

HOW TO PROGRESS COMPLIANCE ISSUES

Mozambique believes that the rapidly growing number of compliance issues that need to be addressed now and in the future merit the establishment of a Working Party on Compliance. However, noting the response to Mozambique's proposal in 2014, instead of resubmitting the proposal, Mozambique presents this Information Paper (IOTC-2015-CoC12-Info-01) as background information to encourage CPCs to re-assess their opinions on this issue for discussion on a new proposal for 2016.

Background:

Mozambique has noted with concern the growing number of compliance issues that due to time constraints the Compliance Committee cannot address. Mozambique's concern is that the IOTC Compliance Programme will fall behind other RMFOs in its progress. If the Commission does not catch up and progress in parallel with other tRFMOs, it will make the IOTC Area of Competence a target for IUU practices.

Issues for Compliance Committee Inputs – immediate and future:

Final approval of science and compliance issues rests with the Commission, however the technical review, fine tuning and final proposal for procedures, processes and resolutions rests with the two technical committees, Science and Compliance. The Science Committee has been long established as one of the core functions of the initial Indo-Pacific Tuna Programme that eventually evolved into IOTC, and its workload necessitated the formation of several working parties to enable it to give appropriate time for professional technical analysis of stock data prior to final recommendations. The Compliance Committee has no such mechanism and with the meeting linked in time with the Annual Session, there is not sufficient time to adequately and professionally address the growing number of compliance issues.

A few issues that Mozambique believes urgently need a mechanism and adequate time for professional analysis by our compliance specialists are presented below. Some issues pertain to Commission processes that should have compliance analysis of impact and inputs, and other are more directly focused on implementation of our compliance resolutions.

Definitions:

1. The absence of any clear definitions in the Agreement for:
 - a. Fishing;
 - b. Fishing vessel;
 - c. Fishing related activities; and *if fishing vessels does not include all carriers and fishing fleet support vessels*, then
 - d. Fishing support vessels.

has created confusion and challenges in interpretation of these activities for the Commission Resolutions as recent as the 2014 CoC meeting when it was noted that definitions in one resolution, Resolution 10/11 on Port State Measures, cannot be legally interpreted as being applicable for all resolutions. Other RFMOs have such definitions and Mozambique suggests that the Compliance Committee, or its technical specialists should work on and agree to clarify these definitions for future compliance operations. Further on this point, the Compliance Committee would need to be aware of the logical issue of the difficulties that would ensue if a general resolution to clarify the meaning of these definitions for the Commission were to differ from definitions already in one other resolution, or from internationally accepted definitions.

Support Vessels:

2. There are several types of support craft and vessels for the tuna fleets, some as single function craft and other as multi-functional support vessels: helicopter spotting craft; bait boats; FADs carriers; searching vessels, often referred to as the advance fishing vessels; supply vessels for food, equipment, etc.; bunker vessels for fuel; and fish carriers – and all support the fishing fleet through advance fishing activities, and others through transshipment during operations to keep the fishing fleet at sea.
3. At present we only have a resolution respecting transshipment of fish between LSTLVs and fish carriers and this Resolution 14/06, has in itself some challenges whereby non-CPC vessels can be identified and listed as carriers for transshipment from CPC LSTLVs. This in itself becomes a concern when we see States like Vanuatu, which provides only carriers, finding it more beneficial to withdraw from IOTC and just get other CPCs to identify its vessels as receiving carriers than be a full member of the Commission. There appear to be no negative impacts for withdrawing from the Commission, and in fact it allows Vanuatu to continue its operations at less cost. For IOTC however, not only was a loss of funding, but it also detracts from the intent of regional cooperation and commitment to compliance and sustainable management.
4. Mozambique queries whether this is what we want?
 - a. Do we want non-CPCs to be permitted to operate in the region without agreeing to be a regional party for overall sustainable management and compliance with its resolutions? Or, do we want to ensure that all vessels operating in the IOTC Area of Competence are fully involved and committed to the Commission measures, even as partial¹ paying Cooperating Non-Contracting Parties to the Commission.
 - b. What are the processes, or what should be the processes (access fees, compliance obligations and possible compliance sanctions) if a non-CPC vessel, identified and recommended by a CPC, contravenes a resolution to which the non-CPC vessel flag

¹ As a side idea, the Commission is always in need of funds, perhaps the WCPFC model whereby any State that benefits from association with, or activities in the Commission Area of Competence, should pay a fee. In WCPFC one of the several requirements for Status of Cooperating Non-Contracting Party is the commitment to pay a portion of the fee it would pay if it were a full Contracting Party.

