

**Promoting Compliance in Tuna RFMOS:
A Survey of the Current Mechanics of Reviewing, Assessing and Addressing
Compliance with RFMO Obligations and Measures, and Identification of
Best Practices**

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Executive Summary

Each of the five international regional fisheries management organizations responsible for highly migratory species (“tuna RFMOs”) has an annual mechanism to monitor and assess the compliance of members, and in some cases cooperating non-members (CNMs), with their obligations under the RFMO convention and its conservation and management measures. This paper examines each of these tuna RFMO compliance mechanisms with respect to the range of tuna RFMO obligations and commitments that are assessed, the current operational conditions of each compliance assessment process, what tools are available to respond to instances of non-compliance, and the public availability of information about the level of compliance of RFMO members or CNMs and their actions to address areas of identified non-compliance. The recommendations of each of the most recent tuna RFMO Performance Review Panels with respect to compliance are reviewed and cross-cutting themes identified. The paper also examines what actions have been taken to date by the RFMOs in response to their Performance Review Panel recommendations. In the final section of the paper, the results of the survey of tuna RFMO compliance processes are used to identify a set of desirable best practices with regard to monitoring, assessing and addressing non-compliance in RFMOs.

The compliance mechanisms of all five tuna RFMOs share core due-process components and their processes are broadly composed of three basic steps: (1) information gathering; (2) review and assessment; and (3) feedback and/or application of corrective remedies by the RFMO and/or through its member States, and flag State action and follow up. The five tuna RFMO compliance monitoring processes vary in how they review and assess member and CNM implementation of and compliance with their obligations, what information is used by the compliance committees or working groups, what information is publically available and at what level of detail, whether or not the RFMO has tools to address non-compliance and whether or not it uses those tools (such as capacity building or application of sanctions), and the degree to which the RFMO follows up on the previously identified non-compliance.

Using the most recent publically available meeting reports and other documentation, this paper found that, in general, across the tuna RFMOs reviewed a considerable number of States are not, either at all, or on time: (1) providing required catch and effort data or reporting on bycatch interactions or shark catches; (2) submitting annual national implementation reports or other compliance information, such as reports of investigations; or (3) paying their assessed contributions to the budget. Further, over-catches of quotas or violations of time/area closures and shortfalls in effective implementation of or participation in RFMO or national observer programs, vessel monitoring systems (VMS), statistical documentation or catch documentation programs or transshipment monitoring schemes are consistently highlighted. The impact of such pervasive member and CNM non-compliance on effective RFMO functioning and achieving sustainable tuna fisheries can be significant.

A review of the compliance-related recommendations of the Performance Reviews that have been conducted to date reveal similar shortcomings in this area across all four tuna RFMOs. However, all five tuna RFMOs reviewed in this paper have, within the last five years, revised the mandates and procedures of their existing compliance committees and, in some cases, have added further tools to strengthen the ability of the organization to improve member and CNM

implementation and enforcement of, and compliance with, their obligations in relation to the RFMO conventions and conservation and management measures. Further, several tuna RFMOs have made notable strides in responding to a number of their Performance Review Panel recommendations in the last five years, and some have embarked on a second Performance Review. Nonetheless, the information reviewed in this study makes clear that more work is needed at the RFMO and national government levels to improve the rate of member and CNM compliance with their RFMO obligations and conservation and management measures.

A set of desirable best practices with regard to monitoring, assessing and addressing non-compliance in RFMOs are identified and presented with respect to three areas: (1) the information used by RFMOs, (2) the structure and functioning of the RFMO compliance review process itself, and (3) the resulting outcomes and follow-up. Using these best practices as yardstick, all five tuna RFMOs are ranked from highest to lowest with regard to their existing compliance monitoring and assessment mechanisms and tools.

Further modification of existing tuna RFMO compliance mechanisms to incorporate and apply the desirable best practices outlined by this paper would strengthen the ability of an RFMO to assess the degree to which its measures are being implemented and complied with, reward those that are abiding by the rules, provide assistance to those nations that need it and penalize those that are undermining the effectiveness of RFMO conventions and conservation and management measures. Greater transparency in terms of the level of compliance of each member and CNM, and the steps they are taking to rectify implementation deficiencies or breaches of conservation measures, will promote system legitimacy, reduce perceptions of unfairness and contribute to public and market confidence in the sustainable international management of global tuna fisheries through RFMOs.

Introduction

1. The purpose of this technical background paper is to provide a comprehensive survey of the current operational conditions and processes of RFMO compliance processes. This paper is primarily concerned with the compliance of States with their RFMO obligations and commitments as members or CNMs, and not the compliance of individual vessels.

2. Five RFMOs are responsible for ensuring, through effective and cooperative management, the long-term conservation and sustainable use of highly migratory fish stocks (“tuna RFMOs”).¹ All of these tuna RFMOs have adopted, over the years, measures to limit catch or effort, control or manage fishing capacity, mitigate bycatch of non-target species, require data reporting and establish monitoring, control and surveillance tools and programs. However, these measures and tools are only effective to the degree they are appropriately designed and implemented and enforced by those States responsible for the vessels that harvest, transport, tranship, and/or land tuna resources or the ports where those resources are landed and/or imported. Further, tuna RFMOs cannot design effective science-based conservation harvest control measures or capacity controls without timely and accurate data, particularly catch and effort data, from all those participating in the fishery. In addition, RFMOs also require sufficient financial resources to support their Secretariats and science providers, ensuring the delivery of programs and services. Tuna RFMO budgets are resourced nearly exclusively from dues assessed to members and, in some cases, voluntary contributions provided by CNMs. If members and, where applicable, CNMs do not pay their dues promptly and in full, or will not agree to increases in certain budget items (such as for scientific research or new staff), tuna RFMO Secretariats face cash shortfalls and insufficient human resources that impact their ability to deliver services, manage programs, and perform work requested by their memberships. Lastly, all States that are harvesting and/or landing or importing highly migratory fisheries should participate in the work of the relevant tuna RFMOs through attending the annual meetings of those Commissions and their subsidiary bodies, particularly the science and compliance committees. Failure to participate in these meetings can result in the inability of the organization or committee to take decisions (lack of a quorum); after-the-fact objections to agreed measures or recommendations, which can cause the measure being objected to from coming into effect²; and/or inefficient use of meeting time when previously discussed items must be reviewed or are reopened. Such circumstances compromise the effective functioning of the organization, as well as erode the political buy-in from those States that did participate in the meeting and took part in developing the conservation and management measures.

¹ The Inter-American Tropical Tuna Commission (IATTC), The Western and Central Pacific Fisheries Commission (WCPFC), The Commission for the Conservation of Southern Bluefin Tuna (CCSBT), The Indian Ocean Tuna Commission (IOTC) and The International Commission for the Conservation of Atlantic Tunas (ICCAT). These regional commissions are established by a treaty or other international instrument that prescribes, among other things, the geographic coverage and competence for the RFMO, the objective and functions of the commission, and any subsidiary bodies, as well as the duties and obligations of members. States join these organizations by ratifying or acceding to the parent treaties. The commissions are composed of the States that are party to the treaty, and many provide avenues for participation for non-parties through some type of cooperating non-party status. These States also employ an executive director and staff to conduct administrative, technical and scientific activities and to coordinate among the member States and to advise them. The Secretariat staff is funded by annual financial contributions assessed to members.

² This is the case with the IATTC; see Article IX of the Antigua Convention.

3. This technical background paper is comprised of three parts. Part I surveys the current compliance structures and processes in the five tuna RFMOs and identifies the overall landscape of obligations and commitments that a RFMO member or CNM is to implement. Part I also identifies, where possible, those obligations and commitments that are currently assessed as part of each RFMO's compliance review process. Further, Part I examines the transparency of the RFMO compliance structure to identify the extent to which the public has visibility into the compliance assessment process and its outcomes. Part II surveys the range of available RFMO responses to non-compliance. Part III summarizes the recommendations of each tuna RFMOs' most recent Performance Review with respect to MCS and compliance, and what actions have been taken to date by the RFMOs in response to their Performance Review Panel recommendations. Finally, Part IV outlines a set of best practices with regard to monitoring, assessing and addressing non-compliance in RFMOs.

4. Only publically available sources of information were consulted and used for this technical background paper. This includes the conventions, resolutions, conservation and management measures, rules and procedures, and other reports, documents and data that are posted on the websites for the five tuna RFMOs or on www.tuna-org.org, a joint website for the five tuna RFMOs. A number of experts were also consulted regarding how the various compliance processes function in practice, or how they are evolving, when the publically available information was not yet available, unclear or silent on an issue. In addition, eight international subject matter experts with decades of experience in all five of the tuna RFMOs analyzed reviewed earlier versions of this technical background paper. Additional resources that were consulted are listed at the end of the paper or are listed in footnotes throughout the paper.

Part I

The compliance processes currently in use in each tuna RFMO

Western and Central Pacific Fisheries Commission (WCPFC)

5. The WCPFC adopted a Compliance Monitoring Scheme (CMS) in 2010 (CMM 2010-03) for a trial period of one year. In 2012³, the Commission adopted its first Compliance Monitoring Report pursuant to CMM 2010-03. The CMS has been revised and extended each of the last five years. The Commission took a decision at its 2015 annual meeting to extend the CMS for 2016 and 2017 only, and that it would be reviewed by an independent panel in 2017 (CMM 2015-07).

6. Compliance Assessment Process. Table 1 summarizes the WCPFC CMS and its process. In brief, the WCPFC CMS is comprised of three stages. First, the Secretariat prepares a draft compliance monitoring report (dCMR) from submitted Part I and Part II Annual Reports⁴ and other available data submitted to the Secretariat in fulfillment of obligations with other CMMs. The dCMRs are then provided to each member or CNM for their review and comment. Prior to the Technical and Compliance Committee (TCC) meeting, the dCMRs are made available to all members and CNMs along with any information or comments provided by the member or CNM concerned. Second, a working group comprised of only members, CNMs and certain regional secretariats, is convened during the TCC to review the dCMRs, highlight any potential compliance issues with respect to each member or CNM, and consider any other information provided by members or CNMs and to make a provisional assessment of each member and CNM's compliance status. The TCC then develops a provisional Compliance Report (pCMR) that contains the provisional compliance assessment and recommendations for any corrective action needed, based on the potential compliance issues identified, and using the criteria and considerations set out in Annex I of the CMS measure. Third, at its annual meeting, the Commission reviews the pCMR, and any information provided by members or CNMs, including any steps taken to address potential compliance issues identified, and is to adopt its final Compliance Monitoring Report with a compliance status for each member and CNM and recommendations for any corrective action needed. Each member and CNM is to include, in its Part 2 Annual Report for the next year, any actions it has taken to address its identified non-compliance in the previous year. In 2015 the CMS was revised to include new sections on capacity development plans⁵, investigation status reports⁶, and conclusion of said plans and reports⁷. In brief, these new sections provide that if a small island developing State, Participating Territory or Indonesia or the Philippines cannot meet a particular obligation that is being assessed, due to a lack of capacity, that CCM shall provide a Capacity Development Plan to the

³ This annual Commission meeting should have been held in December 2011, but it was postponed until March 2012.

⁴ Part I is to provide to the Commission information on fisheries, research and statistics during the preceding calendar year. Part II is to provide information on management and compliance with all binding CMMs, as well as reporting on inspection and surveillance activities including frequency, and on outcomes of investigations including prosecutions, since the previous report. Part II Reports are not public.

⁵ See paragraphs 5-7 of CMM 2015-07.

⁶ See paragraphs 8-11 of CMM 2015-07.

⁷ See paragraphs 12-14 of CMM 2015-07.

Secretariat with their dCMR.⁸ If the capacity assistance need is recognized by the TCC, then the affected CCM will be assessed as “Capacity Building Needed” for the obligation(s). The CCM is to report annually on its progress under the Plan until its timeframe has elapsed. Investigation Status reports are now required when a CCM cannot complete an investigation of an alleged infraction in advance of TCC.⁹ The TCC considers these Status Reports and may suggest changes, which will be reflected upon the agreement of the CCM concerned. When the TCC recognizes the commencement of an investigation as outlined in the Status Report, the CCM is assessed as “Flag State Investigation” for the obligation(s). The CCM is to report annually on the progress of the investigation, including any actions taken, until the Plan’s timeframe has elapsed. For both the Capacity Development Plan and Investigation Status Report, if the TCC does not consider progress has been made, or the affected CCM reports its capacity needs have been addressed or the investigation has been complete, then the CCM’s compliance will be assessed in the normal manner using Annex I of the CMM. In 2015, the CMS was also revised to provide that a CCM cannot block its own compliance assessment if all other CCMs present have concurred with the assessment. The pCMR will reflect the minority and majority views.

7. Obligations Assessed. The current WCPFC CMS reviews a sub-set of the suite of obligations in the Convention and binding conservation and management measures adopted by the Commission. The CMS reviews compliance with seven categories of obligations: (1) catch and effort limits for target species; (2) catch and effort reporting for target species; (3) reporting including with respect to implementation of measures for non-target species; (4) spatial and temporal closures, and restrictions on the use of fish aggregating devices; (5) authorizations to fish and the Record of Fishing Vessels, observer and VMS coverage, transshipment and the high seas boarding and inspection scheme; (6) provision of scientific data through the Part 1 Annual Report and the Scientific Data to be provided to the Commission; and (7) submission of the Part II Annual Report, including compliance with the obligation to report any actions taken to address non-compliance identified in the Compliance Monitoring Report from previous years, and compliance with other Commission reporting deadlines. The Commission is also to evaluate the level of compliance by members and CNMs with collective obligations arising from the Convention of conservation measures related to fishing activities managed under the WCPFC. Each year the Commission is to identify whether additional obligations should be considered annually or in another specified time period. For instance, in 2015, the Commission adopted an agreed list of obligations to be assessed in 2016-2018 and the frequency of assessment (annually, every two years, or every three years).¹⁰ The WCPFC CMS does have a set of criteria and

⁸ A Capacity Development Plan is one that: (i) clearly identifies and explains what is preventing that CCM from meeting that obligation; (ii) identifies the capacity building assistance needed to allow that CCM to meet that obligation; (iii) estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary; and (iv) sets out an anticipated timeframe in which, if the identified assistance needs are provided, that CCM will be able to meet that obligation.

⁹ The Investigation Status report is one that: (i) describes the steps that have been taken to commence the investigation; (ii) describes the process that CCM will take to complete the investigation, within their relevant national processes and laws; (iii) describes, to the extent possible, actions proposed to be taken in relation to the alleged violation; and (iv) sets out an anticipated timeframe in the Status Report.

¹⁰ Attachment O of the Final WCPFC12 Summary Report.

considerations that are to guide determining a compliance status rating for members and CNMs that does include a standard for distinguishing between non-compliance of a minor or technical nature and serious non-compliance that, for instance, undermines the effectiveness of the Convention or measures adopted by the Commission. In 2015, the WCPFC made progressive revisions to the Compliance Status Table that Annex I of the CMS CMM in order to clarify the specific criteria for being assessed a particular compliance status, as well as outlining the response a CCM must take once assessed as in that status.

