why revise the law of the sea?

The international fisheries legal framework is constantly evolving. It has generated for the last 20 years intense legislative activity, in particular in the United Nations and the FAO. The international community is today facing two challenges: ensuring effective implementation of provisions and closing the remaining loopholes.

- On **enforcement of the law of the sea**, efforts are needed in particular to strengthen control, surveillance and follow-up of fishing activities and thus to combat illegal fishing more effectively (see box: 'IUU fishing – A Community action plan'). These efforts will take shape in particular through the establishment of inspection schemes for monitoring landings and transshipments in ports and the definition of the essential link between the vessel and its flag State.
- **Loopholes to be remedied** include: the need for all the high seas to be covered by fisheries management organisations or arrangements (to date, non-tuna resources of the southern Indian Ocean, the Pacific Ocean and southwest Atlantic are not covered); the extension of fisheries instruments to discreet high seas stocks; the development of provisions for the protection of high seas marine biodiversity and more generally for all activities having an impact on the marine environment, including fisheries.



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IUU FISHING – A COMMUNITY ACTION PLAN

Illegal, unregulated and unreported fishing, especially resulting from the activities of vessels flying flags of convenience, is the scourge of high seas fisheries.

The Community has adopted an action plan that is derived from the international plan adopted by the FAO in 2001, based essentially on:

- reinforcing Community legislation to establish the responsibility of the beneficiaries of infringements (responsibility of nationals, regardless of the flag under which the vessels concerned operate);
- strengthening multilateral actions by RFOs (drawing up of lists of vessels, improvement of product traceability, toughening up of control schemes);
- creating a stronger international legal framework (definition of the substantial link, definition of port State obligations).

A priority for the Community is combating IUU fishing and strengthening control and surveillance methods in the countries with which it has a fisheries agreement. The aim is ensuring acceptable and sustainable exploitation of resources. Joint initiatives with the countries concerned are under way, particularly in West Africa, East Africa, Southern Africa and the Pacific, to improve infrastructure, means of control and the legislative framework.

FISHERIES PARTNERSHIP AGREEMENTS (FPA)

With the adoption of the **Council Conclusions of July 2004**, the EC's bilateral fisheries relations are now based on an international legal act between the EC and the concerned coastal State. These are the **Fisheries Partnership Agreements (FPA)**, which are the best means of ensuring sustainable exploitation of certain fisheries resources and greater coherence between EC policy initiatives (see: *'Council Conclusions of 2004'*).

WHY SECTORAL PARTNERSHIPS?

The FPAs aim to defend the interests of the sector but also to contribute to sustainable fishing activities in the waters of third countries in accordance with the principles of the CFP (conservation, fleet, structures, etc.). The FPAs are also meant to enhance coherence with development cooperation policy and with other related policies, such as environment, trade and health (see box: *'Improving Coherence'*).

WHY PAY AND HOW MUCH?

The financial contribution is a crucial element of the FPAs and its amount has to correspond to the mutual interests of the Community and the partner country. The contribution must therefore be calculated while taking three categories of elements into consideration:

