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ASSESSMENT OF THE CURRENT ICCAT BLUEFIN TUNA TRACEABILITY SYSTEM



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TECHNICAL REPORT

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TECHNICAL REPORT

Jean-Pierre Vergine

Executive Summary

The analysis of the current ICCAT Bluefin Tuna traceability system (BCD) has identified a number of shortcomings, which find their sources more in the verification and inspection means than in its original design.

These shortcomings can negatively impact the traceability objectives assigned to the BCD. They also entail a risk of possible discrimination issues that other sectors of the fishery industry could easily challenge, as they apply to themselves more stringent traceability practices while dealing with species, which are usually submitted to less conservation and/or management rules.

Despite a rather extensive array of measures and procedures, the current ICCAT system of inspection and verification offers limited means for getting access to all relevant information for assessing compliance with rules by operators dealing with BFT (or other species).

The solutions proposed in this report aim at eliminating loopholes identified in the BCD traceability chain and at improving provisions on inspections and verifications, in the BCD or in other ICCAT instruments. They take into account business practices and don't require from the operators concerned more information than what they already should have available. The solutions on inspections and verifications aim at designing a comprehensive system, including legal access, by competent authorities, to any relevant information to assess compliance, which could be more cost-effective than the current one.

They could also contribute to a better compatibility of the BCD with the IUU Regulation requirements and support the design and the implementation of catch documents for other species, should ICCAT decide to move forwards in that direction.

These improvements could facilitate a more efficient implementation of the BCD by the authorities and eliminate or strongly minimize the risks of tolerance practices and insufficient verifications impacting the reliability of the system, such as those identified in Section 2 of this report.

Table of contents:

1. Introduction

- 1.1. Purpose of the technical report
- 1.2. Some preliminary facts and considerations
 - 1.2.1. Why a BCD?
 - 1.2.2. Specific layout of the BCD
- 1.3. Basic principles and considerations to keep in mind

2. Analysis of CPC replies published in ICCAT document COC-307A

- 2.1. Replies from ICCAT CPCs
 - 2.1.1. Tunisia
 - 2.1.2. Turkey
 - 2.1.3. EU
 - 2.1.3.1. Discrepancies in growth rates
 - 2.1.3.2. Activities of certain fishing vessels
 - 2.1.4. Japan
 - 2.1.4.1. BCDs
 - 2.1.4.2. Activities of certain vessels
 - 2.1.5. Other CPCs concerned
- 2.2. Comments and questions
 - 2.2.1. General comments
 - 2.2.2. Specific comments on the use of SCRS growth rates
 - 2.2.3. Questions

3. ICCAT Bluefin Tuna Catch document (BCD) – Recommendation 2011-20

- 3.1. Is the information on the BCD sufficient for the purpose of traceability?
- 3.2. Lack of traceability and discrimination issues
- 3.3. How to improve the information on the BCD?
- 3.4. JFO catches
- 3.5. Other improvements
 - 3.5.1. Verification procedures of Recommendation 2011-20 – Par. 22 and 23
 - 3.5.1.1. Who can do that?
 - 3.5.1.2. How to do that?
 - 3.5.2. Notification procedure of Recommendation 2011-20 – Par. 28
 - 3.5.3. Exchange of information - Annex 2 to Recommendation 2011-20
 - 3.5.4. BCD circumvention
- 3.6. Electronic BCD – Recommendations 2010-11 and 2013-17

4. Other ICCAT related instruments

- 4.1. Recommendation 2013-07
 - 4.1.1. More on JFOs –Par. 20 and Annex 6
 - 4.1.2. ICCAT record of vessels authorised to fish Bluefin tuna – Par. 57 to 59
 - 4.1.3. Transshipments at sea – Par. 64
 - 4.1.4. Transshipments at port – Par. 65 and 66
 - 4.1.5. Landings in designated ports – Par. 69
 - 4.1.6. Cross check – Par. 76
 - 4.1.7. Transfer operations – Par. 77, 79 and 81

- 4.1.8. Observer programmes – Par. 82, 83, 90, 91, 92 and Annex 7
- 4.1.9. Enforcement – Par. 93 and 94
- 4.1.10. ICCAT Scheme of Joint International Inspection - Pa. 99 to 100 and Annex 8
- 4.2. Recommendation by ICCAT on a programme for transshipment – Rec 2012-06
- 4.3. Recommendation by ICCAT for an ICCAT scheme for minimum standards for inspection in port – Rec 2012-07
- 4.3.1. Designated ports – Par. 9
- 4.3.2. Port inspections – Par. 16
- 4.3.3. **Port inspection procedures – Par. 17**

5. ICCAT BCD and IUU Regulation – Council Regulation (EC) Nr. 1005/2008 of 29 September 2008

- 5.1. The IUU Regulation – Scope and catch certification scheme
- 5.2. Recognition of the BCD
- 5.3. Data on BCD and the IUU Regulation
- 5.4. Validation authorities
- 5.5. BCD validation
- 5.6. BCD verifications
- 5.7. Products other than farmed BFT
- 5.8. What to do to improve compliance of the BCD with the IUU Regulation?
- 5.8.1. Improvement within the scope of the recognition procedure under the IUU Regulation
- 5.8.2. Improvements at ICCAT level
- 5.8.2.1. Recommendation 2011-20
- 5.8.2.2. Other ICCAT Recommendations

6. Summary of Recommendations

7. Other catch documentation schemes

8. Closing remarks

Documents of reference:

ICCAT Recommendations

2008-09 – Recommendation by ICCAT to establish a process for the review and reporting of compliance information

2011-20 – Recommendation by ICCAT amending Recommendation 09-11 on an ICCAT Bluefin Tuna catch documentation program

2013-16 – Recommendation by ICCAT amending Annex 1 of Recommendation 11-20 on an ICCAT Bluefin Tuna catch documentation program

2010-11 – Recommendation by ICCAT on an electronic Bluefin Tuna catch document program (e-BCD)

2013-17 – Recommendation by ICCAT supplementing the Recommendation for an electronic Bluefin Tuna catch document (e-BCD) system

2013-07 – Recommendation by ICCAT amending the Recommendation 12-03 by ICCAT to establish a multi-annual recovery plan for Bluefin tuna in the Eastern Atlantic and Mediterranean

2012-06 - Recommendation by ICCAT on a programme for transshipment

2012-07 - Recommendation by ICCAT for an ICCAT scheme for minimum standards for inspection in port

2011-12 – Recommendation by ICCAT concerning the establishment of an ICCAT record of vessels 20 meters in length overall or greater authorized to operate in the Convention Area

ICCAT other documents

Document COC-307A

ICCAT Record of BFT catching vessels

Report of the inter-sessional meeting of the compliance committee and panel 2 (Seville, Spain – February 18 to 20, 2013)

Report of the inter-sessional meeting of the compliance committee and panel 2 (Madrid, Spain – March 3-5, 2014)

Report of the 9th meeting of the working group on integrated monitoring measures (Barcelona, Spain – May 22 to 24, 2014)

Documents available on the ICCAT website <http://iccat.int>

EU Documents

Council Regulation (EC) nr. 1005/2008 of 29 September 2008 (IUU Regulation)

Commission Regulation (EC) Nr. 1010/2009 of 22 October 2009

Commission Regulation (EU) Nr. 202/2011 of 1 March 2011

List of flag States notifications

**Documents available on the European Commission website
http://ec.europa.eu/fisheries/cfp/illegal_fishing**

1.Introduction

1.1 Purpose of the technical report

The purpose of this technical report is to provide a critical analysis of the provisions regulating ICCAT's Bluefin tuna (hereafter BFT) traceability through its recovery plan and BCD scheme (hereafter BCD) "against any potential loopholes in securing individual fish traceability from catch operations to first sale after harvest (including both harvest in the wild or at fattening farms)". It shall also address the compatibility between the current BCD and the requirement of the EU IUU Regulation and include specific recommendations to address any potential traceability loopholes observed.

The analysis has resulted in the identification of a number of shortcomings and, in an attempt to resolve them, several proposals are included in this report, where appropriate, by reference to the specific provisions of the legal instruments concerned.

1.2. Some preliminary facts and considerations

Prior to enter into the subject matter and for a better understanding of the analysis and recommendations, it seems to be useful to briefly come back to the origin of the BCD, its purpose and specificities and to remind some basic principles and considerations.

1.2.1. Why a BCD?

Since 1992, some presentations of BFT internationally traded were submitted to a statistical document programme aiming mainly at collecting information on BFT fishing and trading activities. Despite subsequent improvements, this programme could not address IUU fishing issues impacting BFT stocks and document the full chain of activities, in particular due to the strong development of new operational practices such as farming and joint fishing operations.

In 2007, this programme has been replaced through Recommendation 2007-10, a fully new scheme, the Bluefin Tuna catch document (BCD).

Now applicable to domestic and international trade, it aims at ensuring full traceability throughout the whole chain of operations from the catch to the first buyer (domestic trade) or to the importer (international trade), irrespective of product type. It also covers re-export operations. All operators directly involved in this chain have to abide with specific obligations under the BFT recovery plan and related instruments and to submit statements for completion of the BCD. The documents may be validated only in case of compliance with all relevant ICCAT measures. Verification procedures by the CPCs and cooperation mechanisms between CPs themselves and with the ICCAT Secretariat have also been included in this scheme.