8. Transparency and Outcomes. The WCPFC's CMS process is unique among the five tuna RFMOs in that it is opaque to the public and there is no dedicated committee for this purpose. The WCPFC compliance review process is not transparent in that the Part II Annual Reports, the dCMRs and pCMR, the TCC's provisional compliance score or assessment, Capacity Development Plans or Investigation Status Reports or CCM's annual reports under these plans, or the responses by members and CNMs to either their dCMRs or the final CMR are not publically available. Further, the CMS working groups convened during the TCC and Commission meetings are closed to observers (except for the Secretariats of SPC, Forum Fisheries Agency and the Parties to the Nauru Agreement), in contrast to the practices of ICCAT, IATTC, IOTC and CCSBT. Interestingly, the current WCPFC CMS measure explicitly allows for non-governmental organizations to provide suitably documented information to be included in the dCMRs and to be considered by the TCC¹¹, even though such organizations are not allowed to observe the CMS working group deliberations or see any of the documents produced by the Secretariat, TCC or members and CNMs. However, the WCPFC has evolved the implementation of the CMS over the last five years to allow for more transparency and to more closely adhere to the terms of the CMM. While the first few final CMRs contained no detailed information by member, since 2013 the final CMR has included the specific area of non-compliance by member, as well as whether the non-compliance has been noted for more than one year. The final CMR still does not include any recommendations for any corrective action needed, based on non-compliance identified with respect to each member or CNM. In 2014 the WCPFC CMS¹² was amended to call upon the Commission to establish an intersessional working group to identify a range of responses to non-compliance that would be applied through, and complement, the CMS, and that would include cooperative capacity- building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance. The working group has not been convened, but the issue has been included in the workplan for TCC for 2016 and 2017. Also, although a chambered voting process¹³ can be used for decision-making in the WCPFC, to date all decisions have been taken by consensus. The WCPFC may

¹¹ See paragraph 28 of CMM 2015- 07

¹² Paragraphs 37-38 of the current CMS conservation measure (CMM 2015-07) states: "The Commission shall take a graduated response to CCMs identified as having compliance issues, taking into account the type, severity, degree and cause of the non-compliance in question. The Commission hereby establishes an intersessional working group to develop a process to complement the CMS that shall identify a range of responses to non-compliance that can be applied by the Commission through the implementation of the CMS, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs. The intersessional working group shall progress its work electronically to the greatest extent possible and will seek to ensure that all CCMs, particularly SIDS and Participating Territories, have an opportunity to participate. The intersessional working group shall endeavour to develop a process for consideration no later than TCC12 and adoption no later than WCPFC13."

¹³ See article 20 of the WCPF Convention.

need to consider using its voting procedure in the future if imposing sanctions on members or CNMs becomes a possibility.

9. Payment of Assessed Contributions. The payment of financial contributions (whether required – as is for members - or quasi-voluntary – as is for CNMs) is not assessed as part of the CMS; however, whether or not a CNM has provided a financial contribution is considered during the annual review of CNM applications. The status of annual member contributions is considered in the Financial and Administration Committee (FAC) separately. Information regarding payment or non-payment of dues is publically available via FAC documents.

10. Meeting Attendance. Meeting attendance is not assessed as part of the CMS, but all meetings of the Commission and its subsidiary bodies include a list of participants so a record of attendance is publically available. Further, the TCC has noted when CNM applicants are not present to answer questions about their applications, and has encouraged all CNM applicants to attend both the TCC and Commission meetings. Rule 14 of the WCPFC rules of procedure requires a quorum of at least three-fourths of the members of the Commission to be present for the Chair to declare a meeting of the Commission open and permit the debate to proceed. While the WCPFC rules of procedure allow for a subsidiary body of the Commission to formulate and submit to the Commission for approval such rules as may be necessary for the efficient conduct of its functions, at present this has not occurred. So, except as otherwise provided in the Convention, the Commission rules of procedure apply to the proceedings of subsidiary bodies, including the Scientific Committee and the Technical and Compliance Committee. The WCPFC has hard-wired financial assistance for meeting participation for developing State members of the Commission into its annual budget. Each budget includes a line item to support the participation of one developing State member or participating territory¹⁴ representative to each meeting of the Commission and meetings of relevant subsidiary bodies. As a result, the participation by developing State members and participating territories in meetings of the WCPFC is consistently high.

Inter-American Tropical Tuna Commission (IATTC)

11. Compliance Assessment Process. In 1999 the IATTC established the Permanent Working Group on Compliance with Conservation and Management Measures adopted by the IATTC (C-99-01). The mandate, functions and procedures for the working group (which was renamed the Committee for the Review of Implementation of Measures adopted by the Commission) were revised and elaborated in 2003 in Article X and Annex 3 of the Antigua Convention, and the provisions of Annex 3 were further articulated in 2011 (via Resolution C-11-07) with the aim of improving compliance with measures adopted by the IATTC. As part of their revised compliance review process, the IATTC has a standard questionnaire on compliance with IATTC resolutions that all members and CNMs are to complete in advance of Committee meetings. Members and CNMs are also to provide a response to the possible infractions that have been

¹⁴ The Participating Territories in the WCPFC include: French Polynesia, New Caledonia, Wallis et Futuna, Tokelau, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa. Participating territories can participate in the work of the Commission in accordance with the provisions of Article 43 of the WCPF Convention and a separate set of rules of procedure.

identified by the Secretariat. Table 1 summarizes the characteristics and process of the IATTC Review Committee.

12. Obligations Assessed. The IATTC compliance process reviews implementation of specific obligations prescribed in IATTC resolutions that are in force and which involve compliance by vessels and members and CNMs. It does not review compliance with obligations of the Convention overall, with the exception of Article XVIII on Implementation, Compliance and Enforcement.¹⁵

13. Transparency and Outcomes. The IATTC Review Committee is open to accredited observers and its documents are circulated prior to the meeting to members, CNMs and observer delegations. The IATTC compliance process does not prescribe a compliance status for each member or CNM; rather it describes the “compliance record” and possible areas of improvement for each. The IATTC process also does not appear to have a standard for distinguishing between non-compliance of a minor or technical nature and serious non-compliance that, for instance, undermines the effectiveness of the Antigua Convention or resolutions adopted by the Commission. The Review Committee’s report to the Commission makes recommendations regarding particular cases of potential non-compliance, which are to be identified in the annual compliance report prepared by the Secretariat, such as whether or not those cases should be considered an infraction by the Commission. The Antigua Convention (Article VII) and Resolution C-11-07¹⁶ provide the basis for the Commission to take action to address non-compliance by members and CNMs. However, the IATTC has not yet developed a scheme of sanctions and incentives, and a process for their application, to improve compliance by all members and CNMs. In 2006 the IATTC adopted a trade measures resolution (C-06-05: Adoption of Trade Measures to Promote Compliance), but allowed it to lapse in 2008. With some exceptions, all decisions of the IATTC are taken by a consensus of those present¹⁷ so this may have an impact on the ability of the IATTC to impose sanctions on its members or CNMs in the future.

14. In addition to the information requested on the questionnaire, the revised Resolution asks for the following additional information on cases of possible non-compliance: (1) details of the case of possible non-compliance (as identified by the respondent in the questionnaire); (2) current status of the fishing vessel; (3) status or results of investigations; and (4) actions taken based on the result of the investigation, including sanctions and preventive actions. Many

¹⁵ Article XVIII, paragraph 3: *Each Party shall promptly, through the Director, inform the Committee for the Review of Implementation of Measures Adopted by the Commission established pursuant to the provisions of Article X of this Convention of:*

(a) legal and administrative provisions, including those regarding infractions and sanctions, applicable to compliance with conservation and management measures adopted by the Commission;

(b) actions taken to ensure compliance with conservation and management measures adopted by the Commission, including, if appropriate, an analysis of individual cases and the final decision taken.

¹⁶ Paragraph 9: The Committee may consider development of a scheme of sanctions and incentives as well as a mechanism for their application to improve compliance by all CPCs to be submitted to the Commission for consideration and possible adoption.

¹⁷ See article IX of the Antigua Convention.

questionnaires do include some or all of this information when an instance of possible non-compliance has been identified.

15. Payment of Assessed Contributions. The payment of financial contributions is not assessed as part of the current IATTC compliance process. The status of annual member contributions is considered in the Working Group on Finance separately. Information regarding payment or non-payment of dues by individual members is not publically available online, but is presented openly at the annual Commission meetings. However, at the Annual IATTC meeting in 2012, the Secretariat proposed to change some of the reporting and circulation deadlines associated with the compliance process and that additional obligations be added to the questionnaire regarding provisions of the Antigua Convention, including payment of assessed contributions. These changes remain pending.

16. Meeting Attendance. Meeting attendance is not assessed as part of the IATTC compliance process, but all meetings of the Commission and its subsidiary bodies include a list of participants so a record of attendance is publically available. Article VIII of the Antigua Convention requires two-thirds of members to be present to constitute a quorum. This rule applies to all meetings of the IATTC, including the scientific committee and compliance committees. As a result, due to poor attendance by a number of members, including developing countries, many meetings of the Scientific Advisory Committee have been unable to convene formally. In 2011, the IATTC adopted Resolution C-11-11 on Capacity Building. This Resolution creates a special sustainable development Fund to strengthen the institutional capacity of developing countries in the IATTC. One explicit purpose of the Fund is to support the participation of representatives of developing countries in the annual meetings of the Commission or its subsidiary bodies, as well as of scientific experts in the meetings of the Scientific Advisory Committee. In 2014 this Resolution was amended (C-14-03) to create a special sustainable development fund to strengthen the capacity of developing countries and territories in the IATTC. This fund will be resourced annually from a fixed annual contribution of 2% of the Commission's budget, and can be augmented by voluntary contributions.

Commission for Conservation of Southern Bluefin Tuna (CCSBT)

17. Compliance Assessment Process and Obligations Assessed. The first meeting of the CCSBT Compliance Committee was held in 2006. For the next several years, the Compliance Committee focused on the development of an integrated MCS system and did not undertake a routine assessment of member and CNM compliance with CCSBT measures. In 2010, the CCSBT adopted revised terms of reference for its Compliance Committee. The Committee is, among other things, to monitor, review and assess compliance with all conservation and management measures adopted by the Extended Commission and to monitor, review and assess the quality of data (both accuracy and timeliness) submitted. Table 1 summarizes the characteristics and process of the CCSBT Compliance Committee. Using national reports and compliance action plans submitted by members and CNMs, the CCSBT compliance committee reviews member and CNM implementation of specific obligations prescribed in CCSBT conservation and management measures that are in force. It does not review compliance with obligations of the Convention more broadly.

18. Transparency and Outcomes. The CCSBT Compliance Committee is open to accredited observers, but member reports or other meeting documents are not publically available online. However, most documents, unless deemed to be confidential, are available upon making a request to the CCSBT Secretariat. Once observers register to attend meetings of the CCSBT, they are granted access to the documents for that specific meeting only. Observers are also advised that they are required to follow the CCSBT's confidentiality requirements in relation to those documents. The CCSBT compliance process does not prescribe a compliance status for each member or CNM; rather the Committee identifies areas of possible non-compliance or discrepancies (such as between the reported catch and the catch estimated by the Secretariat) and seeks information and explanations from the member or CNM present. At present, the CCSBT compliance process also does not appear to have a standard for distinguishing between non-compliance of a minor or technical nature and serious non-compliance that, for instance, undermines the effectiveness of the Convention or measures adopted by the CCSBT. However, its Corrective Actions Policy (described below) outlines specific kinds of corrective actions that may be recommended by the Compliance Committee that are graduated to specific degrees of non-compliance (i.e., moving from capacity building/training to trade or market restrictions). Decisions of the CCSBT are taken by a unanimous vote of the Members present at the Commission meeting.¹⁸ This type of decision-making process may have an impact on the ability of the CCSBT to impose sanctions on its members or CNMs in the future.

19. In 2011, the CCSBT adopted a Compliance Plan to improve compliance, so that, over time, the Commission, members and CNMs will achieve full compliance with their obligations under CCSBT conservation and management measures. The Compliance Plan also includes a Three-Year Action Plan to address priority compliance risks, which will be reviewed and updated annually. The CCSBT Compliance Plan was updated in 2014, with a new Three-Year Action Plan for 2015-2017. In addition, the CCSBT has three Compliance Policy Guidelines to facilitate implementation of the Compliance Plan: (1) minimum performance requirements to meet CCSBT obligations; (2) a corrective actions policy; and (3) MCS information collection and sharing. The Compliance Plan prescribes new tasks for the Compliance Committee, such as with respect to monitoring member and CNM performance in meeting their obligations, strengthening member and CNM compliance and considering corrective actions and remedies. With these three Compliance Policy Guidelines, the Compliance Committee carries out its expanded mandate using the Guidelines, including recommending investigations of alleged serious non-compliance and, if necessary, recommending to the Commission corrective actions or remedies; recommending additions or changes to CCSBT obligations to address compliance risks; and carrying out an annual compliance risk assessment.

20. In 2012, the Commission agreed to implement a trial independent Quality Assurance Review (QAR) of existing member and CNM systems and processes that are in place to implement CCSBT measures (priority was given to CDS and VMS) during 2013 and 2014. It was agreed to continue the QAR program and a schedule was developed for annual QARs of individual members. The Compliance Committee has also developed further performance requirements for CCSBT obligations. The current set of performance requirements include national catch allocations, compliance action plans, transshipment monitoring, records of authorized farms and vessels, MCS measures and decisions (CDS, VMS), scientific observer

¹⁸ See article 7 of the CCSBT Convention and rule 6 of the CCSBT Rules and Procedure.

program, reporting obligations (to the Commission, the science and compliance committees and the ecologically related species working group), and ecologically related species measures.

21. Payment of Assessed Contributions. The payment of financial contributions by members (CNMs are not requested to provide financial contributions) is not assessed as part of the current CCSBT compliance process. The status of annual member contributions is considered in the Finance and Administration Committee separately. General information regarding the budget is publically available.

22. Meeting Attendance. Meeting attendance is not assessed as part of the CCSBT compliance process, but meetings of the Commission and its subsidiary bodies include a list of participants so a record of attendance is publically available. The Compliance Committee has noted the absence of CNMs in its meeting reports, and has urged them to participate so compliance by all States can be effectively reviewed. The rules of procedures for the Compliance Committee provide that three members of the Extended Commission constitute a quorum. At its 2012 annual meeting, the CCSBT created a small assistance fund for developing countries, which can be used to support participation in workshops and capacity-building (e.g., training) initiatives. This fund was to be supported as part of the approved Commission's budget, but in 2015 and 2016 it was not funded.

International Commission for the Conservation of Atlantic Tunas (ICCAT)

23. ICCAT established the terms of reference for its Conservation and Management Measures Compliance Committee in 1995 (Rec. 95-15). These terms of reference were revised in 2011 (Rec. 11-24) to clarify and rationalize the roles and responsibilities of the Permanent Working Group¹⁹ and the Compliance Committee to strengthen their functioning, effectiveness, and efficiency, and thereby improve compliance with measures adopted by ICCAT. As a result of these changes, starting in 2012, the Compliance Committee is now responsible for reviewing all aspects of compliance and cooperation with ICCAT conservation and management measures, including monitoring, control and surveillance measures. Table 1 summarizes the characteristics of the ICCAT Compliance Committee and its process. In brief, the ICCAT compliance process is composed of three stages, some of which can be and are repeated depending on the circumstances and responses from the concerned member, CNM and non-member without cooperating status.²⁰

24. Compliance Assessment Process. In the first stage, the Compliance Committee Chair, assisted in practice by a Friends of the Chair Group made up of representatives of each of the geographic regions among the ICCAT membership, reviews the report of compiled compliance information that was prepared by the Secretariat, which covers compliance-related information for members and CNMs only. (Information on cooperation by non-members without

¹⁹ The terms of reference for the Permanent Working Group (PWG) were also revised in 2011. The mandate of the PWG is now to review trade and other data to identify discrepancies in ICCAT statistics, consider the effectiveness of ICCAT's technical measures (such as the CDS, SDS and observer programs, chartering rules and port inspections, etc.), and develop or modify technical measures and the IUU Vessel List.

