

Report

Strengthening the IOTC Compliance Assessment Methodology

Acronyms

BET	Bigeye Tuna
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CMM	Conservation and Management Measure
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CPC	Contracting Parties, Cooperating non-Contracting Parties
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organisation of the United Nations
FMC	Fisheries Monitoring Centre
IATTC	Inter-American-Tropical-Tuna-Commission
ICCAT	International Commission for the Conservation of Atlantic Tuna
IMO	International Maritime Organization
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IUU	Illegal, Unreported and Unregulated Fishing
MCS	Monitoring, Control and Surveillance
PSMA	2009 FAO Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
QAR	Quality Assurance Review
SIOFA	Southern Indian Ocean Fisheries Agreement
SPRFMO	South Pacific Regional Fisheries Management Organisation
VMS	Vessel Monitoring System
WCPFC	Western and Central Pacific Fisheries Commission
WCPFC CMS	Compliance Monitoring System of the Western and Central Pacific Fisheries Commission
WPICMM	Working Party on the Implementation of Conservation and Management Measures
YFT	Yellowfin Tuna

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Exec Summary

The purpose of IOTC's compliance monitoring and assessment process is to ensure that Members and Cooperating Non-Members (CPCs) implement and comply with their international obligations arising under the IOTC Agreement and the conservation and management measures (CMMs) adopted by the Commission. While overall compliance has shown positive trends over the last years, the measurement of compliance has been rather quantitative than qualitative, and non-compliance remains a problem in IOTC.

The Compliance Committee is supported by a Working Party on the Implementation of Conservation and Management Measures (WPICMM) that held its first meeting in March 2018. At this meeting, the Working Party adopted a work plan related to compliance for the coming five years (2018-2023) that was later adopted by the Commission. This report covers the part of the work plan. It provides information and recommendations on strengthening the IOTC compliance assessment method to improve compliance with IOTC CMMs while ensuring fairness, consistency and transparency of the assessment process.

Information gathering for the compliance assessment process: The first step of a compliance assessment procedure is gathering information. CPCs are required to report on their progress of implementation and on compliance issues. The compliance review and assessment process is mainly based on self-reporting by CPCs. It is recommended that IOTC move towards making greater use of independent information to verify national self-reporting such as from a Catch Documentation Scheme, and/or transshipment, landing and trade information and VMS data. The online reporting and information management system e-MARIS that IOTC is developing will make data provision more manageable for CPCs and more reliable.

Distinguishing between compliance issues of a more serious and less serious nature: Currently, IOTC does not have a standard for distinguishing between non-compliance of a minor or technical and of a more serious nature. It is recommended that IOTC follow the examples of other RFMOs and take a graduated response to non-compliance, categorizing cases of non-compliance into categories such as: 1. Compliant; 2. Minor non-compliant, e.g. for submitting data incomplete, incorrect or after the submission deadline; 3. Priority/critically non-compliant; 4. Serious/persistent non-compliant, especially in cases of repeated infractions. The categorization should serve as a means to focus on the appropriate follow-up action.

Ranking CMMs by severity of non-compliance: It is difficult to rank CMMs and the reporting requirements contained within them based on their significance for the functioning of the IOTC. However, non-compliance with different measures can have more or less serious consequences for achieving the objectives of the IOTC Agreement, for the robustness of the IOTC management system and for the status of target and non-target species. While most of the CMMs are significant in this regard and work together to create a functional fisheries management system, non-compliance with catch or effort limits and data reporting requirements has particularly negative impacts on conservation and management in the IOTC. Other high-priority reporting requirements are restrictions on FADs; spatial and temporal closures; conservation of non-target species and bycatch mitigation measures; fishing capacity-related data; and information on key MCS measures (VMS, observer coverage, CDS, record of authorized fishing vessels, transshipments, port State measures and IUU vessel list).

Rather than ranking CMMs, it is recommended to strengthen the compliance assessment method by defining critical obligations within CMMs prior to drafting of resolutions. 'Audit points' used in the Compliance Monitoring Scheme of the Western and Central Pacific Fisheries Commission provide a model for this approach. The number of critical obligations against which compliance is assessed should be limited to those that are essential for the performance of the IOTC.

Determining degrees of partial compliance? The current compliance assessment process identifies partial compliance but does not provide degrees of partial compliance. Rather than developing detailed degrees of partial compliance the focus should be on setting a baseline for achieving compliance. Especially in the absence of independent sources of information to verify non-compliance it is recommended that IOTC concentrate on distinguishing non-compliance of a less and more serious nature.

Responding effectively to non-compliance to bring CPCs into compliance: Follow-up is crucial for improving compliance. This includes appropriate responses to non-compliance until the situation has been rectified by CPCs. There are two main ways to follow-up on non-compliance: through corrective actions such as penalties and sanctions and through technical assistance and cooperative capacity building. It is recommended that IOTC strengthen the system of corrective actions, especially for repeated and serious instances of non-compliance. It is further recommended that the IOTC build on existing capacity building initiatives and develop a more systematic approach based on independent reviews of management systems in CPC. This would support Members in overcoming obstacles resulting in non-compliance. In the case of possible infractions, the flag State should provide Investigation Status Reports as part of the annual reporting, even if the investigation has not been completed. Importantly, the reasons for non-compliance should be identified including whether it is related to the measure itself, a need for capacity assistance or whether it is wilful or repeated non-compliance.

Streamlining IOTC reporting requirements: The development of CMMs over time has led to an increasing number and complex system of reporting requirements and deadlines. This is particularly difficult to handle for smaller national administrations with lower capacity to manage data and information. Streamlining reporting requirements ideally means that data would only have to be reported once, in one format and at one specified time for the data and information to be used further to assess compliance with relevant CMMs. This would reduce redundancies, avoid burden, and make reporting requirements easier to understand and to manage, e.g. in the case of port inspections and vessel data. It is recommended that streamlining of reporting requirements be combined with the introduction of the online reporting system e-MARIS. Capacity building should be provided to ensure consistent entry, the required level of detail and data quality.

Harmonizing reporting requirements across tuna RFMOs: The harmonization of reporting requirements across tuna RFMOs should be encouraged, where useful, to make reporting easier for CPCs that are Members to multiple RFMOs and to strengthen monitoring, control and surveillance by setting consistent standards, especially in the context of combatting IUU fishing. Harmonization should be advanced e. g. for records of authorized fishing, support and transport vessels, for IUU vessel lists, for port State measures, for VMS, for reporting of transshipment activities and for observer programs. Automated solutions for data sharing can support coordination and cooperation with States and other RFMOs.

1 Background

1.1 Introduction

The purpose of the IOTC compliance review and assessment process is to ensure that Members and Cooperating Non-Members implement and comply with obligations under the IOTC Agreement and conservation and management measures (CMMs) adopted by the Commission. As in all RFMOs that are responsible for the long-term sustainable use and conservation of highly migratory tuna and tuna-like species (tuna RFMOs) through cooperative management, IOTC has an annual mechanism in place to monitor and assess compliance. The IOTC measures and tools can only be as effective as they are implemented and enforced by the CPCs that are responsible for the vessels that harvest, transport, tranship and/or land tuna resources or the ports where those resources are landed and/or imported¹. While overall compliance has shown positive trends over the last years², the measurement of compliance has been rather quantitative than qualitative, and non-compliance remains a problem in IOTC.

The IOTC Compliance Committee as advisory body of the Commission was set up in 2003. The low levels of compliance with IOTC measures³ have been addressed with redefined terms of reference that strengthened the Compliance Committee in its ability to monitor non-compliance and to advise the Commission on actions. The Compliance Committee is supported by a Working Party on the Implementation of Conservation and Management Measures (WPICMM) that held its first meeting (WPICMM01) in March 2018 in the Seychelles. At this meeting, the Working Party adopted a work plan related to compliance for the coming five years (2018-2023) that was later adopted by the Commission. This report covers a part of the work plan.

Amongst others, the WPICMM01 agreed to strengthen the compliance assessment method so as to distinguish between compliance issues that are of more serious and those that are of less serious nature. It was recommended that compliance issues to be prioritized be identified. The WPICMM also recommended to assess situations of partial compliance, so as to distinguish different levels of compliance by CPCs including by giving the partial compliance status a weight. The WPICMM01 further agreed that a number of Resolutions use inconsistent, weak or confusing definitions; use terms that are not terms of legal art; lack definitions of terms and require amendments to include terms and definitions that are terms of legal art.

¹ Kohler, H., 2018: Tuna RFMO Compliance Processes: A Comparative Analysis to Identify Best Practices (version 2). ISSF Technical Report 2018-11. International Seafood Sustainability Foundation, Washington, DC, USA.

² See Summary Reports of the Level of Compliance, Compliance Committee, e.g. 2018: <http://www.iotc.org/documents/summary-report-level-compliance-4>

³ See Report of the First IOTC Performance Review Panel, 2009: <http://www.iotc.org/documents/report-iotc-performance-review-panel>

1.2 Terms of Reference

Based on the Terms of Reference, the analysis concentrates on the following tasks and outcomes:

- A. **Review the reporting requirements** contained within CMMs in order to **harmonize and streamline** (WPICMM WP section 3):
 - Assess and compare all reporting requirements for CMMs in other relevant RFMOs and harmonize.
 - Undertake an assessment of existing IOTC reporting requirements in order to streamline the reporting by CPCs.
- B. **Develop a methodology for the assessment of implementation by CPCs** for producing the **Country Compliance reports** provided annually to the Compliance Committee and flag States (WPICMM WP section 4):
 - Determine significance of each CMM using a ranking measure.
 - Rank the reporting requirements of CMMs by priority (i.e. which are most critical to report upon).
 - Attribute a co-efficient to determine rank importance.
- C. **Development of minimum regional standards** for implementation of CMMs (WPICMM WP section 7):
 - Identify CMMs where IOTC standards have not been introduced and proposed recommendations for inclusion of IOTC standards for CMMs to allow the WPICMM to provide recommendations to the Compliance Committee (CoC) on Resolution(s) to amend.
- D. **Establish a baseline for IUU fishing activities** based on international recommendations:
 - Compare and contrast the definitions of illegal, unreported and unregulated fishing activities in international instruments and IPOA IUU definitions with the definitions provided in IOTC Resolution 18/03 to prepare a paper for WPICMM02.

1.3 Approach

The review of the compliance and assessment method, in accordance with the terms of reference mentioned above, involved the following activities:

- (1) The analysis of current IOTC reporting requirements contained in currently active CMMs (see **Annex 2**) based on existing information, including a legal review^{4,5} and a comparative study of reporting requirements of other tuna RFMOs (CCSBT, IATTC, ICCAT, WCPFC).

⁴ Compendium of active Conservation and Management Measures of the Indian Ocean Tuna Commission (4 October 2018): <http://www.iotc.org/cmms>

⁵ IOTC Review of active IOTC Resolutions and legislative framework, 2015

- (2) Interviews (in person, written and by skype) with individuals of selected CPCs and organizations accredited as observers to the IOTC based on guiding questions (see **Annex 1**).
- (3) Literature review on compliance assessment procedures of IOTC and other RFMOs (tuna and non-tuna) and on best practices.

1.4 The IOTC compliance assessment process

Compliance monitoring in IOTC is primarily done on the basis of a questionnaire which is circulated by the Secretariat's Compliance Section. CPCs have to respond to this questionnaire on an annual basis. In addition to this, many CMMs contain reporting requirements relating to various aspects of implementation such as providing the Commission with specific information on CMM implementation, or with data and statistics.

The IOTC Secretariat has developed guides to data and information reporting for CPCs with detailed overviews on the data and information that must be reported on the same deadline or on an event basis.

