

Information Paper No. 11

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A framework for coastal fisheries and aquaculture data governance: Legal aspects

BACKGROUND INFORMATION

1. Following the request by Heads of Fisheries to explore the possibilities of establishing a formal **body for the regional standardisation of coastal fisheries and aquaculture data collection** (see Information Paper No. 10 – Regional standardisation of coastal fisheries and aquaculture data), this paper attempts to highlight the main **legal aspects** involved in the operation of such a body. In this regard, it is useful to look at the legal framework under which the Tuna Fishery Data Collection Committee (DCC) operates and to identify the main differences with a potential Coastal Fisheries and Aquaculture Data Standardisation Committee (DSC)¹.
2. Since 1995, the Tuna Fishery DCC has been assisting countries in complying with mandatory requirements established by international law for highly migratory fish stocks. Because of the transboundary nature of those stocks, the **United Nations Convention on the Law of the Sea of 1982 and the UN Fish Stocks Agreement adopted in 1995 for its implementation** require states to manage them regionally, preferably through regional fisheries management organisations or arrangements. One of the functions of such regional bodies is to *'agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks'* (Article 10(e), UN Fish Stocks Agreement).
3. After the establishment of the **Western and Central Pacific Fisheries Commission (WCPFC)** through a Convention that was adopted in 2000 for the implementation of the UN Fish Stocks Agreement in the region, DCC has continued to serve countries in complying with international requirements on highly migratory species. WCPFC member states shall *'collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes'* (Article 5(i) WCPFC Convention).

ISSUES AND CONCERNS

International framework

4. Unlike the tuna fishery, **international law does not establish global reporting obligations or a duty to cooperate in coastal fisheries and aquaculture**, particularly where the exploitation of aquatic resources occurs in waters under national jurisdiction without any transboundary impact. Specific reporting obligations that affect coastal fisheries and aquaculture are found in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and in the Constitution of the Food and Agriculture Organization of the United Nations (FAO). A general need for informed management decisions in matters concerning coastal waters, wetlands, aquatic resources and their habitat can be drawn from a number of multilateral environmental agreements, such as the Ramsar Convention 1972 and the Convention on Biological Diversity 1992.
5. The only texts that specifically recognise the need for informed management decisions in coastal fisheries and aquaculture are **regional and international 'soft law' instruments**, which are not legally binding despite being endorsed by countries. Such instruments only indicate

¹ DSC is an arbitrary name used in this paper as a placeholder for easy reference.

the political will of a country to follow their guidance and strive towards implementing their recommendations. The indicators against which countries are encouraged to report may be defined to assess progress in their implementation. This family of texts includes the FAO Code of Conduct for Responsible Fisheries of 1995, as well as the Voluntary Guidelines for Sustainable Small-Scale Fisheries, the UN Sustainable Development Goals and A New Song for Coastal Fisheries, adopted in 2015.

6. Therefore, in order to implement the standards and protocols established by a Coastal Fisheries and Aquaculture DSC (if this is agreed), PICT governments would have to **subscribe a cooperative arrangement on data** and decide to use SPC as a coordinating body and repository for this data on behalf of PICTs. The arrangement would cover data collection and management, including supply, acquisition, custody (i.e. storage, back-up, security, curation and update), treatment, access and exchange, as well as confidentiality and copyright aspects. A similar arrangement would not have to be legally binding, at least not initially (e.g. a memorandum of understanding (MoU) or a charter); the adoption of a binding agreement, if deemed appropriate, could be a further step in the standardisation process.

Partners' commitment

7. Because data is often collected under specific projects, the adoption of standards by national fisheries departments alone may not be sufficient to ensure consistency as external consultants, non-governmental organisations (NGOs) and other partners implementing particular projects would not be bound by those standards. The issue can be addressed by **imposing the regionally-agreed minimum standards to all partners**. This can be achieved either at the national level, by including provisions in project agreements or in domestic legislation to impose data standards on all projects, or at the regional level, by requiring relevant partners to subscribe to the requirements of the DSC and SPC if given the mandate by PICTs for this.

Domestic legal framework

8. If and when governments have committed to providing data to SPC in accordance with regionally-agreed minimum data standards, national legislation will have to be reviewed in order to back-up and implement that commitment. **For example, fisheries legislation may establish the following:**
 - General management principles:
 - Decision shall be based on the most reliable data and information available.
 - Data shall be collected in accordance with any regionally-agreed minimum data standards.
 - Where data is not available, a precautionary approach shall be adopted.
 - Stock assessment and environmental monitoring programmes shall be set up (for instance, to open a fishery or lift a ban on vulnerable species).
 - Data shall be shared with relevant international and regional bodies or countries;

- Record keeping by the fisheries administration:
 - Fisheries departments shall keep a record of authorisations and other administrative controls on fishing activities (e.g. fishers' professional card, fishing licences or permits, fishing vessel register).
 - Fisheries administrations shall keep records of compliance data (e.g. inspections, offences, sanctions) in order to assess performance of legal provisions or to apply administrative sanctions such as withdrawal or non-renewal of a fishing licence;.
 - Reporting obligations by fishers and aquaculture operators:
 - Fishers shall keep records of their activities (e.g. logbooks) and periodically report them to the fisheries department, either directly or through local bodies.
 - Aquaculture operators shall keep records of all inputs for traceability purposes.
 - Fishmongers and caterers shall keep records of products for traceability purposes.
 - Provisions on the use of data:
 - Confidentiality of sensitive data and information (e.g. trade data, personal data or fishing locations) shall be respected.
 - Copyrights on data and data collection software shall be protected (e.g. ownership of data and end-user licence for software).
 - Research projects shall provide data and information to the relevant authority.
9. The above list is not exhaustive and is only intended as an indication of possible legal provisions. Some PICTs already have similar provisions in their legislation, while others may require **assistance to develop suitable solutions and capacity building to ensure compliance**. There is likely to be some resistance from fishers and aquaculture operators to sharing their personal data – even with high levels of security – so an awareness-raising and information programme may need to be established in certain contexts.

POSSIBLE DISCUSSION POINTS

10. Assuming the Coastal Fisheries and Aquaculture DSC gets the go ahead, the following aspects would need to be discussed:
- How likely is it that a **cooperative arrangement on data collection and sharing** is adopted as a framework for the standardisation of coastal fisheries and aquaculture data?
 - Should this arrangement be embodied in a **non-binding agreement** (e.g. a multilateral MoU between the fisheries departments and SPC, bilateral MoUs between each fisheries department and SPC, or a charter to be subscribed by all parties) or in a **binding agreement**?
 - Should we secure compliance with regionally agreed standards by **all partners involved in data collection** and, if so, how (e.g. imposing standards in each project agreement or

on all projects through national legislation, which would require partners to subscribe a data charter – possibly with SPC)?

- If all PICTs do not agree to this approach, is it worth progressing with a **sub-group of PICTs** that are in agreement with this approach, and how could this be recognised more formally?
- What is a reasonable timeframe in which to expect **countries to review their legislation** so that it reflects their commitment under the cooperative arrangement on data?
- Should an **awareness programme** be developed to assist fishers and other stakeholders with their understanding on the benefits of regional data collection standards?