

# Fishing the Boundaries of Law

## How the Exclusivity Clause in EU Fisheries Agreements was Undermined

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### Executive Summary

The European Union (EU) recently agreed on a reform of the legal framework for its external fleet that fishes outside of EU waters. EU vessels fish in third-country waters under different arrangements; one such arrangement is the official EU-funded bilateral agreements—termed (Sustainable) Fisheries Partnership Agreements or (S)FPAs—that allow EU vessels to fish for surplus stocks in the coastal State’s waters. However, under the previous governing framework, there was a catch: EU vessels could also fish in foreign waters under private agreements without EU oversight or standards, while enjoying the same EU market access as EU vessels with official access agreements.

To show the importance of effective implementation of the future legal framework, especially regarding the lack of EU-wide control for private agreements, and as part of its efforts to bring transparency to commercial fishing, Oceana used Global Fishing Watch (<http://globalfishingwatch.org/>) to investigate the fishing<sup>a</sup> activity of EU vessels operating in the waters of the eight countries with “dormant” (S)FPAs. When there is an active (S)FPA, EU-flagged vessels are forbidden to fish under private agreements. This is also known as “the exclusivity clause” (see annex 1 for full definition). This exclusivity clause also applies if the fisheries agreement is considered “dormant” (i.e. there is no protocol, and therefore no fishing under the agreement is allowed, but the agreement itself is not denounced).

Major findings include:

- Using Global Fishing Watch data, Oceana found EU vessels fishing in West African waters under private agreements from April 2012 through August 2015; however, because of the dormant status of these agreements,<sup>b</sup> the EU governments that issued the authorisations contravened EU law.
- Four EU countries (Greece, Italy, Portugal and Spain) unlawfully authorised vessels to fish in The Gambia and Equatorial Guinea’s waters, in breach of the exclusivity clause in the official fisheries partnership agreements or (S)FPAs.
- Nineteen EU vessels fished with permits granted unlawfully for more than 31,000 hours in The Gambia and Equatorial Guinea’s exclusive economic zones (EEZs).

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<sup>a</sup> Any and all references to “fishing” should be understood in the context of Global Fishing Watch’s fishing detection algorithm, which is a best effort to determine “apparent fishing effort” based on vessel speed and direction data from the Automatic Identification System (AIS) collected via satellites and terrestrial receivers. As AIS data varies in completeness, accuracy and quality, it is possible that some fishing effort is not identified and conversely, that some fishing effort identified is not fishing. For these reasons, Global Fishing Watch qualifies all designations of vessel fishing effort, including synonyms of the term “fishing effort,” such as “fishing” or “fishing activity,” as “apparent,” rather than certain. Any/all Global Fishing Watch information about “apparent fishing effort” should be considered an estimate and must be relied upon solely at your own risk. Global Fishing Watch is taking steps to make sure fishing effort designations are as accurate as possible.

<sup>b</sup> Any EU fisheries agreement is based on a framework agreement or treaty set up between the EU and the coastal state. For an EU vessel to be able to fish in the waters of a coastal State, there needs to be an active protocol in place that is negotiated every three to five years. All EU vessels operating outside EU waters need to obtain a fishing authorisation from their flag Member State. EU vessels are then also given authorisation from the coastal state to operate in their waters. In The Gambia and Equatorial Guinea, there are active Fisheries Partnership Agreements but no active protocols.

- These private agreements in The Gambia and Equatorial Guinea are in breach of EU law.

The EU needs to ensure that the rogue and opaque fishing activity under private agreements documented in this report does not happen again. Oceana asks the EU to ensure that:

- Private agreements are more transparent and accountable, in line with the new external fishing fleet regulation. Fishing activities under these agreements need to adhere to the same standards as official EU agreements and need to be legal, sustainable, transparent, and comply with EU fisheries, environmental and labor laws.
- The European Commission and Member States make key information on private agreements publicly available in an accurate and timely manner via a register of external fishing authorisations.
- Any EU-flagged vessel that does not have a clean compliance record or has reflagged to a country known to be failing to combat Illegal, Unreported and Unregulated (IUU) fishing is not granted a fishing authorisation. Any vessel applying for a fishing authorisation should have a unique vessel identifier (International Maritime Organization [IMO] number), as this is integral to facilitate the tracking of vessel activity and monitoring compliance with applicable laws.
- In the case of serious non-compliance with EU or international law, the Member State or the European Commission intervenes and withdraws the authorisation. Sanctions should be awarded that are dissuasive and deterrent.

The new European legal framework that was agreed upon in June 2017 aims to standardize the fishing activities of all EU-flagged vessels with equal oversight. The Regulation is expected to be published in the coming months, and the provisional agreement has already been published.<sup>1</sup> This development will require a strong commitment from the Member States, as well as from the European Commission, to significantly improve the control of the EU fleet outside EU waters and to ensure that all the loopholes that previously existed are finally closed. If the EU prioritizes its effective implementation, the new law will significantly increase the accountability and transparency of the European long distance fleet.

The future health of the ocean depends on a global approach to conservation and management. Oceana urges countries with distant water fleets to follow this example. Transparency, accountability and sustainability are the most effective tools to eradicate IUU fishing from the world's oceans, and innovative technologies like Global Fishing Watch can increase the transparency of fishing activities around the world.

