



# SUSTAINABLE FISHERY AGREEMENTS:

Strategies for Enforcement and Compliance

Maui, Hawaii  
January 15-18, 2013



# Introduction

The *2011 Bellagio Conference on Sustainable Tuna Fisheries* recognized that the time is ripe to address the problems of overcapacity and over exploitation; without action the present situation with respect to tuna stocks will steadily deteriorate. The resulting *Bellagio Framework for Sustainable Tuna Fisheries* highlighted rights-based management as an effective way to address concerns about overcapacity, over exploitation, and conservation, and to create sustainable economic and social benefits, and employment.

Subsequently, the *Cordoba Conference on the Allocation of Property Rights in Global Tuna Fisheries* concluded that an effective allocation framework is fundamental to the implementation of rights-based management. The Cordoba Conference provided a number of considerations that should be taken into account in the allocation of rights, including the need to consider compliance and enforcement as necessary components of an allocation agreement.

This *Conference on Sustainable Fishery Agreements: Strategies for Enforcement and Compliance* (Maui, Hawaii, USA) brought together a distinguished group of negotiators, scholars, and representatives of Regional Fishery Management Organizations (RFMOs), industry, environmental non-governmental organizations, and other international institutions. The conference provided an opportunity for the participants to engage in debate and discussion in a collaborative and neutral venue on the issues of compliance and enforcement<sup>1</sup> in the context of rights-based management in multi-lateral tuna fisheries. The participants took part in their personal capacity and are listed in Annex 1.

Recognizing the complexity and diversity of management of tuna stocks by all tuna RFMOs, and the need for human and institutional capacity at all levels in the system, this report identifies a number of actions that should be considered when maximum compliance is desired through rational management arrangements supported by effective enforcement. The report covers the range of ideas presented at the conference but does not necessarily represent a consensus on all issues.

---

<sup>1</sup> In this report, “compliance” is understood to mean the application of, and adherence to, agreed measures by RFMO Members and Cooperating Non-Members, as well as individuals and vessels under the jurisdiction of those Members. “Enforcement” is understood to encompass a set of tools to monitor the implementation of agreed measures and to encourage and promote compliance, and can include specific actions and penalties applied as a consequence of non-compliance. Enforcement also involves deterring parties other than RFMO Members and Cooperating Non-Members from undermining the conservation measures adopted by RFMOs.

## LESSONS FROM CASE STUDIES, FISHERIES AND NON-FISHERIES

Following presentations and discussions that covered the basic international instruments that relate to enforcement and compliance for international fisheries and a selection of other environmental agreements, the meeting distilled the discussion into the following key points:

1. Adopting an effective fisheries management system, including a rights-based management system is more difficult in a multinational context (no single authority/arbitrator) than in a single country setting. Compliance and enforcement are critical elements of any effective fisheries management system and need to be addressed in the design and implementation of any system. It would be useful to review case studies (national and international) of rights based management systems to assist in assessing their possible application in the RFMO / multinational context.
2. Each tuna RFMO is in a different stage of development with respect to rights-based management and their compliance and enforcement arrangements.
3. Tools in monitoring the value chain are diversifying beyond flag state control over vessels (e.g., catch documentation).
4. Multilateral cooperative compliance measures are being developed and enhanced over time. These include IUU lists, trade measures, port state controls and observer programs.
5. A linkage exists between compliance and enforcement and allocation of fishing opportunities. The legitimacy of measures is strongly related to the perceived fairness of allocations and rules. Legitimacy needs to be built from the perspectives of both RFMO members and fishers.<sup>2</sup>
6. Experience with initiatives, and rule breaking, can lead to new norms.
7. A crisis may provide the opportunity for more radical changes in the rules.
8. Currently lack of compliance by members is a larger issue for RFMOs than problems with non-members.
9. There is a need to ensure that trade enforcement measures are not unduly burdensome for developing countries. Side payments a la Montreal Protocol can be used to assist developing countries with compliance costs. Small countries need cooperation on compliance and enforcement issues. But the reality must be recognized that unequal power and capacity between member states is inevitably a factor.
10. The UNFSA Article 25(1) obligation to assist developing nations in developing their own fisheries<sup>3</sup> is often overlooked.

