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TUNA RFMO COMPLIANCE ASSESSMENT PROCESSES: A Comparative Analysis to Identify Best Practices

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Abstract

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 technical report examines each of these tuna RFMO compliance mechanisms with respect to the range of 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 are identified.

This report also considers whether RFMO compliance assessment processes incentivize improvement in member compliance and in the performance of the RFMO as an institution. It also explores other aspects of designing or ensuring an effective RFMO compliance assessment system. In the final section, a set of best practices for monitoring, assessing, and addressing non-compliance in RFMOs is identified.

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ISSF is a global coalition of scientists, the tuna industry and World Wildlife Fund (WWF) — the world's leading conservation organization — promoting science-based initiatives for the long-term conservation and sustainable use of tuna stocks, reducing bycatch and promoting ecosystem health. Helping global tuna fisheries meet sustainability criteria to achieve the Marine Stewardship Council certification standard — without conditions — is ISSF's ultimate objective. ISSF receives financial support from charitable foundations and industry sources.

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Table of Contents

Executive Summary **4**

Research Questions **7**

Introduction **8**

Compliance Processes Currently in Use in Tuna RFMOs **10**

IATTC 10

WCPFC 11

ICCAT 13

IOTC 15

CCSBT 16

Other tools in use in tuna RFMOs that perform compliance monitoring and sanction functions 17

Obligations and commitments currently assessed in tuna RFMO compliance structure 18

Available RFMO Responses to Non-compliance and Determining the Level of Compliance **20**

How RFMO Compliance Processes Function in Practice and Ideas for Improvements **22**

RFMO Performance Reviews: Recommendations Related to Compliance and Enforcement **24**

Best Practice Recommendations **26**

Annex 1. Summary Matrix of Tuna RFMO Performance Review Panel Conclusions and Recommendations 31

Bibliography **41**

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 and commitments under the RFMO convention and its conservation and management measures.

This technical report examines each of these tuna RFMO compliance mechanisms with respect to the range of 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 are identified. This report also considers whether RFMO compliance assessment processes incentivize improvement in member compliance and in the performance of the RFMO as an institution. It also explores other aspects of designing or ensuring an effective RFMO compliance assessment system. In the final section, a set of Best Practices for monitoring, assessing, and addressing non-compliance in RFMOs is identified.

All RFMO compliance mechanisms share the following core components, and their processes are broadly composed of three steps (Figure 1):

a. Information gathering

b. Review and assessment

c. Feedback and/or application of corrective remedies by the RFMO and/or through its member States, and flag State action and follow up

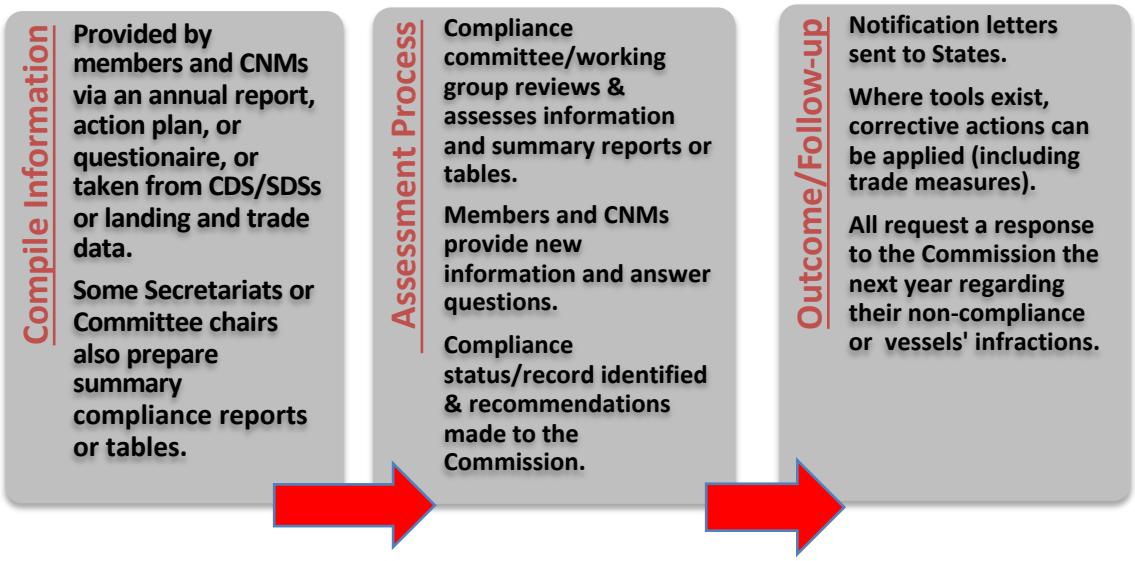

Figure 1. Schematic summarizing the core steps in RFMO compliance processes

However, the five tuna RFMO compliance monitoring processes vary in how they review and assess member and CNM implementation of and compliance with their obligations and commitments, what information is used by the compliance committees or working groups, what information is publicly available and at what level of detail, whether the RFMO has tools to address non-compliance and 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 publicly available meeting reports and other documentation, in general, across the tuna RFMOs revealed that a considerable number of States are not, either at all or in a timely manner:

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
3. Paying their assessed contributions to the budget

Key Findings:

1. **All five of the tuna RFMOs have compliance assessment processes.**
2. **Only IOTC and ICCAT have the ability to take non-discriminatory trade restrictive measures, although they rarely do so.**
3. **Only CCSBT and ICCAT have schemes of responses to non-compliance that are used to guide the RFMO in addressing infractions by members.**
4. **WCPFC is the only tuna RFMO with an opaque compliance assessment process that is closed to observers from accredited non-governmental organizations.**
5. **There are a number of procedural and institutional changes, as well as governance reforms, which could be made to improve/strengthen the functioning and effectiveness of existing RFMO compliance processes.**

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 tuna RFMOs.

However, all five tuna RFMOs reviewed in this paper have, within the last several years, revised the mandates and procedures of their existing compliance committees. In some cases, they 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, and some have embarked on a second Performance Review.

Nonetheless, the information reviewed in this study makes it clear that more work is needed at the RFMO and national government levels to improve member compliance with their RFMO obligations and conservation and management measures.

A set of Best Practices with regard to monitoring, assessing and addressing non-compliance in RFMOs is 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
3. The resulting outcomes and follow-up

A set of best practice recommendations is also presented with regard to creating an effective RFMO compliance assessment system and addressing procedural, institutional or organizational challenges based on interviews with more than two dozen RFMO compliance experts.

A companion paper to this technical report compares the progress of all five tuna RFMOs with respect to these to best practices. This RFMO compliance process best practice snapshot paper is available here.