## **Introduction**

The sustainability of fisheries is crucial for the livelihoods, food security and nutrition of billions of people. Fish is one of the most traded commodities globally, however, many of the world's fisheries are in trouble.<sup>2</sup> A large number of fish populations are fully fished or overfished and the global seafood supply is severely threatened, however, the demand remains high with more than 3.1 billion people relying on fish as an important source of dietary protein.<sup>2</sup> The EU is the largest market for seafood products in the world.<sup>2</sup> In addition to importing more than 60 percent of seafood products,<sup>3</sup> this demand is met, in part, by the catches of EU vessels fishing outside of EU waters, which represents 28 percent of total EU catches.<sup>4</sup> With more than 90 percent of fish populations in the Mediterranean Sea and 41 percent in Atlantic waters experiencing overfishing according to the last estimate in 2015, European fishers must travel farther and fish longer to meet the high demand of the European market.<sup>5</sup>

The EU's distant water external fleet fishes around the world, largely in international waters and in the exclusive economic zones (EEZs)—or a nation's sovereign waters, which extend 200 nautical miles from the coast—of developing coastal States in Africa, the Pacific Islands, the Indian Ocean and northern countries such as Norway, Faroe Islands and Greenland.<sup>4</sup>

Most of the official EU access agreements are conducted between the EU and coastal nations on the western coast of Africa. These waters are home to some of the most productive and economically important fishing grounds, and as such, they attract fishing vessels from across the world, including China, Taiwan, Korea and Europe. West African waters are also prey to the highest levels of illegal and unreported fishing worldwide,<sup>6</sup> and at least \$2.3 billion annually is lost to IUU fishing in this region.<sup>7</sup> With 46.5 percent of the assessed stocks in the Eastern Central Atlantic experiencing overfishing,<sup>2</sup> there is an imminent threat to the health of these fisheries. Like the other large distant water fleets, the scale and reach of the EU's fishing activities abroad can have a significant impact on the long-term conservation and management of global fish stocks. This is concerning for the fisheries resources of the world's most vulnerable communities, like developing African nations, where fisheries management is a critical issue for both food security and income.

## European Union Vessels Fishing in Foreign Waters

Any EU vessel operating in non-EU waters (also called external waters) needs to obtain a fishing authorisation from its flag State (the EU Member State in which it is registered). There is no official EU definition for the EU distant water fleet—also known as “long distance external fleet.” The EU distant water fleet is part of the external water fleet of the EU, the EU-flagged fleet that fishes outside EU waters. The distant water external fleet is currently governed by the 2008 Fishing Authorisation Regulation,<sup>8</sup> which will be replaced by the new external fleet regulation once it enters into force.

There are two public estimates regarding the composition of the European distant water external fleet. The first is from a study published in 2008 that identified 718 vessels during the year 2007.<sup>9</sup> This study accounted for vessels that operated outside EU waters for more than 90 percent of the time. The second estimate originates from the 2014 Annual Economic Report on the European Fishing Fleet and places the figure at 335 vessels.<sup>10</sup> This study defines the distant water fleet as all EU-flagged vessels measuring over 24 meters operating in the outermost regions or non-EU waters outside the North Atlantic, Mediterranean and Black Sea.

However, in 2015, the Who Fishes Far website (<http://whofishesfar.org/>) published a database of EU-flagged vessels that received authorisations to fish in non-EU waters, which was obtained through an access to information request. This information revealed that the total number of EU vessels that have fished in external waters since 2008 was much higher than the estimates, amounting to 23,239 vessels. Many of the vessels that fished in non-EU waters, and that required authorisations to fish outside EU waters, may have fished in non-EU waters for limited periods of time. This primarily concerns the majority of the EU vessels under the reciprocity agreements with Faroe Islands, Iceland and Norway as well as vessels operating in the Mediterranean and Black Sea, under the Regional Fisheries Management Organisations (RFMO) in that area – the International Commission for the Conservation of Atlantic Tunas and the General Fisheries Commission for the Mediterranean and Black Sea. Additionally, vessels could have requested authorisations to operate in non-EU waters, but not actually used them. The total number of vessels that received authorisations to fish in non-EU waters is therefore larger than the number of vessels that are considered to belong to the European distant water fleet.

EU-flagged vessels operate in all the world's oceans, including in the EEZs of non-EU countries under different types of arrangements or management:

- **Official EU access agreements:** Termed (Sustainable) Fisheries Partnership Agreements or (S)FPAs – agreed upon between a non-EU coastal State and the EU, on behalf of its member states, which allow EU vessels to fish for surplus stocks in the coastal State's EEZ.
- **Private agreements:** Also referred to as direct agreements – agreed between individual EU vessel owners (using their EU-flagged vessels) and the government of the non-EU coastal State for access to fisheries resources in the coastal State's EEZ. Due to the presence of an “exclusivity clause” in (S)FPAs, private agreements are only allowed where there is no (S)FPA in place.

- **Chartering agreements:** A type of private agreement under which EU-flagged vessels fish a share of the resources of a coastal State's EEZ in collaboration with local companies.
- **RFMO frameworks:** When EU vessels operate in an area that is subject to an RFMO, or where a coastal State is a party to an RFMO, and EU vessels fish a certain stock in that country's waters, that is governed by the RFMO and its frameworks.
- **Reciprocity agreements:** Aimed at the joint management of shared stocks with Norway, Iceland and the Faroe Islands, under which EU vessels fish in Norwegian, Icelandic and Faroese waters and vice versa.
- **High seas:** If the high seas are not included within an RFMO area, EU-flagged vessels also need fishing authorisations, but are not subject to area-specific management measures.

