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PERSPECTIVES ON FISHERIES ACCESS AGREEMENTS: DEVELOPING COUNTRY VIEW

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PERSPECTIVES ON FISHERIES ACCESS AGREEMENTS: DEVELOPING COUNTRY VIEW¹

Abstract

The objective of the paper is to identify issues and problems that fisheries access agreements have given rise to in terms of policy coherence/incoherence between developed and developing countries, and to address these issues and problems from a developing country view. The original rationale for developing coastal states to adopt access agreements as a key instrument for managing foreign fishing when they extended their fisheries jurisdiction is described and its current relevance is analysed. Some of the key reasons for developing coastal states to adopt access agreements no longer apply or are less strong now. Issues and problems that fisheries access agreements between developed and developing countries have given rise to in terms of policy coherence/incoherence policy are considered. These include over-exploitation and compliance failures, adverse impacts on other fishers and on domestic fisheries development and the lack of transparency.

Taken together, the changes in the conditions that encouraged the adoption of access agreements and the issues of policy coherence suggest a fresh look by developing countries at the role and structure of access agreements. That doesn't necessarily call for terminating or putting aside access agreements. Rather, it calls for developing countries to update their fisheries management strategies, taking into account the need for an ecosystem approach to fisheries management and the opportunities for gains in sustainable fisheries development from rights-based management. Within these strategies, there will continue to be advantages for some developing countries in access agreements, especially government to government agreements that have effective arrangements for compliance control. There is no obvious rationale for the continuation of private access agreements, and there are other options for managing foreign fishing and foreign investment in the fisheries sector more generally through direct licensing of vessels without access agreements. Strengthening of developing country institutions related to fisheries management institutions is critical to taking up those options effectively.

The current debate on fisheries policy coherence for development is creating progress. The shift of the European Community to Fisheries Partnership Agreements provides a framework for effectively addressing coherence in fisheries agreements with sustainable fisheries as measured by one FPA text and creates a positive precedent. But there is room for further development of north/south fisheries arrangements to provide more for the integration of fishing into domestic economies rather than the preservation of distant water fishing as economic enclave activities.

Some policy issues for further consideration are identified and directions for further work are suggested.

The major contribution of the paper might be seen in broadening consideration of aspects of policy coherence/incoherence relating to access agreements, and suggesting alternative arrangements to access agreements, and alternative approaches to access agreements.

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Acronyms and Abbreviations

ADB	Asian Development Bank
DFID	United Kingdom Department for International Development
EC	European Commission
EEZ	Exclusive Economic Zone
EU	European Union
FAO	United Nations Food and Agriculture Organisation
FFA	Pacific Islands Forum Fisheries Agency
FSM	Federated States of Micronesia (Arrangement)
FPA	Fishing Partnership Agreements (EU)
ICCAT	International Commission for the Conservation of Atlantic Tunas
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate IUU fishing (FAO)
IDDDRA	Institut du Développement Durable et des Ressources Aquatiques;
IUU	Illegal Unreported Unregulated (fishing)
MCS	Monitoring, Control and Surveillance
MRAG	Marine Resources Assessment Group
NGO	Non-Government Organisation
OECD	Organisation for Economic Cooperation and Development
PNG	Papua New Guinea
RFMO	Regional Fisheries Management Organisation
SPC	Secretariat of the Pacific Community
UN	United Nations
UNCLOS	UN Conference on the Law of the Sea
USD	United States Dollar
VMS	Vessel Monitoring System
WCPF	Western and Central Pacific Fisheries (Commission or Convention)
WTO	World Trade Organisation
WWF	World Wildlife Fund

Introduction

Objective

1. This paper has been prepared for the OECD Workshop on Policy Coherence for Development In Fisheries. The objective of the paper is to identify issues and problems that fisheries access agreements have given rise to in terms of policy coherence/incoherence between developed and developing countries. The paper draws heavily on the experience of the author in the Pacific Islands region but also draws on information, examples and experience from other regions.

Scope

2. Issues of coherence/incoherence are analysed in respect of fisheries agreements that provide for vessels of developed countries to fish in the waters of developing countries. The analysis covers both government to government agreements, and agreements between developing country governments and fishing associations and businesses. Reciprocal agreements between developing countries are not included in the analysis of coherence. The analysis addresses policy domains related to the contribution by developed countries to reducing poverty and promoting sustainable development in developing countries.

Policy Coherence in Fisheries

3. This paper takes as its starting point the analysis of coherence in fisheries presented in the scoping study on fisheries policy coherence undertaken by for OECD (IDDRA, 2005) and various studies of the impacts of access agreements.

4. The IDDRA study reviewed definitions of policy coherence, concluding (drawing on Weston and Pierre-Antoine (2003)) that:

“In essence, policy coherence is ensuring that policies are coordinated and complementary and not contradictory”,

5. It also noted a fuller definition that received support at an OECD workshop on Policy Coherence is the following (OECD, 2005):

“Policy Coherence for Development means working to ensure that the objectives and results of a government’s (or institution’s) development policies are not undermined by other policies of that government (or institution), which impact on developing countries, and that these other policies support development objectives, where feasible.”

6. IDDRA used ten case studies to explore issues of policy coherence in fisheries. Two related to access agreements, and drew attention to policy conflicts arising from the conflict between inshore artisanal fishers and industrial vessels fishing offshore under an access agreement in one case, and the apparently low development impact of the implementation of access agreements in another case.

7. The study conclusions pointed to the complexity, challenges and opportunities associated with identifying and addressing the causes and solutions to policy incoherence, and the need a better understanding of the key issues, the economic, social and other impacts, and the possibilities for addressing policy coherence for development in fisheries.

8. Concerns about coherence between development policies and access agreements have been an important element of the discussions about policy coherence in fisheries and indeed about policy coherence for development generally since the earliest stages of the discussions about policy coherence (see for example Acheampong, 1997). There have been relatively few analyses specifically directed towards policy coherence and fisheries agreements but there is a large volume of work assessing the impacts of fisheries access agreements that essentially covers much of the same ground.

9. That work is almost completely focused on EU agreements, and it has systematically raised concerns about impacts on artisanal fishers, over-exploitation and fairness of the EU agreements. That there have not been more expressions of concern about the agreements of other flag states is probably due to the relative importance of the EU agreements in financial terms in Africa and to the lack of public access to information on other agreements rather than to their relative impacts. Similar analysis and scrutiny of other agreements would be expected to identify similar concerns, although there are some significant differences between the EU agreements and the agreements of other flag states that might affect any comparison.

Role of Access Agreements for Developing Coastal States

10. As a starting point in analyzing access agreements and policy coherence, it is useful to consider the rationale for access agreements. This includes understanding both why many coastal states made the choice to organise their management of fishing by foreign vessels in their waters using access agreements rather than alternative forms of legal instrument, and why fishing states became involved in managing the operations of their flag vessels in the waters of others using access agreements.

11. Fisheries access agreements in their current form trace largely from their adoption from the late-seventies on as a response to the situation where many coastal states extended their jurisdiction over waters adjacent to their coasts that were already being fished by the vessels of other states. Bilateral agreements had been used before by states to address situations of shared interest arising from the extension of fisheries jurisdiction, such as the establishment of a fishery regime in the North East Atlantic under the 1964 Fisheries Convention. But they were a rather specialised response to particular circumstances between states. Otherwise, most coastal states generally licensed vessels through what FAO called at the time “ad hoc” licensing procedures, although as described below, these were fairly standard procedures for regulating economic activity. From about 1975 on, bilateral agreements were widely adopted as a form of regulation of a large volume of offshore fishing activity taking place in areas under national jurisdiction that were previously high seas. The agreements took a number of forms. Some were purely transitional arrangements providing for the withdrawal within a fairly short period of foreign fleets and their replacement by national vessels. Others provided for reciprocal arrangements for fishing, especially on shared stocks. The bulk of these agreements however provided for the management of fishing by vessels of one state in the waters of the other. The bilateral agreements also took a number of forms. They included:

- Government to government agreements. Some of these were simply framework agreements, establishing broad arrangements for cooperation between the coastal state and the flag state. Others included comprehensive and detailed terms and conditions for fishing;
- Government/industry agreements: typically signed with fishing associations; and
- Government/enterprise agreements

12. These access agreements were entered into by both developed coastal states (including Australia, Canada, New Zealand, Norway and the United States) and developing coastal states. They were particularly important for developing coastal states and it is the agreements between developing coastal states and developed flag states that are the focus of this paper. It should be noted however, that not all

developing coastal states used bilateral access agreements as instruments in managing fishing in their extended jurisdictions. In general, developing coastal states in Asia and South America preferred the use of joint ventures and charters, or arrangements providing for reciprocal access. Bilateral access agreements however, were adopted by most African, Caribbean, Indian Ocean Island and Pacific Island coastal states, and where appropriate, territories, particularly by smaller states. In these regions, the development of access agreements was supported by activities funded under the FAO/Norway EEZ Programme, particularly through a series of regional workshops on the harmonization and coordination of fisheries regimes and access agreements aimed at assisting developing countries to maximize benefits from foreign fishing. For example, the programme for the workshop organised in 1983 by the Organisation of East Caribbean States noted that:

“While some coastal states still affect access by the ad hoc licensing of foreign fishing vessels, many coastal states are now requiring the existence of an access agreement, as a precondition of licensing. The workshop will examine both the reasons for this and the possible uses for access agreements by coastal and fishing states, as a means of determining their appropriateness for the Region”

For coastal states, there were a number of reasons for the move towards managing foreign fishing through access agreements rather than through more direct licensing arrangements. They included securing recognition of coastal state jurisdiction and rights, compliance, and economic gains.

