



# Note

## Fishery Sector in the WTO and UNFCCC: Outlining a Synergetic Approach

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### Summary

This note first presents the importance of fishery sector in the EAC region, to then discussing how fishery is considered at the UNFCCC and WTO levels. Finally, it provides an analysis of the consistency of the two approaches (i.e. WTO and UNFCCC), suggesting some proposals to the negotiators in order to take into account the linkages between climate change and trade when negotiating/discussing fishery-related issues.

## Importance of fishery in the EAC region

According to the Food and Agriculture Organization (FAO), 80 percent of the world's fish stocks have either been fully exploited, or over exploited, and yet fish remains critical for people's dietary needs.<sup>1</sup> Fishery activities are also an important source of employment for millions of people providing economic security by generating incomes.<sup>2</sup>

Fishery in EAC plays an important role in people's livelihood. In this region there are two types of access to fish resources: inland fishery resources (all EAC countries benefit from this) and marine fishery resources (accessible only to Tanzania and Kenya).<sup>3</sup> Although the fisheries sector does not represent a major part of on EAC countries' GDP, it is an important source of livelihood and employment in the region. In Tanzania, more than four million people are directly and indirectly employed by the sector including, boat builders and fish processors. It contributes up to 2.4% of the Tanzania's GDP.<sup>4</sup> Fishing is one of the major economic activities in Uganda. Lakes, rivers and swamps account for 44,000 km<sup>2</sup> of Uganda's surface area of 241,000 km<sup>2</sup>. The sector employs over 700000 people.<sup>5</sup> Rwanda is currently by far a net importer of fish from neighbouring Uganda and Tanzania. However, Rwanda's fisheries and aquaculture sectors provide

about 200,000 jobs (both direct and downstream jobs).<sup>6</sup> In 2013, Kenya's fisheries and aquaculture sector contribute to approximately 0.54 percent of the country's GDP.<sup>7</sup> The value of fish exports from Kenya was about USD 62.9 million in 2012, which is almost 5 times greater than the USD 12.3 million in fish imports in the same year.<sup>8</sup> Fisheries in Burundi contribute to only an estimated 1% of the country's GDP created by agricultural sector and 0.5% to its total GDP. Although these figures suggest that the fisheries sector plays a minor role in the national economy, its significance as a source of food, particularly along the Tanganyika lakeshore, and as a source of employment is very substantial.<sup>9</sup>

### Impact of Climate Change

Climate change generates different modifications in the marine environment with regard to temperature, water stratification, ocean currents, and PH levels.<sup>10</sup> Empirical and theoretical studies show that the distribution of fish and invertebrates resources tend to shift according to the climate fluctuations- usually moving towards the direction of higher latitudes and deeper waters.<sup>11</sup> Observed and projected rates predict a shift of 30-130 km/decade towards the poles and 3.5m/decade to deeper waters.<sup>12</sup>

The 2008-2011 drought led to reduced inflow into and high evaporation from lakes and reservoirs, particularly Lake Victoria, which in turn reduced breeding and fishing grounds, and led to declines in

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<sup>1</sup> MUKIBI, J. (2017). "Addressing Fisheries Subsidies: A Quest for Sustainable Fisheries Production". Geneva. CUTS International Geneva.

<sup>2</sup> Ibid

<sup>3</sup> EBRAHIMI DARSINOUEI, A. Govea, L. (2017). "The wto negotiations on fisheries subsidies", Geneva, CUTS International Geneva.

<sup>4</sup> The Tanzanian Fisheries Sector: Challenges and opportunities (2016). Ministry of agriculture, livestock and fisheries, Tanzania.

<sup>5</sup> The Fishing Cluster in Uganda, Final Report for Microeconomics of Competitiveness (2010). Harvard kennedy school.

