

Sanctions, penalties and incentives to promote compliance in the Indian Ocean Tuna Commission (IOTC)

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Acronyms

CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
CM	Conservation Measure
CMM	Conservation and Management Measure
CMR	Compliance Monitoring Report
CMS	Compliance Monitoring Scheme
CMS-IWG	WCPFC Intersessional Working Group established to facilitate the multi-year workplan of tasks to enhance the CMS
CNM	Cooperating non-Member
COC	Conservation and Management Measures Compliance Committee
CPC	Contracting Party and Cooperating non-Contracting Party (collective acronym)
CP	Contracting Party
FAO	Food and Agriculture Organization of the United Nations
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ILO	International Labour Organization
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
ISSF	International Seafood Sustainability Foundation
IUU	Illegal, Unreported and Unregulated
IWC	International Whaling Commission
MCS	Monitoring, Control and Surveillance
MPA	Marine Protected Area
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
PECMAC	Permanent Committee on Monitoring and Compliance
PR	Performance Review
RFMO	Regional Fisheries Management Organisation
SBT	Southern Bluefin Tuna
SCIC	Standing Committee on Implementation and Compliance
STACTIC	Standing Committee on International Control
TCC	Technical Compliance Committee
TCN	Tuna Compliance Network
TOR	Terms of Reference
WCPFC	Western and Central Pacific Fisheries Commission
WPICMM	Working Party on the Implementation of Conservation and Management Measures
UNFSA	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Background

The Fifth Session of the Indian Ocean Tuna Commission (IOTC) Working Party on Implementation of Conservation and Management Measures (WPICMM) met via video conference between 16 to 18 February 2022. The WPICMM adopted Terms of Reference (TOR) for a comparative assessment of existing sanctioning systems in other Regional Fisheries Management Organizations (RFMOs) and/or other relevant international organizations having a mandate over maritime affairs and fisheries (Appendix 3 IOTC–2022–WPICMM05_Rev1). This assessment will be used to inform the development of a schedule of sanctions for non-compliance with IOTC Conservation and Management Measures (CMMs). In adopting the TOR, the WPICMM noted:

- the serious need for capacity building;
- that imposing sanctions on Contracting Parties (CP) and Cooperating non-Contracting Parties (CNPs) (collectively called CPCs) may be premature;
- that the scheme of sanctions should be used only as a last resort, to address cases of serious and/or repeated non-compliance, where all reasonable efforts have been exhausted and proven unsuccessful;
- that there should be consideration of the level of capacity of CPCs when applying sanctions; and
- the need to consider the impact of the implementation of the schemes of sanctions and incentives on CPCs' compliance.

The TOR specifically required a review and comparative assessment of existing schemes of sanctions, incentives and other remedial measures currently implemented by other RFMOs and/or other relevant international organizations. The comparative analysis seeks to understand the:

- status of implementation;
- method of implementation including the legal basis and decision-making processes;
- constraints to implementation; and
- mechanisms to improve implementation.

This report provides a summary of findings that relate to:

- a review and comparative assessment of the schemes of sanctions and incentives implemented;
- the approaches or mechanisms used to support implementation; and
- issues encountered in their implementation.

To assist IOTC in their consideration of sanctions, this report also includes an overview of important definitions and recent initiatives examining compliance assessment processes in the RFMOs. The report also provides an overview of some of the key legal and operational issues that may require additional consideration by IOTC before a potential scheme of sanctions is developed, adopted and effectively implemented.

The development, adoption and effective implementation of any compliance action must respond to the specific needs and operating context of IOTC. To support this, a summary of key elements of IOTC have been provided in Appendix I.

Introduction

The assessment of the implementation of, and compliance with, agreed obligations is a key component of the internationally accepted fisheries governance regime. To fulfill the objective of the *Agreement for the Establishment of the Indian Ocean Tuna Commission* (Agreement) CPCs must effectively implement and comply with their obligations. Most RFMOs have recognized a need to have a structured

process to assess the implementation of, and compliance with, obligations and have adopted compliance assessment processes. Compliance assessment processes provide a framework to assess implementation and compliance in a structured and consistent way and to identify trends in compliance over time. Compliance assessment processes seek to improve the performance of an RFMO and to support CPCs to better meet their obligations. It has been over a decade since the compliance assessment processes were adopted by the tuna RFMOs and a great deal of work has been dedicated to strengthening and enhancing the processes. The adoption of schemes of sanctions has been identified as one way of improving compliance assessment and supporting RFMOs achieve their objectives. However little work has been undertaken to assess if the application of sanctions would have a direct impact on rates of compliance or if they can be effectively applied in the RFMO context.

It is important for IOTC to have a shared understanding of what is meant by sanctions and their role in compliance. A sanction is defined as *a punitive or coercive measure or action that results from failure to comply with a law, rule, or order as a means of enforcing the law.*¹ In the international context, sanctions may be considered as *political and economic decisions that are part of diplomatic efforts by countries, multilateral or regional organizations against States or organizations either to protect national security interests, or to protect international law, and defend against threats to international peace and security.*² It is accepted that to be dissuasive, a sanction regime needs to include penalties that are sufficiently high to act as a deterrent.³ Creating an economic cost for non-compliance creates an incentive for compliance if the likelihood of being caught and held accountable are reasonable.⁴

Sanctions are often imposed as part of schemes that seek to both address non-compliance and maximize the rate of compliance with fisheries rules. It is important to note that sanctions are only one mechanism to promote compliance.⁵ The term compliance describes the level of conformity with legal obligations. In fisheries, the optimal level of compliance is that which holds the level of non-compliance at an acceptable level, which can be maintained at a reasonable cost while not compromising the integrity of fisheries management or ecological sustainability and ensuring ongoing social license and legitimacy.⁶ To achieve optimal levels of compliance, specific compliance actions need to be targeted to specific behavior. This can cover a range of actions from awareness raising and education through to enforcement, including prosecution and the application of sanctions. Compliance is best achieved through the application of activities that support and promote voluntary compliance by the largest majority possible, balanced with effective enforcement mechanisms that target the minority that choose not to comply. However, enforcement action is often expensive and resource intensive, so promoting and encouraging voluntary compliance is the most cost-effective means of compliance delivery.⁷ In the RFMO context it important to be clear that the application of sanctions at the vessel level is the responsibility of the CPC and that the RFMO would apply sanctions at the CPC level. There is therefore a need to focus on the actions taken by a CPC in respect of their flagged vessels and IOTC obligations.