Securing Recognition Of Jurisdiction And Rights

13. UNCLOS was signed on 10 December 1982, and entered into force on 16 November 1994. However, most coastal states had extended their jurisdiction up to 200 miles while the negotiations on the convention were still not completed, and as they entered into the initial access agreements were keen to establish through state practice the concept of the exclusive economic zone. Securing fishing state agreement to key elements of coastal state authority through government to government agreements was seen as an important opportunity to advance the EEZ concept. This was regarded as particularly important where highly migratory species were involved because of the differences between coastal states and some fishing states over the application of the relevant provisions of UNCLOS with respect to highly migratory species. As a result the opening sections of access agreements typically included wording under which the flag state recognised the sovereign rights and exclusive authority of the coastal state within its 200 mile zone, and in many cases this is still the practice. Some states included a requirement in legislation that foreign vessels could not be licensed unless there was in place an access agreement with the flag state in which the flag state recognised the sovereign rights and exclusive authority of the coastal state, and similar requirements are still in place in some national legislation (for example Marshall Islands and Solomon Islands).

14. Clearly, the goal of advancing international acceptance of the concept of the EEZ and of the extent of coastal state sovereign rights was an important issue in the late 1970s and early 1980s when access agreements in their current form were initiated. It was a particularly important goal for developing coastal states whose area of extended jurisdiction covered rich offshore grounds. Today, that goal is less important, at least for coastal states that have extended their jurisdiction in accordance with UNCLOS, because of the extent of international acceptance of the provisions of UNCLOS related to EEZs, including the amplification of the provisions relating to highly migratory and straddling stocks under the UN Fish Stocks Agreement. In this circumstance, most coastal states are generally more confident about the exercise of their sovereign rights. It is set out in their laws. It is expressed in the way they exercise those rights and in the acceptance by the international community, including all major fishing states, of the general application of national coastal state laws, and developing coastal states should not generally need

the kind of assurance that is available through access agreements to secure those rights. This is not to say that the movement for recognition of those rights is complete. Indeed, the second reason that the recognition in access agreements now might seem less important is that it has not been completely effective. Fishing states have generally been prepared to accept wording in agreements under which they agreed to recognise the exercise of sovereign rights by the coastal states “in accordance with international law”, leaving the flexibility to maintain a different interpretation of what is meant by “in accordance with international law”. Overall however, there is very widespread acceptance of the rights of coastal states in relation to EEZs, at least insofar as they are consistent with UNCLOS, and there should be correspondingly be less need to assert those rights explicitly through access agreements.

The Compliance Umbrella

15. The second major reason for adoption of access agreements by coastal states as a key instrument in managing foreign fishing after the extension of jurisdiction was the compliance “umbrella”. Broadly, the importance of this concept was based on recognition that access to fishery waters could be used to leverage compliance across fleets through access agreements in a way that could not be achieved if foreign vessels were simply licensed on a boat-by-boat basis. More precisely, an agreement for access with a flag state government or with an association representing a fleet of boatowners could be structured to include a requirement that the flag state or association should take measures to ensure compliance with coastal state laws that would cover all vessels in the fleet and not just those that were licensed. The agreement could also include mechanisms for the flag state and the coastal state to cooperate to ensure compliance by both licensed and unlicensed vessels covered by the agreement. Beyond this, compliance could be enhanced by the application of penalties for non-compliance such as forfeiture of bonds or cancellation of licences across the fleet even if non-complying vessels could not be apprehended or made to submit to coastal state jurisdiction. In some cases also, the access agreement served to provide the legal basis for the flag state to take action against non-complying vessels. The compliance umbrella was generally regarded as the key reason for requiring access agreements. For example, Pacific Island participants in a workshop on access agreements noted in their workshop report that *“The reasons for requiring Government to Government or Government to Association umbrella access agreements include ...- most importantly- facilitation of compliance control, through placing more responsibility for compliance control on the flag state or fishing association”* (FFA, 1982). And a 1984 Workshop in the South West Indian Ocean concluded that, with some qualifications *“..it was agreed that access agreements offered considerable advantages in compliance control. It was suggested that wherever possible, only vessels that were subject to an access agreement should be eligible for a licence in the region (except for limited feasibility and similar fishing).”*

16. Given the importance of compliance control as a major reason for the adoption of access agreements, there has been relatively little systematic analytical assessment of the effectiveness of the compliance umbrella provisions, and their effectiveness is difficult to judge at this point. The information that is available suggests differences between regions and countries in the importance and effectiveness of the compliance provision in access agreements. In the Pacific Islands, the compliance role of access agreements now receives much less attention than earlier. At one time, the attention of regional MCS experts and programmes was very heavily focused on access agreements, including how to secure compliance with access agreements and how to structure access agreements and develop relationships with fishing states as partners in compliance through access arrangements. More recently, regional MCS programmes and strategies have given little attention to access agreements as an instrument for improving compliance control, even though most of the IUU fishing in the region is regarded as probably being undertaken in national waters by vessels of distant water fishing states in breach of access agreements (Richards 2003).

17. Two major factors have contributed to this change. The first is that the monitoring, surveillance and enforcement capacities of the Island States have strengthened. At the time of extending their

jurisdiction, Pacific Island Countries faced the task of ensuring compliance by vessels spread over huge areas of ocean, with limited resources that greatly limited the prospect for deterring or detecting illegal fishing activity in their waters. With an air almost of hopelessness, Pacific Island Countries accepted that they could not control foreign fishing by themselves and that they would have to provide for a major role for flag states in securing compliance through access agreements. Around 25 years later, there are in place a regional blacklist arrangement, national surveillance operations, coordinated regional air surveillance programmes, functional national and regional observer programmes, cooperative maritime surveillance arrangements and a regional satellite-based vessel monitoring system covering over 1,000 vessels, all operated by national administrations with greatly enhanced capacities. These programme and arrangements means that Island countries no longer see them selves as heavily dependent on flag states to secure compliance while continuing to recognise the importance of flag states ensuring compliance by their vessels in the waters of other states. The second major factor is the increasing commitment of the global community to end IUU fishing. Much of the work against IUU fishing is focused on high seas fishing, but it also applies to fishing in national waters. There are a number of hard and soft international legal instruments, and international processes addressing IUU fishing. Important elements applying explicitly to IUU fishing in national waters include:

- the FAO Code of Conduct, including:

“7.6.2 States should adopt measures to ensure that no vessel be allowed to fish unless so authorized, in a manner consistent with international law for the high seas or in conformity with national legislation within areas of national jurisdiction.”

“8.2.2 Flag States should ensure that no fishing vessels entitled to fly their flag fish on the high seas or in waters under the jurisdiction of other States unless such vessels have been issued with a Certificate of Registry and have been authorized to fish by the competent authorities. Such vessels should carry on board the Certificate of Registry and their authorization to fish.”

- and the IPOA-IUU, including in the definition of IUU fishing:

“3.1 Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

...

“3.2 Unreported fishing refers to fishing activities:

3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations”

18. At the regional level, there are also some important provisions binding flag states to be responsible for ensuring that their vessels comply with national laws. The WCPF Convention requires a flag state to ensure that *“fishing vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of any Contracting Party”* and more broadly requires a flag state to impose conditions on its vessels, including the condition that *“The operator of the vessel shall comply with the applicable national laws of each coastal State Party to this Convention in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be*

operated in accordance with such laws.” Similarly, an ICCAT measure covering tuna fishing in the Atlantic Ocean requires flag states to ensure *“that their vessels do not conduct unauthorized fishing within areas under the national jurisdiction of other States”* (ICCAT, 2003)

19. Taken together, these instruments should clearly be expected to improve flag state control of vessels in the waters of other states, and to reduce the need for coastal states to turn to access agreements to secure compliance, though government to government agreements may still serve a useful function as a vehicle for cooperation on compliance.

