



**2022  
REPORT**

# **THIRD VIRTUAL EXPERT WORKSHOP ON BEST PRACTICES IN COMPLIANCE IN RFMOS**

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



**Third Virtual Expert Workshop on Best Practices in Compliance in RFMOs: Outcomes of Compliance Review Processes**

**Final Report – April 2022**

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### I. Executive Summary

Many global fish stocks that are managed by regional fisheries management organizations (RFMOs) remain overexploited, and the sustainability of such stocks, and their associated marine ecosystems, is compromised. Addressing this global issue involves higher levels of compliance by RFMO members with existing obligations. Taking into consideration recommendations at the U.N. level and current initiatives in RFMOs to strengthen compliance mechanisms, The Pew Charitable Trusts, in collaboration with the International Seafood Sustainability Foundation (ISSF), convened a series of expert workshops with the objective of identifying some of the challenges in current compliance review mechanisms and potential solutions that would strengthen these processes and lead to improved member compliance.

Following on from a “Virtual Expert Workshop on Best Practices in Compliance in RFMOs” convened in [September 2020](#) and another one in [March 2021](#), a third “Virtual Expert Workshop on Best Practices in Compliance in RFMOs” was held in November 2021 to address outcomes of compliance review mechanisms, and particularly RFMO responses to situations of non-compliance. Participants at previous workshops had highlighted the importance of understanding the mechanisms that are most effective to respond and/or incentivize compliance by RFMO members.

Each of the three Virtual Expert Workshops was attended by approximately 40 experts in RFMO compliance, including compliance officers from RFMO Secretariats, chairs of RFMO compliance committees, and representatives from international organizations, non-governmental organizations (NGOs), academia, and civil society, all of whom participated under the Chatham House rule.

The Third Workshop was organized over a day and a half, and was preceded by an expert panel discussion on Oct. 12, 2021, under the title, “Do RFMOs have the right tools to improve compliance?” The expert panel included 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, Commission for the Conservation of Southern Bluefin Tuna (CCSBT); and Mr. Osvaldo Urrutia, legal and policy adviser, international fisheries, Government of Chile. It was

moderated by Ms. Jung-re Riley Kim, chair, Western and Central Pacific Fisheries Commission (WCPFC), and vice-chair, Indian Ocean Tuna Commission (IOTC).

The objective of the Third Workshop was to review mechanisms that currently exist in RFMOs to respond to situations of non-compliance, discuss their effectiveness in leading to improved compliance by RFMO members (e.g., capacity building, identification letters, increased monitoring, repayment of over-catches, or other penalties with economic consequences, etc.) and explore, in particular, options that could tackle the problem of persistent non-compliers. The Third Workshop was also designed to review methodological developments that could increase the effectiveness of current mechanisms, such as setting a hierarchy of obligations and of breaches of such obligations, and predetermining the consequences of situations of non-compliance.

Workshop participants, by way of conclusion, took from their deliberations some key learnings on cross-cutting themes; structures and procedures for responding to identified non-compliance; and tools to respond to non-compliance.

#### **Cross-cutting themes**

- Adopt solutions that fit the characteristics of each RFMO as there may not be “one size that fits all.” However, consider standardizing some requirements among RFMOs as this may increase clarity for nations that are involved in several RFMOs and increase harmonization among RFMOs.
- As changes to strengthen responses to non-compliance may take place slowly in RFMOs, work to prioritize responses that can be more easily accepted and build trust in the system so that more stringent responses can be applied in the future.
- Assess the outcomes of compliance review mechanisms as part of RFMO performance reviews.
- Allow international bodies (U.N., tribunals, etc.) to assess the performance of RFMOs, particularly in critical situations, as they can provide incentives to improve RFMO performance.
- Develop international guidelines for assessing and addressing non-compliance in RFMOs.
- Carry out RFMO “health checks” to provide a systemic understanding of the performance of the entire RFMO and what is working/not working.

#### **RFMO structures and procedures for responding to identified non-compliance**

- Ensure that RFMO conservation and management measures are clearly drafted and include all aspects that will ensure their effective implementation.
- To assess compliance, cross-validate information received from RFMO members using relevant information external to the RFMO world and incorporate independent assessments of compliance.
- Increase transparency at all levels, including by facilitating access to relevant information and participation by non-state stakeholders.
- Clarify the roles of different RFMO bodies in responding to non-compliance and provide, in particular, more independence to RFMO Secretariats to analyze, present and validate information.

- For efficiency, rank RFMO measures and/or their infringements. In doing so, consider among others: associated risks, impact of the measure, frequency of the infringement and the member’s response to the infringement.
- Categorize RFMO members based on their levels of non-compliance and the causes of such non-compliance. Prioritize action against those members that regularly do not comply and that take no action to reverse the situation.
- Incorporate trend-tracking as part of any compliance assessment and the setting of consequences of non-compliance.

### **RFMO tools and systems to respond to non-compliance**

- Use a broad spectrum of tools, from positive incentives to sharper-edged measures, which adapt to the different causes of non-compliance and to the different “hooks” that different states have to improve compliance (e.g., industry, level of scrutiny, market demands). Consider implementing tools to address non-compliance at a vessel level, where possible.
- In the context of greater transparency, consider creating lists of “reliable” and/or “non-reliable” members; “white lists” of compliant members; or lists of “flags of non-compliance” and prioritize reviews on persistent non-compliers.
- Introduce predetermined consequences of non-compliance and incorporate audit points when drafting new measures. As a first step, consider introducing the consequences as guidelines before making them mandatory.
- Create in advance a list of serious infringements and the responses to such infringements.
- Incorporate automatic responses for issues such as minor reporting infringements, which would not need to be discussed at compliance committee meetings.
- Resort to RFMO market measures only for serious or persistent non-compliance. If transparency is ensured, private market stakeholders can take individual decisions to avoid non-complying members and prioritize sourcing from compliant actors.
- Develop compliance action plans for individual members that identify the specific issues that need to be addressed and set time-bound objectives to improve compliance deficits.
- Set aside RFMO funds and allocate special contributions—also from the fishing sector—towards capacity building for compliance, which include in-country missions and direct engagement of fishers themselves.
- Encourage voting on compliance-related matters, or at least adopt procedures such that members whose compliance situation is being reviewed remove themselves from the decision-making process.

## **II. Workshop Report**

### **1. Introduction**

Many global fish stocks that are managed by RFMOs remain over-exploited, and the sustainability of such stocks, and their associated marine ecosystems, is compromised. Addressing this global issue also involves higher levels of compliance by RFMO members with existing obligations. In the past decade,

independent performance reviews of several RFMOs have provided targeted recommendations to improve actions to ensure compliance, including following up on infringements or infractions and the functioning of RFMO compliance committees and assessment processes. In May 2019, the consultative meeting of States Parties to the United Nations Fish Stocks Agreement (UNFSA) held [consultations](#) on the topic of “Performance reviews of regional fisheries management organizations and arrangements,” which underscored that the full and effective implementation of the provisions of UNFSA depends on the effectiveness of the performance of those organizations and arrangements in fulfilling the functions set out in that Agreement. Other initiatives have explored, particularly at the RFMO level, ways to assess and support better compliance with conservation measures.