Further modification of existing tuna RFMO compliance mechanisms to incorporate and apply the recommended best practices presented by this report would strengthen the ability of an RFMO to:

- Assess the degree to which its measures are being implemented and complied with
- Reward members abiding by the rules
- Provide assistance to nations that need it
- Identify those undermining the effectiveness of RFMO conventions and conservation and management measures, and incentivize them to improve
- Promote clarity regarding RFMO obligations and measures and what must be done to fully implement them
- Improve trust, fairness and transparency in the system
- Enhance RFMO performance in meeting its mandate

Additionally, greater transparency into 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.

Research Questions

These research questions are for readers to begin to examine how aspects of our best-practice recommendations for compliance processes may help them in their work. The questions are not intended to be comprehensive or represent every recommendation in the report. They are designed to assist users in identifying how to use these best practices. We have organized these questions around the key themes covered in the report.

- **To what extent do RFMOs examine and assess members' level of compliance with RFMO conservation measures and obligations? Is this necessary?**
- **What is the process RFMOs use to assess member compliance?**
- **How are the results of such compliance processes used and shared?**
- **Do these processes incentivize improvements in implementation and RFMO performance?**
- **How effective are these processes, what are some of the weaknesses and how can they be improved**?

Introduction

This technical report is a comprehensive survey of the current operational conditions and processes of tuna RFMO compliance processes, as well as perceptions of the effectiveness of RFMO compliance processes from within and outside RFMOs, with ideas for improvements. This paper is concerned with States' implementation of their RFMO obligations and commitments as members or CNMs, and not the compliance of individual vessels that are flagged to members or CNMs.

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 clear with respect to what is expected of members. Measures also must be effectively implemented and enforced by those States responsible for either 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 fish should participate in the work of the relevant tuna RFMOs by 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 (1) the inability of the organization or committee to take decisions (lack of a quorum); (2) after-the-fact objections to agreed measures or recommendations, which can cause the measure being objected to from coming into effect[2]; and/or (3) 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.

This technical report comprises five 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,

[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.

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 observations of how RFMO compliance processes function in practice and offers ideas for improvements generated from surveys and interviews with tuna and non-tuna RFMO compliance officers, NGOs, compliance committee chairs, legal experts, and RFMO member delegates.
- Part IV summarizes the recommendations of each tuna RFMO's most recent Performance Review with respect to monitoring, control and surveillance (MCS) and compliance.
- Part V outlines a set of Best Practices for improving RFMO compliance processes.

Only publicly available sources of information were consulted and used for Parts I, II and IV of this report. 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.

As noted in Part III, more than two dozen experts were interviewed on how the various compliance processes function in practice, how they are evolving, potential operational or institutional challenges, and ideas for strengthening these processes. These experts were also consulted, when necessary, to seek clarifying information when publicly available information was not yet available or unclear or silent on an issue. The information provided in Part III has been anonymized.

RFMO measures and tools are only effective to the degree they are appropriately designed, clear with respect to what is expected of members, and effectively implemented and enforced by those States responsible for either the vessels that harvest, transport, transship, and/or land tuna resources or the ports where those resources are landed and/or imported.

In addition, eight international subject matter experts with decades of experience in all five of the tuna RFMOs reviewed earlier versions of this technical background paper.

Compliance Processes Currently in Use in Tuna RFMOs

As shown in Table 1, tuna RFMO compliance processes vary in (1) how they review and assess member and CNM implementation of and compliance with their obligations, (2) what information is used by the committees (and how it is compiled and what sources are used), (3) what information is publicly available and at what level of detail, (4) whether the RFMO has tools to address non-compliance and uses those tools (such as by capacity building or application of sanctions or penalties), and (5) the degree to which the RFMO follows up on the previously identified non-compliance.

In addition, some tuna RFMOs continue to evolve processes (WCPFC) or have begun to implement revised committee mandates and/or compliance review processes, guidelines and tools (IATTC, CCSBT, ICCAT and IOTC). However, ll five tuna RFMOs' compliance processes 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.

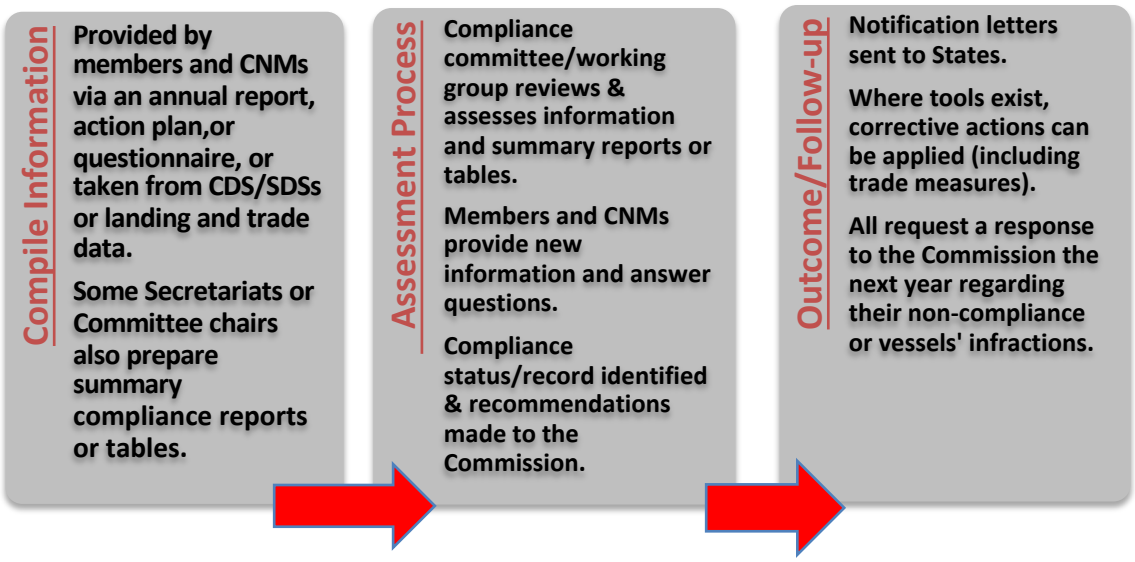

Figure 1. Schematic summarizing the core steps in RFMO compliance processes

IATTC

The mandate, functions and procedures for the Committee for the Review of Implementation of Measures adopted by the Commission are elaborated in Article X and Annex 3 of the Antigua Convention. 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.

Compliance Assessment Process. The IATTC has a standard questionnaire on compliance with IATTC resolutions that CPCs are to complete in advance of Committee meetings. The Review Committee reviews each CPC's compliance and enforcement of IATTC resolutions using the filled-in questionnaires, the summary compliance report provided by the Director, and information on possible non-compliance cases with IATTC resolutions. CPCs are also to provide a response to the possible infractions that have been identified by the Secretariat.

The Committee also discusses non-submission or late submission of questionnaires and repeated absences at Committee meetings. The Committee is to identify, for each CPC, the compliance record and areas of possible improvement as well as any recommended actions for consideration of the Commission. The Commission decides on

actions for improving compliance, which may include sending a letter from the Chairman indicating their compliance record and identifying areas of possible improvement. CPCs are to submit a plan of action for such areas of improvement within three months of the end of the Commission's ordinary meeting.