State is not a party? Related is the question as to the level of responsibility of the CPC identifying the fish carrier for transshipment for compliance processes or sanctions in the case of non-compliance with CMMs by such a carrier. Should our regional commitment to sustainable management include Non-CPCs gaining benefits from operations in the area without a full commitment and accountability for compliance with the rules of the Commission, and at no cost to the non-CPC? Should we be reviewing the withdrawal of Vanuatu from the Commission to provide incentives to encourage it to return to IOTC and the general principle of regional cooperation through membership with formal regional management bodies?

- c. What about the other support vessels noted above? Are they to be regulated as fishing vessels, or *should there be special procedures and compliance mechanisms for such vessels?*

FADs Management

5. What about FADs management? IOTC is in its infancy in FADs management with Resolution 2013/08. For example, can FAD support vessels, e.g., carriers or other support vessels, lay FADs in the closed area, or anywhere in any designated area during closed times as they are 'support' vessels, and not really harvesting fish. We do not need to be reminded that the FADs are aggregating the fish, e.g., fishing, at all times when in the water for later pick-up by the vessel of the FAD owner? This practice begs the question – 'Does this practice of laying FADs in closed areas or during closed seasons negate the intent of the closed area and/or season conservation measure?'
6. Do we have an opportunity to 'fast track' this FADs management process by learning from the advanced management processes in other RFMOs, e.g., use of closed seasons, trial electronic monitoring of FADs to enforce closed seasons and/or monitoring pirate fishing on FADs? Is the IOTC the last 'wild west' ocean area for rather unregulated use of FADs for tuna fishing? What should we do, or how can we catch up with other RFMOs after we fully identify the level of FADs usage in the IOTC Area of Competence?

High Seas

7. **HSBI:** Mozambique notes the progress, albeit very slow on the development of the High Seas Boarding and Inspection (HSBI) Scheme for IOTC and the negative impacts of such slow progress in comparison with other tRFMOs.
8. If such a scheme had been in place, an 'IOTC certified patrol vessel' would have been able to board and inspect a well-known IUU vessel in its Area of Competence to verify its compliance with IOTC Resolutions in December 2013 instead of this vessel being still at large at sea today. This comment pertains to the Nigerian-flagged fishing vessel *Thunder*, black listed in CCAMLR since 2006 and issued an INTERPOL Purple Listing in December 2013. How many other IUU vessels are operating and possibly transshipping IUU tuna in the IOTC Area of Competence while we further fine tune our

resolution. A resolution in place can be amended and enhanced, but the fact that there is no resolution, prevents any boarding and inspection or legal action to protect the tuna resources on our 'open' high seas. Mozambique urges timely completion of this exercise and suggests it is neither timely nor progressive to take the time now to changing a 'proven and working mechanism' into a 'Rolls Royce' edition. Fine tuning and further enhancements can come later, but first let us get a working and proven system in place – and the proposal from IOTC on the table is such a scheme.

Training

9. There are several differing levels of compliance implementing capacity within the region. Would there be merit in developing *regional fishery officer training* standards and regional training packages with regional certification to ensure a standardized and professional level of compliance implementation in the region? Would it not follow that the CoC develop such standards and the Compliance Unit of IOTC Secretariat should be responsible for administering such training and monitoring certification? The benefits Mozambique sees from such a programme is cross certification of Fishery Officers for joint patrols and IOTC High Seas Compliance Operations.
10. The *Regional Observer Transshipment Programme* has such standards and these might also be approved and extended for all national compliance and science observer programmes and/or to a regional science and compliance observer programme in future to facilitate cross certification and embarkation and disembarkation and observer coverage in the future for DWFN-flagged vessels. Such regional standard, certification and science/compliance observer programmes are working and have proven cost effective in other tRFMOs.
11. Mozambique suggested that costs for required capacity building, especially for developing CPCs could be considered through establishment of priority criteria for access to the MPF, an increased MPF, and/or through subject specific donor requests and responses.

IOTC Intra-Regional Cooperation for Compliance

12. This also raises another compliance issue as to whether there should be IOTC procedures for a high seas inspection in the IOTC Area of Competence that reveals serious infractions of another RFMOs conservation measures, e.g., illegal fishing or unauthorized fishing in another convention area.

