

# CAPE

Coalition pour  
des Accords de Pêche Équitables

# CFFA

Coalition for  
Fair Fisheries Arrangements

## **GAINING ACCESS TO CONFIDENTIAL EU EVALUATIONS ON FISHERIES AGREEMENTS: WHAT DO THEY REVEAL AND HOW CAN THEY BE IMPROVED?**

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*Through a formal request for access to information, the European Commission has released 21 ex ante and ex post evaluations of its fisheries agreements with developing countries. Such evaluations reports are clearly important documents that will deepen public debate on how these agreements are managed and what is their environmental and social impact. In this document we make some practical recommendations on how the EC can improve both the process and content of these evaluations in order to strengthen future fisheries agreements.*

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## **GAINING ACCESS TO CONFIDENTIAL EU EVALUATIONS ON FISHERIES AGREEMENTS: WHAT DO THEY REVEAL AND HOW CAN THEY BE IMPROVED?**

In 2011 a group of NGOs and fisheries activists wrote to the European Commission asking for all *ex ante* and *ex post* evaluations of EU fisheries access agreements to be made public. Prior to this request, the position of the Commission was that these documents should be confidential, predominantly to protect the commercial interest of the EU fishing fleet. By referring to binding pieces of legislation on access to information, those making the request for the evaluation reports have ensured that, by early 2012, 21 evaluation reports have been released to the public. The documents are now available on the internet<sup>1</sup> and they have been downloaded by several hundred people; already they are being used in research reports and peer reviewed articles.

In this short article we first briefly reflect on the process of gaining these documents and consider why DG-MARE has resisted the request and may resist further calls for increased transparency. We then consider what key information the reports reveal and why the evaluations reports should be made public. Finally we provide some key recommendations on how the Commission could improve, in line with what is proposed for future external fisheries policy in the CFP reform, both the process of undertaking *ex ante* and *ex post* evaluations, as well as their content.

### **UNDERSTANDING THE RESISTANCE BY THE EC TO INCREASE TRANSPARENCY**

The formal request for access to *ex ante* and *ex post* evaluations was made in March 2011, signed by 28 individuals from civil society organisations, international NGOs and research institutes from Europe, Africa and North America. The request was made in reference to the Aarhus Convention: The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters<sup>2</sup>. The EC is a signatory to this convention and bound by its content.

The initial request asked for access to all *ex ante* and *ex post* evaluations held by the commission. The initial response from DG-MARE was that these documents were confidential for two key reasons: First, to protect the commercial interests of EU fishing firms, and second, to protect the international relations of the EU. In addition, DG-MARE stated that it would have to review all the documents to ensure that if they were released any sensitive information was blocked out. To do this would take enormous resources and would be time consuming.

After a process of submitting a 'confirmatory application' (contesting the initial decision), with legal advice from the NGO 'Client Earth', the Commission decided to release 16 evaluation reports, with the promise that more would be forthcoming. This decision stopped TransparentSea and Client Earth proceeding to the European General Court. However, the EC failed to provide any further documentation and ignored all further correspondence. This prompted a new application for 6 further reports from the Commission in January 2012, which negated the argument that releasing the reports would be too time consuming. Without any resistance, this was approved by the Commission. In this case, the six reports contained some text that was blocked out. This included the names of six Spanish boats that had been fined in Mozambique for not reporting catch data.

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<sup>1</sup> [www.transparentsea.co](http://www.transparentsea.co)

<sup>2</sup> <http://ec.europa.eu/environment/aarhus/>

Through public seminars and informal discussions, it is apparent that there are several *other* reasons why the Commission did not want to release these reports and why it may resist further improvements in transparency on its fisheries agreements:

1. There is a fear that the reports contain information that may threaten the position of the EC in negotiating new agreements and gaining the support of EU member states. This includes problems encountered in third countries that are beyond the control of the EC, such as accountability in how EU funds have been used and uncertainty on the ecological impact of these agreements.
2. It has been argued that the process of undertaking the evaluation reports is strengthened by confidentiality. There is a view that this allows the consultants who research and write these reports to have access to sensitive information that would not be possible if the evaluation process was made public.
3. Some host governments do not welcome increased transparency in fisheries agreements, and therefore if the EC push for improved transparency this may work to the advantage of other distant water fishing nations that do not impose 'good governance' conditions. The EC has argued that until there is commitment by all for a level playing field, trying to increase transparency for the EU will damage European commercial interests.

