



Fisheries
Transparency
Initiative

REPORT ON THE DISCLOSURE OF PER VESSEL CATCH DATA

Report on the discussions of the task force

On behalf of the International FITI Secretariat

This initiative is supported by the Islamic Republic of Mauritania.



Date: 28 October 2016

1. Background

During the 4th meeting of the International FiTI Advisory Group (15 June 2016, Madrid) a set of key recommendations regarding the scope of the FiTI Reporting were discussed. The majority of these were accepted. This included information on characteristics, authorizations and actual payments for each large-scale vessel. However, there was divided opinion on the recommendation to include annual per vessel catch data as part of the mandatory reporting for FiTI implementing countries. The recommendation put to the group read as follows:¹

“FiTI reports should include large-scale fisheries information on annual payments and catches per species, including discarded and retained by-catch, on a per vessel basis. Any legally binding impediments to doing so for certain vessels should be resolved before commencing with FiTI.”

Objections to this recommendation included the argument that the publication of catch data linked to a vessel would be a breach of law in some countries, as such information is considered commercially sensitive. Moreover, there was doubt over the purpose of including this level of detail in FiTI annual reports. In contrast, another view was that laws and policies on the confidentiality of catch data are ambiguous, there is a public interest in the disclosure of such data, and any potential legal obstacles to this level of transparency can and should be resolved.

The International FiTI Advisory Group was not able to resolve this debate at the meeting in Madrid. It was therefore agreed to establish a dedicated task force to analyse obstacles for providing annual data on catches per vessel as part of the FiTI. It was further agreed that the task force should reflect the multi-stakeholder orientation of the FiTI, comprising participants with experience from multiple perspectives. Also, it was agreed that the task force will be operationally managed and overseen by the International FiTI Secretariat. Terms of Reference for the task force were established by the International FiTI Secretariat (dated 22 June 2016), stating its two key objectives:

1. Document and assess all relevant arguments that would support as well as restrict the publication of catch information on a per vessel basis for large- scale fisheries.
2. Determine a consensus-oriented recommendation on vessel-by-vessel reporting prior to the 5th International Advisory Group meeting.

Members of the task force were Alexandre Rodriguez (EU Long Distance Advisory Council); Kristofer Du Rietz (European Commission, Directorate General for Maritime Affairs and Fisheries)²; Alfred Schumm (WWF) and Philippe Michaud (Special Advisor to the Minister of Finance, Trade and the Blue Economy, Republic of Seychelles).

1 “Preparatory Information” for the 4th International Advisory Group meeting (dated 7 June 2016), Recommendation #4.

2 Mr. Du Rietz has contributed to the work of the task force in his personal capacity and his contribution should not be regarded as the official position of the European Commission.

2. Findings and recommendation of the task force

To facilitate the discussion of the task force, the International Secretariat prepared a background paper that considered various objections to per vessel reporting, and put forward counter arguments to these objections. The report is attached as an annex here.

Discussions on the report highlighted the original disagreement that prompted the creation of the task force. Thus, members of the task force formed different, and at times opposing views on the arguments presented in this background report. Most significantly:

- There are opposing views on whether existing laws on confidentiality of commercially sensitive data prohibit governments from publishing per vessel catch data. It is likely that this could only be resolved on a case-by-case basis, with more formal legal advice. However, legal barriers to publishing this data may not be significant, given that the majority of these laws explain that the definition of what is commercially sensitive information will be decided by the competent authority.
- There are opposing views on whether publishing per vessel catch data would pose a legitimate commercial threat to the business interests of fishing companies. One view is that the threat is minimal as long as the data is published for all vessels and that it is not joined by spatial information on where catches were made. However, another view was more cautious and was based on the concern that such data could be used by companies to gain an unfair advantage.
- There was no agreement on whether the publication of per vessel catch data would lead to improvements in fisheries management, as opposed to the publication of this data in aggregated form. While proponents of transparency of catches on a per vessel basis put forward examples of how this data may be used positively, others considered these arguments to be either unconvincing or insufficient to justify the potential negative outcomes posed to law abiding firms.