The IOTC compliance review and assessment process is organized in three steps:

- (1) CPCs complete and submit the Standard Compliance Questionnaire, provided by the Secretariat, which contains a list of all obligations to report upon and against which CPC compliance is assessed. The questionnaire is adapted every year.
- (2) The Secretariat reviews the responses and develops a draft compliance report for each obligation for each CPC (assessing as either compliant, non-compliant, partially compliant or late). CPCs are given the opportunity to comment on these compliance assessments before the Compliance Reports are provided to the Compliance Committee and are made publicly available.
- (3) The Compliance Committee reviews each Compliance Report in its annual meeting by CPC. CPCs are given the opportunity to provide further information and to ask questions. The Compliance Committee then assesses CPC compliance with IOTC obligations.

This short analysis can only provide information for another step in a longer process to strengthen the IOTC compliance assessment method. It should inform further discussions and elaborations in the meetings of the Working Party and the Compliance Committee.

2 Basis for compliance assessment: information gathering

The first step of a compliance assessment procedure is the gathering of information. Under the IOTC Agreement (Article X) and through Appendix V of the IOTC Rules of Procedure, CPCs are required to report on their progress of implementation and on compliance issues through the Report of Implementation and following a Standard Compliance Questionnaire. Monitoring of compliance is also conducted through the assessment of data reporting and information reported as per reporting requirements set out in the various Resolutions⁶.

Situation: The review and assessment of compliance in IOTC is mainly based on self-reporting by CPCs.

Considerations:

- (1) Mechanisms to verify information: IOTC has limited access to independent information sources to verify information provided by CPCs related to the implementation and compliance with conservation and management measures. The WCPFC Secretariat, for example, has access to information on vessel movements and activities through its centralized VMS. Moreover, WCPFC has a High Seas Boarding and Inspection Scheme (CMM 2006-08) and a regime of observers focusing on compliance. This generates additional independent information for identification and verification purposes related to non-compliance.
- (2) Facilitating the provision of information by CPCs: Currently, data and information are provided in a word file. However, IOTC is in the process of developing an online reporting and information management system (e-MARIS). This system will allow data and information required for compliance assessment to be inputted directly by CPCs. Generally, online reporting systems do not only make it easier for RFMO Members to provide data but they also eliminate sources of errors through the transfer of information. The online reporting tool had already been recommended by the 2nd IOTC Performance Review in 2016 to support the IOTC Secretariat through the automation of identification of non-compliance incidents⁷. WCPFC currently has the most advanced online system, which Members can access directly to enter vessel data and provide annual reports on implementation of CMMs. WCPFC also generates an online compliance monitoring report and a compliance case file system.

Recommendations:

- (1) IOTC should move towards making greater use of independent information to verify national self-reporting. A diversity of sources could be used for cross-checking. One source will be information from Catch Documentation Scheme certificates, once available. The use of transshipment, landing and trade information could be considered. A centralized vessel monitoring system does not exist in IOTC. It would provide a valuable independent source of information.

⁶ <http://www.iotc.org/compliance>

⁷ Report of the 2nd IOTC Performance Review, 2016: <http://www.iotc.org/documents/report-2nd-iotc-performance-review>

- (2) The use of independent data sources would also allow a deeper review of compliance with obligations and provide information for strengthening technical assistance and capacity building.
- (3) IOTC should proceed with the development of e-MARIS which will make data provision more manageable for CPCs and more reliable and provide capacity building for its application.

3 Strengthening the compliance review and assessment process

3.1 Developing criteria for distinguishing between compliance issues of a more serious and a less serious nature

Situation: The purpose of IOTC's compliance monitoring and assessment process is to ensure that CPCs implement and comply with their international obligations arising under the IOTC Agreement and the CMMs adopted by the Commission. To that end, the 1st Meeting of the Working Party for the Implementation of CMMs agreed to strengthen the compliance assessment method so as to distinguish between compliance issues that are more serious and those that are of a less serious nature (WPICMM01 3.1, para 8) and recommended that as part of the WPICMM01 workplan, compliance issues should be identified so as to set priorities to be addressed by the Working Party. Currently, IOTC does not have a standard for distinguishing between non-compliance of a minor or technical nature and a serious instance of non-compliance⁸.

Considerations: Compliance monitoring and assessment systems of other RFMOs (e.g. WCPFC, SPRFMO, CCAMLR, SIOFA) are taking a graduated response to non-compliance, taking into account the type, severity, degree and cause of non-compliance in questions. By ICCAT reference guidelines, the severity of non-compliance is categorized as 'minor' or 'significant'. Importantly, and that applies to all RFMOs mentioned, the focus is on compliance by CPCs, not by vessels^{9,10}.

The system of the Southern Indian Ocean Fisheries Agreement (SIOFA) can serve as an example. Following compliance status categories that had already been implemented in WCPFC, SPRFMO and CCAMLR, SIOFA integrated compliance categories into its recently adopted *CMM (2018/11) for the Establishment of a SIOFA Compliance Monitoring Scheme (CMS)*. Table 1 shows the SIOFA categories (1. compliant; 2. minor non-compliant, 3. critically non-compliant, 4. serious/persistent non-compliant), supplemented by practices established in other RFMOs¹¹. The criteria for each category should provide guidance to Members, the Compliance

⁸ See also: Kohler, H., 2018: Tuna RFMO Compliance Processes: A Comparative Analysis to Identify Best Practices (version 2). ISSF Technical Report 2018-11. International Seafood Sustainability Foundation, Washington, DC, USA.

⁹ SIOFA MoP-04-10 Discussion Paper by the Delegation of Australia: Development of a SIOFA Compliance and Monitoring Scheme.

¹⁰ WCPFC Compliance Monitoring Scheme (<https://www.wcpfc.int/compliance-monitoring>)

¹¹ SIOFA MoP-04-10 Discussion paper by the Delegation of Australia: Development of a SIOFA Compliance and Monitoring Scheme.

Committee and the Commission on how to determine which compliance status should be assigned in respect of a given compliance issue¹².

The categorization and ranking of severity of measures should facilitate CPCs with multiple non-compliance cases to address first the more serious ones. As a result, critical and particularly serious/persistent cases of non-compliance would need appropriate remedial or follow-up actions to address and to rectify the situation of non-compliance and/or to improve the implementation of the relevant obligation (see **Section 4**).

Conclusions and recommendations:

- (1) IOTC should follow the examples of other RFMOs and take a graduated response to non-compliance, categorizing cases of non-compliance into categories such as: 1. Compliant; 2. Minor non-compliant, e.g. for submitting data incomplete and/or incorrect or after the submission deadline (as is already the case in IOTC for late submission, see also **Section 3.3**); 3. Priority or critically non-compliant; 4. Serious/persistent non-compliant, especially in cases of repeated infringements; and 5. Not assessed or no compliance status assigned.
- (2) The specific categories for the status of non-compliance should be developed in a workshop by CPCs and need to match the IOTC compliance assessment procedure. The categories have to be linked to appropriate responses to non-compliance.
- (3) Generally, experience from other RFMOs shows that there is a risk of getting too fixated on the categorization of the compliance status and of spending too much time on assigning the categories which often goes along with extended discussions between CPCs. Rather, the categorization should serve as a means to focus on the follow-up action which aims to improve compliance through corrective actions or capacity building (see **Section 4**).

¹² SIOFA CMM (2018/11) for the Establishment of a SIOFA Compliance Monitoring Scheme (CMS), Annex I

Table 1: Possible compliance categories for IOTC and practices used in other RFMOs (WCPFC, SPRFMO, SIOFA) and CCAMLR for comparison

Compliance Status	Criteria¹³	Practice used in other RFMOs and CCAMLR¹⁴
Compliant	This compliance rating may be used where, following review, it is determined that there is no compliance issue with respect to the relevant obligation including meeting-related deadlines, all requested information has been submitted in the appropriate formats and/or having investigated and appropriately addressed in any alleged violations.	SPRFMO, WCPFC, CCAMLR, SIOFA use this category
(Minor) Non-compliant	<p>This compliance rating may be used for cases such as:</p> <ul style="list-style-type: none"> a) Information or data has been submitted or reported in a way that is incomplete, incorrect, wrongly formatted or is otherwise insufficient. This could also refer to inadequate responses to Implementation Reports (which compromises the integrity of the CMS); b) Failure to meet reporting or submission deadlines; c) Failure to meet an obligation, including implementation deadlines, which does not fall into the category of ‘critically non-compliant’; d) Other actions or omissions that constitute an infringement of relevant obligations 	SPRFMO, WCPFC, CCAMLR, SIOFA each use the category of non-compliant (CCAMLR “minor non-compliant”) for compliance issues of a less serious but still actionable nature. Criteria are based on similar criteria.
Priority/Critically non-compliant	<p>This compliance rating may be used for cases such as:</p> <ul style="list-style-type: none"> a) Exceeding the catch or effort limits or any other catch or effort limits established by the Commission; b) Engaging in fishing in any areas closed to fishing by the Commission; c) Repeated rating of non-compliance with the same obligation for the second consecutive year (<i>this could also be considered seriously/persistently non-compliant</i>); d) Failure to comply with previous CMMs (compliance recommendations) adopted by the Commission after sufficient time and assistance has been provided); or 	<p>Criteria are drawn from a combination of SPRFMO and WCPFC. CCAMLR does not have a priority/critically non-compliant rating. Instead this is combined into the ‘seriously/(frequently)/persistently’ non-compliant category.</p> <p>WCPFC does not have a ‘seriously/persistently’ non-compliant rating, i.e. its most serious compliance category is ‘priority non-compliant’.</p>

¹³ Adapted from (1) SIOFA CMM (2018/11) for the Establishment of a SIOFA Compliance Monitoring Scheme (CMS) and (2) Information from SIOFA MoP-04-10 Discussion paper by the Delegation of Australia: Development of a SIOFA Compliance and Monitoring Scheme.

¹⁴ Information from SIOFA MoP-04-10 Discussion paper by the Delegation of Australia: Development of a SIOFA Compliance and Monitoring Scheme. As the discussion paper was contributed by Australia, it does only include RFMOs to which Australia is a Party.

	<ul style="list-style-type: none"> e) Repeated non-compliance with an obligation for two or more consecutively assessed years (<i>this could also be considered seriously/persistently non-compliant</i>); f) Failure to provide its annual Implementation Report or National Report; g) Any other action or omission that constitutes a serious infringement of relevant obligations, or which undermines the effectiveness of the Agreement or CMMs (and which does not fall into the category of 'seriously/persistently non-compliant'). 	
(Optional) Seriously/persistently non-compliant¹⁵	<p>This compliance rating may be used with respect to:</p> <ul style="list-style-type: none"> a) Actions or omissions that constitute a repeated serious infringement of relevant obligations. b) Repeated critical non-compliance with an obligation for two or more consecutively assessed years; c) Repeated failure to develop or implement a Compliance Action Plan after sufficient time and assistance has been provided. 	CCAMLR and SPRFMO both use a 'seriously/persistently compliant' category, though SPRFMO's criteria are broader. The proposed category for most serious category on non-compliance (not integrated into SIOFA) are drawn from CCAMLR and SPRFMO.
Not assessed	This compliance rating may be used for cases where there is ambiguity in the relevant obligation, or where there is a technical impediment to compliance.	
No compliance status assigned	This compliance rating may be used for cases of emergency relating to the safety of a ship and those on board, or safety of life at sea, which resulted in the compliance issue.	

¹⁵ Not implemented in the SIOFA CMM (2018/11) for the Establishment of a SIOFA Compliance Monitoring Scheme (CMS).

3.2 Determining the significance of each CMM using a ranking measure and ranking of reporting requirements of CMMs by priority

Taking this approach further, the WPICMM01 Work Plan for 2018-2023 includes the task of “Developing a methodology for the assessment of implementation by CPCs, for producing the Country Compliance Reports provided annually to the Compliance Committee and flag States, including a ranking of reporting requirements of CMMs by priority (i.e. which are most critical to report upon) and to attribute a co-efficient to each reflecting the rank importance”.

