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West Africa & the New European Common Fisheries Policy: Impacts & Implications

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ABSTRACT

This chapter examines how the EU Common Fisheries Policy (CFP) has historically affected fisheries in West Africa, and how recently enacted reforms to the CFP may alter or perpetuate trends in this relationship. The CFP's historical impacts on West African states are explored through its various policy tools, as well as how CFP changes might affect relations between these countries and the EU, with implications for their wider economies.

West African states represent some of Europe's closest neighbors, and the waters comprising their Exclusive Economic Zones (EEZs) are some of the most productive fishing grounds for European fleets. The interests of European fishing nations and those of coastal West African states have often been at odds, however, and scholars have argued that the combined CFP policies have led to a range of consequences, from degraded habitat and diminished stocks to conflicts between domestic and foreign fishers and stymied local economies.

This historical legacy is here examined, using existing data and studies to assess these claims. Furthermore, the profound impacts of the EU CFP far beyond European waters are demonstrated, along with the possible impacts of recent changes in the EU CFP for West African fisheries. Multiple policies and reforms are addressed, including the discard ban, the implementation of Maximum Sustainable Yield (MSY), and the establishment of Sustainable Fisheries Partnership Agreements (SFPAs). The implications for West African fisheries are tremendous but also uncertain, and much will depend on the implementation of the rules in distant waters.

INTRODUCTION

In 2009, the European Commission announced their intention to begin legislative reform of the European Common Fisheries Policy (CFP).¹ The CFP is one of several frameworks in which European Union (EU) member states have transferred certain sovereign legislative and regulatory powers to common European institutions in order to promote regional management and cooperation.² The CFP creates this framework for EU member states' fishing fleets, markets, and all waters belonging to those states. On July 13, 2011, the Commission released the *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*, and On 30 May 2013 the European Parliament and the European Council reached an agreement on the reform of the CFP. The consolidated text of the new Basic Regulation was published on 10 October 2013, and with the new policy formally agreed upon by the Council and Parliament, the reformed CFP has been in effect since 1 January 2014.³

¹ European Commission, *Green Paper: Reform of the Common Fisheries Policy*, (Brussels, April 22, 2009).

² Juan C Surís-Regueiro, Manuel M Varela-Lafuente, and M Dolores Garza-Gil, "Evolution and Perspectives of the Fisheries Structural Policy in the European Union," *Ocean & Coastal Management* 54, no. 8 (August 2011): 593.

³ Markus Salomon, Till Markus, and Miriam Dross, "Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy," *Marine Policy* 47 (July 2014): 76; Surís-Regueiro, Varela-Lafuente, and Garza-Gil, "Evolution and Perspectives of the Fisheries Structural Policy in the European Union;" "Review of the Balance of Competences Between the United Kingdom and the European Union | Fisheries Report," August 26, 2014, 1–75.

Considering the global importance of the European Union member states as both fishing nations and fish importers, the CFP is a framework that has global, not regional, impacts.⁴ According to the FAO State of World Fisheries and Aquaculture 2014, the fisheries region with the highest average annual production per person is Europe, at 24.2 tonnes, and the EU is by far the largest market for fish and fish products, with imports valuing more than US\$50 billion in 2013, or slightly less than half of world imports.⁵ These characteristics have particular significance for West African fisheries, which have been increasingly exploited by EU fleets since World War II.⁶ West Africa's close proximity to Europe, its former colonial ties to several EU member states, and its limited domestic demand for high-value fish products have rendered the region an ideal locale for EU fishing operations, as Europe's dependence on fish imports continues to grow.⁷

With these considerations in mind, this chapter has a threefold objective. First, in order to understand the objectives of the CFP and its emergence as a global fisheries regime, this chapter discusses its origins, evolution, and role in relation to the UN Convention on the Law of the Sea (UNCLOS). Second, the chapter outlines the CFP's structure and influence, and gives closer examination to the implications of specific historical CFP rules and regulations for West African states. Third, the chapter reviews recent CFP reform, and discusses potential implications of these reforms on the future of West African fisheries.

An Inexhaustible Mine of Wealth

It has been calculated that if no accident prevented the hatching of the eggs and each egg reached maturity, it would take only three years to fill the sea so that you could walk across the Atlantic dryshod on the backs of cod.

-Alexandre Dumas, *Le Grande Dictionnaire de Cuisine*, 1873

Any tendency to over-fishing will meet with its natural check in the diminution of the supply; this check will always come into operation long before anything like permanent exhaustion has occurred.

-T. H. Huxley to the International Fisheries Exhibition in London, 1883

In addition to a highly productive soil, the seas which surround us afford an inexhaustible mine of wealth—a harvest, ripe for gathering at every time of the year—without the labour of tillage, without the expense of seed or manure, without the payment of rent or taxes. Every acre of those seas is far more productive of wholesome, palatable, and nutritious food than the same quantity of the richest land; they are fields which, perpetually “white to harvest” [ripe], require only the labourer's willing hand to reap that never failing crop which the bounty of Providence has kindly bestowed. . . . That the mine we have to work upon is in reality inexhaustible, a transient inspection will be sufficient to satisfy the most sceptical inquirer.

⁴ Ronán Long, “The Role of Regional Advisory Councils in the European Common Fisheries Policy: Legal Constraints and Future Options,” *The International Journal of Marine and Coastal Law* 25, no. 3 (January 1, 2010): 299–302

⁵ Food and Agriculture Organization of the United Nations, *State of the World Fisheries and Aquaculture 2014*, (Food & Agriculture Org, 2014), 8, 31; Long, “The Role of Regional Advisory Councils in the European Common Fisheries Policy: Legal Constraints and Future Options.”

⁶ Jacqueline Alder and Ussif R Sumaila, “Western Africa: a Fish Basket of Europe Past and Present,” *The Journal of Environment & Development* 13, no. 2 (June 1, 2004): 156–78.

⁷ Food and Agriculture Organization of the United Nations, *State of the World Fisheries and Aquaculture 2014*, 14; Alder and Sumaila, “Western Africa: a Fish Basket of Europe Past and Present,” 156-158.

-Henry Schultes, British political commentator, 1813

For most of history, marine fish stocks have been considered one of the most abundant—indeed inexhaustible—resources available to humankind. Throughout the nineteenth century and well into the twentieth, the dominant conception of these stocks was that of a God-sent blessing, a rich and consistent source of food and revenue that was so vast and productive that no conceivable act of man could affect its supply. While this image may have been relatively understandable in previous centuries, the inception of industrial fleets of steam-powered trawlers in the late nineteenth century created a new era of fishing capability. In the 1930s and 1940s, another leap in fishing efficiency occurred with the arrival of large factory ships, modernized gear and vessel technology, and sonar.⁸ The consequences of these developments become clear in global marine fisheries trends, such as the expansion of area and depth fished, rise in global fish catch, and increasing amounts of capital invested in fishing fleets.⁹ Regardless of the dramatic increases in fishing capacity, however, the notion of inexhaustibility persisted well into the 1980s, despite widespread evidence of decline in catch per unit effort (CPUE) and in some cases, stock depletion.¹⁰

Having its origin in the regional cooperation and economic recovery movements of the 1950s and 1960s, the CFP emerged in the context of the notion of fisheries inexhaustibility. As a policy and regulatory framework for European fish production and consumption, the CFP has also adapted over time to adjust to new scientific, economic, and social circumstances. While much literature has examined these developments and adaptations with regard to EU member states and internal European relations,¹¹ this paper seeks to gain a better understanding of the impacts of the European CFP on external, or third states.

I. THE EMERGENCE OF THE EUROPEAN COMMON FISHERIES POLICY

There are four separate, but interrelated policies in the European Common Fisheries Policy: the structural policy, the market policy, the conservation policy, and the external fisheries policy.¹² The creation of the CFP lasted approximately 15 years, and January 25, 1983 is generally regarded as the official birth of the CFP. In reality, this is the date on which the highly controversial conservation policy was agreed, the market and structural policies having been adopted in 1970. The fourth policy, dealing with external or international fisheries, does not have

⁸ A L Fridman, “The Development of Specialized Ships, Nets, and Equipment,” in *The Role of Food, Agriculture, Forestry and Fisheries in Human Nutrition*, ed. V R Squires, vol. 2, (Paris: eolss.net, 2009) 214; Peter Makoto Miyake, “A Brief History of the Tuna Fisheries of the World,” in *Management of Tuna Fishing Capacity*, ed. William H Bayliff, Juan Ignaciio de Leiva Moreno, and Jacek Majkowski, 15 ed., (Rome: Food & Agriculture Org., 2005), 25.

⁹ Wilf Swartz et al., “The Spatial Expansion and Ecological Footprint of Fisheries (1950 to Present),” ed. Stuart A Sandin, *PLoS ONE* 5, no. 12 (December 2, 2010), 1; Food and Agriculture Organization of the United Nations, *State of the World Fisheries and Aquaculture 2014*; Ransom A Myers and Boris Worm, “Rapid Worldwide Depletion of Predatory Fish Communities,” *Nature* 423, no. 6937 (2003): 280–83.

¹⁰ Frédéric Le Manach, “Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries,” (University of British Columbia, 2014), 28; F Berkes, “ECOLOGY: Globalization, Roving Bandits, and Marine Resources,” *Science* 311, no. 5767 (March 17, 2006): 1557; Scheiber, “Ocean Governance and the Marine Fisheries Crisis,” 119-121; Food and Agriculture Organization of the United Nations, *The State of the World Fisheries and Aquaculture 2010*, (Rome: Food & Agriculture Org., 2010).