The objective of the task force was to reach a consensus on the recommendation for the FiTI Standard. Because there were different interpretations of the arguments for and against per vessel catch reporting, a compromise is proposed based on publishing catch data in an aggregated form (as detailed below), but allowing individual countries the option of publishing per vessel catch data if this is the recommendation for FiTI Country Reports made by their FiTI National Multi-Stakeholders Group. It was agreed that National Multi-Stakeholder Groups must make this decision based on wide consultation and this consultation will require consideration to any applicable laws and regulations on the confidentiality of commercially sensitive data and on freedom of information.

In addition, it was proposed that the FiTI International Board should be encouraged to revisit this debate once the FiTI is operational, and when more experience has been accumulated by implementing countries.

Further points of clarification emerged in the discussion of the task force. These were considered important to flag for the finalisation of the FiTI Standard.

1. Mandatory reporting of catch data can not include catches classified as either by-catch (retained) or discards. Many fishing authorities, both national and international (i.e. RFMOs) do not have this level of data for authorised fishing vessels, and it would therefore be unrealistic to have a strict approach to reporting on this for the FiTI. It was therefore suggested that mandatory reporting is included for retained target species, and FiTI Country Reports include all available information on catches of by-catch and discards where possible. Furthermore, where the data is incomplete or thought to be unreliable on bycatch and discards, FiTI Country Reports should indicate the reasons for this and what measures are being taken to improve the situation.
2. It was noted that the unit of measurement for catch reporting must be clarified. This can either be in weight or number of species. Due to variability in fisheries, it was recommended that where possible both units should be reported, but it would be permissible for a FiTI country to report on only one unit of measurement. This is an issue that should be raised for consideration by the National Multi-Stakeholder Groups for further discussion in designing their reports.
3. It was pointed out that if the person responsible for compiling FiTI Country Reports is expected to have access to disaggregated catch data (i.e. access to per vessel information) in order to compile their report, then this person (the so-called Report Compiler) must sign a confidentiality agreement prohibiting them from disclosing this data to a third natural person, legal entity or organisation.

Final recommendation from the task force:

For large-scale fisheries, FiTI reports must include aggregated annual catch data for all licensed fishing vessels. Aggregation of data will be presented according to flag state, fishing gear and target species. Information should be presented on retained targeted species, retained bycatch and discards, although where coastal states are unable to provide complete data on bycatch and discards, the reasons for this must be clearly articulated and information must be provided on what measures will be taken to improve the availability of catch data. Catch data on a per vessel basis for all or some fisheries can be published if justified and agreed upon by the National Multi-Stakeholder Group. Vessels that do not comply with catch reporting provisions according to the country's rules on fisheries tenure arrangement must be identified in the FiTI Report.

Annex:

Background paper on per vessel catch reporting

Prepared by Andre Standing, July 2016.

Introduction

The original proposal for including per vessel reporting was made by members of the Large Scale Fisheries Working Group for FiTI, and was further supported by members of the Small-Scale Fisheries Working Group at a 2-Day Technical Workshop (22-23 April 2016, Berlin/Germany). The proposal for mandatory reporting for FiTI presented at the Madrid meeting involved publishing annual catch data for all licensed vessels classified as “large-scale”. According to the proposal, the data would be presented for each vessel, and this would be done for all large-scale vessels that have access to marine fisheries within a state’s own EEZ (and territorial waters), as well as nationally flagged [large-scale] vessels operating in a third country or the high seas.

Given the time to prepare an annual FiTI Country Report, the catch data for each vessel would correspond to a backdated period of 12 months. For example, a FiTI Country Report published in 2017 would contain total declared catches for each vessel in 2016. The proposal was for FiTI to provide data for each vessel broken down by species, thereby providing data on retained target species as well as retained by-catch. Mandatory reporting elements for large-scale fisheries will be applicable to vessels provided with any type of fishing licenses, including non-commercial scientific or research licenses.

