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Study on the implementation of a Regional Fisheries Observer Programme in the ATLFACO region

Synthesis

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SYNTHESIS

Introduction

This synthesis summarises the main findings of the study commissioned by ATLAFCO pursuant to the Rabat Declaration on regional cooperation for the fight against IUU fishing adopted by the 9th ATLAFCO Ministerial Conference in September 2014. The terms of reference of this study included a review of the contextual elements and recommendations aiming at developing a Regional Fisheries Observer Programme implementing an observer scheme with the following features: **common** to fulfil all mandatory or voluntary requirements ; **single**, with an unique mandate approved by all concerned entities ; and **permanent** to cover all fishing trips of concerned vessels.

Use of fisheries observers as a tool to monitor fishing fleets activities, and as a source of data for scientific purpose is considered in international law, and in particular by the United Nations Convention for the Law of the Sea and its implementing acts, and by FAO voluntary directives for promotion of responsible fishing practices or international plans of action against IUU fishing.

Status of Fisheries Observer Programmes in the ATLAFCO region

Within the ATLAFCO region, which include waters under jurisdiction of its 22 Coastal States from Morocco to the North until Namibia to the South, and adjacent high seas areas, **several mandatory or voluntary observer programmes are into force** and applicable both in waters under jurisdiction and in the high seas. This include in particular:

- Fisheries Observer Programmes implemented under the multilateral framework of ICCAT including scientific data collection detailed by recommendation 10-10, FAD moratorium surveillance imposed through recommendation 15-01, and monitoring of at-sea transshipment activities as specified by recommendation 12-06 ; as well as the Fisheries Observer Scheme implemented under SEAFO;
- Fisheries Observer Programmes foreseen under bilateral access agreements concluded between foreign fleets and Coastal States, including bilateral agreements concluded by the EU and those concluded by other long-distance fishing fleet entities;
- National Fisheries Observer Programmes unilaterally developed by Flag States on their vessels comprising for EU vessels the mandatory data collection foreseen by the Data Collection Framework;
- Fisheries Observer Programmes implemented by shipowners on a voluntary basis to monitor compliance with good practices, or to control the chain of custody for fisheries products stored onboard.

In the case of tuna purse seiners active in the ATLAFCO region, 5 different Fisheries Observer Programme are applicable, each with different prescriptions as regards entity responsible for the programme (Flag State or Coastal State), observer mandate (scientific / enforcement / both), coverage rate (from 5% to 100%) and data ownership. The situation of this fleet in relation with Fisheries Observer Programme is further complicated by the fact that these vessels can exploit both the high sea and the waters under jurisdiction of Coastal States during a same fishing trip. For other fleets, like the small pelagic freezer trawlers, the situation is simpler with two to three applicable programmes, and fishing area located exclusively in waters under jurisdiction of Coastal States.



According to information collected through a questionnaire submitted to all 22 ATLAFCO Member States, **the situations of Member States in relation with Fisheries Observer Programmes are highly variable**. Some Coastal States succeed in deploying Fisheries Observers on fishing vessels, while other face technical, legal or financial issues hampering achievement of a minimum coverage rate of fishing trips. These findings are coherent with the conclusions of an AU-IBAR study published in 2016 which attributed weak performances of Fisheries Observer Programmes to selection, training, and lack of valorising status of observers and to unclear definitions of their roles and responsibilities.

In order to lift these obstacles and to implement permanent observer coverage of their own vessels in partnership with Coastal States, **French and Spanish shipowner associations have developed common, single and permanent regional Fisheries Observer Programmes** onboard their vessels. In essence, the associations train fisheries observers who are deployed on their vessels with a mandate which cover all mandatory and voluntary data collection programmes that apply during a same fishing trip, either in waters under jurisdiction of Coastal States or in the high seas. In a number of cases, human observation is completed by electronic observations, in particular on Spanish vessels. **Since its inception in 2013, these voluntary Fisheries Observer Programmes could develop a number of significant acquis** in terms of training, trip management and data analysis, **but are undermined by a lack of adhesion from Coastal States**.

Lessons learnt from Fisheries Observer Programmes implemented under other contexts

The study reviewed characteristics of Regional Fisheries Observer Programmes implemented in other oceans to draw lessons relevant in the perspective of a Regional Fisheries Observer Programme in the ATLAFCO region. The main lessons are as follows:

- In most cases, **Fisheries Observer Programmes adopted by RFMOs rely on National or sub-regional programmes of concerned entities** (CCAMLR, CTOI, WCPFC, NAFO, ICCAT ROP-BFT for some segments). In some cases, the RFMO is directly responsible for the programme and deploy its own observers with implementation modalities that are largely out of control of concerned entities.
- **A permanent coverage of fishing activities is applicable when the competent RFMO has adopted a specific measure**. In the ATLAFCO region, ICCAT does not impose a permanent coverage, except under the framework limited both in time and in space of the FAD moratorium. A 100% coverage of fishing trips of concerned vessels can be implemented in the ATLAFCO region only on a voluntary basis for tuna vessels.
- **The different Fisheries Observer Programmes have scientific, enforcement or mixed objectives** with a common feature that observers do not have the legal empowerment to issue a notice of infringement or to arrest the vessel. However, observer reports can be used in infringement procedures. Amongst the programmes having an enforcement dimension, the WCPFC observer programme is interesting in that it limits infringement reporting to infringements detailed in a check-list, mitigating the risks of judgment errors by observers.
- Concerning training standards for observers, lessons from other programmes show that **the mere definition of training standards is not sufficient to guarantee an harmonised quality of observations**, and hence, the success of the programme (i.e. NAFO, CCAMLR). The example worth of noting is that of WCPFC which regularly audit training programmes implemented by participating entities to ensure compliance with minimum standards, with the power to withdraw training programme certification if it is not the case.