¹¹ Till Markus, *European Fisheries Law*, (Groningen: Europa Law Publishing, 2009); M Holden and D Garrod, *The Common Fisheries Policy*, (Oxford: Fishing News Books, n.d.); Robin Churchill and Daniel Owen, *The EC Common Fisheries Policy*, (Oxford University Press, 2010).

¹² Markus, *European Fisheries Law*.

an official agreement or adoption date, as it developed gradually out of the growing trend of establishing Exclusive Economic Zones (EEZ's) around 1977.¹³

The Origins of the Common Fisheries Policy

The basis for the CFP emerges from Article 3 of the Treaty of Rome—the 1957 Treaty that established the European Economic Community (EEC)—which states that, “For the purposes set out in Article 2, the activities of the Community shall include... (d) the adoption of a common policy in the sphere of agriculture...,”¹⁴ and in Article 38 of the Treaty, in which the first paragraph states:

The common market shall extend to agriculture and trade in agricultural products. ‘Agricultural products’ means the products of the soil of stock –farming and of fisheries and products of first-stage processing directly related to these products.¹⁵

Although the mandate for a CFP was established in 1957, there was little movement toward establishing a policy throughout the 1950s and well into the 1960s, likely attributable to several factors. In the 1950s, five of the six member states (Belgium, France, Italy, the Netherlands, and Germany) caught 90 percent of their catches outside of their national waters—generally considered to be three miles from shore at that time—and the sixth member state, Luxembourg, was a landlocked State. Therefore little was to be gained by an agreement on shared fishing rights among member states’ waters.¹⁶ By the end of the 1960s, however, the Common Customs Tariff had begun to indirectly affect the fisheries sectors of both France and Italy. These States requested regulations that could help modernize their fleets and enable them to better compete. In 1967, a long paper titled “Basic principles for a common fisheries policy,” was developed by the EC. Even following the release of the paper, however, States other than France and Italy had little incentive to assist these fleets, essentially modernizing their competitors.¹⁷

The application by Denmark, Norway, Ireland, and the United Kingdom to join the European Community was the pivotal event that led to the establishment of the CFP.¹⁸ All four were strong fishing nations, representing waters where the existing member states had highly active fisheries.¹⁹ Therefore, around 1970, the incentives of EEC member states suddenly changed from maintaining the *status quo* to establishing a fisheries policy that new member states would have to accept wholesale as the *acquis communautaire*, newly-admitted states having no say in formulating preexisting policies.²⁰ The basis of the CFP was established in two regulations, barely passing in the final hour in 1970: Council Regulation (EEC) No. 2142/70 on the common market in fishery products and Council Regulation (EEC) No. 2141/70 establishing a common structural policy for the fishing industry.²¹

¹³ Holden and Garrod, *The Common Fisheries Policy*.

¹⁴ European Economic Community, *Treaty Establishing the European Economic Community*, (Rome, 1957).

¹⁵ *ibid.*

¹⁶ Holden and Garrod, *The Common Fisheries Policy*; Churchill and Owen, *The EC Common Fisheries Policy*. p. 29.

¹⁷ *ibid.* p. 4-5

¹⁸ Nienke van der Burgt, *The Contribution of International Fisheries Law to Human Development*, (Martinus Nijhoff Publishers, 2012), 232.

¹⁹ Markus, *European Fisheries Law*; Holden and Garrod, *The Common Fisheries Policy*; “Review of the Balance of Competences Between the United Kingdom and the European Union | Fisheries Report,” August 26, 2014, 13.

²⁰ Churchill and Owen, *The EC Common Fisheries Policy*. p. 5

²¹ Holden and Garrod, *The Common Fisheries Policy*; Churchill and Owen, *The EC Common Fisheries Policy*. p. 5; Council of the European Communities, *Regulation (EEC) No. 2142/70 of the Council, Official Journal of the European Communities*, 1970; Council of the European Communities, *Regulation (EEC) No. 2141/70 of the Council, Official Journal of the European Communities*, 1970.

Following the adoption of these regulations, the European Court of Justice (ECJ) played a central role in the “communitarization” of the EC powers and the establishment of these powers in relation to fisheries.²² First with the 1971 *ERTA* case, the ECJ affirmed the external competence of the Commission and referred to its exclusivity, indicating its precedence over the jurisdiction of Member States.²³ In the 1976 case of *Officier Van Justitie v. Kramer*,²⁴ the ECJ established the EEC’s authority to enter into international agreements specifically relating to the conservation of the biological resources of the sea.²⁵ The 1981 judgment in *European Commission v UK* further solidified these powers in ruling that the EEC had exclusive competence to adopt fisheries conservation measures in Member States’ waters.²⁶

The Structural Policy: Subsidies, Fleets, and Moving Targets

The primary objectives of the 1970 regulations, which formulated the structural and market policies and founded the CFP, were to eliminate the European deficit in the supply of fish and to promote the notion of European “auto-sufficiency.”²⁷ Mike Holden, member of the European Commission Directorate General for Fisheries (DGXIV) 1979-1990, states that, “the apparently self-evident way in which to achieve this objective was to encourage the building of more vessels to catch more fish.”²⁸ While the negative environmental and resource consequences of this approach may seem self-evident now, a few factors kept these considerations out of European common fisheries policymaking. First, at the time of regulation in 1970, and indeed until 1978, there were no scientific fisheries experts in the staff ranks of the Commission,²⁹ Second, as the conservation policy of the CFP was established thirteen years later in 1983, there was no formal process of reconciling the market and structural policies to conservation considerations.³⁰ Third, widespread perceptions of fisheries resources in 1970 were based on the lessons of the 1950s and 1960s, which demonstrated that massive increases in global fishing effort result in tremendous increases in catch. Pauly *et al.* state that this rapid increase in catch encouraged “an entire generation of managers and politicians to believe that launching more boats would automatically lead to higher catches.”³¹ In reality, the increase in effort and catch masked an actual decline in catch per unit effort (CPUE), which emerged in much of the world beginning in the 1950s.³² The obsolete belief in the inexhaustibility of global marine fisheries from the days of Huxley continued to form policy into the late twentieth century.

²² van der Burgt, *The Contribution of International Fisheries Law to Human Development*, 232.

²³ *ibid.*; European Court of Justice, *Judgment of the Court of 31 March 1971. Commission Of the European Communities V Council Of the European Communities. European Agreement on Road Transport.*, 264–84 (1971).

²⁴ European Court of Justice, *Judgment of the Court of 14 July 1976. Cornelis Kramer and Others. Biological Resources of the Sea. Joined Cases 3, 4 and 6-76*, 1280–1314 (1976).

²⁵ van der Burgt, *The Contribution of International Fisheries Law to Human Development*, 229.

²⁶ European Court of Justice, *Judgment of the Court of 5 May 1981. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. Sea fisheries - Conservation measures*, 1047–80 (1981).

²⁷ van der Burgt, *The Contribution of International Fisheries Law to Human Development*; Holden and Garrod, *The Common Fisheries Policy*.

²⁸ Holden and Garrod, *The Common Fisheries Policy*.

²⁹ *ibid.*

³⁰ Emma Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” *Marine Policy* 32, no. 4 (July 2008): 670.

³¹ Daniel Pauly *et al.*, “Towards Sustainability in World Fisheries,” *Nature* 418, no. 6898 (August 8, 2002): 689.

³² Food and Agriculture Organization of the United Nations, *Review of the State of World Marine Fishery Resources*, (Food & Agriculture Org., 2005); Myers and Worm, “Rapid Worldwide Depletion of Predatory Fish Communities.”

In the case of European common fisheries, the emphasis on increasing vessels and fishing effort was embodied best in Article 11 of Regulation 2908/83, which gives priority funding to:

1. the “purchase or construction of new fishing vessels,”
2. the replacement of vessels more than 12 years old or which were “irreparably damaged, broken up, or permanently withdrawn from use as fishing vessels,” and
3. the commissioning of vessels in areas where fishing was “traditionally an important economic activity.”³³

Understandably, the result of these policies was a massive increase in the size of the European fleet from an estimated gross registered tonnage (GRT) of 794,000 in 1970 to 1,303,000 GRT in 1983 and 1,618,519 GRT in 1987.³⁴ With increasing fleet size, improved technology, and rising catches (though not CPUE), European fleets continued to expand effort until the decline of fish stocks became widely evident in the early 1980s.³⁵ At this time, it could be said that the objectives of the CFP expanded—if they were not fundamentally altered—to include direct conservation considerations for target fish stocks³⁶. In response to the decline perceived in the fish stocks, the conservation policy was established and the structural policy was rapidly altered, promoting a policy tool known as multi-annual guidance programs (MAGPs).³⁷

In 1983, Regulation No. 2908/83 redefined MAGPs from their former role as minor coordinating tools to programs that would achieve “a satisfactory balance between the fishing capacity to be deployed by the production facilities covered by the programmes and the stocks which are expected to be available during the period of validity of the programme.”³⁸ The MAGPs were meant to set fishing capacity targets for all countries in the EEC as a means of reducing effort in the common fishery. There were four rounds of MAGPs negotiated: MAGP I (1983-1986), MAGP II (1987-1991), MAGP III (1992-1996), and MAGP IV (1996-2002).³⁹ All of the MAGPs, however, failed to achieve their stated goals, with two of nine member states compliant in MAGP I, five of eleven compliant in MAGP II, and an overall decrease in fleet capacity of 5-12 percent rather than the expected 17-40 percent for MAGPs III and IV.⁴⁰ Though fleets in the 1990s and 2000s were no longer rapidly expanding, the stated reductions in vessel numbers masked actual increases in capacity caused by improved vessel efficiency and

³³ Council of the European Union, 31983R2908: *Council Regulation (EEC) No 2908/83 of 4 October 1983 on a Common Measure for Restructuring, Modernizing and Developing the Fishing Industry and for Developing Aquaculture*, 1983.

