

27 July 2022

Dear Delegations,

The Pew Charitable Trusts (Pew) and the International Seafood Sustainability Foundation (ISSF) are pleased to submit for your information the paper “**APPROACHES TO EVALUATE AND STRENGTHEN RFMO COMPLIANCE PROCESSES AND PERFORMANCE; A TOOLKIT AND RECOMMENDATIONS.**”

In late 2019, The Pew Charitable Trusts, in collaboration with the International Seafood Sustainability Foundation, established a steering committee of professionals and practitioners in the fields of compliance, regional fisheries management, and international law, which, over the next two years, designed and hosted three virtual workshops and two webinars. These workshops and webinars were conducted under Chatham House Rules to promote open and candid exchanges about what was working well in regional fisheries management organization (RFMO) compliance processes and what needed improvement. Out of these workshops came three reports from which recommendations were synthesized into an aggregated outcomes document. These reports are the primary sources for the attached paper.

In January 2022, Pew/ISSF convened a new group of six experts to take the outcomes document and draft it into a paper that would not only contain the workshop outcomes and recommendations but also include some guidance on how any RFMO could choose to adopt and implement them to strengthen their own compliance regime.

As supporters and convenors of this process, both Pew and ISSF representatives at this meeting are ready to answer any questions you may have.

Sincerely,

The Pew Charitable Trusts



International Seafood Sustainability Foundation





**2022
REPORT**

APPROACHES TO EVALUATE AND STRENGTHEN RFMO COMPLIANCE PROCESSES AND PERFORMANCE

A TOOLKIT AND RECOMMENDATIONS

AN INITIATIVE OF THE PEW CHARITABLE TRUSTS &
INTERNATIONAL SEAFOOD SUSTAINABILITY FOUNDATION (ISSF)

Recommended Approaches and Tools to evaluate and strengthen RFMO compliance processes and performance

July 2022

This document has been developed by an Expert Review Group based on outcomes from three Virtual Expert Workshops on Best Practices in Compliance in RFMOs, convened by The Pew Charitable Trusts, in collaboration with the International Seafood Sustainability Foundation (ISSF), with the support of a Steering Committee.

The Expert Review Group included Mr. Duncan Currie, Director, Globelaw; Dr. Robert Day, International Fisheries Advisor and Consultant; Ms. Jung-re Riley Kim, Policy Officer/Negotiator (International Fisheries) Ministry of Oceans and Fisheries Korea; Ms. Holly Koehler, Vice President for Policy and Outreach at ISSF; Ms. Sarah Lenel, Fisheries Advisor and Consultant; Mr. Masa Miyahara, Advisor to Minister for Agriculture, Forestry and Fisheries, Japan; and Dr. Penelope Ridings, Legal Advisor, WCPFC, under the coordination of Mr. Gerald Leape, Principal Officer at The Pew Charitable Trusts. The Steering Committee included Ms. Adriana Fabra, Special adviser to Pew; Mr. Gerald Leape, Principal Officer at The Pew Charitable Trusts; Ms. Holly Koehler, Vice President for Policy and Outreach at ISSF; Dr. Lara Manarangi-Trott, Compliance Manager at Western Central Pacific Fisheries Commission (WCPFC); Dr. Osvaldo Urrutia, Senior Lecturer, Faculty of Law, P. Universidad Catolica de Valparaiso, Chile; and Mr. Mark Young, Executive Director of the International MCS Network.

This is an initiative of The Pew Charitable Trusts, in collaboration with ISSF. The views expressed in this document do not represent or necessarily reflect the views or policies of The Pew Charitable Trusts and ISSF or any of the organizations or agencies with which members of the Expert Review Group and the Steering Committee are affiliated.

Table of Contents

Executive Summary	4
1. Introduction	7
1.1 Background	7
1.2 Experts Review Group	7
1.3 How to use	8
2. Compliance assessment fundamentals	9
2.1 Overview	9
2.2 Recommendations and Tools Relating to the Purpose, Principles and Governance of Compliance Assessment Processes	10
2.3 Principles of compliance assessment processes.....	10
2.4 Establishment and Governance of Compliance Assessment Processes	11
3. Recommendations and Tools Relating to Compliance Assessment Processes	13
3.1 Obligations to be assessed	13
3.2 Data and information	15
3.2.1 Data submission	15
3.2.2 Data collation, analysis and presentation.....	16
3.3 Evaluation of implementation and compliance.....	17
3.4 Decision-making	18
3.5 Compliance responses.....	19
3.6 Capacity of Developing States	21
3.7 Cooperation.....	22
3.8 Monitoring, Evaluation and Review.....	23
4. Conclusion	24
Annex 1: Supporting the monitoring and review of the performance of RFMO Compliance Processes within an RFMO over time or amongst RFMOs	26
Annex 2: A synthesis of the Key Recommendations and Tools	30
Annex 3: Terms and Definitions	32

Executive Summary

In 2020 and 2021, The Pew Charitable Trusts (Pew), in collaboration with the International Seafood Sustainability Foundation (ISSF), convened three Virtual Expert Workshops¹ that brought together over sixty experts including compliance officers from regional fisheries management organizations (RFMO) secretariats, chairs of RFMO compliance committees, representatives from international organizations, non-governmental organizations (NGOs), academia and civil society. The Workshops identified and discussed key challenges in the current RFMO compliance assessment processes and explored potential solutions to strengthen and enhance these processes.

After the Virtual Expert Workshops, a small group of internationally recognized experts² reviewed the collection of Workshop outcomes and findings and prepared a set of recommendations and guidance to evaluate and strengthen RFMO compliance processes and overall RFMO performance. This Report contains those recommended approaches, tools and guidance, which are intended to be used to develop new compliance assessment processes and serve as a model against which existing RFMO compliance assessment processes can be evaluated and strengthened. The authors recognize that the environment within which RFMO compliance assessment processes have been designed, developed, and operate, is an extremely complex one. As a result, the approaches, tools and guidance are designed to be independent of the dynamics of a particular RFMO and yet provide a practical set of recommendations, tools and approaches intended for the development, design, implementation, enhancement and performance review of RFMO compliance assessment processes.

The Report is divided into three main sections. Section 1 provides context on the overarching purpose of compliance assessment processes and the principles by which they should be implemented. Seven principles are identified:

1. [Fair and Impartial;](#)
2. [Legitimate;](#)
3. [Transparent;](#)
4. [Targeted;](#)
5. [Effective;](#)
6. [Efficient; and](#)
7. [Cooperative.](#)

Section 2 identifies guidance for the elements of compliance assessment processes, including those that sit outside the processes but directly impact them and those that make up the assessment of compliance. Ten elements are outlined:

1. [Establishment and Governance of Compliance Assessment Processes](#)
2. [Obligations to be assessed](#)
3. [Data submission](#)
4. [Data collation, analysis and presentation](#)
5. [Evaluation of implementation and compliance](#)

¹ September 2020, March 2021, and November 2021.

² Mr. Duncan Currie, Mr. Robert Day, Ms. Jung-re Riley Kim, Ms. Holly Koehler, Ms. Sarah Lenel, Mr. Masa Miyahara, Ms. Penelope Ridings and Mr. Gerald Leape.

6. [Decision-making](#)
7. [Compliance responses](#)
8. [Capacity of Developing States](#)
9. [Cooperation](#)
10. [Monitoring, Evaluation and Review](#)

A rationale and context are provided for each element. Implementation guidance is then provided for each element to support the effective implementation of compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles.

A third part, presented in Annex 1, outlines a methodology to assess the effectiveness of an RFMO compliance process from both a conceptual perspective, and its application, through the use of radar / spider plots. This section describes how this methodology might be applied and outlines two general elements that can be assessed this way: (1) the basic underpinnings of a compliance process that can be loosely described as governance, and (2) how those underpinnings are applied in an operational sense.

This Report identifies key attributes of an effective and well-designed RFMO compliance assessment process. RFMO compliance processes can be evaluated, either formally or qualitatively, against these attributes to identify areas where effective approaches are being used, and where they can be strengthened. A summary of the approaches is provided in an evaluation method, through the use of radar plots, that draws a distinction between governance (whether there is a process and support for compliance) and operations (how well does the system function in practice).

Annex 2 provides a summary of the key recommendations developed through the course of the workshops and Annex 3 provides a glossary.