These arguments for restricting access to information need to be better articulated by the EC and discussed by a broad range of stakeholders in the context of the reform of the CFP. Yet because of these concerns it is not clear whether the EC will proactively release new *ex ante* and *ex post* evaluations to the public, or whether they will only do so through formal request for information. Moreover, the EC may choose to release only censored reports for public consumption.

#### **European and ACP Institutions support the call for publication of FPA evaluations**

The European Commission has faced mounting calls to make fisheries agreements more transparent, which includes publishing its evaluations. In addition to the formal request for access to these documents led by TransparentSea and CFFA, demands for increased transparency have come from various governmental and intergovernmental reports on the CFP reform, including both within the EU and from ACP countries. The specific recommendation that *ex ante* and *ex post* evaluations should be made public has been put forward by, among others:

- ❖ The Council of Fisheries Ministers in their conclusions on the external dimension of the CFP, adopted in March 2012.
- ❖ The European Economic and Social Committee in their opinion on the reform of the CFP, adopted in March 2012.
- ❖ The European Parliament Fisheries Committee draft report on the external dimension of the CFP reform, by MEP Isabella Lovin.
- ❖ The European Parliament Fisheries Committee draft report on the future CFP basic regulation, by Ulrike Rodust.
- ❖ The working group on environmental and social affairs of the ACP-EU Joint Parliamentary Assembly, in their draft declaration on the reform of the CFP.

## WHAT DO THE EVALUATIONS REPORTS REVEAL?

The evaluation reports released by the EC are substantial documents that provide analysis of how fisheries agreements have performed, and they contain advice to the EC on negotiating new agreements. The format and content of the agreements varies, but they contain important information not only on the fisheries agreements, but also on the context in which these agreements exist.

Based on a review of these documents, we can highlight some key observations about what information they contain and what is their value for deepening public debate on the effectiveness and management of fisheries agreements:

- The evaluation reports contain important analysis on the status of fish stocks targeted by European vessels operating under access agreements. However, the evaluations confirm that the EC does not commission primary research on stock assessments. Moreover, in many countries, there is no reliable information on the fishing activities of the small-scale sector or other distant water fishing fleets, nor accurate data on the actual catches made by EU vessels. Therefore it is not possible for the EU to ensure EU vessels only have access to (part of) the surplus of fish resources, and the agreements provide fishing opportunities largely on the demand by EU fishing firms. Apart from some agreements, including small pelagics trawl fishing in Mauritania, there are no catch limits for EU fishing vessels, which may increase the risk of overfishing, particularly in the so-called mixed fisheries agreements, which remain in Guinea-Bissau and Mauritania.
- The majority of evaluation reports conclude that EU agreements ‘promote sustainable fishing in third country waters’. However, several evaluation reports detail ongoing problems of overfishing and negative impacts on marine ecosystems caused by EU access agreements. Generally fishing for tuna species under these agreements is considered sustainable and catches of tuna under FPAs is small in relation to global catches of tunas. However, there are noted problems of by-catch by purse seine boats, particularly those using Fish Aggregating Devices (FADs), and the reports show that EU fleet of surface long-line boats are predominantly targeting swordfish and sharks, with many shark species being recognized as extensively overfished or threatened. In the mixed agreements, there is serious concern with overfishing and ecological damage caused by trawlers targeting shrimps, octopus and demersal fish, and the reports contain recommendations for the EC to adopt the precautionary approach and ecosystem approach to fisheries management through its FPAs, which it currently does not do. There are still many aspects on the environmental impact of these agreements that have not been dealt with, however it is extremely positive to hear that DG-MARE has, in April this year, before the end of the fishing season, stopped all EU trawling for pelagic fish in Mauritania due to the catch quota being reached for the year.
- Many of the reports reveal that EU fishing vessels fail to report their fishing activities, including accurate catch data. In several reports consultants claim that they are not able to get access to this data, and the same situation is true for host governments. This problem undermines the responsible environmental management of fisheries agreements, and it can deny host countries considerable revenues. The reports can be used to show that the EC has not taken sufficient steps to resolve this issue, and it is therefore an urgent task to ensure EU vessels declare reliable and regular disaggregated information on their catches.
- The reports highlight that in addition to misreporting data by EU vessels, significant amount of valuable fish is caught and retained by EU vessels (typically referred to as by-catch) that is not factored into the payment structure for host countries. This includes sharks caught by EU long-line boats that, despite representing as much as 50% of total catches, is not valued in these agreements at all. Likewise, in the mixed agreements, large volumes of high value demersal fish is caught as a by-catch by shrimp trawlers but is not compensated for by the EU or vessel owners.