As will be explained further, some participants in the International Advisory Group opposed per vessel catch reporting on several grounds. The alternatives to per vessel catch reporting for FiTI would involve the aggregation of data on catches so that catch data could not be attributed to an individual vessel. Various approaches were raised, e.g. the aggregation of data could involve publishing data for a group of vessels according to their flag state. The aggregation of data could also be made according to vessel types (i.e. long-line vessels and purse seine vessels), as well as for vessels with licenses for different target species. Indeed, FiTI Transparency Elements for the catches of small-scale fisheries will be aggregated according to vessel types, gear types and target species. The decision to aggregate data for the small-scale sector (but not for the large scale) is based on the view that it is infeasible to expect most coastal states to collate such information given the sheer numbers of fishers involved and the informal nature of the sector in some countries.

The decision to include per vessel catch data for the large scale sector should be appreciated alongside other data that will be included in FiTI Reports, already agreed to by the International FiTI Advisory Group. The FiTI is not only focused on providing regular information on what has been caught by large-scale fishing vessels, but also:

- Detailed information on tenure arrangements, including the contents of any access agreements and the terms and conditions of fishing licenses for different fisheries and gear types;
- A list of licensed fishing vessels and nationally flagged vessels, including key characteristics for each of these large-scale vessels;
- Information on payments received from the authorisation of fishing for each of these large-scale vessels;
- Comprehensive contextual information on the fishing sector (reported every two years in a narrative form), covering information on trade, stock assessments, fisheries management policies, subsidies and information on resolved cases for illegal fishing.

Considering arguments against per vessel catch data

The proposal for including annual per vessel catch data in the FiTI was rejected on several interrelated concerns. This section outlines these concerns and provides counter arguments that support the initial proposal. The aim of this section is not to argue definitively for accepting or rejecting the initial proposal, but rather to identify the range of arguments that should be considered in order to find a way forward.

Based on the discussions during the Madrid meeting, 3 key arguments against per vessel reporting of catch data can be identified. Each is discussed separately in the following chapter.

Argument 1: Per vessel catch data represents commercially sensitive information, and the disclosure of such data would threaten the legitimate interests of fishing companies.

An important argument against per vessel catch data being made public is that this would threaten the legitimate commercial interests of fishing firms. The argument has at least 3 distinct concerns:

1. Publishing per vessel catch data would provide competitors with vital information that could assist with (hostile) takeovers.
2. Publishing per vessel catch data may allow competing firms to learn from the success and failures of fishing vessels in order to adapt fishing strategies.
3. Publishing per vessel catch data poses a risk to fishing companies as this data is complex and easy to misunderstand. Without considerable contextual information, including information on profitability, such fine level of data may be misused to shame individual vessels or stimulate anti-industry campaigns.

It would therefore be unfair for fishing firms if the data on their catches is made available to other companies, investors and the public.

In response to these concerns, proponents of per vessel catch data do not agree that annual catch data on a per vessel basis would pose a serious threat to the commercial interests of companies. There may also be benefits for companies in having this data in the public domain. Furthermore, as reporting requirements proposed for the FITI would be applicable to all large-scale vessels, this largely avoids any commercial disadvantages that could be caused by reporting for certain companies and not others.

Of the main concerns regarding the potential negative impacts on the commercial interests of firms caused by publishing annual catch data, the following counter arguments can be made.

Per vessel catch data is unlikely to be relevant in informing decisions of competing firms to launch (hostile) takeovers. Such decisions would be informed by analysis of a wide range of data that is usually in the public domain, such as financial statements and share prices, or data that would be accessible to industry stakeholders, including through industry rumour. The FiTI does not request information on profitability of firms or sales data, which is the type of information needed to interpret catch data so that this would be of relevant to commercial competitors. Furthermore, by the time the FiTI publishes such information, it is unlikely that this is perceived as timely information and thus useful for making takeover decisions.

