

Terms of Reference - Scramble for Fish

Section A. 1. Project Background.

Introduction

Around half the world's EEZs are subject to some form of foreign fishing arrangements (FFA) providing access to the fish resources of developing countries for fleets from developed and middle income countries. Some types of FFA, particularly *access agreements*, can account 50% of public revenues in some African and small island countries. FFA are primarily established for export¹, but can also support local and regional markets.

While FFA can bring substantial short to medium-term benefits to developing countries, the ways FFA are negotiated and the institutional arrangements under which they are managed, may be prejudicial to long-term resource sustainability. For some time, FFA have been associated with low transparency, inequitable benefit sharing, conflict with small-scale fisheries, and contributing to resource depletion. They are often further criticized because some FFA benefit from cost-reducing subsidies provided by the flag states.

The **Scramble for Fish** program sets out to explore this perception as a hypothesis. Its principle aim is to assist developing countries in identifying the means to secure equitable and sustainable returns from FFA, particularly ensuring that effective national management systems underpin FFA. Further, it will encourage flag states to adopt more responsible policies and practices with regard to the 'behavior' and activities of their fleets.

Summary of FFA issues

Being generally large in scale and long in duration, many FFA can radically shape a developing country's fishery economy. For example, they can have far reaching impacts on development of a domestic fishing industry; they can influence the effectiveness of small-scale fishing where stocks are shared; and they can have a major impact on domestic markets for fish. The negotiation and monitoring of subsequent performance FFA, in terms of their capacity to deliver sustainable, equitable and effective outcomes, presents a considerable policy challenge for developing countries. This is especially so where the latter have a long tradition in fishing (such as in many West African and Pacific Island nations). For these countries, a first and more fundamental challenge, is enabling policies to optimize and sustain the economic benefits available from their fisheries. FFA may then be able to help deliver these policy objectives (e.g. offshore tuna which is currently unexploited by national fleets, may be exploited by contracting in foreign tuna capacity), rather than working against them.

Unfortunately, however, the reality in many developing countries is that FFA are often concluded under circumstances where fisheries management arrangements in the coastal state are **insufficiently**

¹ e.g. EU agreements are implemented under the Common Fisheries Policy which aims to utilize existing EU harvesting and processing capacity to secure fish supplies for EU markets (CHECK)

developed, and where open access commons issues continue to provide perverse incentives to race for fish, contributing to a generalized decline in fish stocks. Many developing country fisheries both small-scale and large are experiencing decreasing year on year declines in productivity. In this regard, FFA may add substantially to the total fishing capacity or catching power in a fishery with negative long-term impacts on the sustainability of stocks, and the capture and distribution of benefits from the fishery.

Existing FFA governance arrangements may be characterized by poor flag state control, weak property rights in host countries together with a significant dissipation of wealth (rent). Distortions may be created by parallel arrangements covering trade, investment, development policy.

Links to Existing Bank effort

The work has direct links to Bank activities with respect to supporting the role of developing countries in ensuring fisheries can better contribute to macroeconomic policy related to growth, poverty reduction and future food production, balancing national or regional needs with the opportunities to generate revenues from lucrative export markets. The project is relevant to much of the Bank's existing and prospective fisheries and oceans portfolio. For example, it will inform part of the broader 'Political Economy of Fisheries Reform' project and will link directly to governance component of NEPAD's Partnership for African Fisheries. It also responds to demand expressed through existing and pipeline Bank operations in West and East Africa, Indian Ocean, the South Pacific as well as from blocks of developing countries (ACP Fisheries Ministers and Conference for African Ministers on Fisheries and Aquaculture).

Shared responsibilities with other organizations

Proposals may suggest specific partnership arrangements as appropriate. However, it is expected that the project will involve research partners from West Africa, Europe, China and the Pacific.

Relevant Studies and Basic Data

A literature review is one of the proposed first steps in the Project. This will focus on FFA from the perspective of the governance and the institutional contexts that underpin effective fisheries at all scales

Annex 1 provides a provisional list of the recent relevant literature and weblinks. This includes many detailed analyses and evaluations of fisheries access agreements and other types of FFA.

Section A. 2. Project's Objectives.

