



LDAC advice on the role of fishing agents hired by the EU fleets targeting straddling stocks and highly migratory species within the framework of SFPAs

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1. Introduction: definition of the problem and potential solutions

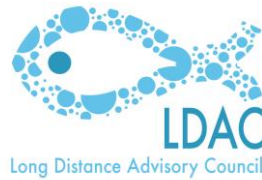
Fishing agents play a critical role in facilitating EU fleets fisheries operations in Africa. Fishing agents provide several services, from organising a license, arranging vessel inspections, recruiting crews, providing food and water supplies to vessels in port, arranging refueling, receiving and passing on information from the vessel to the authorities, etc.

Fishing agents are usually local citizens. In some countries, agents are certified and receive official authority to work. But there are countries where fishing agents are not subject to national certification, which means a person doesn't need a legal basis for acting as a fishing agent. Therefore, EU vessel operators have no way of verifying the legitimacy and legal standing of persons offering fishing agent services.

The problem presented is of special concern for those fishing operators with mobile fleets targeting straddling or widely migratory stocks, such as tropical tuna and tuna-like species or small pelagic stocks. These fleets operate far from the shore and only use agents to arrange the transit or passing within EEZ waters of the coastal States or to make some punctual entry into port. Other operators or fishing companies representing demersal or cephalopod trawling operating regularly in those waters with a reference port or entering into ports frequently have obviously a more in-depth and better knowledge and criteria to ascertain if fees and prices charged for services are in line with the administrative practices of the country and therefore are not affected by the same situation.

In view of the above, there have been serious concerns by several LDAC members about such informal arrangements which may lead to cases of misconduct, bad or abusive practices, including: the adequacy of measures in place to avoid conflicts of interests, the high levels of discretion in the setting of fees between agents and their clients and the lack of transparency regarding actual payments between agents and national authorities. Indeed, public knowledge of how much African states earn from foreign fishing is usually flawed, like the argument that foreign fishing companies get away with paying very low license fees. What is being obscured is the actual amount paid by vessels to their agents, as opposed as what is paid to the central treasury.

In this respect, it is worthwhile to indicate that the Spanish Fisheries Law for the Distant Fleet is very thorough and detailed in the pursue to ensure transparency and accountability for the payments to agents, with an obligation stated to make these payments only to designated accounts of the Public Treasure of the Third Country and via embassies or foreign permanent delegations in the country.



They act as guarantors of compliance. This is of particular importance insofar as this model has inspired the European Regulation on Sustainable Management for European External Fishing Fleets (SMEFF), currently in force, containing a number of legal obligations on reporting for European operators fishing in the EEZ of African coastal states.

Other issues include inflated costs for services like the organization of inspections on board - as there are no fee structure made public by authorities, there is no way for the operators to check they are paying a fair price. The role of agents is an area where risks of corruption and unethical business practices are high.

2. Proposal toward achieving further transparency in the use of fishing agents under SFPAs

The obligation for EU vessel to employ the services of a local agent is included as a clause in SFPAs. For example, under chapter 1 of the annex to the Protocol agreement between the EU and Mauritania, point 6, “designation of an Agent” reads: *“An EU vessel must be represented by a local agent if it intends to land or transship in a Mauritanian port and for any other obligation or practical matters resulting from this Agreement.”*

While there may be legitimate reasons to mandate the use of local agents for EU vessels targeting tuna and tuna-like or small pelagic stocks operating under SFPAs for such specific services, there is a need for the EU and partner third countries to establish what these services are and to ensure this sector is subject to reasonable professional standards. Specifically, it is recommended that, in future SFPAs protocols the text of the protocol includes further detailed information on the roles and responsibilities of agents, including the fees that agents must pay to national authorities on behalf of the industry for these specific services.

Furthermore, it is recommended that the European Commission instigates a discussion on whether it is necessary for some services, such as processing licenses and arranging for vessel inspections, to warrant the mandatory use by EU vessels of local fishing agents, whereas such services ought to be handled directly by the national authority of the coastal state using as model the Spanish system of payments through embassies or diplomatic delegations / consular representations.

In any case, the outcomes of this discussion should not restrict or impede the freedom of hiring or contracting for the fishing operators or companies and the freedom to avail of services of fishing agents of their choice whenever they fulfill the obligations and requirements of qualification established and operate in accordance to law.

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