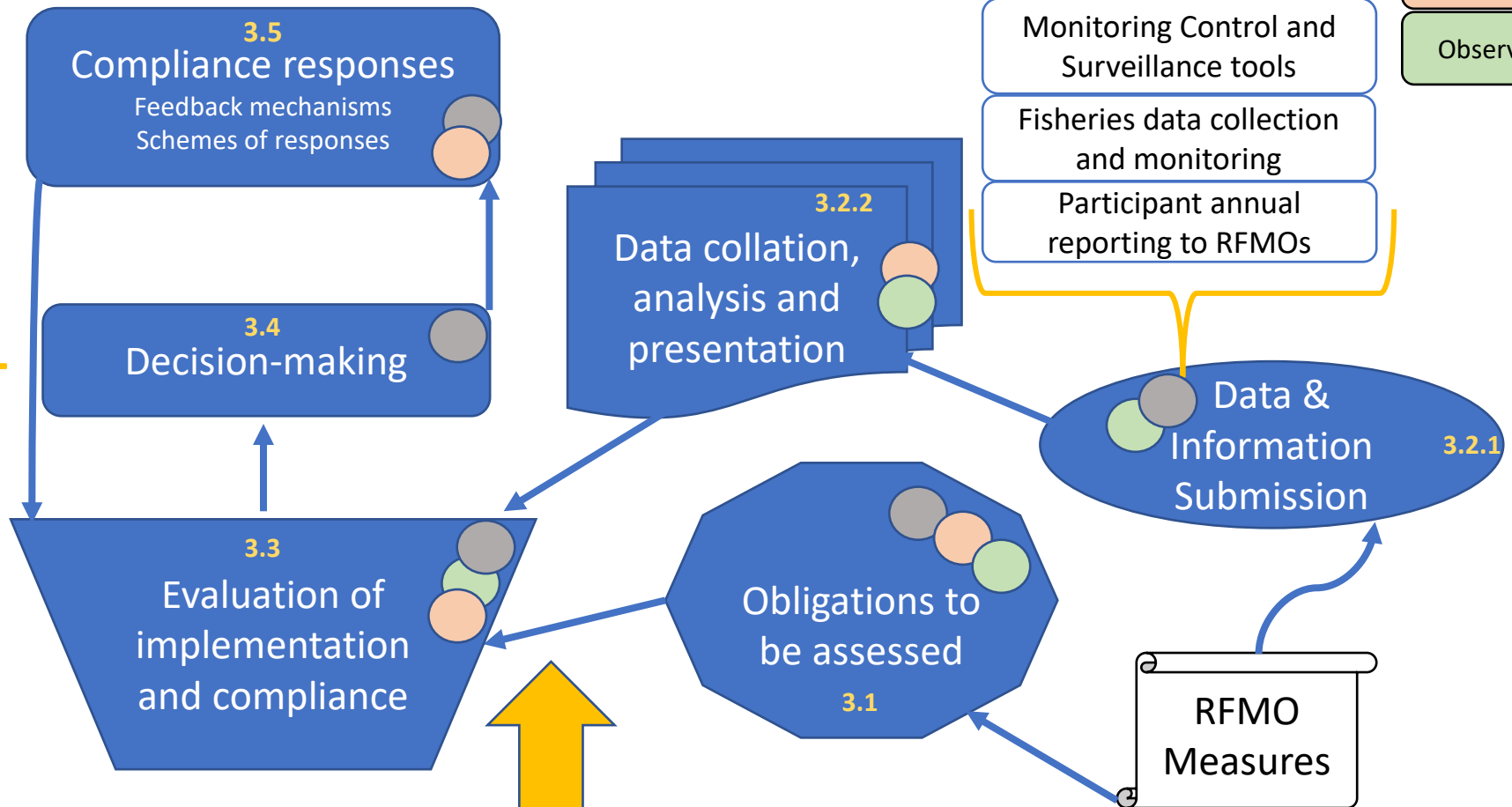
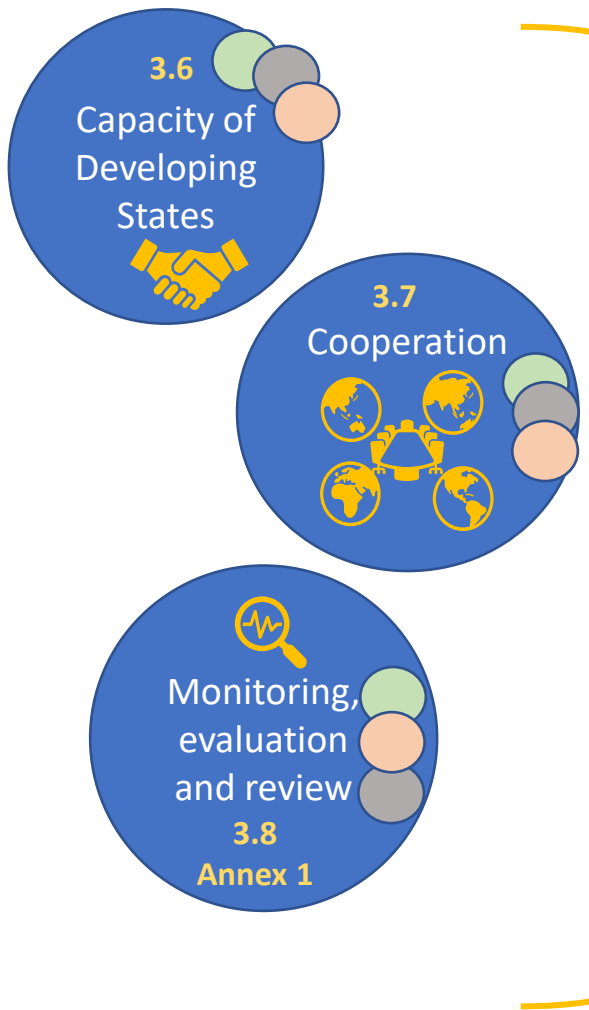
The Report outlines five general areas for RFMOS to consider in evaluating and strengthening their compliance assessment processes:

- (1) ensuring that the governance process is well defined;
- (2) that its operations are undertaken transparently and with a goal of demonstrating the effectiveness of and continual improvement in the implementation of the agreed management actions;
- (3) that there is a robust follow up process on compliance that allows demonstration of progress over an extended period of time;
- (4) that the compliance process is based on clearly identified priority obligations; and
- (5) that there are pre-agreed responses to non-compliance.

Please see below a schematic representation of elements of compliance assessment processes. It represents the relationship between these elements and indicates the actors involved in the different processes. Each bubble contains a figure that cross-refers to the relevant section of this document.

ELEMENTS OF COMPLIANCE ASSESSMENT PROCESSES

- RFMO Participants
- Secretariat
- Observers



RFMO COMPLIANCE ASSESSMENT FUNDAMENTALS



1. Introduction

This paper provides approaches that can be used to develop new compliance assessment processes and to guide regional fisheries management organizations (RFMOs) in evaluating and strengthening existing compliance assessment processes. These approaches are provided as a menu of recommendations and tools that provide a streamlined process for RFMO participants and observers to consider improvements and refinements. The recommendations and tools assume that the appropriate governance frameworks to manage and conserve living marine resources have been established and robust scientific assessment and monitoring is in place. It is recognized that the multilateral international environment within which the RFMO compliance assessment processes have been designed, developed, and operate, is an extremely complex one. It is characterized by political sensitivities, complex legal, institutional, and operational interactions, geographic and cultural differences, and a changing marine environment where conservation, sustainability and exploitation need to be considered in the management actions. This emphasizes the importance of having practical recommendations and tools that are independent of the dynamics of a particular RFMO and yet can help advance the assessment of compliance across these diverse contexts.

1.1 Background

The work that provided the foundation for this document was initiated by The Pew Charitable Trusts (Pew), in collaboration with the International Seafood Sustainability Foundation (ISSF). Pew and ISSF, under the guidance of a Steering Committee,³ convened three Virtual Expert Workshops⁴ that brought together over sixty experts including compliance officers from the RFMO secretariats, chairs of RFMO compliance committees, representatives from international organizations, non-governmental organizations (NGOs), academia and civil society. The Workshops provided a forum to identify and discuss key challenges in the current RFMO compliance assessment processes and explore potential solutions to strengthen and enhance these processes. The experts participated under Chatham House Rule to ensure that robust and open discussions about the compliance assessment processes were undertaken. A set of Workshop findings were prepared by Pew and ISSF with input from the Steering Committee.⁵ These are used as the primary inputs for this document.