Situation: The current compliance assessment process results in a quantification of overall compliance but does not capture the seriousness of any non-compliance. Therefore, countries can show a high percentage of overall compliance even if e.g. important statistical or fisheries management reporting requirements have not been fulfilled. CMMs are not ranked and/or given a weight in the compliance assessment process according to the impact the corresponding non-compliance has on the functioning and robustness of the IOTC.

Considerations: The discussions during the meeting of the first Working Party on the Implementation of CMMs confirmed the general support among CPCs for a strengthened compliance assessment method and agreement on the need to distinguish between compliance issues of a more serious and less serious nature. However, during interviews with individuals from selected CPCs there were distinct **reservations about ranking CMMs** and about assigning coefficients to CMMs and the reporting requirements contained within them. The quantification of non-compliance by significance alone was not seen as *the* silver bullet to generate a fair, consistent and transparent compliance assessment process. It is not clear whether the ranking of CMMs as part of a strengthened compliance assessment process would find acceptance among CPCs.

This became also evident when individuals from selected CPCs were asked if the CMMs/reporting requirements could be grouped into the three categories (see Annex 1):

- a highly prioritized category A of reporting requirements of CMMs which are considered extremely critical to report upon to ensure a robust management system and non-compliance having serious and negative impacts to the functioning of the RFMO);
- a category B of comparatively lower importance to report upon; and
- a category C with reporting requirements that are considered least critical to report upon in comparison.

Most reporting requirements were categorized as high-priority (category A), only few were considered as belonging to the category B and the category C remained blank in most cases. While this limited number of interviews does not reflect the views of all CPCs and can only provide indications, the reluctance to rank the reporting requirements in a more differentiated manner was again documented.

The reluctance to assign concrete ranks/coefficients to CMMs and their reporting requirements was explained with the following reasons:

- (1) It is difficult to separate the measures into different categories. In reality, all measures work together to create a functional fisheries management system;
- (2) Weighing CMMs is not straightforward and difficult to justify. Measures that are apparently less critical to report upon may be significant in their own respect;

- (3) The assessment of compliance is not only about the CMM but about the circumstances surrounding any lack of compliance;
- (4) The significance of individual measures in relation to assessing compliance by CPCs can vary over time or depend on the context, e.g. dominating or repeated cases of non-compliance can change over time and so can specific practices that contribute to current levels of IUU fishing.

Despite these general concerns to put a ranking of CMMs at the centre of the compliance review and assessment process, there is wide agreement that non-compliance can have serious or less serious impacts. The consequences of non-compliance can e.g. be assessed against four risk-based **criteria**:

1. Risks for the status of target species, and of key associated and dependent species.
2. Risks for achieving the objectives of the IOTC Agreement, the UN Convention of the Law of the Sea, and the UN Fish Stocks Agreement.
3. Risks of damaging the functioning and robustness of the IOTC system of reporting, compliance assessment and decision making.
4. Risks of hampering the effectiveness of IOTC MCS measures with negative effects on monitoring catch and effort limits.

Based on interviews with individuals from selected CPCs and international experts as well as literature research on the prioritization in other RFMOs, two main categories of CMMs¹⁶ could be identified (see also categorisation of active IOTC CMMs in table 2):

- **category A**: measures with priority reporting requirements, and
- **category B**: measures that are comparatively less important to report upon.

Category A: Priority reporting requirements

- (1) Catch and effort limits for target species;
- (2) Catch and effort reporting for target species (especially in relation to data for stock assessments);
- (3) Restrictions on the use of fish aggregating devices or other gear restrictions;
- (4) Spatial and temporal closures;
- (5) Reporting on non-target species catches and bycatch mitigation measures;
- (6) Fishing capacity related data;
- (7) Key MCS measures which provide mechanisms to monitor and control catch and effort limit measures, such as:
 - a. VMS coverage and implementation;
 - b. Reporting and implementation of observer coverage;
 - c. Catch documentation scheme once implemented in IOTC;
 - d. Authorizations to fish and record of fishing vessels;
 - e. Transshipment because of the high risk associated to illegal transshipment activities to launder IUU caught fish and thus to undermine the sustainable management of tuna and tuna-like resources;

¹⁶ This list of prioritized reporting requirements for IOTC's compliance assessment procedure also captures the priorities of the list of obligations to be assessed annually in WCPFC's CMM for a Compliance Monitoring System 2017-07 (<https://www.wcpfc.int/doc/cmm-2017-07/conservation-and-management-measure-compliance-monitoring-scheme>)

- f. Port State measures as a powerful and cost-effective means to combat IUU fishing, including through information sharing and regional cooperation;
- g. IUU vessel lists;
- h. Implementation of fisheries management CMMs such as prohibition of large-scale drift nets, use of artificial lights to attract fish.

Category B: Measures comparatively less important to report upon

- (1) Integration of fisheries management CMMs into national legal framework, e.g. on the prohibitions of large-scale drift nets, the use of artificial lights to attract fish, the prohibition of use of aircrafts and unmanned aerial vehicles;
- (2) Licensed foreign vessels and information on access agreements.

Such categorisation does not mean that measures of category B are not important for the sustainable management of the fisheries resources. However, the requirement to report on the implementation of these measures is considered less significant for the functioning of the management system.

Measures that are consistently considered to have a **very high risk** of ramifications for target species, key associated and dependent species in the case of non-compliance are:

- **Catch or effort limits:** non-compliance undermines the conservation and management of the fisheries resource with resultant negative effects on economic development opportunities and food security for coastal States.
- **Data reporting,** both for target and non-target species: non-compliance undermines the ability of IOTC to conduct stock assessment and other analyses and leads to uncertainties in the scientific advice available for decision-making in the Commission.

Table 2: Categorisation of IOTC conservation and management measures active in 2018

1) Fisheries CMMs with reporting requirements

Management standards

- 18/01 – Interim plan for rebuilding the IO YFT stock (A)
- 18/08 – FAD management plan (A)
- 17/07 – Prohibition of large-scale drift nets (A/B)
- 16/07 – Use of artificial lights to attract fish (A/B)
- 16/08 – Prohibition of use of aircrafts/unmanned aerial vehicles (A/B)

Implementation of mitigation measures and bycatch of non-IOTC species

- 18/02 – Management measures for the conservation of blue sharks (A)
- 17/05 – Conservation of sharks caught in association with IOTC species (A)
- 13/04 – Conservation of cetaceans (A)
- 13/05 – Conservation of whale sharks (A)
- 13/06 – Framework on the conservation of shark species (whitetip) (A)
- 12/04 – Conservation of marine turtles (A)
- 12/06 – Reducing incidental bycatch of seabirds in LL fisheries (A)
- 12/09 – Conservation of thresher sharks (A)

2) MCS CMMs with reporting requirements

Reporting on vessels

- 18/10 – Chartered vessels (vessels and catches) (B)
- 15/04 – Record of authorized vessels (documents on board, marking of gear/FADs, logbook on board, authorization to fish outside of national jurisdiction, IMO no., list of authorized vessels) (A)
- 14/05 – Licensed foreign vessels and information on access agreement (B)
- 10/08 – List of active vessels (A)

Management standards

- 18/07 – Measures in case of non-fulfilment of reporting obligations (A)
- 15/04 – Record of authorized vessels (documents on board, marking of gear/FADs, logbook on board, authorization to fish outside national jurisdiction, IMO number, list of authorized vessels) (A)

Transshipment

- 18/06 – Transshipment program (CPC reports, FS reports under ROP, transshipment in port, list of authorized carrier vessels, investigation reports, ROP fee paid) (A)

IUU fishing vessels

- 18/03 – IUU vessel list (A)
- 07/01 – Compliance by CPC nationals (A)

Port inspections

- 16/11 – Port State Measures (list of designated ports, designated competent authorities, prior notification periods, inspection reports, 5% inspection of LAN or TRX, denial of port entry/services, port state actions) (A)
- 05/03 – IOTC program of inspections in port (A)

Vessel monitoring systems

- 15/03 – VMS program (adoption, report on implementation and technical failures, implementation plan) (A)

Observers

- 11/04 – Regional Observer Scheme (≥ 5 % mandatory coverage, observer reports) (A)

Market

- 10/10 – Market related measures (B)

Statistical document program

- 01/06 – Bigeye tuna statistical document program (1st/2nd semester report and annual report, authorized institutions and personnel) (A)

3) Statistical CMMs with reporting requirements

Management standards

- 15/01 – Recording of catch and effort data (official fishing logbooks) (A)

Mandatory statistical requirements

- 15/02 – Mandatory statistical requirements (nominal catch, catch & effort, size frequency, FAD supply vessels and days at sea, FAD set) (A)

Rather than concentrating on ranking CMMs and their reporting requirements according to their significance, other factors should be considered as well when strengthening the compliance assessment process and making the results more meaningful:

- **Concentration on *how* (not only if) the measures are being implemented:** Rather than focusing on whether a measure has been implemented at all, the emphasis should be on how the measure has been implemented. A quantification of the how can be difficult, depending on the CMM.
- **Researching the reasons behind high levels of non-compliance:** As outlined in the WPICMM01 Workplan 2018-2023, it will be useful to determine which IOTC CMMs result in high levels of non-compliance by CPCs. These CMMs should be considered as high-risk, assessed frequently and be addressed with appropriate responses to resolve areas of frequent or persistent non-compliance. The failure to report on actions taken by CPCs as flag or port States to rectify the situation should be considered as serious non-compliance.
- **Presentation of compliance by CPC and by CMM:** It has been suggested that the reporting of the non-compliance/compliance be completed in multiple ways: by CPC and by the CMM. In doing so, it enables identification of:
 - CPCs that might need capacity building support (see **Section 4**);
 - CMMs that need to be reviewed to ensure that they are not causing implementation problems (e.g. the reporting requirement for size-frequency data stipulated by Resolution 15/02 for fish and sharks, or the 5% observer coverage required by Resolution 11/04);
 - Compliance patterns that will provide the Compliance Committee and the Commission with more information for improving the management system.
- **Providing guidance for CPCs where immediate action is required:** The Compliance Committee could express ratings related to the significance and need for immediate action to provide clarity for CPCs as to how to prioritize measures. E.g., measures that require CPCs to establish laws and regulations may take longer than certain aspects of their implementation. The implementation, again, can be more difficult to monitor.
- **Intervals of assessment for different CMMs:** A way to ease the burden of the Compliance Committee and the supporting Compliance Section of the Secretariat is to review and assess compliance with CMMs in category B at larger intervals, i.e. not annually but every two or three years. This is being discussed at ICCAT and WCPFC.

Alternative methods for assessing compliance: The compliance assessment process in WCPFC is based on ‘**audit points**’. Audit points reflect **critical obligations** in each CMM and are identified during the drafting and *prior* to adoption of the measures. The audit points are then considered for assessment. In 2018, more than 130 audit points were drawn from 47 WCPFC CMMs. The WCPFC Secretariat maintains a consolidated list of all audit points for the assessment that is

updated each year. For the efficiency and acceptability of the compliance assessment process based on audits points two factors have been considered as crucial¹⁷:

- It is essential that the application of audit points is clearly articulated and understood by all Members at the time of drafting new measures and **before CMMs are adopted** by the Commission. Definition of audit points during the drafting process also allows for a consistent and standardized way of the reporting by CPCs and facilitates a coherent system for the assessment of compliance.
- The **number** of audit points should be **limited to those that are essential** for the functioning of the Commission. For example, central criteria for selecting audit points in data reporting requirements would include information to assess the status of stocks, to perform scientific evaluations and to assess the effectiveness of the implementation of CMMs. Information on time-frame, data elements, data formats and data quality should be clearly specified¹⁸.