The overall objective of the project is to provide guidance both to developing countries hosting FFA and to relevant flag states, on the need to ensure that effective and responsible governance and resource management underpin FFA arrangements, enabling them to deliver mutual and sustainable benefits. Such benefits may be defined in terms of wealth creation and distribution, environmental conservation, welfare and securing future food supplies. It will examine the particular risk to host developing countries of ignoring this need, and will review relevant empirical evidence on international best practice with

regard to FFA. It will analyze host country fiscal policy and public sector accounting processes regarding identifying, capturing and sustaining revenue and wealth from fisheries, including through FFA.

In its broadest sense, therefore, the project aims to produce a **global public good** with potential for direct application at global, regional, country and corporate levels.

A number of knowledge products will be produced. Guidelines and codes based on best practice will set out mutual roles and responsibilities of stakeholders. Use of guidelines and codes is expected to generate a range of benefits to both parties to FFA, but particularly to developing countries.

The work will directly support efforts by the Bank, other donors and investment interests, particularly in the case study countries, to ensure effective fisheries governance and management is prioritized at all levels of operation from small-scale through to industrial fishing.

The work is also expected to strengthen the key role of fisheries governance within Country Assistance Strategies (CAS). Core aspirations within CAS and PRSP, already emphasize the economic and social value of fisheries, the importance of improved sectoral governance, the need to address malpractice, and to empower local communities to play a central role in assessing, monitoring and benefiting from natural resources. Additionally, it will be important to consider demand-side governance issues relating to small scale fisheries issues, and specifically regarding guidance on how small scale fisheries and fishing communities can be provided with opportunities to engage and provide input on FFAs whilst also assuming responsibility themselves for sustainable marine resource management .

The following specific outputs are proposed:

- An analytical review supported by empirical case work to model actual and potential cost and benefit flows associated with FFA;
- Guidelines / best practice for FFA in developing country fisheries.

In particular the above guidelines will address FFA in the context of the interests of small scale fisheries and fishing communities in developing countries, providing supporting recommendations on how to build awareness and legal literacy on FFAs amongst fishing communities².

Section B. Rationale and Scope.

Rationale. Although some FFA are responsible and equitable, others may be less so. They may act to deplete fish resources which sustain local economies including small-scale fishing communities, and can sometimes be characterized as fomenting an ‘offshore economy’ over which neither the flag state of the vessel, nor the coastal state where the vessel operates, has proper control. FFA are in some circumstances associated with illegal, unreported and unregulated fishing activity. In many cases it is difficult to account for concession revenues, while the costs of compliance enforcement can be beyond the capacity and resources of developing countries.

² Some work has already begun under this heading. The Bank will forward relevant information on request.

Several emerging trends and concerns combine to provide the rationale to address the roles and responsibilities of various parties in FFA. These include:

- The concern expressed by developing countries to the World Bank and through other fora with respect to their ability to control and derive sustainable, optimal and equitable returns from FFA in their EEZs and as a result of investments in fish processing or handling;
- The desire of industry leaders, including producers and buyers, to develop and apply codes of corporate social responsibility with respect to trade, sustainable sourcing, and the social and environmental dimensions of production;
- The concerns of states to demonstrate and internalize best practice / responsible practice into agreements with developing countries that involve natural resources extraction, and the reputational risk of failing to do so;
- The growing international concern with regard to food security in general, and on emerging trends for large-scale foreign investment in developing country assets with the objective of ensuring food supplies for developed food deficit countries;
- The recognition by all stakeholders that improved governance is a key to sustainable fisheries and that collaboration between public and private actors is essential for success. FFA the respective roles and responsibilities of coastal, flag and market states, fishers, companies and investors require codes of best practice around which stakeholders can develop consensus and joint action;
- The recognition that greater coherence between fisheries related policies on trade, foreign investment and economic growth and development is desirable both for developed and developing countries;
- The emergence of political will and development of transparency and public accountability tools;
- The need to integrate and provide opportunities for small scale community fisher communities to have input into policy decisions on FFA negotiations and management.