20. In terms of the effectiveness of the compliance umbrella some additional factors emerge from experience:

- a) **there is a wide variation in the performance of flag state parties:** in the Pacific Islands region, the US government and the government and fishing associations of Japan play a very active role in the oversight of fishing under agreements, including overseeing collection and provision of data and compliance with other licence conditions. Typically, this is reflected in the variations in rates of reporting of catch and effort. The performance of entities from some other states is less effective. In some cases where government to government agreements exist, they have virtually been lost sight of. In other cases, agreements are now concluded with individual boat-owning companies rather than associations.
- b) **there is also a very wide variation in compliance effectiveness as measured by reporting rates for fishing in the waters of different Pacific Island coastal states with similar access partners and structures of agreements:** this suggests that the effectiveness of compliance controls under access agreements might depend more fundamentally on the capacities of the coastal state than on the performance of the flag state. In that case, it seems likely that improved developing coastal state compliance capacities have the value not only of ensuring a higher degree of compliance with licence and agreement conditions, but of making a coastal state less dependent on flag state involvement in securing compliance, and in that way opening opportunities for the coastal state to adopt other forms of management of foreign fishing that may be more beneficial economically.

Economic Returns

21. Issues related to economic gains are central to analyzing access agreements as a form of managing foreign fishing. Both the attraction of access agreements as a way of promoting the concept of EEZs and the compliance umbrella had important economic rationales underpinning them. Broadening and accelerating acceptance of coastal state sovereign rights in EEZs would make more secure for many developing countries the economic gains that the new EEZ regime potentially offered. The compliance umbrella aspect of access agreements was designed to create economic gains by making it more difficult for boatowners to avoid paying access fees and strengthening the bargaining position of developing coastal states. Beyond the value of access agreements in these ways, there were a number of other ways in which access agreements were seen as having advantages in securing economic gains. They included:

- a) **Flexibility:** the argument that access agreements should generate higher levels of access fees through offering greater flexibility is based on the greater freedom offered by access agreements to negotiate higher fees for vessels whose owners could afford to pay more than would be the case if fees were by comparison determined legislatively for broad classes of vessels. This flexibility includes both being to differentiate fees with boatowners depending on their capacity to pay and the value of their catches. In practice, there are cases where agreements with a Pacific Island country do have different fee levels for fleets with essentially the same value of catches but

different capacities to pay, where essentially a fleet with older vessels and lower catches pays less because it cannot afford to match the fees paid by others. In such cases, there may be a benefit from working with access agreements in that a uniform fee schedule would likely either deter the less efficient fleet from licensing or allow the more efficient fleet to fish for less than it would have been prepared to agree to if fees were differentiated. In the same way, it is likely easier to provide in access agreements for differing processes for adjustments of fees with catch values than it would be in a system of direct licensing based on published fees. In this respect, there are several different fee adjustment mechanisms in access agreements with Pacific Island countries, including:

- an adjustment of fees for US purse seine vessels to increase fees when prices are above an agreed trigger level;
- mechanisms for fees in many agreements which include an up front payment per vessel, with an incremental payment if the estimated value of the annual catch is above certain levels; and
- fees per trip for Japanese longline vessels that are adjusted regularly according to average catches per trip and average prices.

There are, however, some major disadvantages in setting fees in access agreements rather than in published schedules. The first is that the bottom line in negotiations with a whole fleet is often set by the boatowners in the fleet with the least capacity to pay. An alternative strategy that involves licensing individual vessels means that those boatowners who can't afford to pay don't take out licences, but have no influence over the decisions of boatowners who can afford to pay. A second disadvantage is that access agreements reduce the scope to generate competition between fleets. Setting fees unilaterally provides coastal states with opportunities to use more market-oriented approaches, raising fees if demand for access is strong, and reducing them if demand for access is weak. These advantages of establishing fees unilaterally are likely to be stronger in a setting where there are established limits to overall foreign access in terms of vessels, licences catch or effort as is increasingly the case.

- b) **Flag state government grants:** cash grants from flag state governments, such as those in the EU and US agreements, are likely to be regarded these days by coastal states as the major advantage of an access agreement, to the extent that are in addition to, rather than instead of a commercial level of access fees. They are particularly valuable in the context of public expenditure because are usually committed in advance at least to some minimum level and therefore can be built into government recurrent expenditure budgets. By comparison, payments from boatowners can fluctuate greatly, reducing their value for budgeting purposes. The discussion about whether such payments should be brought under WTO discipline might affect the scope for these payments in future, perhaps ensuring that these grants do not contribute to over-exploitation or enable boatowners to make a fair contribution for access. Such grants remain however a key feature and attraction of government to government agreements.
- c) **Aid:** most government to government access agreements include provision for grant aid as a component of the financial contribution made by the fishing state. In some cases, such as in agreements with Japan, the aid tied to the access agreement may be the major benefit from the access relationship.

22. From a coastal state perspective, conflicts in development policies arising from access agreements lie essentially in the potential contradiction between the value of the monetary benefits from access fees and related economic gains including tied aid, market access and broader aspects of

cooperation with the fishing state and the adverse impacts of the operations of foreign vessels on resources and other fishers, including the general failure of access arrangements to contribute to domestic fishery development.

Role of Access Agreements for Fishing States

23. There were several reasons why fishing states initially agreed to enter into access agreements that included licensing conditions rather than leaving coastal states to licence vessels directly. They included the opportunity to remind coastal states of their obligation to give access to any surplus in the available yields that could not be taken by domestic fleets and of the requirement to take into account the need to minimise economic dislocation associated with historical fishing in waters now under national jurisdiction. Government to government agreements also gave some flag states a legal basis for controlling their fleets outside their waters.

24. Over time, these goals have been largely overtaken to a point where it seems likely that most of the fishing now covered by access agreements is not in fact an extension of fishing that was taking place before the extension of fisheries jurisdiction. Instead, from a fishing state point of view, access agreements now serve more to facilitate profitable fishing opportunities for flag fleets, secure fish supplies for processing, serve strategic goals associated with deployment of vessels in overseas waters, and at least in the case of the EU, to relieve problems of excess capacity in home waters.

25. For fishing states, policy incoherence results from the putting in place access agreements to secure these economic and strategic advantages in ways that are not consistent with, or contradict, efforts by the international community to promote the sustainable development of developing coastal states, especially those whose waters are fished by distant water fleets.

Access Agreements in the Pacific Islands Region

26. Access agreements have been important to all fifteen Pacific Island Countries² that are members of the FFA at some point. However, there has been a marked change in the importance of access agreements over time. Today, access agreements are relatively unimportant for five of the countries (Cook Islands, Fiji, Niue Samoa, Tonga). These countries all have locally based domestic fishing industries. Some licence foreign vessels operating under the control of national entities, through charters or joint ventures rather than access agreements. All are parties to the Multilateral Treaty between the United States and the Pacific Island Countries, but otherwise licensing of foreign vessels under access vessels is not significant. Four Pacific Island Countries (Kiribati, Nauru, Tokelau and Tuvalu) remain heavily dependent on revenue earned from access agreements. For these countries, access fees are in most years either the major source of recurrent government revenue or close to it. The other Pacific Island Countries have more of a balance between development of domestic fleets and foreign vessels licensed under access arrangements. In this group of countries, domestic fleets are growing and in most cases, a higher importance is attached to developing the domestic fleet than to licensing foreign vessels.

27. Overall, access fees earned by Pacific Island countries are estimated at USD 68.0 million in 2003, up from USD 60.7 million in 1999 (ADB 2004). Over 90% of this revenue is earned by 6 of the 15 Pacific Island Countries. Typically, around 80 percent of the fees are paid by Taiwan, Japan, Korea and the United States. Most of the balance of the fees is received from the European Union, New Zealand, Philippines and from Pacific Island vessels. The agreements take the full range of forms – government-to-government, with industry associations and with individual boatowning companies. There are two multilateral

² Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu and Tokelau (a New Zealand territory)

intergovernmental agreements, one with the United States and another, the Federated States of Micronesia Arrangement providing for reciprocal licensing of purse seine vessels of Pacific Island Countries.

28. In addition to the general reduction in importance in access agreements noted above as foreign fleets are replaced by domestic fleets, there is also some rethinking of the merits of access agreements as a way of managing foreign fishing. Most legislation put in place at the time of establishment of EEZs required that foreign vessels could not be licensed unless some form of access agreement was in place with the flag state or an organisation that would take responsibility for fleet compliance. Most laws in the region now provide for foreign vessels to be licensed under access agreements or directly, but foreign vessels (other than locally-based foreign vessels) have generally continued to be licensed under access agreements because the regulations and licence conditions necessary for direct licensing have not been put in place. Some countries, including Cook Islands, Niue and Tokelau are now working towards establishing a legal framework for licensing foreign vessels directly, either instead of access agreements, or as an option to access agreements.

