



# Review of Compliance Committee Arrangements

## **New Zealand**

Prepared for the 13<sup>th</sup> Meeting of the Compliance Committee (CC13) of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

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# Review of Compliance Committee Arrangements

## INTRODUCTION

This paper is presented to members of the Compliance Committee following discussions held earlier this year at the 5<sup>th</sup> Strategy and Fisheries Management Working Group (SFMWG5). Members of SFMWG5 briefly discussed how changes to the current Compliance Committee model could improve the Compliance Committee's ability to deliver on its increasing responsibilities. No consensus was reached at the time, and New Zealand now presents a more formal proposal for members to consider based on the feedback received at SFMWG5.

## CURRENT CONTEXT

The first meeting of the Compliance Committee was held in 2006 in Japan. Since then, there have been annual meetings, held immediately prior to the annual meeting of the Extended Commission.

The current Terms of Reference<sup>1</sup> offer a broad mandate for the Compliance Committee, listing the following functions:

- A. Monitor, review and assess compliance with all conservation and management measures adopted by the Extended Commission.
- B. Monitor, review and assess the quality of data (in terms of both accuracy and timeliness) submitted to the Extended Commission.
- C. Exchange information on Member and Co-operating Non-Member activities in relation to compliance activities by Members and Co-operating Non-Members of the Extended Commission.
- D. Report to the Extended Commission on the implementation of compliance measures by Members and Co-operating Non-Members.
- E. Make recommendations to the Extended Commission on new compliance measures, including measures to address non-compliance and measures to ensure that accurate and timely data is obtained on all fisheries.
- F. Make recommendations to the Extended Commission on cooperation in compliance activities and information exchange.

The broad functional mandate of the Compliance Committee reflects the growing complexity of the operating environment that the southern bluefin tuna fishery operates in. The Compliance Committee now oversees a number of measures, and is often asked to provide comments on other aspects of the Commission's work (e.g. seabird mitigation and non-member catch). These new functions are in addition to the core function of ensuring that members are fully meeting their agreed obligations.

The Compliance Committee has, on occasion, held workshops to address individual technical topics (e.g. the catch documentation scheme (CDS)).

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<sup>1</sup> Terms of Reference for the Compliance Committee (adopted at the Annual Meeting of the Extended Commission (17 October 2013))

## PROBLEM DEFINITION

The current meeting arrangements<sup>2</sup>, specifically the timing of the meeting, offers some benefits in terms of minimising meeting and travel costs to both the Secretariat and its members. However, those savings often come at the expense of technical expertise and dedicated resourcing. Attendance at the Compliance Committee is largely dictated by the delegation list of the Commission meeting that follows, with priority understandably given to the latter.

The existing model has created an environment where the Compliance Committee can sometimes be overly influenced by the agenda of the Commission meeting that follows. The politically-charged environment of the Extended Commission has, at times, had a negative impact on the discussions held in the preceding week in the Compliance Committee, and has lessened that Committee's ability to provide objective technical advice. Some of the areas where the Compliance Committee has recently struggled to provide advice include:

- Estimates of non-member catch<sup>3</sup>
- Interpretation of the Chinese market<sup>4</sup>
- Update to the Japanese Market Review<sup>5</sup>
- Resolution of technical issues related to the CDS<sup>6</sup>

Fundamentally, the Compliance Committee was designed as an advisory committee to provide wider Commission processes with unique technical expertise in the field of compliance in order to strengthen decision making by Commissioners. That separation in function has somewhat eroded in recent years, in part due to the close proximity of the Compliance Committee meeting with the Commission meeting.

It is also important to recognise that the operating environment surrounding the southern bluefin tuna fishery is more complex now than it was during the early stages of this Commission. Many of the systems and processes developed to date have relied on the assumption of a single dominant market (i.e. Japan). Although Japan still dominates the global market for southern bluefin tuna, rival markets have emerged that are now undermining the effectiveness of CCSBT measures and the fundamental ability to monitor and account for catch.

These new challenges demand an ever evolving approach to monitoring and enforcement that, in turn, requires a mixed technical skillset. In order for the Compliance Committee to properly assess the global risks to this fishery and develop effective tools to mitigate those risks, it must be given the opportunity to engage in dedicated discussions where both operational compliance and management expertise are applied.

## PRACTICES AMONGST OTHER ORGANISATIONS

Practices vary amongst the other regional fisheries management organisations (RFMOs) and the differing models have their own unique strengths and weaknesses. As a means of comparison, Attachment 2 details the practices of other RFMOs in the region as well as an example taken from outside of fisheries.