- Some reports note the problem of fishing vessels owned by EU companies that are operating in third country waters outside the EU's FPAs, despite the exclusivity clause in all agreements that is intended to stop this. The reports can be used to strengthen calls to better manage this situation.
- The reports provide extensive information and analysis on the effectiveness of EU funds in third countries as well as the performance of partnership arrangements between the EC and host countries. Very little has been published on this aspect of EU FPAs, which has caused public criticism. Several of the reports document considerable problems in accountability and effectiveness, with some evidence showing that EU funds may have been misappropriated in certain countries. Moreover, the documents reveal shortcomings of joint committees tasked with implementing partnership activities, such as irregular meetings and poor budget management and planning. However, the reports also highlight some positive progress and they show that the EC has – in many countries – taken positive steps to improve financial management and accountability, as well as integrating EU funding assistance with the activities of other bi-lateral and multi-lateral donors.
- The evaluation reports provide useful country level information on the value added to both the EU and host countries through these agreements. However, because of misreporting catch data by EU vessels, the benefits accrued to the EU tends to be underestimated. The benefits accrued to host countries varies significantly, and for many countries the value added remains only what the EU pays for fishing access. A large proportion of this revenue for host governments is spent on managing and monitoring industrial fishing boats. The reports describe considerable challenges for EU fisheries agreements in being able to stimulate jobs, improve food supply and have a meaningful impact on development in host countries.
- Finally, the EC claims that *ex ante* and *ex post* evaluations are undertaken before all fisheries agreements are renewed. However, the formal request for access to these documents suggests this does not happen in all cases. The EU renewed its fisheries agreement with Sao Tome and Principe in May 2011, but the latest evaluation was undertaken in 2004. In this case there seems to have been no *ex post* evaluation or *ex ante* evaluation to determine the nature and content of the EU's FPA.

## HOW TO STRENGTHEN THE EVALUATION PROCESS

The evaluations reports made public by the EC are important documents that enable a range of stakeholders, both within host countries and the EU, to increase their comprehension of the impact of performance of EU fisheries agreements, as well as broader issues on the management of fisheries in third country waters. Contrary to reservations by the EC, publishing these documents does not threaten the interests of European fishing firms, nor does it threaten relations between the EU and host countries. In fact, not publishing these documents may have done more damage to EU legitimacy, and may have worked to encourage sensationalist and misinformed media coverage on EU fishing in developing countries.

However, there are a number of recommendations on how the EC could improve both the process and content of these agreements in order to improve the effectiveness of their FPAs.