---

<sup>2</sup> By "legitimacy" we mean the acceptance of a rule or allocation as being authoritative and justified.

<sup>3</sup> Applicable to parties to UNFSA.

## LESSONS FROM CASE STUDIES, FISHERIES AND NON-FISHERIES [CONTINUED]

11. To be effective, enforcement mechanisms must be credible. Ideally, agreements must contain sanctions that are credible and so severe that no party wants to risk triggering them.
12. Agreements and mechanisms for their enforcement will continuously need to be revised to address the dynamics of management for the fishery.
13. Some enforcement actions are directed at agreement members (nations), some at vessels.
14. Veto mechanisms in enforcement decision-making, including objections procedures, are undesirable.
15. Enforcement actions can be affected by international relations concerning events/political pressure in other fisheries and in other sectors.
16. An effective tuna management agreement must be open to all states with a real interest in the fishery, including new entrants. Membership is to be determined by each RFMO in accordance with international law.
17. Provisions for both compliance and enforcement need to be integral to the entire design of a rights-based management system.

## COMPLIANCE AND ENFORCEMENT FEATURES FOR RIGHTS-BASED MANAGEMENT SYSTEMS

**Goal: To achieve maximum compliance with rational management arrangements supported by effective enforcement.**

### **A. The Basics of Compliance and Enforcement under Rights Based Management Systems and other Approaches**

*Verifying compliance with quotas, closed areas, effort limits, etc.*

While compliance and enforcement for rights-based and other fishery management systems are believed to be less costly when there are fewer, large vessels, and more difficult when there are many small vessels, there are effective ways to deal with both scenarios, or mixtures of the two. There is a trade-off between the cost of compliance and enforcement and the generation of rents, i.e. the creation of value for participants in the fishery. RFMOs should undertake cost-benefit analyses in developing and choosing amongst management measure alternatives from the viewpoint of compliance and enforcement.



## COMPLIANCE AND ENFORCEMENT FEATURES FOR RIGHTS-BASED MANAGEMENT SYSTEMS [CONTINUED]

The ability to independently verify compliance with quotas, closed areas, effort limits, etc., is an important component of any effective management system. As such, building and maintaining cost-effective monitoring, control and surveillance (MCS) measures, systems and services is an integral part of verifying compliance. Depending on the markets and fisheries involved, different verification methods may be required, (for example, where fish are landed into domestic markets, rather than exported).

The costs and benefits of adequate MCS under rights-based management and other management systems need to be fully evaluated in the context of achieving a common fisheries management objective. Building upon, or redesigning existing, MCS investments when transitioning to rights based systems, depends on the results of those evaluations. Experience around the world shows that, if appropriately designed, rights based compliance regimes can be integrated with other institutions (e.g. banking, taxation, etc.) and these linkages can provide incentives for, and reduce the costs of, improved fisheries compliance.

### *Incentivizing compliance by RFMO members and vessels*

Rights based management has clear advantages over other approaches such as management by total allowable catch (TAC) without allocations. Depending on the design, rights based management promotes aggregate profitability of fishing, which in turn facilitates monitoring and verification. Rights based management systems can be designed to fulfil socio-economic and political objectives, such as to achieve food security, in addition to standard economic objectives. Any exemptions from existing controls (for food security, set asides, etc.) must be accounted for in the agreed allocations.

Under rights based management, individual rights holders take an increased interest in the compliance of others and are more willing to invest in compliance, management and science. In other management arrangements fishers are interested in the compliance of others.