1.2 Experts Review Group

After the Virtual Expert Workshops, a small group of internationally recognized experts was convened and tasked with reviewing the collection of Workshop recommendations and findings and preparing a compliance assessment model to strengthen and enhance the RFMO compliance assessment processes. The members of the Experts Review Group were selected for their expertise and experience

³ The members of the Steering Committee were Gerry Leape, principal officer at The Pew Charitable Trusts; Adriana Fabra, special adviser to Pew; Holly Koehler, vice president for policy and outreach at ISSF; Lara Manarangi-Trott, compliance manager at Western Central Pacific Fisheries Commission (WCPFC); Osvaldo Urrutia, Senior Lecturer, Faculty of Law, P. Universidad Catolica de Valparaiso, Chile; and Mark Young, executive director of the International MCS Network.

⁴ September 2020, First Virtual Expert Workshop on Best Practices in Compliance in RFMOs; March 2021, Second Virtual Workshop on Best Practices in Compliance in RFMOs: the role of transparency in improving RFMO Compliance; and November 2021, Third Virtual Expert Workshop on Best Practices in Compliance for RFMOs.

⁵ First Workshop Report; Second Workshop Report; Third Workshop Report.

with RFMO processes and include Duncan Currie, Robert Day, Jung-re Riley Kim, Holly Koehler, Sarah Lenel, Masa Miyahara, Penelope Ridings and Gerry Leape, as facilitator of the Expert Group.

The Experts Review Group met several times from March to June 2022 and considered the findings of the Virtual Expert Workshops, other work regarding the compliance assessment processes and their own experience, to provide guidance for the effective implementation and operation of RFMO compliance assessment processes. Drafts of the various sections of the document were then developed by the Experts Review Group via electronic communication. The document was circulated for review and input by relevant stakeholders in June 2022 and, per the Terms of Reference for the Experts Review Group, it was then submitted to the Steering Committee for final review and approval. The document was finalized in July 2022.

1.3 How to use

The approaches set out in this paper were developed to evaluate and strengthen RFMO compliance processes and performance. They are intended to provide guidance and a menu of recommendations and tools for the development, design, implementation, enhancement and performance review of RFMO compliance assessment processes.

Recommendations and tools in this paper recognize that RFMOs are diverse in their structures, governance frameworks, and participants, among other factors (i.e., their approaches are not identical). They also recognize that RFMOs all have unique needs and have, or will develop, design and implement, compliance assessment processes to meet these needs. While RFMOs are encouraged to use the recommendations and tools that are most relevant for their needs, including to strengthen or refine their current compliance assessment apparatus, the overall set of approaches provided in this document is considered relevant for all RFMOs.

The document is divided into several sections. The first provides context on the overarching purpose of compliance assessment processes and the principles by which they should be implemented. It then identifies guidance for the elements of compliance assessment processes, including those that sit outside the RFMO processes but directly impact them and those that make up the assessment of compliance. For each element, the Experts Review Group provides a rationale – the what -- and the context for each element – the why. This provides the foundation for guidance on how these elements could be implemented -- the how. For each element, the paper highlights how the menu of recommendations and tools ensures that the purpose and principles are achieved.

In order to more easily assess the effectiveness of an RFMO compliance process from both a conceptual perspective, and its application, the use of radar / spider plots is encouraged. This methodology can help assess (1) the basic underpinnings of a compliance process that can be loosely described as governance, and (2) how those underpinnings are applied in an operational sense. Annex I provides a general description of this methodology.

2. Compliance assessment fundamentals

2.1 Overview

Assessing the compliance with internationally agreed obligations is a key component of the internationally accepted fisheries governance regime.^{6,7} An RFMO is an intergovernmental organization established by international agreement with the competence to adopt a range of legally binding obligations. RFMOs have a critical role in the global system of fisheries governance and provide an effective framework for cooperation between states, fishing entities and Regional Economic Integration Organizations (REIOs) (collectively called participants in this paper).

All RFMOs articulate objectives in their constituent conventions or agreements and these broadly seek the long-term conservation and sustainable use of living marine resources in their area of competence.⁸ To fulfill these objectives, participants in the RFMOs adopt conservation and management measures and require the participants to fully implement and comply with relevant obligations developed by the RFMO. Several RFMOs have adopted compliance assessment processes that provide a framework to review and assess participant implementation of, and compliance with, binding obligations in a structured way. These processes identify implementation and compliance issues and provide several mechanisms to address them. The results of these compliance assessments may be used in some RFMOs, as a mechanism to monitor compliance trends over time. RFMO compliance assessment processes should be designed to improve the overall performance of an RFMO, to support participants in an RFMO to better meet their obligations, and to ensure that the obligations are clearly articulated.

The terms compliance and enforcement are often used interchangeably. However, they are different, and it is important to understand the distinction. Compliance describes the participant's conformance with its legal obligations and enforcement describes activities that promote participant's adherence to its legal obligations.⁹ The measures used to promote compliance and establish enforcement actions do not always overlap but are both needed to manage and conserve living marine resources effectively. Compliance and enforcement rely on the effective implementation of a range of monitoring, control, and surveillance (MCS) measures. MCS serves two main purposes: to obtain data for effective fisheries management and to monitor the implementation of legal obligations. RFMOs adopt and implement MCS measures that respond to their individual needs, and these can provide important data and information to inform the compliance assessment processes.

The environment within which the RFMO compliance assessment processes have been designed, developed, and operate, is an extremely complex one. It is characterized by political sensitivities, complex legal, institutional, and operational interactions, geographic and cultural differences, and a changing marine environment where conservation, sustainability and exploitation need to be

⁶ United Nations Convention on the Law of the Sea of 10 December 1982.

⁷ The 1995 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 (UNFSA) places RFMOs at the core of international fisheries management and includes measures that must be agreed on to ensure the long-term conservation and sustainable management of fisheries for highly migratory and straddling fish stocks.

⁸ Except the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) where the Convention applies to the geographic distribution of Southern Bluefin Tuna (SBT) rather than to a defined geographic area.

⁹ Meltzer, E., The quest for sustainable international fisheries: regional efforts to implement the 1995 United Nations Fish Stock Agreement: an overview for the May 2006 review NRC Research Press, Ottawa, Ontario, Canada, 2009, p. 222.

considered in the management actions. Compliance assessment processes must be evaluated within this broader context. This includes the composition of RFMOs, the compliance structures and bodies established that support or direct the compliance assessment process, the roles and responsibilities of secretariats, participants, and the compliance committees. Many RFMOs have worked to strengthen, enhance, and streamline their compliance assessment processes since their adoption. This has been driven in part by the need to address illegal, unreported, and unregulated (IUU) fishing.

2.2 Recommendations and Tools Relating to the Purpose, Principles and Governance of Compliance Assessment Processes

Compliance assessment processes provide a framework to review and assess RFMO participant implementation of, and compliance with, agreed binding obligations in a structured and consistent way. The processes should be designed to identify and address a range of implementation and compliance issues and provide a mechanism to monitor compliance trends over time. The compliance assessment process is best used to improve the overall implementation of obligations by participants and thus the performance and effectiveness of an RFMO. It is not intended as an adjudication or enforcement mechanism. RFMOs should agree to, and articulate, the purpose of their compliance assessment processes. This purpose should be clear and align with the overall objectives of the RFMO.

2.3 Principles of compliance assessment processes

Well-designed and effective RFMO compliance assessment processes should reflect core guiding principles which highlight priorities and provide guidance on how compliance assessment processes are to be operated to ensure their long-term success. Eight underlying principles have been identified as essential in the design and operation of effective RFMO compliance assessment processes. These principles should be applied across all elements of the processes. The elements of the compliance assessment processes should be developed in a way that ensures these principles are implemented.

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 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.