Obligations Assessed. The IATTC compliance process reviews implementation of specific obligations prescribed in IATTC measures that are in force and involve compliance by vessels and CPCs. It does not review compliance with obligations of the Convention overall, with the exception of Article XVIII on Implementation, Compliance and Enforcement.[3]

Transparency. The IATTC Review Committee is open to accredited observers but its documents are circulated prior to the meeting only to CPCs.

Outcomes. The IATTC compliance process does not prescribe a compliance status for CPCs; 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 those cases should be considered an infraction by the Commission. The Antigua Convention (Article VII) and Resolution C-11-07[4] provide the basis for the Commission to take action to address non-compliance by CPCs. However, the IATTC has not yet developed a scheme of sanctions and incentives, and a process for their application, to improve compliance. With some exceptions, all decisions of the IATTC are taken by a consensus of those present[5] .

WCPFC

The WCPFC adopted a Compliance Monitoring Scheme (CMS) in 2010 and it has been revised and extended nearly every year since. The effectiveness of the CMS was reviewed by an independent expert panel in 2017.

Compliance Assessment Process. In brief, the WCPFC CMS comprises three stages. First, the Secretariat prepares a draft compliance monitoring report (dCMR) from submitted Part I and Part II Annual Reports[6] 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 CPCs along with any information or comments provided by them. Second, a working group comprised of CPCs and certain regional secretariats is convened during the TCC to review the dCMRs, highlight any potential compliance issues with respect to each CPC, and consider any other information provided and to make a provisional assessment of each CPC'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.

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[3] 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.*

[4] 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.

[5] See article IX of the Antigua Convention.

[6] 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.

Third, at its annual meeting, the Commission reviews the pCMR, and any information provided by CPCs, 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 CPC and recommendations for any corrective action needed. Each CPC 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.

The WCPFC CMS is supported by the WCPFC online reporting systems that are used for CPCs to submit their Part II Annual Reports to WCPFC, and for the development, review and finalization of the Compliance Monitoring Report through the three stages of the CMS process. In 2016, the WCPFC expanded its online systems to include an online compliance case file system. The compliance case file system supports the notification to the relevant flag CCM of alleged violations by their vessels and tracks the progress of investigations by flag CCMs for individual alleged violations, up until the conclusion of the investigations by the relevant flag CCM. The online compliance case file system includes notification of alleged infringements detected through high seas boarding and inspections, port inspections, aerial surveillance or observer reports where one CPC has notified the WCPFC and requested another flag State conduct an investigation in accordance with Article 25(2) of the Convention. The WCPFC online systems assist the Secretariat and CPCs with the review of key WCPFC CMM requirements through the CMS process.

Special Provisions. The WCPFC CMS includes provisions for capacity development plans[7]. In brief, these 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 CPC shall provide a Capacity Development Plan to the Secretariat with their dCMR.[8] If the capacity assistance need is recognized by the TCC, then the affected CPC will be assessed as "Capacity Assistance Needed" for the obligation(s). They are to report annually on its progress under the Plan until its timeframe has elapsed. When the TCC recognizes the commencement of an investigation of an alleged infraction the CCM is assessed as "Flag State Investigation" for the obligation(s). CCMs are to report annually through the WCPFC's online compliance case file system on the progress of its investigation(s), including any actions taken. The CMS also provides that a CCM cannot block its own compliance assessment if all other CCMs present have concurred with the assessment. The CCM's views will be reflected in the pCMR or Final CMR.

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 CPCs 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. The WCPFC CMS does have a set of criteria and considerations to guide a compliance status rating that does

[7] See paragraphs 14-21 of CMM 2018-07.

[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.

include a standard for a score of "non-compliant" and a higher standard for a score of "priority non-compliant." The CMS Compliance Status Table also outlines the response a CPC must take once assessed in that status.

Transparency. The WCPFC's CMS process is unique among the five tuna RFMOs in that it is opaque to accredited observers to the RFMO and the public. 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 CPC's annual reports under these plans, or the responses in either their dCMRs or the final CMR are not publicly 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. The current WCPFC CMS measure does, however, explicitly allow for non-governmental organizations to provide suitably documented information to be included in the dCMRs and to be considered by the TCC[9], even though such organizations are not allowed to observe the CMS working group deliberations or review any of the documents produced by the Secretariat, TCC or CPCs.

Outcomes. The final CMR includes the specific area of non-compliance by CPC, as well as whether the non-compliance has been noted for more than one year. But it does not include any recommendations for any corrective action needed, based on non-compliance identified with respect to CPC. The WCPFC also has not yet developed 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. Finally, although a chambered voting process[10] can be used for decision-making in the WCPFC, to date all decisions have been taken by consensus.

ICCAT

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). 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. 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 CPC or non-party without cooperating status.[11] In 2018, ICCAT adopted some amendments to several recommendations to improvement the compliance review of those recommendations (Rec. 18-05; Rec. 18-06; and Rec. 18-07).

Compliance Assessment Process. 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 CPCs. This group also reviews any input by CPCs, and fishery-related information of non-parties without cooperating status, 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 Parties may raise issues of concern during sessions 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.

[9] See paragraph 28 of CMM 2015- 07

[10] See article 20 of the WCPF Convention.

[11] 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.

Several ICCAT instruments guide these recommendations:

- ICCAT's Recommendation on Trade Measures (Rec. 06-13)
- ICCAT's quota compliance rules
- 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
- 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)
- ICCAT's Resolution Establishing an ICCAT Schedule of Actions to Improve Compliance and Cooperation with ICCAT Measures (Res. 16-17)

In addition, information on cooperation by parties without cooperating status is presented in a separate document, the "Secretariat's Report to the Compliance Committee."

Obligations Assessed. The ICCAT Compliance Committee reviews implementation of obligations prescribed in ICCAT conservation and management measures that are in force and 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 of 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 cases are outlined in letters of concern. The ICCAT Compliance Committee considers the history, 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.

Transparency. The ICCAT Compliance Committee is open to accredited observers. The Secretariat posts meeting documents, including compliance-related papers, on the ICCAT website for the annual meeting, and ensures that accredited observers are notified of these documents prior to the meeting.