Recent Initiatives

There have been several recent initiatives that have examined the compliance assessment processes implemented by RFMOs and these provide a range of recommendations for their strengthening. The

¹ Merriam-Webster Dictionary

² Cortright, David (2000). *The sanctions decade: assessing UN strategies in the 1990s*. Lopez, George A. Boulder, Colo.: Lynne Rienner Publishers.

³ Vega, Maria Luz; Robert, René (2013). *Labour inspection sanctions: law and practice of national labour inspection systems*; International Labour Office, Labour Administration and Inspection Programme (LAB/ADMIN). - Geneva: International labour Organisation (ILO).

⁴ Vega, Maria Luz; Robert, René (2013). *Labour inspection sanctions: law and practice of national labour inspection systems*; International Labour Office, Labour Administration and Inspection Programme (LAB/ADMIN). - Geneva: International labour Organisation (ILO).

⁵ Meltzer, E., & Fuller, S. (2009). *The Quest for Sustainable International Fisheries: regional efforts to implement the 1995 United Nations Fish Stocks Agreement*. NRC Research Press.

⁶ Australia's National Compliance Strategy 2022-2026 – National Fisheries Compliance Committee (NFCC)

⁷ Meltzer, E., & Fuller, S. (2009). *The Quest for Sustainable International Fisheries: regional efforts to implement the 1995 United Nations Fish Stocks Agreement*. NRC Research Press.

development and implementation of a scheme of sanctions is a common recommendation across these initiatives.

From 2020 to 2022, the Pew Charitable Trusts (Pew) and the International Seafood Sustainability Foundation (ISSF) convened a series of workshops on compliance best practice in RFMOs. The third workshop focused on the mechanisms that currently exist in RFMOs to respond to non-compliance. While a range of ideas were posed, there was little to justify these and limited detail on how they might be effectively implemented in the RFMO context. However, some common themes did emerge and these are relevant to the application of any scheme of sanctions including:

- RFMOs must define what constitutes a serious offence and what constitutes persistent non-compliance;
- RFMOs must develop a robust mechanism to document and follow up on any actions applied in respect of non-compliance;
- the consequences of non-compliance need to be predetermined;
- there is a need to better understand the drivers of non-compliance and develop corrective actions to specifically respond to these drivers.

It is worth noting that all three workshops highlighted that the compliance assessment processes must be applied to improve the overall performance of an RFMO and that the punitive nature (real or perceived) of many of the processes is not supporting an improvement in compliance. These points may provide guidance to IOTC in the consideration of measures to promote compliance including a scheme of sanctions.

In 2022, Pew and ISSF convened an expert group to develop *Approaches to Evaluate and Strengthen RFMO Compliance Processes and Performance – a Toolkit and Recommendations*. The document provides a range of recommendations on compliance responses that may be useful to consider when developing a scheme of sanctions but again, there is limited guidance on how these would be effectively implemented. The document does highlight the need for robust follow up mechanisms and that the compliance assessment process must seek to improve the overall performance of an RFMO. Importantly, the document provides principles on how compliance assessment processes may be operated to ensure their long-term success. Eight principles are recommended and considered as essential in the design and operation of effective RFMO compliance assessment processes (Appendix II I). These principles are intended to apply to all aspects of compliance assessment including a scheme of sanctions and would provide useful guidance for effective implementation.

In 2022, the Tuna Compliance Network (TCN) completed the *Tuna Regional Fisheries Management Organizations Compliance Assessment Processes – A Comparative Analysis*. This report made several recommendations that are intended, in the first instance, to address the key “pain points” identified by the analysis as requiring improvement. The report did not include any specific recommendations on schemes of sanctions as the study identified a need to refine and strengthen the compliance processes as a priority including the number and complexity of reporting obligations, the annual reporting templates and the use of data and information.

Comparative Assessment

The TOR required a review and comparative assessment of existing schemes of sanctions, incentives and other remedial measures currently implemented by other RFMOs and/or relevant international organizations. This proved challenging given the lack of existing schemes in the RFMOs and other relevant international organizations.

This report provides an overview of the compliance responses adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the International Commission for the Conservation of Atlantic Tunas (ICCAT), Northwest Atlantic Fisheries Organization (NAFO) and North East Atlantic Fisheries Commission

(NEAFC). There is only a brief overview of the work proposed by the Western and Central Pacific Fisheries Commission (WCPFC). A range of compliance responses have been adopted by RFMOs but only three, CCSBT, ICCAT and IOTC have adopted a scheme of sanctions but these are limited in their scope and have suffered from a lack of full implementation.

Several international organizations were examined including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Maritime Organization (IMO), the International Labour Organization (ILO) and the International Whaling Commission (IWC). While these organizations do rely on national implementation of obligations, only CITES has adopted a scheme of sanctions.

CITES has adopted an approach to compliance that is supportive and non-adversarial that seeks to ensure long-term compliance. CITES has adopted compliance procedures that include a range of measure to achieve compliance including:

- provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;
- request special reporting from the Party concerned;
- issue a written caution, requesting a response and offering assistance;
- recommend specific capacity-building actions to be undertaken by the Party concerned;
- provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned;
- send a public notification of a compliance matter through the Secretariat to all Parties advising that compliance matters have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
- issue a warning to the Party concerned that it is in non-compliance, e.g. in relation to national reporting and/or the National Legislation Project; and
- request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion.

In cases of unresolved and persistent non-compliance and the Party is showing no or little intention to achieve compliance, CITES may suspend all trade in specimens of one or more CITES-listed species. A recommendation to suspend trade is always specifically and explicitly based on the Convention and on any applicable Resolutions of the Conference of the Parties. Thirty-one countries are currently subject to trade suspensions. The CITES Convention is focused on the international trade of threatened species and thus provides a framework for trade including certification. The Convention provides the means by which trade sanctions may be imposed by giving the Conference of Parties the ability to “make whatever recommendations it deems appropriate”.