Conclusions and recommendations:

- (1) A clear and understandable way for assessing compliance should be preferred to support a fair, consistent and transparent process. Rather than ranking CMMs by severity of non-compliance for the management system, a practical way for strengthening the compliance assessment method is the **definition of critical obligations** within CMMs (as implemented through 'audit points' in WCPFC). The definition should preferably be undertaken **during the drafting of resolutions** and the number should be limited to those that are essential for the performance of IOTC.
- (2) The presentation of **compliance** should be both **by CPC and by CMM** to allow for the identification of CMMs with high levels of non-compliance, capacity needs, implementation problems and/or patterns. This information can help improve the IOTC management system.
- (3) **High-priority reporting requirements** concern the following management areas: catch and effort limits; data reporting requirements for target species; restrictions on FADs; spatial and temporal closures; conservation of non-target species and bycatch mitigation measures; fishing capacity-related data; and key MCS measures (VMS, observer coverage, CDS, record of authorized fishing vessels, transshipments, port State measures and IUU vessel list). These reporting requirements are crucial for the functioning of IOTC's management system. Critical and serious compliance issues in one of these CMMs needs particular attention that weightage of CMMs will not be able to achieve.
- (4) Based on the considerations mentioned above, the elements of a strengthened compliance assessment process should be discussed, and a method be developed by all CPCs in a **workshop**-like setting.

¹⁷ WCPFC: Review of the Commission's Compliance Monitoring Scheme. Don Mac Kay, Andrew Wright, Christopher Rogers, March 2018

¹⁸ WCPFC: Review of the Commission's Compliance Monitoring Scheme. Don Mac Kay, Andrew Wright, Christopher Rogers, March 2018

3.3 Determining degrees of partial compliance

Situation: The IOTC compliance assessment process currently works with the three categories (1) compliant, (2) non-compliant, and (3) partially compliant. In addition, the timeliness of submission is mentioned but this is not integrated into the calculation of the compliance rate. CPCs are then provided the opportunity to comment on this assessment prior to the Compliance Report being submitted as public document to the Compliance Committee. This breakdown into categories does not distinguish between non-compliance of less serious and more serious nature (see **Section 3.1**) or rank the severity of non-compliance by quantifying the degree of implementation. There are also no degrees of partial compliance.

Considerations: The categorization of compliance status, following the SIOFA model and suggested in Table 1, distinguishes between minor compliance issues (especially late, incomplete or incorrect submission of information) and critical cases of non-compliance with severe impacts on the functioning of the management system.

It is difficult to further quantify the degrees of partial compliance given the lack of additional independent information to verify compliance levels. In IOTC, compliance assessment is mainly based on self-reporting. Other independent sources of information to verify non-compliance, such as information from a centralized VMS or compliance observers, are not available (see **Section 2**).

Conclusions and recommendations:

- (1) Rather than developing more detailed degrees of partial compliance, the focus should be on setting a baseline for achieving compliance (see previous **Section 3.2**) and on distinguishing between compliance issues of a serious and less serious nature. Importantly, research should be done on the causes of non-compliance, especially in repeated instances, and to tailor approaches to respond to the non-compliance through incentives/assistance and disincentives/penalties (see **Section 4**).
- (2) Quantifying the degree of partial compliance for each CMM may not result in a more meaningful and accepted compliance procedure but rather produce an additional layer of complexity in assessing compliance that does not contribute to achieving the objective of bringing CPCs into compliance.
- (3) Especially in the absence of independent sources of information to verify non-compliance it is recommended that IOTC concentrate on distinguishing non-compliance of a less and more serious nature in only broad categories (minor, critical, serious/persistent - see Table 1).

3.4 Minimum regional standards for the implementation of CMMs

Interviews with individuals from CPCs and international experts indicated that there is no common understanding of what minimum regional standards are.

Situation: Minimum standards for the Indian Ocean region determine the minimum data reporting requirements for CPCs. These requirements should be described in the Resolutions. However, at times the reporting requirements are not specific enough to set a standard for the review and assessment process, e. g. a resolution only mentions that reporting on vessels and species caught is required but does not spell out the specific information to be reported.

Considerations: The development of minimum regional standards clarifies the amount and detail of reporting that is required to allow for a complete review and assessment of compliance. The data to be reported should be defined and clear in all cases.

Examples for CMMs for which the minimum regional standards can be formulated:

- (1) Minimum regional standards for the **observer program (Resolution 11/04)**: Details on minimum requirements for: ≥ 5 per cent mandatory coverage, data on landings and observer reports.
- (2) Minimum regional standards for **Vessel Monitoring Systems (Resolution 15/03)**: Details of data/information to be transmitted, transmittal frequency and polling rates, applicability of vessel sizes and types, procedures in case of implementation/technical failures and the use of VMS data.
- (3) Minimum regional standards for the **Record of authorized and active fishing vessels (Resolutions 15/04, 10/08)**: Minimum requirements for vessels to be integrated into the record of fishing vessels.

However, because of the difficulties around the definition of minimum regional standards, this list could not be completed. Additional discussions and analyses need to be carried out to propose concrete amendments for resolutions.

Conclusions and recommendations:

- (1) It is recommended that a **definition for *minimum regional standard*** for the implementation of CMMs be formulated before identifying resolutions where amendments need to be made to integrate these more specific data reporting requirements.
- (2) The analysis and identification of resolutions that require amendments to clarify minimum regional standards has not been concluded and still needs to be undertaken, based on comments provided by CPCs.
- (3) It is further recommended that linking the minimum regional standards to **critical obligations** be considered when drafting new resolutions (see **Section 3.2**). These critical obligations assigned to CMMs can provide a basis to review and assess compliance. Assessing compliance against these concrete obligations can strengthen the assessment process while paying attention to fairness, transparency and consistency.

4 Responding to non-compliance

Compliance mechanisms of RFMOs are broadly composed of three steps: (1) information gathering; (2) review and assessment of compliance with obligations; and (3) response to instances of non-compliance through feedback and/or application of corrective remedies and follow-up.¹⁹ Interviews with selected CPCs and international experts have reinforced the importance of the follow-up actions to achieve the overall goal to bring all Members into compliance with their IOTC obligations in a way that maintains the stability and functioning of the Commission. For the compliance process to have “teeth”, the non-fulfilment of obligations has to lead to consequences; cases of possible infractions need to be investigated, also those of previous years. The latter is particularly important because of frequent changes in the administrations of RFMO members.

Remedial options may include a range of responses. First responses may be limited to reviewing or clarifying issues. They can include requesting additional information or requesting an explanation on the compliance issue within a given timeframe. A second step may involve requesting or directing the relevant CPC to cease the non-compliant conduct and providing a deadline by which time compliance is to be achieved, or evidence of compliance provided²⁰. Within IOTC, there are two main ways to follow-up on instances of non-compliance with the objective to promote compliance with CMMs:

1. through **corrective actions such as penalties and sanctions** in cases where Members show serious and/or repeated non-compliance despite their capacity to fulfil their obligations;
2. through **technical assistance and cooperative capacity building** initiatives in cases where a Member needs assistance to be able to fulfil its obligations.

4.1 Corrective actions

Situation: IOTC has adopted measures providing for consequences in the case of non-fulfilment of their obligations to report on and/or implement CMMs that also aim at acting as deterrents of non-compliance. However, in practice IOTC’s system of penalties and sanctions for non-compliance could be made more effective.

For example, Resolution **18/07** *On Measures Applicable in Case on Non-Fulfilment of Reporting Obligations in the IOTC* (which supersedes 16/06) provides a penalty system for non-compliance related to the submission of basic fishery data requirements as stated in Resolutions **15/01** and **15/02**. Lack of compliance with these reporting obligations continues to be a major challenge for the Scientific Committee and hampers reliable stock assessment in the region. Based on this measure, the Commission may consider prohibiting CPCs that did not report nominal catch data (including zero catches) for one or more species for a given year to retain such species in the following year. This prohibition would be maintained until such data

¹⁹ Kohler, H., 2018: Tuna RFMO Compliance Processes: A Comparative Analysis to Identify Best Practices (version 2). ISSF Technical Report 2018-11. International Seafood Sustainability Foundation, Washington, DC, USA.

²⁰ SIOFA MoP-04-10 Discussion paper by the Delegation of Australia: Development of a SIOFA Compliance and Monitoring Scheme.

have been received by the Secretariat. Cases of repeated non-compliance should be prioritized. Decisions of the Commission are usually taken by consensus but can be taken by two-thirds majority vote of its members present and voting. To date, this measure has not been implemented.

Another measure aiming to ensure compliance with IOTC CMMs is Resolution **10/10 On Market Related Measures**. This measure should only be implemented in accordance with international law and as a last resort where other measures have proven unsuccessful to prevent deter and eliminate any act or omission that diminishes the effectiveness of IOTC CMMs. The IOTC Compliance Committee has not yet made any identification under this resolution²¹.

Further, **Article XIII** of the IOTC Agreement refers to Members which are in arrears in the payment of their financial contributions to the Commission. These members shall have no vote in the Commission if the amount of the arrears equals or exceeds the amount of contributions due for the two preceding calendar years. However, the Commission may permit a Member to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Member. The WPICMM01 recommended that compliance be assessed with Article XIII of the IOTC Agreement as well.

At its 22th Session of the IOTC in 2018, the European Union proposed amendments to Appendix V of the Terms of Reference for the Compliance Committee, also with the aim to strengthen actions taken so as to better encourage compliance with the IOTC Agreement and CMMs. This included compliance with Article XII in the IOTC Agreement as assessment criteria. Some CPCs discussed the varying level of development and capacity and that applying uniform remedies to all CPCs would be unfair. The proposal was referred to WPICMM02 and the Compliance Committee for further deliberations and CPCs were encouraged to send comments to the European Union.

Considerations: In the ISSF analysis of tuna-RFMO compliance assessment processes²², Kohler recommends that a fair, consistent and transparent scheme should be formed by each RFMO that addresses the full range of issues identified and that should include both positive (financial or technical assistance and capacity building) and also negative responses: automatic quota reductions, loss of fishing opportunities, enhanced monitoring and non-discriminatory trade measures. The scheme should take into account the history, circumstances, extent and gravity of the act or omission.

For example, depending on the type, severity and cause of non-compliance (see **Section 3**), CCSBT has listed corrective actions that can be recommended by the Compliance Committee to effectively address any obstacles to compliance²³ that include a range of disincentives for non-compliance (2 – 6):

²¹ Kohler, H., 2018: Tuna RFMO Compliance Processes: A Comparative Analysis to Identify Best Practices (version 2). ISSF Technical Report 2018-11. International Seafood Sustainability Foundation, Washington, DC, USA.

²² Kohler, H., 2018: Tuna RFMO Compliance Processes: A Comparative Analysis to Identify Best Practices (version 2). ISSF Technical Report 2018-11. International Seafood Sustainability Foundation, Washington, DC, USA.

²³ CCSBT Corrective Action Policy. Compliance Policy Guideline 3. Updated at the Twenty-Fifth Annual Meeting: 18 October 2018.

- (1) Compliance assistance / capacity building programs (skills trainings, systems development, analytical assistance, technology purchase);
- (2) Quota payback;
- (3) Quota reductions in national catch allocations;
- (4) Increased monitoring requirements (placement of observers, increased inspection requirements, increased VMS frequency, restrictions on transshipment or landings);
- (5) Public disclosure of cases of non-compliance and corrective actions on the website;
- (6) Trade or market restrictions consistent with international law.

Recommendations: It is recommended that the IOTC system of corrective actions be strengthened. This should include penalties and sanctions, especially in cases where CPCs show serious and/or repeated non-compliance and where this cannot be attributed to the lack of capacity to comply with obligations. The development of a fair, consistent and transparent scheme would increase the acceptance of effectiveness of these actions as means of deterrence.