The EU currently has 12 active (S)FPAs in place.<sup>c</sup> An EU (S)FPA consists of an initial framework agreement signed by the EU and a coastal nation that sets out the general principles that will govern the fishing activities of the EU fleet in foreign waters. An implementing protocol is also required that details the terms and conditions (e.g. fishing activities and compensation rates), which are signed every three to five years. Since 2014, strict standards were established for (S)FPAs, for which the EU currently pays around EUR 145 million annually from public funds.<sup>4,11</sup> (S)FPAs must be of mutual benefit to the EU, the EU fleet and the non-EU country (including its local population and fishing industry) and must respect democratic principles and human rights. The exclusivity clause was also made explicit, even if it existed for most of the Fisheries Partnership Agreements before. These agreements can only target the surplus<sup>d</sup> of the allowable catch, as calculated based upon scientific information and considering all fishing effort on that stock.<sup>10</sup> In practice, the European Court of Auditors concluded that this concept of surplus is difficult to apply due to a lack of information on fish stocks as well as the catches of domestic and foreign fleets.<sup>12</sup>

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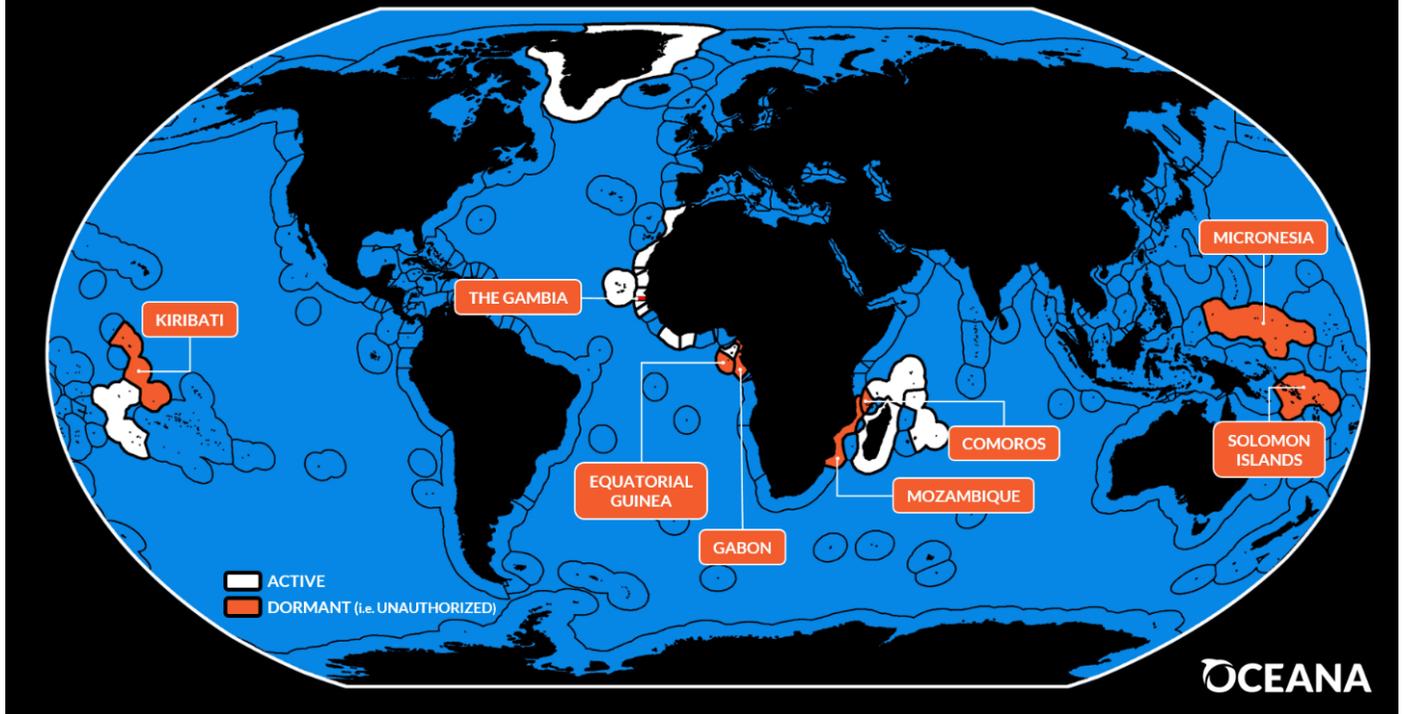
In addition to the 12 active agreements, the EU has eight dormant (S)FPAs with five African countries and three Pacific Island nations, whereby a framework is in place but the protocols have yet to be renewed or are lacking (Figure 1). Whenever there is a dormant agreement, due to a provision in EU law, EU-flagged vessels are not allowed to fish in those waters under private agreements (Annex 1). Therefore, no EU Member State or coastal nation has the legal authority to issue a permit to an EU vessel to fish in those waters. As of August 2017, EU vessels cannot fish in the waters of Comoros, Equatorial Guinea, Gabon, The Gambia, Kiribati, Micronesia, Mozambique or the Solomon Islands.<sup>4</sup>

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<sup>c</sup> Agreements concluded before 2014 are called Fisheries Partnership Agreements or FPAs and those concluded after 2014 are called Sustainable Fisheries Partnership Agreements or SFPAs. As many Fisheries Partnership Agreements were agreed before 2014, we refer to these agreements as (S)FPA throughout the report.

