

Commission for the Conservation of Southern Bluefin Tuna

Considerations on a Compliance Assessment Process for the Commission

Department of Agriculture



© Commonwealth of Australia 2019

Ownership of intellectual property rights

Unless otherwise noted, copyright (and any other intellectual property rights) in this publication is owned by the Commonwealth of Australia (referred to as the Commonwealth).

Creative Commons licence

All material in this publication is licensed under a [Creative Commons Attribution 4.0 International Licence](#) except content supplied by third parties, logos and the Commonwealth Coat of Arms.

Inquiries about the licence and any use of this document should be emailed to copyright@agriculture.gov.au.



The Australian Government acting through the Department of Agriculture has exercised due care and skill in preparing and compiling the information and data in this publication. Notwithstanding, the Department of Agriculture, its employees and advisers disclaim all liability, including liability for negligence and for any loss, damage, injury, expense or cost incurred by any person as a result of accessing, using or relying on any of the information or data in this publication to the maximum extent permitted by law.

Acknowledgements

The department thanks Commission for the Conservation of Southern Bluefin Tuna Secretariat staff for their valuable assistance in drafting the paper.

Background and purpose

At the thirteenth meeting of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) Compliance Committee (CC13) (October 2018, Noumea, New Caledonia), Australia opened discussion on the use of compliance assessment processes in other Regional Fisheries Management Organisations (RFMOs) and like organisations, such as the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Like other RFMOs, the effectiveness of the CCSBT in meeting its objectives is affected by the extent to which Contracting Parties, cooperating non-Contracting Parties, participating fishing entities and cooperating non-participating fishing entities (collectively known as Members/CNMs) implement and comply with obligations arising under the CCSBT Convention and conservation and management measures (CMMs) adopted by the Extended Commission. A compliance assessment process provides a mechanism to generate and track improvements in implementation and compliance over time.

At CC13 Australia was asked to prepare a further paper, with the assistance of the CCSBT Secretariat, on a potential formalised CCSBT CMS for the next meeting of the Compliance Committee (CC14, to be held in Cape Town, in October 2019).

This paper considers the Southern Indian Ocean Fisheries Agreement (SIOFA) Compliance Monitoring Scheme, which was discussed at CC13, as well as the compliance assessment processes of other RFMOs and like organisations (Western and Central Pacific Fisheries Commission (WCPFC), the Indian Ocean Tuna Commission (IOTC), CCAMLR) to derive ideas about potential changes to the existing CCSBT approach. Members are invited to consider whether the CCSBT process should be changed. Recommendations to the Extended Commission (EC)/questions to focus further discussion are at the end of this paper.

1 Typical elements of compliance assessment processes¹

1.1 Reporting on implementation and compliance

- Information on which to assess members' implementation and compliance is commonly derived from one or more reports submitted by members (self-reporting), often using a pre-agreed template.
 - The current SIOFA template is approximately 14 pages (before completion).
 - The WCPFC uses a combination of secure online reporting, spreadsheets and word document templates.
- It can also be compiled/prepared by Secretariat or a third party (independent reporting), based on reports and other information provided by members.
 - The CCAMLR Secretariat prepares draft compliance reports, including proposed compliance statuses, in respect of all members.
- Assessments can also take into account information provided as part of the compliance assessment process (for example, feedback on a draft compliance report or information provided verbally during a meeting).
- It is possible to report against—and therefore assess—all, or only some, obligations.
 - WCPFC has recently begun a process of prioritising obligations for assessment, as assessing all obligations has become unfeasible
 - SIOFA currently assesses all SIOFA obligations; the reporting template spans 14 pages (uncompleted).
 - The IOTC has previously discussed, but not agreed to, assessing obligations under the IOTC's constituting treaty as well as under conservation and management measures.
- In some organisations, reports on compliance are kept confidential to members (e.g. WCPFC), while in others reports are publicly available (e.g. IOTC).

1.2 Assessment by the committee/commission

- The organisations plenary is usually charged with assessing members' compliance. This is typically a two-step process, with a Compliance Committee (or equivalent) conducting a detailed assessment and the Commission (or equivalent) reviewing and endorsing/amending that assessment.