4.2 Technical assistance and capacity building

Situation: If CPCs lack the capacity to fulfil their obligations, these capacity needs have to be addressed to effectively promote compliance. Capacity building has been an integral part of the activities of the Compliance Section in the IOTC Secretariat and has played an important part in improving compliance with CMMs, e.g. in strengthening the implementation of the Port State Measures Resolution (including the application of the e-PSM tool). However, in addition to what is in place already, technical assistance and capacity building could be organized in a more systematic manner to assist CPCs in removing obstacles to non-compliance, such as the below mentioned Quality Assurance System implemented by CCSBT.

Considerations:

- **Capacity development plans:** The WCPFC Compliance Monitoring Scheme (CMS)²⁴ includes a section on Capacity Needs, that requires Members (SIDS and Participating Territory, or Indonesia or the Philippines) that cannot meet a particular obligation due to lack of capacity to provide the Secretariat with a Capacity Development Plan. This plan should clearly identify and explain what is preventing the Member to fulfil its obligation and identify the assistance needed, the costs and technical resources associated, and timeframe anticipated to meet the obligation. The Secretariat can assist in the development of the plan. The concrete outline of the content, resources and timeframe together with the obligation to report on progress has been considered to be an effective way to improve compliance. The Review of the WCPFC CMS²⁵ did not come to a clear assessment of the measure's effectiveness in achieving the objective of identifying areas in which technical assistance and capacity building was needed.

²⁴ WCPFC CMM 2017-07 (<https://www.wcpfc.int/doc/cmm-2017-07/conservation-and-management-measure-compliance-monitoring-scheme>)

²⁵ WCPFC: Review of the Commission's Compliance Monitoring Scheme. Don Mac Kay, Andrew Wright, Christopher Rogers, March 2018

- **Independent reviews of national systems** that support the implementation of CMMs: A useful model is the independent **Quality Assurance Review (QAR)**²⁶ system that has been developed and is already being operated effectively by CCSBT. A system like this would allow IOTC to review management systems of CPCs that support the implementation of CMMs in a more systematic and comprehensive manner. It has also been recommended to WCPFC by the reviewers of its CMS²⁷. This QAR system assists CPCs where there has been repeated non-compliance which can be attributed to systemic reasons. The independent and evidence-based evaluation of the CPC systems and procedures allows the formulation of specific recommendations as to how to improve these to achieve compliance. The QAR is explicitly not meant to be for any punitive purposes but to assist CPCs, especially coastal States.

Recommendations: IOTC is incorporating capacity building initiatives as a standard approach in its responses to non-compliance. However, a more systematic approach could be developed to support Members in overcoming their obstacles resulting in non-compliance. It is recommended that IOTC adopt a similar approach as the Quality Assurance Review of CCSBT and that options be explored in terms of developing a structure to facilitate independent review, including its potential sources of funding.

4.3 Procedures to follow up on infractions and investigations

Situation: Effective follow-up to possible breaches in the rules of IOTC requires reporting on commenced, ongoing or concluded investigations of flag States. The summary report of the Regional Observer Programme, for instance, identifies multiple cases of infractions (related to authorization to fish, VMS, logbook and marking of vessel). The response provided by the Compliance Committee is that the flag States are required to investigate. Although the IOTC Secretariat follows up with repeated infractions (see reports on repeated infractions to the Compliance Committee), the large amount of information on infractions does not allow a review by the Compliance Committee resulting in decisions on how the flag States can fulfil their obligations. This is particularly relevant in the case for repeated non-compliance. Furthermore, this insufficient follow-up is a lost opportunity to get a clearer picture of what the systematic reasons for non-compliance are.

Considerations: WCPFC has a system that supports the follow-up of investigations through **Investigation Status Reports** as part of the Annual Report. These also have to be provided if a flag State cannot complete an investigation before the Compliance Committee meeting. In these cases, the Member needs to provide a description of the steps already taken to commence the investigation, of the process to complete it and, to the extent possible, of the actions proposed to be taken in relation to the alleged violation. Furthermore, the anticipated timeframe for the Investigation Status Report needs to be set out. The Compliance Committee can then recognize the status as ‘Flag State Investigation’ until the investigation has been concluded.

²⁶ <https://www.ccsbt.org/en/content/monitoring-control-and-surveillance>

²⁷ WCPFC: Review of the Commission’s Compliance Monitoring Scheme. Don Mac Kay, Andrew Wright, Christopher Rogers, March 2018

As recommended by Kohler (2018)²⁸, failure to report on actions taken should be considered as a serious type of non-compliance.

Conclusions and recommendations:

- (1) As already recommended by the Panel of the 2nd Performance Review²⁹, 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.
- (2) It is recommended that IOTC requires **investigation status reports** to follow-up on possible and identified infractions and to push Members to fulfil their obligations as flag States.
- (3) It is further recommended that the **reasons for non-compliance** should be identified, including whether it is related the measure itself, a need for capacity assistance or whether it is wilful or repeated non-compliance. The Compliance Committee should provide technical advice on obligations where there is a high level of CPC non-compliance³⁰ (see also **Section 4.2**).

²⁸ Kohler, H., 2018: Tuna RFMO Compliance Processes: A Comparative Analysis to Identify Best Practices (version 2). ISSF Technical Report 2018-11. International Seafood Sustainability Foundation, Washington, DC, USA.

²⁹ Report of the 2nd IOTC Performance Review, 2016: <http://www.iotc.org/documents/report-2nd-iotc-performance-review>

³⁰ Also recommended by 2nd Performance Review under MCS: Report of the 2nd IOTC Performance Review, 2016: <http://www.iotc.org/documents/report-2nd-iotc-performance-review>

5 Streamlining and harmonizing reporting requirements

5.1 Streamlining IOTC reporting requirements

Situation: The development of CMMs over time has led to an increasing number of reporting requirements and deadlines. The IOTC Secretariat has provided a compendium of active CMMs that also outlines connections between active CMMs and those that have been superseded. It has also provided a helpful guide to IOTC data and information reporting for CPCs to use in the implementation of the IOTC Resolutions throughout the calendar year. Moreover, templates have been developed to facilitate data reporting. However, because of the historic formation of CMMs, overlaps and duplications exist in active CMMs and in the reporting requirements contained within them.

Altogether, the reporting requirements form a complex system that is particularly difficult to handle for smaller national administrations with lower capacity to manage data and information and often with a high turnover in personnel. **Streamlining** IOTC reporting requirements, where useful, would reduce the burden for national administrations, make existing requirements clearer to understand and therefore improve compliance with obligations.

Considerations: As a result of the adoption and amendments of IOTC Resolutions over the years, reporting requirements linked to different CMMs depend on the provision of similar or identical data and information. Streamlining these reporting requirements ideally means that data would only have to be reported once, in one format and at one specified time for the data and information to be used further to assess compliance with relevant CMMs.

Two examples for connections, redundancies and duplications that call for streamlining of reporting requirements are:

- **Port inspections:** Resolution **05/03** *Relating to the establishment of an IOTC programme of inspection in port* requires CPCs to electronically submit to the IOTC Executive Secretary by 1 July of each year, the list of foreign fishing vessels which have landed tuna and tuna-like species caught in the IOTC area in their ports in the preceding year (including catch composition by weight and species landed). Resolution **16/11** *On port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing* was first adopted in 2010 and is largely in line with the 2009 FAO Port State Measures Agreement (PSMA), except that it limits itself to the ports of the region and to tuna- and tuna-like species. Like the Resolution 05/03, it focuses on port calls of foreign flagged vessels. The Resolution 16/11 requires the designation of ports and competent authorities. Authorization for port entry is only granted after the verification of information provided by foreign vessels requesting entry (prior notification). Entry into and any use of the port can be denied in the case that there are clear grounds to believe that the vessel has been engaged in IUU fishing or related activities. There are minimum standards for the inspections in ports, related to the number of vessels inspected and the information gathered that goes beyond a regular inspection of documents on board. Rather than reporting once a year, the port State CPC is to report within 3 full working days a copy of the inspection report to the flag State, the IOTC

Secretariat and to other relevant States. As all of the information is to be reported by electronic means and ideally is entered into the e-PSM systems, there is an overlap. The ways of reporting port calls and inspections of foreign flagged fishing and carrier vessels could be combined, especially through the online reporting system. There is also a link to reporting on transshipments in port which are reported under the Resolution **18/06** *On establishing a programme for transshipment by large-scale fishing vessels*.

- **Record of vessels authorized to operate in the IOTC area of competence:** Resolution **15/04** *Concerning the IOTC record of vessels authorized to operate in the IOTC area of competence* requires that all fishing and support vessels (a) 24 metres in length overall or above; or (b) and vessels smaller than 24 metres operating in waters outside the EEZ of the flag State in the IOTC area of competence are entered into the Record (white list). If this is not the case, the vessels are not authorized to fish for, retain on board, tranship or land tuna or tuna-like species or support any fishing activity (e.g. through setting FADs). The WPICMM01 noted 15 data requirements of vessels' attributes to be provided when requesting inclusion of a new vessel in the IOTC RAV and requested the addition of 3 additional attributes:
 - a. Name of vessel(s), register number(s);
 - b. IMO number (if eligible);
 - c. Previous name(s) (if any);
 - d. Previous flag(s) (if any);
 - e. Previous details of deletion from other registries (if any);
 - f. International radio call sign(s) (if any); (
 - g. Port of Registration;
 - h. Type of vessel(s), length and gross tonnage (GT);
 - i. Name and address of owner(s) and operator(s);
 - j. Gear(s) used;
 - k. Time period(s) authorized for fishing and/or transshipping.

Each CPC shall promptly notify, after the establishment of their initial IOTC Record, the IOTC Executive Secretary of any addition to, any deletion from and/or any modification of the IOTC Record at any time such changes occur.

In addition, the Resolution **14/05** *Resolution Licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information* requires vessel information for private access agreements but does not include historical data, important in the licensing process, as to not produce additional burden for CPCs (see table 3). For government to government access agreements, vessel information is less specified but refers to data reporting obligations stipulated in the agreement, including those between the parties involved, as well as those regarding information that must be provided to the Commission. The vessel information required by Resolution **10/08** *Concerning a record of active vessels fishing for tunas and swordfish in the IOTC area* largely corresponds with the information required under Resolution 14/05 and includes information on previous flags.

A recently adopted Resolution **18/10** *On vessel chartering in the IOTC area of competence* defines the reporting requirements for the Contracting Parties chartering the vessels and the flag States of these vessels related to the vessels themselves and the chartering agreements. While historic information on the vessel is again lacking,

information is required on the vessel name, both in original and Latin letters and on the beneficial owner. Resolution **18/06** *On establishing a programme for transshipment by large-scale fishing vessels* includes a record of carrier vessels authorized to receive tuna and tuna-like species and sharks at sea from large-scale tuna longline vessels. Carrier vessels not entered on the record are deemed not to be authorized to receive tuna and tuna-like species and sharks in at-sea transshipment operations. The details required include historic information.

While there are differences in the vessel information required under different obligations, a unique vessel identifier already supports the identification of vessels. As of 1 January 2016, all CPCs have had to ensure that all their fishing vessels registered on the IOTC Record of fishing vessels have IMO number which are crucial to track vessels. In exceptional circumstances in which a vessel owner is not able to obtain an IMO number, the flag State is required to report any such exceptional situation to the IOTC Secretariat.

One solution for a straight-forward and consistent data reporting are **online reporting systems**. The **e-MARIS** is a data management system that is currently under development in IOTC. It will streamline reporting for CPCs and ensure that reporting follows a consistent level of detail by all CPCs.

An online reporting system would simplify and facilitate data provision in the different categories of data reporting if online data entry were streamlined for all relevant CMMs in a consistent manner. In the process, a common standard for vessel information could be established. Information required in the specific context of a CMM could be added. Ideally, automated processes for data validation would automatically cross-check cell content with other sources or give alerts in case of discrepancies in information content. These developments therefore would not only reduce the work load for the CPCs when providing the data and for the Secretariat on the receiving side and when monitoring and assessing compliance. An online system will also improve transparency and data quality essential for effective monitoring, control and surveillance.

