

# The benefits and limits of transparency:

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*Some considerations for the reform of the  
European Union's Common Fisheries Policy*

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**Abstract:** The European Union is currently reforming its Common Fisheries Policy. Initial discussions suggest the issue of improving transparency and accountability in EU fisheries will be taken seriously, with specific recommendations being made on introducing transparency and anti-corruption clauses in EU Fisheries Partnership Agreements signed with third countries. Such recommendations come at a time when calls for improving transparency and accountability in fisheries are gaining momentum, not only from civil society, but also from the fishing industry. The CFP therefore represents an opportunity to advance the notion of access to information and accountability in international fisheries, not only within the EU. Yet this call for improving transparency that has accompanied the CFP reform process has yet to be elaborated on, and recommendations remain vague. This paper aims at deepening the debates on how transparency can be achieved through the CFP reforms, considering both the benefits and the limitations to transparency reforms. The paper puts forward some key discussion points that could be used as the basis for the development of a coherent and thorough strategy on transparency in fisheries, driven by the EU in collaboration with partner organisations, including the fishing authorities of developing countries.

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## 1. Introduction

The European Union is currently reforming its Common Fisheries Policy. A Green Paper on this reform points to renewed vigor by the European Commission (EC) in tackling deep-rooted problems that have taken European fisheries to the point of ecological and financial crisis—approximately 88% of fish stocks are overfished, while European subsidies to the sector are estimated at 1 billion per year. The Commission speaks of ‘wholesale’ and ‘fundamental reforms’.<sup>i</sup>

Much of the focus in the CFP reform is on how Europe can sort out its own malaise and structural problems. But there is also an acceptance that the way in which European fisheries operate abroad, particularly in the developing countries of African, Caribbean and Pacific (ACP) countries, needs major review and re-think. One of the main considerations relates to EU Fishing Partnership Agreements, currently held with 15 developing countries, mostly in Africa.<sup>ii</sup> Having been previously termed ‘access agreements’, these represent a contract between the EU and a third country to allow a certain number of European boats access to their territorial waters, in return for a lump sum paid by the EU, with further payments made to the host country by boat owners who utilize fishing opportunities. Since 1994, there has been an element of development tied to these agreements, with a proportion of the money paid by the EU earmarked for improving the capacity of third countries’ fisheries management. FPAs were supposed to take this element of development further, although some feel the inclusion of the word ‘partnership’ was tokenistic, a point alluded to by a group of ACP Ministers in their response to the Green paper on the CFP reform.<sup>iii</sup>

Few commentators wish to see the ending of EU access agreements as they provide a potential for accountability that may be lost with their disappearance, but there have been persistent criticisms that the terms of these agreements have been unfair and contributed to overfishing. Their development legacy has been poor, and critics suggest that directly linking the amount of money paid to third countries’ development requirements, to how many European boats are allowed to fish, is both irresponsible and incoherent with EU’s ‘policy coherence for development’, as set out in the Lisbon Treaty.<sup>iv</sup> There have also been consistent complaints that the management and performance of FPAs have not been open to public scrutiny; DG-MARE publishes the contents of the agreements, but chooses to keep much other information confidential, including its own audits and evaluations.

So far, discussion on how the EU will reform the CFP in relation to third countries remains vague, and concrete proposals will be made in Spring 2011. It seems likely that de-coupling the FPA financial contribution from fishing possibilities will be given greater attention, and overseas aid for fisheries reforms and capacity building, which does not only come from DG-MARE but also from other sections of the EC, will become more coherent and ‘joined up’. Encouraging joint-ventures between European fishing companies and third countries is another idea, although this is not a new one. At the same time, representatives of the EC have suggested that there could be transparency and anti-corruption clauses in FPAs themselves, and ‘good governance’ needs to be integrated into overseas development assistance.<sup>v</sup> Here lies one of the more contested and controversial areas of reform for the EU.

That transparency and anti-corruption has surfaced as an important consideration in the CFP suggests fisheries is catching up with policy debates that have been going on for some time in

development studies and economic theory. For the past decade, transparency has become one of the most dominant themes in tackling problems of unsustainable and unequal exploitation of natural resources, while more generally there has been a large movement calling for greater transparency in economic, financial and business fields. On September 23rd, Barack Obama put improvements in transparency at the forefront of his speech to the UN General Assembly, calling on heads of states to join him next year in bringing ‘specific commitments to promote transparency, fight corruption, energize civic engagement, and leverage new technologies to strengthen the foundations of freedom in our own countries’.<sup>vi</sup> Yet despite this global movement for transparency, calls for greater transparency in fisheries have been slow to gain momentum.

In the main international agreements and conventions on the governance of fisheries, transparency and access to information are mentioned, but there has been little pressure on signatories to enforce these obligations, and, there is limited detail on precisely what information should be made public, by whom and how. There is no direct reference to transparency or openness in the United Nations Convention on the Laws of the Sea, but in the 1995 agreement on the governance of migratory fish, the ‘Straddling Stocks Agreement’, article 12.1 reads: “States shall provide for transparency in the decision making-making process and other activities of sub-regional and regional fisheries management organizations and arrangements”. Likewise, in the 1995 FAO Code of Conduct on responsible fisheries, notes that ‘States should, to the extent permitted by national laws and regulations, ensure that decision-making processes are transparent and achieve timely solutions to urgent matters’ (Article 6.13). A technical guideline for information sharing was published by the FAO in 2009, which was aimed at raising awareness on the importance of this issue and it provided a useful discussion on how the sharing of certain types of information could be improved, with a particular focus on scientific research.<sup>vii</sup> However, this document fell short of advancing the idea of transparency and access to information being a mandatory commitment for national authorities. More recently, the FAO’s agreement on port state measures to combat, deter and prevent IUU fishing raised the importance of information sharing between parties to the agreement, although the text placed emphasis on the sharing of information between state authorities and RFMOs, not the general public.

This vagueness surrounding transparency in fisheries is evident in the initial discussions surrounding the reform of the CFP. Transparency seems to be considered by a range of different stakeholders as a worthwhile policy idea, but beyond this there has been limited consideration given to why transparency is important and what benefits, and costs, are expected to different stakeholders as a consequence, and how it could be approached in the context of the CFP reform. The aim of this paper is to try and address these shortcomings. Specifically it describes the positive aspects of transparency, such as improving decision-making, raising political voice and combating corruption, and it also offers some discussion on the limitations of transparency and the perverse outcomes that can be associated with transparency rules and initiatives. This discussion on the costs and benefits of transparency lead to some tentative considerations for the EU CFP reform debates, and hopefully these have wider ramifications for improving the management of global fisheries.

## 2. Why transparency now?

Before considering the costs and benefits of transparency, it is useful to consider why transparency has gained a foothold in the CFP reform debates now. An obvious explanation is that it stems from civil society pressure. For several years civil society organisations from EU and ACP countries, such as the Coalition for Fair Fisheries Arrangements, have been demanding greater transparency from the EC on access agreements, work that has been supported by various European Parliamentarians, including from the Green Party. Indeed, it was such civil society pressure that led to the publication of the agreements and protocols themselves, which prior to the 1990s were kept confidential. More recently, the issues of transparency in FPAs was strongly raised in a report on FPAs in West Africa produced by the Swedish Society for Nature Conservation<sup>viii</sup> and lack of EU transparency has been highlighted as new issue for the coalition of NGOs working together to inform the CFP, known as Ocean 2012.<sup>ix</sup> Beyond European pressure, lack of transparency in FPAs was signaled as a problem by the group of ACP Ministers in their response to the Green paper on the CFP<sup>x</sup> and during a recent meeting of African Ministers on fisheries in Gambia, organised through the African Union's "Partnership for African fisheries", a coalition of civil society organisations working on the sidelines of the meeting produced a press statement where the issue of transparency and access to information was one of the priorities.<sup>xi</sup> Overall, these somewhat dissonant calls for transparency may be combining to shift the mindset of policy makers.