Observer Programmes

13. Mozambique raises its concerns on the two current IOTC Observer programmes and potential costs to maintain two different observer programmes in future, one for national science observer programmes, which is also being proposed to extend into a regional programme, and the second programme – the current regional science and compliance transshipment observer programme. Can IOTC or its members afford to fund and

maintain separate science and compliance programmes? Experience from other tRFMOs has indicated the costs would be prohibitive. Other tRFMOs have successfully implemented science and compliance observer programmes for several years. Noting the experience of other such programmes, would there not be benefits to IOTC if we studied these other tRFMO observer programmes and learned from their experiences? Would this not ‘fast track’ us to catch up and parallel other RFMOs management capacity? Would it not facilitate exchange of science information, provide information to enable us to also ‘fast track’ our training capacity, and enhance compliance monitoring through the exchange of procedures and information, subject to confidentiality and data security rules?

14. Currently in IOTC, we have reports from our Transshipment Observer provider and also the IOTC Secretariat noting the general lack of compliance, albeit perhaps minor in some instances, of LSTLV and Carriers in the processes. Unfortunately, we do not have time within the CoC meeting to take more than cursory notice of these reports with no time to assess the reasons behind the alleged infractions or actions to resolve these repeated incidents. Observers are a core compliance tool, but Mozambique has concerns respecting the point that if we cannot provide the time and technical expertise to properly review the observer reports, then how are we going to be successful and progress in our compliance programme. Mozambique again, encourages CPCs to find a mechanism for review of these compliance tools and to recommend appropriate actions to the Commission.
15. Monitoring of other regional observer programme initiatives and use of common standards and processes could potentially also result in financial savings in programme development costs. Further, wider observer coverage might also be achieved at a lower cost by monitoring other tRFMO trials using electronic monitoring schemes as are being undertaken in the WCPFC at this time.
16. Finally, common training standards and certification for national and regional observer programmes could assist in addressing DWFN concerns respecting additional costs incurred by having to come to port for an observer change for operations in each EEZ if cross-authorization was to be considered, it would be greatly facilitated by the implementation of common certification standards for observers. Is this not a win-win situation?

Vessel Monitoring Systems (VMS)

17. Although there are several types of vessel monitoring systems, Mozambique will initially focus on the most common – that of *satellite tracking of fishing vessels* with the capacity of providing vessel name, position, course and speed. By IOTC Resolution 2006/03 each CPC was to have implemented a VMS providing vessel position to an accuracy of 500 m by 1 July 2007. A regional VMS, was proposed in 2014, and then reduced to a proposed study, but unfortunately, both suggestions were deferred.

18. Mozambique has experienced significant benefits from use of VMS and combined with regional cooperation has resulted in detection and actions against several IUU infractions. Consequently, Mozambique has long been a supporter of a regional or sub-regional VMS. In 2007 Mozambique approached the Seychelles to be the Centre for a sub-regional VMS to reduce costs and also facilitate information sharing, the latter would have been under very specific confidentiality and security arrangements, but this arrangement did not proceed at that time. Mozambique notes the experiences of other regions where the cost sharing and savings were the driving factors and enabled the least developed States to have very inexpensive access (computer terminal and communications line) to VMS tracking for the vessels in their area with the fishing vessels paying regional capital transponder and communications costs. Mozambique believes that a regional VMS with appropriate access security and information confidentiality rules, would be very beneficial to all CPCs and especially to those least developed CPCs. The small island developing countries of the Forum Fisheries Agency (FFA) in the Pacific have had noticeable success in using regional VMS as a regional and national compliance tool for the past two to three decades. Mozambique *supports* a study of regional VMS usage - the information to be collected, the challenges, rules and mechanisms to ensure security and national confidentiality, system standardization, the benefits, standard operating procedures (SOPs), and costs. Such a study might serve to mitigate the concerns expressed in 2014 by some CPCs. VMS in combination with other vessel tracking systems can be a very effective tool in the compliance toolbox to stop IUU fishing. Confidentiality and data security concerns expressed by individual CPCs have been successfully addressed and accommodated in other RFMO VMS schemes, e.g., NAFO, ICCAT, IATTC, FFA, PNA and WCPFC.
19. Linked to the VMS are the various regional compliance information exchange mechanisms in use today, for example, Mozambique's Intelligence Unit is involved in the Stop Illegal Fishing programme providing information on vessels of interest; the Fish i Africa programme involved in tracking fishing vessels of interest and sharing of the information regionally amongst participating partners; INTERPOL and others in our efforts to stop IUU fishing in our waters and regionally. A key mechanism in these information exchange groups is the *Automatic Identification System (AIS)*, primarily a vessel safety tool utilized on commercial and some fishing vessels. AIS has proven to be a very inexpensive vessel tracking cross check to VMS and also provides information on vessels not using VMS for compliance monitoring such as carrier vessels involved in unauthorized transshipment operations. Mozambique would suggest that CPCs review and consider the idea of making the use of AIS mandatory for all fishing vessels in the region and any support vessels operating in the IOTC Area of Competence.