<sup>6</sup> <http://rab.gov.rw/animal-resources-department/fisheries/>

<sup>7</sup> <http://www.fao.org/fishery/facp/KEN/en>

<sup>8</sup> Ibid

<sup>9</sup> <http://www.fao.org/fi/oldsite/FCP/en/BDI/profile.htm>

<sup>10</sup> Trade And Environment Review (2016), Fisheries and Climate Change, UNCTAD.

<sup>11</sup> Ibid

<sup>12</sup> Ibid

fish stocks.<sup>13</sup> Climate change impacts, including increases in sea surface temperature, sea level rise and coastal erosion, are likely to put additional pressure on coastal economies, communities and ecosystems. It is estimated that an area of 4-6 km<sup>2</sup> in Mombasa is likely to be submerged with a rise in sea level of only 0.3 meters.<sup>14</sup>

Another example of climate impacts on fish trade is that a projected sea-level rise in Tanzania of 70 centimetres by 2070 could devastate the port city of “Dar es Salaam”, a major player in East Africa trade and in many ways a “life line” for Tanzania as well as adjacent countries.<sup>15</sup>

### Impact of Fisheries Subsidies

Another challenging issue for the EAC region is the fisheries subsidies of foreign countries provided to their fishing industry. Fishing subsidies are estimated to be as high as \$35 billion worldwide, of which \$20 billion directly contributes to overfishing.<sup>16</sup> Subsidies that reduce the cost of fishery operations and those that enhance revenues make fishing enterprises more profitable than they would otherwise be. This results directly or indirectly in the build-up of excessive fishing capacity, leading to the overexploitation of fishery resources. This would undermine the sustainability of marine resources and the livelihoods that depend on them.<sup>17</sup> Unsustainable fishing practices such as overfishing, and illegal, unreported and unregulated (IUU) fishing by other countries have dramatically reduced the size of fish resources in the region, especially in the deep waters off the coast of Kenya

and Tanzania. Subsidies for IUU fishing from other countries to their fishing vessels in EEZs of those two EAC countries is also an important issue as the governments would lose their revenues in forms of fishing licenses, taxes and other fees.

## Fishery-related considerations in the UNFCCC

Fisheries is not explicitly addressed in UNFCCC agreements, but is indirectly and directly discussed and concerned by UNFCCC actions and discussions. The “ultimate objective” of the UNFCCC is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>18</sup> Indeed the global warming is the most related effect of climate change.

According to simulations from computer models, the fishing industry would strongly benefit from meeting the Paris Agreement target<sup>19</sup>, which is to hold the global average temperature increase below 2 degree centigrade and try to limit the temperature increase below 1.5 degree centigrade above the pre-industrial level. In this regard, fishing catches in the tropical Pacific Ocean would shrink by 12 percent if the 1.5 degree rise in temperature is met, while a 3.5 degree increase would lead to a reduction of 47 percent. The benefits for vulnerable tropical countries are therefore a strong support for the 1.5°

<sup>13</sup> Kenya National Adaptation Plan 2015-2030, Enhanced climate resilience towards the attainment of Vision 2030 and beyond, Ministry of Environment and Natural Resources, July 2016.

<sup>14</sup> Ibid,

<sup>15</sup><http://unctad.org/en/pages/SGStatementDetails.aspx?OriginalVersionID=177>

<sup>16</sup> <http://unctad.org/en/Pages/DITC/Trade-and-Environment/Regulating-Fisheries-Susidies.aspx>

<sup>17</sup> Global fisheries subsidies, European Parliament, 2013.

<sup>18</sup> Trade and climate change, WTO-UNEP report (2009).