<sup>d</sup> Surplus of allowable catch means the portion of the allowable catch that a coastal State does not harvest, which results in an overall exploitation rate for individual stocks that remains below levels at which stocks are capable of restoring themselves and the maintenance of populations of harvested species above desired levels based on the best available scientific advice.

## EU (SUSTAINABLE) FISHERIES PARTNERSHIP AGREEMENTS



**Figure 1** | A global view of official EU access agreements, showing third countries with active or dormant EU (S)FPAs.<sup>4</sup>

### Methods

#### Satellite Surveillance of Fishing

Global Fishing Watch is a free online tool that uses public broadcast data from Automatic Identification System (AIS), collected by satellite and terrestrial receivers, to show the movement of fishing vessels over time. AIS was initially designed as a safety mechanism for vessels to avoid collisions at sea; a vessel equipped with an AIS transponder autonomously broadcasts a signal every few seconds with vessel identity and location information, including vessel name, position, speed and direction. Global Fishing Watch applies a fishing detection algorithm to this global feed of AIS data to classify fishing or non-fishing (i.e. transiting) activity based on vessel behaviors such as speed, direction and rate of turn.<sup>13</sup> Oceana utilized Global Fishing Watch data to examine the fishing activities of the EU's external fleet within the EEZs of all foreign countries with dormant EU (S)FPAs, between January 2012 and May 2017. Fishing effort was calculated by aggregating apparent fishing hours, defined as the time each vessel spent apparently fishing.

The AIS-derived global raster of the EU external fleet shows the aggregated apparent fishing hours on a 0.25-degree grid from January 1 – December 31, 2016. The EU external fleet included 1,332 vessels that had unique Maritime Mobile Service Identities (MMSI) in Global Fishing Watch, were flagged to one of the 28 Member States of the EU, and fished outside of EU waters (i.e. on the high seas and in national waters of non-EU member countries, which includes Overseas Countries and Territories of EU Member States that are not part of the EU). Active EU vessels were confirmed by matching the vessel name, International Radio Call Sign (IRCS) and International Maritime Organization (IMO) number to the Community Fishing Fleet Register of the EU.<sup>14</sup>

A potential limitation of this analysis relates to weaknesses in the regulations and requirements for vessels to be equipped with AIS systems. The United Nations' IMO requires all ships over 300 gross registered tons to be fit with AIS,<sup>15</sup> whereas the EU requires all vessels over 15 meters to carry AIS.<sup>16</sup> Therefore, AIS data is biased to represent larger vessels whose flag State requires them to carry AIS. But even those vessels can cheat the system by falsifying their location or by turning off their AIS transponders at will. Therefore, the results of this analysis are a conservative estimate of fishing effort and only include those vessels transmitting AIS. Additionally, it is reasonable to assume that some vessels engaged in illegal fishing will intentionally not broadcast their AIS to avoid being caught, and this analysis would not include those vessels. For example, a report by Greenpeace revealed that 74 out of 92 Chinese vessels fishing in West African waters either had their AIS turned off or did not carry AIS at all, and of the 18 vessels that had their AIS switched on, at least 10 of them wrongly reported their identity or location.<sup>17</sup> Therefore, the results of this analysis are a conservative estimate of fishing effort in this region. Oceana was unable to document the fishing effort of vessels not transmitting AIS, therefore, it is likely that the prevalence of fishing may be even higher than what is reported here.

## **Oceana discovered 19 EU vessels fishing unlawfully in The Gambia and Equatorial Guinea for more than 31,000 hours under private authorisations that were issued in contravention of EU law.**

### **Access to Information on Private Authorisations**

In 2015, Oceana submitted an access to information request to all EU governments whose vessels were engaged in fishing outside of EU waters to identify where EU vessels were authorised to fish under private agreements, but only received data from Estonia, Lithuania and Spain.<sup>18</sup> Therefore, official information on private authorisations issued by the other EU Member States identified in this report (i.e. Greece, Italy and Portugal), which granted vessels access to fish in The Gambia and Equatorial Guinea's waters, was not available.

### **Fishing in the Grey Zone: Investigation of Fishing Activity Authorised in Contravention of EU Law**

Using Global Fishing Watch, Oceana investigated the fishing activity of EU vessels operating in the waters of eight countries with dormant (S)FPAs to see if EU vessels were fishing in their waters when they were not supposed to. Oceana discovered 19 EU vessels fishing unlawfully in The Gambia and Equatorial Guinea for more than 31,000 hours under private authorisations that were issued in contravention of EU law (Table 1).<sup>e</sup> These vessels were flagged to Greece, Italy, Portugal and Spain, and their fishing activity that was detected in Global Fishing Watch dated back to April 2012 through August 2015 (Figure 2). Oceana was unable to document the fishing effort of vessels not transmitting AIS, therefore, it is likely that the prevalence of fishing may be even higher than what is reported here.