- In almost all cases reviewed, **the RFMO at the origin of the Regional Fisheries Observer Programme prepared and published harmonised observer documentation (observer manuals, data collection forms)**. In some cases, harmonisation efforts include details of observer briefing / debriefing procedures (i.e. WCPFC). In the Atlantic Ocean, there is no such international standardisation, which prevent harmonised data collection, and hence data analysis.

Institutional context and relevant achievements in the ATLAFCO region

In the ATLAFCO region, there are three Regional Fisheries Bodies (RFBs), the SRFC, FCWC and COREP which all have a mandate comprising harmonisation of the Member States initiatives for fisheries managements and strengthening sub-regional cooperation. Only Morocco and Namibia are not party to any of these three RFBs. The achievements of the three RFBs in relation with governance and monitoring, control and surveillance in particular are variable. The three RFBs each adopted Minimal Access Conditions (MAC) considering fisheries observer placement with however, different approaches to define observer mandates and the fishing fleet subject to observer coverage. SRFC and FCWC each adopted conventions for exchange of information and data comprising observer data. **Finally, only SRFC has made substantial progress towards sub-regional integration of monitoring, control and surveillance (MCS)** with the preparation of a specific MCS convention and projects of implementing protocols detailing certain modalities, including those concerning observer deployment. According to SRFC, this MCS convention, also open to Ghana and Liberia, should be adopted in a near future, validation steps having been completed.

The three RFBs do not have past operational cooperation experiences, even though they regularly exchange information. **This cooperation can be fostered and organised by ATLAFCO** according to its mandate, and on the basis set out by the MoU signed in Agadir in 2015. In addition, ATLAFCO has concluded various cooperation agreements with distant-water fishing entities including the LDAC which groups EU fishing interests, representatives of Russian fleets, Japanese cooperation and the International Seafood Sustainability Foundation (ISSF), a NGO with an interest in promotion of responsible tuna fishing practices worldwide, and already engaged in the issue of fisheries observers. These cooperation agreements may support the implementation of a future Regional Fisheries Observer Scheme.

Constraints and recommendations

On the basis of the state of play of Fisheries Observer Programmes in the ATLAFCO region, of lessons drawn from other regions, and taking into account the fisheries governance framework in the ATLAFCO region, the study proposes several recommendation to establish a Regional Fisheries Observer Programme incorporating a regional common, single and permanent observation scheme. Main recommendations include:

- **Articulating a Regional Programme on the basis of existing National and Sub-Regional programmes** as opposed to a programme implemented by a single entity with regional competence. This option will support capitalisation on past experiences and acquis, while encouraging appropriation by concerned States. To this end, a MoU concluded between concerned States represented by the respective RFBs will have to be concluded under the coordination of ATLAFCO, formalising the common ambition to develop a Regional Fisheries Observer Programme.
- **The association of Coastal States, Flag States and shipowners in the definition and the implementation of the regional programme through a**



Steering Committee. The programme will have to fulfil legal or voluntary obligations on behalf of the different entities involved in their areas of competence wherever the vessel is, in areas under jurisdiction or in the high seas. With an objective of permanent coverage, the Regional Fisheries Observer Programme will go beyond minimal mandatory provisions. The Steering Committee will be the governance organ of the programme.

