

ADVOCACY NOTE

ENHANCING REGIONAL COOPERATION IN FISHERIES ACCESS AGREEMENT (FAA) FOR SHARED FISH STOCKS

Key Messages

- Customary law confers a sovereign right on the coastal State over its EEZ, and under UNCLOS the coastal State is under an obligation to grant access to its EEZ through access arrangements where it does not have the capacity to fish the allowable catch.
- The costs that accompany bilateral access agreements, in terms of income for local fishers, environmental damage and depletion of fish stocks, far outweigh the short-term financial gains generated from foreign government payments.
- AU MS should ratify, accede and/or accept; domesticate and implement the provisions of key fishery-related Instruments.
- Cooperation under standardized conditions, in a regional arrangement, can provide a vehicle for sharing data among participating coastal States and they can also focus on the harmonization and coordination of their respective fisheries regime with attendant benefits both to those States and the distant water fishing States operating in the region.
- Institutional collaboration

is critical to improving FAA arrangements at regional level, with RECs providing the political and financial support and RFMOs, RFBs and LMEs the technical inputs.

- The design and implementation of a Regional Access Control Regime reinforces cooperation, establishes minimum terms and conditions of access, and addresses several issues vital to the pre-, during and post-negotiations phases of FAA.
- The availability of up-to-date data is a crucial element of sustainable fisheries management; the collection of the required data should be supported by corresponding assistance by DWFN.

Background

In the mid-1970s, anticipating the coming into force of the United Nations Convention on the Law of the Sea (UNCLOS), an increasing number of coastal States proceeded to establish exclusive economic zones (EEZ) by extending their jurisdiction out to the sea from 3-12 to 200 nautical miles. The entire African EEZ waters cover some 13 million km².



UNCLOS (Article 62) stipulates that coastal States who are unable to fully utilize or harvest fisheries resources within their EEZ should allow other countries or states (industrial vessels) access to the surplus stocks. Some distant water fishing nations (DWFNs) have therefore, entered into bilateral fishing access arrangements (Fisheries Partnership Arrangements, bilateral intergovernmental agreements; reflagging; chartering; private commercial agreements and Joint Ventures) with several African coastal States in the past forty years. It is estimated that 59 percent of African Union Member States' (AU MS) EEZ is subject to some sort of foreign fisheries access arrangements at any moment.

Access agreements are contractual arrangements whereby foreign fleets are permitted access to the waters under the jurisdiction of a State or group of States under specified conditions. The Policy Framework and Reform Strategy for fisheries and aquaculture in Africa underpinned, as strategic approach for shared resources, the development and agreement on minimum terms and conditions of fisheries access and adopting a common harmonized and coordinated approach with regards to granting access to resources to third parties and national fleet within the region.

Scope of the Problem/Issue

From an economic perspective, a fishery access agreement, is a contract where agreement between a coastal State and a foreign fishing fleet/nation produces a rent that will not exist otherwise. The concerns are about how to share the rent produced between the coastal State and the fishing nation; the degree of leverage national governments have to secure just benefits from these agreements; and if the coastal States have the appropriate capacity (human and institutional) in terms of monitoring, control and surveillance (MCS) system to effectively police the activities of the Distant Water Fleet (DWFs). Generally, coastal States have neither the leverage to secure just benefits from these agreements nor the capacity to police their waters, and unscrupulous DWFs vessels undertake illegal activities, aggravating the incidence of illegal, unreported and unregulated (IUU) fishing.

A cardinal aspect in fishing agreements is to demonstrate, using scientific evidence, that there really is a surplus, which can be harvested by a foreign fleet. In the absence of functional national fisheries research institutes in many States, this is not possible to do. There are situations where fisheries agreements have allowed access to resources which are fully exploited or even overexploited; where no surpluses exist. Furthermore, the negotiating process has not been inclusive as communities/stakeholders have usually not been involved; and many States do not have comparable status and power with the DWFNs in negotiations; and they have weak bargaining power. Transparency, also has been a factor in the negotiations, as some DWFNs are known to withhold information vital for decision-making.

Over the years, African coastal States have learnt, among other things, that fishing agreements are, despite their similarities, all different from each other and the effects on marine ecosystems as well as the development of the domestic sector or the contribution to the national economy depends on how the distant water fleets operate in the EEZ, including their compliance with responsible fishing practices. In this regard, owing to the absence/limited management schemes in the coastal State, access agreements tend to exacerbate increases in fishing effort and overfishing as well as contribute to environmental degradation. Bilateral FAA can adversely affect the sustainability of shared or transboundary stocks, as the countries concerned do not have common regional strategies for the management of the resources and coastal States enter into these agreements without consulting the other states.