²⁰ ICCAT uses Contracting Parties and Cooperating non-Contracting Parties, Entities and Fishing Entities (CPCs) and non-members without cooperating status (non-CPCs) to encompass the universe of States that are reviewed, but for simplicity sake, this paper will use the same nomenclature (members, CNMs) throughout.

cooperating status is presented in a separate document, the “Secretariat’s Report to the Compliance Committee.”) This group also reviews any input by members and CNMs, and fishery related information of non-members without cooperating status, so to identify and highlight serious issues. In the second stage, the Chair of the Compliance Committee presents the identified compliance issues to the Committee. The Committee discusses apparent issues of non-compliance with a focus on more serious matters, and individual States may raise issues of concern during session and seek explanations from others that are present. The Chair of the Committee, in consultation with the Friends of the Chair Group, then develops recommendations for specific actions to address non-compliance/encourage cooperation. Several ICCAT instruments guide these recommendations:

- ICCAT’s Recommendation on Trade Measures (Rec. 06-13);
- ICCAT’s quota compliance rules (Recs 96-14, 97-08, 00-14, 01-13, and various species recommendations);
- ICCAT’s Recommendation on Compliance with Statistical Reporting Obligations (Rec. 05-09);
- Specific penalty provisions in species recommendations (such as for silky and shortfin mako sharks as well as the eastern Atlantic and Mediterranean bluefin tuna recommendation);
- ICCAT’s Recommendation on “Penalties Applicable in Case of Non-fulfillment of Reporting Obligations” (Rec.11-15), which prohibits members and CNMs from retaining ICCAT managed species until they are in compliance with their catch and effort reporting obligations; and
- ICCAT’s Resolution Establishing Guidelines for the Implementation of the Recommendation 11-15 by ICCAT on Penalties Applicable in the Case of Non-Fulfillment of Reporting Obligations (Res. 15-09).

25. Obligations Assessed. The ICCAT Compliance Committee reviews implementation of obligations prescribed in ICCAT conservation and management measures that are in force and which involve compliance by vessels, members and CNMs. It does not review compliance with obligations of the Convention more broadly. The ICCAT compliance process does assess the status of each member’s implementation of and compliance with ICCAT conservation and management measures, including MCS measures, as well as the level of cooperation by CNMs with ICCAT. The Compliance Committee also distinguishes between non-compliance of a minor or technical nature and serious non-compliance that undermines the effectiveness ICCAT conservation and management measures. In general, serious cases of non-compliance result in identification under the ICCAT Trade Measures Recommendation and minor or technical are outlined in letters of concern. The ICCAT Compliance Committee considers the history, and the nature, circumstances, extent, and gravity of the act or omission that may have diminished the effectiveness of ICCAT measures when reviewing and assessing compliance and deciding whether to make an identification under the Trade Measures Recommendation.

26. Transparency and Outcomes. The Committee has developed guidelines for ICCAT compliance actions, which is essentially a penalty schedule, and it is currently being used by the Committee Chair on a pilot basis to help guide recommendations on the appropriate penalty to

apply depending on the type and severity of the infraction.²¹ The Committee then considers the recommendations and gives those present at the meeting an opportunity to provide additional information or explanations before developing final recommendations. Finally, the Commission takes a decision on the Committee's recommendations and sends a letter to each member or CNM conveying its decision, asking that the identified issues be rectified (or quotas paid back) and requesting a written reply 30 days in advance of the next Commission meeting. At the next Commission meeting, the Compliance Committee again reviews compliance information, considers any responses to the ICCAT letters from the member, CNM or non-CNM concerned, and any new information. In cases of previously identified States, the Committee may recommend that the Commission take one of the following actions pursuant to the Recommendation on Trade Measures (Rec. 06-13): lift the identification; maintain the identification; impose penalties, including non-discriminatory trade restrictive measures; or lift previously agreed trade restrictions (with the additional possibility of re-identification if circumstances so warrant). The ICCAT trade measures instrument provides that other types of penalties should be implemented, such as reduction of quotas or catch limits, before trade restrictive measures are considered. It is also possible for additional letters of concern to be sent. Depending on the circumstances, such letters may or may not precede an identification decision. However, with the adoption of Resolution 15-09, for reporting obligations, if the Compliance Committee determines that a member or CNM has not submitted the required data, they will be prohibited from retaining the concerned species/stock from the relevant fishery as of the following year unless and until the data are provided to the Secretariat. The Committee also considers if any other actions in accordance with Recommendations 05-09 and/or 06-13 should be recommended. Decisions of the Commission are usually taken by consensus, but can be taken by a majority vote of Contracting Parties.²² The ICCAT Compliance Committee is open to accredited observers, but they are not provided official access to meeting documents until the start of the Commission meeting. The current practice is for Secretariat to begin posting meeting documents, including compliance related papers, on a password protected part of the ICCAT website a few weeks before the start of the annual meeting. In 2015 ICCAT began to ensure that accredited observers, as well as member and CNMs, were officially notified of the password to access these documents prior to the meeting.

27. Payment of Assessed Contributions. The payment of financial contributions by members is not assessed as part of the current ICCAT compliance process. (CNMs are not obliged to provide financial contributions although some do (i.e., Chinese Taipei)). The Standing Committee on Finance and Administration (STACFAD) considers the status of annual member contributions. Information regarding payment and non-payment of dues and those in arrears is available in the STACFAD meetings, but is not made available online.

28. Meeting Attendance. Meeting attendance is not assessed as part of the ICCAT compliance process, but all meetings of the Commission and some of its subsidiary bodies include a list of participants so a record of attendance is publically available. A list of participants to the annual Compliance Committee that occurs just in advance of the Commission meeting is not appended to its meeting report, however. Rule 9 of the ICCAT rules of procedure provides that two-thirds of members constitute a quorum for voting. Through rule 13, this

²¹ Compliance Committee Doc. No. COC-313/2011

²² See article III of the ICCAT Convention.

quorum rule applies to meetings of committees of ICCAT, including the scientific committee and compliance committees, although in practice voting does not occur in these committees. In 2011, ICCAT adopted Recommendation C-11-26 on the Establishment of a Meeting Participation Fund for Developing ICCAT Contracting Parties. The special Meeting Participation Fund (MPF) was established to support representatives from those ICCAT Contracting Parties that are developing States to attend and/or contribute to the work of the Commission and other subsidiary bodies. The MPF is financed by voluntary contributions from Contracting Parties and other sources as the Commission may identify.

Indian Ocean Tropical Tuna Commission (IOTC)

29. IOTC established the terms of reference for its Compliance Committee in 2002 (Resolution 02/03 Terms of Reference for the IOTC Compliance Committee). These terms of reference were revised in 2010 (Resolution 10/09 Concerning the Functions of the Compliance Committee) and are now incorporated into the IOTC Rules of Procedure 2014. The IOTC revised the Compliance Committee, at least in part, as a response to the results of the first IOTC Performance Review and the Panel's recommendations to strengthen the ability of the Committee to monitor non-compliance and advise the Commission on actions which might be taken in response to non-compliance. The revised terms of reference also provide that sanctioning mechanisms for non-compliance and provisions for following-up on infringements be developed. Table 1 summarizes the characteristics of the IOTC Compliance Committee and the process currently in use.

30. Compliance Assessment Process and Obligations Assessed. The IOTC Compliance Committee assesses member and CNM compliance and enforcement with their obligations. In so doing, the IOTC Compliance Committee reviews all aspects of member and CNM individual compliance with binding IOTC Resolutions. The IOTC compliance assessment involves a three step process. First, the list of IOTC Resolutions and all obligations contained in the Resolution against which the member and CNM compliance is assessed is developed and circulated by the Secretariat as a Standard Compliance Questionnaire. Each year the Standard Compliance Questionnaire is updated to reflect the decisions taken by the Commission in the previous session. Members and CNMs complete and submit the questionnaire to the Secretariat. Second, the Secretariat reviews the responses to develop a draft compliance status for each obligation for each member and CNM. Obligations are assessed as either compliance, non-compliant, partially compliant or late. A score of 'partially compliant' reflects the submission of in-complete data in accordance with the relevant obligation. Members and CNMs are then provided the opportunity to comment on the compliance assessment prior to the Compliance Report being submitted as a public document for the Compliance Committee. Third, the Compliance Committee, during its annual meeting, reviews each individual Compliance Report member by member, rather than by obligation. During the meeting, the member or CNM is given the floor to discuss its compliance (e.g., update the Commission on new improvements, highlight major challenges), and then other members and CNMs are able to ask questions about specific issues. The IOTC process does not review compliance with obligations of the IOTC Convention more broadly. Although the IOTC process provides a high-level breakdown of the degrees of compliance, it does not have a standard for distinguishing between non-compliance of a minor or technical nature and serious non-compliance that, for instance, undermines the effectiveness of the IOTC Convention or its resolutions.

31. Transparency and Outcomes. The IOTC Compliance Committee meeting is open to accredited observers, and member and CNM national implementation reports and completed compliance questionnaires, the summary report on the level of compliance prepared by the Secretariat and compliance report tables prepared by the Chair of the Compliance Committee, and other meeting documents are publically available online prior to, during, or just after the meeting. The IOTC compliance process does assess the status of each member's implementation of and compliance with IOTC Resolutions and the compliance reports that are prepared (by the Committee Chair) for each member and CNM identify the specific compliance status and areas of non-compliance or partial compliance. This information is then provided to members and CNMs in a "feedback letter." The "feedback letters" are not publically available; however, this information, as well as the member and CNM's response (if any), becomes available at the next Compliance Committee meeting as it forms part of the Compliance Report. Member and CNM responses to the "feedback letters" are circulated by the Secretariat in Circulars and posted online. In 2010, the IOTC adopted Resolution 10/10 Concerning Market Related Measures, which is very similar to ICCAT's Recommendation on Trade Measures (Rec. 11-15). The IOTC Compliance Committee has not yet made any identifications under this resolution, however. Decisions of the Commission are usually taken by consensus, but can be taken by a two-thirds majority vote of its members present and voting.²³

32. Payment of Assessed Contributions. The payment of financial contributions by members (CNMs are not requested to provide financial contributions) is not assessed as part of the current IOTC compliance process. The status of annual member contributions is considered in the Standing Committee on Administration and Finance (SCAF). Information regarding payment of dues and those in arrears is publically available in the SCAF report and its associated documents.

33. Meeting Attendance. Meeting attendance is not assessed as part of the IOTC compliance process, but meetings of the Commission and its subsidiary bodies include a list of participants so a record of attendance is publically available. The Compliance Committee has noted the absence of members and CNMs in its meeting reports, and has urged them to participate so compliance by all States can be effectively reviewed. Article VI of the IOTC Convention provides that a majority of the Members of the Commission shall constitute a quorum. This rule applies to all meetings of the IOTC, including the scientific committee and compliance committees. In 2010, IOTC adopted Resolution 10/05 on the Establishment of a Meeting Participation Fund for Developing ICCAT Members and Non-Contracting Cooperating Parties, which has now been incorporated into the IOTC Rules of Procedure 2014. This special Fund is primarily to support participation of scientists from developing States, but also allows up to 25 per cent of the Fund to be used to support participation of representatives from developing States to attend and/or contribute to the work of the Commission and its Working Parties.

²³ See article IX of the IOTC Agreement.

Table 1: Summary matrix of compliance assessment structures and processes by T-RFMO

RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
WCPCF	No dedicated committee with set meeting period. Small working group convened during the TCC and annual Commission meeting, convened ad hoc.	<p>Part I and II Annual Reports; other data that are to be reported to Commission or SPC; transshipment notifications and declarations; ROP and VMS data; and suitably documented data provided by NGOs.</p> <p>Draft Compliance Monitoring Reports (dCMRs) compiled by Secretariat.</p>	<p>dCMRs are reviewed by members/CNMs before TCC; the small (closed) working group held during the TCC reviews revised dCMRs and prepares a provisional CMR (pCMR) with a compliance status for each member/CNM; the Commission reviews the pCMR and adopts final CMR with a compliance status for each member/CNM.</p> <p>Members/CNMs to report in their (non public) Part II annual report steps taken to address any non-compliance.</p> <p>Annex I of the CMS includes a set of criteria and considerations that are to guide determining a compliance status rating; these criteria include a standard for distinguishing between non-compliance of a minor or technical nature and serious non-compliance that undermines the effectiveness of the Convention or measures adopted by the Commission.</p>	<p>NGOs may submit information in advance but the working group meetings are closed to observers (except SPC, FFA and PNA Secretariats)</p> <p>Part II Annual reports (MCS data), dCMRs, dCMRs summaries, the pCMR and the executive summary of the pCMR are not publically available.</p>	<p>Only the Final CMR is publically available after adoption at the annual Commission meeting.</p>

RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
IATTC	<p>Permanent committee with elected chairperson.</p> <p>Meets immediately prior to annual Commission meeting.</p>	<p>In advance of the meeting, members complete a standard questionnaire on compliance with IATTC resolutions.</p> <p>The Secretariat identifies and possible infractions, using observer reports (for purse seine and at-sea transshipment), of vessels flagged to a member.</p> <p>Members are to provide a response regarding its investigation of such possible infractions.</p> <p>Secretariat circulates all completed questionnaires to members and a list of vessels involved in possible violations and the flag State response.</p>	<p>The Review Committee reviews each member's compliance and enforcement of IATTC resolutions using the filled-in questionnaires, the compliance report provided by the Director and information on possible non-compliance cases with IATTC resolutions.</p> <p>The Committee also discusses non-submission or late submission of questionnaires and repeated absences at Committee meetings.</p> <p>The Committee identifies, for each member, the compliance record, areas of possible improvement as well as any recommended actions for consideration of the Commission. The Commission decides on actions for improving compliance by each member, which includes sending a letter from the Chairman indicating their compliance record and identifying areas of possible improvement.</p> <p>Members are to submit a plan of action for such areas of improvement within three months of the end of the Commission's ordinary meeting.</p>	<p>Accredited observers may attend compliance committee meetings and Annex 3 of the Antigua Convention provides that observers can be invited to speak and can submit documents.</p>	<p>Review Committee documents are circulated in advance of the meeting to members, CNMs and accredited observers. These documents were made available online in previous meetings, but no longer.</p>

RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
CCSBT	<p>Permanent compliance committee with an independent chairperson appointed and funded by the Commission.</p> <p>Meets immediately prior to annual Commission meeting.</p>	<p>Annual reports (which include VMS, transshipment and ecologically related species reporting) and compliance action plan reports (both to be covered in the future in one template).</p> <p>Secretariat report includes a compliance table that summarizes compliance of members and CNMs with management measures.</p>	<p>Both Member/CNM annual reports and the compliance table are used in committee deliberations. Members ask questions of each other based on their review of the national reports and compliance action plans.</p> <p>Corrective Actions Policy is to be applied in cases of non-compliance. Minimum performance requirements to meet CCSBT obligations were adopted in 2011.</p> <p>Compliance Committee to do an annual compliance risk assessment.</p>	<p>Accredited observers may attend compliance committee meetings and rules of procedure provide that observers can be invited to speak and can submit information documents.</p> <p>4 IGOs and 3 NGOs have been granted long-term observer status to attend the Compliance Committee.</p>	<p>Most Compliance Committee documents are publically available through the Secretariat after the Commission adopts the report of the meeting, and all are made available to accredited observers online in advance of the meeting.</p> <p>All Compliance Committee reports are publically available online after the Commission adopts the report of the meeting unless the Commission decides otherwise.</p>
ICCAT	<p>Standing compliance committee (COC) with elected chairperson.</p> <p>Meets during the annual Commission</p>	<p>Annual and other reports; catch, effort, landing, and trade data, including from SDPs, CDS, and observer programs; reports from inspection and surveillance activities (including VMS,</p>	<p>COC Chair develops (in consultation with the Friends of the Chair) proposed actions to address non-compliance issues, taking into account relevant ICCAT instruments.</p> <p>The Committee reviews the summary compliance information</p>	<p>Accredited observers to ICCAT:</p> <p>(1) May attend subsidiary bodies, including the COC;</p> <p>(2) Have the possibility of speaking during COC sessions; and</p>	<p>The ICCAT Compliance Committee is open to accredited observers, but they are not provided official access to meeting documents until the start of the</p>

RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
	<p>meeting, or sometimes immediately prior.</p>	<p>observer programs, in port and at sea inspection programs); and suitably documented information provided by NGOs.</p> <p>The COC Chair, with support from the Secretariat, compiles compliance information and provides it to the COC in the form of an “action tracker.”</p> <p>Members and CNMs may provide corrections or other input to this document before it is discussed on the floor.</p> <p>COC Chair, with help of a small Friends of Chair group, reviews the compiled compliance information and highlights serious issues of non-compliance.</p> <p>The Chair may seek</p>	<p>and the Chairs proposals for action. Members and CNMs may also raise issues and ask questions. Any concerns about fishery related activities by non-cooperating non-members are also presented and discussed.</p> <p>Before making final recommendations to the Commission, States have an opportunity to provide additional information or explanations of their compliance situation.</p> <p>Self-implementing provisions of some ICCAT Recommendations do not require specific decision by the Commission, such as 100% payback of quota overharvests or prohibitions on retention of species for which required data are not submitted. These are reflected in the meeting proceedings and, regarding adjusted quota limits, the compliance annex to the COC report.</p> <p>For other instruments, the COC must make specific recommendations to the Commission for decision. The</p>	<p>(3) May present compliance related information in accordance with agreed procedures.</p>	<p>Commission meeting.</p> <p>The current practice is for Secretariat to begin posting meeting documents, including compliance related papers, on a password protected part of the ICCAT website a few weeks before the start of the annual meeting.</p> <p>In 2015 ICCAT began to ensure that accredited observers, as well as member and CNMs, were officially notified of the password to access these documents prior to the meeting.</p> <p>The COC report, which includes the summary of actions and the compliance annex, is publicly available online after it is adopted.</p>

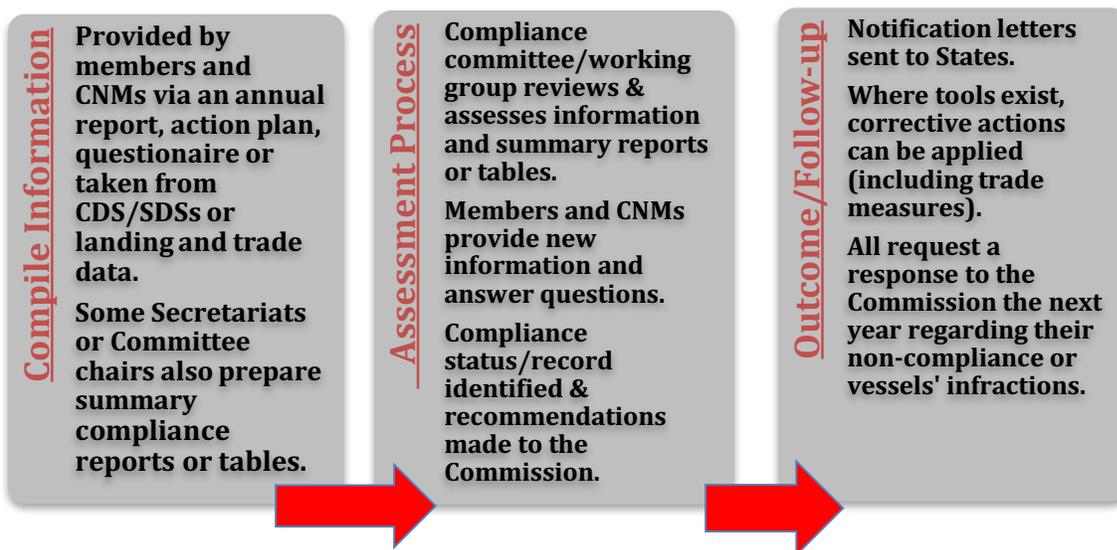
RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
		clarification of possible non-compliance through informal means.	<p>primary mechanism used by the COC is the Recommendation on Trade Measures (Rec. 06-13). Decisions that can be made pursuant to this instrument include:</p> <ol style="list-style-type: none"> (1) No action; (2) Implementation of additional quota reductions or other penalties; (3) Identification for diminishing the effectiveness of ICCAT (including maintaining an identification or re-identifying a party); (4) Lifting an identification; (5) Imposing non-discriminatory trade restrictive measures; or (6) Lifting previously agreed non-discriminatory trade restrictive measures, including with the possibility of re-identification. <p>For lesser infractions, the COC may recommend that a letter of concern be sent. In cases of identification, a letter is sent conveying relevant information and requesting written reply in advance of next Commission meeting. For a letters of concern,</p>		

RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
			<p>the same response deadline applies.</p> <p>Per Resolution 15-09, for reporting obligations, if the CoC determines that a member or CNM has not submitted the required data, they will be prohibited from retaining the concerned species/stock from the relevant fishery as of the following year unless and until the data are provided to the Secretariat. The CoC also considers if any other actions in accordance with Recommendations 05-09 and/or 06-13 should be recommended.</p>		
IOTC	<p>Permanent compliance committee with elected chairperson.</p> <p>Meets immediately prior to annual Commission meeting for at least three days.</p>	<p>In advance of the meeting, members/CNMs complete a standard questionnaire on compliance with IOTC resolutions and provide national reports of implementation.</p> <p>Country-based compliance tables prepared by the Secretariat, which are based on the</p>	<p>The Committee reviews each member's compliance using the compliance tables, national reports and responses, and other summary reports or information provided by the Secretariat regarding possible non-compliance.</p> <p>The Committee identifies for each member their compliance status and areas of outstanding non-compliance, which are summarized in the "feedback letter on compliance issues" addressed to Heads of Delegation during the</p>	<p>Accredited observers may attend Compliance Committee meetings.</p> <p>The rules of procedure are silent on whether NGO observers can be invited to speak or submit information documents.</p>	<p>Compliance Committee documents, including national reports, the compliance tables, and Secretariat summaries, are publically available in advance of the meeting.</p> <p>The "letters of feedback" to members/CNMs outlining areas of non-compliance are not</p>

RFMO	Structure	Information used and how compiled	Process and criteria, if any, used	Transparency	Availability of information about members/CNMs to public
		<p>compliance questionnaire, comments from members/CNMs and the member's responses to previous identified areas of non-compliance.</p> <p>Summary reports of possible infractions observed under the regional observer program, or other IOTC programs, or reported IUU activities in the Convention Area prepared by the Secretariat.</p> <p>Secretariat summary report of the level of compliance with some of the more prominent IOTC resolutions. Except for the Record of Authorized Vessels, this summary does not identify members or CNMs by name.</p>	<p>Annual Commission meeting. The Committee makes recommendations to the Commission.</p> <p>If a member/CNM is not present at the Compliance Committee meeting, the CoC chair provides them questions in writing on the first day of the Commission meeting. If a member/CNM is not present at the Commission meeting, the Commission sends the "feedback" letter highlighting areas of non-compliance and expressing concern with their absence.</p> <p>On certain matters, members and CNMs are requested to report on actions taken to investigate possible non-compliance or IUU activities by their flagged vessels within three months of the end of the annual Commission meeting.</p>		publically available.

34. As is shown in Table 1, tuna RFMO compliance processes vary in how they review and assess member and CNM implementation of and compliance with their obligations, what information is used by the committees (and how it is complied and what sources are used), what information is publically available and at what level of detail, whether or not the RFMO has tools to address non-compliance and whether or not it uses those tools (such as by capacity building or application of sanctions or penalties), and the degree to which the RFMO follows-up on the previously identified non-compliance. In addition, some tuna RFMO processes continue to evolve (WCPFC) or have begun to implement revised committee mandates and/or compliance review processes, guidelines and tools (IATTC, CCSBT, ICCAT and IOTC). However, the compliance processes of the five tuna RFMOs do share core due-process components and, in some cases, standards for distinguishing between minor and serious non-compliance and the types of corrective action tools that are available. Figure 1 outlines the basic steps in RFMO compliance processes that are, for the most part, shared among the five tuna RFMOs.

Figure 1. Schematic summarizing the basic core steps in RFMO compliance processes.



Other tools in use in tuna RFMOs that perform compliance monitoring and sanction functions

35. All five tuna RFMOs that have IUU vessel lists and most compliance committees²⁴ also have the responsibility to review nominated vessels for listing and consider new information or requests to delist vessels from the current IUU vessel list. When listed vessels or vessels that have been proposed to be listed are from a member or CNM, the IUU vessel list can be used as a litmus test for flag State implementation of or cooperation with RFMO rules, and serve to sanction particular types of non-compliance by States of their duties and obligations as flag States under international law.

²⁴ In ICCAT, the PWG is responsible for the IUU Vessel List.

36. While the current tuna RFMO IUU vessel lists differ in some ways in terms of procedures and criteria, in all cases flag States with vessels listed or nominated for listing have an opportunity to provide information in order to prevent the vessel from being listed or as part of its request to have a vessel de-listed. Also, to prevent a nominated vessel from being listed a flag State must demonstrate that its vessel(s) did not take part in IUU fishing activities or report that effective action was taken in response to the alleged infractions, including investigation, prosecution and imposition of penalties of adequate severity. Similarly, to get its vessel delisted from an IUU vessel list, in most RFMOs, a flag State must satisfy one or more conditions, including demonstrating that it has adopted measures to implement effectively its flag State duties so that its vessels comply with the RFMO measures and it can monitor and control the vessel's activities in the RFMO convention area; it has taken effective action in response to the IUU activities that resulted in the vessel's listing, including investigation, prosecution and imposition of penalties; and/or the vessel has changed ownership. Therefore, while RFMO IUU vessel lists are tools designed primarily to combat IUU activities at the vessel level, through removing the economic benefits of IUU fishing, they can also be used as a measure of a flag State's implementation of its duties and responsibilities and serve as an additional data point regarding compliance with RFMO obligations under the convention and binding conservation and management measures. Tuna RFMO IUU vessel lists, and the measures that underlie them, are all publically available. Further, compliance committee or Commission reports, or other meeting documentation, usually provide information on the facts of the case against vessels nominated for listing, as well as any information provided by flag States, such as regarding their investigation, enforcement actions and outcomes, when seeking to have a vessel not included or removed from an IUU vessel list.

37. Using, or attempting to use, an IUU vessel list to penalize flag States for relatively minor or technical infractions has been the cause for some concern among members in some RFMOs (WCPFC and IATTC) since the consequences to the vessel owner of being on an IUU vessel list are severe (e.g., commercial transactions of highly migratory species and refueling, resupply and transshipment activities with the IUU listed vessels are prohibited, as is flagging or chartering an IUU listed vessel). Further, if a tuna RFMO (currently only ICCAT does this) incorporates other tuna RFMOs' IUU vessel lists into theirs, this increases the global impact of such a sanction for the vessel concerned. It also has implications for the flag State given the rise in national measures to combat IUU fishing (such as the EU IUU Regulation and the United States' identification and certification process under Section 609 of the High Seas Driftnet Fishing Moratorium Protection Act).

38. Schemes of corrective actions that RFMOs that are considering (WCPFC and ICCAT) or have adopted (CCSBT) outline a range of responses to degrees of non-compliance by States that are progressive in severity. In these schemes, the trade and commercial restrictive measures that would apply to vessels when listed on IUU vessel lists are among the range of sanctions that could be applied to States for other kinds of infractions under these schemes. However, these types of sanctions are generally reserved for significant, and often persistent, cases of egregious non-compliance.²⁵ Therefore, it is important that RFMOs have both an IUU vessel list and a

²⁵ ICCAT and IOTC have each adopted a separate measure that allows for the application of trade restrictive measures. However, these tuna RFMOs have not, as of yet, developed or adopted formally a scheme of responses to

compliance review process with the ability to apply corrective measures in order to address the full range of non-compliance at both the individual vessel and State levels.

Obligations and commitments currently assessed in tuna RFMO compliance structure

39. For all of the five tuna RFMOs it appears that member and CNM implementation of all measures that are currently in force are to be reviewed as part of their compliance processes, either annually or according to a schedule. Some tuna RFMOs also consider implementation of member obligations under certain articles of their parent conventions. Roughly the categories of obligations that are reviewed break down into five categories:

1. Reporting timely and accurate catch and effort data;
2. Adherence to conservation and management measures such as quota allocations, catch or effort limits, time/area closures or gear restrictions, and capacity limits (where applicable);
3. Implementation of MCS measures (port control measures, VMS, CDS, transshipment monitoring or observer programs);
4. Implementation of bycatch measures and non-target species reporting requirements; and
5. Implementation of vessel authorization measures.

40. Based on a review of available compliance committee reports that contain enough detail to identify the specific obligations and measures that were assessed, the committees' focus in all five tuna RFMOs were largely on the following:

1. Reporting required catch and effort data, including estimates of mortality from all sources, and for non-target species, or for farming operations (bluefin tuna only);
2. Complying with quota allocations, closed seasons/areas, or catch and effort limits and/or capacity management measures;
3. Implementation of MCS measures (VMS, observer programs, transshipment monitoring, submission of or validation of statistical or catch document schemes), including reporting on actions taken to address alleged violations; and
4. Vessels not being on the record of authorized vessels or flag States not reporting their list of active vessels or not reporting on chartering arrangements.

Part II

Available RFMO responses to non-compliance and determining the level of compliance

41. RFMO compliance processes have three basic steps (see Figure 1): (1) information gathering; (2) review and assessment; and (3) feedback and/or application of corrective remedies by the RFMO and/or through its member States, flag State action and follow-up. The application of corrective remedies by tuna RFMOs is a challenging and complex undertaking. Governments

non-compliance, which would include tools to improve implementation and address the broader spectrum of types of non-compliance.

vary in their willingness to have their actions, and those of vessels flying their flag, examined by third parties, information about infractions made public and sanctions imposed in a multilateral setting. Domestic legal processes for investigating alleged infractions and the types of penalties that can be imposed also vary among States. Regular reviews in a multilateral setting that include follow-up to see how members and CNMs are doing to correct any issues or provide missing information do provide powerful political incentives for the State to address any infractions or deficiencies. Such reviews, even if there are no multilateral penalties available, have considerable weight and value in providing oversight and a public accounting of how RFMO measures and member/CNM obligations are being implemented. However, the processes that are the most likely to result in improvements in overall compliance over time will be those that also have the tools to apply multilateral corrective actions, both positive and negative, such as capacity building or data management assistance or reductions in fishing opportunities, increased monitoring or trade restrictive measures.