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<sup>2</sup> The meeting arrangements are outlined in the Procedural Rules of the Compliance Committee, and provided in Attachment 1

<sup>3</sup> Report of the 11<sup>th</sup> Meeting of the Compliance Committee

<sup>4</sup> *Ibid*

<sup>5</sup> Report of the 12<sup>th</sup> Meeting of the Compliance Committee

<sup>6</sup> *Ibid*

## DISCUSSIONS TO DATE

New Zealand introduced the topic of Compliance Committee reform at the most recent meeting of the Strategy and Fisheries Management Working Group (SFMWG5). Members were asked to consider whether the current meeting arrangements were adequately meeting their needs, and whether there might be alternative arrangements that could lead to greater benefits in the future.

It was at SFMWG5 that New Zealand first introduced the potential for some of the current functions of the Compliance Committee to be split away into a technical group.

The Chair of the Compliance Committee suggested that it might be useful to convene expert Compliance workshops on an ad-hoc basis to discuss specific issues such as estimating unaccounted mortality, or relevant new technologies pertinent to risk areas, or the development of an electronic CDS.

Members at SFMWG5 did not agree to a full separation of the Compliance Committee meeting from the Extended Commission, however supported ad-hoc expert Compliance working groups being convened from time to time as required.

## POSSIBLE OPTIONS

Taking on board members' support for ad-hoc expert Compliance working groups, New Zealand is proposing the two following options. Notably, the options separate out a number of functions of the Compliance Committee to a working group held at a time away from the Commission meeting. The aim of this separation is for attendance and discussion at the relevant meetings be able to properly assess the global risks to this fishery, develop effective tools to mitigate risks, and ultimately provide good advice to the Commission on compliance issues.

### Option 1 – Working Group

Option 1 would involve separating out the functions of the Compliance Committee that are strictly technical and not directly related to the evaluation of a member or cooperating non-member's compliance status into a Technical Group. Discussions relating to long term and strategic direction of compliance activities would remain with the existing Compliance Committee.

Table 1: Potential separation of compliance functions

|   | Compliance Committee | Technical Group |
|---|----------------------|-----------------|
| Annual Reports  | ✓                    |                 |
| Assessment of Compliance with Measures  | ✓                    |                 |
| Operation of Measures: <ul style="list-style-type: none"> <li>• CDS</li> <li>• Transshipment</li> <li>• Authorised Vessel List</li> <li>• Port Inspections</li> <li>• IUU List</li> </ul> |                      | ✓               |
| Review and Revision of Resolutions  | ✓                    | ✓               |
| Exchange of Intel on Potential IUU Activities   |                      | ✓               |
| Coordinated Enforcement Activities  |                      | ✓               |

Similar to the Ecologically Related Species Working Group, the Technical Group could meet on alternative years, ensuring that meeting resources are optimised and enough time has passed between meetings to allow progress to be made. Removing technical elements may also allow the Compliance Committee to shorten its annual meeting to two days.

### **Option 2 – Technical Day**

Option 2 would involve a single Technical Day that precedes the Compliance Committee, and to which members would commit technical expertise. This model would be somewhat similar to the current practice of holding the Operating Model and Management Procedure Workshop ahead of the Extended Scientific Committee meeting.

This model would not allow as many topics to be covered as the first option, but could address a single issue each year in a manner that would allow in-depth discussion and analysis.

## **FINANCIAL IMPLICATIONS**

Meeting costs represent a significant financial burden for this Commission, and these financial pressures must be recognised when considering changes to the current meeting arrangements.

Commitments already exist for upcoming meetings and any changes considered will likely only take place once those commitments have passed. Based on the feedback received, New Zealand will work with the Secretariat to provide more detailed cost estimates.

## **CONCLUSION / RECOMMENDATION**

This Commission has shown a genuine commitment to the development and implementation of a robust management framework, underpinned by compliance systems, that ensures the sacrifices made by members are justly rewarded. Fisheries operate in a dynamic environment, and this is particularly true in terms of compliance and monitoring. As a membership, we must ensure that we recognise the need for dedicated and responsive compliance resources, and the risks that arise should we fail to do so.

New Zealand has proposed minor changes to the operation of the Compliance Committee that it believes have the potential to fundamentally enhance this Commission's understanding of compliance risks, and allow it to develop strategies to effectively mitigate those risks.

New Zealand asks that members endorse one (or both) of the options proposed to allow further work to be done on potential financial implications.