In this context, The Pew Charitable Trusts (Pew), the International Seafood Sustainability Foundation (ISSF) and other stakeholders identified the importance of strengthening compliance to further enhance the performance of RFMOs and convened a series of workshops. The first “Virtual Expert Workshop on Best Practices in Compliance in RFMOs,” convened in September 2020, provided an opportunity to identify some of the main drivers for assessing and then promoting effective compliance by RFMO members with applicable conservation and management measures. More information on the first workshop can be found in the [First Workshop’s report](#).

Given the interest expressed by workshop participants in continuing this dialogue on RFMO compliance, a second “Virtual Expert Workshop on Best Practices in Compliance in RFMOs” was convened in March 2021, focused on the issue of transparency, which was regarded by participants at the first workshop as a potential driver of improved quality of information, better data exchange—internal to RFMOs and among States and RFMOs—stronger verification mechanisms and increased external confidence in RFMO compliance processes. More information on the second workshop can be found in the [Second Workshop’s report](#).

To close this initial cycle of virtual workshops, a third “Virtual Expert Workshop on Best Practices in Compliance in RFMOs” was held in November 2021 to address the outcomes of compliance review mechanisms. Participants at previous workshops had highlighted the importance of understanding the mechanisms that are most effective to respond and/or incentivize compliance by RFMO members. The third workshop was convened to review mechanisms that currently exist in RFMOs, discuss their effectiveness in responding to and/or incentivizing improved compliance by RFMO members (e.g., capacity building, identification letters, increased monitoring, repayment of over-catches, or other penalties with economic consequences, etc.) and explore, in particular, options that could tackle the problem of persistent non-compliers. The third workshop also was intended to review methodological developments that could increase the effectiveness of current mechanisms, such as setting a hierarchy of obligations, a hierarchy of breaches of such obligations, and predetermining the consequences of situations of non-compliance.

The third workshop was attended by 39 experts in RFMO compliance, including compliance officers from RFMO Secretariats, chairs of RFMO compliance committees, and representatives from international organizations, NGOs, academia, and civil society, all of whom participated under the Chatham House rule. The full list of participants, who attended in their personal capacity, is available in Appendix 1.

The third workshop, as the previous ones, was organized under the guidance of its steering committee: Mr. Gerry Leape, principal officer at The Pew Charitable Trusts; Ms. Adriana Fabra, special adviser to Pew; Ms. Holly Koehler, vice president for policy and outreach at ISSF; Dr. Lara Manarangi-Trott, compliance manager at the Western and Central Pacific Fisheries Commission (WCPFC); Mr. Osvaldo

Urrutia, senior adviser to the Government of Chile; and Mr. Mark Young, executive director of the International Monitoring, Control, and Surveillance (MCS) Network.

Conclusions and materials from the workshop are available for use by all participants with an interest in RFMO compliance review mechanisms. The outcomes and initial key learnings of the three “Virtual Expert Workshops” will provide the basis for Pew’s development of initiatives to enhance compliance in RFMOs, including new resources and research on the subject, a collection of recommendations made at the “Virtual Expert Workshops,” and an “Expert Workshop on Best Practices in Compliance in RFMOs” to be convened in 2022.

## 2. Workshop’s agenda and organization

Considering the virtual and global nature of the workshop, working sessions were organized according to compatible time zones. Discussions were structured into two working groups, corresponding to two different geographical areas. Regional sessions were held in parallel, but all participants met for a final joint session at which the key learnings from each working group were presented.

Prior to the workshop, participants and other interested stakeholders were invited to attend an expert panel discussion on Oct. 12th titled, “Do RFMOs have the right tools to improve compliance?” on the role of RFMOs in addressing non-compliance and incentivizing improvement. The panel was composed of the following experts: Ms. Alexa Cole, director for International Affairs and Seafood Inspection; Mr. Matthew Gianni, co-founder, Deep Sea Campaign Coalition; Mr. Frank Meere, chair, compliance committee, CCSBT; and Mr. Osvaldo Urrutia, legal and policy adviser, international fisheries, Government of Chile. It was moderated by Ms. Jung-re Riley Kim, chair, WCPFC, and vice-chair, IOTC.

Both workshop regional groups focused on two central agenda items:

- *Structures and procedures to respond to non-compliance*, which addressed the RFMO architecture and procedures already in place or in development in RFMOs that may increase the effectiveness of current mechanisms, such as setting a hierarchy of obligations and of breaches of such obligations, and predetermining the consequences of situations of non-compliance
- *Systems and methods for effective responses to non-compliance*, which considered tools used by RFMOs to respond to non-compliance (e.g., capacity building, identification letters, increased monitoring, repayment of over-catches, penalties with economic consequences, etc.) and assessed their effectiveness, also in regard to the specific problem of persistent non-compliance.

Each regional group had between 15 and 20 participants, which in turn broke up into smaller discussion groups for some sessions. Final organization of the workshop sessions was as follows:

Group 1*	Group 2**
DAY 1 - 2 November (9 a.m. EST)	DAY 1 - 3 November (11 a.m. AEDT)
Sessions 1, 2 & 3 (3.5 hours)	Sessions 1, 2 & 3 (3.5 hours)
DAY 2 - 3 November (5 p.m. EST)/4 November (8 a.m. AEDT)	
Report back and next steps (1.5 hours)	

\*EST: Eastern Standard Time (UTC-5, Washington, D.C.)

\*\*AEDT: Australian Eastern Daylight Time (UTC+11, Sydney)

Detailed workshop agendas are available in Appendix 2. Group facilitators summarized the key points from each session, which were shared immediately with all participants. Each group worked

independently from the other. Conclusions from each group provided the basis for drawing the key learnings from the workshop, which were presented in the final plenary session attended by participants from both regional groups.

### **3. Workshop materials**

All materials for the workshop were made available to participants on the Basecamp online platform, which also offers dedicated space for communication among participants. The workshop Basecamp hosts a “Compliance Library,” which includes a collection of research and RFMO materials relevant to compliance review mechanisms, with a dedicated section on transparency in RFMOs that features the most recent research on the topic. In addition, *RFMO compliance profiles* developed for the First Expert Workshop were updated, as of October 2021, with the collaboration of the RFMO compliance officers and shared with workshop participants.

As part of the workshop preparations, half of the participants responded to a pre-workshop survey, which helped gather information on the experts’ views on the consequences of non-compliance for RFMO regimes, effective responses to non-compliance and incentives for better compliance, among others. Conclusions from this survey are available in Appendix 3.