In short, a comprehensive traceability system, which aims at ensuring full compliance and thus should prevent and combat IUU fishing, rather than a mere "**green light**" for trade.

Finally, the BCD has to provide reliable information for scientific purposes, meaning that its efficiency is required to also support a safe management of resources in the future.

Since its adoption, the BCD has benefitted from several amendments, all of technical nature.

The next step envisaged is the introduction of an electronic BCD (e-BCD), still based upon the overall concept of the paper BCD.

1.2.2. Specific layout of the BCD

By contrast to other catch certification schemes, the BCD has a quite specific layout to take into consideration commercial and operational practices, namely fish farming, which is playing a major role in this sector of the fish industry.

All operations related to fish farming, from the purse-seiners catches (including joint fishing operations – thereafter JFOs), transfer of live fish from fishing grounds to cages, fattening, harvesting and finished product trade have to be accurately reflected in the BCD. The inclusion of all this information in the BCD is the “**price to pay**” to ensure full traceability and means to verify compliance in a non-discriminatory way towards other sectors of this industry.

1.3. Basic principles and considerations to keep in mind

The right to catch fish (a common resource) is granted to certain operators, who have to abide with the related rules. **Catches done in non-compliance with such rules might be considered as illegally obtained resources.**

The fishing, processing and trading techniques and practices are decided by operators, As mentioned under 1.2.2, they are determining for the main layout of the BCD, which, in other words, does not result from considerations and decisions taken by the ICCAT CPCs only.

These operators are responsible for the accuracy of the data to be provided on the BCD for validation, which, in fact, is the information generated by their own activities,

As any other business, all operators involved in BFT operations (vessel owners, farms, traps, traders) are under the obligation to accurately document their activities and to keep records of them. Determined by company, social, tax, etc. laws and provisions of private nature, **these obligations have to be fulfilled independently of the existence of ICCAT or other fisheries rules. Otherwise, they would not be able to carry out properly their own business.**

It does not mean, however, that only those operators referred to in the BCD and the other ICCAT instruments are keeping information, which could be relevant for verifying compliance with these rules. As for any trade, production or processing activities, in their records on transactions with the operators mentioned above, other businesses can keep information, which could be of interest for verifying compliance with these rules.

Such businesses can be service providers, raw materials suppliers, banks, transport companies, etc.

As the purpose of the BCD is to certify compliance with rules, operators shall not request its validation in case of known non-compliance, doubt or insufficient information on compliance.

The BCD is a mean to ensure normal trade flows with products submitted to conservation measures and which comply with such rules. Otherwise, in the absence of such certification scheme, the trade could not be allowed without verifications, on a case-by-case basis, at the various operators concerned, prior to grant permission.

This is the interest of the operators directly concerned to fully cooperate in the safe implementation of the BCD, which should not be seen as an additional burden of tasks, but rather as the appropriate solution to make sure that compliant products can be traded without unnecessary interruptions.

The authorities are responsible for the BCD validation for compliant fish and for any verification to be carried out prior or after the validation. **Given the purpose of the BCD, they should be entitled to verify compliance with rules of BFT by any suitable means.**

These principles and considerations do (or should do) apply to any catch certification scheme.

2. Analysis of CPC replies published in ICCAT document COC-307A

In accordance with Recommendation 2008-09, WWF had reported ICCAT on 19 July 2013 that:

- Significant discrepancies had been detected by means of a conservative analysis of a large number of BCDs validated by several CPCs during a specific time frame for farmed BFT. The growth rates derived from these BCD data let infer serious doubts on the actual traceability of the fish in question,

-Through their AIS position, the presence in BFT fishing areas of several purse seiners not authorised to catch the species that were flagged to 2 CPCs major players in BFT fishing.

In this report, the CPCs concerned have been requested to carry out thorough investigations including “reassessing fish transfers from the available video records and analysing cross-consistency with figures reported in the corresponding BCDs » and, in respect of the AIS detected vessels “thoroughly analyse the activity of the following vessels during the 2012 BFT fishing season through all available data sources ».

Given the purpose of Recommendation 2008-09, the scope of the operations (all carried out in the Mediterranean Sea) and the number of CPCs concerned (9), an analysis of the CPC replies has been felt to be appropriate as they could provide relevant information on the implementation of the BCD and assist in the identification of potential traceability issues and other needs for improvements.

2.1. Replies from ICCAT CPCs

The replies received do not seem to be based on the analysis of all available data sources, as requested in the WWF report, taking also into account that, to a large extent, such data sources could only be made available through verifications given the nature of the doubts.

2.1.1. Tunisia

This CPC does not refer to any verification regarding the accuracy of the catch data on the BCDs, which was a part of the WWF request.

For 2 BCDs, it is reported that the fish has been shipped to Malta live for farming. Apparently, the farming CPC has not been requested to verify the growth factor of the fish in question, despite the time which was available for this purpose between the communication of the WWF report to Tunisia and the insertion of its reply in the COC document.

For the other BCDs, the growth factors have been justified by making a mere reference to the SCRS report for 2008-2009. In no way, this reference can be regarded as the result of any verification of the operations at stake, as requested, irrespective of the different time frame and the reservations expressed by the SCRS itself on these growth factors which are based upon information provided through studies sponsored by the industry.

2.1.2. Turkey

The reply from Turkey does not provide any factual information on the activities carried out by the 7 vessels mentioned in the WWF report within the time frame corresponding to the AIS positions. Stating that these vessels held fishing permits for species other than BFT is of no help, as it is not backed up by evidence on the species and quantities actually caught. The simple mention of « inspection » in this reply is also not sufficient. It does not refer to specific inspections of these vessels during the time frame at stake. Rather, as the WWF report was sent after the end of the fishing season, the clarifications requested could have been brought only on the basis of verifications on the actual fish supplies/sales from these vessels to economic operators, in addition to any inspections done in the course of the fishing season itself.

Quoting that these vessels had not been reported in respect of IUU fishing activities (by who and when?) is also meaningless as such information would already be available within the framework of the ICCAT relevant instruments.

2.1.3. EU

2.1.3.1. Discrepancies in growth rates

From the EU answer, it appears that the discrepancies quoted in the WWF report found their explanation in the presence, in the same cages, of different catches from vessels engaged in JFO. In other words, despite uncertainty regarding the actual origins of the catches, the BCDs have been validated and, apparently, have not been the subject of requests for verification by the CPCs of importation.

The results of the scientific studies quoted in the WWF report have not been taken into consideration although most of them are more recent than the SCRS growth rates accepted for reference and could be based, in all likelihood upon data partly collected in the same farms, or, at least same farming areas.

Even if the 2009 SCRS growth rates are the main (if not unique) reference accepted by this CPC and the other CPCs, the significant discrepancies quoted in the WWF report could have deserved more attention. This should have been the case, in particular, for the BFT from JFO vessels caught at similar dates, and caged and harvested again at similar dates in the same farm.

The EU answer also states that some of these discrepancies quoted resulted in fact from the findings of inspections having for effect to correct the initial information reported by the observers at the time of the catch.

One could be first surprised that these obvious discrepancies on several BCDs validated in the same CPCs did not apparently turned into requests for verification from the importing CPCs.

Secondly, this answer shows that inaccurate data can be mentioned on certain BCD sections without impacting their validation.

2.1.3.2. Activities of certain fishing vessels

The answer confirms that infringements have been established against one of the vessels reported (ATEUOITA00526) as a result of its inspection on 15 June 2012. Independently from the WWF request, the serious nature of these infringements could have led to verify compliance of its past fishing activities with the BFT recovery plan and of its fish sales/supplies with fisheries rules in general. If it has been the case, no report seems to have been done by the flag Member State.

The vessels ATEUOITA00183, ATEUOITA00260 and ATEUOITA00506 were authorised to use long lines and did not record BFT catches. It is not stated if the accuracy of the catch records and the actual use of the fishing gear declared have been verified. This information is not sufficient to determine if these vessels did comply with ICCAT rules on BFT in the 2012 fishing season, likewise the results of one vessel inspection on 19 June 2012 and the lack of comments on their activities corresponding to the AIS positions, the main basis of the WWF request.

Information on the last vessel (ATEUOITA00512) is not available as the analysis of the flag Member State was not completed.

The rather schematic content of this part of the answer can raise doubts on the access to adequate information and means by the flag CPCs for verifying past activities.

2.1.4. Japan

2.1.4.1. BCDs

As the other CPCs, the Japanese answer refers to the same SCRS growth rates to assess and accept the accuracy of traceability information on BCDs. Elaborated on the basis of studies carried out a few years before the operations at stake, by their very nature, they are average figures. At the best, they can only have an indicative and relative value to assess, amongst other means, information provided by operators for the validation of a BCD or to decide (or not) on the request for verification of validated BCDs. In no way, they can support any conclusion, as they are not resulting from verifications pertaining to the operations covered by the BCDs in question.