42. Of the five tuna RFMOs, three have schemes or policies for responding to non-compliance by members and CNMs or other tools (i.e., trade measures instruments) that can be used to apply sanctions, such as to non-cooperating States: ICCAT, IOTC and CCSBT. As described in Part I, while IOTC has a 2010 resolution that provides a framework for applying trade restrictive measures, this mechanism has not yet been implemented and IATTC adopted a trade measures resolution in 2006 but allowed it to lapse in 2008.

43. ICCAT has had measures that provide for the imposition of trade restrictive measures since the late 1990s²⁶ and has imposed such measures on Contracting Parties (Equatorial Guinea, Belize) and non-Parties (e.g., Honduras, Panama, St. Vincent and the Grenadines, Bolivia, Georgia, Cambodia, Sierra Leone²⁷) when these States were determined to have failed to discharge their obligations under the ICCAT Convention or under international law to cooperate with ICCAT. ICCAT's recommendation on Trade Measures (Rec. 06-13), specific penalty provisions in species recommendations (such as for the eastern Atlantic and Mediterranean bluefin tuna) and recommendations on compliance with quotas and/or catch limits are used most frequently and applied to members and CNMs by the Compliance Committee. ICCAT's Compliance Committee has developed guidelines for a schedule of compliance actions for minor, moderate and significant infractions, and these guidelines are currently being used on a pilot basis.

44. As described in Part I, the CCSBT has a Corrective Actions Policy as part of a suite of guidelines and policies to strengthen the CCSBT compliance review component. In 2012, the Compliance Committee recommended that where over-catch by a member or CNM had been established, the Corrective Actions Policy should be applied. Using this new Corrective Actions Policy, one member (Australia) deducted its over-catch for the 2009-2011 fishing season from its 2012 allocation²⁸. However, a CNM (South Africa) advised the Extended Commission that it

²⁶ 1996 Recommendation Regarding Compliance in the Bluefin Tuna and North Atlantic Swordfish Fisheries (96-14) and the 1998 Resolution Concerning the Unreported and Unregulated Catches of Tuna by Large-scale Longline Vessels in the Convention Area (98-18). The 1996 recommendation is still active.

²⁷ Panama, Honduras and St. Vincent and the Grenadines have since become party to ICCAT.

²⁸ Report of the Seventh Meeting of the CCSBT Compliance Committee.

would not repay its over-catches from 2011 and 2012 and the Extended Commission levied no sanction on this CNM.

45. Externally determining an overall level of compliance in tuna RFMOs given the limited public information that is available in some RFMOs is challenging. With the exception of ICCAT, IOTC²⁹ and to a certain degree WCPFC, detailed information - that is not provided by the nation in question - on the level of implementation, by each nation, of RFMO obligations and conservation and management measures, and their response to identified non-compliance, is not publically available. This is due in part to differences in how transparent RFMO compliance processes are, what kind of measures the RFMO has and what information is available to assess compliance (e.g., are there clear quota allocations or effort limits and are recent catch or effort data, by flag, readily available from observer reports, scientific data holdings, etc, or can national catch statistics be cross-referenced with import or other trade data), the role of the Secretariats or compliance committees in assessing and presenting summarized data and information and any responses or follow up from States, and the level of information provided by States in the various annual reports, implementation plans or questionnaires that are to be submitted to RFMOs.

46. Given these variations among the tuna RFMOs, ranking organizations as most compliant overall to least compliant overall would have little practical meaning. For instance, those RFMOs that conduct more comprehensive and finer scale compliance reviews (such as ICCAT and IOTC), which also happen to be in the public domain, will undoubtedly reveal more deficiencies in implementation. Also, when a detailed review is combined with the ability to impose corrective actions or penalties, the compliance committee documents show States addressing issues and improving over time. Therefore, an RFMO with a thorough compliance review process that identifies more infractions does not necessarily mean that its membership is less compliant generally. Further, developing countries make up a substantial proportion of the membership in four of the five tuna RFMOs.³⁰ Many of these developing countries have sizable domestic and distant water fishing fleets (or license foreign fishing vessels to operate in their EEZ or under charter) and have productive tuna fishing grounds in their national waters. Developing State members and CNMs, in particular the least developed among them, often need capacity building and assistance in meeting reporting obligations and in implementing conservation and management measures, which is an area where RFMOs also vary considerably in terms of providing such assistance.

²⁹ In 2011, IATTC made available online its summary compliance report. This same report is no longer available as its posting was objected to by a member because it contained information on possible infractions by vessel name. This information is only available to members. Observers that attend the IATTC Review Committee may view the information if it is presented to the Committee by the Secretariat, but are not provided with copies of the documents. Rigid confidentiality rules, which are extended to meeting reports or more detailed information on member/CNM compliance, present another challenge to effective and transparent implementation of the Substantial Compliance Commitment.

³⁰ Using the IMF categories for advanced and emerging and developing economies (<http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/groups.htm>) and the combined number of members and CNMs in 2015, the percentage of the membership that is a developing country is: IATTC (72%), WCPFC (73%), IOTC (83%), ICCAT (80%), and CCSBT (33%). Note: The IMF emerging and developing economies category excludes the Marshall Islands, the Federated States of Micronesia and Palau due to data limitations. For this analysis, however, these nations were included in the developing country group.

47. However, in looking at the publically available compliance data and meeting documents, implementation reports and compliance letters, in general, across four of the tuna RFMOs reviewed, a considerable number of States are not, either at all, or on time: (1) providing required catch and effort data or reporting on bycatch interactions or shark catches; (2) submitting annual national implementation reports or other compliance information, such as reports of investigations; or (3) paying their assessed contributions to the budget. Further, over-catches of quotas or violating time/area closures and shortfalls in effective implementation of or participation in RFMO or national observer programs or meeting required coverage levels, VMS programs, statistical document or catch documentation schemes or transshipment monitoring schemes are consistently highlighted. The impact on RFMOs and sustainable tuna fisheries are as follows:

- Failure to provide timely and accurate statistical data or participate in observer programs compromises stock assessments and thus the provision of scientific advice based on the most recent information, as well as scientific analyses of the status of bycatch species or the effectiveness of certain mitigation measures.
- Lax submissions of national reports or compliance questionnaires or participation in trade or vessel monitoring schemes or observer programs undermine the ability of the organization, and the public, to understand and assess the degree of implementation of and compliance with conservation and management measures and decisions, as well as identify new measures that may need to be adopted or those that should be reviewed because they are vague or subject to different interpretations.
- Failure to provide financial resources to the RFMO through the payment of assessed contributions compromises the ability of the organization to effectively carry-out its work and deliver services, recruit and retain staff, maintain facilities and invest in new infrastructure or technologies, and so on.
- A lack of compliance with catch and effort limits, gear restrictions or time/area closures, which are designed to maintain catches at sustainable levels or rebuild stocks, directly impacts and erodes the sustainability of the fisheries and conservation efforts of those nations and fleets that do abide by the rules.

Part III

RFMO Performance Reviews: Recommendations relating to compliance and enforcement

48. Four of the five³¹ tuna RFMOs have undergone performance reviews thus far, and all of the performance review panels provided detailed recommendations for strengthening compliance and enforcement. Compliance and enforcement is a cross-cutting concept; as a result, compliance issues were raised in a number of different areas reviewed by the various Panels, such as submitting data and information to meet reporting requirements; implementation of

³¹ In 2014, IATTC agreed on the terms and reference for a review of its performance (and the AIDCP).

monitoring, control and surveillance measures (MCS); use of trade-related measures and IUU vessel lists; institutional measures to review, assess and address non-compliance; national implementation and enforcement of RFMO measures and the performance of flag States' of their duties under international law. For completeness, where possible, all relevant Panel recommendations were included in Annex 1, which summarizes by RFMO the observations and recommendations contained in the completed performance review reports.

49 In brief, across the tuna RFMO performance reviews, the following areas were highlighted:

- Poor reporting of data and other required information (i.e., late, missing, inaccurate, wrong formats);
- Lack of any sanction or penalty regimes for non-compliance, including for statistical data reporting or provision of other required reports;
- Lack of procedures for following-up on identified infractions;
- Inadequate or irregular compliance review and assessment processes;
- Lack of trade or market-based measures;
- Deficient suites of MCS measures (e.g., VMS, observer programs, statistical document or catch documentation schemes, port State measures, transshipment monitoring requirements); and
- Poor implementation of existing MCS tools or regimes to sanction continued non-compliance.

50. One study has used an analytical approach to assess the performance of 13 RFMOs in addressing bycatch and discards (Gilman et al., 2012). This study establishes an ideal standard of RFMO governance for bycatch and discards, and then assesses each RFMO against that standard. One of the set of criteria used was surveillance and enforcement, which the authors generalized to mean RFMO MCS programs, national enforcement action and surveillance activities, RFMO compliance review processes and available sanctions or remedies for non-compliance. Similar to this technical background paper, Gilman et al. found large variability in performance among the 13 RFMOs in this area. In particular, none of the 13 RFMOs assessed met all of three of the elements they identified as fundamental to effective surveillance and enforcement, which were: (i) member reporting on identified infractions, their enforcement actions and the conclusions of those enforcement actions; (ii) information is made publicly available by RFMOs on detected infractions and outcomes; and (iii) detected infractions of binding bycatch measures regularly result in sanctions (Gilman et al., 2012, pp. 54).

51. An issue that is discussed or highlighted through some of the RFMO performance reviews is vessel chartering. Chartering is an important facet of the prosecution of tuna fisheries throughout the world. Particularly for developing States, chartering arrangements provide important opportunities for nations to develop their domestic tuna fisheries through agreements with other States or directly with commercial fishing companies. There is tremendous variety in chartering arrangements, and often their terms and conditions are not made public. As a result, discussions in RFMOs have revolved around the need for clarity on several key issues regarding vessels operating under chartering arrangements: (1) the responsible party for statistical data reporting; (2) catch attribution for purposes of data collection and compliance with applicable

quotas or limits; and (3) the compliance and enforcement responsibilities of the relevant parties engaged in charters. Given that these three areas are of fundamental importance to gauging a nation's degree of compliance with its obligations and commitments as a member or CNM of an RFMO, lack of clarity could create challenges in the implementation of compliance assessment processes. It should be noted that two tuna RFMOs (ICCAT and IATTC³²) have adopted measures prescribing specific provisions for chartered vessels on some or all of these key issues. Also, the WCPFC has a notification scheme for chartering arrangements (CMM 2015-05) and has outlined obligations with respect to the provision of scientific data from vessels operating under chartering arrangements.

RFMO actions in response to their Performance Review Panel's recommendations to date

52. Using on available information, Annex 2 summarizes the actions taken to date by tuna RFMOs to respond to the recommendations of their respective Performance Review Panel recommendations.

Part IV

Monitoring and Assessing Compliance in RFMOs: Best Practices to Date

53. After examining the existing compliance processes in the five tuna RFMOs, and what these RFMOs are doing well and not so well, a set of desirable "best practices" with regard to monitoring, assessing and addressing non-compliance in RFMOs have been identified. While it is true that those RFMOs that exemplify many of these "best practices" still exhibit compliance shortfalls (as discussed in Part II), that is understandable because RFMOs cannot be expected to completely prevent or eliminate infractions by its members and CNMs (e.g., their vessels, or as flag States, coastal States or port States, etc.) any more than a national government could be expected to prevent any of its citizens from ever breaking federal or state/provincial law. Nonetheless, RFMOs should continue to create and implement robust and transparent multilateral compliance processes that can provide the mix of forum and incentives (both positive and negative) to motivate States to meet their obligations, take swift and effective action to address identified instances of non-compliance, and demonstrate improvement over time. Finally, it must be recognized that "best practices" continue to evolve and most of the tuna RFMOs surveyed in this paper continue to refine the design and implementation of their compliance monitoring and assessment processes.

54. The "best practices" in RFMO compliance monitoring and assessment identified by this technical survey paper include the following: First, the overarching desirable practice or practices are identified and then specific procedures, structures, or tools that would operationalize that practice or practices are outlined.

- a) Step 1: The information used to determine the degree of compliance. The desirable best practice is diversity of sources and verification of national self-reporting:
 - (i) Self-reporting by States is coupled with other independent sources of information to verify compliance. For example, national reports are

³² ICCAT Recommendation 02-21 and IATTC Resolution C-12-06.

combined and cross-checked with a compliance report prepared by the Secretariat and/or compliance committee/working group using other sources of verifiable information (e.g., observer programs, transshipment declarations or catch documentation scheme certificates, VMS data, landing and trade information, unloading data etc.).

- (ii) Whether or not required statistical data and national implementation reports have been provided, and whether assessed contributions have been paid, is reviewed as part of the compliance assessment.

b) Step 2: The assessment process. The desirable best practices are (1) a focused State by State and/or obligation by obligation review; (2) clarity and fairness in its due process; and (3) transparency:

- (i) Both member and CNM compliance is reviewed and assessed either member by member or obligation by obligation.
- (ii) There is a dedicated committee or working group, supported by the Secretariat, with a period of time set aside each year for it to meet.
- (iii) The committee or working group conducts a review of the available information for each member and CNM and identifies the possible instances of non-compliance. The committee or working group has an open process whereby States may ask questions of the member or CNM concerned, and the member or CNM concerned has an opportunity to provide information, explanations, and/or reports on any actions it has or is taking to address the identified infractions or deficiencies.
- (iv) The compliance committees or working groups are open to accredited observers, and compliance reports (both those provided by States and what is prepared by the Secretariat or committee), responses by States to previously identified areas of non-compliance and final compliance tables or annexes that identify the areas of non-compliance and recommended actions are available to accredited observers, and publically available in the final reports of these committees or working groups.

c) Step 3: Follow-up and outcomes. The desired best practices are (1) required reporting on actions taken and (2) the availability and use of tools to respond to identified types non-compliance:

- (i) Responses by States to areas of previously identified non-compliance are required and individually reviewed annually by the compliance committee or working group.
- (ii) Failure to report on actions taken is considered as a serious type of non-compliance as is successive and repeated non-compliance on the same obligation.
- (iii) The committee or working group forms its recommendations for addressing the full range of issues identified through a fair, consistent and transparent application of a pre-agreed scheme of responses to non-compliance. Such a scheme contains both positive (such as financial or technical assistance and capacity-building to developing States) and negative (such as automatic quota reductions, loss of fishing opportunities,

enhanced monitoring, non-discriminatory trade measures) responses, and takes into account the history, circumstances, extent, and gravity of the act or omission.

- (iv) The RFMO Commission considers recommendations by the committee or working group and decisions on any penalties can be taken by a vote, if necessary.