The concern that publishing per vessel catch data may enable competitors to adapt their fishing strategies is also improbable. In order for this to happen, data on catches would have to be complemented with spatial data on the positioning of the vessel when making such catches, as well as be based on catches presented on a more detailed timeframe (i.e. month by month, or fishing trip by fishing trip). The FiTI reporting scope does not include such spatial data nor will it provide a breakdown of catches according to a detailed time series (only aggregated data for a period of 12 months). It is also noteworthy that spatial and effort data on catches for vessels is already published by RFMOs, which allows vessel owners to learn about the success (or failure) of fishing vessels from previous seasons.³ As such, for some commercial fisheries, including tuna fisheries, there is already public access to data that can be used by vessel owners to learn about the catches of other vessels. This information has been made public for some years. Publishing annual catch data for the previous fishing season for all licensed vessels is therefore unlikely to have any negative commercial consequences for individual firms, who will also use several other scientific information to inform decisions on fishing effort.

The concern that publishing per vessel catch data may trigger false or biased claims from the public or campaigns from NGOs is not a sound argument to limit the availability of information

³ For example, Contracting Parties and Cooperating Non-Contracting Parties to IOTC are requested to provide catch and effort data for surface fisheries aggregated to 1 degree square areas and for long liners to 5 degree square areas.

either. On the contrary, the problem of false claims or misunderstandings about the activities and impacts of fishing vessels is best countered by making available more reliable information that can help informed debates. In this respect, there may be a more serious reputational risk for responsible companies caused by a lack of reliable information than there is by the publication of data such as their annual catches. Campaigns against fishing companies, including claims of overfishing, gaining fishing access to non-surplus stocks or unfair benefit sharing, can be informed by anecdotal information or observations, which may be revealed as false given further information. This is a positive reason why fishing companies should benefit from greater transparency, so that misinformation on their activities is potentially countered.

In addition, the case of aggregating catch data, so as to protect the commercial interests of fishing firms, also fails to take into account that aggregated data may unfairly tarnish responsible companies. Catch data of irresponsible firms will be lumped together with the responsible ones. For example, aggregated data may show high levels of retained by-catch for overfished or protected species, or it may show that fishing is happening beyond sustainable limits. In such cases it could be a minority of fishing vessels that are contributing to these worrying statistics. Aggregating the data will protect these fishing firms from public scrutiny, and unfairly tarnish the entire sector.

Finally, consumers and investors are increasingly interested in sourcing fish that has high levels of traceability. Thus, companies engaged in the FiTI can show that their catches are publically disclosed and verified. If the disclosure of this data supports the identification of vessels engaging in fraudulent reporting or non-reporting of catch data, this could also promote the interests of firms acting lawfully. They may gain a competitive advantage in marketing fish, and could also improve decision-making by coastal states to insure sustainable catches, which is essential for the commercial interests of fishing firms.

Argument 2: There is no benefit to fisheries management from the public disclosure of per vessel catch data.

The argument against publishing per vessel catch data also includes the view that there is no clear justification for asking governments to do this. It is enough to ask governments to publish aggregated data on catches. Asking for per vessel catch data will have no further benefits. Verifying this data will be almost impossible. What is more, it is also not the purpose of the FiTI to be encouraging forensic auditing of fishing firms by members of the public, which is the impression that publishing per vessel data gives.

Proponents of this view are therefore satisfied that responsible fisheries management will be achieved when public authorities, at both the national and regional level, are provided catch data

on a per vessel basis. It is these authorities that should have the exclusive mandate to verify such data.

However, the counter arguments for the inclusion of per vessel catch data in the FiTI are based on the belief that there is a public (as well as commercial) interest in disclosing this type of information.

To begin with, an important argument for the publication of annual catch data on a per vessel basis is linked to the widespread problem of misreported or unreported catches. It is a problem that implicates both fishing companies and public authorities, due to fraud, corruption or lax attitudes to fisheries management. This creates havoc in fisheries management at both the national and international level, including for scientists, the fishing industry and states. Publishing only aggregated data for fishing vessels, i.e. where data is lumped together for certain fishing fleets or target species, allows non-reporting or misreporting of data to exist with relative impunity. This is because non-reporting or misreporting data by vessels is easily concealed in aggregate figures. The justification for publishing per vessel catch data on an annual basis is therefore about creating an environment where the ability to falsify or hide data on the activities of fishing vessels becomes less easy.