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<sup>e</sup> The Coalition for Fair Fisheries Agreements also reported on the presence of Italian-flagged vessels in the waters of The Gambia in their publication 'EU Common Fisheries Policy External Dimension: Improving sustainability through an ambitious revision of the Fishing Authorisation Regulation' of September 2016

**Table 1** | Summary of the EU-flagged vessels fishing in contravention of EU law

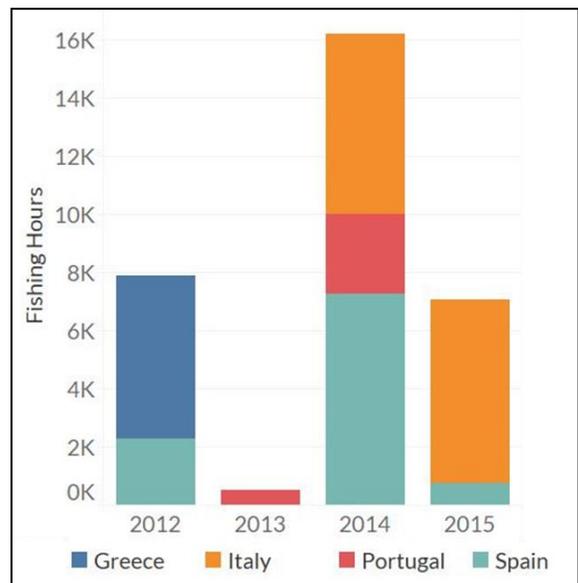
Third Country with Dormant (S)FPA	Vessel Flag State	Number of Vessels	Fishing Effort (hours)
The Gambia	Italy	5	12,537
	Spain	8	10,252
	Greece	3	5,617
	Portugal	2	3,300
Equatorial Guinea	Spain	1	170
<b>Grand Total</b>		<b>19</b>	<b>31,876</b>

Greece, Italy, Portugal and Spain violated the laws of the European Common Fisheries Policy by awarding authorisations to these vessels, as this law explicitly prohibits fishing activity under private agreements in the waters of coastal states with dormant (S)FPA agreements. Furthermore, under the 2008 Fishing Authorisation Regulation, flag states are not required to show that there is a surplus of the resource that can be sustainably caught to fish under private agreements. The sustainability of these fishing activities is therefore unclear.

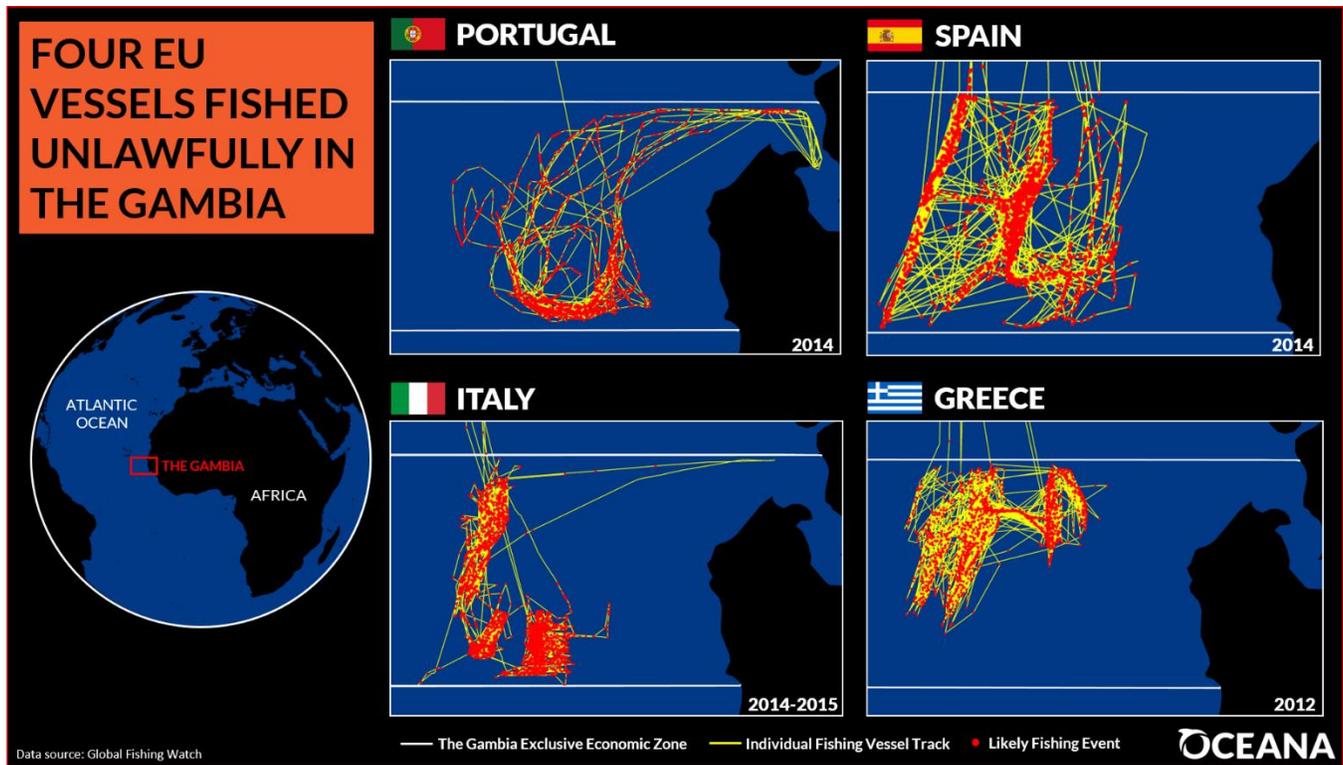
This demonstrates serious shortcomings in transparency and accountability from these EU flag states, as they failed to ensure that their fleets fishing under private agreements were operating in compliance with EU law.