### **4. Workshop proceedings**

This section provides a summary of the main takeaways from the workshop, which points in particular to the principal challenges and potential solutions identified by participants. It is structured along the two main themes discussed at the workshop, and is preceded by a section on “cross-cutting issues,” which reflects takeaways from participants on matters related to RFMO governance and to the rationale of setting consequences to non-compliance, among others.

#### **A. Cross-cutting issues**

##### **(a) Acknowledge the reality of RFMOs**

#### **Challenges**

Participants, when considering making changes to compliance review systems, recognized that RFMOs are not all alike and so their compliance assessment systems, and any necessary improvements, may vary due to their different membership, scope, and governance structures. They pointed out that it is important to be aware of specific RFMO rules of procedure and acknowledge that there are not “one-size-fits-all” solutions. At the same time, some participants considered that standardization of some requirements may be helpful to compare and rate RFMOs (see point ((b)) below) and to monitor members that may be non-compliant across multiple RFMOs.

Often, in RFMOs, there is a lack of trust due to political dynamics. It is important to create an environment of trust by ensuring that processes and decisions are fair. Some participants had the perception that “RFMOs are not courts” and hence should not apply sanctions, while others noted that RFMOs establish obligations and therefore must have the tools to follow up on their implementation.

There was general agreement that creating changes in how RFMOs respond to non-compliance can take time and political capital. However, some participants considered that there is progress happening on compliance reforms in RFMOs, “just maybe not as quick as we would like.”

#### **Potential solutions**

- Take on reforms in a stepwise approach, which builds confidence and trust in the system. For example, as initial steps, tackle issues that may be less controversial.
- As a first step, focus on creating a scheme to address persistent and the most serious types of non-compliance, which damages the effectiveness of core measures and the integrity of the RFMO.
- Develop case studies that demonstrate how compliance regimes can be strengthened.
- Support reforms through collective and cooperative mechanisms, including among RFMOs.
- Address uneven playing fields in compliance systems with capacity building assistance as a first action as opposed to any punitive measures.
- Facilitate participation by all members in compliance review processes. If virtual settings are helpful, consider taking advantage of them.
- Change the names of the working groups away from the word “compliance” and focus instead on the exact performance improvement that is expected. Change the narrative away from finger-pointing and the stigma associated with “non-compliance” and focus on addressing specific problems.
- Consider supporting RFMO reforms with the development of international standards or external guidelines on non-compliance, developed potentially by the Food and Agricultural Organization of the United Nations (FAO). This could provide some consistency in RFMO implementation and buy-in among RFMO members in improvements.

## **(b) Outcomes of compliance review mechanisms as indicators of RFMO performance**

### Challenges

Several workshop participants considered that RFMOs themselves should be monitored on whether they are fulfilling their function and mandates. They should also be asked whether their compliance committees are focused on the right elements. Performance reviews can be a useful tool to improve compliance assessment mechanisms, and the reviews of these reviews have shown to be influential. Performance reviews, to be effective, have to lead to changes and accountability. RFMOs are only as good as the countries that make up their membership. Participants also acknowledged that “RFMOs do not exist in a vacuum”: Their members are benefiting from the global commons and, as a result, they have obligations and responsibilities towards the international community. United Nations bodies and international agreements should apply pressure on RFMOs to improve their performance.

The effectiveness of RFMO compliance systems, however, is impacted by the quality of the compliance data itself. Some participants pointed to the fact that some RFMOs with robust compliance review systems, which manage to detect more situations of non-compliance, appear to have more problems than those with less effective compliance review systems. Participants noted that this could be a consequence of some RFMOs, or some fisheries, having more robust monitoring requirements for data submission rates. Participants also noted this can result in skewed compliance assessments and perceptions of unfairness. Those that are making the effort should be recognized; otherwise, it is discouraging for RFMOs to take the time and effort to strengthen their systems.

### Potential solutions

- Carry out independent assessments of RFMOs, including by civil society, perhaps using a standard set of criteria.

- Evaluate the overall compliance of an RFMO considering the system it has set up, the degree of information that is available for assessments, and how non-compliance is addressed. Do not consider only the levels of non-compliance it has identified.

## **B. RFMO structures and procedures for responding to identified non-compliance**

When discussing “RFMO structures and procedures for responding to identified non-compliance,” workshop participants considered in particular: (1) what is needed to ensure that RFMOs have a robust system to address and respond to identified non-compliance; (2) whether there should be an established hierarchy of obligations and non-compliances and, if so, under which criteria; and (3) whether consequences for specific situations of non-compliance should be developed in advance.

There was consensus among participants that existing systems need to be more robust than they are at the moment. Challenges and potential solutions are presented under the key issues addressed in the different sessions, several of which were also identified in the first and second “Virtual Expert Workshops.”

### **(a) Scope of compliance review systems: vessels v. members**

#### Challenges

Some participants found it important to distinguish, when setting outcomes for situations of non-compliance, infringements by vessels from infringements by RFMO members themselves. Participants acknowledged that they require different solutions, and illegal, unreported, and unregulated (IUU) vessel lists were highlighted as addressing vessel-based infractions.

#### Potential solutions

- It is important that the RFMO compliance process focus on the performance of flag States as flag States are the principal members of the RFMO. Also, issues related to vessel compliance tend to be too granular and may result in the assessment missing the larger, more systemic compliance issues.
- On vessels, require beneficial ownership information to be included in all flag State reports and the penalties for failure to comply with those obligations.

### **(b) Clarity of measures**

#### Challenges

As acknowledged in past workshops, participants identified the lack of clarity of RFMO conservation and management measures (CMMs) as an obstacle to compliance. The ambiguous drafting of some CMMs—mainly the result of political negotiation—makes it difficult to identify what enforcement or compliance is required. Ambiguity also creates difficulties for the Secretariats when reviewing members’ compliance. Participants noted that clearer CMMs are necessary to cultivate a decent compliance system, and that legal clarity is a strong deterrent of non-compliance.

#### Potential solutions

- Involve compliance officers or professionals in the drafting process of a new CMM.

- When drafting a new CMM, include how the measure is to be implemented and identify clearly what the obligations are and for whom.

### **(c) Comprehensiveness of measures**

#### Challenges

CMMs are written at a high level; they are fairly overarching and broad, and their practical implementation is left up to each country. Measures should incorporate the necessary national policy that would help the RFMO member to act (e.g., surveillance, inspections).

#### Potential solutions

- Measures need to incorporate provisions that aid/bolster “on-the-ground” support for each member and describe how to use limited resources equitably.

### **(d) Information**

#### Challenges

As noted in previous workshops, information of quality is essential to any robust compliance review system. Currently, the quality and quantity of data submitted by members can be very different among RFMOs. Some RFMOs have more sophisticated information management systems and monitoring, control, and surveillance (MCS) requirements than others. Also, many RFMOs are not currently using, for their assessments, information from technology or data sources that are now available at the national level, such as satellite, imaging or remote sensing data. RFMOs need a solid system of information that can be validated to identify non-compliance. At the moment, it is not possible to always identify those who are not in compliance with existing data sets that rely primarily on national reporting. The use of independent verification can help identify compliance problems and develop solutions that are graduated and avoid situations in which RFMOs or members with less MCS look more compliant than those that have more enhanced MCS tools.