Outcomes. ICCAT Resolution 16-17 outlines a set of guidelines for an ICCAT schedule of actions that applies when determining non-compliance and appropriate responses. The Committee first determines that non-compliance has occurred, and that further action is warranted, per the guidelines. The Committee then recommends an action from one of the categories. The Committee also 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 CPC 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, and considers any responses to the ICCAT letters as well as 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:

i. Lift the identification; maintain the identification; impose penalties, including non-discriminatory trade restrictive measures; or

ii. 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 Recommendation 11-15 and Resolution 15-09, for reporting obligations, if the Compliance Committee determines that a CPC has not submitted the required data, the CPC 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.[12]

IOTC

IOTC established the terms of reference for its Compliance Committee in 2002. In 2010, the IOTC revised the terms of reference of the Committee, at least in part, in 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. In 2016, the IOTC adopted Resolution 16/10 To Promote Implementation of the IOTC Conservation and Management Measures, which establishes a special capacity-building fund to improve data collection by developing State members and to develop the capacity for implementation of CMMs from 2017-2021. IOTC has also established a Working Party on the Implementation of Conservation and Management Measures (WPICMM), which will serve as an advisory body to the Commission via the Compliance Committee.[13]

Compliance Assessment Process. 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 CPC compliance is assessed is developed and circulated by the Secretariat as a Standard Compliance Questionnaire. CPCs 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 CPC. Obligations are assessed as either compliant, non-compliant, partially compliant or late. CPCs 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 CPC, rather than by obligation. During the meeting, CPCs may provide further information to the Committee (e.g., update the Commission on new improvements, highlight major challenges, etc.), and then other CPCs are able to ask questions about specific issues. 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.

[12] See article III of the ICCAT Convention.

[13] Resolution 16/12 Working Party on the Implementation of the Conservation and Management Measures

Obligations Assessed. The IOTC Compliance Committee assesses CPC compliance and enforcement with their obligations. In so doing, the IOTC Compliance Committee reviews all aspects of compliance with binding IOTC CMMs. The IOTC process does not review compliance with obligations of the IOTC Agreement more broadly.

Transparency. The IOTC Compliance Committee meeting is open to accredited observers, and CPC 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 publicly available online prior to, during and after the meeting.

Outcomes. The IOTC compliance process does assess the status of each CPC's implementation of and compliance with IOTC Resolutions and the compliance reports that are prepared (by the Committee Chair) to identify the specific compliance status and areas of non-compliance or partial compliance. This information is then provided to CPCs in a "feedback letter." The "feedback letters" are not publicly available; however, this information, as well as responses (if any), becomes available at the next Compliance Committee meeting, as it forms part of the Compliance Report. CPC responses to the "feedback letters" are circulated by the Secretariat in Circulars and posted online. The IOTC has 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. The IOTC also has Resolution 16/06 On Measures Applicable in Case of Non Fulfilment of Reporting Obligations in the IOTC, which is similar to ICCAT Resolution 15-09. Under Resolution 16/06, following the review by the Compliance Committee, the Commission may prohibit a CPC that did not report nominal catch data for one or more species for a given year from retaining the concerned species as of the following year unless and until the data are provided to the Secretariat. 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.[14]

CCSBT

The CCSBT Compliance 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.

Compliance Assessment Process. Using national reports and compliance action plans submitted by CPCs, the CCSBT compliance committee reviews CPC implementation.

Obligations Assessed. The Committee reviews CPC 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.

Transparency. The CCSBT Compliance Committee is open to accredited observers, but member reports or other meeting documents are not publicly 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.

Outcomes. The CCSBT compliance process does not prescribe a compliance status for each CPC; 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 CPC 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. However, its Corrective Actions Policy (described below) outlines

[14] See article IX of the IOTC Agreement.

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.[15]

The CCSBT has a Compliance Plan to improve compliance, so that, over time, the Commission, members and CNMs will work towards achieving 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 is reviewed and updated triennially. The Compliance Plan prescribes tasks for the Compliance Committee, such as with respect to monitoring CPC performance in meeting their obligations, improving compliance and considering corrective actions and remedies.

In addition, the CCSBT has three non-binding Compliance Policy Guidelines to facilitate implementation of the Compliance Plan:

1. Minimum performance requirements to meet CCSBT obligations
2. A corrective actions policy
3. MCS information collection and sharing

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 assessment.

The Compliance Committee's current set of minimum performance requirements includes national catch allocations, compliance action plans, transshipment monitoring, records of authorized farms and vessels, MCS measures and decisions (CDS, VMS), scientific observer program, reporting obligations (to the Commission, the science and compliance committees and the ecologically related species working group), and ecologically related species measures.

The CCSBT also has an independent Quality Assurance Review (QAR) program where existing CPC systems and processes are audited against selected sections of the minimum performance requirements guidelines.

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

All five tuna RFMOs have IUU vessel lists, and most compliance committees[16] 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. However, the relationship between RFMO compliance processes and placing vessels on an RFMO IUU vessel list is ill-defined in many RFMOs. For example, when IUU-listed vessels or vessels that have been proposed to be listed are from a member or CNM, the IUU vessel list is being used as a kind of litmus test for flag State performance of or cooperation with RFMO rules and regarding their duties and obligations as flag States under international law. But when is listing such a vessel the appropriate response as opposed to bringing the issue into the compliance process and allowing the flag State to investigate and report back? An issue that was identified in the interviews/surveys is that there is often confusion regarding how violations committed at the vessel level are related to or causative of non-compliance at the flag State level. In RFMOs, States are bound to the treaty obligations and measures adopted via the RFMO governance process. It is then the responsibility of those States to exercise effective control over vessels flying its flag that operate within the

[15] See article 7 of the CCSBT Convention and rule 6 of the CCSBT Rules and Procedure.

[16] In ICCAT, the PWG is responsible for the IUU Vessel List.

RFMO area of competence, and enforce the RFMO requirements. RFMOs as institutions do not supplant flag State authority in terms of control and enforcement at the vessel level.

While the current tuna RFMO IUU vessel lists differ in some ways on procedures and criteria, in all cases flag States with vessels listed or nominated for listing have an opportunity to provide information 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 (1) 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; (2) 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 (3) the vessel has changed ownership.

RFMO IUU vessel lists are tools designed primarily to combat IUU activities at the vessel level through removing the economic benefits of IUU fishing. And while vessel level infractions may be an indicator of flag State non-compliance of its obligations at the RFMO level, that is not uniformly true, nor can that be the automatic assumption. Well-designed RFMO compliance processes that promote a deeper examination of actions taken or not taken by States should reveal if there are systematic flag State control issues, a lack of understanding of the measures or obligations, a legitimate issue of diverse interpretations in a measure, capacity-building needs, etc.

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 tuna RFMOs (e.g., 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 (e.g., IOTC and ICCAT) 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).

Schemes of corrective actions that some RFMOs are using (e.g., CCSBT and ICCAT) 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.[17] Therefore, it is important that RFMOs have both an IUU vessel list and a compliance assessment process with the ability to apply corrective measures in order to address well-defined IUU fishing activities at the vessel level and non-compliance with RFMO measures and obligations at the member/flag State level.

Obligations and commitments currently assessed in tuna RFMO compliance structure

For the five tuna RFMOs, it appears that member and CNM implementation of all measures that are currently in force are

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

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
5. Implementation of vessel authorization measures

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 was 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
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

Available RFMO Responses to Non-compliance and Determining the Level of Compliance

RFMO compliance processes have three basic steps (see Figure 1):

1. Information gathering
2. Review and assessment
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 vary in their willingness to have their actions, and those of vessels flying their flag, examined by third parties, or for information about infractions to be made public and for sanctions to be 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.