Scope. The project addresses the governance of internationally mobile resources, namely fish stocks and fishing fleets. FFA are defined in the context of these Terms of Reference as the range of public and private relationships which underpin fishing and fish production by foreign vessels, or companies in the waters under the jurisdiction of developing coastal states. The targets for this work are primarily the arrangements pertaining to capture fisheries. However, arrangements for aquaculture activities and fish processing are not excluded. '*Fisheries agreements*' (or '*access agreements*') refer to FFA, whether public or private, whereby a foreign entity gains a commercial right to fish in the EEZ of the host state (for example, the EU's Fisheries Partnership Agreements, or FPA). '*Fisheries investments*', however, refer to foreign private investment through say joint ventures, by registering as a company, through agencies, or by establishing a commercial undertaking. In some cases there may be negligible direct foreign investment involved. In practice, however, investments and access agreements are seen as a continuum of FFA. For example, charter agreements may require some coastal state investment, whereas the majority of the investment capital (fishing vessels) remains offshore. Similarly, access agreements may be linked to coastal state landings, or investments in shore facilities.

Although FFA are generally associated with larger-scale fisheries, the project recognizes that the small-scale fisheries 'subsector' may be directly and indirectly affected by FFA. Project target countries especially in West Africa, have a large and active small-scale fisheries which often operate alongside

(and sometime conflict with) FFA, especially when agreements are poorly conceived and/or not enforced. They often compete for resources (such as shrimp and demersal fish) with larger scale fishing operations which may trespass in in-shore zones reserved for small-scale fishers. The project will identify mutually reinforcing links related to fisheries governance respective to large / medium-scale and small-scale fisheries. Addressing the continuum from large to small recognizes the need for governance reform to consider the impacts more holistically, on all subsectors.

Suggested Approach. The analytical methodology will involve modeling and case study analyses of FFA to identify implications for the derived economic benefits to both partners in the agreement i.e. the costs and benefits accruing both to the host developing country and to the foreign partner. Potential for improvements and/or alternative arrangements will be examined.

The approach will also consider best practice. This will draw lessons from states (developed or developing) that have at some time implemented FFA which have since transitioned to alternative arrangements, or from states which currently enjoy effective FFA (generally through private sector investment combined with effective governance and regulatory contexts) which appear to generate mutual and sustained benefits to all parties.

The above will provide the framework to inform improved FFA governance and best practice reform.

Given the complexity of FFA, it is suggested that the scope of case and conceptual analytical work will be limited to countries in West Africa and Pacific. Distant water fishing nations would include China and the EU, although modeling principles might be applicable across the board. The exception is where best practice (or a historical transition towards best practice) has involved states and fleets other than these.

As noted above, the project will engage in how demand-side governance based within small-scale communities can better engage on, and influence, policies and practices on FFA. Best practice cases on this are sought.

It is expected that the consultants will confer with officials and representatives from flag states, host states, industry representation, and small-scale fisheries' representatives, as appropriate. It is suggested that the consulting work will be divided into three main phases:

- I. Project Inception
- II. Analytical and Case Work
- III. Drafting ESW; Public Event to present Findings.

Phase 1: Project Inception (suggested 6 weeks).

An international workshop will be convened to clarify, inter alia, partnership arrangements, methodologies to be adopted, and a clearly defined work plan and budget. In particular, the workshop is expected to enable scene setting for the economic modeling and case work and define associated task allocation to partners. This will establish scenarios to underpin the development of models and conceptual analyses; identify potential case study client countries/fisheries; define consistent case study

templates for the case reviewers; and develop an approach to be followed in addressing small-scale fisheries demand-side issues in the project.

The workshop will be informed by the literature review on FFA (grey and published) identifying information gaps relevant to the Project objective, and priority information needs that will inform the modeling and case work and to ensure sufficient rigor for the final outputs. Of relevance to this review will be information on drivers behind FFA, and data on their existing impacts, including cost and benefit sharing between the parties to agreements. As noted above, benefits are broadly defined in terms of wealth creation and distribution, environmental conservation, welfare and food supply.

Phase 2: Analytical and Case Work (suggested 10 months).

Integrated modeling and case study analyses is thought to be an effective way forward in developing knowledge relevant to the scale and nature of the gains or losses in economic benefits to developing countries, the reasons for these, priority reform measures to ensure equity, and potential entry points for WB (and other) interventions. These may not only be specific to fisheries per se, but also address core public policy issues such as resource allocation and tenure, fiscal policy, legal constraints, anti-corruption measures, and demand-side governance for natural resources management.