#### Potential solutions

- To cross-validate information, allow RFMO Secretariats to use relevant information external to the RFMO world to identify potential non-compliance and validate reports, such as data from NGOs.
- When setting up procedures to use relevant external information or data, ensure that members can respond to information from independent sources.

### **(e) Transparency**

#### Challenges

Participants emphasized the importance of not confusing having more data with providing more transparency (“garbage in, garbage out”). Transparency is necessary to know if states are taking action and improving their performance, and can be helpful to assess the effectiveness of capacity building programs. More transparency will encourage higher levels of compliance by leading to better behavior as a result of exposing issues and identifying what needs to be fixed. However, participants acknowledged that there can be a flip side to this, as access to information can be used against states,

for example, through unilateral measures, and this can be a disincentive to trust and openness among RFMO members.

#### Potential solutions

- Build trust as a way to build greater transparency.
- Improve reporting by members as a first step to increase transparency.
- Increase transparency by harmonizing reporting, creating linkages between databases among RFMOs and establishing data-sharing agreements among RFMOs.

#### **(f) Strengthening Secretariats and other bodies**

##### Challenges

Participants indicated that for members to become comfortable with responses to non-compliance, members first need to be comfortable with the assessment process itself.

In particular, there should be more resources given to the Secretariats. Some participants questioned whether Secretariats are currently able to identify all situations of non-compliance and noted that they may need to access independent analyses and information from observers and others. Overall, there is a lack of tools and empowerment of Secretariats. With more resources, Secretariats can centralize information on non-compliance, engage in consultations with members about potential non-compliance in advance, thus avoiding direct confrontation between members, and spot anomalies in the system or in measures.

#### Potential solutions

- Clarify the roles of different entities in responding or supporting non-compliance (Secretariat, flag States, etc.).
- Appoint independent chairs of compliance committees, as they can have greater accountability and be delinked from politics.
- Strengthen database management and analytical capabilities to aggregate and sort through data quickly to determine the levels of compliance as well as identify systemic issues.
- Empower Secretariats to carry out and/or access independent analysis to validate information.

#### **(g) Hierarchy of obligations**

##### Challenges

Participants favored the establishment of a hierarchy of obligations and of responses to situations of non-compliance—noting that RFMOs cannot handle all the situations of non-compliance at once. However, some acknowledged the difficulties in establishing such hierarchies, as all measures are important and interlinked, and debates to set these hierarchies may turn out to be quite political and lengthy. Some participants suggested focusing on the hierarchy of infractions. Others pointed to the challenge of developing a scheme of responses retrospectively, when the RFMO norms are already adopted (as opposed to when the RFMO and/or the measure is being developed).

Participants supported setting a hierarchy of measures in response to non-compliance, as there cannot be just one type of response: It is necessary to have a variety of tools that are graduated and proportional to the type of breach. Monitoring should focus on the worst offending issues.

To rank responses to non-compliance, it is helpful to keep track of the record of members and which measures are not being complied with, as this helps having a view of the history of non-compliance over time, not only for individual members but also to identify systemic non-compliances.

#### Potential solutions

- Consider existing models in which infringements are categorized, such as in the European Union's (EU) IUU regulation, Northwest Atlantic Fisheries Organization's (NAFO) list of 18 infringements, etc.
- Consider the following elements when ranking infringements and responses.
  - a. 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.
  - b. Frequency of infringement combined with whether a member has taken any action to address the problem.
  - c. Effectiveness of the measure. If its implementation is going well, it can be assessed less frequently. This allows placing the focus on measures/non-compliance that is frequent/systematic.
- Incorporate automatic responses for issues such as minor reporting infringements, which would not need to be discussed at compliance committee meetings. These types of infringements may also be addressed bilaterally between the Secretariat and the member in question.
- Incorporate trend-tracking as part of any compliance assessment and the setting of consequences of non-compliance.

#### **(h) Categorization of member non-compliance and action**

#### Challenges

Consideration of the issue of setting a hierarchy of obligations and of infractions also raised the issue of whether there should be a categorization of members based on their level of compliance and responses. It was noted that members with poor compliance need to be "watched more often" and this is costly. In particular, flags of convenience require particular monitoring. Some participants considered that members could be classified as "reliable" and "less reliable" and build up a history of their performance.

Some participants identified different categories: 1) members that intend to comply but lack the capacity to do so; 2) members that accidentally or occasionally fail to comply but can correct their infringement; and 3) members that do not comply and do not take any action to reverse the situation. These situations require different types of responses, and some participants considered that the latter category of non-compliance should be prioritized.

#### Potential solutions

- Consider incentives for members that have good compliance records.
- Consider identifying groups of member compliance and focusing reviews and actions on those persistent and egregious non-compliers that are not taking action to remedy the situation.
- Apply different solutions to different problems leading to non-compliance, strengthening capacity building where needed and applying harsh sanctions for persistent and serious non-compliers.

- A possible priority—although it is to be determined case by case—could be to start with increasing capacity building, which can be done incrementally, and can then tackle “the political beast of willpower” at a later stage.

### C. RFMO tools and systems to respond to non-compliance

On “tools and systems to respond to non-compliance and improve compliance, particularly persistent non-compliance,” participants examined especially: (1) what types of tools could be more effective to incentivize/promote compliance; (2) whether there are different types of tools for responding to non-compliance needed depending on the severity or frequency of the non-compliance; (3) mechanisms to apply tools for addressing non-compliance, such as pre-agreed responses and/or automatic implementation of sanctions or other consequences; and (4) the role of decision-making processes in the application of responses. In both sessions, participants gave special consideration to the case of persistent non-compliers.

#### (a) The tools at hand

##### Challenges

Some participants considered that most tools that could be used in RFMOs to respond to non-compliance and improve compliance already exist, while others considered that there may be other approaches that could be added. All participants acknowledged, however, that existing tools are not working well, principally due to lack of political will and incentives to modify this will. There is a discrepancy across the board between existing international obligations and the performance of RFMO members, and it is difficult to identify the “higher orders of persuasion” that could drive action, particularly of powerful actors.

As RFMOs learn and improve, they need to use a combination of tools and structures, which take into consideration the differences among RFMOs, their regions and the economic, cultural and political realities of their members. Measures need to appeal to the different “hooks” of states (e.g., industry, level of scrutiny, market demands).

##### Potential solutions

- Devise solutions that respond to the different “profiles” of non-compliers and also that tap on the different “hooks” that different states have.
- Use a broad spectrum of tools, from positive incentives to sharper-edged measures.
- Keep the menu of responses as broad as possible (i.e., do not do away with things just because they are not an issue right now).