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.

ICCAT has had measures that provide for the imposition of trade restrictive measures since the late 1990s[18] and has imposed such measures on Contracting Parties and non-Parties 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. In 2016, ICCAT adopted Resolution 16-17 that outlines a set of guidelines for an ICCAT schedule of actions that applies when determining non-compliance and appropriate responses. The Committee will first determine that non-compliance has occurred, and that further action is warranted, per the guidelines. The Committee will then recommend an action from one of the categories.

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.

Externally determining an overall level of compliance in tuna RFMOs given the limited public information that is available in some RFMOs is challenging. However, in looking at the publicly available compliance data and meeting documents,

[18] 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.

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 in:

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
3. Paying their assessed contributions to the budget

Further, (i) over-catches of quotas or violating time/area closures, (ii) shortfalls in effective implementation of or participation in RFMO or national observer programs, or meeting required coverage levels, or (iii) failing to implement VMS systems, statistical or catch documentation schemes, or transshipment monitoring programs 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.

How RFMO Compliance Processes Function in Practice and Ideas for Improvements

Interviews were conducted (either in person or through written responses using a standardized questionnaire of six questions) with more than two dozen individuals, including the (1) current and former compliance committee chairs or vice chairs of four of the five tuna RFMOs and two non-tuna RFMOs; (2) compliance officers for four of the five tuna RFMOs and one non-tuna RFMO; (3) international legal experts and current or former legal advisors to RFMOs, (4) academics that study RFMOs and international governance issues, and (5) NGOs active in RFMOs, including those that are part of national delegations. In total, 28 interviews or survey responses were conducted/received.

Through an analysis of the data gathered through the interviews and surveys, the following observations about RFMO compliance processes were identified:

- The large number of obligations/measures in RFMOs and their inter-relatedness and often lack of clarity make compliance assessments complex and time-consuming.
- Following up in subsequent years on RFMO members' actions taken regarding identified areas of non-compliance is not systematic or consistently undertaken.
- Information is not typically available or provided regarding how RFMO members are implementing or enforcing RFMO measures/obligations through their national laws.
- The evolving and growing sets of measures, or due to variations in what measures are assessed from year to year, make it difficult to develop a broader picture of compliance/implementation gaps or improvements over time.
- The depth of compliance reviews is highly dependent on the quality and quantity of data sources available to the committee or Secretariat.
- Ensuring that an objective of assessment processes is for improving and strengthening the overall *performance* of RFMOs ("institutional effectiveness") and addressing and promoting implementation, rather than only for punitive "compliance" purposes, is more effective and more in line with the mandate of RFMOs as collaborative international bodies for the sustainable management of shared natural resources.

In addition, those interviewed were asked if they thought the current RFMO compliance processes assessed the correct obligations and measures well. The responses were categorized into two groups: those *outside* of the RFMO governance structure (i.e., NGOs and academic or legal experts) and those *inside* the RFMO structure (i.e., committee chairs, national delegation members or compliance officers). For both categories, the responses were similar regarding if they thought the current RFMO compliance processes assessed the correct obligations and measures. A majority of the respondents answered "mixed," meaning that the RFMOs they have experience with are somewhere in the middle with regard to assessing what are perceived as the right obligations or commitments. The interviewees were also asked their opinion of whether current RFMO compliance processes review primarily procedural obligations (e.g., submission of data, reports) or also review substantial obligations (e.g., not fishing during a closure, respecting catch limits or carrying an observer when required, etc.). Regarding how well RFMOs' compliance processes assess member compliance/implementation of their obligations, there was a significant difference between those *outside* of the RFMO governance structure and those *inside*. More than 50% of those outside the RFMO structure responded that RFMO assessment processes "poorly" assessed RFMO member obligations and commitments. More than 90% of the those inside the RFMO structure responded that the compliance assessment processes functioned "somewhat well."

In many cases, responses to these three questions identified that key challenges for effective compliance assessments include (1) the large number of RFMO measures or obligations that need to be assessed, (2) a lack of independent data

sources to verify self-reported data by RFMO members and (3) limited or absent data from some fleets with low or no levels of observer coverage, which is particularly important for assessing compliance with bycatch mitigation measures. With such a large number of measures, and a reliance on self-reported data, respondents explained that the compliance reviews tended to focus on more procedural obligations that are easier to assess. Therefore, obligations that affect the conservation of the managed stocks are given less or limited attention. Alternatively, respondents noted that some reviews focused only on catch limits for certain species that are the subject of detailed and complicated conservation measures (and highly political), leaving little time for assessing other operational, reporting, monitoring, control and surveillance (MCS), or bycatch-related measures.

Respondents also noted a lack of clarity regarding what was expected for each measure (i.e., what the explicit obligations are), how those obligations are to be measured, and what information needs to be provided. It was also noted often that a lack of weighting or prioritization of obligations or measures to triage the volume of items that the process must consider posed a time-management and managerial challenge. This lack of clarity and prioritization can and has resulted in interpretation issues (which cause differences of view over compliance vs. non-compliance among members over certain obligations) and for members in the same situation to be treated differently because the evaluation becomes more subjective than objective.

Finally, interviewees were asked if they thought RFMO compliance processes serve as an incentive to improve the compliance/implementation of members' obligations and commitments. Here again, for both categories of respondents, the responses were similar. A majority of the respondents in both categories (inside vs. outside the RFMO governance structure) answered "mixed," meaning that the RFMO compliance processes with which they have experience serve in some ways as an incentive for improvement, but this incentive structure could be enhanced/better designed.

A number of responses to this question agreed that RFMO compliance processes – even without any threat of sanction – do serve to incentivize improvement. There is power in collective moral suasion, and the prospect of political embarrassment serves to encourage implementation improvements once lapses are identified. Many responses also indicated that RFMO compliance processes need to institutionalize better follow up and reporting on identified areas on non-compliance from year to year. For instance, without such hard-wired follow-up mechanisms, areas of non-compliance can persist from year to year, or patterns go unnoticed, and it becomes difficult to tell if there are actual improvements in implementation or if member reporting is adapting or repeating previous statements with no update on progress. Respondents also highlighted that RFMO members need to provide more detail on how they are giving effect to their flag State duties and exercising flag State control through national regulations, enforcement authorities and legal mechanisms to institute penalties, when needed, on vessels flying their flag when there are infractions. Finally, the need for RFMOs to develop schemes of responses to address persistent and serious cases of non–compliance was repeatedly noted.

A set of recommended best practices for strengthening/reforming RFMO compliance assessment processes from an institutional, governance, and procedural standpoint, is provided in Part V.