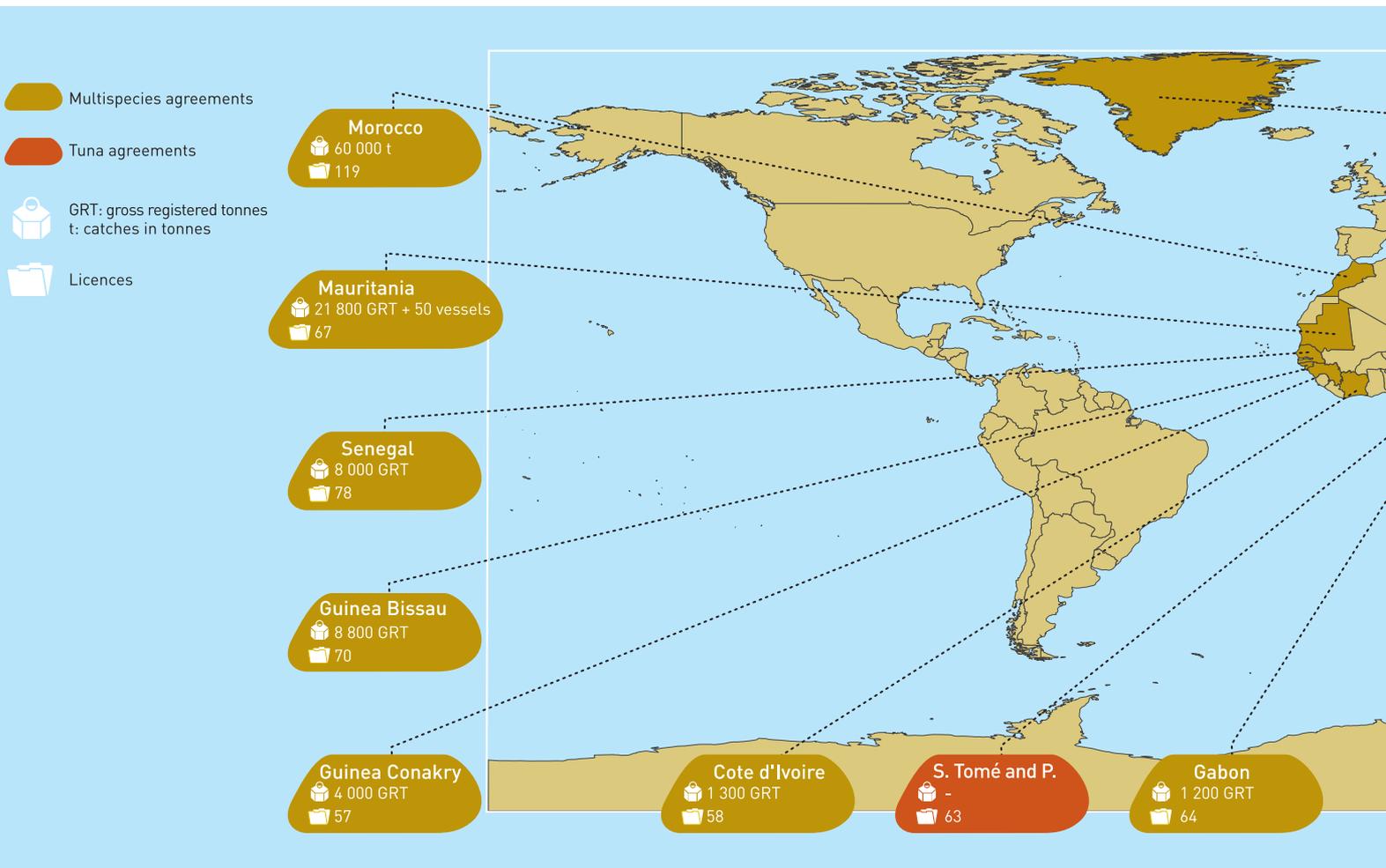
- all fishing possibilities made available,
- support for implementation of the sectoral policy for sustainable development of fishing activities (see box: *'Support for fishing sector policy'*),
- the relative weight of Europeans' economic and social interests in the fishing economy of the partner country.

On top of this financial contribution charged to the Community budget are the fees paid by vessel owners, which represent the price of access to resources and must gradually be adapted so as to be fair and non-discriminatory.

HOW IS AN FPA NEGOTIATED AND THEN MANAGED?

The development of new negotiation methods is another feature of the FPAs. This new method is structured in four stages which can be summed up as follows:

1st stage: prior to the negotiations, ex-ante and ex-post evaluations by external experts (social, political, economical and environmental impact analysis, macro-economic and institutional evaluation, identification of follow-up indicators, etc.) enable the European Commission to prepare negotiating guidelines and obtain a negotiating brief from the Council;



2nd stage: the negotiations proper lead to identification of the elements necessary for building a partnership, notably those provided for in the 2004 Council Conclusions, and conclude with the initialling of a text by the two parties;

3rd stage: on a proposal from the European Commission, the Council adopts a regulation setting up an FPA and its protocol, which sets out the rights and obligations of both parties;

4th stage: implementation, which for the duration of the protocol and thanks to the creation of a joint committee, allows assessment of the development of fisheries and of the sector's activities, notably on the basis of indicators agreed in advance by the parties, and allows adjustments if necessary.