Access Agreements, Policy Coherence and Sustainable Development Issues

29. Through the 1980s, access agreements, and fisheries relations between developed and developing countries more generally were the subject of substantial attention, much of the work stimulated by FAO working with regional fishery bodies and directed towards enhancing the gains that could be secured by developing countries from extended jurisdiction. From the 1990s, heightened concern in the international community about fisheries management failures generally resulted in major efforts being directed towards the preparation of the range of modern global instruments that we now have, founded on the principles of responsible and sustainable fisheries. Within these instruments, access agreements and the broader relationship between developed and developing countries received less attention. More recently however, renewed attention has been paid to access agreements and particularly to the compatibility of fishing under access agreements with the new global instruments and the concepts of responsible and sustainable fisheries. Some most important strands in this more recent work include:

- a) the stream of work sponsored by WWF beginning with publication of “The Footprint of Distant Water Fleets on World Fisheries” (WWF International 1998) and including the preparation of a handbook on access negotiations (Martin et al. 2001) and a series of regional workshops on fisheries access including workshops in Fiji, Mauritania, Senegal and Mauritania;
- b) work on access fees and subsidies in the context of WTO, (see for example ICTSD, 2005); and
- c) work on the impact of IUU fishing on developing countries, such as that undertaken by DFID for the High Seas Task Force (MRAG, 2005)

30. Specific analysis of the contributions of access agreements to sustainable development in developing countries is highly partial. There has been fairly intense analysis and review of the impacts of EU agreements, especially in Africa. On the other hand, there has apparently been relatively little analysis of the impacts of other access agreements.

31. Drawing on these analyses and experience with access agreements, especially in the Pacific Islands region, the following related issues and problems associated with access agreements can be identified as potentially contributing to incoherence between fisheries policies and policies for sustainable development and are considered below:

- undermining of sustainable fisheries through over-exploitation and compliance failures

- adverse impacts on fishers, especially local fishers, through reductions in their catches and market disruption
- lack of integration of fishing operations into the domestic economy
- lack of transparency

Over-Exploitation

32. The problems with agreements for access to developing country waters in respect of over-exploitation are well documented. Under UNCLOS, access arrangements are meant to provide access to surpluses in yield within a TAC, but there is very rarely any analysis of a surplus (ADE-PWC-EPU, 2002). Few developing countries have the capacity for resource assessments that would provide sufficiently reliable information to support fishing at levels near MSY without significant risk of overfishing. Many access agreements do not include appropriately precise limits on effort or catch. Individual access agreements are often concluded without taking into account the overall pattern of fishing effort on the resources involved including domestic effort and effort of other foreign fleets. In these circumstances, the levels of effort introduced by access agreements will often carry at least the risk, and in some cases the reality of overfishing. Access agreements involving levels of effort that carry a risk of overfishing can not be coherent with development objectives.

33. There is an important qualification to this conclusion. Most stocks of tuna and related species are now subject to some form of regional conservation regime, incomplete though many of them still are. In many cases the management systems apply limits by flag not by zone. This does not mean the stocks are not subject to coastal state management in national waters – they are, and coastal states may choose to apply additional catch or effort limits or other measures in their waters to preserve catch rates and avoid local depletion. But in many cases, the bulk of the fishing opportunities is allocated to fishing states, and it is up to them to decide where the catches are made. This means that the test of whether the level of fishing under an access agreement for tuna is consistent with resource sustainability has to be made at the regional level.

Compliance Failures

34. IUU fishing in national waters of developing countries is a serious issue according to MRAG (2005) which estimated for example that IUU fishing took nearly 20 per cent of the catch in sub-Saharan Africa. Overall, IUU fishing in national waters, mostly in developing countries, is estimated at USD 3 billion world-wide and is the cause of direct and indirect economic losses, adverse socio-economic impacts and environmental damage. Distant water fleets are involved in IUU fishing in the EEZs of developing countries, including in waters where they are subject to access agreements. The greatest problem with non-compliance of vessels fishing under access agreements appears to be non-reporting or misreporting rather than unlicensed fishing. Fishing in closed areas and unauthorized targeting (particularly of sharks by tuna longliners) are other significant areas of breaches of access agreements. MRAG found that the number of access agreements was not generally associated with reductions in IUU fishing, but that countries that had access agreements had generally developed a stronger MCS capacity and were more capable of controlling IUU fishing. Overall the factor most strongly determining vulnerability to IUU fishing in developing countries was identified as the overall quality of national governance.

Fishing Interactions

35. Fishing effort licensed under access agreements almost inevitably results in some adverse impacts on other fishing taking place in the same waters, simply because in most fisheries any increment of effort reduces abundance and therefore catch rates. When the level of effort deployed under access

agreements is large relative to the effort of domestic vessels, the effects on catch rates can significantly affect the viability of domestic vessels. The effects are accentuated on smaller vessels that have to operate within a restricted area and can not compete with larger industrial vessels that can range widely to find greater concentrations of fish. Concerns over the effects of foreign fishing on artisanal fisheries in countries such as Senegal have been a key element in the expressions of concern by NGOs about the impacts of access agreements. Coastal states are entitled to take these effects into account in establishing a TAC and measuring a surplus. The main response to this issue is zoning for fishing grounds, in particular to keep foreign vessels offshore. In the Pacific Islands this has been mostly achieved by not allowing foreign vessels inside a 12 mile limit, but the limit is increasingly being set at 50 miles. However, closed area provisions are among the most difficult to enforce without VMS.

Market Interactions

36. The impacts of foreign vessels fishing under access agreements on catches by domestic vessels are often compounded by market interactions. One of the most intractable problems in preparing management plans for offshore fisheries in the Pacific Island countries is what to do about bycatch, especially off foreign vessels. On the one hand, the bycatch is usually a source of cheap, high quality food, including for processing. On the other hand, sporadic offloading of large volumes of fish from foreign vessels at low prices can flood smaller local markets, undermining the livelihoods of those who catch, process or trade locally caught fish. There is no single solution. Some countries encourage such landings for food security, others control supplies so that they are not disruptive or require foreign bycatch to be marketed through local businesses, and others prohibit such landings.

Trade and Investment Implications

37. Integration of developing countries into the world economy is widely seen as a key element in reducing poverty. For many developing countries involved in access agreements, the offshore fisheries sector offers the greatest potential for supporting the kind of trade and investment patterns necessary for their greater integration into the global economy. For this reason, encouragement of domestic fishery development was a key incentive for the establishment of access agreements for many developing countries. Having foreign vessels operating in national waters seemed to provide the opportunity to attract those vessels and their owners to become more closely integrated over time into national economies through having their vessels serviced locally, landing fish and investing in onshore processing. In pursuit of this goal, many developing countries adopted very similar legal frameworks that treated foreign, locally based foreign and national vessels separately, within a structure of preferences designed to encourage foreign fleets initially to base themselves locally and over the long term to become fully integrated into domestic economies, with local crews and national flags. That strategy has largely failed for a number of reasons. Some of these reasons relate to the nature of the fishing businesses that operate under access agreements. Most of them are essentially oceanic fishing businesses. They operate vessels that find comparative advantage in being able to operate over a wide area searching for optimal fishing conditions, and are not adapted to fishing in a localized area. Nor it seems are the businesses themselves well equipped to adapt to investing locally.

38. After over 20 years of hosting foreign fleets in the Pacific Islands, the record of investment in the host countries by businesses operating under access agreements is systematically poor. Most of the foreign investment in offshore fishing and processing in the Pacific Islands has been made by nationals and businesses of countries that are not major access partners such as the Philippines and New Zealand. Where investments have been made by nationals or businesses of fishing states, they have often been made by entrepreneurs or businesses that were not involved in fishing under access agreements but rather were fish traders looking for fish supply, or were fishing businesses that operated locally in a fishing state and found similar opportunities in which they had a comparative advantage in locally based operations in a Pacific

Island fishery. As often as not, the countries in which they have established locally based operations have been countries without access agreements in place. And to the extent that there has been investment by businesses involved in access agreements, there have been very large differences in the relative performance of businesses of different origins, with Taiwanese businesses being more active investors than others. In some cases, the situation is made worse by fishing state regulations that specifically prohibit landing of catches outside ports of the flag state.

39. Of course, there are good reasons why businesses might choose not to invest in other countries, and especially in developing countries that are often characterised by institutional and policy weaknesses. In some cases however, it seems that there are foreign investors who can identify profitable opportunities for investment in developing country fisheries based on comparative advantage and that those investors are not likely to be drawn from businesses operating under access agreements.