³⁴ Holden and Garrod, *The Common Fisheries Policy*.

³⁵ Clare Coffey, *Sustainable Development and the EC Fisheries Sector*, 1999, 11.

³⁶ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 670.

³⁷ Holden and Garrod, *The Common Fisheries Policy*; Surís-Regueiro, Varela-Lafuente, and Garza-Gil, “Evolution and Perspectives of the Fisheries Structural Policy in the European Union,” 594.

³⁸ Council of the European Union, 31983R2908: *Council Regulation (EEC) No 2908/83 of 4 October 1983 on a Common Measure for Restructuring, Modernizing and Developing the Fishing Industry and for Developing Aquaculture*.

³⁹ Holden and Garrod, *The Common Fisheries Policy*; Surís-Regueiro, Varela-Lafuente, and Garza-Gil, “Evolution and Perspectives of the Fisheries Structural Policy in the European Union,” 594.

⁴⁰ Holden and Garrod, *The Common Fisheries Policy*; Surís-Regueiro, Varela-Lafuente, and Garza-Gil, “Evolution and Perspectives of the Fisheries Structural Policy in the European Union,” 594-595. R Cappell, T Huntington, and G Macfadyen, *FIFG 2000-2006 Shadow Evaluation*, March 2010, 1-2.

technology.⁴¹ Holden states that “even for those Member States which met their targets, it must be a matter of some doubt as to what extent active fishing capacity had been reduced.”⁴²

These trends are echoed in the Financial Instrument for Fisheries Guidance (FIFG), which was meant to consolidate all public subsidies associated with the structural policy and act as the financial instrument for the CFP.⁴³ The FIFG was created in 1993 and had two programs: FIFG I (1994-1999) and FIFG II (2000-2006). Like the MAGPs, these programs were also considered unsuccessful, since reductions in fleet size and engine power were lower than the gains achieved through technological improvements.⁴⁴ A 2010 evaluation by the Pew Environment Group stated that “FIFG support for the construction of around 3,000 vessels and the modernization of nearly 8,000 vessels, compared to the scrapping of 6,000 vessels (a large proportion of which were small inshore vessels from Greece and Spain), is expected to have resulted in a net increase in fishing capacity.”⁴⁵

The third instrument of the CFP structural policy is the European Fisheries Fund (EFF), initiated in 2007 and extending to 2013. While any assessment of the EFFs effects is preliminary, trends in the structural policy have not much deviated during this phase, and in 2009, the European’s Commission’s Green Paper on the Reform of the CFP stated that “excess capacity is still the CFP’s fundamental problem.”⁴⁶

The stated purpose of the MAGPs, FIFGs, and EFF was to align European fleet capacity to the actual potential of fisheries resources.⁴⁷ Considering the fact that absolute reductions in European fishing capacity have proven politically untenable, however, policies have been redirected.⁴⁸ The notion is that when actual reductions in active fishing capacity prove too difficult, the vessels that have been effectively “weeded out” of European fisheries may be redirected towards 1) new stocks (exploratory fishing), 2) new occupations (redeployment), or 3) new waters belonging to other states (joint ventures, access agreements or export of vessels). The potential for profitable exploitation of new fish stocks is exceedingly low, however, considering the global expansion of area fished and the increased ability of industrial fleets to reach previously inaccessible stocks.⁴⁹ Considering the high degree of subsidies which remain in the fishing sector, the large number of vessels, and the barriers to entry into other industries, redeployment is also an unlikely long-term solution.⁵⁰ Joint ventures have proven the most

⁴¹ Surís-Regueiro, Varela-Lafuente, and Garza-Gil, “Evolution and Perspectives of the Fisheries Structural Policy in the European Union,” 593-594; Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*, (Brussels, February 28, 2012).

⁴² Holden and Garrod, *The Common Fisheries Policy*.

⁴³ Cappell, Huntington, and Macfadyen, *FIFG 2000-2006 Shadow Evaluation*, 2-3.

⁴⁴ Sebastian Villasante, “Global Assessment of the European Union Fishing Fleet: an Update,” *Marine Policy* 34, no. 3 (May 2010): 663–70.

⁴⁵ Cappell, Huntington, and Macfadyen, *FIFG 2000-2006 Shadow Evaluation*, i.

⁴⁶ Surís-Regueiro, Varela-Lafuente, and Garza-Gil, “Evolution and Perspectives of the Fisheries Structural Policy in the European Union;” European Commission, *Green Paper: Reform of the Common Fisheries Policy*.

⁴⁷ Gerd Winter, ed., *Towards Sustainable Fisheries Law*, (Gland: IUCN, 2009), 277-284; Cappell, Huntington, and Macfadyen, *FIFG 2000-2006 Shadow Evaluation*, 1.

⁴⁸ Holden and Garrod, *The Common Fisheries Policy*; Cappell, Huntington, and Macfadyen, *FIFG 2000-2006 Shadow Evaluation*; Anthony Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, (Maastricht, 1997), 5.

⁴⁹ Holden and Garrod, *The Common Fisheries Policy*; Daniel Pauly et al., “Fishing Down Marine Food Webs,” *Science* 279, no. 5352 (February 6, 1998): 861; Swartz et al., “The Spatial Expansion and Ecological Footprint of Fisheries (1950 to Present),” 1-6.

⁵⁰ Ernst & Young, *Interim Evaluation of the European Fisheries Fund (2007-2013)*, February 2011, http://ec.europa.eu/fisheries/documentation/studies/index_en.htm.

popular solution for removing fishing capacity from European fisheries—a proposal which has tremendous implications for West African fisheries and which is discussed below.

The Market Policy: Standards and Prices

Similar to the structural policy, the market policy was created in 1970 and, true to its origins, parallels the market system defined for European agricultural products.⁵¹ In general, the objectives of the policy are:

1. To establish marketing standards through freshness and size specifications;
2. To stabilize prices, avoid surpluses, and support producer incomes through the fixing of guide prices; and
3. To consider consumer interests by managing marketing by producer organizations.⁵²

For the most part, the CFP market policy has been successful and uncontroversial within the EU, maintained in large part by the increasing deficit in supplies of fish species, which keep producer prices high for European fleets.⁵³ While the market policy has proven beneficial to European producers and consumers, however, the implications for foreign fisheries such as those throughout West Africa have been mixed.

The Conservation Policy: Reconsidering the Resource

The CFP conservation policy was established in 1983 and held as its primary objective “the conservation of biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions.” Conservation approaches suggested in the policy included: effort restrictions, imposition of a total allowable catch (TAC), fishing gear restrictions, fish size and weight limitations, and several others.⁵⁴ The most influential regulation was the TAC, which allowed the European Council to set annual limits on various fisheries in EU waters, and apportion quotas to member states.⁵⁵

In the face of continued declines in European fish stocks, the conservation policy underwent a series of changes under the 2002 reform. Specifically, Regulation 2371/2002 stated the objective of: “[the] sustainable exploitation of living aquatic resources in the context of sustainable development, taking account of the environmental, economic, and social aspects in a balanced manner.”⁵⁶ Although this objective does not seem to substantially deviate from the 1983 objective, a few important differences are noteworthy. First, the use of the term “sustainable exploitation” specifically refers to the notion of “exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine ecosystems.”⁵⁷ Second, Regulation 2371/2002 requires the European Council to promote the ecosystem-based approach to fisheries management, and apply the precautionary principle. Third, while retaining the controversial TAC system, it supplements the policy with a multi-annual management scheme aimed at fostering sustainable exploitation.⁵⁸

⁵¹ Churchill and Owen, *The EC Common Fisheries Policy*. p. 4-5

⁵² Holden and Garrod, *The Common Fisheries Policy*.

⁵³ *ibid.*

⁵⁴ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 669-670. “Review of the Balance of Competences Between the United Kingdom and the European Union | Fisheries Report,” 14-16.

⁵⁵ A Karagiannakos, “Total Allowable Catch (TAC) and Quota Management System in the European Union,” *Marine Policy* 20, no. 3 (1996): 235–36.

⁵⁶ Council of the European Communities, *Council Regulation (EC) 2371/2002*, 2002.

⁵⁷ *ibid.*

⁵⁸ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 671-672.