Japan could compare the grow rates derived from the BCDs with the SCRS ones on a cage basis for 72 of the 90 documents in question. The results are sorted out in different groups, each one corresponding to one cage. This comparison lets show differences to the SCRS growth rates in excess of 10 %. They are either positive for 11 BCDs of the groups 1 and 13 or negative for, again, 11 BCDs of the groups 6, 10, 11 and 12.

Despite these differences exceeding 10%, it seems that the validation of the BCDs has never been questioned. This has apparently also been the case for a BCD showing a negative growth rate.

The 28 remaining BCDs had also been submitted to the same exercise, which could not be achieved in the absence of information regarding the other BCDs related to the same cage/caging operation.

2.1.4.2. Activities of certain vessels

Japan had no comments to do in respect of the information received on the activities of certain fishing vessels in BFT fishing areas although it cannot fully resolve the doubts expressed in the WWF report.

2.1.5. Other CPCs concerned

According to document COC-307A, 4 of the 9 CPCs concerned, which had validated 21 BCDs of the 90 ones referred to in the WWF report, which also included the catching activities, did not provide any information to the ICCAT Secretariat in reply to the WWF report. It does not seem also that the CPCs involved in the subsequent stages of the operations (caging, farming, trade, import) have been requested to contribute to the verification of these catch data, if they were not the Flag States of the catching vessels.

It might be worth noting that the ownership issue described under 4.1.2 concerns certain BFT vessels flagged to 1 of the 4 CPCs in question.

Added to the incomplete answers of the other CPC, this total lack of feedback should be seen as a serious issue. Not only, it prevents ICCAT to get a clear overview of the actual situation and to take appropriate decisions, but it also concerns some of the most obvious discrepancies cases, as illustrated in case 1 c) of the WWF report.

2.2. Comments and questions

2.2.1. General comments

The answers published in the ICCAT document COC-307A are incomplete in respect of the CPCs concerned and of the substance, so that the status of the BCDs, BFT products and vessels concerned could not be ascertained.

The clarification of the doubts expressed in the WWF report would have required that all CPCs concerned verify the data declared by operators on BCDs, catch records or other statements by using the actual information generated by the activities at stake in the own records of those operators.

The comparison of the declared farming and trade data with SCRS growth rates is not adequate for the verification of the BCDs. Such growth rates are average values only, irrespective of the way they have been obtained (fully independent or sponsored studies). Using them to take or support conclusions is thus not in line with the relevant provisions in Recommendation 2011-20, which require the verification of the operation actually subject to a given BCD.

The validity of the BCDs has never been questioned by the CPCs concerned, either at the time of their submission, despite obvious discrepancies, or later on, despite the uncertainties resulting from the answers to the WWF report.

Excepted for one fishing operation by one vessel, the actual activities of the vessels reported had not been sufficiently verified.

Finally, it could be worth noting that, despite the incomplete nature of the CPCs answers

to the WWF report, as described under Section 2, the issues of substance in the document COC-307A have not been discussed at the 2013 ICCAT COC meeting. Rather, the competence of non-governmental organisations to submit reports under Recommendation 2008-09 without prior validation by the CPCs concerned has been challenged during the COC meeting. Under Par. 5 of Recommendation 2008-09, there are no provisions for such prior validation. Otherwise, the submission of reports by non-governmental organisations to the Compliance Committee would be meaningless. This is for the CPCs concerned to provide their comments on such reports to the Compliance Committee in order that this body can have available all relevant information and take decisions, where appropriate.

This issue of general nature should not be discussed further as it would go far beyond the scope of this technical report.

2.2.2. Specific comments on the use of SCRS growth rates

The Japanese answer is uncovering a critical issue for the use of such means, irrespective of the fact that they cannot be relevant for validation or verification purposes:

-In most of the cases, access to all BCDs related to one cage for a given farming operation is necessary to compare the growth rates achieved during this operation with SCRS growth rates (or any other growth rates).

-Unless all BCDs in question have been validated for products sold to the same CPC, this exercise was nearly impossible to do, as the information to be transmitted to the ICCAT Secretariat was not sufficient prior to the adoption of Recommendation 13-06. In the event that all these BCDs are destined to the same CPC, such an exercise would have implied some centralisation of information at national level if the BCDs are submitted at different places, and that all operations in question take place within a quite short time frame.

Since the adoption of Recommendation 2013-06, BCD information on cage number and caging date has to be transmitted to the ICCAT Secretariat. Using the Secretariat BCD database to compare the growth rates calculated on the basis of the BCDs related to one caging/farming operation versus the SCRS growth rates would however imply that the corresponding data have been uploaded from all the BCDs related. Nevertheless, even if this condition is met, the results of this comparison will be indicative only.

Using this additional information from the Secretariat BCD database could even be counterproductive if such comparisons would turn into a substitute to true verifications, although they cannot provide accurate and reliable information to determine compliance.

Beyond these technicalities, some questions of principle remain open: how average values taken from the 2008-2009 SCRS report, irrespective of the source (industry or others), may be used to assess the reliability of growth rates deriving from data related to specific operations, conducted afterwards? And how can they be taken into consideration to refute the argumentation developed in the WWF report, which is based upon more recent studies? At least, these different conclusions should have resulted in a

call for more clarification, which was not the case in the answers received from the CPCs.

2.2.3 Questions

From the answers received, it could also be understood that the ICCAT instruments for verification purposes have not been fully used for clarifying the doubts, whilst it seems that some level of uncertainty regarding the data validated on the BCDs seems to be accepted.

This situation lets raise two main issues:

- Sufficient suitability of the ICCAT instruments on BFT inspections and verifications sufficiently suitable for this purpose, in particular for acceding to and verifying the operator's own records on past and current operations?

- Is the BCD sufficiently adapted to document and validate all data, which are necessary for ensuring full traceability of BFT operations and thus contribute to assess their compliance with the related conservation measures?

3. ICCAT Bluefin Tuna Catch document (BCD) – Rec 2011-20

3.1. Is the information on the BCD sufficient for the purpose of traceability?

The information to be declared on the BCD to support the requests for validation by the different authorities concerned is to be taken by the operators from each stage, from the identification of the fishing vessel to the trade of the final product.

At each stage, this information, which is relevant for the purpose of the BCD, is directly available, from his own records, to the operator responsible for its declaration on the BCD, what should prevent him from making any mistake in its transcription.

Equally important is that the validation at each stage is not authorised if the previous BCD section has not been properly documented and validated.

Given the nature of all these data and the linkage between all validation procedures on the BCD, the whole chain they are forming should be sufficient to establish a link from the catch to the trade through each intermediary step, provided that the data declared in the different sections are related to the same catch and are consistent.

However, as mentioned under 2.1.3.1, this is not always the case, as BFT from different catches and vessels are staying in the same cages at the same time. In the BCDs concerned, the information validated in the transfer, caging, farming and trade sections can be in conflict with the catch information equally validated.

Within this context, the procedure of “grouped BCDs” laid down in Par. 6 of Recommendation 2011-20 can contribute to create some confusion between different catches. The possibility, for a CPC, to request copies of the individual BCDs replaced by a “grouped BCD” is not sufficient to prevent the repetitive use of individual BCDs to launder illegal catches:

- The communication of the individual BCDs is done on request only,
- This procedure does not include any provisions to show the actual balance of BFT still available from these individual BCD against the BFT covered by the “grouped BCD” to make sure that the quantities traded under such “grouped BCDs” do not stem partly from catches actually covered by the individual BCDs.

Another consequence is of course that the link between the catch and the traded product is lost.

Beyond these shortcomings on traceability, which might challenge the validity of the BCDs, this lack of information could raise another issue, of general nature.

3.2 Lack of traceability and discrimination issues

This lack of traceability, which seems to be a rather common practice for the BFT farming industry, could be regarded as discriminatory towards other sectors of the fish processing industry.

In the fish processing industry, full traceability from the catch to the individual processed product is the rule. There are various grounds to explain this way of

functioning, which can be of legal, commercial or technical nature. Each one is sufficient to justify full traceability.

In the tuna canning industry as an example, fish landed is sorted out in boxes on the basis of fishing vessel name, landing date, specie, size category. This detailed information, which is also recorded in the operator stock accounts, is accompanying each fish box all along the process of storage, de-freezing, processing, conditioning and sale of the processed products.

As these operators are able to provide factual evidence on the individual fishing vessels and catches from which their products are stemming, they can perfectly meet the requirements of any existing catch documentation scheme.

This failure to require, from the BFT farming sector, an equivalent level in the traceability chain can be regarded as discriminating towards other operators with other species or non-farmed BFT.

2 other factors are extending the strength of this discrimination towards:

- The other BFT sectors by using growth rates to assess, de facto, compliance, rather than conducting appropriate verifications of the operations concerned,
- The other fisheries sectors, which are submitted to less strong conservations measures than for BFT, whilst implementing stricter traceability procedures.

The fact that BFT activities are subject to a quite extensive array of control, inspection and observation measures could not be opposed to this opinion on discriminatory treatment. These measures are resulting from a decision making process which closely involves the operators concerned and they are designed to match with the operational requirements of this industry.

As operators, they have available relevant information on the supplying fishing vessels and their catches. They know in which cages the fish is transferred, when it is harvested, processed and traded. Mixing fish from different vessels and/or catches in cages is not an obligation imposed by authorities, it results from their own decisions, whatever the ground could be.

