



CCSBT/0607/06

5. Compliance Committee

Purpose

To resolve the terms of reference for the Compliance Committee and other operational procedures.

Background

At CCSBT12, the Extended Commission agreed to activate the Compliance Committee and for it to convene for the first time on the two days preceding CCSBT13. It was agreed that the Secretariat in consultation with the Chair of the Compliance Committee would review the terms of reference and propose any modifications required to reflect the current circumstances of the CCSBT. New terms of reference were to be agreed intersessionally.

The Secretariat prepared a discussion paper to facilitate completion of the task set at CCSBT12. The paper provided options for amending the terms of reference and a proposed set of procedural rules, which if agreed, would allow the Compliance Committee to begin substantive activity when it convened. A copy of the paper prepared by the Secretariat is at Attachment A.

Comments were received from members. However, there were differences of substance in member's responses and the Secretariat suggests these matters might best be discussed and resolved at the Special Meeting rather than to attempt to achieve further intersessional resolution.

Discussion

As a result of the intersessional discussion, there are three main in-principle matters to resolve:

- whether the terms of reference need to be modified at all
- should the proposed rules of procedure be adopted now or left to the Compliance Committee to resolve at its first meeting

- should there be a separate reporting mechanism for the Compliance Committee in addition to the reports already submitted

Terms of Reference

The existing terms of reference would be adequate for the Compliance Committee to perform its functions if members wished to avoid attempting to modify an existing agreed document. They would, however, require amendment to reflect the existence of the Extended Commission and cover cooperating non-members.

The alternative terms of reference circulated in the Secretariat's paper would bring a tighter focus to the terms of reference and are desirable in this context, but that are not necessary for the effective functioning of the Committee if member commitment exists.

Rules of Procedure

Members might consider whether they wish to adopt specific rules of procedure for the Compliance Committee. In the absence of specific rules of procedure, the default situation is that the rules for annual meetings will apply.

The rules of procedure for annual meetings relate more to an international decision making body than a subordinate advisory committee.

The Compliance Committee would benefit from specific procedures focussed on its specific role.

Reporting Mechanisms

The material circulated by the Secretariat for the intersessional discussion included a suggested format for member reports to the Compliance Committee. Some members supported the concept, while others suggested that members' national reports be amended to include the material required for the Compliance Committee. It was also suggested that the Secretariat should report on those measures, which it administers.

The current reporting format for national reports is:

- Introduction
- Operational Constraints on Effort
- Catch and Effort
- Annual fleet Size and Distribution
- Historical Fleet Size and Distribution
- Fisheries Monitoring
- Other Factors

Members will need to consider how this list might be amended.

The Secretariat would provide a separate report on:

- monthly catch report data
- TIS activity (this would be the current report prepared for members)
- operation of the vessel list

For consideration

Prepared by the Secretariat

Attachment A

**COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN
TUNA
COMPLIANCE COMMITTEE
REVIEW OF TERMS OF REFERENCE**

Background

The CCSBT adopted a terms of reference for a Compliance Committee in 1997 at CCSBT4. However, the Compliance Committee was not activated by the CCSBT, which has addressed the functions directly during its annual meetings.

At CCSBT12 in October 2005, the CCSBT agreed to activate the compliance committee and for it to convene for the first time on the two days preceding CCSBT13 and to report to that meeting. It was also agreed that the Secretariat in consultation with the Chair of the Compliance Committee would review the terms of reference and propose any modifications required to reflect the current circumstances of the CCSBT. New terms of reference would be agreed intersessionally.

The purpose of this paper is to provide a review of the terms of reference and propose options for consideration by members.

Discussion

In considering this issue three aspects were taken into account.

- The compliance functions of other RFMOs
- Developments in the CCSBT's conservation and management measures since 1997.
- Adoption of international instruments since the terms of reference were adopted

Compliance Function in Other RFMOs

The existing Terms of Reference for the CCSBT Compliance Committee are at Attachment A. The equivalent documents for ICCAT, IATTC and the WCPFC are at Attachment E. ICCAT agreed to its compliance function in 1995, IATTC created its compliance function in 2000 and the WCPFC compliance function came into force with the establishment of the Convention in 2004.

The documents vary in structure and express the function differently. However, they each reflect four common functions:

- Review compliance with conservation and management measures adopted by the RFMO

- The exchange of information on member activities in relation to compliance matters
- To report to the RFMO on implementation of compliance activities by members
- To make recommendations to the RFMO on new compliance measures

The additional matters included in the various compliance documents tend to be elaborations on these four common themes and/or procedural matters.