In addition to Regulation 2371/2002, a Community Action Plan to integrate environmental protection requirements into the CFP was also defined in 2002, to complement the regulation. The purpose of the Action Plan was to “translate such ideas [on environmental integration] into an Action Plan comprising objectives and principles, means, targets and timetables to enable the Common Fisheries Policy to address environmental challenges efficiently.”⁵⁹

Although the conservation policy was the last policy developed under the CFP in 1983, it has increased in importance in the past three decades and is now one of the overarching themes in the policy as a whole. Criticisms throughout the 1990s, primarily from the non-government organization (NGO) community, targeting what was seen as the contradictory approaches of the structural and conservation policies led to major reforms in the early 2000s.⁶⁰ These reforms were also the product of larger European trends of policy integration and environmentalism.⁶¹ While these reforms laid out some specific conservation tools for fisheries—such as the precautionary principle, ecosystem-based management, and TAC quotas—the major objective of the 2002 reforms was to re-situate the policies of the CFP into a broader approach of sustainability.⁶²

The External Relations Policy: Exporting Capacity and Evolving Agreements

The origin of the external policy lies in the extension of coastal states’ fishing rights from the previously recognized three nautical miles (nm) to 200 nm EEZs under UNCLOS.⁶³ With this drastic change, significant expanses of ocean that had previously been exploited by foreign fleets came under the sovereignty of coastal states’ EEZs, necessitating the negotiation of fishing agreements in order to maintain access to previously exploited areas.⁶⁴ Indeed, the EEC’s 1977 decision that all Member States would declare a 200 nm EEZ coincided with the decision that authorized the EEC to negotiate third party agreements.⁶⁵ The external fisheries policy was designed to cover international fisheries relations between EEC member states and third states (or those external to the EEC), in order to *maximize employment* from the European fishing sector and *ensure supply of fish* to European markets, while still *reducing fishing pressure* in European waters.⁶⁶

The external fisheries policy accomplished this in two primary ways. First, in brokering international fisheries agreements via the EEC, rather than individual member states, the policy

⁵⁹ Commission of the European Communities, *Communication From the Commission on the Reform of the Common Fisheries Policy (“Roadmap”)*, May 28, 2002.

⁶⁰ Eloise Todd and Ella Ritchie, “Environmental Non-Governmental Organizations and the Common Fisheries Policy,” *Aquatic Conservation: Marine and Freshwater Ecosystems* 10, no. 2 (2000): 141–49.

⁶¹ Council of the European Communities, *Council Regulation (EEC) No. 3760/92, Official Journal of the European Communities*, 1992; Nigel Haigh, “Introducing the Concept of Sustainable Development Into the Treaties of the European Union,” in *The Transition to Sustainability the Politics of Agenda 21*, (The transition to sustainability: the politics of Agenda, 1998), 64–75.

⁶² L van Hoof and J van Tatenhove, “EU Marine Policy on the Move: the Tension Between Fisheries and Maritime Policy,” *Marine Policy* 33, no. 4 (July 2009): 726–32.

⁶³ Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 4; Holden and Garrod, *The Common Fisheries Policy*; United Nations, *United Nations Convention on the Law of the Sea (UNCLOS)*, (Montego Bay, 1982).

⁶⁴ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 672–673; Frédéric Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements,” *Marine Policy* 38 (March 2013): 257–66.

⁶⁵ Marine Resources Assessment Group MRAG, Ltd., *Policy Brief 6: Fisheries and Access Agreements*, n.d., http://www.mrag.co.uk/Recent_Publications.htm; Holden and Garrod, *The Common Fisheries Policy*.

⁶⁶ *ibid.*; Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 4–7.

prevented European competition for fisheries access in third countries. Second, it ensured that as many European vessels as possible continued to fish outside common European waters, thereby 1) maintaining European supplies of fish and reducing imports from non-EC member states, 2) appeasing member states while still reducing capacity in European fisheries, 3) ensuring supply of species that do not occur in European waters, and 4) maximizing employment through the distant water fishing fleet.⁶⁷

Therefore, while some believe this policy to be largely independent of the other three, the external policy can be viewed as fundamentally connected to the structural, market, and conservation policies, in that it protects European producers and market prices by reducing imports, and enables displacement of European fishing fleets to other coastal state EEZ's, rather than requiring an absolute reduction in capacity.⁶⁸ In terms of these two objectives, the external fisheries policy was largely successful through the 1980s and into the 1990s.⁶⁹ In 1997, the European Commission estimated that approximately 40,000 fishing and processing jobs and 1300 vessels in the European Community were supported by agreements under the external fisheries policy.⁷⁰

Despite their success with regard to EU member states, however, the external policy came under fierce criticism in the 1990s for a variety of reasons, related to third states. Issues such as unsustainable exploitation, lack of monitoring, control, and surveillance (MCS), impairment of developing economies, food insecurity, and perceived inconsistencies with other EU common policies in environment and development generated significant criticism of the external fisheries policy.⁷¹ Notably, these criticisms coincided with tremendous growth in EU investment in third country fishing grounds, with the budget for international fisheries agreements increasing from 6 million ECU in 1981 to more than 280 million ECU 1996.⁷² NGOs such as The Coalition for Fair Fisheries Agreements emphasized the incoherence in the fact that the European Commission's Directorate General for Fisheries was charged with gaining access for European vessels in third states' waters, while at the same time the Directorate General for Development aimed to develop the artisanal fisheries of these same states.⁷³

In response to these criticisms, the external policy was also revised in 2002 under the second CFP reform. The reforms of the external relations policy were geared toward two primary objectives. The first is that of improving world governance of fisheries through existing international frameworks and regional cooperation mechanisms; this objective was targeted through the EU's renewed commitments of participation in and support of Regional Fisheries Organizations (RFOs) as well as support for enforcing and strengthening UNCLOS.⁷⁴ The second objective is that of improving bilateral agreements between EU member states and developing countries, by designing them more as holistic resource partnerships.⁷⁵ This second

⁶⁷ Holden and Garrod, *The Common Fisheries Policy*.

⁶⁸ Markus, *European Fisheries Law*.

⁶⁹ Holden and Garrod, *The Common Fisheries Policy*.

⁷⁰ Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 5.

⁷¹ Marine Resources Assessment Group MRAG, Ltd., *Policy Brief 6: Fisheries and Access Agreements*.

⁷² Commission of the European Communities, *Communication From the Commission to the Council and the European Parliament*, October 30, 1996; Hans Martin Havstein, "Change and Continuity: 40 Years of Reforming the Common Fisheries Policy," 2013, 33.

⁷³ Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 3.

⁷⁴ Directorate-General for Fisheries and Maritime Affairs and Maritime Affairs, *The European Community External Fisheries Policy*, (Brussels, December 5, 2005).

⁷⁵ *ibid.*

goal was addressed through the 2002 reforms, and further through the adoption of the Council Conclusions in 2004, which outline procedural mechanisms for the 2002 reforms.⁷⁶ These policies transitioned bilateral arrangements with third states away from a policy of “pay, fish, and leave” to that of Fisheries Partnership Agreements (FPAs), based on principles of sustainability and support for third state development.⁷⁷

The FPAs were meant to signal a fundamental change in the legal and political relations between EU member states and third states. Rather than act as a fee-for-service arrangement, FPA goals meant to address the social, economic, and environmental aspects of the third state fisheries, and were “rooted in the ideals of greater coherence between access agreements and internal [EU] policies such as development cooperation, environment, and trade.”⁷⁸ In other words, from 2002 onward, the FPAs were meant to redirect fisheries agreements from being simple commercial exchanges, and guide them “towards developing a sound fisheries management policy for the third country.”⁷⁹ While some provisions of these agreements have improved, assessments conducted by the Directorate-General for Maritime Affairs and Fisheries of the European Commission (DG MARE) indicate that the reforms largely fell short of “sound fisheries management policy.”⁸⁰ What remains notable, however, is that the CFP reforms of the early 2000s expanded the external policy beyond the UNCLOS framework and situated it within the common European legal and regulatory regime. This was a significant move with regard to third party relations—including those with West African states—and some of the implications will be discussed below.

II. EUROPE AND THE WEST AFRICAN FISHERIES LEGACY

The European Union has a unique relationship with West Africa, both historically and geographically, and many EU member states have fished the waters of the Central Eastern Atlantic for centuries. Yet twentieth century developments in de-colonization, industrial fishing, and the declaration of EEZs have redefined the terms on which these waters can, and should, be accessed for fisheries exploitation.⁸¹ Following the colonial era, a series of treaties established the primary economic framework between EU and African-Caribbean-Pacific (ACP) states, fisheries and trade relations comprising two of the many sectors governed by this framework. First, the two Yaoundé Conventions (1963 and 1969), followed by the four Lomé Conventions (1975, 1981, 1985, 1989) specified relations regarding trade and development between EU and

⁷⁶ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 673-674; Council of the European Communities, *Council Conclusions 11485/1/04 on the Commission Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries*, (Brussels, July 15, 2004).

⁷⁷ Directorate-General for Fisheries and Maritime Affairs and Affairs, *The European Community External Fisheries Policy*; Council of the European Communities, *Council Conclusions 11485/1/04 on the Commission Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries*.

⁷⁸ Council of the European Communities, *Council Conclusions 11485/1/04 on the Commission Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries*, (Brussels, July 15, 2004); Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 673.

⁷⁹ *ibid.* 673; Council of the European Communities, *Council Conclusions 11485/1/04 on the Commission Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries*.

⁸⁰ Le Manach, “Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries.”

⁸¹ Churchill and Owen, *The EC Common Fisheries Policy*. 342

ACP countries.⁸² Since 2000, the Cotonou Agreement has provided the political and legal frame for EU and ACP states on development and trade, with significant direct and indirect consequences for fisheries exploitation, production, and export.⁸³ A detailed analysis of the EU-ACP agreements is beyond the scope of this paper, though their implications and discussed throughout. Currently, the EU maintains access to fish stocks along most of the West African coast through some multilateral agreements, but primarily by means of bilateral fisheries agreements with individual West African states.⁸⁴ While these stocks supply fish for growing European markets, and employ European vessels and fishers, they also play an essential role in the economies, diets, livelihoods, and cultures of West African citizens. Many of these countries' populations are also dependent on unusually high proportions of dietary fish protein, such as Senegal (47 percent), Gambia (62 percent), Ghana (63 percent), and Sierra Leone (75 percent), as compared to a global average of 15 percent.⁸⁵ Considering the importance of these Central Eastern Atlantic fish stocks to both European and West African interests, the following section examines some of the consequences that the European CFP has historically had on West African states.