It is thus necessary to improve the traceability on the BCD at a level fully in line with its objectives and to put an end to the discriminatory treatment towards the other sectors of the fish industry, including the processing one.

The improvements, which will be proposed under 3.3, 3.4 and 3.5 are, to a large extend, also applicable to BCDs for non-farmed BFT.

3.3. How to improve the information on the BCD? Rec. 2011-20 – Par. 5, 6, annexes 1, 2, 3

Proposal

Full segregation of fish on the basis of 1 fishing vessel/1 catch/1 BCD/1 cage should be a requirement as soon as it is transferred to a farm and it should be adequately declared in all the subsequent sections of the document.

The name of the fishing vessel responsible for the catch from which the farmed fish to be traded is stemming and the reference to the fishing tour should be included in the BCD farming section, as this information is currently missing.

In the case of JFO, the same segregation rule should apply: 1 BCD/1 cage for each vessel in accordance with the repartition key, even if all the participating vessels are flagged to the same Flag CPC.

This would imply a re-wording of Par. 5; make superfluous the procedure of “grouped BCDs” of Par. 6. and adding the related data in the BCD form (Annex 2).

The specific question of JFO will be examined under 3.4. and 4.1.1.

For obvious commercial reasons, BFT stemming from a whole single catch will be killed, processed and traded at different dates. That means that the number of fishes composing one single batch will have to be declared at each stage against the total number at the time of the initial transfer into the cage.

This activity is currently controlled by submitting, for acceptance, a validated copy of the original BCD, as laid down in section 8 (2) of annex 3 to Recommendation 2011-20. This solution is not sufficient to make sure that the total number and weight of fish traded in several operations will not exceed the figures recorded and validated in the original BCD. It is imposing an additional burden of tasks for the authorities to avoid that one original BCD generates more copies for quantities higher in total than the total number and weight of BFT declared on it would allow.

Proposal

It would be safer and easier to record the numbers of BFT and quantities killed and traded against the full number and quantity transferred into the cage at that given date on the BCD itself. This additional information, which is currently not provided in the BCD, will make it possible to determine the **available balance of BFT** prior to validate the document. For the authorities, it would easily prevent the risk of multiple uses of the same original BCD to launder illegal BFT and ease the management of the BCDs

In addition, the CPC of destination of the BFT will be in a better position for accepting a BCD, as the information on this document will be more detailed.

To declare accurately this specific information at each stage could entail some organisational change at cage level for operators, who, anyway, in order to manage the caging activities, must have available all the required information.

This solution would imply modifications in Par. 5 of the Recommendation, in its annex 3 and in the relevant sections of the BCD.

The benefits to be expected would be to ensure better information flow through the entire chain of operations and to reinforce the responsibility of the farms in the BCD validation process.

The current lack of traceability and the risk of discrimination could be eliminated through the adoption of these improvements, each of these issues being self sufficient to

justify such changes.

A system based on full segregation will not only eliminate the current discrimination towards the other sectors of the fish industry. It will ensure an equal treatment within the BFT farming sector irrespective of the size of the farms and the number of their suppliers.

3.4. JFO catches

The conduct of JFOs is motivated by decisions taken by operators, be they of commercial, operational or other nature. Their authorisation by ICCAT, as a derogation, means simply that different fishing vessels are participating jointly in a fishing operation and that their shares in this operation are determined by their participation level in accordance with a repartition key. Each participating vessel is thus responsible in respect of its participation in the JFO, as determined by the catch repartition key.

Proposal

On this ground, as proposed under 3.3., this responsibility should be reflected by the validation of individual BCD for each vessel participation in a given JFO, in accordance with the repartition key.

3.5. Other improvements

Further steps should be however taken into consideration in order that the modifications suggested in respect of the data to include in the BCD can efficiently improve traceability and avoid discriminatory treatments.

Even if such improvements are adopted, any operator trading BFT from various sources (legal and illegal) could still avoid drawing the attention of the validating authority by declaring the actual vessels and data in the relevant BCD sections and to be confronted to a validation denial. By contrast, declaring in the BCD sections under his responsibility, only vessels and catches already validated is quite without any risk to be detected, even if the traded product(s) stem(s) from catch(es) by other vessel(s).

In the current situation, it is sufficient for the operator to submit (apparently) non conflicting information in his subsequent statements, as the risk of verifications of such declarations on the basis of his own operational and trade records is very low. And to minimize it, he has simply to make sure that the declared average main weights of live BFT/versus farmed BFT will more or less match with SCRS growth rates for a corresponding weight category and farming time.

The same technique of manipulation could also be used to avoid the detection of a negative balance of fish during the validation process by authorities.

To remedy to this situation, it will be necessary to improve the procedures for verification, notification and exchange of information of Recommendation 20011-20 and to reinforce provisions pertaining to inspections and verifications in other ICCAT instruments. This last matter will be discussed in Section 4.

3.5.1. Verification procedures of Recommendation 2011-20 – Par. 22 and 23

3.5.1.1. Who can do that?

In any sector of activities, including fisheries, the efficiency of verifications relies mainly:

- On the nature of the legal means which are required for acceding to any relevant information (kept or not by the operators directly concerned by a BFT operation)
- And specific professional expertise for making an appropriate use of this information to determine if the statements declared on the BCD are correct and compliance with the applicable rules.

These requirements imply means, which are proper to public authorities and can hardly be delegated to “authorised individuals or institutions” as laid down in Recommendation 2011-20. The prior authorisation granted by a public authority is not sufficient as it refers specifically to the BFT operations and cannot thus transfer to those individuals or institutions the legal means and, to a large extent, the expertise required, which are of overarching nature.

Proposal

The task of verifications should be thus reserved to public authorities disposing over all the legal means and professional expertise for conducting such activities.

3.5.1.2 How to do that?

Prior to go into this matter, it is felt useful to come back on the motivations for the validation of a BCD.

The unique ground for requesting the validation of a BCD is a commercial transaction between operators, which is subject to a contract or any other kind of agreement. The BCD validation is only one amongst all the conditions of such agreements to be fulfilled for completion of the transaction, which include prices, quality standards, quantities, product types, size categories, terms of payment, etc.

Operators who cannot supply, fully or partly, the required quantity of legal BFT to meet all agreement conditions, could be inclined to « accommodate » the data to declare on the BCD to simulate compliance.

As a possible example of simulation, the diverging discrepancies in growth rates, either positive or negative, mentioned under Section 2.1.4.1, could illustrate the fact that the validation of BCDs can be requested to meet commercial demands and not necessarily to actually support compliance.

Failure to obtain the validation of a BCD would entail a cancellation of the commercial agreement or financial losses if the BFT can finally be traded without BCD through illegal channels.

It is thus necessary that the verification procedures can take fully into account the commercial dimension of the BFT operations for ensuring their efficiency.

By doing so, the verification procedures will usefully contribute to minimize the uncertainties resulting from the approximate figures which are inherent to the interpretation of images taken by video and/or stereoscopic systems.

Par. 22

The verification procedures in Par. 22 rely mainly on «external » control /observation with limited powers for fully efficient verifications. The starting point of the verifications is basically the submission of various statements and declarations by the operators.

This paragraph also introduces a kind of “hierarchy” in the procedures, meaning that verifications with the operators are considered as being the last resort.

It can be thus expected that operators take care to declare obviously inconsistent information on their statements in order to prevent themselves from possible validation denials and commercial lost, even if they do not correspond to the actual facts. Given the hierarchy in the verification procedures, the risk of a confrontation of their statements with information directly generated by their actual activities in their own business records is very low.

Such business records however have to be accurate in order to reflect the actual activities of the operators and to prevent them from serious issues (mismanagement, financial issues, problems with suppliers or clients, etc.).

Proposals

On these grounds, verifications should be carried out on the basis of the records that any operator has to hold for conducting his own business, independently from the fisheries rules: stock and commercial accounts, payments done and received, feed supplies, management of farming and processing, etc.

In short, any information suitable for establishing who are the actual suppliers with BFT (authorised and/or non authorised vessels), the fishing and processing conditions and the respective quantities and:

- Determining if a request for validation is justified or
- Verifying validated BCDs by another CPC and
- In case of non-compliance, collect evidence for further actions.

As the purpose of verifications by public authorities is to assess compliance with rules, access to such information and records should not be restricted to those held by the operators directly involved through their statement on a BCD. Such access should be extended to any relevant information and records held or kept by other legal or natural persons.

This would imply a complete rewriting of the provisions in Par. 22.

In addition, it would be advisable to include the possibility of post verifications of already validated BCDs, on the initiative of the validating authorities, either on the basis of risk management criteria or at random. A specific paragraph should be included for this purpose.

Without prejudice to the provisions in the enforcement section of recommendation 2013-07, failure to provide access to the relevant information or documentation for the purpose of the verifications by the competent authorities should entail:

- The cancellation of the BCDs submitted to verification, as the operator concerned does not make it possible to determine if their validation was justified or not, and, where appropriate,
- Suspension measures regarding future requests of BCD validation by the operators concerned.

This set of measures regarding BCDs either validated or to be validated should be the subject of a specific paragraph.