CITES has recently adopted a Compliance Assistance Programme aimed at providing targeted support to Parties facing persistent compliance challenges. The Compliance Assistance Programme has three objectives:

- accelerate compliance and help Parties to understand and prioritize the implementation of recommendations at the national level;
- avoid duplications and ensure better alignment of interventions; and
- enhance the quality of assistance, promote common vision, address gaps that cannot be addressed in isolation and create the conditions for joint funding, planning and delivery.

To better support IOTC in their considerations and to fill the gap of other schemes to assess, legal guidance was sought from two international fisheries law experts and their advice has been reflected in the discussion in this report.

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

CCAMLR adopted Conservation Measure (CM) 10-10 on the CCAMLR Compliance Evaluation Procedure (CCEP) in 2010 and it was implemented in 2011. CM 10-10 provides compliance status categories and suggested actions including *Review by the Standing Committee on Implementation and Compliance (SCIC) and Commission and recommend further action(s) by Commission* for non-compliance and serious non-compliance. The CM is silent on what the further actions might be undertaken and there is no policy that would guide the consideration of these actions.

CCAMLR's CCEP was developed and implemented in a way that focused heavily on vessel level compliance rather than CP responses to non-compliance. The CCEP has encountered challenges when it comes to the application of compliance statuses and these often cannot be agreed, even in the case of minor non-compliance. It has been noted that the CCEP has been influenced by broader issues at the Commission level including the consideration of Marine Protected Areas (MPAs). In 2022, the SCIC considered, but did not adopt, a proposal to revise CM 10-10 to focus the CCEP on CP's national level compliance responses (reporting, follow up, enforcement and future mitigation) to compliance issues rather than the gravity of the underlying infraction.

Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

In 2018, CCSBT adopted a *Corrective Actions Policy* that sets out a framework to respond to evidence of non-compliance by a Member and seeks to assist Members to achieve capacity to effectively comply with CCSBT obligations. The policy identifies three main types of non-compliance::

- administrative failings, including not fully implementing effective systems and processes to support obligations (e.g., using the wrong catch reporting forms, failure to submit required data, information and reports);
- failure by Members to take action against non-compliance by fishers, farmers, processors, exporters or importers within their jurisdiction (e.g., failure to follow-up, investigate, report on and potentially prosecute identified non-compliance); and
- deliberate actions by Members to avoid meeting obligations.

The policy provides guidance on corrective actions to be applied and highlights the need to consider the circumstances and degree of non-compliance. The corrective actions provided for in the policy include:

- compliance assistance/capacity building programmes;
- analytical assistance;
- technology purchase;
- quota pay back;
- quota reductions in national catch allocations;
- increased monitoring requirements;
- public disclosure; and
- trade or market restrictions consistent with international law.

The quota pay back, quota reductions, increased monitoring requirements (restrictions on transshipment or landings) and trade or market restrictions can all be considered sanctions for non-compliance and are applied at the Member level in response to over-catch of quota. The pre-establishment of consequences for over-catch is considered to work well by reducing the influence of politics in the decision-making. However, CCSBT still faces challenges in ensuring Members respond to the requirements applied to them in cases of non-compliance. There have been some cases where Members have refused to pay back their over-catch. This would suggest that while CCSBT does have the ability to apply a sanction in the case of over-catch, there can still be challenges in ensuring this action has the intended consequence.

In 2021, CCSBT conducted a third Performance Review (PR2021). The PR2021 noted that the *Corrective Actions Policy* does not provide adequate deterrence for most non-compliance as it is only focused on the over-catch of Southern Bluefin Tuna (SBT). The PR2021 also noted that there are limitations in the application of corrective actions as it relies on consensus decision making. The PR2021 resulted in a range of recommendations to improve compliance, including the:

- adoption of capacity building programs and work plans;
- strengthening of measures to ensure that non-compliance, including persistent non-compliance is addressed, and effective punitive and corrective actions are applied; and
- development of more robust feedback and follow-up mechanisms.

The PR2021 noted that CCSBT should add corrective measures to the *Corrective Actions Policy* for a range of CMMs, and that those actions should be imposed by the Secretariat or other external body as a disincentive for non-compliance.

In 2022, the Compliance Committee recognized the limitations of the *Corrective Actions Policy* in addressing non-compliance other than quota over-catch. In response, the Compliance Committee developed a work plan for 2023 that included a review of the *Corrective Actions Policy*. The review is to include proposals for new tools that can be adopted to incentivize better compliance amongst Members.

International Commission for the Conservation of Atlantic Tunas (ICCAT)

ICCAT adopted *Recommendation 06-13 Concerning Trade Measures* in 2006. The Recommendation provides the basis to apply the adoption of non-discriminatory trade restrictive measures to CPCs and non-Contracting Parties (NCPs) that fail to meet their ICCAT obligations (in the cases of CPCs) or their obligations under international law to cooperate with ICCAT (in the case of NCPs). The Recommendation provides comprehensive guidance on the evaluation of non-compliance, decision-making and the right of reply. The Recommendation does note that for CPCs, actions such as the reduction of existing quotas or catch limits should be implemented before consideration is given to the application of trade restrictive measures. It further states that trade measures should be considered only where such actions either have proven unsuccessful or would not be effective. To date, the Recommendation has only been applied in a couple of circumstances and there is a lack of political will to utilize the provisions in the Recommendation more broadly.

ICCAT adopted *Recommendation 11-15 on Penalties Applicable in the Case of non-Fulfilment of Reporting Obligations* in 2015. The Recommendation provides a “no data, no fish” approach. A CPC that has not provided data by the end of a year will receive a letter in January of the following year advising them of a prohibition or continued prohibition on fishing. The Recommendation has been applied to twenty-eight CPCs since 2013 and currently, three CPCs are prohibited from fishing. Once data is provided by a CPC subject to a prohibition, a letter is sent advising them that the prohibition has been lifted. All CPCs are also advised of prohibitions and those that have been lifted. The Recommendation is silent on the response to cases where a prohibition is in place but fishing does occur and this creates some challenges to its effective implementation. The Recommendation does create a significant amount of work for the Secretariat and is considered to have limited impact on level of compliance.