#### (b) Incentives to compliance: transparency

##### Challenges

Greater transparency is acknowledged not only as an essential tool of RFMO good governance but also as a specific instrument that can incentivize better compliance. However, transparency, as discussed in the second “Virtual Expert Workshop,” has different facets and deserves detailed analysis: On one hand, there is the risk that additional information could be politicized and used against states in an unconstructive manner, and consequently disincentivize greater transparency and trust; on the other

hand, low levels of reporting may result in countries looking more compliant than they really are, which can also result in reduction of trust and unfair application of compliance tools.

Overall, participants agreed that some level of information needs to be made public so there are repercussions and can prompt self-correcting behavior. Publicity of documents will show the good and bad actors by default, as well as trends in compliance if this information is made available, and this can act as a way of “naming and shaming,” obtaining rewards or accessing capacity building and other solutions. High levels of transparency in members’ activities could be rewarded by the member paying lower RFMO fees or being subject to less monitoring and control. Transparency also allows outside markets to make the choice to buy or not if the level of compliance is not what is in line with their policies for sourcing or for the demands of the public. Their intervention may be more effective than having an RFMO deal with this itself.

Specifically, on “naming and shaming,” some participants had reservations on the potentially negative impact of this strategy and also warned that it may be effective in some parts of the world but not in others.

Public participation by civil society can counter certain lobbying groups that have outside influence with governments, and ward off corruption and other elements that prevent RFMOs from achieving their objectives.

#### Potential solutions

- Facilitate greater access of civil society to data and processes in RFMOs. These stakeholders have a greater ability to bring issues to RFMO attention, especially where mandates are constrained or there is a lack of MCS tools, etc.
- Consider identifying groups of member compliance and focusing reviews and actions on those persistent and egregious non-compliers that are not taking action to remedy the situation, and make this information public.

#### **(c) Incentives to compliance: action on vessels**

##### Challenges

It is important to differentiate between lack of compliance by RFMO members and by the vessels they flag or charter (or the owners of such vessels). Some participants considered that specific measures are necessary to ensure compliance by vessels, including RFMO IUU Vessel lists. Specifically, on IUU Vessel lists, participants noted their limited operability due to the need to adopt these lists by consensus in most cases.

##### Potential solutions

- Ensure that information on beneficial ownership is included in compliance reviews.
- Ensure that IUU Vessel lists include vessels flagged to RFMO members and non-members.
- Consider applying direct sanctions to vessels.

#### **(d) Incentives to compliance: market measures**

##### Challenges

Many participants considered that measures that restrict fishing and other measures with an economic impact provide the biggest incentive to improve compliance. In this context, market measures, also those

applied voluntarily by private stakeholders, play an important role. Good fishermen wish to be rewarded and can accept the pressure placed by the market. In the case of IUU fishing, the importance of market measures is particularly clear. However, the market response to situations of non-compliance is time-sensitive, and delays between reporting infringements and follow-up action can create difficulties. In addition, some big economies are not very sensitive to pressure on the fishing industry as this sector may not be so relevant nationally.

#### Potential solutions

- Ensure transparency of the compliance and remediation activities of RFMO members and their fleets so that market stakeholders can make their own decisions.

#### **(e) Incentives to compliance: addressing persistent non-compliance**

##### Challenges

Participants considered that cases of persistent and/or serious non-compliance require specific action. Pervasive breaches of RFMO obligations challenge the governance of the organization itself and the achievement of its objectives. Some participants considered that tackling these cases of non-compliance should be a priority, while others noted that there are large political ramifications of doing so and that a long-term approach may be necessary.

#### Potential solutions

- Create lists of flags of non-compliance as a tool to render flag States accountable.
- Establish strong, predetermined responses to persistent non-compliance.
- In extreme circumstances, consider taking cases of non-compliance to compulsory dispute settlement.

#### **(f) Incentives to compliance: positive incentives**

##### Challenges

To mobilize the necessary political will, it may be helpful to move away from finger-pointing and focus on collectively improving the health of the RFMO, identifying what works and what needs to be corrected.

#### Potential solutions

- Carry out an “RFMO health check,” which also points to what is working and provides an understanding of the performance of the entire RFMO.
- Consider developing an equivalent for RFMOs of what “fishery improvement programs” are to fisheries management. Develop and implement RFMO “improvement programs.”
- Take advantage of market incentives that reward the good actors that work harder to achieve the RFMO objectives.

#### **(g) Incentives to compliance: corrective action plans**

##### Challenges

Given the difficulties or lack of will of some members to tackle their compliance deficits, and in line with the idea of improving the health of the RFMO overall and providing a constructive approach to challenges

related to compliance, some participants supported the idea of introducing corrective action plans for RFMO members. These plans would be based on identified reasons for non-compliance. These plans would also result in greater transparency in the follow-up actions, facilitate trend-tracking over time and build trust as a result.

#### Potential solutions

- Develop transparent action plans that identify the specific issues that need to be addressed (e.g., implementation, interpretation, domestic legislation to impose penalties) and set time-bound objectives to improve compliance deficits.

### **(h) Capacity building**

#### Challenges

Participants acknowledged the importance of supporting capacity building where needed, as the playing field is often uneven among RFMO members. Capacity building is both a structural piece of RFMO governance and a direct driver of compliance. Some participants noted that capacity building cannot be used as an “excuse” for not complying.

Capacity building presents challenges related to its funding and also to the reluctance of some countries to accept capacity building assistance.

#### Potential solutions

- Provide in-country capacity building missions organized by the RFMO Secretariat.
- Provide direct cooperation with the fleets to teach them how to comply with the RFMO obligations.
- Set aside special contributions towards capacity building, including funds from the fishing industry.
- Create a supportive environment in the RFMO in which countries can identify their own capacity building needs and be open to being involved in capacity building programs.

### **(i) Pre-agreed and automatized responses**

#### Challenges

Participants generally considered that setting pre-agreed responses of infractions is helpful to overcome the political dimension of compliance review discussions and expediate decisions. The practical experience in some RFMOs, such as CCSBT, showed that the process of setting consequences for overcatch more automatically worked well, taking the politics out of it. However, some participants also acknowledged that there is such a diversity of infractions that it is difficult to prescribe a standardized solution in advance. Templates and guidelines are useful, but not every situation is alike and not all consequences will work for each situation.

Minor compliance issues (e.g., data submissions and reporting) take up a lot of time that could be resolved easily and that could be automated—thus saving more time for analyses of more serious or persistent compliance problems in the compliance committees or working groups.

Audit points, a tool that identifies elements in a CMM whose implementation is to be assessed and how, may generate better information not just on what is to be reported, but also on the “why/how” the

compliance issue arose in the first place. If CMMs have associated audit points, this may allow the development of some graduated proportionate responses in advance.