Until the new EU external fleet framework comes into force, there is no oversight or requirement to meet EU standards for EU vessels fishing under private agreements. Depending on the Member State, there is also less control. Four EU Member States allowed 18 vessels to fish with unlawfully granted permits in contravention of the exclusivity clause in Gambian waters, and one vessel in Equatorial Guinea’s waters in contravention of EU law. The oversight from flag states (Member States) to ensure that the EU fleet is operating in compliance with EU and international law clearly failed.

According to Oceana sources, in January 2014 and again in April 2015, a notice from the European Commission was circulated by the secretariat of the European Council of Ministers to all fisheries ministers that notified Member States of the existing dormant (S)FPAs, including in the waters of The Gambia and Equatorial Guinea. It stated that EU vessels were not allowed to operate in these waters under private agreements. However, four Italian-flagged vessels were operating in The Gambia at that time, and continued to fish until the end of August 2015 before leaving Gambian waters. Five Spanish-flagged vessels continued operating in the waters of The Gambia in 2014. The Spanish government informed Oceana that they asked the one remaining Spanish vessel to leave the waters of The Gambia on June 18, 2015, after the second notification from the European Council. One Portuguese vessel continued operating in the waters of The Gambia in 2014. The Portuguese and Italian governments responded to Oceana’s request for additional information, saying that they are investigating the fishing activity of their vessels in The Gambia and are in contact with the European Commission. The Greek government has not replied to Oceana.



**Figure 2** | Fishing activity of EU vessels in the Gambian EEZ, by Flag State.



**Figure 3** | Examples of fishing activity by Greek, Italian, Portuguese and Spanish-flagged vessels in The Gambia between 2012 and 2015.

## Fishing Under the Radar: Private Companies’ Fisheries Agreements with the Coastal States

Until the new external fleet regulation comes into force, private agreements are not subject to the same strict standards as (S)FPAs. Private agreements are shielded from the public and lack the transparency and equivalent management requirements to which the rest of the EU fleet are subject. This makes it impossible for the EU flag State, the European Commission, non-EU countries with a fishing or management interest in the same stocks, or other stakeholders, to have a clear view of the activities carried out by these vessels and to ensure that their catch is legal and sustainable.

Challenges of fishing authorised under private agreements:

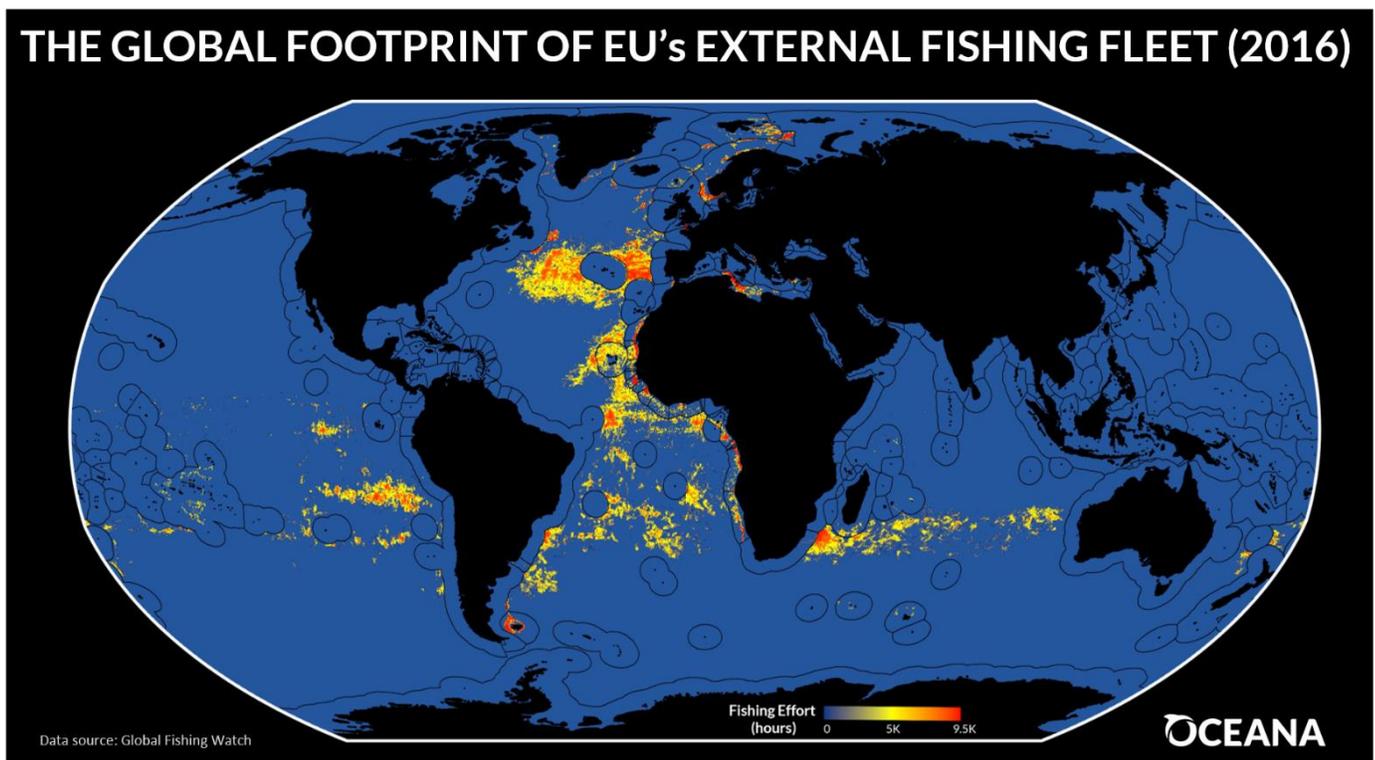
- Lack of transparency:** Though EU-flagged vessels fishing under private agreements fly the flags of EU Member States – and their catches have the same EU market access as catches made by EU-flagged vessels under (S)FPAs – there were no EU-wide procedures to ensure that activities under these agreements complied with EU laws and adhered to EU standards. These private agreements are typically negotiated, concluded and conducted under almost total opacity, outside the legal frameworks of (S)PFAs, which impose standards on operators in terms of labor laws and fishing sustainably. To address this, some Member States, such as Spain, established a system whereby licenses issued to vessels under private agreements were subject to control and validation through diplomatic channels, and required payments to be made directly to the public treasury of the countries licensing the fishing activities.<sup>19</sup>
- Lack of stock assessments:** Under the United Nations Convention on Law of the Sea, it is stipulated that countries shall provide access by other countries to their surplus.<sup>20</sup> Surplus is the stock’s annual potential