The CFP: Beyond Europe

The original goals of the European CFP structural policy were to eliminate the deficit in fish supply and promote European “auto-sufficiency.” Following the decline of European fish stocks, and the consequent reforms, however, the primary goal of the structural policy since the early 1980s has been one of reducing capacity in the European fleet. One of the most popular solutions to this problem—and one that has had a tremendous impact on West African fish stocks—is that of access agreements and joint ventures. Joint ventures may take a variety of different forms, however they generally indicate “an association of two or more parties, whether private or governmental, in order to undertake a commercial project in the fisheries sector, and to share in the risks and profits of that project”.⁸⁶ These arrangements may involve setting up a separate joint company, or a simple contractual relationship. Historically, EU-West African joint ventures generally involve the African party gaining access to capital goods (i.e. vessels and fishing gear), existing export avenues and infrastructure, a potential source of employment, and a share in profits, while the European party gains access to shore-based resources, displaces effort from EU waters, and enables cheaper access to fish stocks by circumventing the fees associated with foreign access agreements.⁸⁷

While this arrangement may appear mutually beneficial, in reality, the consequences of joint ventures for developing countries are mixed. First, while joint ventures involve West

⁸² Le Manach, “Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries,” 95; van der Burgt, *The Contribution of International Fisheries Law to Human Development*, 259.

⁸³ Le Manach, “Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries, 96”; van der Burgt, *The Contribution of International Fisheries Law to Human Development*, 259.

⁸⁴ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 669-670; van der Burgt, *The Contribution of International Fisheries Law to Human Development*, 10-12.

⁸⁵ World Health Organization & Food and Agriculture Organization of the United Nations, *Diet, Nutrition and the Prevention of Chronic Diseases*, (Geneva, 2002).

⁸⁶ Food and Agriculture Organization of the United Nations. Fishery Committee for the Eastern Central Atlantic, *Joint Ventures in Fishery Development in the CECAF Area*, 1974.

⁸⁷ Churchill and Owen, *The EC Common Fisheries Policy*. 343-345.

African companies, the fish that are caught are usually bound for the export market—therefore while catches are recorded as domestically caught, they are oftentimes neither landed nor consumed for domestic benefit.⁸⁸ Second, since the proliferation of joint ventures led to increasing fish exports, the West African region transitioned from a net exporter of fish in the 1960s to a net importer in the 1990s, thereby reducing domestic food security and increasing reliance on market goods.⁸⁹ Third, while joint ventures occur between West African and European parties, the majority of agreements are of a private nature, and profits accrue to private companies.⁹⁰ Therefore, under joint ventures, the fish resource is exploited for the benefit of foreign and domestic private parties, with very low license fees (relative to the actual value of the catch) paid to the coastal state government, and an overall loss to coastal communities.⁹¹ Furthermore, joint ventures enable EU-West African fisheries relations to be redirected away from the more regulated agreements brokered under the EU CFP external policy, and into the much more opaque realm of private bilateral agreements. In 2013, fewer than half of the EU's 700-vessel external fleet were involved in EU-negotiated FPAs, while over 400 vessels were involved in joint ventures, many operating in the same West African waters where FPAs had in fact already been negotiated.⁹²

The general criticism of the structural policy with regard to West African states is simply that by displacing the European fleet from European waters to West African waters, the structural policy is simply shifting the declines seen in European stocks to the stocks of the Central Eastern Atlantic.⁹³ While succeeding in reducing the number of vessels actively fishing in EU waters, the policy simply moves that overcapacity to West African waters, while maintaining the benefit of the resource to Europe. Indeed, the argument is made stronger by the dearth of scientific information and monitoring, control, and surveillance within West African fisheries, as compared to the far more studied and regulated European fisheries. While the structural policy has consistently prioritized capacity reductions for the last thirty years, little to no actual reduction has taken place, and this overcapacity perpetuates the incentive for Community subsidies to distant water fishing operations.⁹⁴

In response to these criticisms, the 2002 CFP reform tightened—and in 2004 formally terminated—the FIG mechanism enabling joint ventures between EU companies and third state companies.⁹⁵ Since 2002, it has no longer been possible to set up temporary joint ventures, i.e.

⁸⁸ Alder and Sumaila, “Western Africa: a Fish Basket of Europe Past and Present,” 156-157, 169-172.

⁸⁹ *ibid.*, 164.

⁹⁰ Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements,” 6-7.

⁹¹ Alder and Sumaila, “Western Africa: a Fish Basket of Europe Past and Present,” 170-171; Cappell, Huntington, and Macfadyen, *FIFG 2000-2006 Shadow Evaluation*, 32-50; Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements.”

⁹² Agritrade, *EU Common Fisheries Policy and Fisheries Partnership Agreements*, October 2013, <http://agritrade.cta.int/>, 2.

⁹³ Churchill and Owen, *The EC Common Fisheries Policy*; Pauly et al., “Towards Sustainability in World Fisheries,” 689-692; Cappell, Huntington, and Macfadyen, *FIFG 2000-2006 Shadow Evaluation*, 32-50.

⁹⁴ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 670-673; David Symes, “The European Community's Common Fisheries Policy,” *Ocean & Coastal Management* 35, no. 2 (January 1, 1997): 137-55; Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements.” ; Churchill and Owen, *The EC Common Fisheries Policy*, 348.

⁹⁵ Roman Grynberg, “WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management,” *Marine Policy* 27, no. 6 (November 2003): 499-511; Stefano Ponte, Jesper Raakjaer, and

transfers of vessels for pilot joint ventures, aimed at relieving excess capacity in European waters. Since then, FIG support of joint ventures has continued to decline.⁹⁶

The Market Policy and West Africa

The main objectives of the CFP market policy are to protect consumer interests by establishing standards and managing producer marketing, and to protect producer interests by fixing guide prices and avoiding surpluses. While these policies have been largely uncontroversial to European member states, they have proven challenging to third states such as those in West Africa. The first significant challenge that West African states face with regard to the CFP market policy is the high sanitation, safety, and traceability rules required for access to European markets.⁹⁷ Ponte *et al.* (2007) summarize this challenge well:

The EU has institutionalized particularly challenging regulations in this respect.

The basic framework for fisheries products was laid out in EC Directive 91/493 of 1991... It requires Member States and third countries to put in place systems of inspection and control to ensure the safety of fisheries products, including the implementation of Good Hygiene Practices (GHPs) and Hazard Analysis and Critical Control Point (HACCP) systems. Many EU fisheries-specific regulations have now been integrated within what is known as the new EU 'hygiene package' of regulations... a bewildering array of rules and demands on the regulatory agencies and exporters in African countries, even without considering private standards on quality, packaging and processing, and the impact of eco-labeling on market access. Given the highly technical nature of compliance and its related costs, *this is probably the area that will pose the most serious challenges for African exporters and their industries and governments* [emphasis added].⁹⁸

Although many health and sanitation standards are reasonable protections for food imports, some EU requirements have been criticized as protectionist and discriminatory to third states. Yet even when standards are not discriminatory, African states still face the administrative, legal, financial, and bureaucratic challenges of creating "competent authorities" with the capacity to ensure compliance with the EU's strict "hygiene package" and import requirements.⁹⁹ Considering these obstacles, it is unlikely that many West African states would be able to achieve these standards in the short term without substantial outside assistance.¹⁰⁰ The second challenge, related to the issue of import standards, is that of processing revenue.¹⁰¹ A 1999 IFREMER/CEMARE study estimated that EU vessels gained approximately €3 profit for every €1 spent on bilateral fishing agreements with African, Caribbean, and Pacific (ACP) countries simply through the processing and marketing of fish caught in those waters.¹⁰² Since fish caught in the West African EEZs cannot meet EU market standards through local processing

Liam Campling, "Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation," *Development Policy Review* 25, no. 1 (January 1, 2007): 113–38.

⁹⁶ *ibid.*

⁹⁷ Churchill and Owen, *The EC Common Fisheries Policy*.

⁹⁸ Ponte, Raakjaer, and Campling, "Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation," 131–132.

⁹⁹ *ibid.* 131–132.

¹⁰⁰ *ibid.* 120–127–128.

¹⁰¹ Churchill and Owen, *The EC Common Fisheries Policy*.

¹⁰² Le Manach, "Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries.," IFREMER, *Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report*, 1999.

facilities, fish are shipped to the EU and all revenue from processing and marketing is obtained by European entities.¹⁰³ The unabashedly mercantilist slant of this policy is outlined in the European Community publication *European Distant Water Fleet: Some Principles and Some Data*, which claims that “agreements represent 40,650 jobs, over 83 percent of which depend upon ‘southern agreements.’”¹⁰⁴ This second challenge reveals the difficulty that West African states face, not only in accessing revenue through the export of fish to the European market, but also in the intermediate revenue from processing those exported fish.