In 2016, ICCAT adopted *Resolution 16-17 on Establishing an ICCAT Schedule of Actions to Improve Compliance and Cooperation with ICCAT Measures*. The Resolution guides the determination of the severity of non-compliance and required or potential actions to address non-compliance. The Resolution seeks to provide a way to address non-compliance in a consistent, fair, and transparent way while remaining flexible to address the unique circumstances of CPCs.

The Resolution has suffered from a lack of effective implementation since its adoption and recent work has focused on addressing this. In 2021, the Chair of the Compliance Committee and the ICCAT Secretariat submitted *Working Paper on Draft Schedule of Actions: Severity of Types on Non-Compliance with Specific ICCAT Provisions*. This paper seeks to progress the implementation of the Resolution by

providing a draft severity table that lists the level of severity of types of non-compliance with specific ICCAT provisions. The table is intended to provide guidance to the Conservation and Management Measures Compliance Committee (COC) and ensure coherence among cases and over time. The paper does note the need for each case to be evaluated before a final decision is made. In 2022, COC agreed to adopt a Schedule of Compliance Issues and Corresponding Actions that includes:

- the type of issue;
- the level of severity (Year 1 = Minor non-compliance, Year 2 = Considerable non-compliance, Year 3 = Significant non-compliance and Year 4 and subsequent years = Very significant non-compliance);
- warranted action by COC;
- mitigating circumstances; and
- aggravating circumstances.

The Schedule provides that mitigating circumstances may reduce the severity by one level and aggravating circumstances may increase severity by one level. The warranted actions provided in the Schedule include:

- letter of Concern requesting rectification;
- capacity building and technical assistance;
- data improvement and/or reporting plan with required reporting on implementation;
- fishery restrictions;
- enhanced monitoring, control and surveillance (MCS) requirements;
- temporary quota reductions; and
- responsive actions in accordance with *Recommendation 06-13*.⁸

It is expected that the Resolution will be implemented in 2023 but several challenges remain, including broader issues with the compliance assessment process, decision-making and CPC capacity.

Northwest Atlantic Fisheries Organization (NAFO)

NAFO's *Conservation and Enforcement Measures* provide a range of procedures relating to infringements including the duties of the inspecting CP and flag State CP. There are clear obligations on a flag State CP that has been notified of an apparent infringement including taking immediate judicial or administrative action in conformity with the national legislation. The sanctions applicable in respect of infringements must be proportional to the severity of the offence. CPs are required to report on the status of prosecution for apparent infringements including until there has been a final decision. What is useful from the NAFO approach is the articulation of infringements that are considered serious, including:

- fishing an "Others" quota without prior notification to the Executive Secretary contrary to Article 5;
- fishing an "Others" quota more than five working days following closure by the Executive Secretary contrary to Article 5;
- directed fishing for a stock which is subject to a moratorium, or for which fishing is otherwise prohibited, contrary to Article 6;
- fishing in a closed area, contrary to Article 9.6 and Article 17;
- directed fishing for stocks or species after the date of closure by the flag State Contracting Party notified to the Executive Secretary contrary to Article 5;
- fishing with a bottom fishing gear in an area closed to bottom fishing activities, contrary to Chapter II;
- fishing with an unauthorized mesh size, grid or grate bar spacing, or without the use of grid or grate, contrary to Article 13;

⁸ Reserved for very significant non-compliance.

- fishing without a valid authorization issued by the flag State Contracting Party contrary to Article 25;
- mis-recording of catches contrary to Article 28;
- failing to carry or interfering with the operation of the satellite monitoring system contrary to Article 29;
- failure to communicate messages related to catch contrary to Article 12.1(a) or Article 28;
- obstructing, intimidating, interfering with or otherwise preventing inspectors or observers from performing their duties;
- committing an infringement where there is no observer on board;
- concealing, tampering with or disposing of evidence related to an investigation, including the breaking or tampering of seals or gaining access to sealed areas;
- presentation of falsified documents or providing false information to an inspector that would prevent a serious infringement from being detected;
- landing, transshipping or making use of other port services:
- in a port not designated in accordance with the provisions of Article 43.1; and
- without authorization of the port State referred to in Article 43.6. (q) failure to comply with the provisions of Article 45.1.

The NAFO approach is anchored in obligations on CPs to undertake at-sea surveillance and inspection and to designate NAFO inspectors. Infringements identified and actions taken by CPs are considered by the Standing Committee on International Control (STACTIC) and reported in the Annual Fisheries and Compliance Review. Where two or more CPs disagree on the interpretation or application of the *Conservation and Enforcement Measures* as they relate to infringement several steps are provided in the NAFO approach, including:

- CP consultation with a view to resolving their disagreement;
- the Chair of STACTIC shall at the request of one CP, convene a special meeting of STACTIC to consider the dispute and seek to recommend a resolution;
- the transmission of a report of a special meeting of STACTIC to all setting out its findings and recommendations; and
- follow up special meeting/s to consider the report and to take appropriate action.

NAFO however does not apply a scheme of sanctions or other corrective actions to CP non-compliance and does not have any work proposed to develop these.

North East Atlantic Fisheries Commission (NEAFC)

The NEAFC Scheme of Control and Enforcement provides guidance on the infringements to be applied by CPs including infringement procedures, follow up actions, measures by CPs and reporting. What is useful from the NEAFC approach is the articulation of infringements that are considered serious, including:

- fishing without a valid authorization issued by the flag CP;
- fishing without or after attainment of a quota;
- use of prohibited fishing gear;
- serious mis-recording of catches;
- repeated failure to comply with the provisions of Articles 11, 12, and, as appropriate, 13;
- landing or transshipping in a port not designated in accordance with the provisions of Article 21;
- failure to comply with the provisions of Article 22;
- landing or transshipment without authorization of the port State as referred to in Article 23;
- preventing an inspector from carrying out his duties;
- directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- falsifying or concealing the markings, identity or registration of a fishing vessel;

- concealing, tampering with or disposing of evidence relating to an investigation;
- multiple violations which together constitute a serious disregard of CMMs;
- engaging in transshipment or joint fishing operations with vessels of a non-Contracting Party which has not been accorded the status of active co-operating non-Contracting Party in accordance with Article 34b; and
- supplying any provisions, fuel or other services to vessels that have been placed on the IUU lists established in accordance with Article 44(3).