However civil society pressure needs to be placed alongside other developments. The issue of access to information has become central to global efforts to combat illegal fishing, particularly in terms of the expanded use of international traceability mechanisms designed to stop illegal fish entering legal markets and restrict the activities of so-called black listed fishing vessels. In 2010, the EU launched new legislation on combating IUU, for which traceability requirements of fish products from outside the EU was an important aspect.<sup>xii</sup> There has also been an FAO agreement on port state measures to combat IUU fishing, which places obligations on states to share certain data on inspection and port visits by fishing vessels.<sup>xiii</sup> Closely related to the FAO agreement on IUU fishing, the FAO has also resurrected the idea of creating a global record of fishing vessels, which for the time being does not exist as a comprehensive database. Such efforts at creating traceability and sharing information on fishing vessels are undermined by the problem unequal sharing of information from national fishing authorities. However, it should be noted that the issue of transparency in addressing illegal fishing has not always given priority to public disclosure of information, as is called for by civil society, rather data and information sharing is considered important between fishing authorities and regional bodies only.

Yet there are also pressures from within the European fishing industry that may be relevant, even decisive to understanding why transparency has gained a foothold in the CFP reform debates. European fishing, and particularly the Spanish who make up the most sizeable proportion of the EU fleet abroad, has come under increasing scrutiny for their role in overfishing in developing countries. Many within the Spanish fishing industry feel much of this criticism is sensationalized and one sided. Sources within Spanish fishing associations have explained that Africa is no longer a main priority for their future fishing activities; fishing is too unpredictable, as is local governance, with some claiming the cost of bribe payments is becoming extraordinary.<sup>xiv</sup> Most significantly, they believe the growth in number

of Asian fishing boats fishing in Africa, who have a far worse record of abusing regulations and human rights, is where the real problem lies. According to the view of those involved in European fishing, it is the lack of information on these ‘other’ boats that needs to be addressed. Perhaps this has been one reason why transparency has found its way onto the European political agenda, and why an increasing attention on transparency for European boats, from both government traceability requirements and NGO scrutiny, is inevitably joined by the call for equal transparency being applied to other nationalities.

Thus, if there is an emerging call for transparency within the EU, it comes from different sources with divergent motivations. Civil society typically links transparency to the objective of holding those in government and within the fishing industry to account. For international authorities, transparency is about increasing control and regulations over the trade in fish, particularly illegal fish. While transparency for the fishing industry is seen as a means to counter spurious criticisms and create a ‘level playing field’ with competitors. These distinct motivations may well converge and create a harmonious environment for policy reforms. Yet it is also possible that different approaches to transparency, and competing views on why transparency is important, could cause friction or tensions further down the line.

### **3. The lack of transparency in marine fisheries**

The emerging interest in transparency suggests opacity in fisheries is a considerable problem. However, it is not an easy task to illustrate this, partly because empirical studies showing precisely what government information around the world is made available, and how, are lacking. Nevertheless, it is possible to highlight some of the main areas of concern.

Perhaps one of the most important areas of fisheries in developing countries that remain opaque relates to the way access to fisheries resources is allocated, including through access agreements. Access agreements signed between ACP countries and several Asian countries and fishing associations are kept entirely confidential, meaning citizens of these countries have no idea how many boats are allowed access to their waters, what terms and restrictions are put in place and how much revenue is being generated. There is no participation from local citizens into the negotiation of these agreements either. In comparison, the EU’s FPAs are now more open, with the contracts themselves published electronically and free to download, and in some cases there are meeting notes for the committees that oversee the implementation of FPAs in specific countries.<sup>xv</sup> Yet certain information about the performance of these FPAs remain guarded. This was the message put to the EC by the group of ACP ministers, although it is noteworthy that they also recognized the problem being within ACP member states as well:

*‘After close to three decades of signing EU-ACP fisheries agreements, and making available funds attached to agreements for fisheries management, fisheries research, stock assessment and the like, very few or no formal, transparent and freely available evaluations on surplus production available for third countries have surfaced in any of the ACP Member States. This must change and both the ACP countries and the EU should endeavour to commit to such changes. If fisheries in ACP countries are to avoid the deepening crises that affect*

*European over-sized fleets and a depletion of fish stocks, there is a need to manage ACP fisheries resources in a different and much more responsible manner’.*<sup>xvi</sup>

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Problems of transparency surrounding FPAs were illustrated well in a recent study by the Swedish Society for Nature Conservation. A written request was sent to the EU Directorate-General for Maritime Affairs and Fisheries (DG MARE) for specific information on the management and performance of FPAs in four countries in West Africa. The requests included information on evaluations, audits of funds, a list of the EU vessels and owners operating under the agreements, reported landings and their values, as well as information on the destination of the fish being caught under these agreements. Although DG-MARE responded to the request for information, no data was supplied for any of the four countries, with the explanation being that much of the data was confidential so as to protect commercial interests.<sup>xvii</sup>

The European Court of Auditors (ECA) raised a similar concern over lack of accountability in their evaluation of European fisheries in 2001.<sup>xviii</sup> The ECA complained of incomplete information being made available from member states, which made it impossible for them to understand the economics and profitability of European fisheries. The ECA submitted eight data sheets to selected member states that required information about the activities of their fishing fleets in third countries. Four of these sheets were returned with no information at all on catch quantities, and all eight failed to include data on value.<sup>xix</sup> For some time EU fisheries subsidies, valued at approximately 1 billion Euros a year, were also poorly accounted for and the public had no way of tracking where these subsidies were used. However, the NGO ‘EU-Transparency’ has recently released a new website ‘fishsubsidy.org’ that provides comprehensive information obtained from the EC on this issue.

At the level of ACP fisheries authorities there is also considerable problems of openness and accountability. Research is needed to illustrate the extent and nature of this lack of transparency within ACP countries, yet it is the author’s view, based on several years of experience, particularly in Africa, that citizens of ACP countries face considerable difficulties in gaining access to basic information on how their marine resources are managed and exploited. In addition to confidentiality surrounding access agreements, many, if not the vast majority of ACP fishing authorities do not publish the details of private fishing licenses, including the names of companies registered to fish and the details of the contracts. Few countries publish annual reports containing information on fish catches, the activities and performance of fisheries departments, or detailed audited budgets and expenditures. Moreover, only a small minority of ACP states have up-to date websites where such information could be made available and it can be difficult to locate contact details, working emails and telephone lines for fishing authorities. It is hard to differentiate where information is deliberately withheld, or it is unavailable due to capacity constraints and inefficiencies. Yet there is pervasive sense that fisheries authorities see sharing data and informing the public about the management of commercial fisheries as unnecessary. In a report on tuna fishing in the Pacific Island Countries (PICs), it was argued:

*“...fisheries governance has on the whole been marked by a lack of consultation; between government departments, with affected communities, with social and environmental non-governmental*

*organisations, and between government and industry...PIC governments are not used to including NGOs and do not really see NGOs as being legitimate voices in decision making”.*<sup>xx</sup>

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The problem of incomplete or missing data is not simply a localized one in developing countries. It can stem from foreign fishing companies choosing not to report activities and catch data to local authorities, possibly to evade taxes and regulations. So, for example, in their examination of EU fishing in Guinea-Bissau, Kaczynski and Fluharty claim that ‘foreign fleet operators do not cooperate with local authorities as prescribed in the (fishing access) agreement and by the Guinea-Bissau’s license regulations. As a result no statistical data on foreign fleet activity are supplied and information on catches is routinely denied to the government.’<sup>xxi</sup>

The overall situation in marine fisheries in developing countries is that knowing who is fishing where, what quantities are being caught, where this fish is going, how much money is being paid and how this is being used by national authorities, are all issues that remain largely protected and obscured from public scrutiny. There are however some notable exceptions. In Africa, the fishing authorities of both South Africa and Namibia publish significant information on their websites, including legislation, budgets, lists of licensed vessels and thorough annual reports. In Papua New Guinea, the National Fisheries Authority publishes a list of licensed vessels on their website.<sup>xxii</sup> This year also saw the unexpected publication of details on licensed vessels, including the cost of these licenses, by the fisheries authorities in Gabon.<sup>xxiii</sup> Apparently this was a condition imposed by the World Bank for broader development assistance.<sup>xxiv</sup> There have also been instances of in-depth financial audits of fisheries departments in ACP countries, caused by concern over fraud and corruption, including in Guinea Conakry, the Solomon Islands and Fiji, a matter discussed below in more detail. Yet such examples still represent small advances in transparency in a limited number of countries.