More positively, the benefits of making more detailed catch data available will help build trust in companies and the fishing authority. Across the world fisheries is perceived to be in crisis, and the industry is routinely criticised for being poorly managed, with public data on catches being seen as lacking credibility. A decision to publish disaggregated data would be a strong step towards creating more trust. Denying public access to this data, based on arguments regarding commercial interests or the view that the public cannot be trusted in using this data, risks encouraging or reinforcing a lack of confidence in the fisheries sector.

Publishing per vessel catch data should not be framed only as a means for forensic auditing of fishing firms by NGOs, or encouraging anti-government advocacy campaigns. Nevertheless, public scrutiny on the activities of vessels and the management decisions by governments is increasingly happening in many parts of the world. This has contributed to the international call for transparency in the sector. Sometimes these efforts have helped identify instances of irresponsible fisheries management and cases of illegal fishing. Publishing per vessel catch data will not, by itself, give a complete or reliable insight into the extent of these problems. Such analysis always requires additional work and data. However, if researchers, scientists, journalists and NGOs, as well as companies, use per vessel catch data to help identify specific instances of poorly managed fisheries or cases of suspected misreporting or illegal fishing, the result will be beneficial for both fishing authorities and the lawful fishing sector. The same data may also be used to defend governments and companies from misleading campaigns. As stated above, any concerns that the data will be misinterpreted or be misconstrued, points to the need for more openness and debate, rather than choosing to obscure data and stifle public debate instead.

Finally, it is quite possible that publishing disaggregated catch data will not lead to an immediate analysis of this data by others. In such cases it may be seen as a waste of time. However, proponents of per vessel reporting point out that beyond the potential benefits of publishing per vessel catch data, as authorities should collate this data anyway, it will not be very difficult to publish. Besides, making data available may stimulate interest and the capacities in using it, which may not be there from the outset.

Argument 3: Laws at the national and international level prohibit the disclosure of per vessel catch data.

The final argument against publishing catch data on a per vessel basis concerns legal barriers that prohibit governments from doing this. Opponents of disclosing per vessel catch data identify confidentiality clauses and laws that forbid states publishing such data, which exist on at least three levels:

1. Confidentiality of catch data is included in rules governing Regional Fisheries Management Organisations. Although there are different wordings to such agreements, across all RFMOs the Secretariat of these bodies have agreed that data on catches supplied by Member States and Cooperating Non-Member States will not be disclosed to the public in a way that can be linked to an individual vessel.
2. Publishing per vessel catch data would violate confidentiality clauses contained in certain fisheries access agreements. For example, this is the case regarding the EU's Sustainable Fisheries Partnership Agreements with third countries. Over the past few years all new agreements or protocols contain a confidentiality clause that prohibits coastal states publishing disaggregated catch data, i.e. on a per vessel basis.
3. More generally, there is a concern that publishing per vessel catch data would violate national laws on the protection of commercially sensitive information, what is usually defined as a "trade secret". In short, governments cannot publish this data even if they wanted to.

In response to these legal arguments against per vessel catch data reporting, there are a number of counter arguments. To begin with, the FiTI, as other similar transparency initiatives such as the Extractive Industry Transparency Initiative, requires an enabling environment regarding transparency, relating to laws, regulations, administrative rules as well as actual practice. Consequently, it is expected from governments to review their legislative and contractual framework regarding fisheries and make relevant changes, if required, in order to participate in the initiative. This may need to happen for some countries that have put in place laws and

agreements that promote confidentiality to an extent that it does not allow them to disclose certain information.

There are also valid reasons why some data on the activities of fishing vessels should be treated as confidential, including data that if published may pose a security risk to vessels at sea. However, as will be argued, the three examples listed above do not constitute a strong legal barrier to coastal states publishing annual catch data on a per vessel basis.