Conclusions and recommendations:

- (1) **Streamlining** of reporting requirements will reduce redundancies and will make reporting requirements easier to understand and to manage, especially for smaller administrations. Reporting requirements on port inspections or vessel data are provided as examples. It is recommended that streamlining of reporting requirements be combined with the introduction of the online reporting system e-MARIS.
- (2) When introducing the online reporting system e-MARIS, **capacity building** should be provided to ensure consistent entry, the required level of detail and the quality of data and information reported by CPCs.
- (3) **Automated solutions for data sharing** can make better use of the data within IOTC (e.g. data required for the assessment of compliance with different CMMs) and are also helpful in the context of data sharing with States and other RFMOs (see **Section 5.2**).

Table 3: Vessel information required to be reported by IOTC Resolutions 14/05, 15/04, 18/06, 18/10

15/04 – Record of authorized vessels	10/08 – List of active vessels	14/05 – Record of licensed vessels: Private access agreements	14/05 – Record of licensed vessels: Govt. to govt. agreements	18/10 – Vessel chartering	18/06 - Record of carrier vessels authorized to receive at-sea transshipment
a. Name of vessel(s), register number(s); b. IMO number (if eligible); c. Previous name(s) (if any); d. Previous flag(s) (if any); e. Previous details of deletion from other registries (if any); f. International radio call sign(s) (if any); g. Port of Registration; h. Type of vessel(s), length and gross tonnage (GT); i. Name and address of owner(s) and operator(s); j. Gear(s) used; k. Time period(s) authorized for fishing and/or transshipping.	a. IOTC number; b. Name and registration number; c. IMO number, if available; d. Previous flag (if any); e. International radio call sign (if any); f. Vessel type, length, and gross tonnage (GT); g. Name and address of owner, and/or charterer, and/or operator; h. Main target species; i. Period of authorization.	a. IOTC Number; b. Name and registration number; c. IMO number (if eligible); d. The flag at the time of issuing the license; e. International radio call sign (if any); f. Vessel type, length, and gross tonnage (GT); g. Name and address of owner, and/or charterer and/or operator; h. Main target species; and; i. Period of license	a. The CPCs involved in the agreement; b. The time period or periods covered by the agreement; c. The number of vessels and gear types authorized; d. The stock or species authorized for harvest, including any applicable catch limits; e. The CPC's quota or catch limit to which the catch will be applied, where applicable; f. Monitoring, control, and surveillance measures required by the flag CPC and coastal CPC involved; g. Data reporting obligations stipulated in the agreement, including those between the parties involved, as well as those regarding information that must be provided to the Commission; h. A copy of the written agreement.	Chartering CP: <ul style="list-style-type: none"> the name (native, Latin), registration of chartered vessel, IMO number (if eligible); the name and contact address of the beneficial owner(s); description of the vessel, incl. length overall, type and the type of fishing method(s); copy of chartering agreement and any fishing authorization or license, incl. quota allocation(s) or fishing possibility; duration of chartering arrangement; consent to chartering agreement; the measures adopted to implement these provisions; Flag CPC: <ol style="list-style-type: none"> consent to chartering agreement; measures adopted to implement these provisions; its agreement to comply with IOTC CMMs. 	a. The flag of the vessel; b. Name of vessel, register number; c. Previous name (if any); d. Previous flag (if any); e. Previous details of deletion from other registries (if any); f. International radio call sign; g. Type of vessels, length, gross tonnage (GT) and carrying capacity; Name and address of owner and operator(s); h. Time period authorized for transshipping.

5.2 Harmonizing reporting requirements across tuna RFMOs

Situation: For countries that are members to more than one RFMO, the complexity of reporting requirements is even higher, as reporting requirements of different tuna RFMOs can differ in timing, format and detail of data and information required. While a joint process of all five tuna RFMOs (Kobe process) has supported coordination and cooperation in various aspects of fisheries management and even harmonization of certain activities since 2007, the process has not included the **harmonization of reporting requirements** yet. In 2017, the Tuna Compliance Network (TCN) was set up to facilitate communication and cooperation between officers responsible for compliance in tuna RFMOs and MCS experts. Its main objective is to share best practices on compliance processes and contribute to combatting IUU fishing in tuna fisheries.

Considerations: The comparison of reporting requirements in tuna RFMOs shows commonalities and differences. Generally, all of the three main segments of reporting are covered in all RFMOs:

- **Fisheries CMMs** (e.g. reporting on management standards/methods for rebuilding stocks of target species; the use of FADs or specific gear; mitigation measures and bycatch of non-target species);
- **MCS CMMs** (e.g. reporting on vessels; authorizations to fish; transshipment measures; IUU vessel listings; port inspections; VMS; observers; market measures) and
- **Statistical CMMs** (reporting on catch and effort data; mandatory statistical reporting requirements).

Differences in the dominating fisheries, dynamics and relations between Members, historical developments, catch and effort limits, bycatch affected and other regional aspects are reflected in the formulations of RFMO-specific CMMs and reporting requirements contained within them. Generally, it is considered useful to formulate reporting requirements, including their details and deadlines, within the regional context. However, there are merits in harmonizing measures across world regions to achieve greater transparency and consistency and to facilitate compliance.

On a more concrete level this means harmonizing reporting requirements for two main purposes:

- To make reporting easier to comply with reporting obligations, especially for CPCs that are Members (or Cooperating Non-Members) of more than one RFMO and/or with flagged fishing, support or transport vessels that operate across various oceans;
- To strengthen monitoring, control and surveillance and the global fight against IUU fishing through a harmonized approach.

The following aspects should be considered in progressing harmonization of reporting requirements amongst tuna RFMOs (CCSBT, IATTC, ICCAT IOTC, WCPFC):

- **Records of authorized fishing, support and transport vessels:** If data fields and reporting deadlines were aligned in the white lists in all tuna RFMOs, it would facilitate comparison of lists and support cross-checking to identify vessels potentially engaged in IUU fishing activities.

- **IUU vessel lists:** A lot of progress has been made in recognizing IUU vessel lists of other RFMOs over the last decade. However, further harmonization of procedures and listings would support combatting fishing and increase disincentives to engage in IUU fishing activities.
- **Port State Measures:** Reporting on port State measures should be harmonized amongst all tuna RFMOs in line with the requirements and minimum standards (see also **Section 6**) of the FAO Port State Measures Agreement (PSMA). This includes the designation of ports, the designation of competent authorities, advance request for port entry, authorization/denial of port entry, force majeure, use of port, level and priorities of inspections, conduct of inspections, content and transmittal of inspection results, port State actions following inspections. This harmonization would go hand in hand with the broad ratification and capacity building efforts to achieve an effective implementation of the PSMA in all world regions. Mechanisms to support information sharing and cooperation not only within RFMOs but also amongst RFMOs in the context of PSMA implementation would further strengthen action against IUU fishing operators and render their activities risky and unprofitable.
- **Vessel Monitoring Systems:** Harmonization of VMS requirements and reporting would support consistent MCS across all world regions. Harmonized reporting on VMS implementation and reporting deadlines could facilitate identification of vessels engaged in IUU fishing activities and operating across oceans. Harmonization could also relate to the information to be transmitted as per Resolution **15/03** that currently requires information on vessel identification, geographical position (longitude, latitude) with a position error which shall be less than 500 metres at a confidence level of 99 per cent, and date and time. Best practice shows that that RFMOs should go beyond that and consider require vessel name, course, speed, and in more advanced VMS programs, activity (e.g. fishing, transshipping, searching) and catch (e.g. through electronic logbook).³¹ Harmonized minimum standards (see **Section 3.4**) also relate to: transmittal frequency and polling rates, applicability of vessel sizes and types, data to be transmitted and standardized formats, recipients of VMS reports (ideally not limited to flag State FMC but simultaneously to the IOTC Secretariat following the example of WCPFC), procedures in case of implementation and technical failures and the use of VMS data and exchange formats.³²
- **Reporting on transshipment activities:** Similarly, the reporting deadlines, along with the information reported on transshipments, could be harmonized amongst tuna RFMOs. Information sharing with regard to vessels engaged in transshipments and catch transhipped is essential for following trade flows and cross-checking information, including in the ports where fish is eventually being landed and enters the international market. The harmonization of reporting requirements can play an important role in improving transparency and in increasing the risk of being caught when laundering illegally caught fish into the supply chain.

³¹ Kohler, H., 2016: A survey of RFMO Vessel Monitoring Systems and Set of Best Practices. ISSF Technical Report 2016-02. International Seafood Sustainability Foundation, Washington, DC, USA.

³² Kohler, H., 2016, see above.

- **Observer programs:** It is important to standardize data collection items among tuna RFMOs in order to (1) avoid confusion for the observers considering that vessels, particularly large-scale tuna vessels move across ocean (2) to support improving compliance for CPCs with vessels operating in the areas of multiple RFMOs. To reduce the work load for the observers, the data required should be limited to the essential data fields. This also needs to be seen in the context that only 7 out of 33 IOTC CPCs have achieved the observer coverage of 5 per cent as required by Resolution 11/04.

To make full use of the coordinated reporting of data and information amongst tuna RFMOs, mechanisms for **data and information sharing** need to be developed further. The abovementioned **online reporting and data management system** can provide opportunities for that, especially if a common software were used by all RFMOs.

Conclusions and recommendations:

- (1) The harmonization of reporting requirements across tuna RFMOs should be encouraged, where useful, to make reporting easier for CPCs that are Members to multiple RFMOs and to strengthen MCS by setting consistent standards, especially in the context of combatting IUU fishing globally.
- (2) Harmonization should be advanced for e. g. records of authorized fishing, support and transport vessels, IUU vessel lists, port State measures, VMS, reporting of transshipment activities and observer programs.
- (3) Automated solutions for data sharing can support coordination and cooperation with States and other RFMOs (see **Section 5.2**).

6 Definition of IUU fishing based on international instruments

This section is about the definition of IUU fishing and fishing related activities to provide a baseline for the identification of non-compliance with relevant CMM. It is to inform the discussion whether amendments need to be made to the relevant resolution in this regard. It has been suggested that the definition should be brought in line with those of international instruments.

Analysis:

The current definition of illegal, unreported and unregulated fishing in Resolution 18/03, paragraph 4, captures a broad range of fishing and fishing related activities that are similar to the definitions in other RFMOs (for comparison with the tuna RFMOs CCSBT, WCPFC and ICCAT see table 4 below) and is comprehensive in detail. Some examples: (1) The IOTC Resolution refers to *all* vessels presumed to be engaged in IUU fishing activities and does not limit it to fishing vessels. (2) In the case of transshipment or other joint operations with support or supply vessels, the IOTC Resolution 18/03 does not only consider it IUU if the other (receiving or supplying) vessel is on the IUU vessel list, but it also applies to any vessel that is not on the authorized lists of fishing and carrier vessels (white list). (3) The IOTC Resolution describes vessels engaged in fishing or fishing related activities that have intentionally falsified or concealed its markings, identity or registration as IUU fishing – important for the identification of vessels - which is not spelled out by CCSBT, WCPFC or ICCAT.

The broad range of activities that are understood as IUU fishing are defined in the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). All tuna-RFMOs refer to the 2001 IPOA-IUU in their relevant measures. The IPOA-IUU provides a basis for the development of consistent National Plans of Action and a toolbox for all States to combat IUU fishing. The IPOA-IUU also recognizes the primary role that RFMOs play in combatting IUU fishing, particularly for straddling and highly migratory fishing stocks. The IPOA-IUU therefore provides States, acting through RFMOs with a number of tools designed for use at the regional level, building on RFMO conservation and management measures.³³

Like other IPOAs adopted by COFI (e.g. on sharks, seabirds or capacity), the IPOA-IUU has been elaborated within the framework of the Code of Conduct. A number of provisions of the Code of Conduct, particularly in Articles 1 and 3, also describe the relationship between the IPOA-IUU and other relevant international instruments. The IPOA-IUU is to be interpreted and applied in a manner that is consistent with international instruments, foremost the 1982 UN Convention for the Law of the Sea, the 1993 FAO Compliance Agreement, and the 1995 UN Fish Stocks Agreement.³⁴ The IPOA-IUU provisions that relate to international trade are also to be interpreted and applied in a manner that is consistent with the rules of the World Trade Organisation (WTO).