The observation that fisheries in developing countries lack transparency is substantiated by a growing body of evidence showing the lack of accountability and openness of government authorities in general, although there are signs of improvements in some regions. Most recently the ‘open budget survey’ conducted by the International Budget Partnership, showed that 74 of the 92 countries surveyed failed to meet the basic requirements of budget accountability and transparency, with 40 countries providing almost no meaningful information to their citizens at all.<sup>xxv</sup> The worst offenders included many ACP states, as well as China. Other reviews on the advance of freedom of information laws have highlighted very slow progress in Africa and Asia Pacific, with only 4 African countries having passed specific Freedom of Information Acts, including South Africa, Zimbabwe, Angola and Uganda.<sup>xxvi</sup> Two of these countries, at least, have shown no commitment to use these acts, other than to suppress media and civil society. The opacity of fisheries therefore conforms to broader challenges of government accountability and openness.



## 4. The case for transparency in fisheries management

There are several reasons put forward for why transparency in fisheries is important to address, although at the same time we need to appreciate that the presumed benefits of transparency may not be the same for different stakeholders. In an attempt to simplify the case for transparency, here we can consider three broad themes.

### 4.1. Improving the quality of decision-making

It is widely accepted that increased transparency and freedom of information improves the quality of policy-making and the effectiveness of state departments. Put simply, improved flow of information allows for increased public scrutiny and greater accountability, imposing necessary discipline on the public sector. Joseph Stiglitz won the Nobel Prize for economics for his work on ‘asymmetries of information’, showing how unequal access to information allows officials and political elites to pursue policies that are more in their interests than in the interests of citizens.

In a recent review of the effectiveness of fisheries management worldwide, based on a survey of over 1000 fisheries scientists and experts, it was noted that one of the main attributes of success was the degree to which national fishing authorities were transparent, sought the advice of independent experts and were willing to act on that advice.<sup>xxvii</sup> Yet the survey found that in the vast majority of countries, such transparency and participation was lacking and that decision-making was highly influenced by political and commercial pressures, as well as corruption. Only 1.4% of countries surveyed scored well. The authors of the report further claimed that transparency and participation was the most important factor in determining whether fisheries were managed sustainably.

*‘Our findings indicate that policymaking transparency is likely to work as a “sustainability bottleneck” through which other positive attributes of fisheries management are filtered. For instance, we found that scientific robustness did not influence the sustainability of fisheries. This may be because, in the process of policymaking, scientific advice may be overridden due to socioeconomic costs and political or corruption pressures... If the policymaking process is participatory and legitimate, it is likely that even poorly enforced systems will move towards sustainability because of voluntary compliance’<sup>xxviii</sup>*

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The report gave the example where a lack of policymaking transparency by the International Commission for The Conservation of Atlantic Tunas led to a failure to reduce catches at 15,000 tonnes per year and to close the fisheries during two spawning months, as was recommended by independent scientific advice. Indeed, lack of transparency and participatory processes have been a recurring criticism of RFMOs in general. There have been improvements in this regard among some RFMOs, but a report by Traffic International pointed out that when there were contentious issues, RFMOs tended to exclude outside observers.<sup>xxix</sup> Such secrecy, it is implied, allows an abuse of power by those with privileged

access to information, which can easily be those with the largest commercial and financial interests.

Improved flow of information may also facilitate collaboration and the formation of partnerships based on trust, at least the opposite can be the case. One area where this is evident relates to the international efforts to counter illegal fishing. In a review of the implementation of the FAO agreement on port state measures to prevent, deter and eliminate IUU fishing, Pew Environmental Group argued that one of the key challenges lies with resistance from authorities in sharing vital data among themselves and others about port state visits and inspections.<sup>xxx</sup> It was recommended that if this initiative is going to be successful in the future, considerable improvements in transparency and information sharing are paramount.

This recommendation by Pew focused only on enforcing the port state agreement. Yet broader and more localised efforts to counter illegal fishing and report instances to authorities can also be undermined by the inability of the public and industry to gain information about licenses and fishing regulations. There have been several cases when NGOs have reported instances of industrial fishing boats operating in restricted fishing zones, only to find out later that they were allowed to do so through their fishing license.<sup>xxxi</sup> Yet the link between transparency and illegal fishing may go further. Rarely is it considered how a lack of openness may encourage uncertainty and distrust among fishers, with orthodox explanations of illegal fishing being limited to economic notions of ‘rational choice’.<sup>xxxii</sup> Yet lack of certainty and a sense of doubt over consistency in the application of laws and regulations may be an important rationalisation of illegalities. Summarizing the link between transparency and illegal fishing at the 2010 Seafood summit in Paris, Shaun Driscoll from the FAO argued: ‘Illegal fishing is a scourge that will severely undermine the legitimate industry if it is not brought under control. But change requires the absolute commitment of all segments of that legitimate industry - a commitment to transparency’.<sup>xxxiii</sup>

## 4.2. Addressing corruption

Lack of transparency creates an environment for forms of corruption and dishonesty to flourish. One of the complaints about lack of civil society involvement in the negotiation of access agreements is that it is widely rumored that favourable agreements are partly the outcome of bribes and kick-backs given to representatives of national authorities, while it is also thought that negotiations include the lure of donor funds, or the threat of their removal.<sup>xxxiv</sup> The consequences of this form of corruption can be far reaching, creating a situation of ‘state capture’.<sup>xxxv</sup> Where access agreements are characterized by bribe payments and are tied to loans and aid projects, this can undermine the independence of host regulators and policy makers in making responsible decisions on limiting fishing intensity and imposing conservation measures. Having entered into corruption tainted deals, it may also be extremely difficult for further irregularities to be countered, such as illegal fishing by boats operating under access agreements.

To what extent improving the transparency of access agreements can diminish forms of corruption and state capture is hard to tell, although concerted efforts at improving accountability in the signing of access agreements in the Solomon Islands meant total access

fees paid to the country increased from roughly USD 2 million in 2002 to USD 4 million in 2004.<sup>xxxvi</sup>

The problem of corruption goes further than access agreements. Broadly speaking, accountability of state revenues derived from the exploitation of marine resources has not been scrutinised, at least not to the same extent as in other resource sectors. However, revenues from fisheries can be substantial, and the opportunities for embezzlement and fraud are high. A characteristic of the management of fisheries that may encourage this form of corruption is that decisions on licensing are typically made by a single person, with very little involvement by others.<sup>xxxvii</sup> Moreover, budgets and accounts of the ministry or department responsible for fisheries are often kept secret and are poorly audited.