The NEAFC Scheme of Control and Enforcement requires CPs to follow up on cases and to report without delay any serious infringement to the Secretariat. The NEAFC Scheme of Control and Enforcement is anchored in obligations on CPs to undertake at-sea surveillance and inspection and to designate NEAFC inspectors. Infringements identified and actions taken by CPs are considered by the Permanent Committee on Monitoring and Compliance (PECMAC) and reported in the annual Compliance Report that is adopted by the Commission. NEAFC however doesn't apply a scheme of sanctions or other corrective actions to CP non-compliance and does not have any work proposed to develop these.

Western and Central Pacific Fisheries Commission (WCPFC)

The WCPFC Compliance Monitoring Scheme (CMS) was established by CMM 2010-03 as a trial during 2011 to 2015. A revised CMM was implemented during 2016 to 2018. During this time the CMS has undergone significant developments and strengthening. The current CMM, as in previous CMMs, provides a compliance status table that identifies responses to non-compliance including reporting on non-compliance obligations and other responses as determined by the Commission. The CMM is silent on what the other responses might be and there is no policy that would guide the consideration of these actions.

During 2017, the CMS was reviewed by an Independent Panel to develop recommendations to improve compliance and to strengthen the implementation of the CMS. In 2018, an Intersessional Working Group was established to facilitate the multi-year workplan of tasks to enhance the CMS (CMS-IWG). In 2021, the CMS-IWG was tasked by the Commission to progress four prioritized streams of intersessional work that will extend until 2023:

- the development of a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission;
- the development of audit points to clarify the Commission obligations assessed under the CMS, as well as a checklist to be used by proponents of any proposal to include a list of potential audit points for the consideration of the Commission;
- the development of a process for Technical Compliance Committee (TCC) to consider the aggregated tables alongside the draft Compliance Monitoring Report (CMR); and
- appropriate compliance assessment decision making processes.

In 2022, the Commission tasked the CMS-IWG to develop corrective actions to encourage and incentivize compliance with the Commission's obligations, where non-compliance is identified. This work will be undertaken during 2023 and seeks to improve how the Commission considers and responds to non-compliance.

Despite the many advancements in the WCPFC CMS, it has faced several challenges in recent years. It is widely considered that there exists an imbalance between the information available for monitoring compliance between the longline and purse seine fisheries and this results in higher levels of non-compliance being identified in the purse seine fisheries. It has also been noted that compliance with some obligations cannot be independently verified from the available data sources. These two issues create an imbalance in the CMS and as a result it has been deferred for two years. This is important to note as it highlights that any inequities in compliance assessment can create significant challenges to implementation and this would include the application of sanctions. It also raises the possibility that

the adoption of a scheme of sanctions may make the subsequent adoption of strengthened monitoring and control measures challenging.

Discussion

Only three RFMOs have adopted CPC-level sanctions, CCSBT, ICCAT and IOTC. The ICCAT and IOTC approaches are limited in scope and have suffered from a lack of effective implementation and therefore have had limited impact on improving compliance. The CCSBT approach has been more successful but is also limited in scope and challenges remain regarding effective implementation.

Other efforts to develop effective corrective actions have been limited and/or are only just being considered by the RFMOs. This is occurring in parallel to the broader consideration of the compliance assessment processes and measures to streamline, strengthen and enhance them. There are several overarching challenges to implementing a scheme of sanctions in an RFMO, including:

The compliance assessment processes are based largely on data and information reported by CPCs, or “self-reported”. There is limited ability for the independent verification or validation of this data and information. This means that the basis for compliance assessment is unequal and the application of a scheme of sanctions based on this would be unfair. A scheme of sanctions may act as a disincentive to strengthen independent data and information sources, such as observer coverage, as this is likely to identify potential non-compliance.

There are inherent and explicit inequities between CPCs and this has implications for a scheme of sanctions. The UN Fish Stocks Agreement (UNFSA) provides for the recognition of the special requirements of developing States including the provision of assistance to developing States (Article 24, paragraph 1). This assistance is to be directed at MCS, compliance and enforcement including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment (Article 25, paragraph 3(c)). UNFSA therefore highlights the need to focus efforts on encouraging compliance rather than penalizing non-compliance.

UNFSA also requires that measures adopted by an RFMO do not transfer a disproportionate burden of conservation action onto developing States (Article 24, paragraph 2c). While efforts are made to address this, most RFMOs have failed to do so consistently and the tuna RFMOs have identified that obligations may be:

- duplicative and inconsistent;
- continually expanding and changing in nature;
- challenging to adopt into national law;
- challenging to implement in practice, for example, observer requirements of vessels that cannot physically accommodate observers (IOTC);
- contradictory, for example, requirements for the release of non-target species and requirements relating to the full utilization of retained catches of non-target species (IATTC); and
- subject to differing interpretations.

This may create undue burden on CPCs, particularly for developing CPCs. This may result in an unfair basis by which to apply a scheme of sanctions.

The participation in a RFMO is voluntary and there is no obligation on a State to join an RFMO. This means that the application of a sanction on a CPC could have unintended consequences such as the withdrawal of that CPC. This would directly undermine the objective of a RFMO.

There are RFMO obligations that relate to a State’s role as a port State or a coastal State. While these obligations must be implemented and complied with at the RFMO level, they also fall within a State’s sovereignty including port State measures (PSM) and those that relate to

coastal State obligations. There may be challenges in applying a sanction for non-compliance that relates to an obligation that falls within a State's sovereignty.

To apply sanctions, the obligations must be clear and there must be a shared understanding of what is required by an obligation and the threshold at which a sanction would be applied. RFMOs would have to agree what constitutes a serious offence and what is persistent non-compliance. RFMOs would need to have a better way to identify the root causes of non-compliance and understand the motivation for non-compliant behavior. These issues need to be addressed before a scheme of sanctions could be developed and effectively implemented. There would be a need to ensure that minor non-compliance across a range of obligations, that may represent systemic issues, can be effectively identified and addressed. If there is a focus on single issue of serious non-compliance, this systemic non-compliance could be overlooked. When examined in isolation, many issues identified can be considered of a minor technical or administrative nature. However, when taken in their totality, these minor technical or administrative issues become more serious and start having an impact on fishery management arrangements. They also have significant impacts on the workload of the Secretariat and CPCs.