<sup>19</sup> <https://www.valuewalk.com/2017/01/food-jobs-fish-hinge-paris-agreement/>

C goal.<sup>20</sup>

The Paris Agreement requires all Parties to put forward their best efforts through “nationally determined contributions” (NDCs) and to strengthen these efforts in the years ahead. This includes requirements that all Parties report regularly on their emissions and on their implementation efforts.<sup>21</sup> EAC countries have taken some measures in their NDCs to protect and preserve their fish stocks and marine environment against adverse effects of the climate change. Kenya plans to enhance the resilience of the agriculture, livestock and fisheries value chains by promoting climate smart agriculture and livestock development.<sup>22</sup> Burundi provides that they need technical and technology transfers to develop the exploitation of fishing resources while conserving resources.<sup>23</sup> Tanzania intends to strengthen management of coastal resources and beach erosion/sea level rise control systems, promote livelihood diversification for coastal communities, improve monitoring and early warning systems of both sea level rise impacts and extreme weather events for building adaptive capacity, enhancing conservation & fishery resource management, strengthen key fisheries management services for sound development and management of the fishery sector for resilience creation.<sup>24</sup>

### **Environmental and Economic Aspects of Fisheries at the UNFCCC**

Fish remains among the most traded food commodities worldwide. In 2013 the total value of fishery exports reached 57.9 million metric tons. The UNFCCC by its text considers both

environmental and economic aspects of climate change, even if there is at this stage no clear mention of fishery. *Article 4(1)(f) of UNFCCC takes climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.* Economic considerations are more obvious in Paris Agreement as well. Article 4.15 of the agreement provides that “*Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.*”

### **The Possible Trade Impacts of the Implementation of Fishery-Related Outputs of the UNFCCC**

Under the UNFCCC, parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.<sup>25</sup> These measures are mentioned in member parties’ NDCs. Reducing overfishing and excess capacity, implementing the ecosystem approach to fisheries and aquaculture management, establishing natural resource co-management regimes with community groups and using more fuel efficient boats, can be relevant measures to minimize the adverse effects of climate change on fishery and fish stocks. Overall, implementing the

<sup>20</sup> <https://www.valuewalk.com/2017/01/food-jobs-fish-hinge-paris-agreement/>

<sup>21</sup> [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php)

<sup>22</sup> Kenya’s INDC, July 2015.

<sup>23</sup> Burundi’s INDC, September 2015.

<sup>24</sup> Tanzania’ INDC,

<sup>25</sup> UNFCCC convention, article 3.3

measures under the auspices of the UNFCCC and Paris Agreement, could lead to better the oceans' status of temperature, salinity and acidification and lessen the impacts on fish reproduction and more available fish to catch and, Thus improve the current status of the fish trade.

In EAC region, implementing NDCs will not only alleviate the negative impact of climate change, it will also create other trade-related opportunities such as improving energy security, increased market opportunities, creating (green) jobs, allowing technology transfer, leading to cost saving from reduced fossil fuel imports, etc. This will contribute to the overall economic growth and sustainable economic development of the region.<sup>26</sup>

## The WTO and the Fishery Sector

Governments around the world continue to provide billions of dollars in subsidies to the fisheries sector. The Doha Ministerial Conference launched negotiations to clarify and improve WTO disciplines on fisheries subsidies. In the Hong Kong Ministerial Conference in 2005, there was broad agreement on strengthening those disciplines, including through a prohibition of certain forms of fishery subsidies that contribute to overcapacity and overfishing.<sup>27</sup> There have been several meetings at the WTO in which members engaged in detailed discussions on different proposals aimed at achieving an outcome on fishery subsidies at the WTO's upcoming Ministerial Conference in Buenos

Aires in December 2017.

WTO members on July 18, 2017 agreed to move to the next phase of negotiations on this issue after a surge of new and revised proposals aimed at reaching a decision by December. Members assented to the preparation of a document compiling the proposals in the form of a matrix, which was intended to help members firm up positions over the summer, ahead of intensive September negotiations.<sup>28</sup>

The compilation matrix reflects seven proposals submitted by a number of members including, New Zealand, Iceland, Pakistan, the European Union (EU), Indonesia, the African, Caribbean, Pacific (ACP) Group of States, a Latin American group composed of Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay, the LDC Group, and Norway.<sup>29</sup> Almost all proposals seek to achieve the 2020 targets set out in the United Nations' Sustainable Development Goals (SDGs). SDG Target 14.6 calls for prohibiting certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminating subsidies that contribute to IUU fishing, and refraining from introducing new such subsidies, by 2020. It also recognizes that appropriate and effective special and differential treatment for developing and LDCs should be an integral part of the WTO fisheries subsidies negotiations.<sup>30</sup> In all proposals, there is general acknowledgement that subsidies that contribute to IUU, overcapacity and overfishing should be eliminated.<sup>31</sup>

<sup>26</sup> KATUSHABE W. Taking Stock of INDCs: Potential Trade Impacts for East Africa, September 2016, Cuts International Geneva.