There have been several cases where embezzlement of fisheries revenue has been uncovered. It was such evidence that brought about institutional change in the Solomon Islands, as public allegations of corruption prompted an investigation by the Auditor-General that revealed the country had lost some US\$ 4 Million through the theft of license fees by the Ministry of Fisheries.<sup>xxxviii</sup> In Fiji, in 2004 the director of fisheries was exposed by a special committee of inquiry of privately selling fishing licenses to foreign boats that would have otherwise been denied access to Fijian waters due to restrictions imposed on fishing capacity. Similarly, in 2008, growing pressure on the government of Guinea led to an official audit of the Ministry of Fisheries, which revealed the country lost millions of Euros in lost revenues through a range of dubious accounting practices.<sup>xxxix</sup> Implied in this case was that off-the-book transactions and bribe payments were chiefly to blame.

This problem with embezzlement and fraud is of particular concern to the donor community. In Tanzania for example, between 1994 and 2006 the Norwegian government provided US\$ 60 million for a Management of Natural Resource Programme, which included work on the conservation of marine and coastal resources and the creation of marine protected areas. Investigations beginning in 2006 revealed that up to half of this money was lost to corruption and fraud.<sup>xl</sup> It is worth noting that in 2006 the World Bank provided Tanzania with a further loan of US\$ 55 million for improving the management of marine and coastal resources. Public information on how this money has been spent is scarce, and independent annual audits have not been actively circulated.

This issue of corruption in donor funding is of course relevant to the EC. Through FPAs the EU has spent millions of euros on sectoral development in some of the most corrupt countries in the world. Yet in-depth financial audits of this donor assistance have never been undertaken, or at least have not been published. In response to the request for information put to it by SCCN, DG-MARE wrote:

*“We are focused on the results and on the political commitments the country makes, not on the way they use their own budget therefore we do not insist on analysing too much in details the way these countries spend their own money...in fact if we focus too much on this, we tend to forget the real issue is on the results they have achieved”.*

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This is a unsatisfying response given that the results of EU assistance under FPAs is never publicized in detail by DG-MARE and that ensuring that EU money is not misappropriated or

used in ways that runs counter to pro-poor development or human rights is an important dimension to EU policy coherence.

A final area of corruption relates to conflicts of interest, a problem facilitated by a lack of transparency in company records and share-holdings, and partly exacerbated by policies promoting joint-ventures between foreign businesses and local stakeholders. Senior fisheries officials and politicians can simultaneously own private fishing boats or they are joint-venture partners in fishing and fish processing companies. Not only is this situation inherently unfair, but it also threatens sound policy making and compliance. Thus, where fishing boats are co-owned by senior officials, they may be free to engage in a range of illegal activities knowing that there is protection from arrest and investigations. In Angola, the EU and South African Development Council undertook a project aimed at increasing the capacity of marine surveillance and inspections. A research report undertaken as part of this project noted that in many cases evidence of malpractices were not reported to the authorities due to the knowledge that boats were co-owned by politicians and public officials, including those in the ministry of fisheries. The report urged transparency in the ownership of fishing boats to be prioritised.<sup>xli</sup>

Conflicts of interests also extend to other spheres of government responsibility. Shipping agents, for example, are known to include senior political figures and their position of influence can greatly assist in the smuggling of illegal fish or providing favorable assistance with fishing licenses. In Vanuatu, an investigation in 2003 into why two Taiwanese long-line boats who were given licenses to operate within the six-mile zone off the coast, something that was formerly prohibited under Vanuatu law, found that the shipping agent for the boats was also the director of the Maritime Authority who issued the licenses.<sup>xlii</sup>

### 4.3. Raising political voice?

Finally, although strengthening transparency may assist the ability of citizens to contest decisions and activities of government authorities and fishing companies, as well as challenge forms of corruption, improving the flow of information from government departments may actively stimulate participation of people in politics and service delivery, while a restriction of information works to decrease this interest. According to this view, improvements to information flows of government activities and policies helps raise political voice and participation, which in turn is thought to have a positive effect on the quality of governance in general. As Kauffman and Beller put it: ‘transparency and information flows have an important role to play in ensuring that politicians get the right incentives to serve the majority of the population’.<sup>xliii</sup>

It is not known by the author if there have been studies illustrating this relationship between access to information and improved political voice in fisheries and coastal communities, although the large amount of research and writing on the importance of co-management in fisheries alludes to this. However it is interesting to consider work from other fields. Perhaps most influential was the work of Amartya Sen who showed that access to food during famines in several poor countries was not explained by the availability of food itself, rather it occurred due to uneven access to information and political influence.<sup>xliiv</sup> This observation has inspired a growing literature on how access to information is related to poverty and inequality. Studies in India, for example, have claimed to show that those with greater access to newspapers,

radios and other forms of media tend to derive measurable benefits in the allocation of state funds.<sup>xlv</sup> Moreover, in cross country surveys, the penetration of media and news information has been linked with lessening inequality, although cause and effect can be difficult to disentangle.<sup>xlvi</sup>

Improving the flow of information on fisheries management to small-scale fishers and coastal communities was stressed in the FAO technical guidelines on information and knowledge sharing. It was stated that ‘the participation of the small-scale sector is absolutely critical to improving fisheries management’.<sup>xlvii</sup> It was also noted that this political influence fisheries could be undermined by inadequate flow of information about the small-scale sector to national fishing authorities. This observation was alluded to by a team of researchers in East Africa who showed the magnitude of underreporting in official statistics; in Mozambique the actual catch of the small scale sector was some 6.2 times greater than that was officially reported by the government to the FAO.<sup>xlviii</sup> Such under-reporting may mean that small-scale fisheries is undervalued and not seen as politically important by decision-makers, as fisheries scientists at the University of British Columbia write: ‘The chronic underreporting of the small-scale fishing sector leads to inequitable policy decisions that favor industrial fisheries (that often compete for the same resources)’.<sup>xlix</sup>

## **5. The limits to transparency**

Improving transparency is therefore strongly justified on the grounds of strengthening the quality of decision-making, stimulating political processes and combating forms of dishonesty and corruption. Yet such benefits have to be considered alongside some important limits and pitfalls of transparency. There are arguments suggesting transparency can go too far and transparency initiatives and reforms can have perverse outcomes.

### **5.1. Transparency as a threat to effective governance and legitimate commercial interests**

Some state information and political processes remain confidential and beyond incessant public scrutiny for good reason. The call for greater inclusion of NGOs and scientists in decision-making processes is not without its costs. Closed negotiation of access agreements or deliberations at RFMOs may be justified on the grounds of efficiency. The inclusion of large numbers of outsiders will inevitably slow procedures and could require a dumbing down of debates and analysis. Moreover, open debates may inhibit frank exchanges of ideas and the discussion of sensitive topics. It has also been argued that too much openness encourages political correctness or pandering to popular sentiments.<sup>1</sup> Ultimately, where there is an excess of participation in decision making by outsiders, the real debates and decisions may simply shift elsewhere and happen informally. It is therefore not entirely convincing that procedural improvements linked to transparency and public participation in policy making will inevitably create change or be a good thing, as is assumed by the authors of the international survey on fisheries management effectiveness.

Improvements in transparency may also create bureaucratic burden for authorities. Disclosure of certain key documents and statistics can be vitally important, but too much disclosure may

place considerable strain on government departments, and this may introduce an obsession with public reporting and form-filling that will come at the expense of efficiency, creativity and a willingness to tackle difficult or unpopular issues, an argument that is no doubt familiar for those working in Universities or large NGOs.

Certain information held by authorities may be kept secret for justifiable reasons. Strong arguments may be made by national authorities to keep information of suspected illegalities involving fishing boats and fishing companies hidden. This might be due to ongoing investigations, or it might be due to fears that publically available information on monitoring surveillance and control may give fishing boats the opportunity to identify weaknesses and improve their chances of evading the law.