### ▪ Promoting public participation and accountability

The process of undertaking *ex ante* and *ex post* evaluations of fisheries agreements has been characterized by confidentiality and as a consequence lack of public participation. Publishing the evaluation documents goes some way to improving the situation, but there are practical steps that could strengthen the evaluation process:

1. There is a need for the EC to ensure that all reports, including past reports, are made available to the public, without hiding information in the texts, particularly on fishing firms engaged in illegal activities.
2. To ensure that the evaluation reports and the decisions of the EC on access agreements take into consideration the views of wider stakeholders, draft evaluation reports should be made available for public comment *before* the negotiation of future agreements. The evaluations should therefore be used to inform a public discussion and process of open consultation, which could last for two months. It should be recognized by DG-MARE that engaging wider comments and stakeholders active participation (including the views of NGOs, local fisheries organisations, the industry, host governments etc.) will strengthen the evaluations and improve the findings of commissioned consultants who undertake these evaluations. An increase in information sharing that may be achieved through public comment could be more important than any privileged access to information for consultants achieved by keeping the evaluation reports secret.
3. Increasing public participation in the decision making process requires that evaluation reports are accessible to local communities in host countries. Reports need to be written baring this in mind and these documents need to be translated into local languages.
4. The evaluation reports raise some critical concerns for the EC, including on issues relating to underreporting of catch data by EU vessels, ecosystem damage, overfishing and the effectiveness of EU funds. Because these reports have been confidential, there is no record of how the EC views these concerns and what steps they take to address them. We believe that the draft evaluation reports should be responded to in writing by the EC, and these responses need to be published in the final *ex ante* and *ex post* evaluations. This response by the EC should also include consideration to key concerns that are generated through public comment and peer review.
5. The EC has employed the same consulting firms for all of its evaluations over the past few decades. These are consulting firms based in Spain and France; the two countries where the economic benefits of FPAs are concentrated. These consulting firms provide services to the European fishing industry and therefore are vulnerable to conflicts of interest and bias in evaluating FPAs. There are some benefits for the EC of using these consulting firms for their

evaluations; the firms may have unique access to information from the industry, and continuity in undertaking these evaluations may mean that those writing the reports build up historical knowledge that improves the report's content. Nevertheless, there could be benefits for the EC in employing other firms to undertake these evaluations, as this may bring a new perspective and mindset. We therefore think that the EC should open up the tendering process for these evaluations and ensure that their decision on who is awarded the contract for these evaluations is fair and transparent.

▪ **Strengthening the content of evaluations**

We recognize that the existing evaluation reports contain a great deal of information and a good level of analysis on many aspects. There is also a limit to what can be contained in these evaluations due to limits on time and resources. However, the content of the evaluations could be improved if the following is incorporated:

1. There is a need to ensure that disaggregated data on catches and payments made by EU vessels operating under FPAs is provided to the consultants preparing these evaluations, and this data should be published in full in the evaluation reports. This data is supposed to be held by member states of the EU whose fishing firms buy licenses under the FPAs, and it is also data that should be made available to host countries. The evaluation reports confirm that this information sharing does not happen in a consistent and transparent way. We do not believe that publishing this data will threaten the commercial interests of the industry. What is more, full disclosure would seem appropriate for the industry to meet obligations for addressing the problem of IUU fishing, including the reporting requirements established by the EU.

2. The joint committee's that now exist under FPAs lack transparency. The *ex ante* and *ex post* evaluation reports should include details of the agendas and outputs of these committees, including relevant material produced by these committees as an annex to the evaluation reports. The EC has published some summary notes of the joint committee meetings on the website of DG-MARE, but there is an inconsistent approach to this and not all meeting reports are made available. It is not unreasonable that the Chair of these joint committees is tasked with producing an annual report, or at least a report at the end of each FPA. These reports could detail what the objectives were of the joint committees, how money has been allocated and spent, and how far the committees have been able to meet their objectives.

3. The evaluation reports tend not to consider the social clause of FPAs in any detail. This aspect should be given more consideration, particularly whether the objective of fair treatment for third country workers on board EU vessels is being met, in line with ILO recommendations (and with the 2007 ILO Convention on Work in the Fishing Sector).

4. The evaluation reports, and other independent research on EU agreements, highlight that the value of all retained fish taken by EU vessels is not adequately taken into consideration by the EC in structuring payments for host countries. This includes demersal fish by-catch by shrimp trawlers, and shark by-catch by long line boats. The evaluation reports should attempt to better understand the value of this 'by-catch' for the EU vessels.