40. Nor is there any indication of trade benefits from access agreements for Pacific Island countries. At times, trade considerations have been important in access agreements – for example, the Pacific Islands' interest in establishing a multilateral access agreement with the United States was initially closely related to avoiding trade disruptions. But there is no apparent strong link or correlation between access and trade currently. Japan and the United States remain overwhelmingly important as ultimate markets for fish exports from the Pacific Islands and those two countries are also major access partners, but the nationals and industries of Japan and the United States have not been very active in Pacific Island fisheries trade and investment in the region. Instead, the pattern of trade gains is driven by comparative economic advantage, especially in processing, with countries such as Fiji and Samoa among the major beneficiaries of that outcome, although they do not have substantial access relationships with the major fishing states.

Private Sector Development

41. The creation of a healthy enabling environment for private sector development and of strengthening of private sector capacities is broadly accepted as a major priority for developing countries to make effective use of effective resources for development (See for example the World Bank Global Monitoring Report 2004). A fisheries policy that promotes private sector development is one which provides secure, stable opportunities for entry and exit to fisheries business opportunities for foreign or domestic investors. That doesn't preclude policies that limit foreign participation or establish preferences for local or indigenous participants – most developed countries have such policies also. But it does mean there should be an openness about investment opportunities and about the pattern of participation in a fishery which provides businesses with a wide range of choice about the kinds of vessels they use, the partnerships they form and how they can start up, expand, contract or quit their investments. Namibia is quoted below as having a fisheries policy that has facilitated that kind of openness. There have been foreign investors from various origins involved in the Namibian fisheries sector at different times – including France, Holland, Iceland, Japan, New Zealand, Norway, Russia, South Africa and Spain, without access agreements, and with a complex and comprehensive framework of business relations between an inclusive Namibian private sector and investors from elsewhere. It is hard to imagine any arrangement being more different from this or more closed, than the usual government to government access agreement, in which two groups of officials, typically behind closed doors, make arrangements that usually result in short term arrangements for what is essentially an economic enclave operation. If private sector development is a cornerstone of sustainable development, then most fisheries access agreements clearly don't contribute to putting that cornerstone in place.

Subsidy Effects

42. Assessing the impacts of state to state payments for access is a complex issue. The most obvious examples are the cash grants included in access agreements by the EU and the US, but the effects of in-

kind aid tied to access are similar. The cash grants make direct contributions to economic welfare in the recipient coastal states. In countries where the provision of basic services such as health and education is tightly constrained by the revenue earning capacities of the governments, those contributions may be vital to achievement of development goals, at least in the short term. In the Pacific, Nauru, Kiribati and Tuvalu are in this position. But such payments are also subsidies. Whether they are “harmful” subsidies that merit disciplining under WTO is a separate and more complex issue than can be addressed in this paper, but some aspects of that discussion are relevant. Whether such grants are subsidies that contribute to overcapacity depends in part on the extent to which they substitute for private payments. If they are simply a top-up above the levels that boatowners would otherwise pay, then there may be no such impact. It also depends on the management regime in place. If there is a management regime that is effectively limiting fishing mortality, then there may also be no significant incentive to increase capacity, and the payments may be seen largely as intergovernmental transfers. And it may depend on how the grant funds are spent. If a significant amount of the grants are spent on strengthening compliance, research and management capacities, then the agreements taken as a whole may not contribute to overcapacity.

43. But even in these cases, there may be trade-distorting effects. The grants will clearly incline coastal states to favour fleets supported by grants in choosing access partners. That clearly has the potential to favour fleets from developed countries that can afford to subsidise access payments, rather than developing flag states. And with reciprocal access arrangements increasing in importance in some areas, the higher returns from agreements with developed countries that include state grants may be in conflict with shared goals to strengthen regional fleets. In the Pacific, these possibilities are not real issues yet, because the state grants generally support capital-intensive purse seine fleets and longline fleets supplying the higher value tuna sashimi market, whereas most domestic development is directed towards smaller scale longlining for canning and lower value markets than the sashimi market. But in time, the effects of access fee subsidies in disadvantaging developing countries may become more apparent.

44. The subsidy effects are more considerable in agreements associated with vessel transfers, such as an EU second-generation agreement. Depending on how the specific arrangements for transferring capacity are organised and financed, this form of agreement has substantial potential to contribute beneficially to the development of a domestic industry but it also has its costs. Advantaging some through subsidies typically disadvantages others, including other investors in the same fishery who may be operating without subsidies and, if catches are traded, competing countries, including competing developing countries.

Transparency/Corruption

45. Concern about the apparent lack of transparency is a serious issue with respect to access agreements. As the WWF Handbook (Martin et al., 2001) puts it:

"It is essential that national and international decision-making on access agreements be conducted in the public domain and that the texts of bilateral access agreements be freely and fully available to the public."

46. It is not clear that there has been any increase in the incidence of corruption in fisheries affairs, but it is clear that there are greater concerns about the level and effects of corruption and associated weaknesses in governance on prospects for sustainable development. In the Pacific Islands region, the importance of fisheries in many Pacific Island Countries and some recent findings of corruption in fisheries affairs in some countries increase that concern. Access agreements are the focus of much of that concern. The problems are deepseated. Firstly, the negotiation of access agreements is almost inevitably a secretive process. Part of the rationale for using access agreements rather than direct licensing is that it is possible to have different fee levels for similar fleets and for foreign fleets to agree to pay different fee levels to

countries where the fishing opportunities are essentially similar. But that approach usually requires at least the commercial aspects of the agreements to be kept confidential. As a result, in the Pacific Islands region, only the multilateral treaty with the United States, the EU agreements and FSM Arrangement are fully in the public domain. The government to government agreements with Japan and Korea are also generally public because they require legislative action but the commercial subsidiary arrangements for these agreements and all other agreements are generally not public.

47. And even where the agreement texts are public, the negotiations themselves are usually closed. More seriously perhaps, in countries where access agreements are important, the approach to negotiating access agreements is also reflected in the legislation governing all fisheries decisions. For example, one element of the strategy developed in the 1980s for developing coastal states was to give very great legal authority to a single Minister or official not just to negotiate access agreements but also to grant, suspend or terminate licences and to attach conditions to licences as a way of strengthening the position of those responsible to deal with powerful foreign fishing interests. As more fisheries come under limits, it is often decisions on what vessels can be licensed and the licensing conditions generally, and not just access fees that are at the root of concerns about transparency. Addressing these concerns takes more than publishing access agreements, it takes a review of fisheries law to ensure broader participation in decisions on licensing, provide for open consultation about licensing conditions and for the establishment of licence registers. Looking ahead, concerns about transparency are not likely to abate. With resources becoming scarcer and access to them becoming more valuable, incentives for corrupt practices are bound to increase and impatience with the kind of secrecy that attends access agreements also can be expected to increase.

Fisheries Policy Development/Formulation

48. If policy reforms in developing countries are necessary to improve the performance of developing countries in meeting their people's needs from their own resources, then it is worth asking whether access agreements promote or deter appropriate reforms, and the answer is likely to be negative. There have been major reforms in the fisheries policies and institutions of many developed countries over the past 20 years, driven by prominent fisheries management failures in Europe and North America, and involving the application of rights-based management and the ecosystem approach. Developing countries have also been going through fisheries policy reforms, though different in nature. For many developing countries, the reforms have fundamentally involved a shift from actions to increase production such as introducing more modern fishing craft and upgrading infrastructure, often with substantial state involvement, to conservation and management programmes based on fishery monitoring, research and consultation. In many cases, these efforts involve the complexities of conservation and management in diverse coastal fisheries. The examples below illustrate the variable pace of reform among developing countries in commercial fisheries management and a worrying feature is the possibility that access agreement based frameworks have not promoted, and may have hindered reform. This doesn't necessarily mean that access agreements themselves obstruct reform, though that is possible. More likely, it is countries with the weakest institutional capacities that both continue to rely on access agreements and can not internally generate the momentum to reform fisheries policies and generate new options for sustainable fisheries development. In these cases, countries might rely on access agreements for which texts are readily available and which are institutionally undemanding, rather than going through the process of drawing up regulations and having them adopted, and establishing the institutional processes for granting of more secure and more valuable forms of access rights.