Developments in the CCSBT's Conservation and Management Measures

At the time of the adoption of the terms of reference by the CCSBT there was one conservation and management measure in force – the setting of a TAC and national allocations to Members. Since then the CCSBT has adopted a number of additional conservation and management measures:

- An Action Plan to deal with IUU fishing
- A trade documentation scheme with controls on Members over importations of SBT
- An authorised vessel list linked to the trade documentation scheme
- Monthly catch reporting
- Observer program standards with reporting obligations and coverage targets
- A management procedure for determining the TAC
- Seabird mitigation measures

International Instruments

A number of international instruments have been negotiated since the adoption of the terms of reference by the CCSBT. Not all Members are signatories or have ratified these instruments at the time of writing of this report and some are voluntary instruments. The instrument of main relevance is the United Nations Fish Stocks Agreement (UNFSA), which came into force in 2001. Parts III to VI of the Agreement specify a range of functions for RFMOs and obligations on member States that cannot be effectively implemented without a functioning compliance structure in the RFMO. The Agreement does not specify how a compliance function should be structured.

All of the RFMO compliance arrangements came into effect after UNFSA opened for signing but only the arrangements for the WCPFC came into effect after UNFSA

came into force. The functions listed in the various documents could all be judged to be consistent with UNSFA although the Secretariat is unable to judge whether they actually deliver in practice an effective compliance function.

Options

There are a number of options for the CCSBT to consider intersessionally, which take into account the issues outlined the Discussion Section above and the current circumstances of the Commission:

- i. Retain existing terms of reference
- ii. Modify the terms of reference with minimal change to delete only redundant provisions
- iii. Revise the terms of reference intersessionally to specify four fundamental objectives with the procedural issues and coverage to be determined later by the Compliance Committee
- iv. Revise the terms of reference to specify four fundamental objectives plus procedural arrangements

Option (i)

The existing terms of reference seem adequate in structure to support an effective Compliance Committee without modification. The four fundamental elements of an RFMO compliance function are incorporated in the text. However, to make the function effective, some specification of procedural/operational rules would be required.

Option (ii)

A draft terms of reference which makes minimal change to the existing document to remove redundant provisions and tighten the drafting is at Attachment B. The draft:

- removes paragraph 2 because the activity would seem implicit in paragraphs 3 and 8
- modifies paragraph 3 so that it follows directly from the provisions of paragraph 1
- removes paragraph 4 as it seems to duplicate paragraph 3 (b)
- removes paragraph 6 because it does not seem to be a compliance committee function
- makes some changes in English expression

This draft would also benefit from the inclusion of procedural/operational rules.

Option (iii)

A substantially modified terms of reference is at Attachment C. This draft condenses the text to four fundamental activities, which are capable of giving a less limiting operational role to the work of the compliance committee.

The four activities are those common to all of the RFMO compliance activity texts.

Because of its broadness, the text would have to be supplemented with decisions on how the compliance committee would perform the specified tasks.

Option (iv)

This is option (iii) with specification of operational rules added. A text is at Attachment D.

It has the advantage of giving maximum flexibility to the work of the Compliance Committee and specifying how the work would be organised. If adopted intersessionally, it would save further work by the Compliance Committee in developing operation procedures when it first meets on 8-9 October 2006 prior to CCSBT13.

Prepared by the Secretariat

Attachment A

Commission for the Conservation of Southern Bluefin Tuna Existing Terms of Reference for the Compliance Committee

1. To review the southern bluefin tuna (SBT) fishing activities of each Member of the Commission, including compliance with national quota allocations and associated fishery management arrangements.
2. Develop cooperative system, which can be implemented under the Convention, relating to monitoring and compliance for SBT fishing activities, taking into account international initiative.
3. To review matters and prepare an annual report relating to implementation of conservation and management measures decided by the Commission, including:
 - (a) exchange of information on the activities by which each Member ensures compliance by vessels flying its flag; and
 - (b) exchange of information on measures including legislative and administrative arrangement and penalties; and
 - (c) exchange of views on practical and cost effective measures for improving monitoring and compliance.
4. To exchange information on flag State SBT enforcement activities including outcomes, where appropriate, of judicial and administrative proceedings and the development of measures to ensure compliance with Commission measures and recommendations.
5. Examine ways of cooperating in the undertaking of surveillance including arrangements for the exchange of information of sightings and other information and about activities of vessels.
6. Develop educational material to promote the Commission's conservation and management measures.
7. To exchange information on activities for taking SBT by nationals, residents or vessels of any State or entity not party to the Convention.
8. To report the results of discussions, including making recommendations as appropriate, to the Commission.