¹ Note this section provides a summary of other RFMO CAP processes. CCSBT Extended Commission Members should consider this in conjunction with the full text of those organisations' relevant rules/measures.

- The deliberations of each body, based on reported information and often on additional information provided before or at the meeting, are captured in specific compliance reports or in the body's meeting report.
 - In the WCPFC there is a draft Compliance Monitoring Report (dCMR – prepared by the Secretariat before the meeting), a provisional Compliance Monitoring Report (pCMR – capturing deliberations of the Technical and Compliance Committee) and the final Compliance Monitoring Report (capturing the Commission's decision).
 - The IOTC reflects the outcomes of discussions in the committee and commission in the reports of their meetings.
- Assessment is usually mainly focused on member, not vessel, compliance.
- The committee/plenary will often assign a compliance status in respect of each compliance issue identified and specify actions to be taken to remedy the compliance issue.

1.3 Compliance statuses

- Where compliance statuses are used, they are typically nominated in initial compliance reports (by either the member or the Secretariat) before being considered by the compliance committee and agreed upon by the commission.
 - The IOTC Secretariat nominates compliance statuses in its draft compliance reports in respect of each member, but members can propose changes to these based on information they provide about the issue in question. Because IOTC compliance discussion outcomes are not recorded in a separate report, there is not generally a final decision on compliance status.
 - In SIOFA, members can self-nominate a compliance status, but this can be amended by the Secretariat. Once agreed, compliance statuses are recorded in the final compliance report adopted by the Meeting of Parties.
- Common compliance statuses include:
 - 'compliant'
 - 'capacity assistance needed' in cases where developing countries need further assistance to comply with an RFMO requirement
 - 'non-compliant', with sub-categories such as 'partial non-compliant', 'minor non-compliant', or 'serious/persistent/critical non-compliant'
 - 'not assessed' or 'review of measure required', where the obligation and therefore compliance with it is considered unclear.
- The criteria associated with each status are often described in the organisations measure/rules, albeit in varying degrees of detail. Precedent also tends to be used to inform decisions on status. Which status is to be assigned can often be a source of debate.

1.4 Follow-up actions

- Some organisations describe the follow-up actions that might be available in respect of different compliance statuses.

- WCPFC and SIOFA have specific follow-up actions in respect of different compliance statuses, which are non-exhaustive. IOTC does not specify follow-up actions.
- The follow-up actions that are to be taken by a member that is found to have a compliance issue are typically agreed by the commission and recorded in the relevant compliance reports.
 - The IOTC does not always agree on follow-up actions for every compliance issue, although sometimes specifies a follow-up action in its meeting report; it also uses a system of correspondence between the member and the Commission Chairperson to seek (but not necessarily require) information on follow-up actions.

2 The CCSBT's compliance monitoring process

2.1 Compliance with Measures Paper

At Compliance Committee meeting 4 in 2009, the Secretariat presented a Compliance with Measures paper that summarised Members' and Cooperating Non-Members' compliance with CCSBT measures. The meeting noted that, in conjunction with Annual Reports, this provided a useful guide to the key issues of compliance. It was recommended that the Secretariat prepare this paper in consultation with Members and CNMs each year, with Members and CNMs being given a deadline for providing corrections to the table in advance of the meeting.

The compliance information that is used to prepare the paper is submitted to the Secretariat in accordance with a variety of differing reporting requirements and deadlines; for example, CDS data needs to be submitted regularly from 30 June to 31 March, monthly catch reports between 1 July and 30 June and data exchange data between 1 August and 31 July. The Secretariat runs CDS reconciliations, collates and analyses other data and produces a table showing draft compliance results for each member.

The table is sent out to members in approximately July each year (there is no specified date when this has to be sent out but the Secretariat aims for mid-July to allow for consideration before the Compliance Committee meeting, which is usually early October each year). Note that not all values in the table can be completed at this stage, as some information is drawn from Member's Annual Reports (see below), which are due after this time.

Each Member reviews its own portion of the table and may then respond, within four weeks, with any comments. In practice the Secretariat continues to receive comments and make updates to the draft tables up until four weeks before the Compliance Committee meeting, i.e. up until early to mid-September.