catch minus the potential catch of the national fleet, according to its capacity to harvest the entire allowable catch. Private arrangements usually consist of financial payments in return for access to fisheries resources. However, many developing countries (e.g. The Gambia and Equatorial Guinea) do not have the necessary capacity to conduct stock assessments in their waters, therefore, foreign fishing vessels are often granted access to these resources without scientifically based catch limits.

- **Lack of key information:** Until the new external fleet regulation goes into force, EU flag States whose vessels fish under private agreements are only required to “endeavour to obtain information” on any such arrangements and inform the European Commission of the names of the vessels concerned.<sup>8</sup> Vessels fishing under private agreements have no requirement to provide other relevant information, such as the target species, fishing area, time period, gear, the details of data collection or reporting of catches. There is no centralized EU-wide system to gather information on these private agreements, a significant loophole which means a large portion of the EU’s external fishing activity is not subject to the necessary level of scrutiny and could possibly operate outside the scope of EU law and standards.

## The Global Footprint of the EU External Fleet

Using Global Fishing Watch data, Oceana analyzed the fishing activity of the EU’s distant water external fleets that broadcast AIS. In addition to EU vessels fishing under (S)FPAs, RFMOs or on the high seas, Oceana identified fishing activity of EU vessels, most likely under private agreements in Angola, the Democratic Republic of the Congo, the Falkland Islands, Ghana, Guinea, Namibia, Republic of the Congo and Sierra Leone.



**Figure 4** | Fishing activity of the EU’s distant water external fleet in foreign country waters in 2016.

## **A New Legal Framework for the EU External Fishing Fleet**

The new legal framework that was agreed in June 2017<sup>1</sup> and once it enters into force it will publicize for the first time, through a public register, where EU-flagged vessels operate under private agreements. In addition, after almost four decades of mismanagement that allowed EU-flagged vessels to operate without EU oversight, private agreements will need to meet EU standards and law, and show both the flag state and European Commission that they meet these requirements before receiving approval to fish. The success of this new law depends completely on the commitment of the EU flag states and the European Commission to implement these changes and strengthen the checks and balances of the EU vessels fishing under private agreements. If the new law is enforced properly, any fishing activity that falls outside EU laws, as described in this report, should stop.

Another initiative that could help to increase transparency and participation in fisheries governance for the benefit of a more sustainable management of marine fisheries is the Fisheries Transparency Initiative (FiTI) that was launched in 2015. This initiative involves a myriad of stakeholders from the fisheries sector, national authorities and civil society. Their global standards were adopted on April 27, 2017, and in 2018, the first coastal states will start reporting under these standards. The reporting requirements include detailed information on access and fishing rights, unique vessel identifiers and long distance vessel registers.<sup>21</sup>

## **Coastal State Responsibility**

International law stipulates that coastal States have the sovereign right and requirement to manage fisheries in waters under their jurisdiction.<sup>22</sup> More than 90 percent of the global fish catch is estimated to be taken from waters under the jurisdiction of coastal States.<sup>23</sup> Although reliable data is not available, it may be presumed that a significant proportion of IUU fishing also occurs in those waters.<sup>24</sup> Much of that IUU fishing is conducted by vessels registered in the coastal States themselves, particularly in the form of underreporting or misreporting of catch. In other cases, foreign vessels may operate without permission from the coastal State or fish in violation of the terms of access granted to them. West African coastal States are particularly vulnerable to illegal fishing, which accounts for an estimated 40 percent of all fish caught in this region.<sup>6</sup> IUU fishing within waters under national jurisdiction primarily harms the coastal States in question and the legitimate fishers who operate in those waters.

For example, in The Gambia, people live mostly near the Gambia River or on the coast, and are therefore highly dependent on fisheries. Fish make up a majority of the population's daily animal protein intake, and the livelihoods of about 200,000 people are directly or indirectly dependent on fisheries-related activities. Local artisanal fisheries make up a majority of fisheries landings and contribute 90 percent of the fish consumed by Gambian people.<sup>25</sup> While fisheries are very important, the Gambian government faces challenges in monitoring its waters and enforcing fisheries laws. It is therefore in the interest of coastal States, like The Gambia, to do all they can to prevent, deter and eliminate illegal fishing in their waters, as they will reap the benefits most directly. It is their responsibility to ensure they have the proper monitoring and enforcement capacities in place before granting access to their waters.