#### Potential solutions

- Develop pre-agreed responses for categories of non-compliance, but factor in some flexibility in the system, recognizing, for example, the different impact of the same solution to different circumstances or members.
- For pre-agreed responses, consider starting with setting guidelines before introducing a binding measure. This step may allow for testing and building of trust.
- Take advantage of performance audits of members, which can have a valuable role without needing to go into a compliance monitoring scheme.
- Link a risk-based framework to audit points and to what it is expected to be implemented.
- Develop templates to help better structure the process and communication with the Secretariat, providing clarity on how obligations are reviewed and ultimately adopted.
- Ensure the necessary mandates for the Secretariat to assess compliance and be able to provide assistance to members with certain requirements without first going to the compliance committees.

#### (j) Decision-making

#### Challenges

Participants pointed to the fact that different RFMOs use different decision-making procedures and that this would also be used when determining consequences for non-compliance: Some RFMOs can take decisions by voting or by a majority, while others can only use consensus or unanimity.

#### Potential solutions

- Encourage voting on compliance-related matters.
- Adopt procedures so that members whose compliance situation is being reviewed remove themselves from the decision-making process.

### 5. Summary outcomes

Examination of current challenges and opportunities by workshop participants point, among others, to the following potential solutions.

#### A. Cross-cutting themes

- Adopt solutions that fit the characteristics of each RFMO as there may not be “one-size-that-fits-all” solutions. However, consider standardizing some requirements among RFMOs as this may increase clarity for nations that are in several RFMOs, and increase harmonization among RFMOs.
- As changes to strengthen responses to non-compliance may take place slowly in RFMOs, work to prioritize responses that can be more easily accepted and build trust in the system so that more stringent responses can be applied in the future.
- Assess the outcomes of compliance review mechanisms as part of RFMO performance reviews.

- ▷ Allow international bodies (U.N., tribunals, etc.) to assess the performance of RFMOs, particularly in critical situations, as they can provide incentives to improve RFMO performance.
- ▷ Develop international guidelines for assessing and addressing non-compliance in RFMOs.
- ▷ Carry out RFMO “health checks” to provide a systemic understanding of the performance of the entire RFMO and what is working/not working.

#### **B. RFMO structures and procedures for responding to identified non-compliance**

- ▷ Ensure that measures are clearly drafted and include all aspects that will ensure their implementation.
- ▷ To assess compliance, cross-validate information received from RFMO members using relevant information external to the RFMO world and incorporate independent assessments of compliance.
- ▷ Increase transparency at all levels, including by facilitating access to relevant information and participation by non-state stakeholders.
- ▷ Clarify the roles of different RFMO bodies in responding to non-compliance, and provide, in particular, more independence to RFMO Secretariats to analyze, present and validate information.
- ▷ For efficiency, rank RFMO measures and/or their infringements. In doing so, consider, among others: associated risks; impact of the measure; frequency of the infringement and the member’s response to the infringement.
- ▷ Categorize RFMO members based on their levels of non-compliance and the causes of such non-compliance. Prioritize action against those members that regularly do not comply and that take no action to reverse the situation.
- ▷ Incorporate trend-tracking as part of any compliance assessment and the setting of consequences of non-compliance.

#### **C. RFMO tools and systems to respond to non-compliance**

- ▷ Use a broad spectrum of tools, from positive incentives to sharper-edged measures, which adapt to the different causes of non-compliance and to the different “hooks” that different states have to improve compliance (e.g., industry, level of scrutiny, market demands). Consider tools to address non-compliance at a vessel level, where possible.
- ▷ In the context of greater transparency, consider creating lists of “reliable” and/or “non-reliable” members; “white lists” of compliant members; or lists of “flags of non-compliance” and prioritize reviews on persistent non-compliers.
- ▷ Introduce predetermined consequences of non-compliance and incorporate audit points when drafting new measures. As a first step, consider introducing them as guidelines before making them mandatory.
- ▷ Create a list of serious infringements and the responses to such infringements in advance.

- ▷ Incorporate automatic responses for issues such as minor reporting infringements, which would not need to be discussed at compliance committee meetings.
- ▷ Resort to RFMO market measures only for serious or persistent non-compliance. If transparency is ensured, private market stakeholders can take individual decisions to avoid non-complying members and prioritize sourcing from compliant actors.
- ▷ Develop compliance action plans for individual members that identify the specific issues that need to be addressed and set time-bound objectives to improve compliance deficits.
- ▷ Set aside RFMO funds and allocate special contributions—also from the fishing sector—towards capacity building for compliance, which include in-country missions and direct engagement of fishers themselves.
- ▷ Encourage voting on compliance-related matters, or at least adopt procedures such that members whose compliance situation is being reviewed remove themselves from the decision-making process.

*[insert image somewhere in the report if desired]*



### III. Appendices

#### Appendix 1

#### **Third Virtual Expert Workshop on Best Practices in Compliance in RFMOs: Outcomes of Compliance Review Processes 2-3 November 2021 or 3-4 November 2021**

#### **List of participants**

Hrannar Már Ásgeirsson, monitoring control and surveillance officer, NEAFC

Celia Barroso, fishery policy analyst, NOAA Fisheries

Ricardo Belmontes, fishery manager and policy officer, IATTC

Courtney Burn, compliance adviser – International Fisheries

Derek Campbell, chair, compliance committee, ICCAT

Alexa Cole, director, Office of International Affairs, Trade, and Commerce

Emily Crigler, vice-chair, WCPFC TCC / chair of CMS-IWG, WCPFC

Robin Davies, officer, The Pew Charitable Trusts

Robert Day, former chair, technical and compliance committee, NPFC, and TCC vice-chair and acting chair, WCPFC

Laura Eeles, associate, The Pew Charitable Trusts

Adriana Fabra, adviser, The Pew Charitable Trusts

Viv Fernandes, manager, international compliance policy, AFMA

Johanne Fischer, adviser, international fisheries management

Peter Flewwelling, compliance manager, NPFC

Jessica Ford, senior research scientist, CSIRO

Solène Guggisberg, Netherlands Institute for the Law of the Sea (NILOS)

Quentin Hanich, fisheries governance program leader, University of Wollongong

David Hogan, chair, compliance committee, IATTC

Rachel Hopkins, acting director, international fisheries, The Pew Charitable Trusts

Peter Horn, project director, The Pew Charitable Trusts

Susie Iball, compliance manager, CCSBT

Randy Jenkins, compliance manager, SPRFMO

Mat Kertesz, chair of WCPFC TCC

Kristín von Kistowski, MCS and compliance expert, FAO

Holly Koehler, vice president, policy and outreach, ISSF

Gerry Leape, principal officer, The Pew Charitable Trusts

Sarah Lenel, consultant

Lara Manarangi-Trott, compliance manager, WCPFC

Niya McKie, administrative assistant, The Pew Charitable Trusts

Raiana McKinney, senior associate, The Pew Charitable Trusts

Frank Meere, chair, compliance committee, CCSBT

Alberto Parrilla, compliance officer, ICCAT

Penelope Ridings, legal adviser, WCPFC

Eidre Sharp, assistant compliance manager, WCPFC

Kim Stobberup, MCS consultant, FAO

Justin Turple, director, international fisheries policy, Canada

Osvaldo Urrutia, senior lecturer, faculty, Law of the Sea Center, Pontifical Catholic University of Valparaíso (Chile)