Port State Measures Agreement (PSMA)

20. Mozambique finds it interesting that all CPCs have agreed to implement Resolution 2010/11 for Port State Measures, yet only three African States have ratified the

Agreement. IOTC CPCs, if they proceeded to ratify what they have already agreed to implement through IOTC, would carry the PSMA 'into force', and Mozambique encourages other CPCs to ratify this Agreement. If there was time in CoC, Mozambique could provide information on the ratification process used in their country with the legal assistance provided by WWF if it would assist others in their efforts.

21. One action that Mozambique has initiated after designating its ports for foreign fishing operators, was the mandatory pre-fishing briefing and port inspection as a mandatory requirement for all national fishers prior to the fishing season and for foreign fishing vessels prior to commencing fishing operations in its EEZ. The advantages of a pre-fishing briefing include: review and update of legislation, reports and new requirements for the Master and Local Agent to facilitate compliance, provision of the opportunity to embark any seamen or observers, checking of all equipment and systems (VMS) in working order prior to fishing and also verification of fish onboard the vessel by species on entry to the EEZ. This pre-fishing liaison has proven beneficial to both parties to alleviate any misinterpretation of license terms or legislation and report requirements prior to the fishing operations. Mozambique recommends such a process for other CPCs as a valuable mitigation and verification mechanism to deter IUU fishing.
22. Mozambique supports the efforts of the Secretariat in the development of an e-PSM monitoring and compliance scheme and its timely conversion into a resolution to assist in stopping IUU fishing in the IOTC Area of Competence. This is another subject meriting open discussions at CoC, but the time constraints of the meeting have not yet permitted such action.

Compliance Reports and Data Gaps

23. The IOTC Science Committee and also Compliance Committee have noted gaps in data and reports. A review of other RFMOs processes and levels of compliance in these matters can assist in identifying those CPCs that are in need of capacity building exercises to mitigate this situation, and also identify those CPCs where such gaps may not be the result of lack of capacity, but perhaps are more deliberate. The questions Mozambique has for the Compliance Committee are:
 - a. Should there be, and can there be an assessment mechanism to identify under which of the two categories noted above the CPCs fit?
 - b. In the case of undeveloped capacity, can there be a criteria for determining priority access to funding for capacity enhancement?
 - c. In the case where capacity exists but information is not being provided, should there be any consequences?

A review of other RFMOs might provide knowledge or ideas of how they have addressed these same issues.

Objection Procedures

24. Mozambique believes that the current objection procedure process in the Agreement is weak and allows CPCs to object for very slim reasons and thus avoid compliance requirements they find distasteful or lack the commitment to implement. This is counter-productive to the intent of the Commission to promote and encourage sustainable and responsible fishing practices. Mozambique is aware of the emerging processes to address this concern in the Conventions of two newer RFMOs, SPRFMO and NPFC whereby the objection process may be used only in specific circumstances and must be supported by other national measures that achieve the same purpose. Mozambique recognizes that IOTC has the greatest number of least developed countries in its membership, a fact that will influence this process. However, Mozambique suggests that we need to find a mechanism whereby objections can be managed in a manner that still implements the gist of resolutions.