## **Policy Recommendations**

To prevent further abuse, monitoring of fisheries and enforcement of laws is critical. Improving the transparency of private agreements and fishing agreements of the distant water fleet is integral to the health of the oceans. Mandating publicly available tracking systems enables citizens and governments to better monitor commercial fishing activity around the world. As a matter of priority, key information should be made publicly available to improve transparency and accountability, and to facilitate oversight of fishing activities under these arrangements. Also, Oceana calls on Greece, Italy, Portugal and Spain to fulfill their responsibilities as flag states to ensure that in the future, their EU vessels do not fish in the waters of countries with dormant (S)FPAs, like in the waters of The Gambia or Equatorial Guinea, in adherence to EU and international law. The European Commission should publish an

accessible list of dormant agreements and provide annual updates to the Member States as well as to the coastal states where EU vessels fish. This will help prevent fishing activity by EU-flagged vessels in countries with dormant agreements. In addition, in line with the new legal framework for the EU external fishing fleet, the flag state or the European Commission should intervene and withdraw the fishing authorisation when EU vessels are engaged in activities that are in contravention of EU law. Additionally, coastal States like The Gambia, which grant access to their marine resources via private agreements, should be responsible for ensuring proper monitoring and enforcement of their waters.

Oceana is working to increase transparency of global fishing activity worldwide. Specifically, Oceana asks the EU, as well as other distant water fleets and coastal States to:

1. **Mandate vessel tracking.** Require that all fishing vessels carry and transmit AIS or other comparable, publicly available tracking systems at all times.
2. **Make private agreements more transparent and accountable,** in line with the new external fishing fleet regulation. These fishing activities need to adhere to the same standards as official EU agreements and need to be legal, sustainable, transparent and comply with EU fisheries, environmental and labor laws.
3. **Withdraw fishing authorisations in the case of serious non-compliance with EU or international law and ensure sanctions are awarded that are dissuasive and deterrent.** EU-flagged vessels that do not have a clean record of compliance or have reflagged to countries known to be failing in their efforts to combat IUU should not be issued fishing authorisations. Any vessel applying for a fishing authorisation should have a unique vessel identifier (e.g. IMO number) as this is integral to facilitate the tracking of vessel activity and monitoring their compliance with applicable laws.
4. **Publish key information on private agreements in an accurate and timely manner.**
5. **Uphold coastal State responsibilities.** Coastal States should allow access to foreign fleets only when proper monitoring and control can be executed. Equatorial Guinea should become signatory to the Port State Measures Agreement.
6. **Make distant waters fleets more transparent, accountable and sustainable.** Transparency, accountability, and sustainability are the most effective tools to eradicate IUU fishing from world's oceans and seas.

## Conclusion

The scale and reach of the EU's fishing activities abroad can have a significant impact on the long-term sustainability and management of global fish stocks. Developing countries can be severely affected by the overexploitation of fisheries resources, as fisheries provide critical sources of both food security and income. Oceana identified EU vessels fishing with unlawfully granted permits under private agreements, that were granted in contravention of EU law, in the waters of The Gambia and Equatorial Guinea. EU-flagged vessels often engage in fishing activity under private agreements, however, the lack of legal requirements or standards and public information makes it complicated for coastal States, the European Commission and even flag states to determine if their activity is compliant with EU law. Moreover, this lack of transparency makes it difficult to know the number of EU vessels fishing under such agreements, where they are fishing and for what species, which inhibits fisheries managers' abilities to assess the impact on local fish stocks. In addition, the information reported here demonstrates the need for greater intervention from the flag states and the European Commission when EU law is broken.

The new legal framework is the perfect opportunity for both Member States and the European Commission to ensure that all fishing activities under the EU flag are accountable, transparent and sustainable, and to ensure the continued leadership of the EU in matters of global fisheries governance. However, if effective implementation of the law and control of the fleet are not prioritized, it risks being a waste of paper and time. Oceana therefore calls for immediate implementation of the new EU legislation and close monitoring, control and enforcement of the activities of the EU external fishing fleet, especially under private agreements. Oceana urges countries with distant



water fleets to follow this example. Transparency, accountability and sustainability are the most effective tools to eradicate IUU fishing from the world's oceans. Innovative technologies like Global Fishing Watch enable NGOs, governments, researchers and citizens to investigate fishing activity around the world. Oceana will continue to use Global Fishing Watch to push for transparency at sea to ensure legal and accountable fishing activities and to restore and increase ocean biodiversity and abundance.

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## **Annex 1: Dormant Sustainable Fisheries Partnership Agreement and the exclusivity clause**

This "exclusivity clause" has been explicitly included as one of the sustainability principles enshrined in (S)FPAs in the 2014 reform of the European fisheries laws, also called Common Fisheries Policy. Article 31(5) of EU Regulation 1380/2013 for the Common Fisheries Policy stipulates that "Union vessels shall not operate in the waters of the third country with which a sustainable fisheries partnership agreement is in force unless they are in possession of a fishing authorisation which has been issued in accordance with that agreement." This provision expresses the "exclusivity clause" and prevents individual operators from making private agreements with coastal States with which the EU has established a fisheries agreement.

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