At the same time, members of the fishing industry will argue that certain data on their activities must be kept confidential for commercial reasons. Information on where fishing boats have been operating and data on catch volumes may be guarded as competitors could use this to see where good fishing lies. Indeed, in one article about corruption in the Pacific Island fisheries, it was noted that fishing companies worried that such information has been sold to competitors by national fishing authorities.<sup>li</sup> Whether this information should be kept confidential remains uncertain, as it may be argued that the interests of the environment are more than the commercial interests of individual fishing boats. Moreover, there may be ways of publishing data on the activities of fishing boats that retains a respect for commercial considerations, such as publishing aggregated data for fishing fleets rather than data on the specific activities of fishing boats. Yet the point being made is that a general call for transparency needs to be nuanced with a deeper understanding of exactly what type of information should be made public and why certain stakeholders may have legitimate complaints with this level of disclosure.

## **5.2. The moral hazard of using transparency to combat corruption**

Although the call for transparency is widely supported in combating corruption, the role transparency plays in exposing or deterring forms of corruption can be ambiguous. The problem is partly one of complexity. Data on financial flows, budgets and company records do not simply show where dishonesty takes place. Information disclosed through transparency initiatives can require a great deal of further investigation and expertise to reveal fraud or malpractice. This has been a complaint made against transparency in oil and mining revenues, which has received large attention by the international community but has led to few prosecutions or the recovery of stolen assets.<sup>lii</sup> Likewise, a decade of reforms and new legislation on improving transparency in banking has failed to make much impression on global money laundering.<sup>liii</sup> Greater transparency may mean that those involved in corruption or crime take further steps to conceal transactions, often with the help of lawyers and accountants,<sup>liv</sup> or it simply leads to dishonesty in the reporting of data; transparency does not guarantee that the information disclosed is accurate or complete. In some cases, increased transparency may even open opportunities for new forms of rent-seeking by officials.<sup>lv</sup> This is a serious concern for new traceability requirements in fisheries; it increases the value of falsifying documents and inspections, which opens a new channel of bribes and kick-backs for dishonest authorities.

Obligations for transparency can therefore be ineffective without considerable enforcement and further investigations. In the case of the multi-million fraud of Norwegian donor money in Tanzania, the true extent of the frauds was only uncovered by in-depth independent investigations. Before this, the recipients of the aid had diligently completed reporting forms and project updates, which revealed no obvious problems. Even an audit undertaken by the Auditor General in Tanzania was considered sufficiently complex by the donors that the services of an international auditing firm had to be used to interpret the AG findings for them.<sup>lvi</sup>

Thus, while improvements to transparency may mean members of the public and NGOs can detect instances of corruption, we cannot assume this happens in a straightforward way. This is not to suggest transparency is hopeless in highlighting instances of corruption. Rather, it should be thought of as one part of addressing the problem. Invariably transparency requires further scrutiny of facts. Unfortunately, in many countries where corruption is most problematic, governance problems, such as weak media freedom, poor respect for civil rights and inadequate whistle-blowing protection, makes such scrutiny and responses to corruption extremely difficult or dangerous.<sup>lvii</sup>

Where transparency fails to address existing corruption, there is a ‘moral hazard’ that comes as a consequence. Simply meeting the requirements of international transparency initiatives can be used as a bulwark to further criticisms or allegations. Transparency therefore can give a false stamp of approval that may work against improving accountability. At the same time authorities that meet the standards of transparency can receive benefits, in terms of increasing their legitimacy within the international community, which in turn leads to increasing aid and bolstering preference for securing loans and investments by international financial institutions.<sup>lviii</sup>

The issue of transparency being an unwelcome distraction to forms of corruption can be taken further. In some cases the goal of creating transparency has been given such prominence that it downplays or eclipses other policy debates. This has been a growing criticism of the Extractive Industries Transparency Initiative. Although EITI emerged from a general concern over the ‘resource curse’, overtime the immense amount of funding provided by EITI for auditing government revenues from mining companies has, according to some commentators, worked to sideline more difficult and controversial discussions on the management of global oil.<sup>lix</sup> This has been interpreted as politically convenient, with the international fuss over transparency weakening demands for a review of how oil wealth is spent, what is the impact of mining companies in communities, how can developing countries lower dependence on mining revenues and whether oil and minerals are best ‘left in the ground’. Although transparency appears as politically neutral, the way in which transparency initiatives are framed can therefore influence wider political debates. Sarah Bracking points out that the ‘powerful are often those who make decisive issues about their behaviour ‘disappear’ from view. In this case (EITI), profit sharing is removed from political space, since the problem of reporting and transparent accounting crowds it out’.<sup>lx</sup> This outcome of transparency initiatives has been dubbed ‘clearwashing’ by some.<sup>lxi</sup>

### 5.3. Limited transparency and the selective interpretation of data

Finally, we should be aware of the consequences of limited or impartial information flows, and the role of NGOs and the media in acting as intermediaries of transparency. As noted above, transparency can raise political voice that contributes to addressing inequality in political processes. Greater sharing of data holds out the promise of promoting the interests of those at the fringes of society, such as coastal communities and small-scale fishers. Yet a reality in many countries is that the ability to access information is unequally distributed, which is partly a consequence of how information is made available, but also an outcome of unequal political influence. An international survey undertaken by the Open Society Justice Initiative on access to information highlighted this well, showing that less privileged and more marginalized people found it more difficult to get information from government departments, in comparison to people with higher status, such as those from companies or international NGOs.<sup>lxii</sup> It was also shown that gender played a role, and those who had a reputation of being critical of governments were less likely to get information than those who were not.

Where information is partially available or more readily available to certain sections of society, particularly those who can pay for it or offer something in return, disadvantages and inequality may be amplified. Policy making and service delivery may be co-opted by certain groups who have privileged access to information, and this can include inter-governmental organisations, well-resourced NGOs, as well as private companies and parastatal organisations. We cannot assume that these groups or organisations will use privileged information or access to decision making in ways that would support the interests of others—too often the notion of ‘civil society’ is conflated into a homogenous block with innate goodness, but this obscures the fact that civil society is a contested sphere of competing interests and ideas.<sup>lxiii</sup>

How information is made available for different members and sections of society is therefore a critical consideration if improvements to transparency are to contribute to deepening democratic governance. Not all government agencies may have the capacity or expertise to meet this challenge. Ensuring information reaches the most marginalized people in society may be considered overly burdensome and time consuming, a factor that is important in under-resourced and over-stretched government departments.

Invariably information that flows from transparency rules and initiatives does not pass in its raw form to members of the public. In some cases the sheer volume and complexity of data means it has no obvious meaning to many people. Organisations and groups, such as the media and NGOs, tend to play a role of intermediaries of information, examining data and using it to tell a particular story. The theory behind transparency’s benefits often fails to analyze this process of how information is used and packaged by others. It is presumed that the greater flow of government information will simply lead to better comprehension; the emergence of truth or a more informed citizenship. But this is not necessarily the case. It has been argued that many NGOs in developing countries that receive donor funding to work on transparency and accountability are conservative and depoliticized, partly because of their donor dependence, which makes them poor conduits of information in terms of raising voice of the poor and grass-roots organisations.<sup>lxiv</sup> Conversely, there are more independent organisations and news agencies that may scrutinize government information narrowly to fit



their underlying agenda or to uncover ‘scandals’. In turn, ‘contemporary politicians and officials recognize these tendencies and exploit them by strategically disclosing ‘information’ through coordinated public relations campaigns that produce pre-packaged, tightly controlled ‘news’’.<sup>lxv</sup> Thus, improved transparency may help resolve debates in fishing, providing conclusive evidence for a particular issue where before there was doubt caused by opacity, but equally improved transparency may not resolve disputes at all, more information and hard data may be used and abused selectively to lend credibility to a particular view or agenda.