<sup>27</sup>[https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_intro\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_intro_e.htm)

<sup>28</sup>[https://www.wto.org/english/news\\_e/news17\\_e/fish\\_20jul17\\_e.htm](https://www.wto.org/english/news_e/news17_e/fish_20jul17_e.htm)

<sup>29</sup> Ibid

<sup>30</sup><https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>

<sup>31</sup>[https://www.wto.org/english/news\\_e/news17\\_e/fish\\_24jan17\\_e.htm](https://www.wto.org/english/news_e/news17_e/fish_24jan17_e.htm)

New Zealand, Iceland and Pakistan, proposed to prohibit subsidies to fishing activities where stocks are not assessed or are assessed as being overfished; and subsidies provided for fishing activities on the high seas and in the waters of another Member.<sup>32</sup>

The EU proposal seeks to prohibit subsidies linked to overcapacity (including those used to increase the capacity of, or support the construction of, fishing vessels) and to IUU fishing, provides special and differential treatment for developing members and LDCs, and highlights the importance of members notifying all kind of subsidies that support, directly or indirectly, marine fishing activity. In addition to the subsidies prohibited, the Parties shall not grant or maintain any subsidies for fishing outside the territorial sea that negatively affect targeted fish stocks that are in an overfished condition.<sup>33</sup>

The joint proposal from Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay provides that developing countries and LDCs could apply transition periods (to be defined through negotiations) for implementing the specific disciplines to be established, in some cases subject to the receipt of technical assistance and support for capacity building. Also the fishing activities which are inconsistent with State responsibilities for the conservation of living marine resources under international law should be considered as “Unregulated fishing” and thus the related subsidies should be prohibited.<sup>34</sup> The LDC group, in addition to prohibiting IUU subsidies, proposed a transition period for LDCs as well. Indonesia proposed that developing country members shall be allowed to grant or maintain fisheries subsidies to their artisanal fisheries activities.<sup>35</sup> In fact, not all subsidies

should be prohibited. For instance the subsidies for adoption of techniques aimed at reducing the environmental impact of wild marine capture or compliance with fisheries management regimes are **not prohibited in LDCs’ proposal**. They acknowledged the legitimacy of the subsidies for preservation and protection of the fisheries resources.

Although in WTO negotiations, because of the nature of this organization, the economic impacts of fisheries subsidies and overcapacity fishing dominate, any decision on fisheries subsidies would directly affect the sustainability of marine resources and ecosystems (i.e. the environment). While Members mainly discuss and address issues such as poverty reduction, food security, IUU and overcapacity fishing alongside the SDGs, some members addressed the environmental aspects of the fisheries subsidies (as demonstrated above while **summing up the LDCs’ proposal**). The proposal from Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay, also recognizes the obligation to prevent harmful impacts of certain fisheries subsidies on sustainability of marine resources.

### **Climate impacts of the implementation of fishery related outputs of WTO**

Prohibiting the fisheries subsidies for the overcapacity and IUU fishing with WTO negotiations, would led to reverse the current decline in fish stocks. An annual 5 percent decrease in global fishing effort for a period of 10 years would allow global stocks to recover quickly to the optimal level within 30 years. However such an adjustment would impact greatly on stakeholders in the fishing

<sup>32</sup> TN/RL/GEN186.