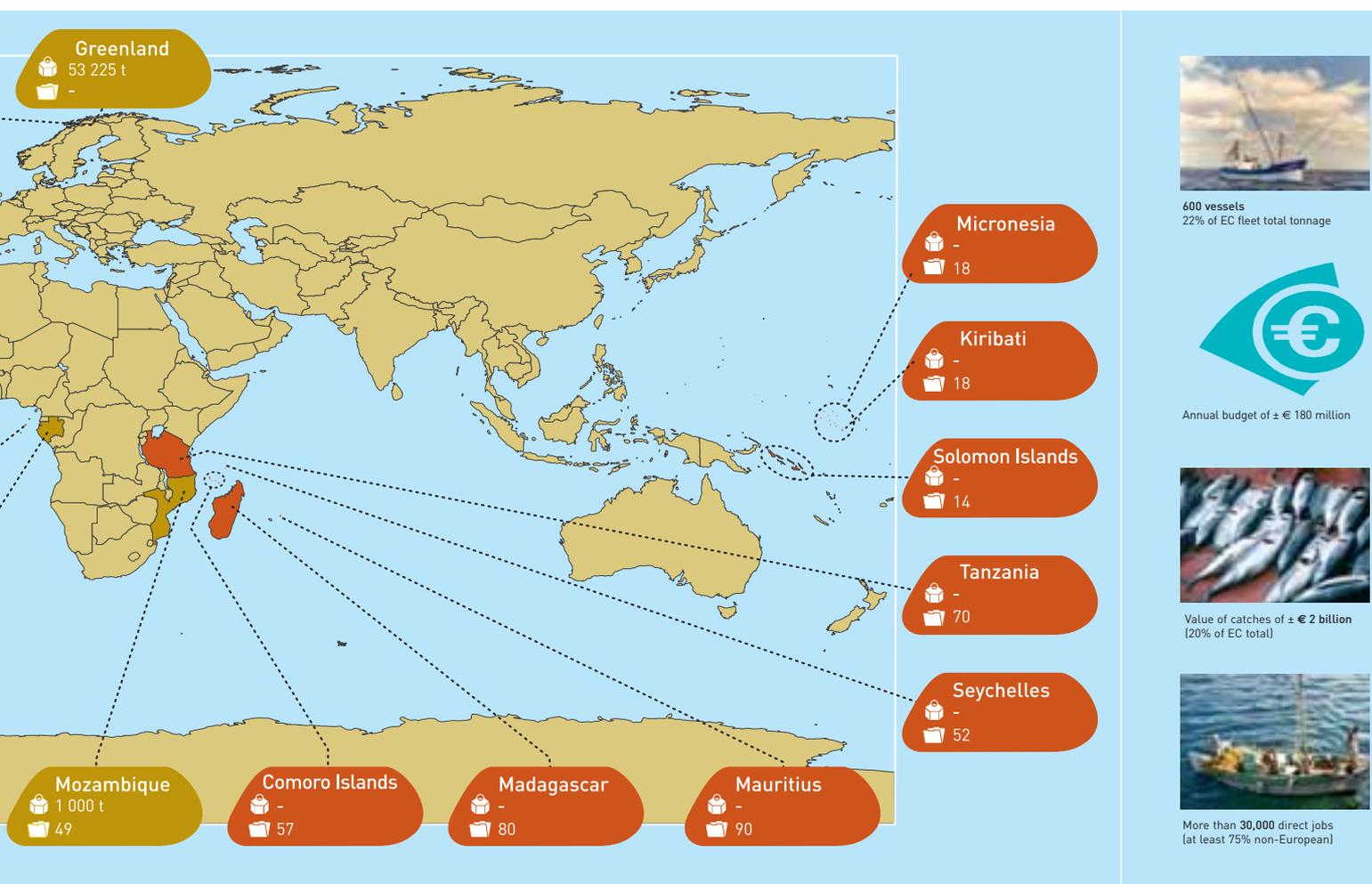
Support for the fisheries policies of the countries with which the EC has a fisheries agreement is an essential element of the new Partnership Agreements. Such support is needed to help ensure the introduction of a coherent and integrated long-term policy for resource management and enhancement of the value of fisheries products.

ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

The unilateral commercial preferences that the EU currently grants under the Cotonou Agreement to African, Caribbean and Pacific (ACP) countries are authorised by a system of exemptions to World Trade Organisation (WTO) rules. The exemptions will end on 31 December 2007 and are not renewable. Accordingly a new scheme needs to be put in place to govern relations between the two regions from 1 January 2008. That new scheme will be made up of EPAs, currently being negotiated with the different ACP sub-regions.

The ACP States have identified fisheries as one of the priorities of these negotiations. For fisheries products, the talks will focus in large measure on commercial aspects (rules of origin, market access and sanitary and phytosanitary standards (SPS)). Certain ACP sub-regions nonetheless wish to see resource management, control and surveillance included in a regional approach or even integrated into the EPAs. The idea is not to replace the Fisheries Partnership Agreements (FPAs) but to solve on a regional basis certain problems whose causes and consequences are not limited by national borders.

Without prejudging the final result of the negotiations under way, it is certain that the outcome will have an impact on the FPAs between the EU and certain ACP States.



FISHERIES PARTNERSHIP AGREEMENTS: THE CHANGES

◆ Procedures:

- Improvement of policy dialogue with the partner countries and stakeholders (including the industry) and the Community's contribution towards a viable fisheries policy
- Emphasis on impact assessments and sustainability
- Emphasis on control and implementation

◆ Content:

- Emphasis on viable fishing activities (and on the existence of scientific advice)
- Emphasis on coherence with other EC policies
- Budgetary discipline

IMPROVING COHERENCE

The FPAs are meant to enable the EC and its partner to establish a legal framework that improves the coherence of actions to ensure sustainable fisheries in the mutual interests of the parties, notably with:

- the general objectives of EC conservation policy,
- the Union's environmental protection commitments,
- the Union's cooperation and development policy,
- trade policy and consumer protection,
- principles of good governance, notably in the financial and budgetary realm.