Par. 23

The wording “to resolve such doubts” is ambiguous. It should be clear that the cooperation between the CPCs concerned aims at clarifying the doubts by appropriate verifications.

Proposal

To lift up this ambiguity, this wording could be replaced by “to verify the information and clarify such doubts.”

3.5.2. Notification procedure of Recommendation 2011-20 – Par. 28

The notifications to the ICCAT Secretariat on the implementation of the BCD do not provide any specific information on the legal and organisational means of the authorities concerned for this purpose. The communication of provisions adopted in national law to implement the BCD is not sufficient to ensure that the notifying CPC has available all the legal and organisational means to control fisheries and related activities. Yet, such means are a pre-requisite to back up the effective implementation of this scheme possible.

Certainly, under the general obligations to comply with ICCAT rules, which apply to Contracting Parties, Cooperating non-Contracting Parties, Entities, Fishing Entities or Non-contracting Parties (called CPCs in this report), the availability of such means should be implicit. However, given the profile of their own fishing, processing or trading activities, the CPCs are not all involved at the same operational level in the implementation of the BCD.

In the absence of access to the content of the notifications published by the ICCAT Secretariat, it is not possible to examine their details. Nevertheless, some doubts could be expressed in respect of the capability of several notifying CPCs to effectively implement a catch documentation scheme such as the BCD. These doubts find their origins either in limitations in national law, which prevent an effective control of such activities or in specific situations, which seriously impact the capacity of the validating authorities to carry out their duties in general.

Proposals

First of all, the CPCs should notify public authorities only, disposing over all the legal means and professional expertise for the validation and the verification of BCDs. Splitting partly these tasks between public authorities and “authorised individuals or institutions” cannot be viable as the mere validation of BCDs also implies a certain level of verifications.

The ICCAT Secretariat should also be in position to assess the information received from the CPCs and to request more details if necessary in the light of their obligations prior to publication.

Equally, it could be advisable to establish a notification monitoring system to identify specific situations raising doubts on the ability of notified authorities to correctly implement the BCD. As examples could be mentioned repetitive issues with verification results reported by CPCs or situations, which might impact the functioning of authorities in a CPC.

However, the introduction of a monitoring system of this kind would imply some changes in the attributions of the ICCAT Secretariat and its relations with CPCs, both matters being beyond the scope of this report for being discussed further here.

3.5.3. Exchange of information - Annex 2 to Recommendation 2011-20

The exchange of information between the farm and flag CPCs provided for in Par. 85 of Recommendation 2013-07, which is necessary to prevent further operations with BFT illegally caught for various reasons (quotas not available, incorrect catch declarations, no authorisation) is not reflected in the BCD form.

It is thus not possible for the CPC receiving the final BFT product to know if this verification has actually taken place to confirm compliance. More important, in the event that this exchange of information did not occur, it prevents the flag and farm CPCs to take appropriate actions in due course should it be required.

Proposal

The relevant section on the BCD form should be amended in order to include a reference to this exchange of information where it confirms compliance of catch. The absence of such reference would equal to a warning signal to be followed by a request for verification launched by the CPC of destination.

3.5.4. BCD circumvention

It is not unusual that, when stricter rules are being introduced in a given control system or in any system applicable to commercial transactions, certain operators will try to circumvent fully this new legal environment, to continue their business without abiding with such rules.

An usual mean of circumvention consists in the simulation of transactions with products, which are not submitted to these rules. In the specific case here, BFT would be declared on commercial, customs, health and transport documents as another fish

species, which could present some similarities in terms of product type, size, fishing areas, countries involved. The possible “official” price difference, which could result from declarations under another specie name, is not a critical issue to resolve. In many countries, financial transactions between companies for international trade are not strictly controlled. There are also some means to bypass such controls in order that the right price for the product actually sold can be paid to the supplier, such as fictitious transactions via companies registered in “tax-haven” countries.

Such situations can be addressed by adequate means, which are applicable to any other specie submitted to conservation rules, and would require operational contributions from authorities not involved in the implementation of the BCD. The circumvention issue is thus mentioned here mainly “for the records” and further consideration, should it be required by future developments.

3.6. Electronic BCD – Rec 2010-11 and 2013-17

The e-BCD can provide several technical improvements to ease the functioning of the whole scheme. In addition to the possibility to avoid automatically the declaration of conflicting or unrealistic data, a significant advantage should be the possibility of links to sources of information, for supporting the validation procedure at its subsequent steps and further verifications.

These sources of information should be:

- proper to the ICCAT rules and national rules pertaining to fisheries management and control, such as VMS, record of authorised vessels, JFO information, quotas, authorisations, etc. ,
- proper to the operators, such as invoicing systems and, in particular, stock accounts, as they can provide a continuously updated overview on inputs of fish and outputs of fish in processed or unprocessed forms to better manage the balance of available/trade BFT, as suggested under 3.3. and
- external, such as register of companies, customs declaration systems and tax declaration systems, provided that the latest ones are recording individual transactions.

The two last sources of information mentioned can be very efficient, in particular, for automatic cross checks based upon search criteria such as commodity codes, transport information, trade partners, to generate alerts in case of conflicting information and initiate further actions without delay.

As it is quite frequent that several operators in several CPCs are concerned by one BCD, and not only in the case of farmed products, the e-BCD should be an appropriate platform to interlink and better manage the data to be provided by all these actors.

The on-going discussions on the e-BCD are mainly of technical nature and there are some considerations for excluding domestically trade BFT from its scope (see report of the 9th meeting of the working group on integrated monitoring measures, May 2014). The benefits to be expected from the e-BCD would be thus seriously undermined if the shortcomings pointed out in this report on the quality of information to be declared and on the ways to verify it were not resolved and if its scope would be limited.

Due to the normal impact of the automatic treatment and transfer of data inherent to any declaration scheme based upon e-technology, a further degradation of the current situation could even be anticipated. It is also important to avoid any limitation of the scope of implementation, which could easily generate circumvention means.

Proposal

It is suggested to take first into consideration the improvements suggested in this report, in particular for all aspects pertaining to verifications and traceability, prior to undertake further steps in the design and the implementation of the e-BCD.

4. Other ICCAT related instruments

Over the years, ICCAT adopted instruments on inspections, vessel records, observer programmes, etc., aiming mainly at ensuring a quite full and permanent control on all activities pertaining to BFT, with a special emphasis on farming.

In the light of the analysis and proposals under Sections 2 and 3, it is felt useful to examine the relevant parts of these instruments, where a need for improvement has been identified to ensure consistency.

4.1. Recommendation 2013.07

4.1.1. More on JFO – Par. 20 and Annex 6

As mentioned under 3.4., the conduct of JFOs is motivated by decisions taken by operators, for commercial, operational or other grounds.

The authorisation of JFOs implies an additional burden of tasks for the authorities, as they have to verify, for one single operation, the activities of vessels, possibly owned by different operators.

This situation is more complicate if the vessels are flagged under different Flag CPCs.

The sole condition required for authorising JFOs with vessels under different flags is that one, only, of the participating CPC has less than 5 purse seiners. There is thus a high risk that its participating vessel(s) be placed under the economic leadership of operators of the other CPC.

Whilst each CPC conducting a JFO is responsible and accountable for the related catches, there are no specific provisions on cooperation mechanisms between the participating CPCs.

For both cases, (1CPC/1JFO or several CPCs/1JFO), Par. 20 does not specify who is responsible for the trade aspect of the JFOs. It can be thus the seller mentioned on the BCD or another (unspecified) operator.

Equally, from Annex 6 to Recommendation 2013-07, it appears that operator(s) deciding to organise a JFO have no obligations to provide any justification in their request for authorisation.

As JFOs are derogating from the general rules, their authorisation and conduct should be submitted to additional conditions to ensure an equal level of control with all BFT operators, which also warrant a better traceability.

Proposals

In addition to the proposal “1 vessel/1 BCD” also suggested for each JFO vessel under 3.3., the wording of Par. 20 and Annex 6 of Recommendation should be amended in order that the capacity of CPCs to cooperate each other to ensure compliance of such

operations, as they require the participation of different authorities, be privileged as a requirement over the criterion of the number of vessels under their flag.

This vessel number rule should thus be replaced by a cooperation procedure put in place by the CPCs concerned prior to the request for authorisation.

The submission of such requests should be supported by appropriate justifications to explain why it is necessary to conduct a JFO instead of usual fish operations. In all cases, all fishing vessels declared under a given JFO should actually contribute to the catch activities.

Finally, if the operator responsible for the trade aspect of the JFO is different from the seller or exporter to be declared on the BCD, his identity should be mentioned on the request for authorisation.

4.1.2. ICCAT record of vessels authorised to fish Bluefin tuna – Par. 57 to 59

The main rules to establish and manage this record are the conditions and procedures referred in Recommendation 2011-12 on the ICCAT record of vessels of 20 meters length or greater, excepted its Par. 3

As these records include only vessels authorised to operate, which have been notified by their Flag CPC, it is expected that those vessels are under their effective control.

From the information published in respect of the 38 BFT catching vessels reported by one CPC, it appears that different vessel owners of different vessels are sharing the same P.O.Box address.