55. Using these best practices as yardstick, ICCAT and IOTC rank the highest among the five tuna RFMOs. These RFMOs have publically available, detailed compliance tables or annexes that utilize multiple sources of information to identify areas of non- or partial compliance with RFMO obligations or measures (that are compiled by the Compliance Committee chair with, in some cases, assistance from the Secretariat and/or a small group of Parties). Both of these RFMOs also provide information publically on the responses by States (if any) to areas of identified non-compliance. WCPFC has also made progressive strides in this direction in recent years. Its final Compliance Monitoring Report is now public and provides details by member; however, all the documents, data, and deliberations that relate to incidents of non-compliance or how identified areas of non compliance are or will be addressed remain behind closed doors and in non-public reports. ICCAT and IOTC have also adopted tools to address persistent non-compliance, some of which are automatically triggered. CCSBT also has some of these same robust elements (e.g., it has a corrective actions policy) as well as tools that are unique among the tuna RFMOs (i.e., a multi-year Compliance Plan that is periodically revised and guidelines on the minimum performance requirements to implement CCSBT measures). However, the current CCSBT compliance process is less transparent overall in terms of the detailed information by member and CNM that is made publically available, and so it does not rank as high as ICCAT and IOTC in that regard. IATTC's compliance process continues to exhibit worrying trends of only cursory examination of the information available on member and CNM compliance, non-transparency in the documents that are made publically available or to accredited observers (such as the Secretariat compliance summary), and producing committee reports that lack any detail on areas of non-compliance by members or CNMs, responses and follow-up to identified infractions or deficiencies in implementation, or recommendations to address non-compliance. The WCPFC ranks the lowest among all of the five tuna RFMOs for its completely closed compliance assessment process and because responses and follow-up to identified infractions or deficiencies in implementation remain non-public. Both IATTC and WCPFC also currently lack any tools³³ to address non-compliance, and the WCPFC measure is also not permanent.

56. As discussed in Part I, all of the tuna RFMOs have revised the mandates and procedures of their existing compliance committees within the last several years, and, in some cases, have added further tools to strengthen the ability of the organization to improve member and CNM implementation and compliance with their obligations in relation to the RFMO conventions and conservation and management measures. As outlined in Annex 2, most RFMOs have made notable strides in responding to a number of their Performance Review Panel recommendations.. Nonetheless, it is clear that more work is needed at the RFMO and national government levels to improve the level of member and CNM compliance with their RFMO obligations and conservation and management measures.

³³ Other than the IUU Vessel Lists, as discussed in Part I.

57. A core conclusion of the report of the Independent Panel to Develop a Model for Improved Governance by RFMOs (Lodge, et al., 2007, pp. x) was that for international cooperation through RFMOs to be successful, free-riding (i.e., non-compliance or non-cooperation with RFMO measures) must be addressed and deterred, and to accomplish this one of the things RFMOs must do is create incentives for members and CNMs to comply. Further modification of existing tuna RFMO compliance mechanisms to incorporate and apply the desirable best practices outlined above would strengthen the ability of an organization to assess the degree to which its measures are being implemented and complied with, reward those that are abiding by the rules, provide assistance to those nations that need it and penalize those that are undermining the effectiveness of RFMO conventions and conservation and management measures. Greater transparency in terms of the level of compliance of each member and CNM, and the steps they are taking to rectify implementation deficiencies or breaches of conservation measures, will promote system legitimacy, reduce perceptions of unfairness and contribute to public and market confidence in the sustainable international management of global tuna fisheries through RFMOs.

58. RFMOs are the established international governance mechanisms with the mandate, geographic scope, membership and expertise to manage international fisheries. RFMOs are organizations composed of nations, and it is these member countries that are responsible for the RFMO's overall success and performance in effectively managing the fisheries over which they have competence. Therefore, the long-term sustainable management of globally shared and traded fisheries resources, such as highly migratory species, completely depends on the degree to which nations implement and enforce the measures, requirements and decisions they adopt through these RFMOs.

Annex 1. Summary matrix of tuna RFMO performance review panel conclusions and recommendations

RFMO	Relevant Panel Conclusions and Recommendations
ICCAT (completed in 2008)³⁴	<p><u>Application of trade and market related measures:</u> <i>ICCAT's performance in this area is sound. Actions against non-Contracting Parties have borne results and reduced IUU fishing activity. Further application of these measures against those CPCs whose nationals are involved in the IUU trade of bluefin tuna for farming in the Mediterranean may well assist in bringing some rigor and control to that fishery. The Panel notes the actions that ICCAT has taken over time to apply non-discriminatory trade measures to countries that do not cooperate with the Commission.</i></p> <ul style="list-style-type: none"> <i>The Panel suggests that ICCAT investigates applying similar penalty arrangements to members that continually break ICCAT rules and regulations. In concert it is also recommended that ICCAT investigate and develop a universal penalty regime that either has the capacity to suspend member countries that systematically break ICCAT regulations or can apply significant financial penalties for breaches. These measures need to be severe in the sense that member should clearly understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.</i> <p><u>IUU Fishing:</u> <i>The implementation by CPCs of full and effective MCS tools including observer and compliance arrangements coupled with strong flag and port State controls will deal effectively with IUU fishing activities. There are currently gaps in the application of these processes, although capacity building initiatives with developing countries that are now in place will no doubt prove beneficial in the longer term. The reporting to ICCAT of suspicious vessels and the trade restrictions applied to non-parties have all proven to be effective in dealing with IUU activity.</i></p> <ul style="list-style-type: none"> <i>In view of the well-recognized fact that some fishing vessels, particularly those engaged in IUU fishing, often repeat their offences taking advantage of lack of severe sanctions, in the Panel's view, the Commission should adopt provisions on the need to apply sanctions sufficient to secure compliance in accordance with the provisions of UNFSA and the FAO Compliance Agreement.</i> <p><u>Compliance and the Compliance Committee:</u> <i>In the Panel's view, non-compliance with ICCAT measures is one of the most serious problems that await urgent attention of the Commission. The effectiveness and credibility of ICCAT depend largely on how much the Commission can succeed in improving the situation in the immediate future. The Commission must squarely deal with the problem and strengthen its measures and mechanisms. The concept of a Compliance Committee and the terms of reference are sound. The adherence by Contracting Parties to the rules and recommendations made by the Commission however is poor. The Compliance Committee will not fix the underlying problems of this Commission; only political will can. This Committee would be far more effective if CPCs actually were committed to proper monitoring, control and compliance measures and had the will to deliver on their commitments to the Commission. It is difficult at times to read and then reconcile</i></p>

³⁴ <http://www.iccat.int/Documents/Meetings/Docs/Comm/PLE-106-ENG.pdf>

RFMO	Relevant Panel Conclusions and Recommendations
	<p><i>the annual reports from members with what is actually happening in some of the ICCAT fisheries.</i></p> <ul style="list-style-type: none"> • <i>A strong and enforceable penalty regime may help to encourage proper compliance.</i> <p><u>National Implementation:</u> <i>The Panel recommends that:</i></p> <ul style="list-style-type: none"> • <i>ICCAT CPCs should immediately apply fully the rules and measures adopted by ICCAT and through domestic arrangements including flag and port State controls, observer programs and VMS, provide effective control over their nationals;</i> • <i>CPCs must agree to provide accurate and timely data and information on MCS activities and arrangements to ICCAT;</i> • <i>CPCs should also consider immediately developing a fair and tough penalty regime that will be applied to defaulting CPCs;</i> • <i>CPCs immediately take seriously their obligations with respect to compliance with quota allocations and fishing opportunities and effectively manage their quota allocations and report honestly and accurately and in a timely manner their catch to ICCAT;</i> • <i>The key obligation should be reinforced by the development of an appropriate penalty regime of significant consequence to provide a real incentive for members to cooperate.</i> <p><u>Provision of Data and Information.</u> <i>Given the numerous references and recommendations and resolutions in the ICCAT Compendium relating to improvements in data collection, the Panel finds it difficult to formulate a recommendation that might make a difference. The Panel strongly believes that: misreporting must stop immediately. The Panel is concerned that with the present situation in relation to data and compliance, the conclusion could be drawn that some parties to ICCAT hold in contempt the resolutions and recommendations in relation to the management of sharks and shark by-catch and the provision of related data. The Panel notes with great concern that, three years after it became mandatory through Rec. 04-10 for CPCs to report Task I and Task II data for sharks, in accordance with ICCAT data reporting procedures, including available historical data, most parties are still not complying with the recommendation.</i></p> <ul style="list-style-type: none"> • <i>The Panel recommends that:</i> <ul style="list-style-type: none"> ○ <i>CPCs collect accurate Task I and Task II data from all their fisheries according to ICCAT protocols and report them in a timely fashion to the ICCAT Secretariat;</i> ○ <i>Consideration be given to modify the ICCAT observer program to collect such data.</i> ○ <i>Effort should be continued to build capacity in developing CPCs and improve reporting by developed CPCs and CPCs who continually fail to comply should be subject to an appropriate penalties regime. Such a regime should be severe and be enforceable;</i> ○ <i>CPCs immediately take the management of shark fisheries and shark by-catch seriously and implement and comply with the ICCAT recommendations and resolutions to provide accurate and reliable data to the SCRS;</i> ○ <i>The Panel recommends that CPCs comply with Rec. 04-10 immediately.</i>

RFMO	Relevant Panel Conclusions and Recommendations
<p>CCSBT (completed in 2008)³⁵</p>	<p><u>Self Assessment</u></p> <p><u>MCS measures:</u> <i>As the CCSBT does not have its Convention area and SBT migrates into the other tuna RFMOs' areas of jurisdiction, the CCSBT should cooperate with the other tuna RFMOs to optimise harmonisation; improve global effectiveness; and avoid duplication of work. The CCSBT should prioritise the development of MCS in the context of a compliance plan.</i></p> <p><u>Follow-up on infringements:</u> <i>The CCSBT should, as a minimum, establish agreed rules on the treatment of overcatch (requirement of payback). Ideally, the CCSBT should establish a range of penalties in relation to all conservation measures.</i></p> <p><u>Cooperative mechanisms to detect and deter non-compliance:</u> <i>Since the first meeting of the CC in 2006 it has focused on the development of an integrated MCS and has not to date undertaken routine assessment of member and cooperating non-member compliance with CCSBT measures. All Members and Cooperating Non-Members should submit their national reports to the CCSBT. The CCSBT allocate sufficient time to the CC and the Extended Commission to allow them to complete both routine and development work each year.</i></p> <p><u>Market related measures:</u> <i>The CCSBT should implement a CDS as matter of urgency. Pending implementation of a CDS, all members and cooperating non-members should be required to implement the TIS. The CCSBT should monitor all market and port states and encourage compliance with CCSBT monitoring and trade measures.</i></p> <p><u>Independent Expert</u></p> <p><u>Data collection and sharing:</u> <i>The Self Assessment outlines in considerable detail the mechanisms for data collection and sharing that the CCSBT has adopted. It does not always make clear, however, the extent to which CCSBT members and cooperating non-members are complying with their obligations in this regard. The Self Assessment does note that one cooperating non-member, the EC, has informed the CCSBT that the EC will not implement the CCSBT Trade Information Scheme (TIS) and will not comply with the monthly catch reporting procedures. The Self Assessment does not indicate whether or how the CCSBT has responded. The CCSBT TIS appears to be working reasonably well with respect to catches of SBT that actually enter international trade. As noted above, however, the scope of the TIS does not include catches of SBT that do not enter international trade.</i></p> <ul style="list-style-type: none"> <i>The CCSBT should thus continue to move forward smartly toward the adoption and implementation of a full CDS. The revelation of serious overfishing and under-reporting of SBT has understandably prompted the CCSBT and its</i>

³⁵ http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/report_of_PRWG.pdf
http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/PerformanceReview_IndependentExpertsReport.pdf

RFMO	Relevant Panel Conclusions and Recommendations
<p>CCSBT (completed in 2014)</p>	<p><i>members to seek better mechanisms for monitoring catches and for ensuring accurate reporting. The Commission as a whole does not yet have in place a robust suite of measures for this purpose.</i></p> <p><u>MCS measures:</u> <i>Like other tuna RFMOs, the CCSBT has an authorized vessel list and is considering the adoption on an IUU vessel list. The only Port State Measure adopted by the Commission so far is a prohibition on landings of SBT by vessels that are not on the authorized vessel list. The 2003 FAO Model Scheme on Port State Measures to Combat IUU Fishing recommends a range of additional measures, which many RFMOs have begun to adopt. As the Self Assessment notes, there is also under negotiation a new binding international agreement on Port State Measures. But that new agreement may not enter into force for several years. Although most CCSBT members require their vessels to use satellite-based vessel monitoring systems (VMS) and despite the adoption in 2006 of a CCSBT resolution committing members and cooperating non-members to adopt an integrated VMS system, the CCSBT still does not have such a system in place.</i></p> <ul style="list-style-type: none"> • <i>In the meantime, the CCSBT should move to adopt a broader set of Port State Measures designed to prevent the landing and transshipment of illegal, unreported and unregulated SBT catches – including by vessels on the CCSBT authorized vessel list.</i> • <i>The Commission should institute a VMS promptly.</i> • <i>Similarly, despite a recognition – within the CCSBT and elsewhere – that unmonitored transshipment at sea can provide a means for evasion of RFMO rules, and despite the adoption in 2006 of a resolution seeking to establish controls on at-sea transshipment, a number of CCSBT members have not met the deadlines for action set forth in that resolution. The CCSBT has not yet implemented a regional observer program (despite a July 2008 deadline for doing so), nor has it adopted rules for implementing requirements relating to high seas boarding and inspection set forth in the UNFSA. The Self Assessment suggests that the absence of a CCSBT “convention area” means that implementation of boarding and inspection rules “would be complex because they would cover all oceans.” That is not a good reason for failing to have such rules, given the clear requirements of the UNFSA.</i> <p><u>Independent Reviewers recommended:</u></p> <p><u>Compliance and Enforcement:</u> <i>The CCSBT should continue to ensure compliance by all possible means, including through continued, and full implementation of the enhanced Compliance Committee process, QAR program and compliance action plans and policies. Any additional recommendations on compliance that stem from these new processes should be specific and lead to action by the CCSBT in accordance with the rules and procedures of the Compliance Committee and related Compliance Action Plan and tools. No additional recommendations are necessary.</i></p> <p><u>Port State Measures:</u> <i>The CCSBT should accelerate its progress in developing a Resolution on Port State Measures consistent</i></p>

RFMO	Relevant Panel Conclusions and Recommendations
	<p><i>with the 2009 FAO Port States Agreement.</i></p> <p><u>MCS:</u> <i>Considering that both technology and sister RFMOs programmes keep evolving, the CCSBT should continue to improve its MCS measures and scheme, and take additional steps to harmonize its MCS measures with other RFMOs. Details on areas to harmonize further are examined below.</i></p> <p><u>Observer programs:</u> <i>The CCSBT should accelerate its efforts to strengthen its Scientific Observer Standards and ensure they are harmonized with those of neighboring RFMOs with respect to ERS observer data. The CCSBT should also give serious consideration to the development of a ROP, perhaps through forging a relationship with the WCPFC to allow for mutual recognition or cross endorsement of observers, as the WCPFC and IATTC have done.</i></p> <p><u>VMS:</u> <i>The CCSBT should trigger paragraph 5 of its 2008 CCSBT Resolution and goal 8.3 of its Compliance Action Plan, and review and revise the Resolution to include specific baseline operational VMS standards for SBT vessels regardless of their area of operation, such as reporting frequencies, recipients and use of VMS data (such as by the CCSBT Secretariat, SC/ESC, and ERSWG and Compliance Committees (other than summary reports currently required under the 2008 Resolution). For instance, CCSBT members and CNMs could agree that their SBT vessels operating in other RFMO Convention Areas would transmit the VMS reports sent under those VMS programs to the CCSBT Secretariat.</i></p> <p><u>Transshipment:</u> <i>The CCSBT should accelerate its progress in reviewing its Transshipment Program for tuna longline vessels in conjunction with the development of a Port State measures resolution that is consistent with the 2009 FAO Port States Agreement. The CCSBT should also be prepared to develop rules to govern at sea transshipment involving purse seine vessels that are consistent with those adopted by the WCPFC, if at-sea transshipment activities involving such vessels begins to be utilized in the future.</i></p> <p><u>HSB&I:</u> <i>CCSBT should therefore develop as a matter of priority procedures for high seas boarding and inspection of SBT vessels.</i></p> <p><u>Follow-up on infringements:</u> <i>The CCSBT has taken steps since 2008 to considerably strengthen its compliance assessment processes and tools, including a framework for applying a range of penalties for instances of Member and CNM non-compliance with CCSBT measures. CCSBT should continue to refine these tools and ensure they are transparently and fairly implemented when necessary to ensure legitimacy and integrity in its system, thereby creating an incentive for compliance among members and CNMs.</i></p> <p><u>Cooperative mechanisms to deter non-compliance:</u> <i>The CCSBT has taken steps since 2008 to considerably strengthen its compliance assessment processes and tools, including reworking its Compliance Committee terms of reference, giving the</i></p>