The definition of IUU fishing in the IOTC Resolution 18/03 in the context of listing vessels presumed to have engaged in IUU fishing or fishing related activities differs from the definition

³³ FAO International Plan of Action – IUU: <http://www.fao.org/3/y3536e04.htm#fn12>

³⁴ FAO: Illegal, unreported and unregulated fishing. <http://www.fao.org/3/a-i6069e.pdf>

in the IPOA-IUU in order and detail and does not follow the structure of the ‘I’, the ‘U’ and the ‘U’ as they relate to fishing activity. However, the relevant content for the identification of IUU fishing activities in the IOTC Area of Competence is covered in Resolution 18/03 (see table 4). The order and structure of the provisions may reflect the prevalence and significance of activities identified.

Conclusions and recommendations:

- (1) **Reference to IPOA-IUU:** In the chapeau of Resolution 18/03 **Art. 3**, the following language could be added to make more clear reference to the IPOA-IUU: “For the purposes of this Resolution a vessel is presumed to have engaged in IUU fishing activities [[as described in the IPOA on IUU fishing](#)] when a CPC has provided information that such a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC CMMs;” Alternatively, following the example of the FAO PSMA, a provision could be added in Art. 1 (Use of Terms): [[g](#) [illegal, unreported and unregulated fishing](#)” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as ‘IUU fishing’;]
- (2) **Provisions that could be added to the IOTC Resolution:**
 - A vessel is presumed to have engaged in IUU fishing activities when a CPC has provided information that such a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC CMMs:
 - [“has transhipped with, participated in joint fishing operations with, supported, or resupplied vessels included in the IUU Vessel List”](#) (see IATTC for separate formulation). Generally, this should be included in Resolution 18/03 Art. 3 g) as an IUU-listed vessel should not be on the list of authorized vessels either. However, it would make the application clearer.
 - [“is under the control of the owner of any vessel on the IOTC IUU Vessel List.”](#) (see WCPFC and IATTC) Procedures for applying this paragraph can be annexed.
- (3) If considered useful, the different fishing and fishing related activities can be brought into an order following the categorization of (1) illegal, (2) unreported, and (3) unregulated. This would not change the existing baseline but bring it in line with the structure provided in the definition of IUU fishing in the IPOA-IUU.

Table 4: Comparison of the definitions of IUU fishing activities in IOTC Resolution 18/03 *On Establishing a List of Vessels Presumed to Have Carried out Illegal, Unreported and Unregulated Fishing in the IOTC Area of Competence* with the description in 2001 FAO International Plan of Action on Preventing, Deterring and Eliminating IUU Fishing as well as corresponding resolutions of the tuna RFMOs CCSBT, IATTC, ICCAT and WCPFC

IOTC Resolution 18/03	2001 FAO IPOA-IUU	CCSBT IUU Vessel List Res.	IATTC C-15-01	ICCAT 11-18	WCPFC 10-06
Art. 4	Art. 3	Art. 3	Art. 3	Art. 1	Art. 3
For the purposes of this Resolution a vessel is presumed to have engaged in IUU fishing activities when a CPC has provided information that such a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC CMMs		For the purposes of this Resolution, the (fishing) vessels are presumed to have carried out SBT IUU fishing activities, <i>inter alia</i> , when a Member or CNM presents suitably documented evidence that such vessels:	For the purposes of this resolution, vessels fishing for species covered by the IATTC Convention within the IATTC Convention Area are presumed to have carried out IUU fishing activities when an IATTC CPCs presents suitably document information that such vessels:	For the purposes of this recommendation, the fishing vessels flying the flag of a non-Contracting Party, or a Cooperating non-Contracting Party, Entity or Fishing Entity, or a Contracting Party are presumed to have carried out illegal, unreported and unregulated fishing activities in the ICCAT Convention area, <i>inter alia</i> , when a CPC presents evidence that such vessels:	For the purposes of this conservation measure, vessels fishing for species covered by the WCPFC Convention are presumed to have carried out IUU fishing activities, as described in the IPOA on IUU fishing, in the Convention Area when a CCM presents suitably documented information that such vessels, <i>inter alia</i> :
a) engaged in fishing or fishing related activities and is neither registered on the IOTC Record of Authorised Vessels in accordance with Resolution 15/04, nor recorded in the Active list of vessels; or	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or	a) Harvested SBT and were not authorised by a Member or CNM to fish for SBT, or;	a) Harvest species covered by the Convention and are not on the IATTC Regional Vessel Register, or	a) Harvest tunas and tuna-like species in the Convention area and are not registered on the ICCAT list of vessels authorized to fish for tuna and tuna-like species in the ICCAT Convention area;	a) Harvest species covered by the WCPFC Convention in the Convention Area and are neither on the WCPFC record of authorized vessels nor a fishing vessel fishing exclusively in waters under the jurisdiction of its flag State, or
b) engaged in fishing or fishing related activities when its flag State is without quota,	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures			b) Harvest tuna and tuna-like species in the Convention area, whose flag State is without quotas, catch limit or	

catch limit, or effort allocation under IOTC CMMs where applicable unless that vessel is flagged to a CPC; or	adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or (Illegal) 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.			effort allocation under relevant ICCAT conservation and management measures;	
c) Failed to record or report its catches in accordance with IOTC CMMs or has made false reports; or	(Unreported) 3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or (Unreported) 3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.	b) Did not record and/or report their SBT catches or catch-related data in accordance with CCSBT reporting requirements, or made false reports, or;	c) Make false reports or fail to record or report their catches made in the Convention Area, or	c) Do not record or report their catches made in the ICCAT Convention area, or make false reports;	c) Do not record or report their catches made in the Convention Area consistent with WCPFC measures, or make false reports, or
d) Taken or landed undersized fish in contravention of IOTC CMMs; or	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or			d) Take or land undersized fish in contravention of ICCAT conservation measures;	d) Take and land undersized fish in a way that undermines WCPFC conservation measures, or
e) Engaged in fishing and fishing related activities during closed fishing periods or in closed areas in contravention of IOTC CMMs; or	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or		d) Engage in fishing activities in a closed area or during a closure period, or	e) Fish during closed fishing periods or in closed areas in contravention of ICCAT conservation measures;	e) Fish in a closed area or during a closed season in a way that undermines WCPFC conservation measures, or

f) Use prohibited fishing gear in a way in contravention of IOTC CMMs;	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or	c) Used prohibited or non-compliant fishing gear in a way that undermines CCSBT conservation and management measures, or;	e) Use prohibited fishing gear or fishing methods, or	f) Use prohibited fishing gear in contravention of ICCAT conservation measures;	f) Use prohibited fishing gear in a way that undermines WCPFC conservation measures, or
g) transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are not included on the IOTC Record of Authorised Vessels or not on the Record of Vessels Authorised to Receive Transshipments At-Sea in the IOTC Area; or	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or	d) Transhipped with, or participated in joint operations such as re-supplying or re-fuelling vessels included in the CCSBT IUU Vessel List, or;	f) Tranship with, participate in joint fishing operations with, support, or resupply vessels included in the IUU Vessel List, or g) Conduct transshipment operations at sea with vessels not included on the IATTC Record of Carrier Vessels, or	g) Tranship with, or participate in joint operations such as re-supply or re-fuelling vessels included in the IUU vessels list;	g) Tranship with, participate in joint fishing operations with, support or re-supply vessels included in the IUU Vessel List, or
h) engaged in fishing or fishing related activities in waters that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel); or	(Illegal) 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;	e) Harvested SBT in the waters under the national jurisdiction of the coastal State or entity without authorisation and/or committed a serious infringement of its laws and regulations directly related to the SBT fishery, without prejudice to the sovereign rights of the coastal State or entity to take measures against such vessels, or;	b) Harvest species covered by the Convention in waters under the national jurisdiction of the coastal State in the Convention Area without authorization and/or in contravention of its laws and regulation, without prejudice to the sovereign rights of coastal States to take measures against such vessels;	h) Harvest tuna or tuna-like species in the waters under the national jurisdiction of the coastal States in the Convention area without authorization and/or infringes its laws and regulations, without prejudice to the sovereign rights of coastal States to take measures against such vessels,	b) Conduct fishing activities in waters under the jurisdiction of a coastal State, without permission of that State, or in contravention of its law and regulations, or
i) engaged in fishing or fishing related activities whilst being without nationality; or	Unregulated) 3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization,		h) Are without nationality, or	i) Are without nationality and harvest tunas or tuna-like species in the	h) Are without nationality and harvest species covered by the WCPFC

	or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or			ICCAT Convention area, and/or	Convention in the Convention Area, or
j) engaged in fishing or fishing related activities having intentionally falsified or concealed its markings, identity or registration; or	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or				
k) engaged in fishing or fishing related activities in contravention of any other binding IOTC CMMs	(Illegal) 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or	f) Engaged in fishing activities for SBT, including transshipping, re- supplying or re-fuelling, contrary to any other CCSBT conservation and management measures.	i) Engage in fishing activities contrary to the provisions of the Convention or any other IATTC conservation and management measures, or	j) Engage in fishing activities contrary to any other ICCAT conservation and management measures.	i) Engage in any other fishing activities that undermine the provisions of the WCPFC Convention or any other WCPFC conservation measures, or
	(Unregulated) 3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.				
			j) Are under the control of the owner or operator of any vessel on the IATTC IUU Vessel List. (Procedures for applying this paragraph are attached as Annex B.)		j) Are under the control of the owner of any vessel on the WCPFC IUU Vessel List. (Procedures for applying this paragraph are attached as Annex A)

7 Annexes

Annex 1

Questionnaire/guiding questions for interviews with individuals from selected CPCs and observers on improving the methodology for assessing compliance with IOTC CMMs by CPCs

The IOTC Working Party on the Implementation of Conservation and Management Measures in its first meeting (WPICMM01) in March 2018, adopted a work plan related to compliance for the coming five years (2018-2023) that was later adopted by the Commission. Amongst others, the WPICMM in its first meeting agreed to strengthen the compliance assessment method.

Selected guiding questions for input from CPCs:

- (1) **Ranking the significance of compliance issues:** The purpose of the compliance assessment process is to ensure that CPCs implement IOTC measures and comply with their obligations and to achieve a robust tuna management system in the Indian Ocean. To make the compliance assessment more meaningful, it has been recommended to distinguish between compliance issues of a more serious and less serious nature. Serious compliance issues should be given a higher weight in the assessment, should be assessed in shorter intervals/regularly and require strict responses.

Of the **CMMs with reporting requirements** (please see following page):

- **Category A:** Which would you prioritize as **very important**, i.e. non-compliance has serious consequences sustainable tuna fisheries management?
- **Category B:** While all reporting requirements are important, which would you **rank lower in significance** that category A?
- **Category C:** Which would you consider **least critical to report upon** in comparison?
- Why?

- (2) **Streamlining reporting requirements:**

- Do you see duplications or overlaps in IOTC reporting requirements and a need to streamline these?
- What else could be done to make reporting simpler and more manageable for CPCs, especially those with smaller administrations, and support the compliance process?

- (3) **Levels of partial compliance:** Which CMMs would require degrees of compliance to be differentiated and specified with details – rather than simply differentiating between compliant and non-compliant?

- (4) **Regional minimum standards:** Where do you see the need to introduce IOTC **minimum standards** consistent across the region to support compliance with CMMs?