This simple fact could let question the actual ownership and operational control of the 7 vessels concerned. One might wonder if the reporting CPC has taken all appropriate measures in that respect prior to request their inclusion in the ICCAT record. The wording of Par. 5 e) and f) of Recommendation 2011-12 leaves in fact to the discretion of the CPCs the conduct of such actions (“.. to the extend possible, under national law..”). Equally, the wording “..citizens or legal entities within the flag CPCs...” of Par. 5 f) is not sufficient to ensure that they are actually conducting their activities from their territories so that they can be under their effective control and sanctioned.

Such restrictions can open the doors to the inclusion into the ICCAT record of vessels insufficiently controlled in respect of ownership and/or management, although it is a pre-requisite for being entitled to operate.

This paragraph should be amended, in order to ensure effective control on vessels and their operators by the Flag CPCs, a pre-requisite to an efficient BCD.

Proposals

The segment “..to the extend possible, under national law..” should be deleted in Par. 5 e) and f) of Recommendation 2011-12.

The wording of Par. 5 f) should also be amended in the following way: “.. citizens or legal

entities registered within flag CPCs and operating their vessels from their territories so that any control or punitive actions can be effectively be taken against them.”

Finally, the publication of such (apparently?) contradicting information, like in the case of the 7 vessels referred to above, might let raise doubts on the full reliability of the vessel record. It might thus also appropriate to reflect on the possibility, for the ICCAT Secretariat, to defer the inclusion of the vessels and companies concerned into the record so long the reporting Flag CPC does not clarify their status.

For this purpose, it would certainly be necessary to modify the attributions of the ICCAT Secretariat, as in other situations described in this report (notification procedure on validating authorities). Being beyond the scope of this report, this matter should not be discussed further here.

4.1.3. Transhipments at sea – Par. 64

Although such transhipments of BFT are prohibited, such activities are no taken into consideration in the section on enforcement.

Proposal

Transhipments of BFT at sea should be treated as an offence and submitted to the provisions of the enforcement section in Recommendation 2013-07.

4.1.4. Transhipments at port – Par. 65 and 66

Transhipments in designated ports are facilitating the controls of such activities by the competent authorities.

However, it cannot be excluded that transhipments take place in non-designated ports, if the fishing and/or receiving vessels, for any reason, intend to avoid the procedures and inspections to be carried out in accordance with Par. 65 and 66.

In the case of transhipments in designated ports, it cannot be excluded that vessels do not comply fully with the provisions on prior notifications in Par. 66 to minimize or avoid the impact of the anticipated inspection in those ports.

Failure to comply with the notification provisions laid down in Par.66 should be treated as an offence and submitted to the provisions of the enforcement section of Recommendation 2013-07.

Proposals

In order to close this possible loophole, it could be advisable to introduce a specific information procedure with non-designated ports at the end of Par. 65. It could consist in:

- The communication, to the authorities in charge of non designated ports of the vessel names in the ICCAT record established under Par. 57 to 59,
- In case of calls or stays of these vessels in their ports, they should advise immediately the competent Port State authorities in charge of BFT operations for

appropriate action and take provisional measures to prevent those vessels to commence transshipments or to land their catches.

An additional information procedure should also be included in order to advise the Flag CPCs, if different from the Port State.

In addition, transshipments or tentative transshipments in non-designated ports or any failure to comply with Par. 65 should be treated as an offence and submitted to the provisions of the enforcement section in Recommendation 2013-07.

Failure to comply with the notification provisions laid down in Par.66 should also be treated as an offence and submitted to the provisions of the enforcement section of Recommendation 2013-07.

4.1.5. Landings in designated ports - Par. 69

Proposal

For the same grounds, similar information procedures as for Par. 65 should be included in Par. 69.

In addition, landings or tentative landings in non-designated ports should be treated as an offence and submitted to the provisions of the enforcement section in Recommendation 2013-07.

4.1.6. Cross check - Par. 76

These provisions are not sufficient to ensure appropriate verifications, as they are mainly restricted to cross checks of the information contained in the different statements that operators have to submit. It can be thus easily anticipated, that operators having carried out non-compliant activities, will avoid providing conflicting information on these declarations. Otherwise, they would attract the attention of authorities and give themselves grounds for further investigations, unless they find it useful, for any reason, to let uncover minor issues without serious impact in terms of possible sanctions.

The possibility to verify the information declared on the basis of other relevant documents, such as invoices and/or sales notes, is also not sufficient as such documents are linked to the declarations and operators would avoid to mention on them conflicting data.

It is also not clear whether or not the authorities have an initiative right to decide the conduct of cross checks as their starting point depends systematically on the existence of a statement by an operator. This non-said and yet true « pre-requisite » also implies some timely limitations:

- Verification of one operation by one operation, which can make it more difficult to have an overview on the operator's activities during one or more fishing seasons,
- Time constraints when the cross checks are done during the validation process,
- Due to the current wording of these provisions, the verification activity of the

authorities is oriented by the information provided by the operators, whose main interest is to avoid doing too easily any mistake, which could negatively impact the conduct of their business. As the information to use for cross checks is quite exclusively of declarative nature, the means of verifying their accuracy and thus compliance with rules are significantly restricted.

- As an example, it is quite obvious that an operator who bought fish from an unauthorised vessel will not mention its name on any statement he has to submit. The uncertainties inherent in the fish production (dead fish, farming incidents, approximate growth rates, etc.) can give some leeway to operators for dissimulating illegal transactions amongst legal ones. As such, the implementation of all measures on vessel detections at sea and vessels inspections at sea and in ports cannot ensure a full elimination of illegal fishing activities by unauthorised or authorised vessels. And illegally caught fish is also destined for trade, if possible through official channels to get a better chance of being sold at market prices. The risk of having illegally caught fish traded under the BCD should thus not be underrated.
- The only way to resolve efficiently these shortcomings and issues is to adapt the provisions on verifications to these challenges.

Proposals

- The scope of these provisions should be thus wider in order to grant access to **any** information or document held by **any** legal or natural person, which might be relevant for the authorities for the purpose of verifying compliance with ICCAT rules. In operational terms, it would mean access to any records or documents, including accounting records, payments, etc., legal powers to question persons and receive statements and to secure means of evidence. The legal and natural persons referred to above are the operators mentioned in the Recommendation and any other person holding any relevant information or documents.
- A prerequisite for implementing fully and efficiently such legal means is the initiative right for the authorities to decide when and where to carry out verifications, and not only when a statement is submitted by an operator.
- This initiative right should be exercised without prejudice to the obligation to carry out verifications on request by another CPC.
- The scope of the verifications should also cover any operation conducted since the entry into force of the ICCAT Recommendation at stake, where appropriate (in case of doubts or risks identified afterwards) or at random.
- Failure to provide access to the relevant information or document on request by the competent authorities should be treated as an offence and submitted to the provisions of the enforcement section in Recommendation 2013-07.

Access right to any relevant information or document, as proposed above, will facilitate the conduct of such post verifications, increase their efficiency and will be more cost-effective.

In addition to be consistent with the proposals regarding the BCD verifications strictly speaking, this new approach would not mean more controls on the BFT industry, rather more efficient verifications focused towards illegal practices, which are also detrimental to compliant operators

4.1.7. Transfer operations – Par. 77, 79 and 81

As for transshipments and landings, the appropriate control of transfer operations is crucial to ensure full traceability of the BCD and compliance with conservation measures of the fishing activities. As a matter of consistency, the incorrect implementation of the provisions of Par. 77, 79 and 81 should also be sanctioned.

Proposal

Failure to comply with the provisions of Par. 77, 79 and 81 should be treated as an offence and submitted to the provisions of the enforcement section in Recommendation 2013-07.

4.1.8. Observer programmes – Par. 82, 83, 90, 91, 92 and Annex 7

The involvement of observers and inspectors in the control of BFT operations can be a source of confusions due to their different status.

Several important clarifications have already been provided in Appendix 4 to the report of the inter-sessional meeting of the Compliance Committee and Panel 2 held in February 2013. In short, they confirm the precedence of findings by authorities and that observers have no obligation to sign any statement where they are in disagreement with their content. This precedence is also the rule for the validation of sections 6 and 7 of the BCD, as stated under 6.1 of this inter-sessional meeting report.

The confirmation of this precedence highlights the needs for improvements of the verification and inspection means and procedures, as described in several sections of the present technical report.

These clarifications also confirm the situations where observers have to report a possible non-compliance case.

Some other issues might also deserve clarifications:

- The presence of observers is only required during the operations to be declared in advance by the operators. There is thus a risk, in particular in farms, that undeclared operations be carried out in the absence of an observer and be not recorded in documents submitted to the competent authorities. This risk could not be underrated due to the lack of specific provisions in the Recommendation as to how observers are made aware that a specific operation requiring their presence will take place:

- Prior information or request by operator?
- Any direct or indirect information to be communicated to the observer and by who (port authorities, CPC authorities, others)?
- Power initiative of the observer?

- The different tasks assigned to the ICCAT observers are not prioritized in Recommendation 2013-07 and it could be useful to provide guidelines in that respect.

As these needs for clarifications were mainly related to their status, at this stage, it could be advisable to suggest some improvements in Annex 7 to Recommendation 2013-07 to

reinforce their independency towards the operators.