RFMO Performance Reviews: Recommendations Related to Compliance and Enforcement

All five 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 (1) submitting data and information to meet reporting requirements; (2) implementation of monitoring, control and surveillance measures (MCS); (3) use of trade-related measures and IUU vessel lists; (4) institutional measures to review, assess and address non-compliance; and (5) national implementation and enforcement of RFMO measures and the performance of flag States' of their duties under international law. 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.

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)
- Poor implementation of existing MCS tools or regimes to sanction continued non-compliance

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 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).

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
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 all five RFMOs have adopted measures or have specific provisions for chartered vessels on some or all of these key issues or with respect to obligations for the provision of scientific data from vessels operating under chartering arrangements.

Best Practice Recommendations

After examining the existing compliance processes in the five tuna RFMOs, and analyzing the information gathered through the interviews and surveys, a set of recommended best practices for RFMO compliance processes has been identified.

RFMOs that exemplify many of these best practices still exhibit compliance shortfalls (as discussed in the previous section of this report), which 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 or provincial law. Further, most of the tuna RFMOs surveyed in this paper continue to refine the design and implementation of their compliance monitoring and assessment processes.

RFMOs should continue to create and implement robust and transparent multilateral assessment processes that can provide the mix of forum and incentives (both positive and negative) to motivate States to meet their obligations and improve and strengthening the overall *performance* of RFMOs as collaborative international institutions for the sustainable management of shared resources.

Operational and Structural Recommendations for Improving RFMO Compliance Processes

Recommendation 1: Information Used and Items Assessed

- RFMOs should use a diversity of information sources, which should also be used to verify national self-reporting.
  - Self-reporting by States should be coupled with other independent sources of information to verify compliance. For example, national reports should be 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.).
- RFMOs should also review whether required statistical data and national implementation reports have been provided, and whether assessed contributions have been paid, as part of the compliance assessment.

Recommendation 2: The Assessment Process

- RFMOs should review both member and CNM compliance either State by State or obligation by obligation.
- RFMOs should have a dedicated compliance committee or working group, supported by the Secretariat, with a period of time set aside each year for it to meet.
  - The committee or working group should conduct a review of the available information for each member and CNM and identify 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.
  - The compliance committees or working groups should be open to accredited observers, and compliance reports (both those provided by States and what is prepared by the Secretariat or committee) and the responses by States to previously identified areas of non-compliance should be available to observers.

- The final compliance tables or annexes that identify the areas of non-compliance and recommended actions are publicly available.

Recommendation 3: Follow Up and Outcomes

- Responses by States to areas of previously identified non-compliance are required and individually reviewed annually by the compliance committee or working group.
- Failure to report on actions taken is considered a serious type of non-compliance as is successive and repeated non-compliance on the same obligation.
- The committee or working group should form 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.
- The RFMO Commission considers recommendations by the committee or working group, and decisions on any penalties can be taken by a vote, if necessary.

Institutional and Governance Recommendations for Improving RFMO Compliance Processes

Recommendation 4: Develop audit points or performance metrics for all conservation measures (ideally as they are being developed) to ensure clarity in the obligations, and what must be complied with. Such audit points can reduce (1) the potential for misinterpretation, (2) confusion over what is to be reported or what obligations apply, and (3) perceptions of unfairness that can result when assessments between members vary due to (1) and (2).

Recommendation 5: Develop schemes of responses to non-compliance that provide for more automatic responses to "procedural" obligations (i.e., submitting data or reports on time). Designing schemes that will address procedural obligations via a separate process from the formal compliance committee meetings will allow more time to be devoted to analyzing the implementation of substantive obligations (e.g., quotas, closures and MSC measures) and for members to present information on their actions. However, if persistent non-compliance is identified for any procedural obligations, the system should have a mechanism for bringing these items to the attention of the formal committee (this is linked to trend tracking; see recommendation 8).

Recommendation 6: Develop mandates and systems for promoting effective information exchange between compliance committees and the Commission (including its subsidiary bodies or panels, where relevant) regarding changes in conservation measures to address provisions where there is lack of clarity regarding the obligations and/or reporting requirements that have been identified by the committee.

Recommendation 7: Ensure there is a disciplined process for following up annually on the actions taken by RFMO members to identified areas of non-compliance, and strengthen the requirements for members to report on how they are domestically implementing their RFMO obligations (e.g., reporting on the national laws or regulations that are in place).

Recommendation 8: Develop mechanisms to track trends in compliance, by member and obligation, over time so performance improvements or gaps can be measured and assessed.

Recommendation 9: Strengthen transparency by allowing accredited observers to attend meetings and by making public detailed information on the identified areas of non-compliance, by member and obligation, and on the actions taken by members to address implementation gaps, including over time (e.g., the compliance reports should track several years of assessments and actions so trends in performance can be evaluated).

Recommendation 10: Ensure assessment processes are framed to improve/ strengthen the overall *performance* of RFMOs, rather than only in punitive "compliant" vs. "non-compliant" terms. The foundational measures establishing the objectives, process, information sources, and other procedures should clearly articulate that effective implementation of RFMO measures and the normative obligations of the RFMO treaty is essential to a high-performing and well-functioning RFMO. Assessments of compliance or levels of implementation by members and CNMs is a necessary part of this process to identify gaps/lack of clarity in measures and capacity-building needs, and also to maintain a sense of fairness and integrity regarding all members playing by the rules. However, the process should be focused on the fact that a high-performing and effective RFMO has a well-structured and fair process to ensure measures are being implemented — and if not, why not — and it is empowered to take steps to improve and has governance/incentive tools to address non-compliance.

Table 1: Summary of RFMO Compliance Processes

	Structure	Information used & how compiled	Process & criteria, if any, used	Transparency	Availability of information to public
IATTC	Permanent committee with elected chairperson. Meets immediately prior to annual Commission meeting.	In advance of the meeting, members complete a standard questionnaire on compliance with IATTC resolutions. The Secretariat identifies possible infractions, using observer reports (for purse seine and at-sea transshipment), of vessels flagged to a member. Members are to provide a response regarding its investigation of such possible infractions. Secretariat circulates all completed questionnaires to members and a list of vessels involved in possible violations and the flag State response.	The Review Committee reviews each member's questionnaires, the compliance report provided by the Director, and information on possible non-compliance cases. The Committee also discusses non-submission or late submission of questionnaires and repeated absences at Committee meetings. The Committee identifies, for each member, the compliance record, areas of possible improvement, and recommended actions for consideration of the Commission. The Commission decides on actions for improving compliance, which includes sending a letter from the Chairman indicating the member's compliance record and identifying areas of possible improvement. 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.	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.	Reviewed Committee documents are circulated in advance of the meeting to members, CNMs and accredited observers. These documents used to be made available online in previous meetings, but no longer.
IOTC	No	Yes	VMS may apply, but depends on how "fishing" is defined by Commission IMO # required Can be listed on the IOTC IUU Vessel List	Yes	Observer coverage does not explicitly apply, but could depending on how definition of "fishing" is applied
ICCAT	No	Yes	VMS, FAD logbooks, FAD management plans	Yes and data, including VMS position reports, are reported to national scientists	Only during the 2-month FAD closure in the Gulf of Guinea