The Secretariat is due to publish the Compliance with Measures paper, including the finalised Compliance with Measures table four weeks in advance of the Compliance Committee meeting; however sometimes the paper is published slightly later, particularly where revisions of the paper are required to take into account late/revised Annual Reports. In practice, the Secretariat continues to update the Compliance with Measures paper based on data submitted in Annual Reports up until the Compliance Committee meeting.

2.2 Annual Reports

All CCSBT members complete up to three Annual Reports: to the Compliance Committee and Extended Commission; to the Scientific Committee; and to the Ecologically Related Species Working Group (where a meeting of the Working Group is to be held that year). Together, these Annual Reports provide a comprehensive summary of how members have implemented and met obligations across the range of CCSBT measures. Each Annual Report has its own template and these are updated regularly to reflect any changes in obligations. The templates are completed by each member in respect of their own implementation, compliance and data, before being

submitted to the Secretariat. Annual Reports are due four weeks prior to the relevant meeting, but in some cases are submitted or revised after this time.

2.3 Compliance Committee and Extended Commission review of compliance

The Compliance Committee has a standing agenda item for 'Overview of compliance with CCSBT Conservation and Management Measures'. Under this agenda item the Secretariat's report on Compliance with Measures is presented and discussed, as are Members' Annual Reports, and the Compliance Committee draws on these to conduct an assessment of members' compliance with measures.

The Compliance Committee also has a standing agenda item for 'Recommendations to the Extended Commission', under which it can make recommendations to the Extended Commission for improvement or other action in response to compliance issues.

The Extended Commission then considers the report of the Compliance Committee and can endorse, modify or reject its recommendations relating to compliance.

2.4 Corrective Action Policy

The broad process for considering possible non-compliance and making recommendations for corrective actions is set out in the CCSBT's Corrective Actions Policy (Compliance Guideline 3, which was updated at CCSBT25) (see https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/operational_resolutions/CPG3_CorrectiveActions.pdf).

The purpose of the Corrective Actions Policy is: 'to bring all Members into compliance with their CCSBT obligations in a way that maintains the stability and cohesion of the Commission. To this end it sets out a framework to respond to evidence of non-compliance by a Member. The primary response focus is to assist Members to achieve capacity to effectively comply with CCSBT obligations.'

The Policy provides advice on how the Compliance Committee should obtain and consider evidence of non-compliance, as well as actions the member concerned might offer to take, or actions the Compliance Committee should recommend, in response to non-compliance. The Policy specifies that the Commission will negotiate an outcome (corrective action) with the Member concerned.

2.5 Minimum Performance Requirements

In addition to the process associated with the compliance with measures report and Annual Reports, the CCSBT also has a policy on Minimum Performance Requirements to Meet CCSBT Obligations (Compliance Policy Guideline 1, which was updated at CCSBT25; (See https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/operational_resolutions/CPG1_Minimum_Standards.pdf). The policy sets out minimum requirements for Members and Cooperating Non Members of the Commission to meet their obligations in relation to CCSBT Conservation and Management measures.

The purpose of the minimum performance requirements is to improve implementation of CCSBT obligations, primarily by acting as audit points for the Quality Assurance Review (QAR) process

(see below). They enable all Members to have a common understanding of existing obligations and the core elements expected of quality implementation of these obligations. It also provides for transparency in terms of each Member's implementation procedures.

2.6 Quality Assurance Reviews

A further element of compliance monitoring by CCSBT is the QAR process. This involves the use of an independent third party auditor to review Member's domestic systems and processes with respect to CCSBT obligations and to report on their overall effectiveness. Where weaknesses are identified the QAR process provides recommendations to improve Member performance. The QAR process is unique to the CCSBT and fundamentally underpins Member compliance.

The WCPFC 2018 Review of its compliance processes concluded that having an effective compliance monitoring scheme is a worthwhile achievement in its own right, but some Cooperating and Cooperating Members (CCM) said they would like the WCPFC system to have more 'teeth'.