RFMO	Relevant Panel Conclusions and Recommendations
	<p><i>Committee adequate time to meet, and adopting an IUU Vessel List measure. Members and CNMs are cooperating with the process, providing their national reports on time and submitting themselves to a multilateral review of their compliance in the Compliance Committee. The CCSBT should continue implement these tools fully and ensure non-compliance is transparently and fairly assessed, thereby creating an incentive for compliance among members and CNMs. The CCSBT should also consider mandating that a member who is being considered for a sanction under its policies may not participate in the decision-making on that issue.</i></p> <p><u>Market-related measures:</u> <i>The initial recommendations are already fairly well implemented. CCSBT should explore all available options for tracking the trade of SBT between those States that are not members or CNMs, and continue to engage in outreach (both from the Secretariat and individually as CCSBT members or CNMs, such as through diplomatic channels and in bilateral contacts) to those non-member nations to encourage their participation in and implementation of the CCSBT CDS.</i></p>
<p>IOTC (completed in 2009)³⁶</p>	<p><u>Data collection and sharing:</u> <i>The quantitative data provided for many of the stocks under the IOTC Agreement is very limited. This is due to lack of compliance, a large proportion of catches being taken by artisanal fisheries, for which there is very limited information, and lack of cooperation of non-Members of the IOTC. The data submitted to the Commission is frequently of poor quality. This contributes to high levels of uncertainty concerning the status of many stocks under the IOTC mandate. Addressing uncertainty in data and in the stock assessments is one of the most fundamental and urgent actions required to improve the performance of the Commission.</i></p> <ul style="list-style-type: none"> • <i>This will require a variety of actions of which the most important are: application of scientific assessment methods appropriate to the data/information available, establishing a regional scientific observer programme to enhance data collection for target and non-target species, and improving data collection and reporting capacity of developing States. Also engaging non-Members actively fishing in the area is of critical importance to addressing uncertainty. Equally important are developing a framework to take action in the face of uncertainty in scientific advice and enhancement of functioning and participation in the Scientific Committee and subsidiary bodies.</i> <p><u>Compliance and enforcement and tools to address non-compliance:</u> <i>Low levels of compliance with IOTC measures and obligations are commonplace. The Commission to date has taken very limited actions to remedy this situation – there are currently no sanctions/penalties for non-compliance in place. Moreover, the list of illegal, unreported and unregulated (IUU) vessels applies to non-Members only. It is imperative to strengthen the ability of the Compliance Committee to monitor non-compliance and advise the Commission on actions which might be taken in response to non-compliance. The Panel recommends that:</i></p> <ul style="list-style-type: none"> • <i>Non-compliance be adequately monitored and identified at individual Member level, including data reporting;</i> • <i>The causes of non-compliance be identified in cooperation with the Member concerned;</i>

³⁶ <http://www.iotc.org/files/misc/performance%20review/IOTC-2009-PRP-R%5BE%5D.pdf>

RFMO	Relevant Panel Conclusions and Recommendations
	<ul style="list-style-type: none"> • <i>When the causes of non-compliance are identified and all reasonable efforts to improve the situation are exhausted, any Member or non-Member continuing to not -comply be adequately sanctioned (such as market related measures);</i> • <i>Any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA and should include specific provisions on Member's duties as port States;</i> • <i>IOTC explore the possible implementation of the FAO Model Scheme on Port State Measures;</i> • <i>IOTC develop a comprehensive monitoring, control and surveillance (MCS) system through the implementation of the measures already in force, and through the adoption of new measures and tools such a possible on-board regional observers' scheme, a possible catch documentation scheme as well as a possible system on boarding and inspection;</i> • <i>The current IUU resolution should be amended to allow the inclusion of vessels flagged to Members;</i> • <i>The deadline to provide data on active vessels be modified to a reasonable time in advance of the meeting of the Compliance Committee;</i> • <i>IOTC explore options concerning the possible lack of follow-up on infringements by CPCs;</i> • <i>IOTC establish a sanction mechanism for non-compliance, and task the Compliance Committee to develop a structured approach for cases of infringement;</i> • <i>Provisions for follow-up on infringement should be included in any amended/replaced Agreement;</i> • <i>A structured, integrated approach to evaluate the compliance of each of the Members against the IOTC Resolutions in force should be developed by the Compliance Committee;</i> • <i>CPCs should be reminded of their duty to implement in their national legislations the conservation and management measures adopted by IOTC;</i> • <i>The requirement to present national reports on the implementation of IOTC measures should be reinforced;</i> • <i>The sense of accountability within IOTC seems to be very low; therefore more accountability is required. There is probably a need for an assessment of the performance of CPCs;</i> • <i>Establishment of formal mechanisms of MCS (e.g. observers programmes) should be considered;</i> <p><u>Market-related measures:</u> <i>The Panel recommends that:</i></p> <ul style="list-style-type: none"> • <i>IOTC action in terms of measures relating to the exercise of rights and duties of its Members as market States are very weak, the non-binding market related measure should be transformed into a binding measure;</i> • <i>The bigeye statistical document programme should be applied to all bigeye products (fresh and frozen). Catch documentation schemes for target species of high commercial value should be considered. Alternatively, expanding the scope of the current statistical document programme to address current loopholes should be considered.</i>

RFMO	Relevant Panel Conclusions and Recommendations
<p>IOTC (completed in 2016)³⁷</p>	<p><u>Compliance and Enforcement:</u> The Panel recommended:</p> <ul style="list-style-type: none"> • That any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA and take due note of the FAO Voluntary Guidelines on Flag State Performance. • That since port State measures are critical for the control of fishing in the IOTC area and beyond, CPCs should take action to ratify the FAO Agreement on Port State Measures, and the Commission explore possible ways of including ports situated outside the IOTC area known to be receiving IOTC catches in applying port State measures established by the IOTC. • That the Commission, through its port State measures training, support the implementation, including support from FAO and other donors, of the requirements of the FAO PSMA and the IOTC Resolution 10/11 <i>On port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing</i>. <p><u>MCS:</u> The Panel recommended:</p> <ul style="list-style-type: none"> • That the IOTC should continue to develop a comprehensive MCS system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible catch documentation scheme, noting the process currently being undertaken within the FAO. • That as a matter of priority review the IOTC MCS measures, systems and processes, with the objective of providing advice and guidance on improving the integration of the different tools, identification of gaps and recommendations on how to move forward, taking into consideration the experiences of other RFMOs, and that the review should be used as a basis for strengthening MCS for the purpose of improving the ability of the Commission to deter non-compliance and IUU fishing. • That the IOTC should establish a scheme of responses to non-compliance in relation to CPCs obligations, and task the Compliance Committee to further develop a structured approach for cases of infringement. • That the IOTC further develop an online reporting tool to facilitate reporting by CPCs and to support the IOTC Secretariat through the automation of identification of non-compliance. • That reasons for the non-compliance should be identified, including whether it is related to the measure itself, a need for capacity assistance or whether it is willful or repeated non-compliance, and that the Compliance Committee provide technical advice on obligations where there are high level of CPCs non-compliance. <p><u>Cooperative mechanisms to detect and deter non-compliance:</u> The Panel recommended:</p> <ul style="list-style-type: none"> • That the Commission considers strengthening the intersessional decision making processes in situations where CPCs

³⁷ <http://www.iotc.org>

RFMO	Relevant Panel Conclusions and Recommendations
	<p>have not transmitted a response such that a decision can be taken for effective operational cooperative mechanisms and that the Commission encourages the CPCs to be more involved in decision making and for the Commission to collaborate to the greatest extent possible with other RFMOs.</p> <p><u>Market related measures:</u> The Panel recommended:</p> <ul style="list-style-type: none"> • That the Commission considers strengthening the market related measure (Resolution 10/10 <i>Concerning market related measures</i>) to make it more effective. • That the Commission considers to invite key non-CPCs market States that are the main recipient of IOTC catches as observers to its meetings with the aim of entering into cooperative arrangements.
<p>WCPFC (completed in 2011)³⁸</p>	<p><u>Data collection and sharing:</u> <i>The Panel recommends:</i></p> <ul style="list-style-type: none"> • <i>The Commission is urged to rectify identified data submission shortcomings and to encourage the Secretariat to make data submission information easily accessible, particularly with respect to ensuring that data deadlines are met, and especially for fisheries subject to CMMs in force, and/or requiring assessment.</i> • <i>Serious consideration should be given to providing an enduring, and detailed, 'Data Submission' item on the WCPFC Website as a 'one-stop shop' for all data submission information.</i> • <i>To improve transparency attached to the timely submission of data, submission dates should be monitored by the Secretariat with the attached information being made available on the password protected portion of the WCPFC Website.</i> • <i>The WCPFC is encouraged to give serious consideration to SC7 concerns regarding data issues.</i> • <i>The WCPFC should note the lack, and/or lateness, of many Members' provision of scientific/fishery operational data.</i> <p><u>Compliance and enforcement and MCS:</u> <i>The Panel recommends that:</i></p> <ul style="list-style-type: none"> • <i>A common understanding be sought among CCMs on the TCC's priorities. The Committee's agenda should then be adjusted accordingly and its working schedule carefully tailored to ensure that it provides all its required outputs;</i> • <i>All outstanding issues related to the ROPs effective implementation (i.e., data flow, access to observer data, draft observer report submission and reduction in cost) should be expeditiously resolved;</i> • <i>Clearer mechanisms should ensure that CCMs follow-up on CMM infringements and regularly submit information on actions taken in terms of non-compliance with WCPFC CMMs;</i> • <i>There is also a systematic failure in the submission of Part 2 Annual Reports on compliance, before the required deadlines and in a manner and format as required by the Convention and CMMs concerned. These are serious</i>

³⁸ <http://www.wcpfc.int/doc/wcpfc8-2011-12/review-performance-wcpfc>

RFMO	Relevant Panel Conclusions and Recommendations
	<p><i>problems which should be rectified as a matter of urgency.</i></p> <ul style="list-style-type: none"> • <i>A comparable range of penalties for non-compliance should be developed;</i> • <i>The IUU Vessel List should be shared and, to the extent possible, harmonized with other RFMO lists, as recommended by KOBE III;</i> • <i>Consideration should be given to a new CMM (i.e. a Charter Arrangement Scheme), to address pending charter-related issues. In this respect, the WCPFC needs to solve the issue of attribution of catch caught by chartered vessels as a matter of priority. It is recommended that a process to develop criteria to determine what types of charter arrangements can be covered under particular CMMs be established. The first step could be a study of the different arrangements for “chartering” in different WCPFC members.</i> • <i>The Compliance Monitoring Scheme (CMM 2010-03) should be faithfully implemented as a top priority. A process to identify a range of possible responses to non-compliance should be added, as appropriate, to a revised CMM;</i> • <i>The Secretariat should review its Compliance Report with a view to improving its impact in terms of being a tool that contributes more effectively to the monitoring of compliance without imparting an excessive burden on CCMs reporting requirements.</i> • <i>The maintenance and provision of the WCPFC Record of Fishing Vessels be improved, including, as appropriate, the introduction of a Lloyd’s Fairplay Unique Vessel Identifier (UVI/ IMO) for large vessels of 24 meters or more in length.</i> • <i>A new CMM on port State measures be adopted and implemented within the Convention Area at the earliest opportunity; and that training and technical assistance for island CCMs should be provided where needed to facilitate implementation of WCPFC-wide port State measure scheme;</i> • <i>Ways should be explored and established for VMS information within EEZs to be shared by the WCPFC Secretariat with appropriate confidentiality requirements;</i> • <i>The Northern Committee (NC) resolves a VMS implementation date for the Convention Area north of 20⁰N and west of 175⁰E;</i> • <i>A WCPFC CDS be established as soon as possible.</i> • <i>The Commission establish a clear process to invite non- Parties to accede to the Convention.</i> <p><u>Market-related measures:</u> <i>The Panel recommends that:</i></p> <ul style="list-style-type: none"> • <i>The Commission is encouraged to continue considering the role that market-related measures may play in addressing IUU and unsustainable fishing.</i>

Annex 2. Summary matrix of key RFMO actions in response to their Performance Review Panel recommendations

RFMO	Key Actions to Date
ICCAT	<p data-bbox="411 313 663 342"><u>Adopted or agreed:</u></p> <ul data-bbox="464 386 1898 1036" style="list-style-type: none"> <li data-bbox="464 386 1898 516">• <i>Revision of the Compliance Committee’s terms of reference (Recommendation 11-24) to rationalize the roles and responsibilities of the PWG and CoC and to consolidate compliance review functions in the CoC, among other things), and creation and use of a "friends of the Compliance Committee Chair" group (as an alternative to a “Compliance Task Force”).</i> <li data-bbox="464 521 1898 586">• <i>Adoption of procedures for compliance reporting tables, application of compliance recommendations and the creation of the Compliance Annex (Rec.11-11).</i> <li data-bbox="464 591 1898 656">• <i>Adoption of the Penalties Applicable in Case of Non-fulfillment of Reporting Obligations Recommendation (Rec.11-15).</i> <li data-bbox="464 660 1898 693">• <i>Inclusion of penalty provisions in the recommendations for silky (Rec. 11-08) and short fin mako sharks (Rec. 10-06).</i> <li data-bbox="464 698 1898 763">• <i>That the Compliance Committee will have a dedicated period of time to meet in advance of the annual Commission meeting.</i> <li data-bbox="464 768 1898 833">• <i>Revision of the IUU Vessel List recommendation to allow cross-listing of other t-RFMO IUU Vessel Lists (Rec. 09-10) and to broaden the coverage to vessels of 12 meters or greater LOA (Rec. 11-18).</i> <li data-bbox="464 837 1898 902">• <i>Revision of the ICCAT Record of Vessels Authorized to Operate in the Convention Area (Rec. 09-08) to include vessels of 20 meters or greater LOA, and its compliance provisions (Rec. 11-12).</i> <li data-bbox="464 907 1898 972">• <i>Adoption of a recommendation establishing a meeting participation fund for developing countries Contracting Parties (Rec. 11-26).</i> <li data-bbox="464 977 1898 1036">• <i>Adoption of ICCAT’s Resolution Establishing Guidelines for the Implementation of the Recommendation 11-15 by ICCAT on Penalties Applicable in the Case of Non-Fulfillment of Reporting Obligations (Res. 15-09).</i> <p data-bbox="411 1114 699 1143"><u>Pending or in process:</u></p> <ul data-bbox="464 1183 1871 1313" style="list-style-type: none"> <li data-bbox="464 1183 1871 1248">• <i>Adoption of a schedule of penalties or compliance actions (guidelines for ICCAT compliance actions was developed and was used on a pilot basis in 2011 and 2012).</i> <li data-bbox="464 1253 1871 1313">• <i>While requirements for observer sampling have been agreed, such data are not generally available to the Standing Committee on Research and Statistics (SCRS).</i>
CCSBT (2008 and 2014 PRs)	<p data-bbox="411 1325 699 1354"><u>Adopted and ongoing:</u></p> <ul data-bbox="464 1395 1839 1424" style="list-style-type: none"> <li data-bbox="464 1395 1839 1424">• <i>A resolution establishing a CCSBT VMS that takes into account the VMSs in place in IOTC, ICCAT, WCPFC and</i>