Annex 7 Par. 6 b)

To ensure full independency of the observers, they should never be nationals of a Flag CPC or a farm CPC.

Proposal

Deletion of the segment “to the extent possible”.

Annex 7 Par. 10

The observers are appointed by the ICCAT Secretariat and not by vessels or farms. They are not thus bound to their hierarchy and it should be clearly reflected in this provision.

Proposal

New wording of the first segments such as” The observers shall respect the general rules of behaviour which apply on board of the vessel or in the farm...”

Annex 7 Par. 11 e)

This provision is too restrictive, as other legal or natural persons could find an interest in bribing observers, interfering in their activities, etc. and not only the vessels, crews, traps or farms.

Proposal

The scope of this provision should be extended in order to include any legal or natural person having such interest.

4.1.9. Enforcement – Par. 93 and 94

The proposals regarding the violations of Par. 64, 65, 66, 69, 77, 79 and 81 cannot be taken into consideration through their mere inclusion in the enforcement section without a rewording of Par. 93 and 94, as:

- The infringements which shall entail the enforcement measures can be established depending on the cases, by the Flag CPC or another CPC (Port or farm),
- The vessels concerned are fishing vessels and other vessels participating to BFT operations,
- Some of those enforcement measures could be taken by another CPC than the Flag CPC (fines, seizure, sequestration),
- Certain infringements regarding transfers involve farms and/or vessels (Par. 77, 79 and 81).

Proposals

Par. 93 – vessels

Replace first part of Par. 93 by

“CPCs shall take enforcement measures, in accordance with its law, in respect of vessels which do not comply with the provisions of paragraphs 21 to 26, 29 to 31, 64 to 66 and 67 to 72, 77, 79 and 81.”

Par. 94 – farms

Insertion of Par. 77, 79 and 81 in first part of Par 94.

4.1.10. ICCAT Scheme of Joint International Inspection - Pa. 99 to 100 and Annex 8

The threshold of 15 fishing vessels engaged in BFT fishing seems to be too restrictive for deciding that the Flag CPC concerned has an inspection vessel in the Convention area or cooperates with another CPC for that purpose. Alternative criteria should be envisaged in order to better cover the activities of vessels under this threshold and to take into consideration risk factors, either already identified or new. As a practical example could be mentioned the detection (by AIS positions or other means) of the presence of vessels in a BFT fishing area where they are not supposed to operate at that time.

However, due to the diversity of such situations, which might provide a basis for such criteria, it is not possible, at this stage, to suggest detailed proposals as in other sections of this report.

4.2. Recommendation by ICCAT on a programme for transshipment - Rec 2012-06

Whilst this Recommendation lays down precise rules on transshipments, which usefully support compliance and traceability controls, including for BCDs, it remains silent in the case of failures by the operators concerned.

This shortcoming can be addressed in respect of BFT transshipments at ports referred to in its Par. 1 and Annex 3 through the proposal under 4.1.4.

Proposal

However, to ensure that all species concerned by this Recommendation be treated on the same way, it would be advisable to include an enforcement section to lay down appropriate measures in respect of non compliance cases with the provisions in its Par. 1, 6, 13, 14, 15, 16, 17, 18, 23 and Annex 3, except for BFT transshipments at sea (prohibited) and covered by proposal under 4.1.3.

It would also be advisable, for a better consistency of observer programmes, to take into consideration the proposals under 4.1.8. for amending Annex 2 of Recommendation 2012-06 along the same line.

4.3. Recommendation by ICCAT for an ICCAT scheme for minimum standards for inspection in port - Rec 2012-07

4.3.1. Designated ports - Par. 9

As already mentioned under 4.1.4 and 4.1.5, it cannot be excluded that transshipments or landings take place in non designated ports, if the fishing and/or receiving vessels, for any reason, intend to avoid the procedures and inspections to be carried out in accordance with this Recommendation.

Such issues have already been identified (see point 9.2.1. of the report of the inter-sessional meeting of the Panel 2 and Compliance Committee in March 2014)
For the same grounds, similar information procedures as for Par. 65 and 69 of Recommendation 2013-07 should also be included in Par. 69.

Proposals

It could be thus advisable to introduce a specific information procedure with non - designated ports at the end of Par. 9. It could consist in:

- The communication, to the authorities in charge of non designated ports of the vessel names in the ICCAT record established under Par. 57 to 59 of Recommendation 2013-07,
- In case of calls or stays of these vessels in their ports, they should advise immediately the competent Port State authorities responsible for the implementation of ICCAT rules for appropriate action and take provisional measures to prevent those vessels to commence transshipments or to land their catches.

An additional information procedure should also be included in order to advise the Flag CPCs of those vessels.

In addition, such landings or tentative landings in non-designated ports of species covered by ICCAT rules should be treated as an infringement under Par. 22 to 25.

4.3.2. Port inspections – Par. 16

The Port CPCs have the duty to determine which foreign vessels have to be inspected. This cannot be done “in accordance with its national law”, as the criteria to take into consideration for selecting the foreign vessels are those adopted by ICCAT in that Recommendation, unless some CPCs implement more stringent measures as allowed in Par. 1. Such criteria have been determined as they aim to meet requirements for efficient inspections of vessels submitted to ICCAT rules. They should be selected and implemented without being influenced by rights, obligations or procedures which are determined by national law, and which can differ from one CPC to another one.

Due to the prior notification procedure, the vessels are aware that they can be selected for inspection. To avoid it, they could attempt to submit a “nil report” or to provide incorrect information in respect of species, quantities or catch areas, etc. aiming at minimizing the interest for an inspection. The selection criteria should take into account such risks.

Proposals

The segment “in accordance with national law” should be deleted in Par. 16.

It is also suggested to add a sub paragraph d) “or doubts upon risk management criteria.”

4.3.3. Port inspection procedures – Par. 17

On the same grounds as mentioned under 4.3.2., to avoid inspection results which could be unfavourable, it cannot be excluded that vessels attempt to dissimulate, destroy certain information or documents or submit information or documents which do not reflect the actual catch conditions. It could be thus advisable that, under Par. 17, the inspection may be extended to any place where information or document related to the activities of the inspected vessel can be kept.

Proposal

It is suggested to introduce in Par. 17, between “...in case of transshipment..” and “...which they deem..” the following segment: “ kept on board of the vessel or in any other place,. »

An additional suggestion regarding the specific aspect of « information” would be to replace the following sentence in that Par. by a wording such as : « They may also question the Master, crew members, or any other person in relation with the vessel being inspected. »

Failure, from the side of operators, to provide such factual information from their own records should entail the denial of validation or the cancellation of previously validated BCDs.

5. ICCAT BCD and Council Regulation (EC) nr. 1005/2008 of 29 September 2008 (IUU Regulation)

At all stages, from the catch to the trade, EU operators are major players in the BFT industry worldwide. As the BCD has been recognised as meeting the requirements of the IUU Regulation, it is important to assess the issues identified under Section 3 in the light of the requirements for such recognition.

5.1. The IUU Regulation – Scope and catch certification scheme

Since the entry into force of the IUU Regulation on 1st January 2010, a full set of new provisions does apply to all IUU fishing and related activities within the EU member States, Community waters, third country maritime waters and on high seas (Article 1). Included in these provisions is a EU catch certificate, required for fish under any form, imported/re-exported into/from the EU and, under certain conditions, exported from the EU (Articles 12 and 15). The IUU Regulation provides for that catch documents or any related documents validated in conformity with RFMO catch documentation schemes, shall be accepted as catch certificates under the said Regulation for the products at stake (Article 13). A prerequisite is however that the RFMO catch documentation schemes shall be recognised as complying with the requirements of the IUU Regulation. In addition, the products accompanied by such recognised catch documents are submitted to the same provisions on import checks, verifications and refusals under the IUU Regulation as any product imported under the EU catch certificate.

To a significant extent, the functioning of the IUU Regulation catch documentation scheme is relying on operators recording and traceability systems, be they imposed by law or for their own management practices which are briefly described under paragraph 1.3. The existence of these systems and practices, which are commonly used by the fish industry worldwide, including the processing sector, had been a determinant factor for its design.

Its functioning also depends on the legal and organisational means of the authorities in charge of fisheries management and control, including the validation or post verification of the catch certificates in the countries concerned. Shortcomings affecting such means or their proper implementation could imply more delays for import due to verifications. This can negatively impact the trade and even the safe management of fisheries resources in case of inefficient verifications.

5.2. Recognition of the BCD

Through the adoption of the Commission Regulation (EC) Nr. 1010/2009 of 22 October 2009, the BCD has been recognised as complying with the requirements laid down by the IUU Regulation. BCDs shall thus be accepted as catch certificates under the said Regulation (Article 7.1 and Annex V, Part I).

This recognition is not submitted to any additional conditions, by contrast to another RFMO catch document (Article 7.2 and Annex V, Part II).

For information only, the amendments introduced to this Regulation by Commission

Regulation (EU) Nr. 202/2011 of 1 March 2011 have no impact on the recognition of the BCD.