	Structure	Information used & how compiled	Process & criteria, if any, used	Transparency	Availability of information to public
WCPFC	No dedicated committee with set meeting period. Small working group convened during the TCC and annual Commission meeting, convened ad hoc.	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. Draft Compliance Monitoring Reports (dCMRs) compiled by Secretariat.	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. Members/CNMs to report in their (non-public) Part II annual report steps taken to address any non-compliance. 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.	NGOs may submit information in advance, but the working group meetings are closed to observers (except SPC, FFA and PNA Secretariats). Part II Annual reports (MCS data), dCMRs, dCMRs summaries, the pCMR and the executive summary of the pCMR are not publicly available.	Only the Final CMR is publicly available after adoption at the annual Commission meeting.

Annex 1. Summary Matrix of Tuna RFMO Performance Review Panel Conclusions and Recommendations

RFMO	Relevant Panel Conclusions and Recommendations
ICCAT (completed in 2008)[19]	Application of trade and market related measures: *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.* • *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 members should clearly understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.* IUU Fishing: *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.* • *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.* Compliance and the Compliance Committee: *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 the annual reports from members with what is actually happening in some of the ICCAT fisheries.* • *A strong and enforceable penalty regime may help to encourage proper compliance.* National Implementation: *The panel recommends that:*

[19] http://www.iccat.int/Documents/Meetings/Docs/Comm/PLE-106-ENG.pdf

RFMO	Relevant Panel Conclusions and Recommendations

ICCAT (completed in 2008) *(continued)*	• *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.*
	• *CPCs must agree to provide accurate and timely data and information on MCS activities and arrangements to ICCAT.*
	• *CPCs should also consider immediately developing a fair and tough penalty regime that will be applied to defaulting CPCs.*
	• *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.*
	• *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.*
	
	<u>Provision of Data and Information</u>. *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 bycatch 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.*
	
	• *The panel recommends that:*
	  ○ *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.*
	  ○ *Consideration be given to modify the ICCAT observer program to collect such data.*
	  ○ *Effort should be continued to build capacity in developing CPCs and improve reporting by developed CPCs, and CPCs that continually fail to comply should be subject to an appropriate penalties regime. Such a regime should be severe and enforceable.*
	  ○ *CPCs must immediately take the management of shark fisheries and shark bycatch seriously and implement and comply with the ICCAT recommendations and resolutions to provide accurate and reliable data to the SCRS.*
	  ○ *The panel recommends that CPCs comply with Rec. 04-10 immediately.*

ICCAT (completed in 2016) [20]	**<u>Port State Measures</u>** *The Panel recommends that ICCAT:* • *Encourages its CPCs to become Contracting Parties to the PSM Agreement.* • *Amends Rec 12-07 to ensure more consistency with the PSM Agreement, in particular by including definitions and requiring CPCs to impose key port State measures such as denial or use of port in certain scenarios.* • *Closely follows IOTC's efforts to enhance effective implementation of its port State measures through, inter alia, its e-PSM system, and, where appropriate, adopt similar efforts within ICCAT.* • *Makes more efforts to assess substantive compliance with its port State measures and to specify consequences for non-compliance.*

[20] http://www.iccat.int/com2016/DocENG/PLE_103_ENG.pdf

RFMO	Relevant Panel Conclusions and Recommendations
ICCAT (completed in 2016) *(continued)*	**Integrated MCS measures:** *The Panel recommends that ICCAT:* • *Gives priority to adopting a modern HSBI scheme - through a Recommendation and not a Resolution - that extends to all key ICCAT fisheries as such, but can be applied in practice to selected fisheries according to the COC's compliance priorities.* • *Evaluates the need and appropriateness of further expanding coverage by national and non-national on-board observers for fishing and fishing activities.* • *Considers expanding VMS coverage, adopting uniform standards, specifications and procedures, and gradually transforming its VMS system into a fully centralized VMS.* • *Works towards replacing all SDPs with electronic CDPs that are harmonized among tuna RFMOs where appropriate - in particular for bigeye tuna - while taking account of the envisaged FAO Voluntary Guidelines on Catch Documentation Schemes.* • *Considers, in the interest of transparency, incorporating all measures relating to distinct MCS measures - in particular transshipment and on-board observers - in one single ICCAT Recommendation, so that CPCs have only one reference document to consult.* • *Assesses whether, in relation to transshipment, the differences in minimum vessel-lengths in Recs 12-06 and 13-13 have created a potential loophole.* **Cooperative Mechanisms to Detect and Deter Non-Compliance** • *The Panel recommends that the COC should identify key compliance priorities across the range of different fisheries, and programme its work accordingly. Identification of non-respect of reporting requirements or incomplete reporting by CPCs should be entrusted to the ICCAT secretariat and its report submitted to COC in advance of the Annual Meeting.* • *The Panel recommends that independent information from the fisheries, through inspections at sea and in port, and through effective observer programmes, are made available to the COC, in order for the COC to conduct an effective compliance assessment.* • *The Panel recommends that ICCAT lists be established for the northern and southern swordfish fisheries. As mentioned previously, CPCs are obliged in accordance with Rec 03-12 to maintain an up-to-date record of fishing vessels authorised to fish species under the purview of ICCAT, so the establishment of an ICCAT list is no additional burden for the CPCs involved.* **Follow up on infringements** • *The Panel considers the key task of the COC should be to make a qualitative assessment as to the degree to which the measures in the individual fisheries contained in the ICCAT recommendations, are being respected by the vessels of the Parties.* • *In the view of the Panel, the COC will be unable to exercise such a function until it obtains information from independent sources, such as, a joint inspection scheme and effective regional observer programmes. It suffices to contrast the information available to the COC on the eastern bluefin tuna fisheries, as a result of observer reports and inspection reports, with the paucity of information on other fisheries.* **Market-related measures** • *The Panel concurs with the 2008 Panel's observation, that the imposition or the threat of imposition of market or trade measures is probably the single most persuasive measure that will ensure compliance with ICCAT measures.*