## **B. Compliance and Enforcement Procedures under a Rights Based Management System**

High levels of compliance depend on the transparency and perceived fairness of allocations of fishing opportunities and rules about their use. Compliance systems must ensure that the results of monitoring are transparent and that there is independent verification (to avoid conflicts of interest) of compliance reports. Impartial and transparent compliance monitoring is a critical function of RFMOs for which they need access to information and capacity in staff and resources. Independent verification of members performance against their obligations is critical to the success of implementing a rights-based fisheries management system.

Enforcement arrangements in RFMOs should focus on capacity building as well as compliance monitoring, violation detection and penalties for non-compliance. Sanctions have to be sufficient to provide a deterrent. Different levels of penalties within a fishery management jurisdiction create perceptions of unfairness and can threaten system legitimacy. Standards for sanctions applied by RFMO members and cooperating non-parties should be harmonized and effective for all participants so as to prevent leakage, whether by reflagging or fish laundering. Sanctions imposed by a RFMO in the event of non-compliance should be pre-agreed and follow a due process. Trade restrictions, quota reductions, IUU lists, authorized (positive) lists and catch documentation are important enforcement and verification tools.

### *Decision-making*

The development of a long-term management strategy including the integration of compliance, monitoring and enforcement is important for rights-based management. Rights-based management demands a more robust (and sometimes more costly) decision making system, an improved governance system including arrangements to remove conflicts of interest.

Rights-based management systems must be supported by agreed dispute resolution procedures. Compared to a consensus regime, decision-making by voting with an effective objection procedure has the advantage of allowing states that agree with a decision to implement supporting domestic legislation, and not be held back by members that oppose the decision.

## **C. Developing Human and Institutional Capacity**

The design of a rights-based management system must take account of the capacity and willingness of all RFMO members to make sufficient investments in compliance and enforcement systems and services.

Developing countries may not always have sufficient resources to enforce the breadth of measures that a RFMO may consider. Assistance is required to developing countries in the areas of fisheries management capacity and enforcement capacity as part of investments in RFMO compliance and enforcement systems. Developing countries through membership in a collective arrangement can be assisted in conducting MCS activities, implementing RFMO measures and complying with RFMO measures. Development agencies such as the FAO, GEF, World Bank and other national or regional development agencies could also be involved in helping build the compliance and enforcement capacity of the RFMOs and RFMO members.

## CONCLUSIONS AND KEY POINTS

1. **Moving ahead in fishery management:** Each tuna RFMO is in a different stage of development with respect to rights-based management and their compliance and enforcement arrangements. Further consultations are required at a member and regional level on how to take rights-based management forward in each RFMO.
2. **Legitimacy engenders compliance:** The rights-based management system must be designed with incentives that promote and encourage optimum compliance and be supported by effective enforcement. The legitimacy of the management system (decision-making process, allocation, and rules) must be seen to be fair for participants to want to comply.
3. **Invest in compliance:** Participants must be prepared to make sufficient investment in institutional capacity and this will involve providing assistance to some members and strengthening RFMO secretariats.
4. **Design the right system:** RFMOs should do basic cost-benefit analyses (including business compliance costs and state compliance monitoring and enforcement costs) in designing a rights based fisheries management system and when developing and choosing management measures and associated rules.



## ANNEX 1. PARTICIPANTS

Robin Allen (Co-Chair)	Hussain Rasheed Hassan	Julio Morón-Ayala
Hugo Alsina	Fabio Hazin	Wez Norris
Chris Andersen	Peter Ho	Eugene Pangelinan
Scott Barrett (Co-Chair)	Charles Karnella	Victor Restrepo
Guillermo Compean	Michele Kuruc	Jerry Scott
Stan Crothers	Rebecca Lent	Dale Squires
Bill Fox	Terje Lobach	Rafael Trujillo
Bill Gibbons-Fly	Lara Manarangi-Trott	Meryl Williams
Josh Graff Zivin	Daroomalingum Mauree	Andrew Wright
Brian Hallman	Driss Meski	