Clarification of IUU listing

25. Mozambique, in one of its IUU cases, encountered the opinion from the third party that the current IUU resolution implied a statute of limitations for IUU listing of two years. If such is true, then a tactic of delaying the process regarding an allegation of IUU fishing could negate the intent of the resolution. Mozambique is concerned with this interpretation of the IUU Resolution and suggests that a legal clarification is warranted.
26. Further, on the same case, Mozambique noted that the vessel in question was sold, to another party under the same flag State, without the new owner being aware of the fact that the vessel was under investigation for an alleged infraction. In essence this became a new practice of ‘owner hopping’ as opposed to ‘flag hopping’. Mozambique is concerned that these two practices can negatively impact on the intent and application of the most effective compliance tool for serious infractions – that of IUU listing until the matter is appropriately resolved between parties and to the satisfaction of the Commission. Mozambique suggests that this is also an issue that should be addressed in the CoC. It might be more appropriately reviewed by legal and compliance authorities in a task force or working group of the CoC with the findings and recommendations presented to CoC for the Commission.
27. Linked to IUU Listing, noting that **only** CPCs can list or delist vessels from the IOTC Authorized Fishing Vessel List. Mozambique recognizes that this can cause conflicts in information when a CPC has a vessel that has been found to be IUU and that same CPC forgets, or refuses, to delete this vessel from the IOTC authorized vessel list. In case of flag State forgetting, of refusing to remove an IUU vessel from the Authorized Fishing Vessel List, the Commission could consider two options:

- a. the listing of a vessel by the Commission automatically removes the vessel from the IOTC Authorised Vessel List until the matter is resolved according to the Resolution; OR
 - b. the Executive Secretary be given authority to remove the IUU vessel from the Authorized Fishing Vessel list if not done by the flag State within 30 days after the annual session where the vessel was placed on the IUU list. This is based on the assumption that the IUU list comes into force immediately at the end of the Annual Session.
28. The second issue is the situation where the Secretariat may have information of alleged IUU activity, but under the current rules is not permitted to present this to the Commission. This has been an experience in other RMFOs and Mozambique suggests the authority of the Executive Secretary of IOTC be reviewed to address this matter. One idea for consideration would be the following:
- a. In case of Secretariat aware of alleged IUU operations;
 - i. The Executive Secretary (ES) would be tasked to provide such information to the flag State of the vessel for response back to the ES and reporting to the Commission at its next annual session;
 - ii. If the response back to the ES does not fully resolve the incident, the ES would be tasked to present the incident to the next Session for further action.

Minimum Terms and Conditions for Fisheries Access

29. Mozambique has noted the effectiveness of the use of standard Minimum Terms and Conditions for Access to coastal and small island State EEZs in other RFMOs. Such a scheme could assist in ensuring more equitability in fisheries access Agreements, and also ensure that DWFNs were aware of the minimum standards and conditions to be expected for foreign fisheries access in applicable areas. Mozambique supports the ongoing work on this subject and welcomes ideas from other CPCs as to how this idea could be further developed and implemented.

Use of Flags of Convenience

30. Mozambique notes that discussions at the last CoC discussions revealed two issues:
- a. How does CoC address an alleged IUU infraction for a vessel flagged to a non-CPC that does not respond correspondence from the Secretariat, on behalf of the Commission? Linked is the issue as to the IUU mechanism and should it permit the flag State of the beneficial owner of the alleged IUU vessel to speak on behalf of the vessel instead of the flag State of the vessel concerned?
 - b. Second, is the fact where it was found during discussions that an alleged IUU vessel was in fact using a Flag of Convenience, differing from the flag State of the beneficial owner. Again, the questions may be several as to whether the Commission wishes to continue to permit this process and what might be done to mitigate its consequences. Mozambique suggests that this subject merits further, and possibly lengthy discussion to ensure that there is a mechanism to prevent a

repeat of the confusion experienced in the CoC in 2014. Where can such a mechanism be developed within the current CoC time frames?

Does IOTC need a Working Party on Compliance?

31. Several of the issues noted above have been discussed and resolved in other RFMOs. Many of these also merit attention by the IOTC Commission and will need inputs from the CoC. Mozambique therefore suggests that given the already full schedule of the CoC, then one proven mechanism to enable appropriate discussion and consideration of such issues would be a Working Party on Compliance (WPC), and proposes reconsideration by CPCs of their position of 2014 to enable IOTC Compliance Programme to catch up with that of other tRFMOs.

Costs of a Working party in Compliance

32. Mozambique notes that cost for a WPC was a major concern with respect to the idea in 2014. Mozambique highlights the fact that newer RFMOs are reducing costs by proposing bi-annual meetings to allow time to implement resolutions and assess such actions, albeit with the proviso that any CPC may call an inter-sessional meeting to address a critical situation. Mozambique suggests that IOTC could consider bi-annual meetings of some of the existing working parties where major stock changes are not influenced by one year of fishing, *thus the costs of a Working Party on Compliance might be accommodated within current funding levels.*