A third, and less direct, challenge lies in the subsidies that European companies receive, creating an added competitive disadvantage for third states. Millions of dollars in subsidies for fuel, processing, and marketing fish enable tremendous advantages for EU companies, and render the barriers to entry in foreign markets far too strong for competition from developing West African states.¹⁰⁵ Furthermore, these subsidies also have been criticized for enabling unfair advantage within West African waters, by allowing highly efficient EU vessels to outcompete local fishers and decreasing fish availability through high discard rates.¹⁰⁶

The Conservation Policy and West Africa

In its initial 1983 form, the CFP conservation policy applied conservation measures such as restriction of effort, fishing gear, and fish size to European vessels fishing European waters, and left the conservation of stocks beyond the EU to the domain of UNCLOS.¹⁰⁷ The continued decline of global stocks and rising pressure from environmental groups, however, led to reforms in the early 2000s, which have profound significance for West African fisheries. Particularly, the Community Action Plan described above “obliges the Community to demonstrate the same commitment to environmental integration in its external activities as internally and requires the Community to adopt a strategy that contributes toward global sustainable fishing.”¹⁰⁸ In other words, the regulations of the CFP Conservation Policy have “now broadened from focusing solely on EU waters to cover waters outside the EU in which EU vessels operate.”¹⁰⁹

While the importance of this extension of the CFP conservation policy to third states’ waters cannot be underestimated, the implementation of this idea has been questionably successful. To date, European distant water fishing fleets have continued to receive substantial criticism for their environmentally detrimental activities, and West African waters have been particularly singled out for unsustainable practices from high discard rates to destructive fishing

¹⁰³ IFREMER, *Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report*, 1999; Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements.”

¹⁰⁴ Directorate-General for Fisheries and Maritime Affairs, *European Distant Water Fleet: Some Principles and Some Data*, April 11, 2001.

¹⁰⁵ Le Manach, “Past, Present and Future of Publicly-Funded European Union’s Fishing Access Agreements in Developing Countries;” Antonius Gagern and Jeroen van den Bergh, “A Critical Review of Fishing Agreements with Tropical Developing Countries,” *Marine Policy* 38 (March 2013): 375–86; D Gascuel et al., “Decline of Demersal Resources in North-West Africa: an Analysis of Mauritanian Trawl-Survey Data Over the Past 25 Years,” *African Journal of Marine Science* 29, no. 3 (December 2007): 331–45; Greenpeace, “The Price of Plunder,” *Ocean Inquirer*, February 2012.

¹⁰⁶ Churchill and Owen, *The EC Common Fisheries Policy*. 349

¹⁰⁷ United Nations, *United Nations Convention on the Law of the Sea (UNCLOS)*.

¹⁰⁸ Commission of the European Communities, *Communication From the Commission Setting Out a Community Action Plan to Integrate Environmental Protection Requirements Into the Common Fisheries Policy*, (Brussels, May 28, 2002).

¹⁰⁹ Ponte, Raakjaer, and Campling, “Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation,” 127.

methods.¹¹⁰

The External Policy and West Africa

The external policy is the policy that has had the most obvious impact on West African states, as it has governed fisheries access agreements since the 1970s. The external policy emerged in order to respond to the growing trend of EEZ declarations, and aimed to maintain European fishing access to coastal waters which would be enclosed in third state EEZs. European demand for fish products, as well as the European fleet's capacity to exploit fish, far outstrip the reproductive capacity of fish stocks within European waters; therefore fishing access agreements were seen as the natural solution to occupy European vessels and supply continued fish to European markets.¹¹¹

While the notion behind access agreements is one of mutual benefit, the combined advantages of EU subsidies, EU consolidated bargaining power, and stronger financial positions in negotiating agreements allowed the European fleet a tremendously asymmetrical position in these agreements, which—with very few exceptions—favored European interests far and above those of their West African 'partners.'¹¹² Also, the notion of fisheries access agreements emerges from UNCLOS, which indicates that states that do not have the ability to exploit their fisheries resources to the point of their established TAC are obligated to allocate those fishing rights to other states.¹¹³ Considering the fact that the EU provides approximately €120 million per year to West African countries via fishing agreements, West African states face a strong temptation to declare a TAC regardless of considerable gaps in scientific information regarding habitat, fish stocks, fishing pressure, etc.¹¹⁴ Furthermore, since sustainability concerns were largely absent in fisheries agreements until the 2002 reform, and West African states generally lack adequate MCS and enforcement capabilities, fishing through access agreements allowed a significantly greater margin of environmental degradation than was possible in European waters.¹¹⁵

In general, the fee-for-access fishing agreements between the EU and developing states—especially those in West Africa—were fiercely criticized as exploitative, environmentally

¹¹⁰ Vlad M Kaczynski and David L Fluharty, "European Policies in West Africa: Who Benefits From Fisheries Agreements?" *Marine Policy* 26, no. 2 (2002): 75–93; Ponte, Raakjaer, and Campling, "Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation," 123, 126–128.

¹¹¹ Kaczynski and Fluharty, "European Policies in West Africa: Who Benefits From Fisheries Agreements?" 76.

¹¹² ADE-PWC-EPU, *Evaluation of the Relationship Between Country Programmes and Fisheries Agreements*, Final Report to the European Commission, November 21, 2002; Council of the European Communities Committee on Fisheries, *Report on International Fisheries Agreements (Committee on Fisheries Report)*, 1997; Ponte, Raakjaer, and Campling, "Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation," 119–120; Witbooi, "The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example," 172–174; Alder and Sumaila, "Western Africa: a Fish Basket of Europe Past and Present."; Winter, *Towards Sustainable Fisheries Law*.

¹¹³ United Nations, *United Nations Convention on the Law of the Sea (UNCLOS)*.

¹¹⁴ Witbooi, "The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example," 170–171. Ponte, Raakjaer, and Campling, "Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation," 129; D J Agnew et al., *West Africa Regional Fisheries Project, Estimation of the Cost of Illegal Fishing in West Africa: Final Report*, 3rd ed., May 2010.

¹¹⁵ Witbooi, "The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example," 670–671; IFREMER, *Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report*; Le Manach, "Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries," 73–87.

unsustainable, and contrary to development objectives.¹¹⁶ In response to these criticisms, the European Commission instituted a number of policies in the 2002 reforms, including: sustainability impact assessments, stakeholder engagement, coherence between agreements and European policies, coherence between agreements and development policies in partner states, and an overall reform toward holistic “fisheries partnership agreements.”¹¹⁷ Although some scholars suggest that these reforms are, in fact, being progressively implemented,¹¹⁸ others emphasize the fundamentally contradictory nature of agreements which are designed on the one hand to protect the interests of European fishing fleets, and on the other hand to promote sustainable fisheries in West African waters.¹¹⁹

III. THE NEW CFP AND WEST AFRICA: CHANGING TIDES OR DOLDRUMS?

The European Common Fisheries Policy, discussed in this paper, has led to a host of consequences for the governments and populations of coastal West African states. The combined CFP policies have prevented development of domestic West African fleets, degraded habitat, unsustainably fished stocks, led to conflict between domestic and foreign fishers, handicapped third state marketing and processing entities, and provided meager compensation in comparison to the value of the product.¹²⁰ Alder and Sumaila summarize the consequences well, stating that, “the benefits of independence, EEZs, access fees, and management of coastal resources that most western African countries anticipated have not been realized... In some cases, the negative impact on marine resources has been high compared to the benefits.”¹²¹

Reforms in recent years, especially in 2002, have seen improvements in the CFP language regarding third states, conservation of stocks, destructive fishing methods, and regressive subsidies. Yet despite these changes, many NGOs, journalists, and civil society members have expressed skepticism about the potential of the reforms to alter the current state of fisheries or North-South relations. Furthermore, scholars have emphasized the paradoxical aspects of the CFP, which seems to strive for European protections and profits on one hand, and development and conservation measures for West African waters on the other.¹²² In essence, the internal incoherence in the CFP fundamentally emerges from the conflicting interests between

¹¹⁶ Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 3; Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example,” 170-171.

¹¹⁷ Commission of the European Communities, *Communication From the Commission on an Integrated Framework for Fisheries Partnership Agreements with Third Countries*, (Brussels, December 23, 2002); Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 2-3.

¹¹⁸ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example.”

¹¹⁹ Ponte, Raakjaer, and Campling, “Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation, 129;” van der Burgt, *The Contribution of International Fisheries Law to Human Development*. 250-255

¹²⁰ Witbooi, “The Infusion of Sustainability Into Bilateral Fisheries Agreements with Developing Countries: the European Union Example, 672-675;” Ponte, Raakjaer, and Campling, “Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation;” Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*; Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements,” 3-4.

¹²¹ Alder and Sumaila, “Western Africa: a Fish Basket of Europe Past and Present,” 172.