49. It should be a particular concern that there is a continuing and perhaps growing dependence on private access agreements between developing country governments and businesses with texts that have changed little in two decades (except for some compliance strengthening) and for which there is no longer a sound rationale. The core structure of these texts is that governments agree to make licences available in return for businesses individually or collectively agreeing to a range of conditions including fees and to

generally comply with applicable national laws. In effect, this approach puts all the licensing terms and conditions on the table in a negotiating context. It is an unusual way for governments to regulate business activities. In other sectors of the economy, governments typically establish a legislative and regulatory framework. Where an activity needs to be regulated, there will usually be a standard set of conditions, typically prescribed by regulations, and a fee, often with some kind of consultative process with the business sector concerned. Businesses apply and licences are granted after some form of consideration of the application. Where there are limits to the volume of activity, criteria might be established and applications measured against the criteria, often by an independent body. Such approaches can be found in transport, telecommunications, mining and many other businesses sectors. It is rare for governments to subject themselves to an agreement process largely to secure agreement for compliance with national laws.

50. The occasions on which governments enter into commercial agreements with businesses in other sectors usually involve major projects for which there is some kind of specific incentive package or in ventures where government assets are involved. The value of private fisheries agreements needs to be assessed against these standards for government regulation of economic activities. There may have been a rationale for such an approach when fisheries jurisdictions were first being extended as noted above, to secure recognition of the coastal state's authority, provide for transitional arrangements in historical fishing now being subjected to new forms of jurisdiction, enhance compliance and establish a new regulatory framework for offshore fishing, but it is difficult to see that those considerations are relevant to private fisheries access agreements today.

51. Against this background, and taking into account the problems of the lack of transparency, the absence of beneficial investment from fishing under access agreements generally and the likelihood that other forms of regulation might generate higher revenue levels, there is certainly a case to be made for considering whether private access agreements are an appropriate way for developing countries to regulate offshore fishing. Further analysis might find that heavy reliance on private fisheries access agreements is more a reflection of institutional weakness than deliberate policy choice.

Examples

52. The following examples illustrate some responses by developing countries to opportunities for reforming fisheries policies, including the role and structure of access agreements.³

Cook Islands

53. After nearly 20 years of low (USD 32 000 in 1999 (ADB, 2004b)), sporadic and highly variable receipts from access fees from foreign longliners, Cook Islands has been radically reforming its overall approach to offshore fisheries management. The changes include:

- Terminating fishing under previous longstanding access agreements for foreign longliners, and limiting the use of access agreements to exceptional circumstances where there is a substantial development impact, such as contributions to outer island welfare;
- Shifting the focus of participation by foreign investors and foreign vessels from access fee fishing to charters and joint ventures;
- Improving the climate for investment in domestic offshore fishing and associated processing through clearer, more transparent and more stable policies and infrastructure investment;

³ Data on Pacific Island countries in this section taken from the SPC Tuna Yearbook (SPC, 2005) and the ADB review of access agreements (ADB, 2004a)

- Systematic changes in the legal framework to make it more relevant to collaborative domestic fishery management and less directed towards arms-length foreign fishing vessel control. These changes include a secure and transparent system of fishing rights set out in legislation.

54. The changes contributed to offshore fishery catches increasing from almost zero in the year 2000 to 3 000 tonnes in 2004. Most catches are processed onshore in a number of plants established initially by foreign and domestic investors. The value of output in 2004 was around USD 8 million, an important economic contribution for a country of around 20 000 people.

Fiji

55. As one of the more developed Pacific Island States, Fiji has since the extension of its jurisdiction targeted domestic offshore fishery development, rather than licensing of foreign vessels. Its domestic longline development began in the 1990s and landed nearly 20,000 tonnes in 2004. By 2003, there were two canneries and five loining plants in operation, as well as packing plants for longline exports, and fresh tuna exports were valued at around USD 60 million (ADB, 2004b). Foreign vessels participate under charters, and the management arrangements include provisions for participation by indigenous Fijians in the control of the fishery. Management of Fiji's offshore fisheries has gone through a process of institutional and policy reform and strengthening since preparation of a Tuna Management and Development Plan in 2002. Features are a strong co-management process, institutional strengthening especially in the area of compliance, and most recently a decision to cut the number of vessels to preserve the economic viability of the fishery, but deepening of reform has been called for (ADB, 2005).

Niue

56. Over a 20 year period, Niue's experience with licensing foreign vessels under access agreements was similar to that of Cook Islands – fees earned were low, sporadic and variable, finally drying up after the fleets of Taiwan and Korea declined to accept a requirement to install vessel monitoring devices. Niue has now granted a processing right to a Niue-New Zealand joint venture. Vessels are licensed directly without access agreements, and with a licence condition that catches must be landed in Niue.

Papua New Guinea

57. Commercial catches by Papua New Guinea's domestic tuna fleets (longline and purse seine) have grown from around 1 000 tonnes to over 200 000 tonnes in 2004. The fleet includes chartered vessels, but all catches are landed or transhipped in PNG and increasingly processed onshore. A significant share of the catch is taken outside PNG waters, including in the waters of other Pacific island countries under reciprocal access provisions in the FSM Arrangement. In addition, foreign purse seiners may operate in PNG waters under bilateral access agreements but are being phased down, and PNG is about to implement an arrangement limiting purse seine effort in vessel days that may see bilateral access agreements in time replaced by more flexible and competitive licensing instruments. Foreign longliners are licensed only under charters and no longer under access agreements. These developments have been underpinned by major institutional reform and strengthening that involved creating a self-financing statutory authority for fisheries management and legal and policy reforms, involving reductions in core staff from 330 to 65 (ADB 2003) (Manieva 2003).

Kiribati, Nauru and Tuvalu

58. The experience of the four Pacific Island Countries outlined above is not necessarily representative of the approach of other Pacific Island countries. Several Pacific Island countries, including Kiribati, Nauru and Tuvalu still depend very heavily on access agreements as a primary instrument for the

management of commercial offshore fishing. These three countries have high earnings in access fees (around USD 32 million in 2003) to finance their recurrent budgets, large zones (4.7 million sq. km), large catches (ranging from 250 000 to 400 000 mt annually between them), and small populations (around 120 000 in total). Their fisheries administrations are small, and challenged to maintain control of the high levels of fishing in their waters, especially in the light of the requirement to participate in increasingly complex global and regional fisheries management initiatives and processes. All are committed in their fisheries policies to developing a domestic commercial fisheries sector but have a record of failure of previous ventures, most of them involving state participation and assets granted under aid tied to access. All have legislation that allows foreign vessels to be licensed under access agreements or by direct issue of permits, but none have in place the regulations governing fishing conditions that would be required for direct licensing. All foreign vessels are licensed under access agreements, many of them commercial level agreements with associations and companies.

Namibia

59. Fifteen years after it started developing its fisheries management regime, Namibia is perhaps the most often-quoted model for effective developing country management of commercial offshore fisheries – a recent paper prepared for the High Seas Task Force, for example, notes that

“The case of Namibia, for example, demonstrates the positive contribution of an effective regulatory environment, including conditionalities in the activities of fishing fleets, a comprehensive resource assessment program with long-term commitment to fishery-independent surveys, and commercial data collection.” (MRAG, 2005)

60. Achieving independence in 1990, Namibia faced both the disadvantage of having to build a fisheries administration and fisheries industry almost from scratch and the corresponding advantage of being relatively unconstrained by historical conditions. A White Paper laid out a vision of a responsibly managed fisheries sector that progressively moved towards Namibianisation and onshore processing. Initially, Namibia anticipated a significant role in this strategy for foreign vessels fishing under access agreements and entered into negotiations with a range of fishing states. It proved not possible within the access negotiations to find agreement on arrangements that supported the goals of Namibianisation and onshore development. The closest Namibia came to an access agreement was with the EU on a second generation agreement. That agreement was not concluded because of concerns by the Namibian government about the overall impact that subsidy arrangements in that form of agreement would have on investment in the sector.

61. Instead, Namibia developed a management regime based on limited access and allocations of rights in all fisheries. Within this framework, foreign investors can participate in joint ventures, and rightholders are generally able to charter foreign vessels, although incurring substantially higher fees than if Namibian vessels were used. The result is a sector with substantial constructive foreign participation. Within the framework, foreign investors come and go, making investments, building businesses and taking profits on exit or making losses and moving on, just as they do in any other major sector of a market economy. The only form of access agreement authorised by current Namibian law is a government to government agreement with other member countries of the Southern African Development Community, a provision designed to facilitate mutual access.

Overview of the Examples

62. Fiji and Namibia have managed foreign fishing in their waters without access agreements since establishing their EEZs. Both have relatively strong fisheries management institutions – in the case of

Namibia as a result of a long term effort with substantial donor support – in the case of Fiji strengthened by recent reforms. Cook Islands, Niue and Papua New Guinea operated for around 20 years with a heavy reliance on access agreements, but have moved in very different ways to change the way in which foreign fishing is managed resulting in a lesser role for access agreements, with generally beneficial outcomes. Cook Islands, Fiji, Niue and Papua New Guinea are increasingly involved in licensing arrangements with vessels of other Pacific island states, either as the licensing state or the fishing state. These countries have all undergone some recent process of institutional, legal and policy reform and strengthening. Kiribati, Tuvalu and Nauru remain heavily dependent on access agreements and have policies and institutions that have been little changed since their EEZs were first established.