## **6. Conclusion: Some considerations for EU CFP reforms**

This paper comes at a time when the issue of transparency is gaining wider political attention, particularly within the reform process of the EU CFP. Support for improving transparency seems to stem from divergent interests, which includes civil society concerns over the activities of European boats in third countries and the impact of development assistance overseas, concern with the illegal fishing and the need for the sharing of government data to improve investigations and law enforcement strategies, and concerns from within European fishing companies for a ‘level playing field’.

So far discussions on transparency in fisheries have been somewhat general. Ideas that have emerged from initial discussions on the reform of the CFP seem limited. Including specific transparency clauses and anti-corruption clauses in FPAs is good first step. It is not clear whether this means the EC will embrace transparency in its own FPAs further, or whether the emphasis is on host countries being made to share data on other bi-lateral agreements to the EC. One hopes for a combination of both. But arguably the EC has an opportunity through the CFP reform to take the issue of transparency in fisheries further, both in relation to EU fisheries abroad, as well as in the management of fisheries among developing countries where the EU will continue to provide development and governance assistance through financial and technical aid.

The analysis put forward in this paper suggests transparency has potential benefits, and that the existing lack of transparency in fisheries may be undermining responsible and equitable fisheries management. Improving transparency can lead to gains in the quality of decision-making, it may help to address forms of corruption and frauds, and possibly transparency can stimulate political voice and processes. Yet there are limits to transparency and possible pitfalls with transparency reforms. An appreciation of these limitations does not mean the call for transparency is misguided or forlorn. What they suggest is that greater consideration is needed in articulating what type of information should be made available, how, to whom and for what purpose. Moreover, there may well be a need for expectations with transparency to be realistic—increased flow of information holds out the prospect of improving government accountability and efficiency, but there is no guarantee that this will happen. Transparency may work well in some situations and in some countries, less so in others.

Given these complexities and limitations of transparency, there are some practical considerations and points of debate that could be considered by stakeholders in relation to the reform of the EU CFP. Four questions seem most important:

*1/* The first question relates to why specific information is needed. There is a strong argument for transparency to be considered a basic right, as is stated in article 19 of the UN Charter on Human Rights. Public access to information is therefore not something that has to be justified for a particular end. Moreover, we cannot anticipate how different people and organisations will use new information. However, pressure to increase transparency in fisheries could be made much stronger if different stakeholders can articulate specific applications. This would give the call for transparency a clear relevance that may help motivate change.

The concept of transparency has been closely associated with combating corruption and malpractice. Improving transparency in fisheries could be framed with this in mind, although as argued above a simplistic understanding of how transparency can address corruption should be resisted. At best, transparency must be seen as one component of anti-corruption work. It would no doubt be a positive development if donors, policy makers and central governments took the issue of political and administrative corruption in fisheries much more seriously.

The improved flow of information on commercial fisheries, including detailed information on financial flows, donor assistance and licensing, may be framed in a more positive way. One suggestion is that transparency can be linked to broader efforts at understanding the value of marine resources, and the cost of their loss. The type of information that is most guarded in fisheries is precisely that which is needed to make these valuations, which are now gaining increasing support for changing political will in preserving ecosystems. Transparency may also be linked with international and local efforts at reducing some forms of illegal fishing.

Choosing the focus for a transparency initiative also informs what measures of success can be used. This is an issue requiring more thought, but improving the overall long-term benefits from fisheries, such as improved food security, employment and contribution to state finances, could be measures of success linked directly to transparency reforms. Cases where improvements to transparency have apparently led to considerable increases in government revenues, such as the Solomon Islands, need to be given more widespread recognition. Research on the success of transparency reforms has shown that sustainability of these reforms comes from those who are responsible for disclosing information seeing some benefits in return.<sup>lxvi</sup>

*2/* The question of why transparency is needed leads to a consideration of exactly what information should be made publicly available, not only by the EU, but also by national fishing authorities. A call for transparency that is vague on the details risks being well-received, but ultimately ineffective. Arguably what needs to be developed is a clear standard of transparency that can be used to hold those responsible for the management of commercial fisheries accountable and can be the basis for monitoring improvements to transparency overtime. International conventions and agreements on fisheries do not give enough detail on what information should be made available and how. This suggests the matter is not seen as important and perhaps explains why there have been few efforts to enforce transparency more energetically.

The argument for improving transparency on FPAs has been made often. Indeed, there seems to be a strong case that the EC should release information on the audits and evaluations of

FPAs, as well as the names of companies and vessels who are fishing under FPAs. In addition, it is not unreasonable to expect fishing boats working under FPAs to make available data on their catch volumes and value, which would go some way in allowing others to understand the profitability of FPAs and trends in catches over time.

At the level of national fishing authorities, the list of potential information that should be publically available could include full disclosure on bi-lateral access agreements, including the disclosure of draft contracts before they are signed; full list and prices of private licenses issued by national fishing authorities, including the contracts of these licenses with the name of the vessel and captain; detailed accounts of the department responsible for fisheries including expenditure and income, national laws and management plans for fisheries and details of penalties and fines imposed on fishing vessels for illegal fishing. In addition, port state authorities could be obliged to publish data on port visits by fishing boats as well as data on inspections, as is indicated in the FAO Port State agreement.

But in suggesting these aspects, as others have done, we need to be clear about the level of information that should be made transparent. If an aim of transparency reforms in the CFP is to allow citizens to contest policy decisions made by the EU, is it enough to make public the evaluations of FPAs, or should the EC make available the underlying data that was used to inform these evaluations? The timing of when information is made available is also critical—if information on fisheries is to be used to monitor illegalities by members of the public and other fishing boats, then there may be limited use in publishing data on licenses that is dated.

It is these considerations on the precise level of detail for transparency that should be tackled, while there is a need to balance the requests for disclosure with an appreciation of how too many reporting obligations may burden authorities.

*3/* A third consideration relates to how information is made available. Ensuring information is accessible goes to the heart of making transparency contribute to democratic accountability. A risk lies with impartial transparency, where information and access to decision making is available to specific sectors and well-resourced organisations exclusively.

Building capacity among national authorities to improve dissemination of information may be critical. Although information on fisheries may be deliberately obscured from public scrutiny, this is not the only reason for lack of transparency. Work by the Open Society Justice Initiative on access to information highlighted the problem that many government departments face in collating information and having this accessible to others. Fisheries authorities may be overstretched and poorly resourced, meaning some forms of data and reports are simply not captured by them. Moreover, in many countries there may not be a communications officer or point person for receiving requests for information, and data that does exist may be filed in a way that makes it highly inaccessible: technical reports and spreadsheets buried in government archives may not be consumed readily by members of fishing communities.

Assistance to governments for institutional reform and training in this respect could be included in the sectoral reforms linked with FPAs, as well as supported by further donor programmes and efforts. The simple act of creating an up-to-date and clear website on fisheries data and reports seems a straightforward recommendation. Yet there also more

innovative ways of sharing information, either through the use of new media (few fishermen have a computer, but all have cell phones) or via radio, which remains the most important source of news and analysis in many poorer countries and rural communities.

To what extent capacity building of state departments needs to be joined by similar capacity building among NGOs is unclear. This seems unnecessary within the European context, but perhaps more so in ACP countries. There may be a need for unconditional grants for investigative journalists and researchers for analysis of data and the monitoring of transparency. Such monitoring should not only highlight where lack of transparency and accountability exist, but it should also measure the ability of different sectors of the population to access information, particularly small scale fishing communities.

4] The fourth question is how can transparency be achieved among national fishing authorities. In what ways can transparency be incentivised or enforced?<sup>lxvii</sup> The answer to this may partly lie with how transparency is framed and how the benefits of transparency are articulated. Yet the task of achieving real improvements to transparency may also require other actions to be taken.