Attachment B

Commission for the Conservation of Southern Bluefin Tuna

Modified Terms of Reference for the Compliance Committee Option (ii)

1. To review annually the southern bluefin tuna (SBT) fishing activities of each member of the Commission, including compliance with national quota allocations and other fishery management arrangements.
2. Prepare a report relating to implementation of conservation and management measures decided by the Commission, including:
 - (a) information on the activities by which each Member ensures compliance by vessels flying its flag; and
 - (b) information on measures including legislative and administrative arrangement and penalties; and
 - (c) development of measures for improving monitoring and compliance.
3. Examine ways for cooperating in surveillance measures including arrangements for the exchange of information of sightings and other information concerning activities of vessels.
4. To exchange information on activities for taking SBT by nationals, residents or vessels of any State or entity not party to the Convention.
5. Make recommendations as appropriate, to the Commission.

Attachment C

Commission for the Conservation of Southern Bluefin Tuna Modified Terms of Reference for the Compliance Committee Option (iii)

1. Review and monitor compliance with conservation and management measures adopted by the Commission
2. Exchange information on member activities in relation to compliance activities by members.
3. Report to the Commission on the implementation of compliance measures by members
4. Make recommendations to the Commission on new compliance measures

Attachment D

Commission for the Conservation of Southern Bluefin Tuna Modified Terms of Reference for the Compliance Committee Option (iv)

Functions

- A. Review and monitor compliance with all conservation and management measures adopted by the Extended Commission
- B. Exchange information on Member activities in relation to compliance activities by members.
- C. Report to the Commission on the implementation of compliance measures by Members
- D. Make recommendations to the Extended Commission on new compliance measures

Procedural Rules

- 1. The Compliance Committee will meet annually immediately prior to the annual meeting of the Extended Commission unless otherwise decided by the Commission.
- 2. The Compliance Committee will be composed of two representatives from each of the Members and Cooperating Non-members of the Extended Commission. There is no restriction on the number of advisers each Member and Cooperating Non-member may bring to the meeting. A quorum will be three Members.
- 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.
- 5. Reports and recommendations of the Compliance Committee will be adopted by consensus of the Members present.
- 6. Only Members will have voting rights.

7. Members and Cooperating Non-members may bring forward for consideration any matters relevant to the functions of the Compliance Committee.
8. The Chair of the Compliance Committee shall be appointed for a period of two years by the Extended Commission. 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 report to the Extended Commission's Annual Meeting.
10. Four weeks prior to the convening of the Compliance Committee, each Member and Cooperating Non-member will provide a report providing the information listed in Annex 1.
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.

**CCSBT – COMPLIANCE COMMITTEE
MEMBER REPORTS**

FISHERIES INFORMATION

Monthly SBT catch in weight and numbers for each of the preceding 24 months.

Estimated annual total catches of non-target, associated and dependent species (if available)

Developments/trends in the fishery (changes in fishing patterns, fleet operations, target species, level of transshipment etc)

IMPLEMENTATION OF CCSBT CONSERVATION AND MANAGEMENT MEASURES

Report on measures adopted for conservation and management by the Extended Commission (currently this will include implementation of quota controls; authorisation of vessels on CCSBT vessel register; management of trade documents; observer program activity; and compliance with seabird mitigation measures)

OTHER COMPLIANCE ACTIVITY RELATED TO MANAGEMENT OF THE MEMBER'S FLEET

Inform Extended Commission of flag state measures adopted
Fishing vessel information other than that provided to Secretariat for inclusion on authorized vessel list
Transshipment and supply vessel information
Summary report on citations, violations, action taken
Seagoing patrols(eg number of days/area covered)
Aerial surveillance (eg number of flights/areas)
VMS summaries

INSPECTION SCHEMES

Transshipments(eg number of inspections)
At-sea inspections(eg number of inspections/ by vessel flag)
Port inspections(eg number of inspections)

OTHER ACTIVITIES

Relevant changes to national legislation
Extended Commission trade measures

Attachment E

**Other Regional Fisheries Management Organisations
Arrangements for Compliance Committees**

1. International Commission for the Conservation of Atlantic Tunas
2. Inter American Tropical Tuna Commission
3. Western and Central Pacific Fisheries Commission

INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS

MANDATE AND TERMS OF REFERENCE FOR THE CONSERVATION AND MANAGEMENT MEASURES COMPLIANCE COMMITTEE

1. Name of Committee

1.1 The committee shall be named the "ICCAT Conservation and Management Measures Compliance Committee", to be generally known as the "Compliance Committee".