RFMOs operate within decision-making frameworks that may impact the ability to apply sanctions fairly and consistently. There is a need to ensure that due process is provided to support the considerations and application of sanctions and RFMOs may be limited in their ability to adequately provide for this.

Recommendations

Reflecting the concerns highlighted by the WPICMM05, this assessment supports the conclusion that the adoption and implementation of a scheme of sanctions is premature. It is recommended that IOTC focus efforts on strengthening capacity development, expand efforts to encourage compliance and understand what drives non-compliance. If a scheme of sanctions is to be pursued, there is more work needed to understand the impact this scheme may have and the legal basis by which it might be applied.

It is unclear at this stage, if a scheme of sanctions would improve compliance in the context of an RFMO, some evidence would suggest it may have the opposite impact. It is clear however, that the application of sanctions in an RFMO would be particularly challenging. Considering this, several recommendations have been developed that seek to address some of the broader issues that require attention before further consideration of a scheme of sanctions is pursued.

Capacity Development and Technical Assistance

IOTC implements comprehensive capacity development and technical assistance initiatives that seek to strengthen the implementation of CMMs. While these initiatives are more advanced than in other RFMOs, there may be some benefit in the independent review of these to identify their impact and to develop recommendations for their strengthening. This would provide the foundation to:

- systematically identify capacity development and technical assistance needs;
- better understand the drivers of non-compliance;
- identify best practice approaches; and
- prioritize capacity development, technical assistance needs and to identify resourcing requirements.

This would provide the basis to develop a *Capacity Development and Technical Assistance Strategy* that could include objectives, identify priorities, clarify core capabilities, identify, and address weaknesses and mitigate risks. This strategy should include mechanisms for monitoring and evaluation to ensure its effective implementation. This approach would support IOTC in meeting its obligations in respect of the special requirements of developing States.

Obligations

To develop and implement a scheme of sanctions, IOTC must answer several key questions, including:

- what constitutes serious or persistent non-compliance;
- what drives serious or persistent non-compliance; and
- what are the consequences of serious or persistent non-compliance.

As noted in the *Strengthening the IOTC Compliance Assessment Methodology* report, there was a need to review the reporting requirements contained within CMMs to harmonize and streamline them. Some work was advanced to respond to this need. In 2019, the WPICMM was asked to consider this issue in detail. Work has also been undertaken on “legal scrubbing” of the CMMs and it is important that IOTC implement the outcomes of this work as a matter of priority. This is urgently needed for IOTC to improve its compliance assessment process and to answer some of the key questions noted above. This provides the basis to prioritize CMMs to be assessed in any given year and to identify the specific provisions that are to be evaluated. This prioritization would focus the compliance assessment process on priority CMMs and reduce the burden of the processes by limiting the number of CMMs to be assessed.

As the WPICMM05 noted, sanctions should be used only as a last resort, to address cases of serious and/or repeated non-compliance, where all reasonable efforts have been exhausted and proven unsuccessful. As noted, it is premature for IOTC to be considering a scheme of sanction. Rather is recommended that IOTC build on its compliance assessment approaches and adopt

- a capacity development plan approach; and
- an independent compliance review approach.

Capacity Development Plans

A capacity development plan approach⁹ would be implemented where a CPC cannot meet a particular obligation/s due to a lack of capacity and triggers an agreed threshold (e.g., a rate of compliance of sixty percent or less rate for a period of two years). A CPC would then be required to develop a plan that:

- identifies and explains what is preventing that CPC from meeting its obligations;
- identifies the capacity assistance needed to meet obligations;
- estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary; and
- sets out an anticipated timeframe in which if the identified assistance needs are provided to meet that obligation.

To strengthen this approach, CPCs may be supported by the Secretariat and/or external services to develop their plans. These plans would provide the basis for a CPC to request specific support from the Compliance Committee and provide the means to identify resources to provide this support. The Compliance Committee would annually review the assistance requested and any assistance provided.

Independent Compliance Review

For those CPCs that consistently fail to meet their obligations (e.g., a rate of compliance of forty percent or less in any given year or a history of systemic non-compliance), it is recommended that IOTC consider the adoption of an independent compliance review approach¹⁰ that would provide an in-depth examination of a CPCs legal, institutional and operational capacity to implement and comply with its obligations. This approach would:

- be undertaken by an independent service provider in consultation with the relevant CPC and the Secretariat;
- be undertaken over an extended period (six months to a year);

⁹ This recommendation is based on the WCPFC CMS CMM that makes special provisions for Small Island Developing States or Participating Territories and the Philippines.

¹⁰ This recommendation is based on CCSBT’s Quality Assurance Review (QAR) approach.

- be guided by TOR that identify specific obligations to be considered;
- require extensive information and evidence gathering and use a range of verifiable data and information sources; and
- provide recommendations on issues requiring improvement.

This approach would require adequate resourcing and clear guidelines on how the recommendations are to be adopted by the CPC. This approach would have several benefits, by:

- providing a comprehensive understanding of the root cause(s) of non-compliance for a particular CPC;
- providing a robust mechanism to encourage compliance rather than being punitive in nature; and
- promoting a more positive compliance environment that seeks to support CPCs.

These two approaches provide robust responses to compliance and would provide effective mechanisms to identify and address non-compliance in a supportive and non-adversarial way. It is recommended that IOTC focus on these approaches rather than the development of a scheme of sanctions. Recognizing the limitations noted above of such a scheme and the limitations on IOTCs time and resources.

Appendix I – Indian Ocean Tuna Commission (IOTC)

The development, adoption and effective implementation of any compliance action must respond to the specific needs and operating context of IOTC. To support this, a summary of key elements of IOTC have been provided in this section.