2.4 Establishment and Governance of Compliance Assessment Processes

Compliance assessment processes operate within the broader normative context of an RFMO as an international body for participants to pursue cooperation in the conservation and management of

fisheries¹⁰. This context is also important in the design, governance and effective operation of compliance assessment processes. Through their constituent conventions or agreements, RFMOs may establish subsidiary and/or advisory bodies to support the work of their governing bodies. All the RFMOs have used these mechanisms to establish subsidiary bodies to specifically consider matters related to participant implementation of obligations and compliance with them – namely compliance committees. Governed within, and provided direction by, the overall commission process, these compliance committees are responsible for the development and implementation of the compliance assessment processes. They do not have a decision-making mandate, rather they provide advice and recommendations on the implementation of, and compliance with, obligations to their respective governing bodies that are made up of the RFMO participants responsible for decision making. Compliance committees are usually chaired by an individual nominated from an RFMO participant and include participation of delegations and in some cases observers. Compliance committees are instrumental in operationalizing the RFMO’s compliance assessment processes. They therefore require governance mechanisms which facilitate their work in a manner which meets the principles of compliance assessment processes, including that of transparency.

RFMO conventions and agreements provide the governance structure in which compliance committees sit, and within which compliance assessment processes are established. RFMO compliance assessment processes may be established through various mechanisms including through RFMO conventions or agreements, compliance committee rules of procedure or terms of reference (TOR), measures, resolutions, recommendations, or decisions. These establishing instruments can vary in their form and content. Establishing compliance assessment processes by stand-alone instruments provides clarity around the purposes, principles, functions, and operational aspects of the processes.

Secretariats of RFMOs provide the backbone for the compliance assessment processes and can be instrumental in strengthening RFMO performance. They are largely responsible for the collection, collation, processing and presentation of compliance assessment data and information. They provide direct support and advice to participants in identifying and responding to their implementation and compliance issues.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Ensure that compliance committees are established by instruments that clearly articulate:

- the mandate and purpose of the compliance committee;
- the roles and responsibilities of the compliance committee and those that participate; and
- provisions requiring and describing the relationship and information exchange with other RFMO advisory and governing bodies.

Evaluate the need to, and if necessary, establish working groups, sub-committees or “friends of the chair” to support the work of the compliance committees.

¹⁰ See Article 8 of the UNFSA.

Establish a clear process for the participation of observers who have an interest in the work of compliance committees, governed by appropriate confidentiality requirements and that provides them access to the relevant documents and reports. .

Consider appointing independent chairs of compliance committees, in order to promote neutrality and independence on sensitive issues.

Ensure that compliance assessment processes are established by stand-alone instruments that clearly articulate:

- the purpose and principles of compliance assessment processes;
- obligations and performance expectations;
- roles and responsibilities including of governing bodies;
- decision-making processes;
- a description of key elements and associated processes; and
- review and evaluation mechanisms.

Recognize the valuable contribution of RFMO secretariats, including by:

- ensuring they are given a clear mandate to support the compliance assessment process, particularly by increasing their capacity to analyze and preliminary assess compliance information;
- enabling them to develop appropriate systems and processes, including on-line / electronic or automated systems, to support compliance committees and their work;
- ensuring that resources are adequate to support effective compliance processes.

3. Recommendations and Tools Relating to Compliance Assessment Processes

3.1 Obligations to be assessed

RFMOs adopt a range of binding obligations which require participants to undertake certain actions to ensure the effective management and conservation of living marine resources. For some RFMOs, the number and complexity of the obligations and reporting requirements are significant. These complex obligations need to be effectively implemented and enforced by all participants. Compliance committees assess the performance of participants of an RFMO by examining their compliance with the agreed obligations including through the compliance assessment processes.

The assessment process should include the identification of obligations adopted by the RFMO that lack clarity, consistency with other obligations, that may be duplicative, have inadequate reporting mechanisms or cannot be effectively implemented. These issues can make compliance assessment challenging. This is best avoided by ensuring that obligations are drafted with clarity in the first place through a deliberate process of drafting, negotiation and adoption that facilitates the assessment of compliance. So too does having a shared understanding of what is required to comply with an obligation, such as through the use of audit points or other mechanisms which clearly identify what is required to demonstrate compliance with an obligation. Clear lines of communication are needed

between the compliance committee and the commission so that problems with ambiguous or conflicting obligations can be addressed, including through revisions to measures.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Clarity and consistency of obligation
Ensure that new obligations or revisions to existing obligations are carefully written so the obligations and reporting requirements are clear, implementable by all participants considering their capacities and consistent with other measures.
Encourage RFMO participants to develop, negotiate and adopt conservation and management measures that avoid last-minute negotiations and the likelihood of imprecise or vague language being adopted.
Consider establishing a drafting committee that draws on the experience of experts in compliance and implementation of measures, including RFMO compliance officers, to reduce the likelihood of imprecise or vague language being adopted.
Ensure the retention of institutional records of the negotiation of a measure to understand its rationale as it was drafted.
When vagueness in measures is unavoidable in order to achieve an agreement within the limited time of commission meetings, such vagueness should be addressed through a multiannual process of collaboration between the compliance committee and the commission to improve on the measure.
Ensure that for existing obligations a process exists that allows for an evaluation if obligations have become contradictory, duplicative or overlapping by revising, consolidating or coordinated the obligations where needed.
Operational procedures for implementing and assessing obligations.
Draft conservation and management measures together with audit points or adopt other mechanisms to promote clarity how obligations are to be assessed and the data that are to be reported to demonstrate compliance.
Ensure that audit points or other mechanism to promote clarity in how the obligations are to be assessed are focused not only on individual elements of measures, but also assess the implementation of the obligation, including whether it is accomplishing what it was meant to achieve and whether it is achieving a conservation/management benefit.
To make more effective use of the formal compliance discussions, use intersessional working groups to help participants, and secretariats, organize information and undertake reviews and preliminary assessments that allow for the obligations to be assessed in an efficient way.

3.2 Data and information

The ability to undertake an effective review of compliance rests on the availability of representative data and information. Compliance assessment processes evaluate the implementation of, and the level of compliance with RFMO obligations and identify areas in need of improvement. The processes require the relevant data and information in order to build the knowledge needed for a compliance assessment. The data and information come from a variety of different sources, and must be collated, presented, and analyzed. This enables the evaluation of implementation and compliance with the RFMO obligations. Decisions are taken based on the evaluation and action taken in response. The compliance responses may vary, depending on the nature of the non-compliance. All these elements in the compliance assessment process should be articulated and agreed in advance and need to be implemented in a fair and transparent manner so that all participants are aware of the demands and consequences of non-compliance.

3.2.1 Data submission

Data and information that are used in compliance assessment processes ideally must be of high quality, timely, accurate, verifiable and representative. If data and information that forms the basis of compliance assessments cannot be adequately verified or are available only for certain participants because, for example, observer programs provide coverage that is not comparable or justified objectively (e.g., between fleets or gear types), support for the legitimacy of the resulting compliance assessment will be reduced. Further, such compliance processes will likely result in unbalanced and partial assessments of those RFMO participants that provide full data and information versus those participants that do not.

RFMOs have significant amounts of data and information that is reported by participants or directly available (e.g., through VMS) for assessing compliance. These data reporting obligations can create burdens for some RFMO participants, which can undermine support for compliance assessment processes when coupled with perceptions that these processes are not fair or do not produce compliance improvements or good outcomes. Further, the amount of these data can be difficult to analyze and present in a way that supports a coherent compliance discussion.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Ensure the RFMO has the information to assess compliance by:

- carrying out a review of the information obtained from RFMO participants and from other sources;
- assessing whether this information is representative and useful for compliance assessment;
- reducing or eliminating sources of information that are not helpful; and
- taking steps to obtain other information that is helpful including data sets from NGOs and other observers, non-participants, and other RFMOs.

To facilitate the use of data provided by participants and the RFMO, revise existing data sharing rules and definitions of "confidentiality" in light of new and emerging technology and clarify issues related to data ownership, sharing and use (such as for compliance and/or scientific purposes).

Ensure information meets high standards and allows for verification and cross validation where practicable, and that the addition of new data sources is balanced with increasing workloads for secretariats.

Streamline compliance reporting through:

- the use of templates, harmonization of reporting deadlines, and electronic formats and data fields to make data input easier; and
- the use of innovative technologies, such as automated or online reporting systems or databases.