- (5) **Harmonizing reporting requirements:** Where do you see a need for harmonizing reporting requirements with those of other **tuna RFMOs** (IOTC and CCSBT, IATTC, ICCAT, WCPFC)? Which CMMs/reporting requirements are important in this regard and which aspects (timing, details, format)?

- (6) Finally, do you have **other recommendations** as to how to strengthen the IOTC compliance mechanism, particularly how the implementation of CMMs and compliance with their obligations is reviewed and assessed and what information is used?

Fisheries CMMs with reporting requirements

Management standards

- 18/01 – Interim plan for rebuilding the IO YFT stock
- 18/08 – FAD management plan
- 17/07 – Prohibition of large-scale drift nets
- 16/07 – Use of artificial lights to attract fish
- 16/08 – Prohibition of use of aircrafts/unmanned aerial vehicles

Implementation of mitigation measures and bycatch of non-IOTC species

- 18/02 – Management measures for the conservation of blue sharks
- 17/05 – Conservation of sharks caught in association with IOTC species
- 13/04 – Conservation of cetaceans
- 13/05 – Conservation of whale sharks
- 13/06 – Framework on the conservation of shark species (whitetip)
- 12/04 – Conservation of marine turtles
- 12/06 – Reducing incidental bycatch of seabirds in LL fisheries
- 12/09 – Conservation of thresher sharks

MCS CMMs with reporting requirements

Reporting on vessels

- 18/10 – Chartered vessels (vessels and catches)
- 15/04 – Record of authorized vessels (documents on board, marking of gear/FADs, logbook on board, authorization to fish outside of national jurisdiction, IMO no., list of authorized vessels)
- 14/05 – Licensed foreign vessels and information on access agreement
- 10/08 – List of active vessels

Management standards

- 18/07 – Measures in case of non-fulfilment of reporting obligations
- 15/04 – Record of authorized vessels (documents on board, marking of gear/FADs, logbook on board, authorization to fish outside national jurisdiction, IMO number, list of authorized vessels)

Transshipment

- 18/06 – Transshipment program (CPC reports, FS reports under ROP, transshipment in port, list of authorized carrier vessels, investigation reports, ROP fee paid)

IUU fishing vessels

- 18/03 – IUU vessel list
- 07/01 – Compliance by CPC nationals with IOTC CMMs

Port inspections

- 16/11 – Port State Measures (list of designated ports, designated competent authorities, prior notification periods, inspection reports, 5% inspection of LAN or TRX, denial of port entry/services, port state actions)
- 05/03 – IOTC program of inspections in port

Vessel monitoring systems

- 15/03 – VMS program (adoption, report on implementation and technical failures, implementation plan)

Observers

- 11/04 – Regional Observer Scheme (≥ 5 % mandatory coverage, observer reports)

Market

- 10/10 – Market related measures

Statistical document program

- 01/06 – Bigeye tuna statistical document program (1st/2nd semester report and annual report, authorized institutions and personnel)

Statistical CMMs with reporting requirements

Management standards

- 15/01 – Recording of catch and effort data (official fishing logbooks)

Mandatory statistical requirements

- 15/02 – Mandatory statistical requirements (nominal catch, catch & effort, size frequency, FAD supply vessels and days at sea, FAD set

Annex 2

List of IOTC reporting requirements

I. Fisheries CMMs			
Category	CMM		Reporting requirement
MANAGEMENT STANDARDS			
	18/01	On an interim plan for rebuilding the Indian Ocean yellowfin tuna stock in the IOTC Area of Competence	Report on methods for achieving the YFT catch reductions
	18/01		Purse seiners served by supply vessels
	18/01		Plans for reducing the use of supply vessels
	18/08	Procedures on FADs management plan, including a limitation on the number of FADs, more detailed specifications of catch reporting from FAD sets, and the development of improved FAD designs to reduce the incidence of entanglement of non-target species	FADs management plan
	18/08		Report on progress on implementation of FADs management plan
	17/07	On the prohibition to use large-scale driftnets in the IOTC area (<i>objection by Pakistan; does not apply to Pakistan</i>)	Ban of large-scale driftnets
	16/07	On the use of artificial lights to attract fish	Prohibition of surface or submerged artificial lights to attract fish
	16/08	On the prohibition of the use of aircrafts and unmanned aerial vehicles as fishing aids	Prohibition of aircrafts and unmanned aerial vehicles
IMPLEMENTATION OF MITIGATION MEASURES AND BYCATCH OF NON-IOTC SPECIES			
	18/02	On management measures for the conservation of blue shark caught in association with IOTC fisheries	Submission of data regarding blue sharks - catch & effort, size and discard (by gear)
	18/02		Report on actions taken to monitor blue shark catches
	17/05	On the conservation of sharks caught in association with fisheries managed by the IOTC	Submission of data regarding sharks - nominal catch (by gear, by species)
	17/05		Submission of data regarding sharks - catch & effort (by gear, by species)
	17/05		Submission of data regarding sharks - size frequency (by gear, by species)
	13/04	On the conservation of cetaceans	Data on interactions with Cetaceans by species (all gears) or reports that no interaction has occurred
	13/04		Instances of cetaceans encircled by species (PS only).
	13/05	On the conservation of whale sharks (<i>Thindocon thypus</i>)	Instances of whale sharks encircled by species (PS only).
	13/05		Data on interactions with whale sharks (all gears) or report that no interaction has occurred
	13/06	On a scientific and management framework on the conservation of shark species caught in association with IOTC managed fisheries (Objection [India]: not binding on India)	Prohibition on oceanic whitetip sharks (<i>banned since {YEAR}, information provided in IR/CQ incl. reference to national legislation</i>).
	12/04	On the conservation of marine turtles	Sea turtles report: Information on interactions: either none or by species, by gears and information on status of implementation of FAO guidelines and this resolution.

	12/04		Carry line cutters and de-hookers on board (LL): Obligation in place {YEAR}, information provided in IR/CQ incl. reference to national legislation.
	12/04		Carry dip nets (PS): Obligation in place {YEAR}, information provided in IR/CQ incl. reference to national legislation.
	12/06	On reducing the incidental bycatch of seabirds in longline fisheries	Seabirds report: Information on interactions by species, or report that no interaction has occurred.
	12/06		Implementation of mitigation measures south of 25°S: Obligation in place {YEAR}, information provided in IR/CQ incl. reference to national legislation.
	12/09	On the conservation of thresher sharks (family <i>Alopiidae</i>) caught in association with fisheries in the IOTC area of competence	Prohibition of thresher sharks (all species of family <i>Alopiidae</i>) (<i>Banned since {YEAR}, information provided in IR/CQ incl. reference to national legislation</i>)

II. Monitoring, control and surveillance CMMs

Category	CMM		Reporting requirement
REPORTING ON VESSELS			
	18/10	On vessel chartering in the IOTC area of competence	Report on vessels and catches of chartered vessels
	15/04	Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence	List of authorized vessels ≥ 24 m in length overall
	15/04		List of authorized vessels (< 24 m, operating in waters outside EEZ of flag State)
	14/05	Licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information	List of foreign vessels licensed in EEZ
	14/05		List of foreign vessels denied a license
	10/08	Concerning a record of <u>active</u> vessels fishing for tunas and swordfish in the IOTC area	List of active vessels
MANAGEMENT STANDARDS			
	18/07	On measures applicable in case of non-fulfilment of reporting obligations in the IOTC	Report actions taken to implement reporting obligations & improve data collection of catches
	15/04	Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence	Documents on board
	15/04		Marking of gears
	15/04		Marking of FADs
	15/04		Logbook on board
	15/04		Official authorization to fish outside of national jurisdiction
	15/04		IMO number for eligible vessels
TRANSHIPMENT			
	18/06	On establishing a programme for transhipment by large-scale fishing vessels	At sea transhipments - CPC report: 2 mandatory reports (quantity transhipped by species, list of LSTLVs and comments on the observer report)
	18/06		Flag State report concerning information on TRX at sea under the ROP
	18/06		Transhipment in port reports: Quantity transhipped by species by LSTLV / Flag State report concerning information on TRX in foreign port
	18/06		List of authorised carrier vessels and all mandatory information

	18/06		Report on results of investigations on possible infractions
	18/06		ROP fee paid by CPC of LSTLV
	18/07		Additional notifications
ILLEGAL, UNREPORTED AND UNREGULATED (IUU) VESSELS			
	18/03	On establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence	Vessels flagged to CPC that have been IUU listed in the previous year
	07/01	To promote compliance by nationals of Contracting Parties and Cooperating Non-Contracting Parties	Compliance by nationals - no nationals involved on vessels listed at the previous session of the Commission
PORT INSPECTIONS			
	16/11	On port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing	List of designated ports
	16/11		Designated competent authority and details
	16/11		Prior notification periods reported by CPC
	16/11		Inspection reports provided by CPC
	16/11		At least 5 % inspection of LAN or TRX
	16/11		Reported denial of entry into port
	05/03	Relating to the establishment of an IOTC programme of inspection in port	Report on landings of foreign vessels in port (Port inspection programme)
VESSEL MONITORING SYSTEMS			
	15/03	On the vessel monitoring system (VMS) programme	Adoption VMS for all vessels ≥ 24 m and < 24 m fishing on the high seas
	15/03		VMS report on implementation and technical failures
	15/03		VMS implementation plan
OBSERVERS			
	11/04	On a regional observer scheme	Regional Observer Scheme (no. of vessels monitored and coverage by gear type)
	11/04		CPC provides ≥ 5 % mandatory coverage, at sea (≥ 24 m)
	11/04		CPC provides ≥ 5 % mandatory coverage, at sea (< 24 m)
	11/04		CPC provides data on landings and ≥ 5 % coverage, phasing in artisanal landings
	11/04		Observer reports
MARKET			
	10/10	Concerning market related measures	Report on import, landing and transshipment of tuna and tuna-like fish products in ports (by gear, by species)
STATISTICAL DOCUMENT PROGRAMME			
	01/06	Concerning the IOTC Bigeye tuna statistical document programme	1st semester report by CPCs importing BET
	01/06		2nd semester report by CPCs importing BET
	01/06		Annual report by CPCs importing BET
	01/06		Information on authorized institutions and personnel.

III. Statistical CMMs

Category	CMM		Reporting requirement
MANAGEMENT STANDARDS			
	15/01	On the recording of catch and effort data by fishing vessels in the IOTC area of competence	Official fishing logbook
MANDATORY STATISTICAL REQUIREMENTS			
	15/02	On mandatory statistical reporting requirements for IOTC Contracting Parties and Cooperating Non- Contracting Parties (CPCs)	Nominal catch: Coastal fisheries (by gears, by species)
	15/02		Nominal catch: Surface fisheries: PS, BB, GI (by gears, by species)
	15/02		Nominal catch: LL Provisional or Final (by gears, by species and type of fisheries (fresh & frozen))
	15/02		Catch & Effort: Coastal fisheries (by gears, by species, by month)
	15/02		Catch & Effort: Surface fisheries: PS, BB, GI (by gears, by species, by month, by grid)
	15/02		Catch & Effort: LL Provisional or Final (by gears, by species, by month, by grid, by type of fisheries (fresh & frozen))
	15/02		Size frequency: Coastal fisheries (by gears, by species, by month, by size categories)
	15/02		Size frequency: Surface fisheries: PS, BB, GI (by gears, by species, by month, by grid, by size categories)
	15/02		Size frequency: LL Provisional or Final (by gears, by species, by month, by grid, by size categories, by type of fisheries)
	15/02		FADs: Supply vessels (number and characteristics of SV)
	15/02		Days at sea by supply (effort by SV by month by grid)
	15/02		FADs set by type (catch on FADs set by type, by grid, by month)
	18/05	On management measures for the conservation of the billfishes: striped marlin, black marlin, blue marlin and indo-pacific sailfish	Catch data for marlin species