5.3. Data on BCD and the IUU Regulation

Whilst the nature of data to include in the BCD is in line with the requirements in the IUU Regulation, the way they are declared for farmed fish could be retrospectively an issue for its recognition as well as it is one for the ICCAT scheme itself.

As described in Section 3, the validation of BCD for products stemming from different catches from different vessels farmed in the same cage cannot ensure traceability as required in the IUU Regulation. In addition to this uncertainty, information on the multiple vessels and catches is not directly accessible to the authorities of the receiving country.

By contrast, under the IUU Regulation, this detailed information is directly available, either on the catch certificate itself if all the vessels are flagged to the country of validation (footnote) or on the catch certificate(s) attached to the re-export certificate in case of fish processed in another country than the Flag State(s) (Articles 12.3 and 14.2).

5.4. Validation authorities

Under the IUU Regulation, the publication of Flag State notifications, which is a prerequisite for trading with the EU, is subject to the communication of certain information of organisational and legal nature (Article 20).

By contrast to the ICCAT system, this publication is not automatic as, so long the specific information required is not provided, the names and other details of the validating authorities are not published (Article 20.3).

In accordance with par. 28 of Recommendation 2011-20, the CPCs shall communicate, in their notification, the provisions adopted in their national law to implement the BCD programme. The scope of this part of the notification is narrower than its pendant in the IUU Regulation, imposing to the Flag States to provide more information, including on the legal and organisational means to manage and verify fishing activities, thus prerequisites to support the correct implementation of any catch documentation scheme, including the BFT one (Article 20.1 and Annex III).

It has also to be noted that several CPCs, which have notified to ICCAT the implementation of the BCD, are not on the list of notifying countries published under the IUU Regulation. The reasons for these absences can vary:

- a) No notification,
- b) Insufficient notification
- c) “negative” notification: the country concerned advised the European Commission that, having no sea-going vessel catching fish for direct or indirect export to the EU, there is no need for a notification.

In addition, under the IUU Regulation, the validation and verification of catch certificates may be carried out by public authorities only (see its Article 20.1.(b)).

In short, the IUU Regulation notification standards, which also apply to the BCD validating authorities in third countries, are more advanced than those laid down in Recommendation 2011-20. They are however not exceeding the legal and organisational means necessary for implementing ICCAT rules.

These significant differences regarding the notification requirements could also be retrospectively an issue for the recognition of the BCD under Article 13 of the IUU Regulation, in particular as the ICCAT Secretariat is not empowered to implement provisions similar to Article 20.3 of the IUU Regulation.

5.5. BCD validation

From Section 2.1.3.1 it appears that BCDs have been validated despite the lack of detailed information on the catches and vessels from which the products to trade were obtained and/or conflicting data in observer's and inspection findings.

As the 2009 SCRS growth rates have been used to justify retrospectively the correctness of BCDs, it could be inferred that they could also have been taken into account for accepting the data declared prior to the validation rather than verifying them on the basis of facts.

This way of validating BCDs cannot meet the requirements laid down in Article 12 of the IUU Regulation, whereby the validation of catch certificates has to be based on facts which can be ascertained.

5.6. BCD verifications

As described in Section 3, the verification procedures laid down in Recommendation 2011-20 are quite exclusively restricted to the control of various statements by operators which are not suitably supported by adequate means for accessing and verifying their records related to the BFT activities.

In addition, at least in the French version of Recommendation 2011-20, verification procedures are optional.

Indeed, it seems that a comparison based upon average values provided by SCRS growth rates is privileged towards the verification procedures in this Recommendation, even if such rates cannot be related to the operations at stake. This is, at least, what is resulting from the answers received to the WWF request regarding a large number of BCDs validated by several CPCs (see Section 2).

Should this practice be of general or wide use in the CPCs, as for the way of validating BCDs, it is doubtful that it can meet the requirements of the IUU Regulation.

Under the IUU Regulation, any import accompanied by a recognised catch document is submitted to the same provisions on checks and verifications as any operation under the normal catch certificate (Articles 13.1, 16, and 17).

The IUU Regulation does not allow any flexibility to third country authorities for any kind of verifications, be they done prior to validation or afterwards on request within a given deadline (Articles 12.3 and 17 6(b)). The verification results have to provide a

clear reply, including, of course, on compliance or non-compliance with the relevant rules (Article 18.2 on refusal of importation).

As for the validation and notification procedures, the lower verification standards (even if actually implemented rather than comparisons based on growth rates) of Recommendation 2011-20 are too weak for efficiently supporting the conduct of verifications as required by the IUU Regulation.

5.7. Products other than farmed BFT

To a large extent, these shortcomings in respect of the IUU Regulation requirements are not limited to farmed BFT. As they also concern in particular the notification and verification procedures and means, their impact does apply to the BCD irrespective of the product concerned.

This remark also applies to any other recognised catch documentation scheme for which shortcomings of equivalent nature would be identified.

5.8. What to do to improve compliance of the BCD with the IUU Regulation?

5.8.1. Improvement within the scope of the recognition procedure under the IUU Regulation

By way of a Commission Regulation, it is possible to recognise an RFMO catch documentation scheme by adding certain conditions. It has been the case for the CCSBT scheme, which has been recognised as well through the Commission Regulation (EC) Nr. 1010/2009 of 22 October 2009 (see Section 5.2). However, such additional conditions can only be of technical nature without interfering to the RFMO scheme in question. In this case, the additional condition consisted in the submission, by the importer, of transport details.

This solution is not viable in the case of the BCD due to the nature and diversity of the needs for improvements identified, which can be done at ICCAT level only.

5.8.2. Improvements at ICCAT level

5.8.2.1. Recommendation 2011-20

A first set of improvements would require amendments to Recommendation 2011-20.

They should concern:

- The content of the BCD form to include specific data to identify precisely the fish caged on the basis of 1vessel/1catch/1cage and the subsequent fish outputs from the cage against a given catch,
- The provisions on validation to make sure that it shall be done on the basis of factual information only,
- The provisions on verifications to make sure that all appropriate legal and organisational means shall be used for this purpose, enabling, in particular, access to any relevant information, be it kept by an operator specifically mentioned in the Recommendation or any other legal or natural person,

- The provisions on notifications to provide relevant information on the fisheries management and control system in force by the public authorities notified, in addition to the measures adopted at national level to implement the BCD.

Such improvements are suggested as proposals in Section 3.

5.8.2.2. Other ICCAT Recommendations

To ensure the full efficiency of such amendments of Recommendation 2011-20, further improvements should also be considered. As, to a large extent, they concern overarching ICCAT instruments, the benefits to be expected would be of general nature, and not limited to a better compliance of the BCD implementation with the IUU Regulation.

These instruments are the Recommendations 2011-12, 2012-06, 2012-07, and 2013-07. Given their nature, the proposals for improvements suggested in Section 4 could help in ensuring a better compatibility of the BCD with the requirements in the IUU Regulation.

6. Summary of Recommendations

Several solutions to improve the BCD itself and to better support its implementation have been described in details in Sections 3 and 4.

They can be categorised as follows:

- Improvements in the data collection and validation to ensure full traceability from the catch to the trade on the BCD for all BFT products,
- Extension of the verification means and cooperation mechanisms in Recommendation 2011-20,
- Improvements in other ICCAT instruments directly or indirectly related to BFT operations to ensure a comprehensive support to the functioning of the BCD.

As mentioned in Section 5, these proposals could be useful to reinforce the compatibility of the BCD with the requirements of the IUU Regulation, on legal and operational aspects as well.

As the e-BCD is still a “work in progress”, the contribution of this report is that respect consists in providing some advices, which could be taken into consideration in the development of this project.

7. Other catch documentation schemes

In order to be comprehensive, the analysis in this technical report had to encompass other ICCAT instruments (inspection, vessel records, compliance) whose implementation is a pre-requisite for a safe management of the BCD and other BFT related instruments.

Several improvements of these instruments have been suggested in Section 4, to increase their efficiency and reliability by eliminating some loopholes and developing more means for inspections, verifications and enforcement. They have been designed to take into account the needs of the BCD, and beyond them, of any catch documentation scheme.

Improvements of the BCD proposed in Section 3 are based along the same line and most of them (even if they aim at addressing the specific farming issue) could also be directly applicable for the design of new catch documentation schemes for other species, traded in processed or unprocessed form.

It is thus suggested that such proposals be taken into consideration within the framework of discussions at ICCAT level on catch document schemes for other species (point 7 – report of the 9th meeting of the working group on integrated monitoring measures – May 2014).

8. Closing remarks

The proposals in this report could be regarded as being quite ambitious. They are simply commensurate to the challenges of the BCD (or any other catch document scheme) full traceability requirement, which is crucial for its reliability and acceptance by all actors concerned and of the fight against IUU fishing.

However, the improvements, which should be introduced to the BCD and the other ICCAT relevant Recommendations, cannot be self-sufficient as such. In order to be fully efficient once they have been improved, these instruments have to be implemented by public authorities having all required legal means and technical expertise, with the active support of the ICCAT Secretariat, a requirement which could imply reconsidering its current role in a more pro-active way.

Finally, the conditions for compliance assessments could certainly benefit from a clear separation of decision-making powers between the authorities and bodies in charge of control and management tasks at national and ICCAT levels.



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