- **A centralisation of operational task within a Programme Directorate** which will include a centralised part in charge of overseeing programme implementation under harmonised standards, and a decentralised part with Regional coordinators nominated by RFBs for deployment of Observer with regional competence to be designated by the National authorities of participating States. The Programme Directorate will be the executive organ of the programme;
- **The implementation**, through a specific agreement between parties, of a mechanism of mutual recognition of Regional Observers, giving through accreditation a regional competence to observers to observe fishing activities in any fishing area. This specific mechanism is necessary in the absence of ICCAT accreditation system of observers.
- **The definition of a common and single mandate for observers with regional competence** which will have to cover at minimum all legal obligations for which concerned States are accountable before the international community. Our recommendation is for a scientific mandate which will support good working conditions onboard the vessels, taking into account that scientific reports can be used to detect a posteriori possible non-compliance issues. However, should parties wish to include an enforcement mandate, we recommend to follow the WCPFC line with a check-list system which limits possible observer judgment errors. In all cases, we recommend not to grant to the observer the legal power to issue notice of infringement or to arrest the vessels;
- **A high-level harmonised training of observers with regional competence**, due to the fact that the success of a future programme will depend, to a large extent, on the quality of the observations provided. We recommend that a training curriculum, closely aligned with the mandate given to the observer, should be defined in a harmonised manner by the Programme Directorate and enforced by the participating States. As it is the case within the WCPFC, we also recommend that training courses implemented by participating States, in accordance with the guidelines of the programme, be accredited and regularly audited in order to decide whether to maintain this accreditation or not. National observer having successfully completed the compulsory training course may be designated by their States as observers with regional competence to the Programme Directorate who will manage their deployment.
- **Harmonised standards for data collection protocols and observer reporting at the regional level**, since it is important for the programme to be able to collect information of an equal level irrespective of the origin of the regional observer. These regional standards do not exist as yet, noting however that some parties (i.e. the EU, French and Spanish ship-owners) have developed some for their own needs, and that very recently, ICCAT has allowed the involvement of its Scientific Committee (SCRS) in this exercise.
- **Robust institutional basis in participating States:** due to legal and financial uncertainties in participating States, the regional programme is exposed to risks of volatility for observers with regional competence if the institutional framework governing their status is not defined by States of which they are nationals. We therefore recommend that States wishing to participate in the regional programme be in a position to demonstrate (i) that observer status is well defined in national legislation and (ii) that multi-year financial resources are available to pay salaries and charges of regional observers.
- **The definition of rules for the protection and dissemination of data collected by observers with regional competence**, which comply at least with the attributions of flag States and coastal States, with possibilities to go further if



the participants explicitly agree. In order for the regional programme to be able to valorise the data collected, we also recommend that the confidentiality rules governing the use of the information collected should be clearly defined.

- **An equitable distribution of the workload between the parties concerned.** According to our estimates, the regional programme is likely to create 150 regional observer positions for the tropical tuna fishery, or 130 for the small pelagic industrial fishery. As requested several times during the stakeholder survey, these positions should be allocated equitably among the participating States on an objective and verifiable basis. As such, an allocation key based on pro-rata of catches of the fishing fleets subject to observations in the area under jurisdiction appears to us to be an acceptable working assumption.
- **Sustainable financing mechanisms:** according to our estimates, the operating cost of the regional programme over a full year will be approximately € 1.6 million per year, including € 750,000 for the operation of the Programme Directorate and € 875,000 for the payment of regional observer day-at-sea allowances and related travel expenses. **These operating costs may be fully covered by shipowners' contributions.** For its preparation phase leading to its operational revenue generating mode, **we estimate that the programme will need the equivalent of € 1.2 million in grants**, possibly covered by Donors with interests in the strengthening of fisheries governance in West Africa.
- We recommend that **funding of programme operations is done through an observer fund** that will be managed by the Programme Directorate under the control of the Steering Committee.

The study establishes an action plan that proposes a **timetable for the actions recommended for the implementation of a Regional Fisheries Observer Programme** and specifies the role of each entity for each action. The action plan is divided into **three phases**:

- i) **a programme initiation phase** during which the institutional prerequisites for the foundations of the programme are achieved, including the conclusion of memoranda of understanding between the parties concerned;
- ii) **a phase for the creation and the launching of the programme's organs**, including the constitution and then the operationalisation of the Steering Committee (governance body) and the Programme Directorate (executive body);
- iii) **an operationalisation phase** during which the programme prepares and adopts the key elements of the programme (definition of the mandate of the observer with regional competence, harmonization of training, collection and reporting standards, deployment procedures, allocation key for regional observers positions, etc.).

According to our estimates, **if the start-up phase starts in 2017, the regional fisheries observer programme could be operational by 2019.**

Conclusion

This study concludes that the implementation of a Regional Fisheries Observer Programme in the ATLAFCO region is possible. **The main factor underpinning its success will be the political willingness of the entities involved** to achieve this result. The strong commitment of the various parties in the improvement of fisheries governance and in the fight against IUU fishing support optimism concerning the involvement of each party in the construction then in the implementation of the Regional Fisheries Observer Programme, which **will be a landmark initiative in the history of governance of the fisheries sector** in West Africa with the emergence of the first collective initiative of both institutional and private actors aiming at combining and optimising at regional level monitoring conditions of fishing fleets engaged in transnational activities.



The Regional Fisheries Observer Programme will thus support two essential pillars of fisheries governance through inter-State cooperation promoted by the law of the sea: (i) monitoring, control and surveillance of fishing fleets, with positive effects on the fights against IUU fishing, and (ii) improving scientific advice in support of fisheries management through the provision of new data that is currently lacking.

Due to its operational characteristics and the demand by ship-owners concerned to reach this type of common, single and permanent regional coverage, **the first candidate fleet to be selected for this regional programme would certainly be the industrial tuna seiner fleet**, active in the ATLAFCO region. The successful implementation of a regional fisheries observer programme on tuna seiners will facilitate the work for integration of other fishing fleets. Among these, priority may given to the **industrial pelagic trawlers fleet**, which, despite its impact on stocks and its economic dimension, is at present relatively little monitored through independent fisheries observers.

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