¹²² Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*; Agritrade, “Fisheries Council Adopts Conclusions on the External Dimension of the CFP,” April 23, 2012, <http://agritrade.cta.int/>; Long, “The Role of Regional Advisory Councils in the European Common Fisheries Policy: Legal Constraints and Future Options,” 299-302.

short-term EU commercial concerns and long-term global concerns for the sustainability of fisheries.¹²³

The New European Common Fisheries Policy

In 2009, the European Commission again announced the intention to conduct a legislative reform of the CFP, and The Green Paper on the Reform of the Common Fisheries Policy was published in April 2009, setting a time frame to address the reform and initiating a public consultation process.¹²⁴ The Commission's analysis, based on the Green Paper, "concluded that despite progress since the 2002 reform, the objectives to achieve sustainable fisheries in all its dimensions (environmental, economic and social) have not been met and the Green Paper identified a series of structural shortcomings of the current CFP... The European Parliament and the Council of Ministers supported this conclusion."¹²⁵ In July 2011, the Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy was released, citing several significant problems with the current CFP, including: high discard levels, fleet overcapacity, overfishing, low compliance, poor integration of policies, poor data, poor profitability and market adaptability in fleets, and overall unsustainability.¹²⁶ The July Proposal outlined a new basic regulation, a reformed market policy, and a communication on the external policy; in December, a proposal was added for a new structural policy, thereby establishing a process of reform for the majority of the components of the CFP.¹²⁷ The new market policy and basic regulation were agreed upon in May 2013, and came into effect from January 1, 2014. The new structural policy was agreed upon in October of 2013, and was published in May 2014.¹²⁸ Major components of the EU CFP reform include:

1. *Implementation of Maximum Sustainable Yield (MSY)*—Article 2 of the new Basic Regulation established MSY as the new management target for setting TAC levels. This replaces the former approach of using minimum stock biomass and the precautionary principle to set "limits of reference" that may be exceeded for additional payment, and is specifically designed to increase the long term sustainability of the fisheries policy.¹²⁹ The timeline for achieving the MSY exploitation rate is 2015 where possible and "on a progressive, incremental basis at the latest by 2020 for all stocks."¹³⁰

¹²³ Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*; Camilla Adelle, Julia Hertin, and Andrew Jordan, "Sustainable Development 'Outside' the European Union: What Role for Impact Assessment?" *European Environment* 16, no. 2 (March 1, 2006): 57-72; N Sporrang, CCoffey, and K Bevins, *Fisheries Agreements with Third Countries – Is the EU Moving Towards Sustainable Development?*, 2002, 1.

¹²⁴ European Commission, *Green Paper*, (Brussels, April 22, 2009); Surís-Regueiro, Varela-Lafuente, and Garza-Gil, "Evolution and Perspectives of the Fisheries Structural Policy in the European Union," 593-594.

¹²⁵ Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*.

¹²⁶ *ibid.*

¹²⁷ Salomon, Markus, and Dross, "Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy" 77; European Commission, *Communication From the Commission to the Council Concerning a Consultation on Fishing Opportunities for 2014*, (Brussels, May 30, 2013); European Commission, "Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy."

¹²⁸ "Review of the Balance of Competences Between the United Kingdom and the European Union | Fisheries Report," 15-16.

¹²⁹ Salomon, Markus, and Dross, "Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy," 77-78; Frédéric Le Manach et al., "European Union's Public Fishing Access Agreements in Developing Countries," ed. David Hyrenbach, *PLoS ONE* 8, no. 11 (November 27, 2013): 2.

¹³⁰ Council of the European Communities, *Regulation (EU) No 1207/13*, 2013.

2. *Revision of multi-annual management plans*—Article 9 of the new Basic Regulation revises the existing system of multi-annual management plans to emphasize their importance over annual plans, stress conservation measures and management by MSY, and include quantifiable targets and clear timelines.¹³¹
3. *The discard ban*—In Article 15, the Basic regulation introduces a gradual implementation of an obligation to land “all catches of species which are subject to catch limits” and in the Mediterranean, “all catches of species which are subject to minimum sizes.” Various listed species of pelagic, demersal, and other fish are required to come under the obligation between from 2014-2016, with some exceptions up to January 1, 2019.¹³²
4. *Regionalization*—Article 18 creates a framework for regional cooperation around conservation measures and multiannual plans, and enables the creation of joint recommendations by member states to support implementation of the EC’s acts, initiate legislation in the EC, and specify EU laws in national terms.¹³³
5. *Capacity limitation*—Articles 21 and 22 require publicly available annual reports on the balance between fishing capacity and fishing opportunities. They further set an overall capacity limitation for the European fleet in term of a vessel's tonnage in GT (Gross Tonnage) and its power in kW (Kilowatt), and indicate the potential to establish a systems of transferable fishing concessions, usually in the form of individual transferable quotas (ITQs).¹³⁴
6. *Sustainable Fisheries Partnership Agreements and Surplus Catch*—Article 31 stipulates that SFPAs will replace FPAs as the mechanism of fishing agreements with third states. These SFPAs are meant to emphasize democratic principles and human rights, and stress sustainability, as EU fishing vessels will only catch surplus catch, as described in UNCLOS Article 62.¹³⁵
7. *Exclusivity in partnership agreements*—Article 31 of the Basic Regulation contains an exclusivity clause (5) whereby EU fishing vessels are forbidden to operate in the waters of a partner country unless authorized under the partnership agreement.¹³⁶
8. *New funding mechanism*—Regulation (EU) No 508/2014 published in May 2014 established the European Maritime and Fisheries Fund (EMFF) the funding mechanism that will replace the current European Fisheries Fund (EFF). According to the EC, “compared to the European Fisheries Fund (EFF), the EMFF brings about a fundamental change of approach to public funding to the fisheries sector through a focus on collective

¹³¹ Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*; Salomon, Markus, and Dross, “Masterstroke or Paper Tiger – the Reform of the EU’S Common Fisheries Policy,” 77-78.

¹³² National Assembly for Wales, *EU Policy Update (EU2013.5)*, October 2013; Council of the European Communities, *Regulation (EU) No 12007/13*, 2013; Salomon, Markus, and Dross, “Masterstroke or Paper Tiger – the Reform of the EU’S Common Fisheries Policy,” 78-79.

¹³³ Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*; National Assembly for Wales, *EU Policy Update (EU2013.5)*.

¹³⁴ Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*; Salomon, Markus, and Dross, “Masterstroke or Paper Tiger – the Reform of the EU’S Common Fisheries Policy,” 81.

¹³⁵ Council of the European Communities, *Regulation (EU) No 12007/13*.

¹³⁶ *ibid.*

actions and on the viability of coastal areas rather than fleet subsidies benefitting mostly vessel owners.”¹³⁷

Impacts and Implications for West Africa

Throughout the reform process, West African states have paid close attention to the European CFP negotiations. Although they have no formal vote within the EU, these States have lobbied ally states to advocate their positions.¹³⁸ In the build up to the reform, Greenpeace organized a campaign to bring West African fishermen to key locations in Europe to communicate the ways in which industrial European vessels impact their lives and communities.¹³⁹ While the consequences of the CFP reform will likely emerge in both predictable and unanticipated ways, it is worthwhile to conduct a preliminary analysis of the key reforms through the lens of West Africa.

With the establishment of MSY as the management target under the CFP, the EU has determined that a biologically relevant metric will determine the allowable catch under European jurisdiction. A similar reform outlined in Article 31(4) determined that Union fishing vessels shall only fish surplus stocks—where MSY is not fully exploited—in third country waters. While these reforms may seem like an encouraging shift toward conservation objectives, they can also be understood as a simple codification of existing international law into European terms.¹⁴⁰ In the Preamble, the Basic Reform states that

“[existing] international instruments predominantly lay down conservation obligations, including obligations to take conservation and management measures designed to maintain or restore marine resources at levels which can produce the maximum sustainable yield both within sea areas under national jurisdiction and on the high seas, and to cooperate with other States to that end... The CFP should, therefore, contribute to the Union's implementation of its international obligations under those international instruments.”

While this codification may in fact result in very specific management and policy changes for European waters, the chances for those reforms to heavily impact West African fisheries remain slim for a number of reasons. First, the scientific information needed to set MSY, and therefore surplus, is rarely available for most West African stocks, especially on an annual basis.¹⁴¹ Second, where such information is available, MSY is only pertinent in fisheries that set a TAC and have the ability to enforce it through limitations on entry or effort. Furthermore, while CFP jurisdiction extends to Union fishing vessels outside Union waters and nationals of EU member states, MSY as a management tool is only effective if applied to the fishery as a whole, not individual vessels comprising a fraction of the fishing effort. Although Article 31 states that surplus catch is dependent upon the “relevant information exchanged between the Union and the third country about the total fishing effort on the affected stocks by all fleets,” the significant amount of illegal industrial fishing and unreported artisanal fishing

¹³⁷ European Commission, *The Social Dimension of the CFP Reform*, 2012; Till Markus, “Towards Sustainable Fisheries Subsidies: Entering a New Round of Reform Under the Common Fisheries Policy,” *Marine Policy* 34, no. 6 (November 2010): 1117–24.

¹³⁸ John Vidal and Fiona Harvey, “UK Steps in to Help West Africa in Fight to Overturn EU Fishing Abuses,” *The Guardian*, March 18, 2012.

¹³⁹ National Assembly for Wales, *EU Policy Update (EU2013.5)*.

¹⁴⁰ Churchill and Owen, *The EC Common Fisheries Policy*; United Nations, *United Nations Convention on the Law of the Sea (UNCLOS)*.

¹⁴¹ Le Manach et al., “Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements,” 6-7.

conducted in West Africa serves to undermine any meaningful estimates of total fishing effort.¹⁴² Furthermore, due to the asymmetrical negotiating power between the EU and West African states, where surpluses are calculated, they may play a reduced or controversial role in negotiation of agreements. The current negotiations between the EU and Mauritania were suspended on October 10, 2014 due to the parties' inability to resolve quote issues on stocks determined to be overexploited.¹⁴³ These same constraints are also critical to the multi-annual management plan reforms, and similar challenges apply for the discard ban.