3.2.2 Data collation, analysis and presentation

The collation, analysis and presentation of data and information for evaluation and discussion by RFMO participants is essential for an effective, fair, and transparent compliance assessment process. Ensuring that data and information used for compliance assessments are accurate, representative, and useful for the purpose of the exercise requires appropriate capacities within the RFMO secretariat. Effective collation and presentation of data and information for compliance assessments is fundamental to providing RFMO participants with consistent and actionable information on which to focus their evaluations. Without a consistent and accessible way of presenting these data, ideally with some analysis in advance, small delegations or developing country participants can be disadvantaged. This undermines the fairness, efficiency, and effectiveness of the process.

The data and information that is reported by RFMO participants and/or accessed by the Secretariat can be sensitive. Such data must be presented and utilized in compliance assessment processes in a manner that ensures the confidence and trust of all participants but also promotes trust in the RFMO itself by demonstrating accountability to observers and other third parties.

The presentation of data and information needs to be made available in ways that promote the transparent and impartial identification of significant compliance concerns and systemic issues or trends. Compliance assessment processes that promote a focus on the improvement of the effectiveness of the RFMO through identifying these significant compliance concerns and/or systemic issues can activate the needed political will to bring about changes that will strengthen compliance and the performance of the RFMO.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Ensure Secretariats are guided by clear rules, including on confidentiality, so they can share reports, and other information, on compliance with RFMO participants and observers that provide a comprehensive overview of compliance by participants.

Enable RFMO Secretariats to develop tools to analyze and present compliance information to participants in a clear and solution-oriented way by:

- strengthening database management to aggregate and sort through data quickly to determine the levels of compliance as well as support identification of systemic issues;

<ul style="list-style-type: none"> • providing more transparent presentation of information and outcomes including tracking compliance trends over time; • ensuring that the criteria for the design and presentation of any automated systems for the analysis and presentation of data is transparent; and • public reporting of compliance assessment results and actions to demonstrate how well the RFMO is performing.
<p>Build abilities and capacities in the Secretariat and amongst participants</p> <ul style="list-style-type: none"> • to manage and process all necessary information, including datasets held by the Secretariat and other data that may be utilized from observers or third parties; • to cross-reference datasets with other existing data sets to uncover anomalies; • to use the capacity of observers and third parties to assist in analyzing the full range of information being considered by the RFMO.
<p>Incorporate technological solutions in all phases of compliance review mechanisms, including in data collection, data collation, data analysis and reporting.</p>
<p>Provide summaries, aggregate tables, compliance plots and synthesis of all data and information available to make the information more accessible and facilitate the identification of critical problem areas.</p>

3.3 Evaluation of implementation and compliance

Evaluating the level of compliance with RFMO obligations and identifying areas in need of improvement is the primary function of compliance assessment processes. The goal is to ensure that if there are issues of non-compliance, that the underlying reason is addressed, be it by improving the clarity of the obligation or its implementation by participants. Most RFMO compliance processes face challenges at this step due to the large number of obligations that are to be assessed, the volume of data and information presented, and the limited time and capacities of compliance committees and participants to analyze those data and conduct assessments. The lack of an agreed understanding among participants over how an obligation is to be implemented can result in different interpretations, which in turn may cause differences of view over compliance versus non-compliance among participants. Some participants may also feel that participants in similar situations are treated differently due to this lack of shared understanding or clarity.

An RFMO must also decide which obligations are to be assessed and the frequency of assessment, either annually or on a multi-annual basis. A risk-based assessment framework which assesses the nature of the obligation, the potential consequences arising from breaches of the obligation, and the impact of the obligation on the conservation and management of the resources managed by the RFMO can assist in targeting the RFMO compliance assessment process on those obligations which are most significant for the RFMO. This can also be used to identify trends that can allow for the development of specific and adaptable responses to types of non-compliance.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Develop a risk-based approach to assessments, which considers the nature of the obligation and its impact on conservation and management of the resources managed by the RFMO, and incorporates information obtained by analyzing the different reasons that lead to non-compliance and by tracking and identifying the systemic trends in compliance and issues with non-compliance over time.

Adopt a compliance monitoring schedule to focus on different obligations over several years and establish priorities based on a risk-based assessment to identify the frequency at which obligations are reviewed. Prioritization criteria can include:

- major infractions, such as those that are fundamental to the integrity of the RFMO's conservation and management mandate and impact on the conservation of resources (e.g., quotas/limits, catch data reporting, vessel monitoring systems, observer programs);
- obligations that present implementation problems; obligations whose implementation is going well can be assessed less frequently;
- obligations or measures that will expire or need to be re-negotiated; and
- measures that have not been reviewed for several years.

Focus compliance assessment reviews and actions on persistent and serious issues of non-compliance.

When considering the severity of infringements and possible responses, consider the following criteria:

- risk-based: consider different factors such as how detrimental is the infraction to the status of stocks. Some risks could have a greater weight than others;
- frequency of infringement combined with whether a participant has taken any action to address the problem; and
- sanctions, which according to the IPOA-IUU should be of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such illicit fishing activities.

Consider compliance regarding principally actions by the flag state, while considering performance of vessels and beneficial owners/operators, and focus on cases of persistent and egregious non-compliance.

Where practicable in the case of individual vessels, ensure information on beneficial ownership of vessels is included in compliance reviews.

3.4 Decision-making

Compliance committees provide recommendations and advice to the RFMO governing body on implementation and compliance with obligations by the participants in the RFMO. Decisions are taken in accordance with the requirements in the conventions and agreements establishing the RFMO. Where decisions are taken by consensus, this may mean that adverse compliance decisions are effectively vetoed by the non-compliant participant. To encourage robustness of the compliance assessment

processes, as well as adhering to the principles of fairness and transparency, there should be mechanisms to facilitate decision-making and prevent deadlocks in compliance assessments.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Ensure that compliance information is clearly presented and thus facilitates the discussion and determination of compliance status.

Ensure that decision making occurs in a timely way including:

- by ensuring that participants whose compliance situation is being reviewed are not themselves part of the decision-making process or cannot prevent a decision by withholding consensus; and
- allowing members to achieve consensus, and barring that, determine through a vote the compliance status of a participant while documenting the rationale for a split decision and addressing the underlying difference through the compliance review process.

3.5 Compliance responses

An integral part of compliance assessment systems is the response to identified non-compliance, or the challenges experienced in the implementation of an obligation (such as lack of capacity or the lack of clarity with the obligation or how it is to be implemented). Compliance responses may be twofold: feedback from the compliance assessment process to improve the overall compliance with obligations and specific responses at the RFMO level to non-compliance by participants.

Without a feedback system that promotes cooperation among RFMO participants in ensuring that non-compliance is addressed, the compliance process will lose value. If non-compliance is identified but there is no mechanism for ensuring such infractions are effectively addressed through RFMO actions or domestic processes, or that infractions result in minimal consequences, participants may no longer see the value in such compliance assessment processes.

Institutionalizing discussions on reporting of identified areas of non-compliance and specific follow-up actions taken by participants will assist in identifying where improvements in implementation of obligations are necessary or the areas requiring further work. Establishing systems to provide capacity building to those participants that need assistance in complying with RFMO obligations are an essential component of follow-up mechanisms.

Developing established responses to address types of non-compliance, particularly persistent and serious cases, can promote legitimacy of the compliance process by ensuring there are consequences that apply equally to all participants and do not allow issues to persist indefinitely. The expectation is that sanctions will be of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such illicit fishing activities. These sanctions can be applied by the participant under their domestic law or by the participants within the RFMO compliance response framework or both.

Requiring more detailed reporting on how participants are implementing their obligations and acting regarding identified areas of non-compliance can allow for greater confidence that participants are complying with their RFMO obligations and committed to improvement in their compliance.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Feedback Mechanisms
<p>Ensure there is a robust follow-up mechanism in the compliance committee on participants' identified areas of non-compliance. This may include:</p> <ul style="list-style-type: none"> • individual reporting on follow-up actions to address infractions or provide missing reports; and • providing capacity building and reporting mechanism to those participants that need assistance in complying with RFMO obligations.
<p>Publish information on participants' responses to non-compliance and follow-up actions to enhance transparency and incentivize compliance.</p>
<p>Ensure that there is a process to use information gathered in compliance assessments to improve the clarity of new obligations and in assessing and updating existing ones.</p>
Schemes of Responses
<p>Adopt corrective actions policies or guidelines for responses to non-compliance, which:</p> <ul style="list-style-type: none"> • identify in advance the consequences of non-compliance; • are graduated according to severity of the non-compliance; and • consider the differential impact of responses in light of different circumstances or participants.
<p>Establish automatic procedures to determine and apply the consequence of an infraction, based on these pre-established corrective actions policies or guidelines for responses to non-compliance.</p>
<p>Consider potential responses to non-compliance within the RFMO such as:</p> <ul style="list-style-type: none"> • allocation decisions which explicitly take into account the participants' compliance record (positive and negative); • the loss of fishing opportunities through removing non-compliant participant-flagged vessels from the RFMO vessel registry for an agreed period of time; • quota reductions applied to compensate for the non-compliance activity of the participants'-flagged vessels; and • in the case of alleged serious non-compliance identified through an RFMO high seas boarding and inspection (HSBI) scheme, require that the vessel concerned return to port for follow-up inspection within 72 hours.