In the past, DWFNs were interested in demersal stocks: mainly octopus, sole, shrimps, and snappers, hake; small pelagics: sardinellas, horse mackerel, sardine, pilchard; and the tuna family. In the 2000s, as coastal States, particularly in West Africa, increasingly develop their own fishing capacities through the artisanal sector and since all major demersal stocks are fully or already over-exploited, the interest has shifted to tuna stocks, and to some extent, to the small pelagic fisheries, which are shared stocks.

Studies suggest that the costs that accompany access agreements, in terms of income for local fishers, environmental damage and depletion of fish stocks, can far outweigh the short-term financial gains generated from foreign government payments. AU MS are not maximizing the benefits from fisheries exploitation through developing value adding operations such as developing processing and export markets; but have laid more emphasis on bilateral access agreements which outcomes have generally been unsatisfactory.

Briefly, many AU MS face important challenges in managing and optimizing economic benefits from bilateral FAA. The main challenges include

- Weak monitoring Control and Surveillance (MCS)
- Insufficient technical expertise in various areas, including negotiation skills
- Insufficient port infrastructure and processing plants
- Little knowledge of the stocks
- Illegal, Unreported and Unregulated fishing activities
- Minimal return of value to domestic economies, relative to value of catches

Call for Reforms

Cognizant of the situation, the first Conference of African Ministers of Fisheries and Aquaculture (CAMFA-I) in 2010 stressed the need for sustainable fisheries access agreements in the interest of sustainable development of coastal States. The Conference further recommended that FAA be negotiated at regional level and that the Regional Economic Communities (RECs) should provide a supporting role, in order to increase benefits for African States. The CAMFA-I Recommendations were adopted by the AU Summit in February 2011.

The Joint Meeting of the Ministers of Agriculture, Rural Development, Fisheries and Aquaculture in 2014, raised concerns about all forms of overexploitation of the fisheries resources including Illegal, Unreported and Unregulated (IUU) Fishing leading to plundering of the resources. The Meeting requested Member States and the RECs to design fisheries access strategies which encourage secure rights and sustainable harvesting of

fisheries resources to harness the wealth-generating potential of the resources.

Advocated Reforms

Why a regional approach?

The best approach for negotiating FAAs is regionally because many resources migrate regionally, and also negotiating with more organized and well experienced entity requires concerned States to pool their resources under a strong regional framework rather than the individual country approach.

Cooperation under standardized conditions can provide a vehicle for sharing data among the participating coastal States and also focus on the harmonization and coordination of their respective fisheries regime with attendant benefits both to those States and the distant water fishing States operating in the region. For coastal States the benefits would include: better information and bargaining position, reduction in compliance control costs, and more effective management of the transboundary stocks. For the distant water fishing States: facilitating access to and providing for similar conditions of access over a wide range of zones within which the stocks migrate and therefore shared among the concerned coastal States.

A regional access agreement can greatly enhance the ability of the Member States to monitor and control IUU fishing by mobile foreign fishing fleets. A clear regional approach to controlling access by foreign fleets may also improve the investment climate required for creation of joint ventures and direct foreign investments, add stability to these fisheries, and create a basis for long-term planning of the optimum usage of these resources by AU MS and responsible foreign partners.

The economic, social and ecological consequences or negative impacts of past bilateral FAAs and the fact that the only stocks that currently lend themselves to FAAs are transboundary or shared stocks further strengthens the need for a regional approach to granting access to DWFs. The call by the international

community for countries to adopt the ecosystem approach in the management of fisheries resources is an encouraging sign and marks the advent of a regional strategy for the management of resources relating to fisheries agreements

In contrast, the absence of a common regime of control over foreign fishing means that the Member States compete to attract foreign vessels, which can exploit to advantage the differences and inconsistencies between the individual national access regimes, resulting in the depletion of the fishery resources.

Main Pillars for enhancing regional Cooperation

The principal pillars for enhancing regional cooperation in FAA for shared stocks are:

- Capacity building of Stakeholders on issues of shared stocks, FAA and negotiation skills
- An enabling legal framework
- Inclusiveness, transparency and collaborative in approach
- Strengthening institutional collaboration
- Increasing knowledge and understanding of the resource
- Design and implementation of a regional access control regime
- Miscellaneous actions

Capacity building

The Policy Framework and Reform Strategy of Fisheries and Aquaculture in Africa (PFRS) identified open access in capture fisheries, inadequate/ineffective foreign access arrangements as part of the enormous challenges and deficiencies of the fisheries and aquaculture sector in AU MS; limiting the capability of most governments to ensure the sustainability and profitability of the sector so that it can contribute to the wellbeing and economic development of the continent.