# Attachment 1

## PROCEDURAL RULES OF THE COMPLIANCE COMMITTEE

1. The Compliance Committee will meet annually immediately prior to the annual meeting of the Extended Commission unless otherwise decided by the Extended Commission.
2. The Compliance Committee will be composed of two representatives from each of the Members and Cooperating Non-members of the Extended Commission. Representatives on the Compliance Committee may be accompanied by advisers. A quorum will be three Members of the Extended Commission.
3. With the agreement of the Extended Commission, representatives of pertinent inter-governmental and non-governmental organisations and non-members may participate as observers.
4. The Compliance Committee will prepare a report for consideration by the Extended Commission at its annual meeting or as otherwise requested by the Extended Commission.
5. Reports and recommendations of the Compliance Committee will be adopted by consensus of the Members of the Extended Commission present.
6. Only Members of the Extended Commission will have voting rights.
7. Members and Cooperating Non-members of the Extended Commission may bring forward for consideration any matters relevant to the functions of the Compliance Committee.
8. The Extended Commission shall appoint a Chair of the Compliance Committee who shall sit in office for a period of two years. The Chair may only be re-appointed twice (i.e. a maximum of six years in office). The Chair will be independent and not be regarded as part of any Member's delegation. Appointments of the Chair will be made taking into account the technical nature of the Compliance Committee.
9. The duties of the Chair are to manage the business of the Compliance Committee meeting and to present the Committee's reports to the Extended Commission.
10. Four weeks prior to the convening of the Compliance Committee, each Member and Cooperating Non-member of the Extended Commission will provide a report providing the information listed in the national report. The Compliance Committee may, by consensus, propose new elements for Members and Co-operating Non-members to provide information in the report.
11. Four weeks prior to the convening of the Compliance Committee, the Secretariat will provide a report on its activities related to the Extended Commission's conservation and management measures.
12. The Compliance Committee may make recommendations to the Extended Commission that material used in its deliberations be regarded as confidential and not to be published.
13. The Compliance Committee may make recommendations to the Extended Commission to amend these terms of reference to facilitate its work.

## Attachment 2

### PRACTICES AMONGST OTHER ORGANISATIONS

| Agreement    | Mechanism   | Timing   | Mandate  |
|--------------|---|--|--|
| <b>CCSBT</b> | Compliance committee                                    | Held immediately prior to Commission meeting       | <p>Functions:</p> <p>A. Monitor, review and assess compliance with all CMMs;</p> <p>B. Monitor, review and assess the quality of data (in terms of both accuracy and timeliness) submitted to the Extended Commission.</p> <p>C. Exchange information on Member/CNM activities in relation to compliance activities.</p> <p>D. Report to the Extended Commission on the implementation of compliance measures by Members/CNMs</p> <p>E. Make recommendations to the Extended Commission on new compliance measures, including measures to address non-compliance and measures to ensure that accurate and timely data is obtained on all fisheries.</p> <p>F. Make recommendations to the Extended Commission on cooperation in compliance activities and information exchange.</p>                    |
| SPRFMO       | Compliance and technical committee                      | Held immediately prior to the Commission meeting   | Monitor and review the implementation of, and compliance with, conservation and management measures adopted under the SPRFMO Convention and provide advice and recommendations to the Commission.  |
| CCAMLR       | The Standing Committee on Implementation and Compliance | Meets annually immediately prior to the Commission | <p>Review the operation of conservation measures and compliance systems and to advise the Commission on their refinement and implementation.</p> <p>CCAMLR operates a Compliance Evaluation Procedure (CEP) in accordance with its CM10-10. The Secretariat prepares a summary compliance report which records instances of non-compliance by the licensed fleet. CCAMLR members then respond setting out what they have done to address the issues identified. SCIC considers the summary compliance report and prepares a provisional compliance report and assesses the 'compliance status' of each breach: minor non-compliant; non-compliant; serious, frequent or persistent non-compliant. The Commission then considers that provisional compliance report. This process happens annually.</p> |

|                              |   |  |  |
|------------------------------|---|--|--|
| WCPFC                        | Technical and Compliance Committee  | Held separately prior to the Commission meeting        | Functions include - providing the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with CMMs. Monitor and review compliance with CMMs adopted by the Commission and make recommendations to the Commission as necessary; review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the Commission and make recommendations to the Commission as necessary. |
| Kyoto Protocol to the UNFCCC | The Compliance Committee is made up of two branches: a facilitative branch and an enforcement branch. | Held separately. Each branch has different membership. | The facilitative branch aims to provide advice and assistance to Parties in order to promote compliance, whereas the enforcement branch has the responsibility to determine consequences for Parties not meeting their commitments.  |