An obvious point is that through the CFP reform the EU must become an example of best practice, otherwise using the occasion of the CFP to place transparency on the international agenda may be countered with accusations of hypocrisy and double standards. This has undermined international efforts at improving transparency in the oil and mining sectors of developing countries, as it has regularly been argued that Western countries imposing obligations for transparency on others have failed to address the same problems 'back home'.

In addition to becoming an example of best practice, the EC may be able to use the CFP as an opportunity to consolidate the support for transparency in fisheries among other European bilateral donors and inter-governmental organisations, such as the World Bank and the UN. Indeed, perhaps development assistance provided by the EU and others for fisheries development could be made conditional on improvements to government transparency. There may be apprehension in following this path as it might push some countries to favour unconditional fishing access agreements on offer from Asian countries. However, we should also not presume that all fishing authorities in the developing world are naturally against improving the flow of information, particularly as they may be frustrated over a lack of transparency stemming from foreign fishing fleets and countries, including the EU. ACP ministers in their response to the Green Paper raised this, and their commitment to championing greater accountability could be given more prominence.

Finally, the issue of transparency and access to information in fisheries needs to be placed in a wider legal context. Transparency needs to be framed not as a voluntary gesture, but as something that is obligated by several important pieces of legislation and international agreements.

In addition to the agreements on fisheries, there are prominent agreements and legislation that need to be considered in the CFP reform. In addition to Principle 10 of the Rio Declaration, there needs to be a review of the 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters'. The Aarhus Convention, as it is more commonly known, was ratified primarily by European countries and

the European Union. At its core are three key principles: The right of everyone to receive environmental information held by public authorities; the right of everyone to participate in environmental decision-making and the right to challenge alleged abuses of these rights in a court of law. The Aarhus convention also places an obligation on parties to actively educate people on how they can access information on environmental matters. Why the Aarhus Convention has not been applied to EU fisheries and FPAs is a question deserving of more scrutiny.

In addition to these environmentally focused documents, a standard of transparency in fisheries should be linked to UN, Commonwealth and regional conventions on human rights as well as anti-corruption, including the United Nations Convention against Corruption. In Africa, the corruption convention of the African Union, adopted in 2003, speaks to the need for access to information and that the media and civil society should be enabled to participate in the monitoring process of public bodies, and there have been further regional agreements taking these principles further. In Asia-Pacific, in 2000, the OECD and the Asian Development Bank agreed to the Anti-corruption Plan for Asia-Pacific', which includes measures for government openness and transparency.

A review of this legislation, and relevant case law, could be an activity linked directly with the CFP reform process. Critical issues of when it is justifiable to withhold information and when it is not, need to be articulated to a wider audience. In particular, there is confusion about when it is legally justifiable to protect commercial interests in fisheries, as opposed to the obligation to publish information that is in the interest of protecting human rights and the environment.

The above suggestions on points of debate for taking the issue of transparency further are not exhaustive; they are merely put forward to stimulate further thinking and engagement on this broad issue. The overall recommendation from this paper is that whilst improving transparency remains an important policy goal, far more consideration is needed on precisely how this is achieved and to what ends. The CFP reform process offers an excellent opportunity for different stakeholders to engage more substantively on these questions.

## *Endnotes*

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<sup>i</sup> Commission of the European Communities (2009), Green Paper, ‘Reform of the Common Fisheries Policy’, Brussels, p. 3.

<sup>ii</sup> The EU has held access agreements with 21 countries over the past few decades. Some of these agreements have not been renewed, such as with Senegal, while others may be negotiated for the first time, such as with Kenya and Tanzania.

<sup>iii</sup> ACP position on the EU’s Common fisheries policy reform, Brussels 16<sup>th</sup> December 2009. Available at: [http://ec.europa.eu/fisheries/reform/docs/acp\\_en.pdf](http://ec.europa.eu/fisheries/reform/docs/acp_en.pdf)

<sup>iv</sup> For analysis on the relationship between the Lisbon Treaty and European fisheries, see Client Earth (2010) ‘The impact of the Lisbon Treaty on European Fisheries policy – an environmental perspective’, available from: [www.clientearth.org](http://www.clientearth.org).

<sup>v</sup> The author’s understanding of these debates is partly informed by participating in several seminars with European stakeholders, as well as email communications with representatives of DG-MARE.

<sup>vi</sup> <http://www.accessinitiative.org/blog/2010/09/president-obama-calls-for-global-commitments-on-open-and-accountable-government>

<sup>vii</sup> FAO Technical Guidelines for Responsible Fisheries, (2009) ‘Information and knowledge sharing’, Food and Agriculture organization of the United Nations, Rome.

<sup>viii</sup> Swedish Society for Nature Conservation, ‘To draw the line: EU fisheries agreements in West Africa’, Stockholm.

<sup>ix</sup> See [www.ocean2012.eu](http://www.ocean2012.eu)

<sup>x</sup> ACP position on the EU’s Common fisheries policy reform, 2009, para 18.

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<sup>xi</sup> The Banjul Declaration is available at: [http://www.cape-cffa.org/IMG/pdf/BANJUL\\_CIVIL\\_SOCIETY\\_DECLARATION\\_EN.pdf](http://www.cape-cffa.org/IMG/pdf/BANJUL_CIVIL_SOCIETY_DECLARATION_EN.pdf)

<sup>xii</sup> [http://ec.europa.eu/fisheries/cfp/illegal\\_fishing/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/illegal_fishing/index_en.htm)

<sup>xiii</sup> The FAO agreement on ‘port state measures to prevent, deter and eliminate IUU fishing’ is available from the FAO website: <http://www.fao.org/Legal/treaties/list1-e.htm>

<sup>xiv</sup> This view has been expressed to the author by representatives of Spanish fishing associations, including at a meeting hosted by the Spanish Ministry of fisheries in Las Palmas, May 2010 where the author presented on the theme of corruption and fisheries.

<sup>xv</sup> Some, but not all of these are available through the EU’s website: [http://ec.europa.eu/fisheries/cfp/international/agreements/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm)

<sup>xvi</sup> ACP position on the EU’s Common fisheries policy reform, 2009, para 18

<sup>xvii</sup> Swedish Society for Nature Conservation (2009) ‘To draw the line: EU fisheries agreements in West Africa’, Stockholm, p.27.

<sup>xviii</sup> European Court of Auditors. 2001. ‘Concerning the commission’s management of the international fisheries agreements, together with the commission’s replies’. Special Report, p.3.

<sup>xix</sup> Ibid. para 18.

<sup>xx</sup> Barclay, K. and I. Carthwright (2007) Governance of tuna industries: the key to economic viability and sustainability in the western and central Pacific ocean, *Marine Policy* 31, 3 p.355

<sup>xxi</sup> Kaczynski, V. and D. Fluharty. 2002. ‘European policies in West Africa: who benefits

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from fisheries agreements?’ Marine Policy 26, 4 p.75.

<sup>xxii</sup> Tsamenyi, M and Hanich, Q (2008), “*Addressing corruption in Pacific Island Fisheries*”, Report prepared for the IUCN Profish Law Enforcement, Corruption and Fisheries Project, available from [www.iucn.org](http://www.iucn.org), p. 10.

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[http://www.finances.gouv.ga/IMG/pdf\\_registr\\_licences\\_peche\\_public\\_09\\_DGPA\\_cle01f96f.pdf](http://www.finances.gouv.ga/IMG/pdf_registr_licences_peche_public_09_DGPA_cle01f96f.pdf)

<sup>xxiv</sup> The author is waiting for further information on this condition requested by the World Bank in Gabon. It is a matter of some interest if this condition will be extended to other countries in the future.

<sup>xxv</sup> International Budget Partnership (2010), ‘Open budgets. Transforms lives. The open budget survey 2010’.