	<p><i>CCAMLR (2008);</i></p> <ul style="list-style-type: none"> • <i>Measures for at –sea transshipment monitoring of large scale fishing vessels (which includes coordinating with ICCAT and IOTC) (2009);</i> • <i>Implementation of the CCSBT CDS system (2010);</i> • <i>A Commission Compliance Action Plan, a Corrective Actions Policy, requirements for submission of national compliance action plans, and minimum performance requirements for members and CNMS to meet their obligations in relation to CCSBT conservation and management measures (2011 and 2012);</i> • <i>Revised terms of references for the Compliance Committee (2011);</i> • <i>The Compliance Committee reviews and assesses compliance by members and CNMs based on national reports and other information;</i> • <i>A decision to implement a trial Quality Assurance Review of member’s national systems and processes through 2016.</i> • <i>Adoption of a Resolution on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing Activities For Southern Bluefin Tuna (SBT) (2014)</i> • <i>Adoption of Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port (2015; effective 1 Jan 2017)</i> • <i>Revisions to the Resolution on Establishing a Program for Transshipment by Large-Scale Fishing Vessels (2014)</i> • <i>Revisions to the Resolution on the Implementation of a CCSBT Catch Documentation Scheme (2014)</i> • <i>Adoption of an new three year Compliance Action Plan (2014) and Minimum Performance Requirements to Meet CCSBT Obligations (2015)</i> • <i>Revisions to the Resolution on a CCSBT Record of Vessels Authorised to Fish for Southern Bluefin Tuna (2015)</i> <p><u>Pending:</u></p> <ul style="list-style-type: none"> • <i>Implementation of the scientific observer program (difficulties in members recruiting and deploying scientific observers has been noted and discussed in the Compliance Committee);</i> • <i>Procedures for high-seas boarding and inspection.</i>
IOTC (2009 PR)	<p><u>Adopted or ongoing:</u></p> <ul style="list-style-type: none"> • <i>Resolutions 12/07 and 10/08 modified the reporting date for active vessels, which is now in the month preceding the meeting of the Compliance Committee.</i> • <i>Resolution 10/08 establishes 15 February as the new deadline for submission of the list of active vessels for the previous year.</i> • <i>Resolution 10/09 (now included in the IOTC Rules of Procedure 2014) revised the procedures to be followed to assess compliance with IOTC measures and provides for the assessment of compliance by CPCs.</i>

- *Reports on compliance with data reporting requirements have been regularly reviewed by the Compliance Committee, as well as discussed at the species Working Parties, the Working Party on Data Collection and Statistics and the Scientific Committee. The Working Party on Data Collection and Statistics and the species Working Parties evaluate the availability and quality of data, and make recommendations to the Scientific Committee on how to improve data quality. The country-based compliance report submitted to the Compliance Committee provides information on the timeliness and completeness of the reporting of data required by the various Resolutions of the Commission. The Secretariat maintains contact with national officers to determine the reasons for non-compliance, in particular, concerning data reporting. Country-based reports have been prepared for the Compliance Committee meetings since the 2011 meeting and a Compliance Report template was adopted at the 2011 Commission meeting. The identification of non-compliance causes started with the country-based approach at the Compliance Committee meeting in 2011.*
- *Resolution 10/10 provides the necessary framework in which to apply market related measures, following an appropriate process.*
- *Resolution 11/04 (superseding Res.09/04 and Res. 10/04) provides CPCs with the necessary framework for putting in place national scientific observer programs.*
- *The Regional Observers Scheme commenced 1 July 2010, and is based on national implementation. The Secretariat coordinated preparation of standards for data requirements, training and forms.*
- *Resolutions 12/07 and 10/08 address the reporting requirements of flag and coastal States responsibilities, with regards to vessels that are active in the IOTC Convention Area.*
- *The Commission has allocated USD\$400,000 for a range of projects related to capacity building in data collection and reporting. USD\$60,000 was allocated for capacity building in the 2011 budget, and USD\$78,000 tentatively in the 2012 budget. One workshop was organized in 2011, in Chennai, India involving representatives of several CPCs.*
- *Resolution 10/05 (now included in the IOTC Rules of Procedure 2014) provides a mechanism for financial support to facilitate scientists and representatives from developing IOTC CPCs to attend and/or contribute to the work of the Commission, the Scientific Committee and its Working Parties. In 2011, capacity building funds were provided and utilized in workshops to enhance understanding of the IOTC process among officials of member countries.*
- *A Meeting Participation Fund was established via Resolution 10/05 and is now part of the IOTC Rules of Procedure 2014. It provides a funding mechanism to facilitate scientists and other representatives from CPCs who are developing States to attend IOTC meetings. The fund is financed, initially, by accumulated funds, with no provisions for long-term support yet agreed. The fund was replenished to USD\$200,000 in 2011 from accumulated funds.*
- *Resolution 10/11 on Port State Measures. IOTC CPCs have agreed to implement the conditions of the FAO Agreement even before it becomes globally binding, and it became the first RFMO to do so. Implementation begun 1 March 2011.*
- *Resolution 11/04 – observers and field samplers are required to monitor the landing and unloading of catches respectively.*
- *Resolution 11/03 extends the reach of the IOTC IUU Vessel List to vessels of members.*
- *CPCs are reminded annually about the responsibility of integrating IOTC conservation and management measures in their national legislation. The Reports of Implementation, mandated in the IOTC Agreement, provide a mechanism to*

	<p><i>monitor progress of implementation at the national level.</i></p> <ul style="list-style-type: none"> • <i>Reminders are sent to CPCs prior to the Commission meeting and a template has been developed by the Secretariat to facilitate the preparation of national reports on implementation of IOTC measures. Compliance with this requirement is assessed in the country-based compliance reports.</i> • <i>Resolution 11/05 provides for an observer programme to monitor at sea transshipments, by placing observers on carrier vessels. Resolution 11/04 (superseding Resolution 09/04 and 10/04) establishes a Regional Observer Scheme that includes observers on board fishing vessels and port sampling for artisanal fisheries.</i> <p><u>Pending:</u></p> <ul style="list-style-type: none"> • <i>The development of a scheme of incentives and sanctions and a mechanism for their application.</i> • <i>Provisions for follow-up on infringement should be included in any amended/replaced Agreement.</i> • <i>Reductions in future quota allocation have been proposed as deterrents for non-compliance.</i> • <i>IOTC already has an extensive number of MCS related measures. However, the implementation of these measures are the duty and responsibility of the CPCs. Proposals to introduce a catch documentation scheme, especially for the major IOTC species, have been rejected by CPCs.</i>
WCPFC	<p>Responses to the Panel recommendations taken to date.</p> <ul style="list-style-type: none"> • <i>In 2012 at its Annual Commission meeting, the Secretariat presented a matrix of the recommendations from the Performance Review Panel (WCPFC-2012-12).³⁹ The Commission agreed to sort and split the WCPFC Independent Performance Review recommendation matrix by committee, add a column to track progress, and forward each portion to the relevant committee for action in 2013.</i> <p><u>Issues or recent activities to note that are relevant or related to implementation of the Panel's recommendations:</u></p> <ul style="list-style-type: none"> • <i>In the context of a review paper presented by the Secretariat (WCPFC/TCC8-2012-10), in 2012 the TCC discussed a range of possible modifications to the IUU Vessel list, including harmonizing elements with other tuna RFMO IUU vessel list procedures and providing for recognition of other tuna RFMO IUU vessel lists. No further action was taken or recommended.</i> • <i>The Secretariat developed a revised template for the 2012 annual compliance report (the Part II Annual Report) and a suggested checklist for 2012 reporting requirements contained in conservation and management measures and other WCPFC decisions and posted these on the WCPFC website.</i>

³⁹ Note that as of January 11, 2013, the final WCPFC's 2012 Annual Commission Meeting report is not yet available; this information is derived from the 2012 TCC report and the draft 2012 Commission report, which may undergo some changes after members and CNMs provide their comments and edits.

- *Technical work regarding the operation and implementation of the Regional Observer Program (e.g., concerning carrier vessels, cross-endorsement of observers, and disembarking of observers in foreign or home ports) commenced in 2012 through the ROP Technical Advisory Group.*
- *In 2012, the TCC and Commission continued to consider options to address ROP data issues and cost optimization of the ROP. For example, TCC8 (2012) recommended the relocation of SPC data entry staff from their offices in Pohnpei to the WCPFC Commission headquarters in Pohnpei and that the current ROP budget be maintained at current levels for the next 3 years. The Commission adopted this recommendation.*
- *Some members are developing national Information Management Systems (IMS) for electronic entry of observer data. TCC8 recommended that the Commission provide assistance to these members. The Commission adopted this recommendation.*
- *The scientific services provider (SPC) advised in 2012 that ROP data entry rates have improved over time with increased training and using data scanning techniques to replace data submission by post.*
- *In 2012, the TCC recommended that the Secretariat be tasked with undertaking a more comprehensive analysis of future options for ROP data management, including options raised in the Cost Recovery and Optimisation of Commission Service Costs Report, and to make electronic data entry for the ROP a priority. The Commission adopted these recommendations. Work continues to progress in the area of the ROP management, observer safety, standards and data provision through the ROP-IWG.*
- *In 2015 it is not clear that the TCC reviewed any member and CNM responses or follow-up action regarding the areas of non-compliance identified previously through the Compliance Monitoring Scheme for 2014.*
- *In 2012 the Commission requested the Secretariat finalize an online interface for the submission of the annual compliance reports (Part II reports) so; members and CNMs may be able to make use of this online system for their 2013 reports.*
- *Developing a scheme of responses for non-compliance was briefly discussed in 2011 and 2012 (noting Australia's previously tabled paper WCPFC8 -201-DP34). The importance of developing responses to non-compliance was noted and a graduated process was recommended. In 2012 the Compliance Monitoring Scheme CMM was amended to include provisions for an intersessional working group to identify a range of responses to non-compliance. In 2013 this measure was again amended, and the working group was to develop the range of responses by WCPFC12 (2015). The working group has not yet met or made any recommendations to the WCPFC on this issue.*
- *In 2012, the Secretariat prepared a proposed TCC three-year work plan in a revised format that clearly identified TCC functions and priorities (WCPFC/TCC-2012-21). The Commission adopted this work plan with some revisions. A new 3 year Work Plan for the TCC was adopted in 2015.*
- *In 2012 the WCPFC extended the Compliance Monitoring Scheme (CMS) for an additional year, but with the caveat that the compliances status and other related compliance information contained in the trial Compliance Monitoring Report are only available for the Commission purposes outlined in the CMS, and that this information not be used by members or CNMs for any outside purposes. In subsequent revisions of the CMS, this proviso was removed.*
- *In 2012, revisions to the current WCPFC chartering notification scheme were not adopted. The Commission extended*

	<p><i>the current measures (CMM 2011-05) for another three years. In 2015, revisions to the current WCPFC chartering notification scheme were not adopted. The Commission extended the current measures (CMM 2015-05) for another 3 years.</i></p> <ul style="list-style-type: none"> • <i>Since 2009 the European Union has tabled proposals on Port State Measures. In 2014 and 2015, the FFA also tabled a proposal. No PSM measure has been adopted to date.</i> • <i>In 2013, the WCPFC adopted a final Compliance Monitoring Report that contained details, by member, of their areas of non-compliance.</i> • <i>In 2013, the WCPFC established a working group on CDs, which has met three times.</i> • <i>In 2013, the WCPFC amended its Record of Fishing Vessels and Authorization to Fish CMM to require, effective 1 January 2016, flag CCMs shall ensure that all their fishing vessels that are authorized to be used for fishing in the Convention Area beyond the flag CCM's area of national jurisdiction and that are at least 100 GT or 100 GRT in size have IMO or LR numbers issued to them.</i> • <i>In 2014, the WCPFC established a working group to develop standards for electronic monitoring and electronic reporting, which met first in 2015.</i> • <i>In 2014 and 2015, the WCPFC took steps to require the provision of outstanding operation-level data from certain fleets through amendments to the tuna conservation measure (CMM 2015-01, paragraphs 56-60)</i> • <i>In 2012, the WCPFC9 endorsed the NC members commitment to implement VMS in the area north of 20N and west of 175E by 31 December 2013. Also, in 2012, the WCPFC established procedures for the application of the Commission VMS to waters under the jurisdiction of members, upon the request of the member, and the provision of those data (called "in-zone VMS data") for vessels reporting to the Commission VMS who enter these waters under national jurisdiction.⁴⁰ These in-zone VMS data are to be used only for the same purposes as high seas Commission VMS data (monitoring, control and surveillance (MCS) and scientific purposes, in accordance with WCPFC rules and procedures⁴¹). The WCPFC has also adopted special provisions for VMS reporting relating to some of its conservation measures for tunas. The most recent of these, CMM 2015-01, stipulates that during the FAD closure periods purse seine vessels are not to operate under the manual reporting provisions of the WCPFC VMS SSPs and the VMS polling frequency is increased to every 30 minutes.⁴²</i> • <i>In 2015, the WCPFC adopted an amendment to the VMS SSPs to address compliance issues associated with ALC type approvals. The amendments make it possible for the Secretariat to recommend the removal of ALC models from its list of approved types if they don't meet the standard, or do not have the ability to successfully report to the Commission</i>
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⁴⁰ This policy is known informally as "Flick the Switch." WCPFC9 Annual Meeting Summary Report (paragraph 234-239)

⁴¹ Commission Rules and Procedures for the Protection of, Access to and Dissemination of High Seas Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Monitoring, Control or Surveillance (MCS) Activities and the Access to and Dissemination of High Seas VMS Data for Scientific Purposes (Commission's 2009 Rules and Procedures), paragraph 35.

⁴² WCPFC CMM 2013-01, paragraphs 32 and 36.

	<p><i>VMS. Following this recommendation, CCMs have 3 years to ensure that its flagged vessels replace non-type approved ALCs with and approved ALC⁴³.</i></p> <ul style="list-style-type: none"><i>• Also in 2015, the WCPFC adopted changes to the ROP minimum data elements on the WCPFC Observer Trip Monitoring Summary to support a pre-notification process from observer providers to flag States of alleged infringements by their flagged vessels.</i>
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⁴³ <http://www.wcpfc.int/doc/tcc-02/vessel-monitoring-system-standards-specifications-and-procedures-ssps>

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