Resolving Incoherence/Strengthening Coherence

The Need for Sustainable Fisheries Strategies for Developing Countries

63. The analysis above identifies a range of issues and problems associated with access agreements. These results are not new. Other analyses have addressed the problems with respect to sustainable fisheries, impacts on local communities and transparency, but have given less attention to issues related to trade, investment and private sector development. But identifying issues and problems with access agreements is one thing, resolving them is another – especially with problems of policy coherence that essentially result from conflicting objectives. From a developing country point of view, the issue might be looked at not from the point of view not just of how to put “fixes” into existing access agreement structures but rather whether access agreements remain appropriate instruments and where they remain appropriate, what structure of agreements is appropriate. The starting point for this analysis should be a coherent updated, strategy or vision of the contribution that fisheries is expected to make to national sustainable development. Such a strategy should take into account the need for an ecosystem approach to fisheries management that deals with the interactions between different fishery components both above and below the water, and the opportunities for gains in sustainable fisheries development from a system of secure access rights for individuals, groups, businesses or communities. The strategy should include a clear understanding of the role of foreign investment generally and of fishing by foreign vessels in particular.

64. Countries planning to emphasise the development of substantial domestic fishing and processing sectors should expect to find that access agreements are not likely to be an appropriate instrument to achieve that kind of goal, with the possible exception of arrangements such as those in an EU second generation agreement. There are a number of factors that can improve the opportunities for this form of development. Changing patterns of comparative advantage driven by strengthened governance, better investment climates, improved opportunities for trade in fisheries products, improved infrastructure, enhanced skills and stronger domestic private sectors should see more developing countries with the opportunity to make this kind of choice, especially as pressure on fish supplies tighten, values increase and the competitiveness of develop country fleets declines.

Reforming Government to Government Access Agreements

65. Some developing countries will continue to see opportunities for important economic gains, especially government revenue, in authorised fishing by foreign distant water vessels. Where there is a responsible fishing state partner government able and prepared to add value to the arrangements for access in terms of both economic and financial contributions and ensuring compliance by its vessels, government to government access agreements should continue to be important instruments, and efforts to resolve the issues of policy incoherence associated with these agreements should continue to be a priority. In this respect, the policy framework for both fishing states and coastal states for fisheries access agreements has not kept pace with the acceptance of the concepts of responsible and sustainable fisheries and needs to be updated. The changes in the EC approach to agreements represent current best practice in this respect. That change is based on a shift from access agreements to “partnership agreements” (FPAs) designed to

establish a sectoral relationship in fisheries with partner countries that is in line with the development cooperation arrangements in the Cotonou Agreement. The Solomon Islands FPA was apparently the first FPA. The Agreement is not yet in force but the text is faithful to the Community's stated intentions to "contribute to the establishment of the conditions for sustainable fisheries beyond Community Waters". It includes new provisions on policy dialogue on fisheries reforms, good governance, scientific cooperation, employment of Solomon Island workers on Community vessels and their rights, responsible fishing and resource sustainability, and financial support for those purposes, and a comprehensive set of conditions for fishing including reporting, observers, boarding and inspection and VMS. However, at its core, it remains an access agreement, initially for 4 purse seine and 10 longline vessels, and in this respect does not substantially address the trade, investment and private sector development issues that would be associated with integrating fishing under the agreement into the Solomon Islands domestic economy. On the surface then, the new emphasis on coherence in the Solomon Island FPA would make a small, rather than a significant contribution to sustainable fisheries development in Solomon Islands.

66. But there is a bigger picture. The Community support for development projects in Solomon Islands includes assistance to coastal fisheries and currently for the rehabilitation of infrastructure of the tuna industry. The Community has been a major supporter of regional fisheries research programmes and has been working constructively with the Solomon Islands and other Island countries in the establishment of the new Western and Central Pacific Fisheries Commission. Pacific Island Countries and the Community are working to develop a Regional Economic Partnership Agreement with a fisheries component. And if current development plans are successful, the value of Solomon Islands exports of fish to Europe will probably greatly exceed the value of catches likely to be made in Solomon Islands waters under the FPA, illustrating the idea that in the longer term it will be access to fish supply, not fishing, that will be the more important relationship between developed and developing countries. In addition, other OECD Members are supporting a major programme of strengthening of Solomon Island fisheries institutions that will enhance its capacity ensure compliance with the FPA and benefit from its operations.

67. Taken together, these strands of development cooperation can make a powerful contribution to national sustainable development. Addressing coherence in fisheries agreements may be a small step in this process in this case, but it is an important one. Out further though lies the broader task of making such agreements into instruments of broader-based instruments of development cooperation that promote integration of fishing into domestic economies rather than maintaining distant water fishing as economic enclave activities.

68. There is some scope for similar approaches by other fishing states, especially those that are major market states. However, it is unlikely that most other fishing states will have the same breadth of opportunities as the EC to address policy incoherence concerns through restructuring access agreements or taking account of them in broader economic relationship for at least two reasons. Firstly, the Community has a substantial development cooperation framework with most, if not all, of the developing countries with whom it has access agreements. And secondly, the Community has the opportunity to separate its sources of technical assistance from the control of its fleets because it has a number of member states with a long record of participation in development cooperation activities, including fisheries compliance that are not involved in distant water fishing. Other fishing states might therefore find it more difficult to resolve the policy coherence concerns with access agreements with such an approach.

69. There might be scope also to consider new structures for access agreements. With the increasing transfer of the responsibility for funding of financial contributions to boatowners, there is less reason for commercial aspects to be included in the government to government access agreements. In this direction, government to government agreements would focus on compliance and sustainability issues with coastal state agreement on fishing opportunities being made available at least on a non-discriminatory basis, or more positively, on a basis that took into account the value of the fishing state contributions to compliance

and sustainability. The developing coastal state would then establish the volume of fishing opportunities to be provided and the conditions of fishing including any fees, moving the access relationships more in the direction taken by developed coastal states including Canada and the United States when they first extended their fisheries jurisdictions.

Reforming and Strengthening Fisheries Management Programmes and Institutions

70. Some of the issues identified as problems with access agreements are not essentially related to access agreements but are wider fisheries management issues. Conflict between the interests of artisanal fishers and industrial vessels may not be substantially different whether the industrial vessels are foreign access vessels, foreign charter vessels or domestic vessels, though the problem may be accentuated under boatowners that are remote and removed from the local discourse about these effects. Resolving these conflicts is a core fisheries management problem, and a tough one, that requires information, policy analysis, structures for dialogue with stakeholders and compliance arrangements.

71. There is an important role for regional cooperation in addressing fisheries management weaknesses that lie at the heart of many of the issues and problems with access agreements. Pacific Island Countries in particular have benefited from regional cooperation in fisheries, including cooperation directed towards access agreements. But the answer is unlikely to lie in the direction of strengthening regional fisheries organisations at the expense of national ownership and control of fisheries management arrangements. Rather, regional cooperation should strengthen and not undermine, national ownership and control of policies and resources; and build capacity, not dependence from regional arrangements.

Private Fisheries Access Agreements

72. In terms of sustainable fisheries in developing countries, it is difficult to see any rationale for private fisheries access agreements to be continued, except that since they are in place it is less demanding to keep them than replace them. There are options centred around licensing vessels directly in accordance with conditions prescribed by regulations including fees that should generate greater benefits for developing coastal states. These options requires stronger institutional arrangements to decide on the circumstances in which individual foreign vessels should be allowed to participate in fishing and the establishment of systems of criteria, incentives and requirements for landings, crewing and national control to ensure their participation is beneficial, along with enhanced monitoring. They are much more powerful when overall access is limited, requiring a limited entry framework at least across major fisheries.

Access Agreements and Alternatives

73. Finding problems with access agreements doesn't necessarily indicate moving directly to terminating access agreements. It calls rather for the kind of overall policy analysis and decision-making outlined above that result in a developing coastal state defining the role of foreign vessels and foreign investment more generally and assessing alternative ways of managing participation by foreign vessels. The obvious alternative to access agreements is to simply licence vessels directly on a vessel by vessel basis, preferably within a system of access rights that leaves rightholders with room to choose the appropriate mix of vessels, with criteria that determine the limits within which foreign vessels can be operated and appropriate conditions including fees, crewing etc. This approach can be adopted incrementally, which would be particularly important for developing coastal states that depend heavily on returns from access agreements. The most important step is to build a sound legal framework for direct licensing with terms and conditions including fees laid out in transparent regulations. This can exist alongside the legal framework for access agreements, and be applied as a first step to particular groups of vessels, beginning with some that are licensed only under private agreements.