Rank infringements and responses and ensure that assessment reviews are proportionate to the severity of the infraction and its consequences.

When ranking infringements and responses, consider the following criteria:

- the risk of the non-compliance to the implicated stock(s) amongst others risks;
- the frequency of non-compliance; and
- whether a participant has taken any action to address the problem.

3.6 Capacity of Developing States

All RFMOs include developing country participants which may have capacity constraints in implementing agreed obligations. There may be capacity constraints for developing country participants in being able to generate and provide requisite information and participate effectively in RFMO meetings. Consistent with the principle of fairness, developing country participants should not be disadvantaged because of their capacity constraints. Targeted and effective capacity building efforts, combined with commitment to engage and improve compliance, can bring positive compliance outcomes. This will require efforts by all participants to recognize and address the individual capacity constraints of participants.

Capacity building is not solely confined to developing country participants. Depending on the complexity of new tools or measures adopted by an RFMO, all participants may need a period of time and capacity building so that they are in a position to fully implement their obligations.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Engage RFMO participants in the identification of their own capacity building needs and encourage/incentivize their involvement in capacity building programs.

Establish mechanisms for participants that receive capacity-building assistance to provide information on the implementation of capacity building programs and their impact on levels of compliance.

Establish adequate and targeted capacity building programs, which:

- create capacity in-country to assist participants in implementing the RFMO's mandate and requirements, where appropriate;
- provide online training and other resources on a regular basis to increase capacity; and
- involve the private sector and civil society in capacity building as funders, trainers, and trainees.

Ensure the effectiveness and efficiency of capacity building programs by prioritizing those participants with more critical problems, improving coordination of capacity-building efforts, and periodically assessing their effectiveness.

Set aside special contributions towards capacity building efforts, which may include funds from the fishing industry.

3.7 Cooperation

While each RFMO is governed by its constituent convention or agreement, there is a recognition that they are each implementing a shared interest in resource conservation and sustainable utilization outlined in the UN Convention on the Law of the Sea and in the UN Fish Stocks Agreement.¹¹ There are several formalized mechanisms that allow for cooperation between RFMOs, and between RFMOs and other bodies. There are opportunities to strengthen such cooperation in relation to compliance monitoring.

To improve compliance monitoring processes, RFMOs can further enhance their cooperation, including through informal exchanges of best practices (e.g., through informal mechanisms like the Tuna Compliance Network (TCN) or the Pan Pacific Fisheries Compliance Network (PPFCN) as well as through more formal arrangements that would include data sharing. Some notable opportunities exist regarding carrier vessels that operate in areas with multiple or overlapping RFMOs or between RFMOs managing species that share an ecosystem. Benefits could also be seen by coordinating reporting requirements for participants that may belong to several RFMOs.

Enhanced data sharing between RFMOs, including through standardization of cooperation and transparency approaches, would streamline this process and avoid creating multiple different approaches. Cooperation between RFMOs through informal voluntary networks and through using the auspices of the FAO can also serve to strengthen compliance assessment processes.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Share knowledge and data in order to cross-verify reports and other data between and among RFMOs including through:

- the development of confidentiality agreements and standardized rules across RFMOs for data sharing, cooperation and transparency;
- the conclusion of memoranda of understanding (MOUs), or potentially a global agreement on data release among RFMOs; and
- the harmonization of reporting requirements and assessment procedures between RFMOs.

Encourage and facilitate collaboration and the sharing of knowledge and experiences in the areas of compliance work among RFMO compliance officers, for example through informal and voluntary networks such as the TCN and the PPFCN.

Encourage international organizations such as the FAO to develop international standards or guidelines for assessing and addressing non-compliance, including overarching transparency

¹¹ See supra.

guidelines, which could provide some consistency in RFMO implementation, and encourage improvements in compliance among RFMO participants.

3.8 Monitoring, Evaluation and Review

Monitoring, evaluation, and review are essential to the effective implementation of robust compliance assessment processes. Mechanisms to follow-up annually on identified areas of participants' non-compliance are used to support RFMO participants in better meeting their obligations. This may be through transparent processes to determine whether compliance has improved or whether there are systemic issues which need attention, either individually or collectively. Monitoring and evaluation mechanisms examine and assess compliance trends over time. They provide the necessary feedback and lessons learned to enhance compliance assessment processes. Review mechanisms, including those that are external to the RFMO, evaluate compliance assessment processes or, more broadly, the health of the RFMO. They seek to improve the overall performance of an RFMO.

Creating changes in how RFMOs respond to non-compliance can take time and political capital. It is therefore necessary to have a transparent and fair process which draws on compliance assessments to encourage improved compliance, both at the individual and collective level. Openness and transparency in compliance assessment outcomes and their follow-up incentivize better compliance. Collective and cooperative mechanisms, within and among RFMOs, can assist in building trust and creating a culture of compliance within an RFMO. Compliance assessment processes are dynamic processes which gain considerable benefit from feedback loops and lessons learned from assessing the outcomes of compliance assessments. Monitoring, evaluation, and review mechanisms are essential to this and work to identify and draw on these valuable lessons learned so that the compliance system as a whole improves. Moreover, a focus on collectively improving the "health" of the RFMO through identifying what works and what needs to be corrected can mobilize the necessary political will to bring about changes that will enhance compliance and the performance of the RFMO.

To support the effective implementation of the compliance assessment processes and ensure that they achieve their purpose and operate by agreed principles, RFMOs should:

Publish information on the responses to non-compliance and follow-up actions to enhance transparency and incentivize compliance.

Identify the effectiveness of a measure and its obligations. If during the compliance assessment process, it is found that an obligation is being implemented well, the obligation can be assessed less frequently. This allows the focus to be placed on obligations or non-compliance that is frequent or systematic.

Consider taking on reforms to compliance assessment processes in a stepwise approach, which builds confidence and trust in the system. For example, as initial steps, tackle issues that may be less controversial.

Develop case studies, drawing on lessons learned from evaluations of compliance assessment processes, that demonstrate how compliance regimes can be strengthened.

Assess the outcomes of compliance review mechanisms as part of RFMO performance reviews.

Carry out an “RFMO health check,” which highlights what is working and provides an understanding of the performance of the entire RFMO.

4. Conclusion

This paper identifies key attributes of an effective and well-designed RFMO compliance assessment process. RFMO compliance processes can be evaluated, either formally or qualitatively, against these attributes to identify areas where effective approaches are being used, and where they can be strengthened. RFMO participants and other stakeholders are encouraged to consider the menu of recommendations and tools provided in this paper as a means of improving and strengthening RFMO compliance processes. Annex 1 describes a methodology to assess RFMO compliance processes. This evaluation method summarizes the key attributes provided in this document, which, through the use of radar plots, can help evaluate areas where effective approaches are being used and where they can be strengthened, including through using the menu of recommendations and tools provided in this paper. It draws a distinction between governance (whether there is a process and support for compliance) and operations (how well does the system function in practice).

In addition, a synthesis of the key recommendations and tools developed through the course of the Workshops is set out in Annex 2.

Building on the outcomes of the three Workshops, this paper identifies a set of core areas for RFMOs to consider in evaluating and strengthening their compliance assessment processes. These include ensuring:

- that the governance process is well defined and that its operations are undertaken transparently and with a goal of demonstrating the effectiveness of the implementation of the agreed management actions;
- a robust follow up process on compliance that allows demonstration of progress over an extended period of time based on clearly identified priority obligations and agreed responses to non-compliance.

The discussions among the participants in the three Workshops, and the two webinars,¹² identified other broader aspects that could be considered by RFMO participants and observers to improve shared fisheries governance and performance generally.