<sup>33</sup>[https://www.wto.org/english/news\\_e/news16\\_e/fish\\_09dec16\\_e.htm](https://www.wto.org/english/news_e/news16_e/fish_09dec16_e.htm)

<sup>34</sup> Ibid

<sup>35</sup> Ibid

industry, and are quite costly to implement.<sup>36</sup>

Trade measures can enhance access to efficient and environmentally environmentally-friendly technologies. New techniques and technologies could make a positive impact to climate change in a way that the production of goods and services generates less greenhouse gas emissions. By increasing the availability of goods, services and technologies that are likely to be important in improving energy efficiency, trade can help to meet the challenge of global warming. New techniques and technologies could be used to decrease the unwanted effects on fish such as new techniques to catch tunas without killing dolphins for instance. These kinds of techniques could lead to better management of marine resources.

## Consistency of WTO and UNFCCC Approaches

The interlinkage between climate change and trade have been demonstrated by many different organizations and cannot be questioned anymore. Climate change has a physical effect on trade in terms of patterns and volume.

Earlier declarations, echoing the chapeau of the GATT Article XX, explicitly acknowledged that measures taken to combat climate changes should not distort international trade and Article 3.5 of the UNFCCC states that Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.<sup>37</sup> On fisheries subsidies negotiations in WTO, proposals are mainly addressing the adverse impacts of the fisheries

subsidies on trade and livelihood of the people rather than pure environmental consideration. However many proposals, including the proposals from ACP group and LDCs which EAC countries belong to, declared that the subsidies for research and development and sustainability of stocks, the adoption of techniques or technologies aimed at reducing the environmental impact of wild marine capture (such as turtle excluder devices), subsidies for improving compliance with fisheries management regimes aimed at sustainable use and conservation (such as devices for vessel monitoring systems), and subsidies for increasing resilience or reducing vulnerability to climate change should be excluded from the prohibited subsidies. Such non-prohibited subsidies could in a way help countries in protecting their marine environment. Allowing such fishery subsidies in mentioned proposals, show that (many) members of the WTO, are aware of the adverse impacts of the climate change on the marine environment. Implementing the proposed WTO measures and non-prohibited subsidies, which would lead to sustainability and conservation of the marine environment and fish stock, could hence be also considered as a part of member parties' obligations under the UNFCCC. Either under article 4 of UNFCCC treaty, where parties have obligation *to Take climate change considerations into account in their relevant social, economic and environmental policies and actions, and employ appropriate methods*, or when revising their NDCs.

UNFCCC parties could benefit from both prohibited and not prohibited subsidies in WTO negotiations to the purpose of protection, management and conservation of their marine environment (including fish stock), in their objective of mitigating and adapting to the adverse

<sup>36</sup> Supra note 1.

<sup>37</sup> Ibid.

impacts of climate change.

Both the proposals in WTO and EAC climate change policy explicitly show that EAC has become aware of the importance of protecting the marine environment and inland waters and preserving fish stocks. EAC countries need technical assistance from developed countries in order to fulfil their obligations under the UNFCCC and Paris Agreement. They also need those technical assistance to combat and monitor IUU fishing in their EEZs.<sup>38</sup>

### **The role of RFMOs**

Regional Fisheries Management Organizations (RFMOs) are intergovernmental fisheries organizations or arrangements that have the authority to establish fisheries conservation and management measures on the high seas. RFMOs play a critical role in the global system of fisheries governance. They are the primary way to achieve cooperation between and among fishing nations that is essential for the conservation and effective management of international fisheries. The essential purpose of an RFMO, therefore, is to provide an effective forum for international cooperation in order to enable States to agree on conservation and management measures for those fisheries. RFMOs exist in the majority of high seas areas that have major deep-sea fisheries. They are usually tasked with collecting fisheries statistics, assessing resources, making management decisions and monitoring activities. RFMOs play a pivotal role in facilitating intergovernmental cooperation in fisheries management. With recently strengthened mandates, most RFMOs now have the power to

manage according to an ecosystem approach to fisheries. However, management is often complicated by deficient or unavailable data and inadequate systems of administration.<sup>39</sup>