Mark Young, executive director, IMCS Network

## Appendix 2

# INVITATION

## THIRD VIRTUAL EXPERT WORKSHOP ON BEST PRACTICES IN COMPLIANCE IN RFMOS

### Outcomes of Compliance Review Processes

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The Pew Charitable Trusts, in collaboration with the International Seafood Sustainability Foundation (ISSF), is pleased to invite you to participate in the Third Virtual Expert Workshop on Best Practices in Compliance in RFMOs, being held on **2-3 November 2021** or on **3-4 November 2021**, depending on your time zone. This Workshop builds on the outcomes of the First and Second Virtual Expert Workshops on Best Practices in Compliance in RFMOs and focuses on the design and effectiveness of responses to non-compliance and incentives for improving compliance.

This First Workshop provided an opportunity to identify some of the main drivers of effective compliance by RFMO members with applicable conservation and management measures (CMMs); the Second Workshop focused on the multidimensional aspects of transparency in RFMO compliance review mechanisms. Please find here the [First Workshop Report](#) and the [Second Workshop Report](#).

The Third Workshop is open to experts from RFMO Secretariats, RFMO Compliance Committees, international organizations, academia, and civil society. As in the previous Workshops, experts participate in their personal capacities and the discussions are held under the Chatham House Rule. The meeting will be structured in two working groups -- organized according to time zones -- that will work in parallel and on the same issues. Working groups will meet for one 3.5 hour session on the first day and join a 1.5 hour capstone plenary on the second day.

The topic of the Third Workshop, and in particular how RFMOs address significant and persistent non-compliance, was identified as a priority issue by participants at the First Workshop. The objective of this third Workshop is to review existing mechanisms in RFMOs to determine and apply specific responses to address situations of non-compliance, as well as consider their effectiveness and options for improving these mechanisms or designing alternatives.

The Workshop will be structured in four sessions: a first introductory session that will provide insights from a survey among workshop participants and key takeaways from a Panel Webinar discussion which was held in October, and offered a space to set the scene for the Workshop discussion. Session 2 will review existing methods used by RFMOs for responses to non-compliance (e.g. capacity building, identification letters, increased monitoring, repayment of over-catches, penalties with economic consequences, etc.) and consider their effectiveness, also in regard to the specific problem of persistent non-compliance. Discussions will be supported by a preliminary written review of RFMO solutions and the presentation of several case studies at the Workshop. Session 3 will review methodologies already in place or in development within RFMOs that may increase the effectiveness of current mechanisms, such as setting a hierarchy of obligations and of breaches of such obligations, and pre-determining the consequences of situations of non-compliance. At the final session, on the second day, the input and preliminary conclusions from each working group will be presented and considered by all Workshop participants. Please find below a calendar of the working groups and a preliminary agenda.

The Workshop will be supported by a dedicated online platform (Basecamp) where all Workshop participants will be able to access materials, stay informed about the Workshop's organization and have exchanges after the Workshop on future related initiatives.

We look forward to hearing about your availability to join this Workshop and keeping you informed in the weeks to come. We would appreciate receiving your answer by October 28th, 2021. If feasible, you could let us know with your response if you anticipate joining "Group 1" or "Group 2". If you have any questions please don't hesitate to contact me.

*Gerald Leape, Principal Officer, The Pew Charitable Trusts*

# WORKSHOP ORGANIZATION & AGENDA

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## WORKSHOP ORGANIZATION

### GROUP 1

UTC -7, UTC-6, UTC-5, UTC-4, UTC-3, UTC-2,  
UTC-1, UTC, UTC+1, UTC+2, UTC+3

2 NOVEMBER (9 AM EDT)\*

SESSIONS 1 - 3 (3.5 HOURS)

### GROUP 2

UTC+7, UTC+8, UTC+9, UTC+10, UTC+11,  
UTC+12, UTC+13, UTC+14

3 NOVEMBER (11 AM AEDT)\*\*

SESSIONS 1 - 3 (3.5 HOURS)

3 NOVEMBER (5 PM EDT)/4 NOVEMBER (8 AM AEDT)

SESSION 4: CONCLUSIONS (1.5 HOURS)

**\*EDT : EASTERN DAYLIGHT TIME (UTC-4, WASHINGTON, DC)**  
**\*\*AEDT: AUSTRALIAN EASTERN DAYLIGHT TIME (UTC+11, SYDNEY)**

## GROUP 1 | ATLANTIC & INDIAN OCEANS

2 NOVEMBER 9-12:30 PM EDT (UTC-4)

- 5' • Opening Workshop

### SESSION 1: INTRODUCTION & BACKGROUND

- 25' • Workshop objectives/purpose  
• Outcomes of pre-workshop survey  
• Key takeaways from October Panel Webinar on Consequences of Non-compliance  
• Discussion + Q&A

### SESSION 2: RESPONSES TO NON-COMPLIANCE

- 20' • Brief presentation of existing RFMO profiles & case studies regarding structures and tools/procedures to respond to non-compliance  
• Discussion + Q&A

- 3' • Organization Breakout groups Session 2

- 35' • **BREAKOUT GROUPS:** Discussion on RFMO structures and procedures for responding to identified non-compliance, including existing approaches, with special consideration of persistent non-compliers
- What is needed to ensure RFMOs have a robust system to address and respond to identified non-compliance (e.g., formalized follow-up processes, pre-agreed responses, capacity assistance or action plans, etc?)
  - Should there be an established hierarchy of obligations and non-compliances? What are some of the criteria to determine this hierarchy? What are some of the challenges and potential solutions?
  - Should consequences for specific situations of non-compliance be developed in advance? (e.g., a "compliance control rule"?) What are some of the challenges and potential solutions?

- 20' • Reporting back + discussion

- 15' • Break

### SESSION 3: SYSTEMS AND METHODS FOR EFFECTIVE RESPONSES TO NON-COMPLIANCE

- 2' • Organization of Session 3

- 25' • Brief presentation of RFMO profiles & case studies regarding existing systems for applying responses to non-compliance (e.g. types of responses and how they are implemented)  
• Discussion + Q&A

- 35' • **BREAKOUT GROUPS:** Discussion on tools and systems to respond to non-compliance and improve compliance, particularly persistent non-compliance, and how they could be strengthened
- What types of tools could be more effective to incentivize/promote compliance? Are existing tools sufficient? If not, what are some options for improvement?
  - Are different types of tools for responding to non-compliance needed depending on the severity or frequency of the non-compliance?
  - How would tools for addressing non-compliance be applied? For example, if there could be pre-agreed responses and/or automatic implementation of sanctions or other consequences, what are some of the challenges and potential solutions?
  - What is the role of decision-making processes in the application of responses? What are some of the challenges and potential solutions?