One aspect is to strengthen the overarching legal framework of the RFMO through amending its convention where necessary to reinforce the ongoing and basic requirements of the compliance assessment process. This may include excluding a participant whose compliance status is being

¹² Webinar Expert Panel Discussion “The Role of Transparency in the Performance of RFMOs”, 15 March 2021.

Panelists: David Balton, Former U.S. Ambassador for Oceans and Fisheries; Quentin Hanich, Fisheries Governance Program Leader, University of Wollongong; and Dr. Penny Ridings, Legal Adviser at WCPFC. Moderator: Judge Tomas Heidar, Vice-President of the International Tribunal on the Law of the Sea. Webinar Expert Panel Discussion “Do RFMOs have the right tools to improve compliance?”, 12 October 2021 Panelists: Ms. Alexa Cole, Director, Office of International Affairs and Seafood Inspection; Mr. Matthew Gianni, Co-founder Deep Sea Campaign Coalition; Mr. Frank Meere, Chair, Compliance Committee, CCSBT; Mr. Osvaldo Urrutia, Senior Lecturer, Faculty of Law, P. Universidad Catolica de Valparaiso, Chile. Moderator: Ms. Jung-re Riley Kim, Chair, WCPFC and Vice-Chair, IOTC.

assessed from the decision-making process (e.g., voting on its own compliance status) and considering voting as a mechanism to move a compliance process, and any follow up actions, forward in a timely way.

Another broader consideration that contributes to the compliance status of a participant is the effectiveness of its control of its flag vessels (namely flag State performance). While FAO flag State performance guidelines exist, they remain voluntary. Consideration needs to be given to mechanisms to strengthen flag State performance as well as mandating the need to identify beneficial ownership for vessels included on RFMO vessel registries.

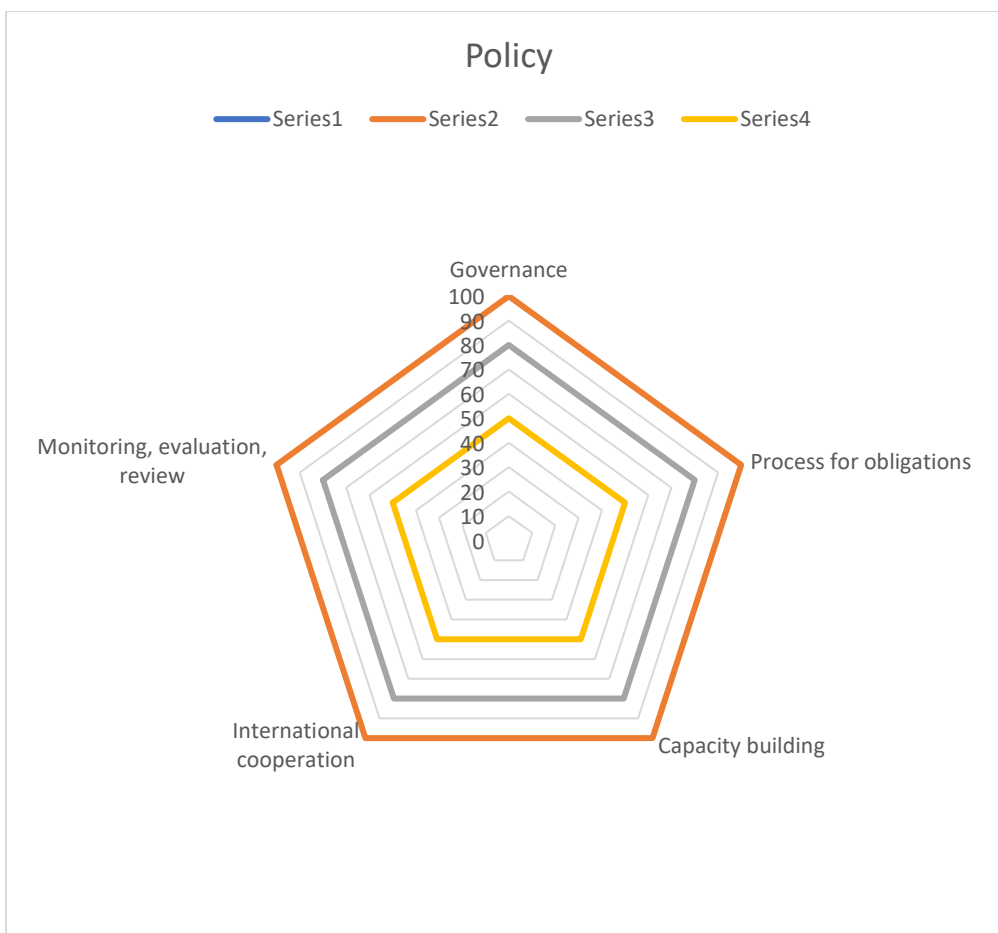
Another aspect is promoting consistency among RFMOs in the implementation of compliance processes. One avenue would be to encourage international organizations such as the FAO to develop international standards or external guidelines for assessing and addressing non-compliance, including overarching transparency guidelines, which could provide some consistency in RFMO implementation, and encourage improvements in compliance among RFMO participants. There is also clear benefit from collaboration and the sharing of knowledge and experiences in the areas of compliance work among RFMO compliance officers, particularly through informal and voluntary networks. It is through learning from others and sharing approaches, such as those identified in this paper, that RFMO compliance assessment processes can be continuously evaluated and strengthened.

Annex 1: Supporting the monitoring and review of the performance of RFMO Compliance Processes within an RFMO over time or amongst RFMOs

A graphical representation of the performance of the RFMO compliance process is recommended in order to synthesize and effectively represent the complex set of aspects that the process encompasses. The approach below, based on spider/radar plots, was developed by the Expert Review Group drawing from the key attributes of an effective and well-designed RFMO compliance assessment process and recommendations and tools provided in this document. The approach covers the two important aspects of the compliance assessment process – that there be an effective governance process and that this be implemented effectively.

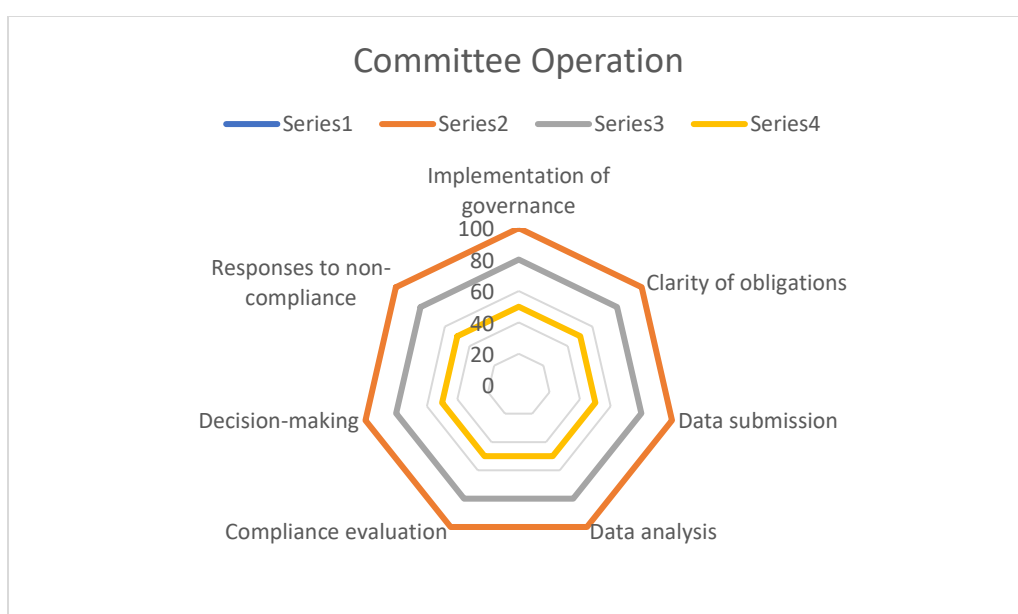
The approach ideally would be quantitative, with demonstrable and objective criteria. One example of an objective criteria would be the ability for observers to participate in the compliance assessment process. Arguably this would be an important element for governance and an RFMO could score a green under that element only if the process admitted observers. Observer participation would also be considered under operations, and an RFMO for example could be scored 20 if observers fully participated, 10 if they observed and engaged, and zero if they only observed. It is recognized that some RFMOs may prefer to employ a more qualitative approach. A caution would be to ensure that the value of this approach is not diminished through too subjective of an evaluation. Thus, a hybrid could prove valuable to address those elements that are more easily quantifiable combined with a more qualitative approach for those elements that either lack hard data or are more truly subjective.