Compliance Assessment

To fulfill the objectives of the Agreement, CPCs must effectively implement and comply with their obligations. The objective of the Agreement is to promote the conservation and optimal utilization of tuna and tuna-like stocks covered by the Agreement, and to encourage sustainable development of these fisheries. The Preamble of the Agreement notes the special interests and needs of developing countries including to benefit equitably from the fishery resources.

The Agreement requires CPCs to ensure that such action is taken, under its national legislation, including the imposition of adequate penalties for violations, as may be necessary to make effective the provisions of this Agreement and to implement CMMs which become binding on it.

The IOTC Compliance Committee was established in 2003, as permitted under Article XII.5 of the Agreement, and its mandate, objectives and functions are detailed in the *Rules of Procedure (Appendix V) The Compliance Committee - Terms of Reference and Rules of Procedure (2022)*. The rules also provide the basis for IOTC's compliance assessment process that was implemented in 2011 to:

- review each individual CPC's compliance with binding IOTC Conservation and Management Measures adopted by the Commission and make such recommendations to the Commission as may be necessary to ensure their effectiveness;
- compile reports, with the help of the IOTC Secretariat, based on information submitted by CPCs in accordance with the various Resolutions adopted by the Commission and, which will form the basis for the compliance examination process;
- develop a structured, integrated approach to evaluate the compliance of each CPC against the IOTC Resolutions in force. The Chairman of the Compliance Committee, assisted by the IOTC Secretariat, will identify, select and transmit the significant non-compliance issues to each CPC and submit them for discussion at the Compliance Committee meeting;
- issue its opinion on the compliance status of each CPC at the end of the meeting. Non-compliance with the binding IOTC CMMs will lead to a declaration of non-compliance by the Compliance Committee and recommend suitable actions for consideration of the Commission; and
- develop a scheme of incentives and sanctions and a mechanism for their application to encourage compliance by all CPCs.

The compliance assessment process has several steps (Table 1) and provides the basis for the Compliance Committee to make recommendations in relation to implementation and compliance issues and provides an opinion on the compliance status of each CPC.

CPCs	Secretariat	Compliance Committee
<p>CPCs must prepare a Report of Implementation that:</p> <ul style="list-style-type: none"> • describes the actions taken, under national legislation, in the previous year to implement conservation and management measures adopted in the previous year (including the imposition of adequate penalties for violations); • describes the actions taken, under national legislation, to implement conservation and management measures adopted by the Commission in the previous year; and • includes data and information reporting requirements. <p>CPCs must also complete a Compliance Questionnaire provided by the Secretariat.</p> <p>No compliance statuses are assigned by CPCs.</p>	<p>The Secretariat develops assessment criteria that is consider and approved by the WPICMM.</p> <p>The Secretariat updates and circulates a Compliance Report template and a Compliance Questionnaire that includes all the obligations to be assessed.</p> <p>Based on the responses provided in the Compliance Questionnaire, the Reports of Implementation and information in National Scientific Reports the Secretariat prepares a Compliance Report for each CPC. The Secretariat assigns a draft compliance status for each obligation for each CPC.</p> <p>The Secretariat prepares <i>Summary Report on the Level of Compliance</i> that summarizes the level of compliance with some of the more important CMMs.</p> <p>The information is presented by CPC and by CMM. The paper provides the rates of compliance for each CPC and relevant obligations and provides commentary on compliance trends and progress.</p> <p>The Secretariat also prepares an <i>Implementation of Recommendations Relevant to the Compliance Committee</i> paper that provides the basis for the Compliance Committee to consider the progress made during the intersessional period, in relation to the recommendations for actions by CPCs, the Chair of the Compliance Committee and/or the IOTC Secretariat.</p> <p>The Secretariat also prepares a Summary Report on Compliance Support Activities that provides a summary of the activities undertaken by the IOTC Secretariat in support of implementation of CMMs.</p>	<p>The completed Compliance Questionnaires and Reports of Implementation are provided to the Compliance Committee.</p> <p>The Compliance Committee considers the individual Compliance Reports and assesses the level of compliance. This assessment also takes into consideration various other papers prepared by the Secretariat including:</p> <ul style="list-style-type: none"> • Response to Feedback Letters; • Report on establishing a Programme for Transshipment by Large-Scale Fishing Vessels; • Implementation of reporting obligations of nominal catch data; • Summary report on possible infractions observed under the regional observer programme; and • Summary of compliance with the drifting fish aggregating devices management plans. <p>The Compliance Committee make recommendations in relation to implementation and compliance issues and provides an opinion on the compliance status of each CPC.</p>

Table 1: Summary of IOTC's compliance assessment process steps

In 2017, IOTC established the WPICMM to:

- alleviate the technical discussions, workload, and time pressures on the Compliance Committee, and permit it to focus on higher level compliance implementation strategies in its work for the Commission;
- enhance the technical capacity of CPCs to understand and implement IOTC CMMs; and
- prioritize implementation issues and develop operational standards for use by CPCs.

In 2019, as part of the WPICMM work plan, the WPICMM reviewed the IOTC compliance assessment process to advance the workplan of the WPICMM, including to:

- review the reporting requirements contained within CMMs to harmonize and streamline;
- 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;
- develop of minimum regional standards for implementation of CMMs; and
- establish a baseline for illegal, unreported and unregulated (IUU) fishing activities based on international recommendations.

A report, *Strengthening the IOTC Compliance Assessment Methodology* was prepared and was presented to the Compliance Committee and WPICMM for consideration and development of next steps. The report details several considerations in the relation to a scheme of sanctions and incentives and corrective actions.

Corrective Actions

IOTC adopted *Resolution 18/07 on Measures Applicable in the Case of non-Fulfilment of Reporting Obligations in the IOTC* in 2018 and this provides a penalty system for non-compliance related to the submission of basic fishery data requirements. This is similar to the ICCAT's "no data, no fish" approach as provided for in ICCAT *Recommendation 06-13*. The ICCAT Recommendation differs in a key point however in that a CPC that does not report data *shall be prohibited* from fishing. *Resolution 18/07* only provides to the consideration of such a prohibition.