SUPPORT FOR FISHING SECTOR POLICY

Under the Fisheries Partnership Agreements, part of the financial contribution is earmarked for the development and implementation of the beneficiary country's fishing sector policy.

The allocation and management by the beneficiary State of this contribution is founded on the joint identification by that State and the European Commission. In order to carry this out, these parties concerned define the objectives to be attained and the related annual and multiannual budgetary planning, as well as the criteria and indicators to be used for annual assessment of results and progress achieved.

This sector-based approach makes it possible to provide support for the beneficiary State's fishing sector in a global and coherent way. It also encourages better take-up of fisheries policy by the beneficiary State, dialogue and more complementary initiatives by players in the sector.

COUNCIL CONCLUSIONS ON PARTNERSHIP AGREEMENTS – JULY 2004 (EXTRACTS)

- The Council reaffirms its willingness to maintain fisheries agreements (...) and to guarantee and step up its action to establish sustainable fisheries outside Community waters (...).
- The Council considers that public agreements encompassing all fishing activities in distant waters provide the best means of ensuring the sustainable exploitation of surpluses and a greater coherence between the political initiatives of the Community (...).
- The Council recalls that the Community must:
 - contribute towards rational and sustainable exploitation of the surplus of coastal States' marine resources (...);
 - improve scientific and technical knowledge of the fisheries in question;
 - contribute towards combating illegal, unregulated and unreported (IUU) fishing;
 - contribute towards strategies for the sustainable management of fisheries as defined by the coastal State (...);
 - facilitate the integration of developing coastal States into the global economy, (...) by promoting fair conditions of employment, (...) by encouraging the creation of an environment that is favourable to private investment and to the development of a dynamic, viable and competitive private sector, notably by a framework supporting European investments and the transfer of technology and vessels;
 - foster better global governance of fisheries (...).
- The Council sees a need for progressive development of a policy dialogue at national and/or regional level (...) and this dialogue must be consolidated by a binding instrument.
- The financial contribution will be determined on the basis of three parameters: accessible fishing possibilities, actions to promote the sustainable development of fisheries and the impact of the FPA, and participation of European interests in the sector as a whole. The single financial contribution will be deployed according to the budgetary procedures of the partner State and according to the results of the negotiations.
- The Council asks the Commission, for each agreement, to carry out ex-ante and ex-post evaluations (...), propose to its partners the setting up of a bilateral scientific committee, implement initiatives that will promote responsible fishing (...) and ensure that the FPA is permanently monitored.

THE LEGAL FRAMEWORK

COMMUNITY LAW

Treaty establishing the European Community (Extracts of the consolidated version)

- Art.32 (ex 38) [see Title II of Articles 33 to 38]
Common fisheries policy
 - Art.131 (ex 110) Trade policy
 - Art.136 (ex 117) Social policy
 - Art.152 (ex 129) Protection of human health
 - Art.153 (ex 129A) Consumer protection
 - Art.174 (ex 130R) Community policy on the environment
 - Art.177 (ex 130U) Development cooperation policy
 - Art.300 Provisions governing the conclusion of international agreements
- See: <http://europa.eu.int/eur-lex>

GENERAL PRINCIPLES OF THE CFP

- Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.
- See: <http://europa.eu.int/eur-lex>

BILATERAL FISHERIES RELATIONS

- Council Resolution of 3 November 1976
 - Council Conclusions of October 1997
Council Document 11784/97
 - Council Conclusions 11485/1/04 on the Commission Communication on an integrated framework for fisheries partnership agreements with third countries
 - Commission Communication for the eradication of illegal, unreported and unregulated fishing
COM (2002) 180 of 28/05/2002
- See: <http://europa.eu.int/eur-lex>

OTHER

- COTONOU AGREEMENT. ACP-EU Partnership Agreement
- Economic sector development (see Article 23)
- Fisheries agreements (see Article 53)
- See: http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm

INTERNATIONAL LAW

- United Nations Convention on the Law of the Sea/UNCLOS (1982)
→ See: <http://www.un.org>
- Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks/UNIA (1995) – Known as the ‘New York Agreement’
→ See: <http://www.un.org>
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO/1995)
→ See: <http://www.fao.org>
- Code of Conduct for Responsible Fisheries (FAO/1995)
→ See: <http://www.fao.org>
- Convention on Biological Diversity (CBD/1992)
→ See: <http://www.biodiv.org>

USEFUL ADDRESSES

Directorate-General for Fisheries
and Maritime Affairs – European Commission
B-1049 Brussels
Website: http://www.europa.eu.int/comm/fisheries/policy_en.htm

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