1. The confidentiality rules of RFMOs do not prohibit coastal states publishing per vessel catch data.

While all RFMOs have adopted a confidentiality clause or guidelines relating to the publication of catch data supplied to them by member states or Cooperating Non-Members, these rules are applicable to the RFMO, not coastal states. As such, these rules do not prohibit coastal states from deciding to publish certain types of data on the activities of their licensed vessels or flagged vessels if they want to, including per vessel catch data. In several of the texts of confidentiality of data rules agreed to by members and CNMs of RFMOs, this is made clear. For example, in the case of International Commission for the Conservation of Atlantic Tuna (ICCAT), their “Rules And Procedures For The Protection, Access To, And Dissemination Of Data Compiled By ICCAT” (adopted in 2010) contain a “final clause” which states:

“These Rules and Procedures do not prevent a CPC from authorizing the release of any data it has provided to the ICCAT.”

The exact same clause is found in the Western and Central Pacific Fisheries Commission (WCPFC), in their “Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission (adopted in 2007), and a similar clause is found in the Commission for the Conservation of Southern Bluefin Tuna’s (CCSBT), “Rules And Procedures For The Protection, Access To, And Dissemination Of Data”.

Rules adopted by RFMOs also allow for the sharing of data considered “non-public” with others if there is a valid request for this data and if the coastal states who supplies this data consents to such a request. In the Indian Ocean Tuna Commission’s (IOTC) “Resolution 12/02 on Data Confidentiality Policy and Procedures” (adopted in 2012), paragraph 1.b reads:

“Catch-and-effort and length-frequency data grouped at a finer level of time-area stratification will only be released with written authorisation from the sources of the data. Each data release will require the specific permission of the IOTC Executive Secretary.”

And under 1.f it is stated:

“The identity of individual vessels will be hidden in fine-level data unless the individual requesting this information can justify its necessity.”

Similarly, in the case of WCPFC their rules allow for the sharing of confidential data.

“Non-Public Domain data will be made available by the Secretariat to any persons if the CCM that originally provided that data authorises the Commission to release them.”

Thus, while the rules on confidentiality of data adopted by RFMOs support the argument that catch data linked to an individual vessel is considered commercially sensitive, they do not provide a legal barrier to coastal states in making this information about their licensed and flagged vessels public, or available to third parties.

2. Confidentiality clauses in fisheries agreements could be renegotiated or waived with the consent of fisheries partners.

Confidentiality of data in EU SFPAs and FPAs do prohibit coastal states publishing per vessel data for EU flagged vessels. For example, in the EU Fisheries Agreement with the Seychelles (2014), Article 13 states:

“Both Parties shall ensure that only aggregated data related to fishing activities in the EU waters⁴ shall be made available to the public domain, in conformity with the provision of the appropriate IOTC resolution. Data which may be considered as otherwise confidential shall only be used exclusively for the implementation of this Agreement and for the purposes of fisheries management, monitoring, control and surveillance with the relevant competent authorities.”

A different wording on confidentiality is in the Protocol of the Fisheries Agreement with Mauritania (2015). Article 12 states:

“Mauritania shall undertake that all nominative data relating to EU vessels and their fishing activities obtained within the framework of the Agreement will, at all times, be processed strictly in accordance with the principles of confidentiality and data protection. Such data shall be used exclusively for the purposes of implementing the Agreement.”

It is difficult to know whether such clauses exist in other bi-lateral or private agreements, as the texts of these agreements tend to be confidential. However, in the case of the EU, it would be possible for the EU to allow coastal states to waive or renegotiate such clauses in the protocol or

4 According to this clause, publishing aggregated data related to fishing activities would only be restricted for activities in *EU waters*, and not for fishing activities by EU vessels in *Seychelles waters*.

agreement, on the basis that the coastal state wanted to make public disaggregated data for all of its licensed and flagged vessels.