<sup>xxvi</sup> Banisar, D (2006) Freedom of information around the world: A global survey of access to information government laws’, Privacy International, Washington.

<sup>xxvii</sup> Mora C, Myers RA, Coll M, Libralato S, Pitcher TJ, et al. (2009) Management Effectiveness of the World's Marine Fisheries. PLoS Biol 7(6)

<sup>xxviii</sup> Ibid, p. 7

<sup>xxix</sup> A. Willcok and Lack, M (2006) ‘Follow the leader: Learning from experience and best practice in regional fisheries management organisations’ WWF International and Traffic International, p. 38—40.

<sup>xxx</sup> Pew Environment Group, (2010) ‘Preliminary findings from a gap analysis: A comparison of RFMO port state measures to prevent, deter and eliminate illegal, unreported and unmanaged fishing’, briefing report available from



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<sup>xxxii</sup> An example comes from filmed investigations into illegal fishing in West Africa by the Environmental Justice Foundation, see [www.ejf.org](http://www.ejf.org)

<sup>xxxiii</sup> The explanation that illegal fishing is an outcome of fishing boats weighing up the cost and benefits of illegal fishing is a common one. See for example High Seas Task Force (2006), *Closing the net: Stopping illegal fishing on the high seas*. Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom, WWF, IUCN and the Earth Institute at Columbia University.

<sup>xxxiiii</sup> S. Driscoll (2010) ‘Improving transparency and eliminating illegal fish from the supply chain through recent/proposed international initiatives’, presentation given at the Seafood Summit, Paris, April 10<sup>th</sup> 2010.

<sup>xxxiv</sup> This is raised in several publications, including, Clover, C (2005), *The end of the line; how overfishing is changing the world and what we eat*, London, Ebury Press. Mwikya, M (2006), “Fisheries Access Agreements: Trade and Development Issues”, *Natural Resources, International Trade and Sustainable Development Series Issue Paper 2*, International Centre for Trade and Sustainable Development, Geneva. Barclay, K. and I. Carthwright (2007) Governance of tuna industries, p.352, and Tsamenyi, M and Hanich, Q (2008), “*Addressing corruption in Pacific Island Fisheries*”, Report prepared for the IUCN Profish Law Enforcement, Corruption and Fisheries Project, available from [www.iucn.org](http://www.iucn.org), p. 10.

<sup>xxxv</sup> For a discussion on state capture, see Kaufmann, D and Vicente, P (2005), *Legal Corruption*, World Bank Institute, Washington.

<sup>xxxvi</sup> Barclay, K and I Cathwright (2007) Governance of tuna fisheries, p.352.

<sup>xxxvii</sup> Tsamenyi, M and Q. Hanich (2008) ‘Addressing corruption in Pacific Island fisheries’, p. 9—10.

<sup>xxxviii</sup> *Ibid.*

<sup>xxxix</sup> For further details, see Standing, A (2009) ‘Corruption and industrial fisheries in Africa’, p. 19.

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<sup>xl</sup> Jansen, E. (2009) *Does aid work? Reflections on a natural resource programme in Tanzania*. U4 Issue 2009:2

<sup>xli</sup> Cederrand, S (2004) 'Report of the surveillance voyage to Angola waters of the Namibian fisheries protection vessel 'Anna Kukurakaze Mungunda' April-May 2004', working paper 31, European Union & Southern African Development Council, p.28.

<sup>xlii</sup> Ferrieux-Patterson, M (2003), "*Conflicts of Interest—Vanuatu's Experience*", paper presented at the 4th regional conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Kuala Lumpur, p.3.

<sup>xliii</sup> Kaufmann, D and A. Bellver (2005) 'Transparenting transparency: Initial empirics and policy applications', World Bank, p.12

<sup>xliv</sup> Sen, A. (1981), *Poverty and famines: An essay on entitlement and deprivation*, Oxford University Press.

<sup>xlv</sup> Besley, T. R. Burgess and A. Prat (2002), 'Mass media and political accountability', in 'The right to tell: the role of mass media in economic development', World Bank Institute: Washington.

<sup>xlvi</sup> For a useful discussion, see Kaufmann, D and A. Bellver (2005) 'Transparenting transparency'.

<sup>xlvii</sup> FAO (2009) 'Information and knowledge sharing', p. 56.

<sup>xlviii</sup> Jacquet, J. H. Fox, H. Motta, A. Ngasuru, and D. Zeller, (2010) 'Few data but many fish; marine small-scale fisheries catches for Mozambique and Tanzania', *African Journal of Marine Science*, Vol 32, No. 2.

<sup>xlix</sup> Jacquet, J., D. Zeller and D. Pauly (2010) 'Counting fish; a typology for fisheries catch data', *Journal of Integrative Environmental Sciences*, Vol 7, No. 2. p. 141.

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<sup>1</sup> Fenster, M (2006) 'The opacity of transparency', *Iowa Law Review*, 91, p. 910.

<sup>li</sup> Tsamenyi, M and Q. Hanich (2008) 'Addressing corruption in Pacific Island fisheries',

<sup>lii</sup> See for example, Kolstad, I and A. Wiig, 'Is transparency the key to reducing corruption in resource-rich countries?', *World Development*, vol 37, no. 3

<sup>liii</sup> See Naylor, R (2005) 'Wages of crime', Cornell University Press.

<sup>liv</sup> Moran, H 2006. How multinational investors evade developed country laws. Working Paper No. 79. New York: Centre for Global Development.

<sup>lv</sup> See, for example, Yang, D. (2005), 'Can enforcement backfire? Crime displacement in the context of customs reform in the Philippines', Ford School of Public Policy, University of Michigan.

<sup>lvi</sup> Jansen, E (2009) 'Does aid work?'

<sup>lvii</sup> For a discussion on the complexities of combating corruption, including the fallacy of transparency in some cases, see Johnston, M (2005) 'Syndromes of corruption: wealth, power and democracy', Cambridge University Press.

<sup>lviii</sup> Bracking, S (2009) *Hiding conflict over industry returns: A stakeholder analysis of the extractive industries Transparency Initiative*, Working Paper 91, Brooks World Poverty Institute, University of Manchester, p.7.

<sup>lix</sup> Shaxson, N (2009) *Nigeria's extractive industries transparency initiative: Just a glorious audit?*, Chatham House, London, p. 28, and Muller, M (2010) *Revenue transparency to mitigate the resource curse in the Niger delta?*, Occasional Paper V, Bonn International Centre for Conversion.

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<sup>lx</sup> Bracking, S (2009) ‘Hiding conflict over industry returns’, p.7.

<sup>lxi</sup> Rowell, A, Marriott, J and Stockman, L 2005. *The next gulf: London, Washington and oil conflict in Ni-geria*. London: Constable, p.187.

<sup>lxii</sup> Open Society Justice Initiative (2006), ‘Transparency and silence: A survey of access to information laws and practice in 14 countries’, Open Society Institute, New York.

<sup>lxiii</sup> see for example, Mercer, C (2002) ‘NGOs, civil society and democratization: a critical review of the literature’, *Progress in development studies*, vol2/1.

<sup>lxiv</sup> *Ibid.*

<sup>lxv</sup> Fenster, M (2006) ‘The opacity of transparency’, *Iowa Law Review*, 91, p. 926.

<sup>lxvi</sup> Fung, A. M. Graham and D. Weil, (2003) *The Political Economy of Transparency What Makes Disclosure Policies Sustainable?*, John F. Kennedy School of Government Harvard University Faculty Research Working Papers Series.

<sup>lxvii</sup> A failure to address this issue is perhaps the main weakness of the FAO technical guidelines of information and knowledge sharing. This provided a useful discussion on the need for improvements to access to information in fisheries, but was devoid of concrete recommendations on how this can be achieved or whether authorities are obliged to be transparent at all.