RFMO	Relevant Panel Conclusions and Recommendations
ICCAT (completed in 2016) *(continued)*	• *The Panel, noting Rec 12-09, commends ICCAT for its initiatives in this area and recommends that catch documents, preferably electronic, be introduced for big eye and swordfish species.* **Reporting Requirements** • *The Panel recommends that ICCAT, though its Panels 1 to 4, should undertake an overall review of the current reporting requirements, on a stock by stock basis, both in relation to Task I and Task II data contained in the myriad of recommendations, in order to establish whether the reporting obligations in question could be reduced or simplified.* • *The Panel recommends that before the adoption of each new recommendation, there should be an assessment as to the likely impact on the Secretariat's workload that its implementation implies.* • *The Panel recommends that ICCAT consider introducing a provision in new recommendations, whereby the introduction of new reporting requirements would only become effective after a 9 to 12 month period has elapsed. This would assist Developing States to adapt to new requirements. This is particularly relevant where the volume and/or nature of the reporting have changed significantly. The difficulties Developing States encounter in introducing new administrative/reporting requirements at short notice, is well documented in the compliance context. The option for Developed CPCs to apply immediately the new reporting requirements may of course be maintained, if those CPCs consider it opportune.* **Confidentiality** *The Panel commends ICCAT for the significant improvements in transparency and confidentiality since 2008 and recommends that ICCAT:* • *Considers further improvements, for instance by making more of its data and documents publicly available and - as regards to documents - explaining the reasons for classifying certain documents as confidential.* • *Conducts a review of its Rules and Procedures on Data Confidentiality as envisaged in its paragraph 33, taking into account the need for harmonization among tuna RFMOs consistent with Rec KIII-1. As part of this review, it should adopt an ICCAT's Information Security Policy (ISP), where appropriate.*
CCSBT (completed in 2008)[21]	**Self Assessment** MCS measures: *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.* Follow-up on infringements: *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.* Cooperative mechanisms to detect and deter non-compliance: *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-*

[21] 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
CCSBT (completed in 2008) *(continued)*	*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.* Market related measures*: 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.* **Independent Expert** Data collection and sharing*: 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.* • *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 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.* MCS measures*: 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.* • *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.* • *The Commission should institute a VMS promptly.* • *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.* **Independent Reviewers recommended:**

RFMO	Relevant Panel Conclusions and Recommendations
CCSBT (completed in 2008) *(continued)*	Compliance and Enforcement: *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.* Port State Measures: *The CCSBT should accelerate its progress in developing a Resolution on Port State Measures consistent with the 2009 FAO Port States Agreement.* MCS: *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.* Observer programs: *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.* VMS: *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.* Transshipment: *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.* HSB&I: *CCSBT should therefore develop as a matter of priority procedures for high seas boarding and inspection of SBT vessels.* Follow-up on infringements: *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 ensue 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.*
CCSBT (completed in 2014)	Cooperative mechanisms to deter non-compliance: *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 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*

RFMO	Relevant Panel Conclusions and Recommendations
	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. Market-related measures: *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.*
IOTC (completed in 2009)[22]	Data collection and sharing*: 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.* • *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.* Compliance and enforcement and tools to address non-compliance: *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:* • *Non-compliance be adequately monitored and identified at individual Member level, including data reporting;* • *The causes of non-compliance be identified in cooperation with the Member concerned;* • *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);* • *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;* • *IOTC explore the possible implementation of the FAO Model Scheme on Port State Measures;* • *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;* • *The current IUU resolution should be amended to allow the inclusion of vessels flagged to Members;* • *The deadline to provide data on active vessels be modified to a reasonable time in advance of the meeting of the Compliance Committee;* • *IOTC explore options concerning the possible lack of follow-up on infringements by CPCs;*

[22] http://www.iotc.org/files/misc/performance%20review/IOTC-2009-PRP-R%5BE%5D.pdf

RFMO	Relevant Panel Conclusions and Recommendations
IOTC (completed in 2009) *(continued)*	• *IOTC establish a sanction mechanism for non-compliance, and task the Compliance Committee to develop a structured approach for cases of infringement;* • *Provisions for follow-up on infringement should be included in any amended/replaced Agreement;* • *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;* • *CPCs should be reminded of their duty to implement in their national legislations the conservation and management measures adopted by IOTC;* • *The requirement to present national reports on the implementation of IOTC measures should be reinforced;* • *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;* • *Establishment of formal mechanisms of MCS (e.g. observers programmes) should be considered;* <u>Market-related measures:</u> *The Panel recommends that:* • *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;* • *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.*
IOTC (completed in 2016)[23]	<u>Compliance and Enforcement: The Panel recommended:</u> • 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 *On port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing*. <u>MCS: The Panel recommended</u>: • 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.

[23] http://www.iotc.org

RFMO	Relevant Panel Conclusions and Recommendations
IOTC (completed in 2016) *(continued)*	• 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 is high level of CPCs non-compliance. <u>Cooperative mechanisms to detect and deter non-compliance</u>: The Panel recommended: • That the Commission considers strengthening the intersessional decision making processes in situations where CPCs 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. <u>Market related measures</u>: The Panel recommended: • That the Commission considers strengthening the market related measure (Resolution 10/10 *Concerning market related measures*) 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.
WCPFC (completed in 2011)[24]	<u>Data collection and sharing:</u> *The Panel recommends:* • *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.* • *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.* • *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.* • *The WCPFC is encouraged to give serious consideration to SC7 concerns regarding data issues.* • *The WCPFC should note the lack, and/or lateness, of many Members' provision of scientific/fishery operational data.* <u>Compliance and enforcement and MCS:</u> *The Panel recommends that:* • *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;* • *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;* • *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;* • *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 problems which should be rectified as a matter of urgency.* • *A comparable range of penalties for non- compliance should be developed;* • *The IUU Vessel List should be shared and, to the extent possible, harmonized with other RFMO lists, as recommended by KOBE III;*

[24] http://www.wcpfc.int/doc/wcpfc8-2011-12/review-performance-wcpfc

RFMO	Relevant Panel Conclusions and Recommendations
WCPFC (completed in 2011) *(continued)*	• *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.* • *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;* • *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.* • *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.* • *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;* • *Ways should be explored and established for VMS information within EEZs to be shared by the WCPFC Secretariat with appropriate confidentiality requirements;* • *The Northern Committee (NC) resolves a VMS implementation date for the Convention Area north of 20°N and west of 175°E;* • *A WCPFC CDS be established as soon as possible.* • *The Commission establish a clear process to invite non- Parties to accede to the Convention.* <u>Market-related measures:</u> *The Panel recommends that:* • *The Commission is encouraged to continue considering the role that market-related measures may play in addressing IUU and unsustainable fishing.*
IATTC (completed in 2016)	<u>Compliance Committee</u> • Utilize annual meetings to make well-documented decisions to improve compliance with Commission resolutions. The Annual meeting should be used to consider each of the suggested actions from the Compliance Committee and provide direction to the Secretariat and the members as to the required follow-up action. Progress on this follow-up action should be monitored and reported, so it leads to improvements in compliance with the Commission resolutions.

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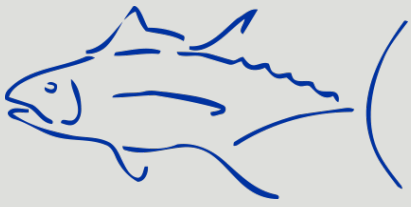
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