Article 15, outlining the discard ban, or landing obligation, states that the landing obligation will apply to “all catches of species *which are subject to catch limits*...caught during fishing activities in Union waters or by Union fishing vessels outside Union waters in waters *not subject to third countries' sovereignty or jurisdiction*”[emphasis added]. In other words, like the MSY and multi-annual plan reforms, the obligation to land discards would only apply to species that are already subject to determined catch limits, a management approach that relies heavily on scientific information, monitoring, and enforcement. Since only a small fraction of species caught as bycatch have determined legal catch limits, it can be understood that the discard ban would not apply to the tremendously high number of remaining fish, crustaceans, sharks, turtles, birds, and marine mammals.¹⁴⁴ It would also not apply to EU vessels fishing in third countries' EEZs, such as those in West Africa, though Article 31(3) does indicate that “the Union shall endeavor to include in Sustainable fisheries partnership agreements appropriate provisions on obligations to land fish and fishery products.”¹⁴⁵

Two other reforms, fleet capacity limitation and Sustainable Fisheries Partnership Agreements, also initially appear to reduce the historically negative impacts that European fleets have had in West Africa. As of the implementation of the reforms in January 2014, SFPAs replaced FPAs as the access agreement mechanism with third countries, with the objective to “establish a legal, environmental, economic and social governance framework for fishing activities carried out by Union fishing vessels in third country waters.”¹⁴⁶ The language included in the Article is more aspirational than definitive or binding, however, calling for the Union to “endeavor to ensure... mutual benefit”, “endeavor to include... obligations to land fish,”¹⁴⁷ and “include a clause concerning respect for democratic principles and human rights.”¹⁴⁸ In the context of low capacity, monitoring, and enforcement that usually exists in West African fisheries, soft language rarely begets concrete reform. The capacity limitation reform is similarly

¹⁴² IFREMER, *Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report*; Dyhia Belhabib et al., “Fisheries Catch Misreporting and Its Implications: the Case of Senegal,” *Fisheries Research* 151 (March 2014): 1–11; Food and Agriculture Organization of the United Nations, *Report of the FAO Regional Workshop in the Elaboration of National Plans of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing-- West African Subregion*, FAO Fisheries Report, (Rome: Food & Agriculture Org., 2006); David J Agnew et al., “Estimating the Worldwide Extent of Illegal Fishing,” ed. Stuart A Sandin, *PLoS ONE* 4, no. 2 (2009).

¹⁴³ Salomon, Markus, and Dross, “Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy,” 82; Le Manach et al., “European Union's Public Fishing Access Agreements in Developing Countries,” 1; Commission of the European Communities, “Fisheries Partnership Agreement: EU-Mauritania Negotiations Suspended,” *Ec.Europa.Eu*, October 10, 2014.

¹⁴⁴ Churchill and Owen, *The EC Common Fisheries Policy*.

¹⁴⁵ Council of the European Communities, *Regulation (EU) No 12007/13*.

¹⁴⁶ Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy*. Article 31(1)

¹⁴⁷ *ibid.* Article 31(2-3)

¹⁴⁸ *ibid.* Article 31(6)

constructed, with Articles 21 and 22 calling for publicly available annual reports on the balance between fishing capacity and fishing opportunities and an overall limitation for the European fleet in terms of both gross tonnage and power.¹⁴⁹ Yet since the fishing capacity ceiling set out in Annex II sets the limit at the current levels of effort in the European fleet, no actual reduction in capacity is required. Furthermore, Article 22 also states that, “separate assessments shall be drawn up for fleets operating in the outermost regions and for vessels operating exclusively outside Union waters,” indicating that the assessment of balance between capacity and fishing opportunities will be determined separately for third state waters such as those in West Africa.¹⁵⁰ These policies, despite constituting the major components of the EU CFP reform, appear to hold little promise for altering relations with third states such as those on the Western coast of Africa. Regionalization, one of the reforms to garner the most excitement following the 2009 Green Paper, is also unlikely to impact West African fisheries, since it is primarily concerned with establishing a framework for regional cooperation *between EU member states*, and does not bestow an increase of powers on regions outside the European Union.

Two of the changes in the reform, however, merit closer examination for their potential implications in West Africa. Article 31 contains an exclusivity clause, which states that, “Union fishing vessels shall not operate in the waters of the third country with which a Sustainable fisheries partnership agreement is in force unless they are in possession of a fishing authorisation which has been issued in accordance with that agreement.”¹⁵¹ Prior to the current reforms, fewer than half of the European Union’s external fleet had gained fishing access through an EU-negotiated Fisheries Partnership Agreement, while the majority had fished under privately negotiated joint ventures.¹⁵² The new reform addresses this issue by prohibiting EU vessels from operating in the waters of a partnership country unless under the terms of the FPA and by complicating the terms under which vessels may reflag and return to the EU fishing fleet registry.¹⁵³ The terms of this exclusivity clause are currently under examination in a European Court of Justice case questioning the agreement between Morocco and the European Union, and will likely have a major bearing on interpretation of Article 31 in the future.¹⁵⁴

The second reform that merits consideration is the implementation of the European Maritime and Fisheries Fund (EMFF) that will replace the European Fisheries Fund (EFF) as the funding mechanism of the CFP. According to the EC, “compared to the European Fisheries Fund (EFF), the EMFF brings about a fundamental change of approach to public funding to the fisheries sector through a focus on collective actions and on the viability of coastal areas rather than fleet subsidies benefitting mostly vessel owners.”¹⁵⁵ While much of the terminology of the EMFF remains loyal to its predecessors, the reforms determined that EMFF funds would not be allowed to subsidize the construction of new vessels. While this may present a strong positive

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

¹⁵² Worldwide Fund for Nature (WWF), *WWF Response to the 2009 Green Paper*, ed. Helen Mclachlan, November 2009.

¹⁵³ Council of the European Communities, *Regulation (EU) No 12007/13*. Article 31(9)

¹⁵⁴ Case C-565/13: Request for a preliminary ruling from the Hovrätten för västra Sverige (Sweden) lodged on 4 November 2013 — Kammaråklagaren v Ove Ahlström, Lennart Kjellberg, Fiskeri AB Ganthi and Fiskeri AB Nordic, 1–2 (n.d.).

¹⁵⁵ Till Markus, “Towards Sustainable Fisheries Subsidies: Entering a New Round of Reform Under the Common Fisheries Policy,” *Marine Policy* 34, no. 6 (November 2010): 1117–24; European Commission, *The Social Dimension of the CFP Reform*.

outcome for West Africa, which has historically absorbed so much of the European fleet's overcapacity, the reforms fall short of prohibiting "capacity-enhancing" subsidies such as those that would modernize fishing gear and vessel technology.¹⁵⁶

Conclusion

Despite the momentum that surrounded the EU CFP reform process,¹⁵⁷ a preliminary assessment of the major reforms promises little in way of altered relations between Europe and West Africa. While the EMFF reforms and the exclusivity clause indicate potential shifts in the way fisheries relations are negotiated in the region, the overall emphasis of reforms appears unequivocally domestic. Though some scholars suggest that the lack of emphasis on the external policy within the 2013 reforms was intentional,¹⁵⁸ early indications from leadership—including a statement by the European Commissioner for Maritime Affairs and Fisheries that the external dimension was "an intrinsic part of the reform"¹⁵⁹—suggested the possibility of significant change.

Recent reforms seem to indicate little in the way of lasting consequences for West African waters, however many scholars have redirected their hopes for a change in relations away from the EU and toward West African domestic and regional policies.¹⁶⁰ Some scholars have suggested that the strongest potential for improvement lies in regionally-coordinated negotiation of agreements, improved scientific data, development of domestic fishing fleets, linking of access fees to resource rents, and insistence on the part of West African states that EU fleets land catches within the region, rather than within the EU or via transshipment at sea.¹⁶¹ Furthermore, Salomon suggests that despite its shortcomings, the recent reform may have normative power, raising standards in European waters and in turn "strengthen[ing] the rule of law in international fisheries management."¹⁶² The ultimate consequences of the EU CFP reforms will not be decided in the next year or even the next five years. Despite the recent reforms' limited attention to external relations, the European Community has demonstrated a growing understanding of the impacts of its policies throughout the world, and the trajectory of relations with third states is positive, if the speed is less than hoped for. While the EU remains a major force in global fisheries, the policies of other regions, such as West Africa, are of critical and increasing importance, and global cooperation will be necessary to achieve the strides needed to improve the state of global fisheries.

¹⁵⁶ Agritrade, "EU Institutions Agree on European Fisheries Aid 2014–2020," March 19, 2014, <http://agritrade.cta.int/>; Salomon, Markus, and Dross, "Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy" 81-83; Greenpeace, "Parliament Fights Overfishing by Voting to Reform Subsidies," October 23, 2013, <http://www.greenpeace.org/eu-unit/en/News/2013/Parliament-fights-overfishing-by-voting-to-reform-subsidies/>.

¹⁵⁷ Le Manach et al., "European Union's Public Fishing Access Agreements in Developing Countries," 7.

¹⁵⁸ Salomon, Markus, and Dross, "Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy," 82.

¹⁵⁹ Agritrade, "The External Dimension of the New CFP Is an 'Intrinsic Part of the Reform'," January 19, 2012, <http://agritrade.cta.int/>.

¹⁶⁰ Surís-Regueiro, Varela-Lafuente, and Garza-Gil, "Evolution and Perspectives of the Fisheries Structural Policy in the European Union," 596-600; Le Manach et al., "Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements," 6-9.

¹⁶¹ Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation*, 15-21; Ponte, Raakjaer, and Campling, "Swimming Upstream: Market Access for African Fish Exports in the Context of WTO and EU Negotiations and Regulation," 133-134; Le Manach et al., "Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements" 6-9; Le Manach, "Past, Present and Future of Publicly-Funded European Union's Fishing Access Agreements in Developing Countries."

¹⁶² Salomon, Markus, and Dross, "Masterstroke or Paper Tiger – the Reform of the EU'S Common Fisheries Policy," 83.