The review noted that the WCPFC has already committed to establish a process to achieve this end, but meanwhile as an interim measure recommends the establishment of a targeted QAR system to assist a CCM where there is repeated non-compliance, apparently due to a systemic reason. Such a QAR would be for the purpose of assisting the CCM, and making recommendations, not for any punitive purpose. The review noted that it would be based upon the system already being operated effectively by CCSBT, although it noted that in the CCSBT case it is done as a matter of regular routine auditing rather than targeted auditing where difficulties seem apparent, as is proposed by the review.

The CCSBT may wish to consider this WCPFC finding with respect to QAR process and whether more targeted QARs, focusing on specific areas of compliance, may be useful. In this regard the QAR process could be applied across some or all Members with respect to compliance with specific CMMs, rather than an audit of compliance with all CMMs by a particular Member/CNM.

We note that at this time CCSBT Members have not committed to make QARs a part of the CCSBT's annual or ongoing process.

3 Discussion

The CCSBT compliance process mirrors the processes used in other RFMOs in many respects. For example, the annual reports and the Compliance with Measures paper are akin to the compliance reporting and papers prepared by members or secretariats of other organisations. Also, as in other organisations, these documents are considered by the Compliance Committee and plenary, forming the basis of those bodies' views on whether a compliance issue exists and how to respond. Finally, the Corrective Actions Policy is partly analogous to the measures or rules established by other organisations to set out how a compliance assessment process will be conducted, including the specific types of follow-up actions that might be required of a member.

There are also a number of differences between the CCSBT and other processes. For example, The CCSBT does not use a single, catch-all reporting template for compliance reporting. Also, while the Corrective Actions Policy provides guidance on the overall compliance assessment process, it does not contain as much detail as other organisations' processes about the provision of compliance information, or how decisions on compliance and follow-up actions will be made. Notably, there is no aspect of the CCSBT process that requires the assignment of compliance statuses. Finally, unlike other organisations, the CCSBT has an additional, unique process of QARs, which it uses in addition to the compliance assessment process to improve overall implementation.

Given the similarities between the processes of the CCSBT and other organisations, the CCSBT would need to consider what additional benefits would flow from altering the current process and weigh these against the potential additional workload (e.g. amending the Corrective Actions Policy if required, or otherwise re-defining the process to be used; requiring additional compliance reporting by members or the secretariat; extending meeting time to accommodate a more complex assessment process). It makes sense to strike a balance between having consistency and learning lessons between organisations, while also tailoring the process to suit the organisation in question.

This indicates there may be room to make small 'tweaks' or amendments to the process, rather than major changes, to better advance the overall objective of compliance assessment without undertaking major changes. It is also apparent that the CCSBT has processes additional to other organisations, particularly the QAR process, which contribute to the overall objective and therefore need to be taken into account when weighing the benefits and costs of possible changes.

3.1 Questions to focus further consideration

- Is the current CCSBT compliance process effective or does it require strengthening?
- Do the processes of other organisations provide additional guidance to the CCSBT on additional steps that should be included in the CCSBT compliance assessment process?
- Does the CCSBT process cover all of, or enough of, the obligations upon members to ensure an effective review of compliance? If not, do obligations to be assessed need to be prioritised in the interests of time and efficiency?

- Would a template based approach, using Member self-reporting and/or self-assessment, offer an improvement on the current process? Is there a need to provide for verification of, or standards for, self-reported information to ensure information is complete and accurate? And how can CCSBT avoid duplication and minimise burden on members/Secretariat associated with any additional compliance reporting?
- Would adding a requirement for Members, or the Compliance Committee, to nominate a compliance status or measure of severity be a useful addition to the current process? If so, how can this be done without the assignment of statuses detracting from the focus on establishing and monitoring follow-up actions?
- Is there a need to improve the way follow up actions are recorded and monitored, to generate and track improvements in compliance?
- Would it be useful for the Secretariat's compliance with measures paper to also specifically report on persistent non-compliance by a Member/CNM?
- Would adding a requirement for Members, or the Compliance Committee, to nominate a compliance status or measure of severity be a useful addition to the current process?
 - If so, how can this be done without the assignment of statuses detracting from the focus on establishing and monitoring follow-up actions?
- Is there scope to have a more direct or formalised relationship between compliance assessment and QARs – for example, using QARs as a method of investigating the cause of and targeting improvements in respect of a particular compliance issue?