2. Mandate and Objectives of the Compliance Committee

2.1 The Compliance Committee shall be broadly responsible for reviewing all aspects of compliance with ICCAT conservation and management measures in the ICCAT Convention Area, with particular reference to compliance with such measures by ICCAT Contracting Parties.

2.2 The Compliance Committee shall report directly to the Commission on its deliberations and recommendations.

2.3 The Compliance Committee shall cooperate closely with ICCAT subsidiary bodies in order to remain informed on all issues concerning compliance with ICCAT conservation and management measures.

2.4 The work of the Compliance Committee shall be guided by the following overall objectives:

2.4.1 To provide a structured forum for discussion of all problems related to effective implementation of, and compliance with, ICCAT conservation and management measures in the ICCAT Convention area.

2.4.2 To gather and review information relevant to review of compliance with ICCAT conservation and management measures from ICCAT subsidiary bodies, and from National Reports submitted by ICCAT Contracting Parties.

2.4.3 To identify and discuss problems related to the implementation of, and compliance with, ICCAT conservation and management measures, and to make recommendations to the Commission on how to address these problems.

3. Terms of Reference of the Compliance Committee

3.1 In order to meet three overall objectives, the Compliance Committee shall:

3.1.1 Review the status of implementation of, and compliance with, ICCAT conservation and management measures, as reported in National Reports submitted by Contracting Parties, catch data compiled by the Commission and SCRS, trade information obtained through national statistics, the Bluefin Tuna Statistical Program and other relevant information.

3.1.2 Specifically review domestic measures for the implementation of the Commission's recommendations, as reported by Contracting Parties.

3.1.3 Review the implementation of the ICCAT Port Inspection Scheme and progress made

with inspections conducted under this scheme. In particular, the Committee shall identify and discuss problems related to non-compliance with ICCAT conservation and management measures detected during such inspections.

3.1.4 Review other enforcement activities conducted by Contracting Parties in the Convention area, including domestic inspection programs, reported by Contracting Parties, in order to identify problems with non-compliance detected during such enforcement activities.

3.1.5 Develop and recommend suitable and effective measures to ensure proper application of the provisions of the Convention. In particular, to further develop and recommend effective international inspection and enforcement schemes, if considered necessary, within the ICCAT Convention Area.

3.1.6 Develop and make recommendations to the Commission to resolve identified problems with implementation of, or compliance with, ICCAT conservation and management measures, in order to enhance compliance with ICCAT recommendations.

INTER-AMERICAN TROPICAL TUNA COMMISSION PERMANENT WORKING GROUP ON COMPLIANCE

Rules of Procedure

1. Functions

In accordance with the Resolution on the Establishment of a Permanent Working Group on Compliance adopted by the members of the Inter-American Tropical Tuna Commission (IATTC) (“the members”) during its 63rd Meeting, the functions of the Permanent Working Group on Compliance (“the Working Group”) shall be:

- a) To review and monitor compliance with conservation and management measures adopted by the IATTC;
- b) To recommend to the IATTC means of promoting compatibility among the national fisheries management measures of the members, including infractions and sanctions;
- c) To recommend to the IATTC appropriate measures for addressing matters related to compliance with fisheries management measures;
- d) Analyze information by flag and, as necessary, by vessel, and other information necessary to carry out its functions;
- e) To report the results of its work to the IATTC, which will in turn inform the members and nonmembers.

2. Governmental members

The Working Group shall be composed of representatives of each of the Parties of the IATTC ("governmental members").

3. Observers

Representatives of non-Parties, pertinent intergovernmental organizations, non-governmental environmental organizations with recognized experience in matters pertaining to this Working Group, and owners of tuna vessels fishing in the eastern Pacific Ocean under the jurisdiction of any of the Parties, may participate in the Working Group as observers.