Indeed, given the arguments already presented that the publication of annual catch data (for all large-scale vessels) is unlikely to lead to negative commercial impacts for fishing companies, and the publication of such data may have positive impacts for fisheries management, the EU would have a firm justification for consenting to the renegotiation of these clauses. A valid reason not to consent to this request would be if the renegotiation of the confidentiality clause would result in the publication of catch data only for EU flagged vessels. However, as the FiTI applies to all vessels, this scenario would not apply.

The consent of the EU to renegotiate or void their confidentiality clauses would also be aligned with the EU's commitment to promoting transparency in fisheries management, which is a stated aim of the existing Common Fisheries Policy. Moreover, promoting the disclosure of more information on the activities of fishing vessels in countries where the EU operates would support the EU's efforts to ensure EU vessels only target surplus stock in third countries (as the EU will be provided with more detailed and credible catch data on the activities of other fishing fleets), as well as ensuring there is a level playing field provided to all foreign fishing vessels. As such, the support given to coastal states in publishing catch data on a per vessel basis would be coherent for the EU. This argument is given further support when considering that the EU's access agreements with third countries, such as Mauritania, can contain conditions for coastal states to be transparent to the EU about the activities of other fishing vessels and other access agreements.

Finally, some of the EU's confidentiality clauses make reference to the fact that data on EU vessels needs to be handled in accordance with the "principles of data protection and confidentiality". The wording is ambiguous because it makes no reference to what such principles are. However, in the EU, laws establishing the principles of confidentiality and data protection do include the need to respect freedom of information and public access to documents.⁵ This also strengthens the case for the EU promoting transparency and can be used as a legal context to further support the decision for disclosure of information, again on the basis that rules are applied consistently to all licensed fishing vessels.

5 Source: European Agency for Fundamental Rights, European Court of human Rights, European Council (2014) Handbook on European data protection law, p.26—28.
http://www.echr.coe.int/Documents/Handbook_data_protection_ENG.pdf

3. Laws on the protection of “trade secrets” allow states to publish commercially sensitive data if they want to.

It is not feasible here to provide an extensive review of laws at the national or international level on the protection of commercially sensitive information. However, in many countries businesses are protected from the disclosure of such data through national laws. These are usually based on the WTO’s “Agreement on Trade Related Aspects of Intellectual Property Rights” (TRIPS). For example in 2016 the EU has concluded its directive “On the Protection of Undisclosed Know-how and Business Information (trade secrets) against their Unlawful Acquisition, Use and Disclosure”, which defines a trade secret in terms of the TRIPs. These are useful documents to inform the discussion on this issue.

However, data on production volumes of a publically owned natural resource is unlikely to meet the definition of a trade secret, as defined by the WTO or the EU. Even if per vessel catch data was considered a trade secret, laws protecting trade secrets tend to allow states to publish these if they consider it to be in the public interest, or if they have the consent of the holders of such data, i.e. fishing companies. This is described in the EU’s Directive where it states that lawful acquisition, use and disclosure of trade secrets is achieved when this protects a “legitimate interest recognized by Union or national law” (Article 5, point D). Furthermore, it is described that the Directive “does not affect the right of freedom of information, as set in the EU’s Charter and national laws” (Article 1.1a) and that the Directive “should not affect the application of Union or national rules that require the disclosure of information, including trade secrets, to the public” (p.8, [11]).

For the member states of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, (the “Aarhus Convention”), which includes the EU and all of the EU member states (a similar worded convention is being finalized in South America and the Caribbean), disclosing information on environmental matters is obliged where there is public interest in doing so. The text of this convention does allow for confidentiality of commercially sensitive information, however authorities have to interpret this in a “restrictive way”, giving due recognition for the wider public interest. This provides a strong legal context for parties of the Aarhus Convention to be protected from any legal dispute if they wanted to publish fisheries catch data for fishing firms. What is more, a member of the public could use the Aarhus Convention to make a request to access this data held by public authorities.

Laws on trade secrets therefore do not provide a strong barrier for public authorities in wanting to publish per vessel catch data, if public authorities or civil society and the industry considered this to be a positive move to strengthen the management of fisheries.