Given the expectation that the modeling and conceptual analytical work will inform much of the country case analyses, these activities will need to be effectively sequenced.

A modeling process will be defined to examine the implications for sustainable and productive fisheries, of different FFA under a range of management scenarios in different countries. Modeling would, for example, compare outcomes from FFA promulgated under open access regimes, to FFA within effectively managed fisheries with enforceable rights. Where possible, associated case work may generate empirical information to support the modeling.

Where appropriate, modeling will also take account of scenarios that embrace outcomes in small-scale fisheries, especially where community rights-based management (based on forms of enforceable rights such as TURFs or community corporate/cooperative mechanisms and structures) is considered as part of an overall management solution in the context of FFA governance and reform.

The project case studies are not expected to provide a quantitative inventory of FFA, rather they will complement modeling effort (as noted) and help develop a taxonomy of these arrangements. It is recognized that achieving effective outputs from case work is likely to be hampered by difficulties in securing reliable information relevant to the true nature of the benefits accruing, their range in the value, their distribution, etc.

Case studies may also document impacts of FFA on small-scale fisheries and efforts by these to mitigate conflict or benefit losses through leveraging reforms in the way their local fisheries are managed.

Case work will also include selected countries (or regions/fisheries) which have demonstrably successfully transitioned from open access for foreign vessels through to national control (linking this to UNCLOS obligations).

Given that FFA, particularly access agreements, are often integrated into broad, intersectoral deals and trade-offs, and may also be indistinguishable from ODA, it is recognized that these analyses will be challenging.

Toward the end of this phase a **final workshop** would be convened to discuss a draft report (milestone during 2012).

Phase 3: Drafting the ESW and publicity (suggested 1 month; report / event / ESW by Autumn 2012).

Based on the final workshop and wider consultation (if deemed appropriate) the consultants will develop a final report as a draft project **Economic Sector Work**, which will annex the required knowledge products (guidelines, codes of best practice and other elements).

An additional **Synthesis Paper** will be produced together with at least one 'glossy' **Policy Brief**, and at least one short brochure targeted to small scale fisheries representatives and communities. The Synthesis and Policy Brief/s would be prepared in final format for dissemination at a (suggested) World Bank publicity event.

The outputs will have a diverse target audience both in developing and developed countries and in the international community. The developing country audience includes national fisheries and finance authorities, the private sector, NGOs, and small scale fisheries' representatives. The developed country audience includes national fisheries authorities, bodies that regulate the activities of national investors outside of their country of citizenship (or incorporation and organizations of parliamentarians), community sciences organizations working on coastal and marine issues, and international NGOs supporting fisheries issues in the developing world.

The specific targets are developing country fisheries and finance ministries, executive directors of developing country/ developed country fisheries joint venture companies, developed country agencies dealing with control of foreign fishing and responsible foreign investment and organizations focused on corporate social responsibility.

WBG audience includes the IFC and units and TTLs concerned with natural resource extraction and allocation issues (e.g. EITI) and the linkages between food security and trade.

Section C.

a) Description of Deliverables.

Consultants' should ensure output deliverables are clearly defined and that these correspond to the needs of the scope and activities listed in Section B above.

Further documentation will be needed, including Inception report and half-year progress report.

Deliverables will be associated and measured against major milestones.

b) Delivery Criteria and Schedule. Proposals must specify dates and criteria for each deliverable associated with defined tasks. This must be articulated in a clear and concise manner with little room for misinterpretation.

Section D. Specific Inputs to be provided by the Client.

The World Bank will consider funding and hosting the final event, will fund downstream dissemination activities and will cover production costs pertaining to the final documentation. The Baan may also contribute towards the Inception workshop and will ensure effective liaison with the Demand-Side Governance activities.

The World Bank will ensure the findings and recommendations of any existing work undertaken under the Scramble for Fish project, and the associated Demand-side Governance activities will be made available to the Consultants as part of this tender. This information will clarify remaining obligations on behalf of the Bank and to be assumed by the consultant.

Annex 1

Indicative Relevant Literature

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