Currently, quite a number of countries, most of whom are also part of the WTO and UNFCCC – such as EAC members, have joined various RFMOs, and voluntarily report to the RFMOs their fishing activities such as amounts of catch of specific stock, fishery condition, and condition of fish stocks. Then, the RFMOs analyse conditions of various fishery resources, based on the data voluntarily provided, and try to conserve fishery resources at risk. Even when members have over-caught or failed to implement the agreement adopted at the RFMOs, they would still report truthfully, because they understand that the purpose of their reports is to ensure proper monitoring required for the conservation of fishery resources.<sup>40</sup> Lake Victoria Fisheries Organization (LVFO) is a specialized Institution of EAC with the mandate to coordinate the management of the fisheries resources of Lake Victoria for sustainable development.<sup>41</sup> Kenya is also a Member of the Committee for Inland Fisheries of Africa (CIFA), a founding Member of Aquaculture Network for Africa (ANAF), a Member of the FAO Indian Ocean Tuna Commission (IOTC) and a Member of the FAO South West Indian Ocean Commission for Fisheries (SWIOFC).<sup>42</sup>

RFMOs, in some proposals on fisheries subsidies negotiations, have the duty of determining the IUU fishing activities and overfished fish stocks, but members are not bound by the measures or decisions the RFMOs which they are not a party to. In some cases, as with IUU fishing, trade restrictions

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<sup>38</sup> TN/RL/GEN/193.

<sup>39</sup> <http://www.fao.org/fishery/topic/166304/en>

<sup>40</sup> Y.Cho (2015), Revisiting WTO Fisheries Subsidies Negotiations, Beijing Law Review

<sup>41</sup> <http://www.fao.org/fishery/rfb/lvfo/en#Org-OrgsInvolved>

<sup>42</sup> <http://www.fao.org/fishery/facp/KEN/en>



can be the only way to regulate environmentally problematic practices. At the same time, such measures can also be discriminatory between countries, and particularly be detrimental to developing countries and LDCs with limited capacity to manage and document fish stocks,<sup>43</sup> and also could be in conflict with a wide range of WTO rules, including sanitary and phytosanitary (SPS) measures, anti-dumping, subsidies and countervailing measures, and technical barriers to trade and rules of origin.<sup>44</sup>

Establishing a common legal framework to protect marine environment and fish stock, prohibiting the fishing subsidies related to IUU and overcapacity fishing and providing technical assistance to RFMOs, under WTO and/or UNFCCC, could help them to better (and sustainably) manage the fish resources.

## Recommendations to negotiators

Protection and sustainability of oceans and marine resources are vital for fishery related activities, and human livelihood. Going to UNFCCC COP 23 and WTO MC11 negotiations, following ways forward could be helpful in ensuring the linkages between

climate change and trade are taking into account when dealing with fishery:

- In COP23 and when implementing Paris Agreement, the special needs of LDCs and developing countries and providing technical assistance to them, should be considered as one of the main issues to be defended in negotiations by EAC members and AGN.
- In MC11, members should work towards an agreement on the issues on which all of them are more or less on the same page, such as IUU and overcapacity fishing (at least in the EEZs of members).
- In both COP23 and MC11, when negotiating fishery related outcomes, members consider the effects of fisheries subsidies on both climate and trade, their impacts on marine resources, fish stock and food security simultaneously.
- Negotiate to ensure necessary technical assistance to LDCs and developing countries to monitor and detain vessels involved in IUU and overcapacity fishing in their EEZs.
- Negotiate to provide technical assistance to RFMOs', to improve their role and performance in conservation and management of fishery resources.

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<sup>43</sup> [https://www.wto.org/english/res\\_e/reser\\_e/ersd201003\\_e.htm](https://www.wto.org/english/res_e/reser_e/ersd201003_e.htm)

<sup>44</sup> Ibid.

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