To operationalize the specific strategy that relates to FAA, AU-IBAR has organized training workshops to equip fisheries experts, relevant officials from the Judiciary and Trade departments and other stakeholders from AU MS with the necessary skills and knowledge

for enhancing their ability to successfully negotiate for granting access to fishing fleets, processing technologies and other related fisheries investments in order to promote equitable and sustainable access agreements in Africa. In addition, the training workshops acquainted the participants with the principles and provisions of the FAA, key provisions in the relevant fisheries related instruments, basic negotiation techniques, the rules and regulations of the Common Fisheries Policy, and the conservation and management measures.

The workshops were also a medium to fostering cooperation related to a variety of issues concerning transboundary fish stocks, such as common approach in engaging with the foreign fishing vessels, mutual access, fisheries access agreements with DWFs, resource management and conservation and monitoring control and surveillance. Such capacity building enhanced interpersonal relationships among the major key players from the concerned States, which could be critical in advancing regional cooperation.

Enabling Legal Framework

The legal basis for fishing access agreements is found in UNCLOS which permits coastal States to exercise sovereign rights for the purpose of exploring, exploiting, conserving and managing all marine resources in their EEZ; while also stipulating that coastal States, who are unable to fully utilize or harvest fisheries resources within their EEZ should allow other countries or states access to the surplus stocks. Furthermore, UNCLOS, the UN Fish Stocks Agreement, Port States Measures Agreement (PSMA) and the FAO Code of Conduct for Responsible Fisheries reflect the underlying principles in regional cooperation among States. The UN Fish Stocks Agreement is legal (binding), more meticulous on the duty to cooperate and provides the mechanisms that give effect to this duty; while the Code of Conduct is voluntary and pays special attention to the responsible and effective management and utilization of fisheries.

The international instruments are significant in that they stress the responsibilities which accompany rights of States and other stakeholders in the fishing sector; encourage cooperation, provide best practices

and several of their provisions have direct bearing to the issue of FAA, IUU fishing and MCS which is an indispensable component of fisheries management, especially in the context of FAAs.

It is important that AU MS ratify, accede and/or accept these key Instruments, adopt them into their domestic legal system, integrate the Instruments into their national standard and make it domestic law and be committed to implement the provisions of the instruments. Domestication is important because Instruments ratified by states may be binding to states but might not be applied or enforced domestically against natural or juridical persons unless they are reflected in enabling legislation.

The Basic Text of Regional Fishery Bodies (RFBs), Regional Fisheries Management Organizations (RFMOs) and Large Marine Ecosystem (LMEs) Programmes/Commission, as well as, Regional Economic Communities should also be taken into account, where appropriate.

RFMOs and some regional fishery bodies have developed best practices that should be integrated in FAAs; while the LME approach has become an important vehicle for engaging neighboring States in the conservation and sustainable use of marine resources and in addressing transboundary ocean issues.

Inclusiveness, Collaboration and Transparency

The negotiation of fair and sustainable FAA, should be inclusive, collaborative and transparent taking into account the potential implication and impacts of the process of negotiating FAAs for the various regional organizations and other stakeholders especially of the fisheries sector. All stakeholders including RFBs, RFMOs, RECs and the various Programmes /Commissions covering the relevant LMEs must be involved or represented in negotiations. States/governments should avoid deciding for the private sector, and endeavor to include all relevant actors and professional groups in FAAs discussions.

The process should also be transparent in order to cultivate trust. The need for transparency in the operation of access agreements cuts across a number of areas: transparency is relevant to strengthening the bargaining position of coastal States, for obtaining adequate reporting on fish stocks; and also aid in the adequate determination of the value of the fish resources in question. Coastal States with information on the state of the resource should make them available and all deliberations should be open.

Significant sector specific support for the fisheries must be organized, to ensure that the fisheries sector gets the best from the resources available in the national treasury; therefore, the Ministry of finances and even national treasury must be intimately involved in the process.

Promotion of institutional collaboration

Promotion of institutional collaboration is critical to improving FAA arrangements at regional level. The involvement of RECs, RFMOs, RFBs and LME Programmes or Commission will permit the concerned States to address problems and deliver outcomes that are not easily or effectively achieved by working alone. The synergies realized by combining effort and expertise will produce benefits greater than those through individual institutional effort. Such collaborative advantage can best be achieved by RECs providing the necessary political and financial support, and the RFMOs and others, the technical inputs. This will require a high level of trust and extensive dialogue between the institutions.