4. Decision making

1. All participants in the Working Group shall have speaking rights, but only the governmental members shall have voting rights. The Working Group shall adopt its reports and recommendations by consensus of the governmental members present and voting. Any recommendations of the Working Group must be considered by the IATTC.
2. In cases of urgency, and without prejudice to the provisions of paragraph 4 (1) of these rules of procedure, the Working Group may take decisions by correspondence through a vote of the governmental members, under the following procedures:
 - a) The proposal shall be circulated to all members of the Working Group, in writing, with all pertinent documentation, at least 14 days before the proposed effective date of the resolution, action, or measure and the votes shall be transmitted to the Director no less than 7 days before the proposed effective date;

b) The proposal shall be considered urgent unless a simple majority of the governmental members objects in writing and the proposal shall be accepted unless any governmental member objects in writing; and

c) The Director shall circulate the proposal as well as the accompanying documentation, receive and count the votes, and inform the members of the Working Group of the results of a vote as soon as the voting closes.

5. Chairperson

1. The Chairperson of the Working Group, who shall be a member of a delegation of one of the Parties, shall be elected for a two-year term at the regular meeting of the Working Group, and may be reelected to the position by the Working Group. The Working Group shall also, on the same schedule, elect a vice-Chairperson, who shall fulfill the duties of the Chairperson until the end of the period of appointment, should the position become vacant. The vice-Chairperson shall also serve as Chairperson if the latter is unable to attend or participate in a meeting of the Working Group.

2. The duties of the Chairperson shall be to:

a) Propose the time and place of all regular meetings of the Working Group for its consideration;

b) To convene special meetings of the Working Group, at the request of at least two governmental members, as long as such request is supported by a majority of the governmental members;

c) Present to the regular meetings of the IATTC the reports, recommendations, and communications of the Working Group.

6. Information

1. The Director shall provide to the governmental members and non-member governments all pertinent information relative to the operation of their flag vessels at least 15 days in advance of a meeting of the Working Group.

2. Governmental members and observers shall apply the rules of confidentiality adopted by the IATTC with respect to all information provided to the Working Group.

7. Attendance at meetings

1. There shall be no restrictions on the number of persons a governmental member may include in its delegation to a meeting of the Working Group.

2. Observers from intergovernmental and non-governmental organizations shall be limited to two delegates, but may bring more with the approval by consensus of the governmental members. If a consensus is not possible, this matter may be decided by a two-thirds majority of the governmental members.

8. Meetings

The Working Group shall meet at least once each year, if possible in conjunction with a meeting of the IATTC. The quorum for a meeting is two-thirds of the governmental members.

9. Language

The official languages of the Working Group shall be English and Spanish.

10. Amendments

These rules of procedure shall be approved by the IATTC. The Working Group may recommend to the IATTC, for approval, any changes that may be necessary in order for the Working Group to fulfill its mandate.

WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

TECHNICAL AND COMPLIANCE COMMITTEE

Functions

1. The functions of the Technical and Compliance Committee shall be to:
 - (a) provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;
 - (b) monitor and review compliance with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary; and
 - (c) review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the Commission and make such recommendations to the Commission as may be necessary.

2. In carrying out its functions, the Committee shall:
 - (a) provide a forum for exchange of information concerning the means by which they are applying the conservation and management measures adopted by the Commission on the high seas and complementary measures in waters under national jurisdiction;
 - (b) receive reports from each member of the Commission relating to measures taken to monitor, investigate and penalize violations of provisions of this Convention and measures adopted pursuant thereto;
 - (c) in consultation with the Scientific Committee, recommend to the Commission the priorities and objectives of the regional observer programme, when established, and assess the results of that programme;
 - (d) consider and investigate such other matters as may be referred to it by the Commission, including developing and reviewing measures to provide for the verification and validation of fisheries data;
 - (e) make recommendations to the Commission on technical matters such as fishing vessel and gear markings;
 - (f) in consultation with the Scientific Committee, make recommendations to the Commission on the fishing gear and technology which may be used;
 - (g) report to the Commission its findings or conclusions on the extent of compliance with conservation and management measures; and
 - (h) make recommendations to the Commission on matters relating to monitoring, control, surveillance and enforcement.

3. The Committee may establish, with the approval of the Commission, such subsidiary bodies as may be necessary for the performance of its functions.

4. The Committee shall exercise its functions in accordance with such guidelines and directives as the Commission may adopt.