Postscript: Policy Coherence/Incoherence and RFMOs

74. As the discourse on policy coherence and fisheries broadens, one aspect related to access agreements that might receive attention is that of policies in respect of RFMOs. Many, and perhaps most, access agreements between developing and developed countries include provision for fishing of species that fall within the scope of various RFMOs, particularly the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC) and the new Western and Central Pacific Fisheries Commission (WPFCC). In these cases, the arrangements in the access agreements have to be consistent with measures adopted by the RFMOs. Some of the measures of those RFMOs may have a major effect on the shape of the access agreements, the benefits that the agreements provide, and more generally the contribution of fishing under the agreements to sustainable development in the developing coastal states. The two major aspects of the work of RFMOs that may affect the outcomes of access agreements are:

- a) the effectiveness of measures to ensure sustainability of fishing for the stocks involved. Clearly, the sustainability of fishing under access agreements for species that are substantially managed under an RFMO depends heavily on the effectiveness of the RFMO conservation and management measures; and
- b) the effect of RFMO conservation measures on the allocation of fishing opportunities among members of the RFMO.

75. Participating effectively in the work of RFMOs is difficult for developing states, especially smaller developing states. The issues are complex, involving a mix of legal, scientific, economic and other technical factors that is difficult for small delegations to adequately cover, and the organisations tend to work in working groups and committees which involve a large number of sessions of meetings during a year. As a result, few developing countries, except the largest, have the capacity to participate effectively and the processes tend to be dominated by developed countries, some of whom have very substantial economic interests in the outcomes and active domestic fishing industry participants. By comparison, the interest, attention and participation of developed fishing state development agencies in the processes of RFMO decision-making appears to have been substantially less than in the access agreement processes. In this setting, there is a risk that the fisheries policies of developed countries in the RFMOs will lead to outcomes, including in fishing under access agreements, that are not coherent with sustainable development objectives. This is an issue that may be worth more attention within the debate on policy coherence for development in fisheries.

Some Policy Considerations

76. Analysis of access agreements is highly partial and focused on the EU agreements. There is a need for a broader analysis of access agreements of other fishing states. Some of this at least could be initiated by the fishing states themselves.

77. Proposals for addressing concerns related to policy coherence and access agreements have generally focused on reforming the agreements without addressing their basic structure. There is scope for considering alternatives to access agreements for developing countries and different access agreement structures which leave more responsibility with the developing country for management of commercial aspects while strengthening the contributions of access agreements to compliance and sustainability.

78. There are likely to be some developing countries that are involved (trapped?) in access agreements because they do not have the compliance and other fisheries management institutional capacities to adopt more rigorous and more beneficial fisheries management strategies and policies.

79. Substantial dependence on private fisheries agreements by a developing country is more likely to be a sign of institutional weakness limiting policy options than a policy choice.

80. The case for the value of investment in compliance activities has been well made by DFID and MRAG (MRAG, 2005). The dividends from effective compliance include not only enhanced control of IUU fishing and reduction of the losses that it causes, but the opening up of a wider range of fisheries management and development paths that might be potentially more beneficial for a developing coastal state, in part because of reduced need to rely on access agreements to secure compliance. But the effectiveness of investments in fisheries compliance (and fisheries management capacities generally) is heavily dependent on the overall strength of national governance.

81. Reform and strengthening of fisheries programmes and institutions is an essential element in the development of sustainable fisheries and increasing the contribution of fisheries to achievement of broader development goals, including ensuring that fishing under access agreements is consistent with achievement of these goals. Progress in transferring and adapting modern fisheries management concepts proven in developed countries, such as rights-based management and the application of an ecosystem approach is particularly dependent on redirected and improved fisheries management capacities in developing countries.

BIBLIOGRAPHY

- Acheampong, A. (1997) "Coherence Between EU Fisheries Agreements and EU Development Cooperation: The Case of West Africa" (ECDPM Working Paper No. 52).
- ADB (2003) "Project Completion Report On The Fisheries Development Project (Loan 1656-PNG) in Papua New Guinea"
- ADB (2004a) "A Review Of Current Access Arrangements In Pacific Developing Member Countries (PDMCs)".
- ADB (2004b) "On Or Beyond the Horizon: A Discussion Paper on Options for Improving Economic Outcomes from the Western and Central Pacific Tuna Fishery"
- ADB (2005) "Republic of the Fiji Islands: Fisheries Sector Review"
- ADE-PWC-EPU (2002) "Evaluation of the Relationship between Country Programmes and Fisheries Agreements". Final Report to the European Commission"
- APRODEV (1999) "Brussels' blind spot - the lack of coherence between poverty eradication and the European Union's other policies"
- EC (2002) Communication On An Integrated Framework For Fisheries Partnership Agreements With Third Countries (COM 2002 637)
- FAO (1984) "Report On The Proceedings Of FAO/Southwest Indian Ocean Committee/Workshop On Licensing & Control Of Foreign Fishing"
- FAO (1999) "Report Of A Regional Workshop On Fisheries Monitoring, Control And Surveillance (for South and South-East Asia), 1998"
- FFA (1982) "Report of Proceedings of the Workshop on the Harmonisation and Coordination of Fisheries Regimes and Access Agreements, FFA Report 82/1.
- FFA (2005) "Record of Proceedings of the IUU Fishing Risk Management Workshop 2005", FFA Report 05/28
- ICCAT (2003) "Recommendation 03-12 By ICCAT Concerning The Duties Of Contracting Parties And Cooperating Non-Contracting Parties, Entities, Or Fishing Entities In Relation To Their Vessels Fishing In The ICCAT Convention Area"
- ICTSD (2005) "Towards development-oriented fisheries subsidies disciplines at the WTO"
- IDDDRA (2005) "*Special Chapter on Policy Coherence for Development in Fisheries*" in the
- IFREMER (1997) Evaluation Of The Fisheries Agreements Concluded By The European Community

- Lankester, K., P.S. Diouf and K. Sané (eds) (2002) Fisheries Access in West Africa. Proceedings of two Workshops Held in Senegal and Mauritania, 2001
- Manieva, J (2003) Fiscal Reforms For PNG Fisheries
- Martin, W., M. Lodge, J. Caddy and K Mfodwo (2001) A Handbook for Negotiating Fishing Access Agreements. WWF publication.
- MRAG (2005) "Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries"
- OECD (2005) "*Policy Coherence for Development: Promoting Institutional Good Practice*"
- OECD (2005), *Review of Fisheries in OECD Countries: Volume 1: Policies and Summary Statistics* 2005 edition.
- Parkes, G.B. (1998) The Payment Of Fees For Access To Fisheries In Exclusive Economic Zones, presented to the FAO/Norway Government Cooperative Programme – GCP/Int/648/Nor82
- Regional Workshop On Fisheries Monitoring, Control And Surveillance, Kuala Lumpur and Kuala Terengganu, Malaysia, 29 June – 3 July 1998
- Richards, A.H (2003). "Fisheries monitoring, control and surveillance in the Western and Central Pacific" FFA Report 03/25.
- SPC (2005) "Western And Central Pacific Fisheries Commission Tuna Fishery Yearbook 2004"
- Weston, A. and Pierre-Antoine, D. (2003) "Poverty and Policy Coherence: A Case Study of Canada's Relations with Developing Countries". Ottawa: The North-South Institute.
- World Bank (2004) "Global Monitoring Report 2004: Policies and Actions for Achieving the Millennium Development Goals and Related Outcomes"
- WWF International's Endangered Seas Campaign (1998), "The Footprint of Distant Water Fleets on World Fisheries"

Global and Regional and Bilateral Agreements

- Agreement (1982) 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 (*the UN Fish Stocks Agreement*).
- Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of The One Part, and the European Community and its Member States, Of The Other Part (*the Cotonou Agreement*).
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (*the WCPF Convention*).

COM/AGR/DCD/PCDF(2006)2

EC/Solomon Islands (2004), Partnership Agreement between the European Community and Solomon Islands on Fishing off Solomon Islands.

FAO (1995), Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (*the FAO Compliance Agreement*).

FAO (1995). Code of Conduct for Responsible Fisheries.

Federated States of Micronesia Arrangement for Regional Fisheries Access (*the FSM Arrangement*).

International Plan Of Action To Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing (*the IPOA-IUU*)

Treaty On Fisheries between the Governments of certain Pacific Islands States and the Government of the United States of America.

UN (1982). Convention on the Law of the Sea.