Increasing knowledge and understanding of the transboundary stocks

Lack of knowledge on the status of fish stocks has resulted in over exploitation of some of the resources which DWFNs targeted in the past. In order to avoid a continuous degradation of the fishery resources, it is important that future decisions on allocations or quotas in FAA arrangements are based on the best scientific information available on the state of the stocks, including abundance and distribution of

fish stocks over time, as well as economic and social data. The time to start addressing this shortcoming is now, rather than later. Hence, it is imperative that in enhancing regional cooperation on FAA for shared stocks, emphasis is placed on stock assessment, an area that seems to have been neglected in many AU MS fisheries agenda.

To choose the best approach to managing a fish stock, managers must equip themselves with as much information as possible. A stock assessment provides decision makers with much of the information necessary to make reasoned choices. A fishery stock assessment describes the past and current status of a fish stock. How big is the stock? Is it growing in size or shrinking? A stock assessment also attempts to make predictions about how the stock will respond to current and future management options. Will a slight increase in fishing pressure have a negative effect on the stock next year? Three years from now? In the end, the manager must decide how to interpret the information from the stock assessment and determine which options are best overall. A complete stock assessment contains a vast array of information on both the fish population and the fishery itself.

Fisheries managers then consider results of the stock assessment when taking management action, which in turn may affect stock abundance or productivity. If a stock is overfished, actions need to be taken to reduce fishing pressure. This allows the stock to rebuild to an acceptable level and promotes a healthy fishery in the future. On the other hand, if a stock is healthy, managers take steps to ensure the stock is harvested at a level allowing for long-term sustainability. The role of stock assessments, therefore, is to provide the best possible technical support to decisions concerning the granting of access rights to DWFs.

Fisheries research institutes in a region should agree on the format for collecting data to facilitate the management of the data for decision. They should also establish collaborative mechanisms to improve the quality of their work which may include joint work programs, exchange of experiences, joint publication of their work; and in general, lay emphasis on capacity

development.

Bearing in mind that the availability of up-to-date data is a crucial element of sustainable fisheries management and that many fisheries research institutes in the continent lack funds, the collection of the required data should be supported by corresponding assistance by DWFN,

Design and Implementation of the Regional Access Control Regime

AU MS need to design and implement a regional access control regime, which should, at the minimum, contain the following:

- establishing a co-ordinated approach to the exploitation of shared stocks through licensing, observers, vessel identification, standardised log book, and timely reporting;
- establishing uniform minimum terms and conditions of access;
- standardising licensing procedures;
- the exchange and analysis of data;
- monitoring, control and surveillance, of fishing activities;
- harmonization of fisheries policies,
- maintaining common sub-regional vessel register, and
- dispute settlement

The implementation of a regional approach is however dependent on the political good-will of all the concerned coastal States as an official resolution by member States so as to engage the process of implementation of regional fishing agreements.

The first stage will be to harmonize the national regulatory frame and to create an African Union group of experts to develop the components of such a process and to bring in the same time support to the coastal States for the improvement of their negotiation capacity and management of the agreements. The second stage would be to validate politically, on the scale of the AU, the institutional frame selected while the third stage would consist of institutional implementation, of the process of allowance of the access to the shared

resources and the management of the agreements.

Other actions to enhance regional cooperation.

Other actions that are required to enhance regional cooperation on FAA of shared stocks include:

- Strengthening of the regional cooperation for both FAAs and Trade negotiations;
- Sharing of relevant consultancy reports and documents from partners on the ongoing consultancies on FAAs and International Instruments.
- Strengthening of the teams involved in Fisheries Access Arrangements and Trade negotiations with inclusion of all experts and stakeholders.
- Continuous capacity building on key aspects of FAA
- AU MS, on regional basis, make an inventory and consolidate available expertise on fisheries and trade negotiations.
- AU-IBAR develops a pan-African action force in order to ensure transparency in fishing right allocation, to provide key expertise to States that negotiate/allocate rights and to promote a regional organization of the allocation of shared stocks such as tuna.

Conclusion

The potential of the fisheries sector to contribute to poverty reduction and improved socio-economic benefits to populations have not been optimally exploited. It is estimated that the continent loses between US\$2-US\$5 billion annually due to mismanagement in the sector. Part of this loss can be attributed to poorly negotiated bilateral FAA. Reforms, as advocated in this Paper, are essential to ensure the fisheries resources, particularly the transboundary stocks are conserved and managed sustainably.

Further Reading

1. Regional Workshop on Strengthening Capacity for negotiating fair and sustainable fisheries access agreements in West and Central Africa, 28-30 March 2016, Dakar, Senegal; AU-IBAR, Nairobi, Kenya

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