IOTC adopted *Resolution 10/10 Concerning Market Related Measures* in 2010. The Resolution provides the basis to apply the adoption of non-discriminatory trade restrictive measures to CPCs and non-Contracting Parties (NCPs) that fail to meet their IOTC obligations (in the cases of CPCs) or their obligations under international law to cooperate with ICCAT (in the case of NCPs). Again, this is like the ICCAT approach provided in ICCAT *Recommendation 06-13*. While trade restrictive measures are considered some of the most effective to promote compliance, RFMOs have struggled to effectively implement them and IOTC has not applied them under this Resolution. In 2019, it was noted that the language of the Resolution was non-binding in nature and it was suggested that the Resolution be reviewed and strengthened.

CPCs

As noted in the Preamble of the Agreement and discussed below, the special needs of developing States are particularly important when it comes to developing, adopting and effectively implements a scheme of sanctions. To assist IOTC in this, a summary of CPCs has been provided.

IOTC has thirty-one (31) CPCs, twenty-three (23) or seventy-four percent (74%) are developing States.¹¹ Only eight (8) or twenty-six percent (26%) are developed States.¹² As expected, the composition of IOTC CPCs represents both the geographical location of their relevant areas of competence and the key flag States that fish for tuna globally. In general, CPCs cooperate in the context of a tuna RFMO because of

¹¹ As identified in the World Economic Situation and Prospects, United Nations, 2020 that contains a set of data that the World Economic Situation and Prospects (WESP) employs to delineate trends in various dimensions of the world economy.

¹² As identified in the World Economic Situation and Prospects, United Nations, 2020 that contains a set of data that the World Economic Situation and Prospects (WESP) employs to delineate trends in various dimensions of the world economy.

their real interest in the fish stocks managed by that tuna RFMO. The ability of a CPC to participate effectively in the processes of IOTC can be impacted by their development status and their capacity to implement fisheries management regimes. In addition, the specific interest and level of engagement of a State within IOTC can vary depending on whether they are a coastal State and/or a flag State. This can also lead to increasing challenges to balance the interests of different national stakeholders within IOTC (Table 2).

Status	#
Developing coastal states only	7 (23%)
Developing flag states only	3 (10%)
Developing coastal and flag states	13 (42%)
Developed coastal states only	2 (6%)
Developed flag states only	3 (10%)
Developed coastal and flag states	3 (10%)
Total	31

Table 2: Summary table of IOTC CPCs (2021)

The composition of IOTC CPCs is dominated by participants that are developing States that are a coastal State only or are a coastal and a flag State. Developing coastal States and flag States may have flagged vessels operating in waters under their own national jurisdiction, the national jurisdiction of another State or on in the ABNJ or any combination of these. There are several developing States that operate as flag States only (carrier or bunkering vessels in IOTC). The percentages of developed CPCs that are flag States only is comparatively low, but this may not accurately reflect the impact and influence of these States, as the size of their fishing fleets is often significant.

The number of vessels authorized to operate by a CPC can also be a useful representation of the economic interest that a State has and potentially their capacity to meet their obligations (Table 3).

Status	#
Total vessels authorized by developed flag states only	424 (9%)
Total vessels authorized by developed flag and coastal states	91 (2%)
Total vessels authorized by developing flag states only	207 (4%)
Total vessels authorized by developing flag and coastal states	3994 (85%)
Total	4716

Table 3: All vessels authorized by IOTC period 1 October 2020 and 30 September 2021

Appendix II - Compliance Assessment Principles

Principle	Description
Fair and impartial	Compliance assessment processes must be operated in a fair and impartial way. Fairness is promoted by ensuring that obligations and expectations are clearly specified. The processes must be undertaken consistently and based on an accurate assessment of available data and information. Feedback and an opportunity to respond to issues identified must be provided. An equal opportunity to participate in the processes must be afforded to participants. The processes should be designed to recognize the differences in capacity among RFMO participants and balance the availability of data and information with the level of non-compliance identified.
Legitimate	Compliance assessment processes must be developed to support an RFMO in achieving its objectives and support participants in meeting their obligations. There should be adequate consultation and efforts to ensure a shared understanding of the purpose, principles, and elements of a compliance assessment process by all participants. There must be efforts to ensure that the processes are not seen as punitive and are genuinely employed to improve the overall performance of an RFMO.
Transparent	Compliance assessment processes must operate in a transparent way. Transparency facilitates access to more information and may lead to better quality decision-making. Transparency must be optimized at all levels in RFMOs including between participants, between participants and secretariats, between RFMOs and among key stakeholders and the wider public. More transparent processes may increase fairness and impartiality and make the processes more legitimate. This contributes to making the processes more effective.
Targeted	Compliance assessment processes should prioritize obligations to be assessed and focus on those obligations that are key to ensuring an RFMO achieves its objectives. Compliance assessment processes may benefit from adopting a risk-based mechanism to identify the obligations to be assessed and the frequency they should be assessed. Compliance responses need to consider the type, motivation, and severity of non-compliance and focus on repeated non-compliance, serious non-compliance and the clarification of poorly articulated obligations.
Effective	Compliance assessment processes must effectively identify and address implementation and compliance issues and monitor compliance and implementation trends over time. The process should seek to improve the overall performance and effectiveness of an RFMO and to support participants with meeting their obligations. Compliance assessment processes

Principle	Description
	need to be supported by rigorous follow up mechanisms to ascertain if participants are taking action to address areas of non-compliance and to ensure that targeted compliance responses are effective at addressing serious compliance issues. Such follow-up mechanisms promote both transparency and legitimacy of the process.
Efficient	Compliance assessment processes must be developed in a way that minimizes unnecessary administrative burden and costs on participants, secretariats, and governing bodies. Various elements of the compliance assessment processes should be supported by on-line/electronic platforms including for the submission, collation and presentation of data and information, which increase efficiencies and promote fairness among RFMO participants with diverse capacities.
Cooperative	Cooperation is at the heart of all RFMO processes and is a key part of the compliance assessment processes. Cooperation must be supported and enhanced at all levels, including as appropriate through formalized mechanisms. Participants must cooperate with each other and their secretariats. The bodies of the RFMO must also cooperate with each other to support more effective decision making. There is also benefit in cooperation between RFMOs, and with other intergovernmental organizations to increase data and information sharing and to work towards harmonization.