The plots below are for illustrative purposes. Further work could be done to develop an approach to representing RFMO compliance processes through spider / radar plots.



	POLICY	80-100 Green	65 to 80 Yellow	50 to 65 Orange	Under 50 Red
1.	Governance – includes principles and transparency – i.e., includes the participation of observers	Processes are fair, impartial, legitimate, transparent, targeted, effective, efficient and cooperative			
2.	Process to ensure clarity of measures is in place to address compliance issues related to interpretation	To avoid undermining performance of participants or their assessment of compliance			
3.	Capacity building	RFMO has well developed mechanisms for developing country capacity building			

		for compliance purposes			
4.	International cooperation	Good sharing of knowledge and information with other RFMOs and others.			
5.	Monitoring, evaluation, review	Robust monitoring and follow up of instances of non-compliance			



	COMMITTEE OPERATION	80-100 Green	65 to 80 Yellow	50-65 Orange	Under 50 Red
1.	Implementation of governance –	Are the processes themselves open, fair and transparent and the Chair is able to operate in a neutral fashion			
2.	Clarity of obligations – is the lack of clarity undermining the performance of	Obligations are clear; audit points established for all key obligations; risk-based assessment			

	participants or their assessment of compliance	framework to prioritise obligations for assessment			
3.	Data submission	Data is available and verification from independent sources is possible			
4.	Data analysis	Data is presented in an understandable and useful way; trends and summaries are analysed			
5.	Compliance evaluation	Focus is clearly on non-compliance; priority given to compliance with obligations where conservation and management are most at risk			
6.	Decision-making	Decision making is fair, objective and without involvement of the affected participant in decision-making on their compliance issues either in committees or in the commission			
7.	Responses to non-compliance	Responses are agreed in advance and domestic actions / follow-up are aligned with RFMO concerns, focussed on the most egregious instances, and encourage future compliance / deter non-compliance.			

Annex 2: A synthesis of the Key Recommendations and Tools

RFMO organization and governance. RFMO participants should ensure that the roles of RFMO bodies, participants and other stakeholders in compliance review processes are clearly defined and that their secretariats, in particular, are adequately resourced so they have the time, capacity and mandate to analyze compliance data and assist participants more effectively.

Observer participation. Establish a clear process for the participation of observers, governed by appropriate confidentiality requirements, who have an interest in the work of compliance committees and that provides them access to the relevant data, documents and reports.

Clarity and consistency of conservation measures. Ensure that new conservation measures are carefully written so their obligations and reporting requirements are clear and consistent with other measures and review existing measures and obligations to improve their clarity, implementation and compatibility with other measures and obligations.

Assessment metrics. Draft obligations with audit points or other mechanisms to promote clarity in the obligations to be assessed and the data that are to be reported to demonstrate compliance.

Data quantity. Ensure the RFMO has the information to assess compliance by reviewing the sources of information, assessing whether it is representative and obtaining information from additional sources where available.

Data quality. Ensure information meets high standards and allows for verification and cross validation where practicable, and that the addition of new data sources is balanced with increasing workloads for secretariats

Data confidentiality. Ensure Secretariats are guided by clear rules, including on confidentiality, so they can share data, reports, and other information, on compliance with RFMO participants and observers that provides a comprehensive overview of compliance by participants.

Information presentation. Enable RFMO Secretariats to develop tools to analyze and present compliance information to participants in a clear and solution-oriented way.

Technology. Incorporate technological solutions in all phases of compliance review mechanisms, including in data collection, data collation, data analysis and reporting.

Assessment basis. Develop a risk-based approach to assessments, which considers the nature of the obligation and its impact on conservation and management of the resources managed by the RFMO, and incorporates information obtained by analyzing the different reasons that lead to non-compliance and by tracking and identifying the systemic trends in compliance and issues with non-compliance over time.

Compliance review procedures. Adopt a compliance monitoring schedule to focus on different obligations over several years, establish priorities to identify the frequency at which obligations are reviewed based on with criteria including obligations fundamental to the integrity of the RFMO, obligations that present implementation problems or a due for re-negotiation.

Criteria to determine outcomes of non-compliance. Analyze the different reasons that lead to participants' non-compliance and devise responses that adapt to the different types of non-compliance and to the impact on RFMO fisheries, with a focus on persistent and egregious non-compliers.

Decision-making. Encourage timely decision-making including by ensuring that participants whose compliance situation is being reviewed are not themselves part of the decision-making process or cannot prevent a decision by withholding consensus.

Follow up actions. Ensure there is a robust follow-up mechanism in the compliance committee on participants' identified areas of non-compliance, including individual reporting on follow-up actions, and publicity on participants' responses to non-compliance.

Procedures to determine outcomes. Automatic procedures. Establish automatic procedures to determine and apply the consequence of an infraction, based on pre-established corrective actions policies or guidelines for responses to non-compliance, which are graduated according to severity of the non-compliance and consider the differential impact of responses in light of different circumstances or participants.

Procedures to determine outcomes. Proportionality. Rank infringements and responses and ensure that assessment reviews are proportionate to the severity of the infraction and its consequences.

Capacity-building. Ensure the effectiveness and efficiency of capacity building programs by prioritizing those participants with more critical problems, improving coordination of capacity-building efforts, and periodically assessing their effectiveness

Information from RFMOs. Encourage RFMOs to share knowledge and data with each other to cross-verify reports and data, including through confidentiality agreements and the harmonization of reporting requirements and assessment procedures, and encourage collaboration and the sharing of knowledge and experiences in the areas of compliance work among RFMO compliance officers.

Review. Draw on lessons learned from evaluations of compliance assessment processes to demonstrate how compliance regimes can be strengthened and carry out an "RFMO health check," which highlights what is working and provides an understanding of the performance of the entire RFMO.

Annex 3: Terms and Definitions

<p>Illegal, Unreported and Unregulated (IUU) Fishing</p>	<p>The term IUU fishing is used to broadly describe fishing activities that contravene or disregard national, regional or international fisheries legal frameworks or to describe a lack of regulation or control in fisheries. The term covers a wide variety of fishing activities and reflects three distinct and separate components; illegal, unreported and unregulated. The International Plan of Action IUU (IPOA-IUU) provides a description of these three components, including as they relate specifically to the high seas.</p>
<p>Monitoring, Control and Surveillance (MCS)</p>	<p>The term MCS was developed by FAO in 1981 and is now widely accepted as an essential component of sustainable fisheries management and to detect, deter and eliminate illegal, unreported and unregulated (IUU) fishing. There are several MCS measures adopted by RFMOs to support compliance and enforcement activities, including fishing vessel authorizations, records of fishing vessels, catch and effort reporting, vessel monitoring systems (VMS), schemes of observation, boarding and inspection regimes and port State measures (PSM).</p>
<p>Measures</p>	<p>RFMOs use various terms to describe the measures they adopt for the conservation and management of stocks under their purview including Conservation Measures (CM), Conservation and Management Measures (CMM), recommendations, resolutions, or decisions. For this document, the term measures will be used and is intended to cover all the different terms used by RFMOs to describe the instruments which contain legally binding obligations with which participants must comply.</p>
<p>Obligations</p>	<p>Legally binding obligations arise from the measures applied by RFMOs and may also arise from the text of relevant conventions or agreements. For this document, the term obligations will be used and is intended to cover all the different terms used by the RFMOs that may be assessed in a compliance process.</p>
<p>Participants</p>	<p>RFMOs use various terms to describe the participation of States, fishing entities and Regional Economic Integration Organizations (REIOs) including Member and Contracting Party (CP), as well as Cooperating Non-Member (CNM), Cooperating non-Contracting Party (CNC) and Participating Territory (PT). For this document, the term participants will be used and is intended to cover all the different terms used by the RFMOs.</p>
<p>Regional Fisheries Management Organizations (RFMO)</p>	<p>There is no internationally agreed definition of a RFMO, however the Food and Agriculture Organization of the United Nations (FAO) does provide a working definition as an intergovernmental organization established by international agreement with the competence to adopt a range of legally binding obligations.</p>