- 15' • Reporting back + discussion

3 NOVEMBER 5-6:30 PM EDT (UTC-4)

- 5' • Welcome

- 40' • Report back on outcomes from previous day

- 40' • Discussion and conclusions

- 5' • Next steps + closure

## GROUP 2 | PACIFIC OCEAN

3 NOVEMBER 11-2:30 PM AEDT (UTC+11)

- 6' • Opening Workshop

### SESSION 1: INTRODUCTION & BACKGROUND

- 25' • Workshop objectives/purpose  
• Outcomes of pre-workshop survey  
• Key takeaways from October Panel Webinar on Consequences of Non-compliance  
• Discussion+ Q&A

### SESSION 2: RESPONSES TO NON-COMPLIANCE

- 20' • Brief presentation of existing RFMO profiles & case studies regarding structures and tools/procedures to respond to non-compliance  
• Discussion+ Q&A

- 3' • Organization Breakout groups Session 2

- 35' • **BREAKOUT GROUPS:** Discussion on RFMO structures and procedures for responding to identified non-compliance, including existing approaches, with special consideration of persistent non-compliers
- What is needed to ensure RFMOs have a robust system to address and respond to identified non-compliance (e.g., formalized follow-up processes, pre-agreed responses, capacity assistance or action plans, etc?)
  - Should there be an established hierarchy of obligations and non-compliances? What are some of the criteria to determine this hierarchy? What are some of the challenges and potential solutions?
  - Should consequences for specific situations of non-compliance be developed in advance? (e.g., a "compliance control rule"?). What are some of the challenges and potential solutions?

- 20' • Reporting back + discussion

- 15' • Break

### SESSION 3: SYSTEMS AND METHODS FOR EFFECTIVE RESPONSES TO NON-COMPLIANCE

- 2' • Organization of Session 3

- 25' • Brief presentation of RFMO profiles & case studies regarding existing systems for applying responses to non-compliance (e.g. types of responses and how they are implemented)  
• Discussion+ Q&A

- 35' • **BREAKOUT GROUPS:** Discussion on tools and systems to respond to non-compliance and improve compliance, particularly persistent non-compliances, and how they could be strengthened
- What types of tools could be more effective to incentivize/promote compliance? Are existing tools sufficient? If not, what are some options for improvement?
  - Are different types of tools for responding to non-compliances needed depending on the severity or frequency of the non-compliance?
  - How would tools for addressing non-compliance be applied? For example, if there could be pre-agreed responses and/or automatic implementation of sanctions or other consequences, what are some of the challenges and potential solutions?
  - What is the role of decision-making processes in the application of responses? What are some of the challenges and potential solutions?

- 15' • Reporting back + discussion

4 NOVEMBER 8-9:30 AM AEDT (UTC+11)

- 6' • Welcome

- 40' • Report back on outcomes from previous day

- 40' • Discussion and conclusions

- 6' • Next steps + closure

THIRD VIRTUAL EXPERT WORKSHOP ON BEST PRACTICES IN COMPLIANCE IN RFMOs | NOVEMBER 2021

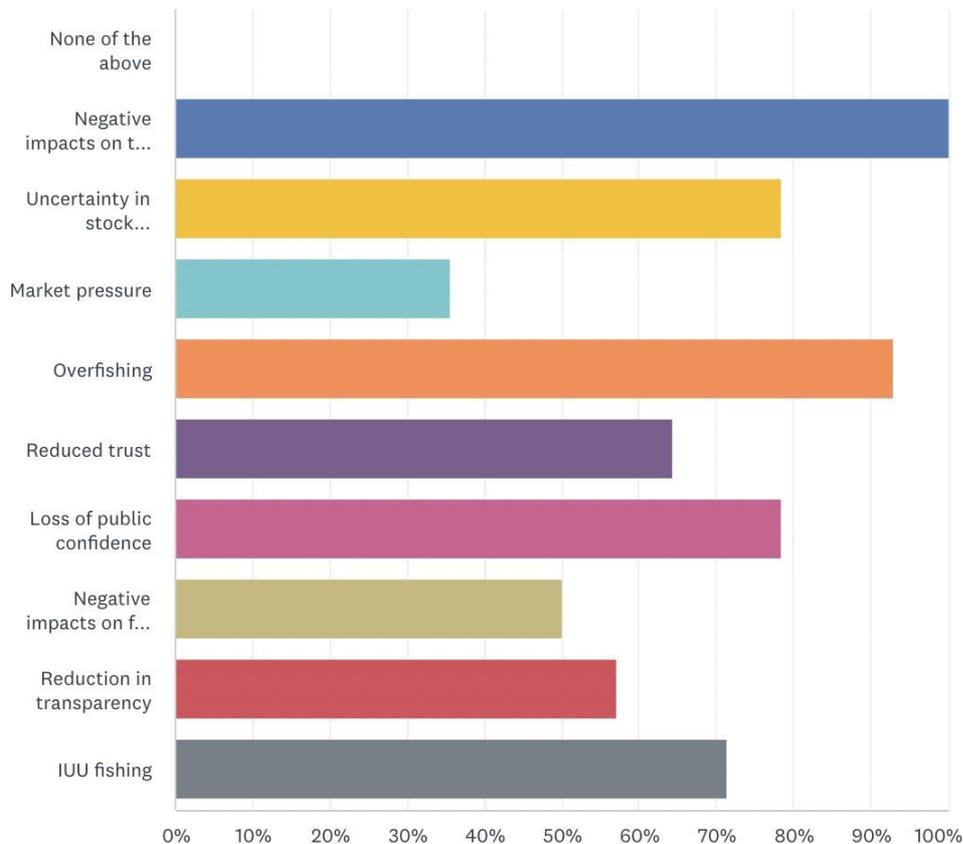
## Third Virtual Expert Workshop on Best Practices in Compliance in RFMOs: Outcomes of Compliance Review Processes

2/3 November 2021 (Atlantic & Indian Ocean) 3/4 November 2021 (Pacific)

### Conclusions from Pre-Workshop Survey

At the time of closing this report, 16 responses to the Pre-Workshop Survey were received. Survey questions focused specifically on the issue of outcomes of RFMO compliance review processes and responses in the case of non-compliance (see survey questions in Appendix below). Answers brought useful quantitative and qualitative information, as respondents provided extensive comments.

Non-compliance with RFMO obligations and measures undoubtedly has some consequences. When asked, respondents agreed that primary concerns resulting from poor compliance in RFMOs impacted aspects related to fisheries sustainability: 100% of them agreed on concerns about the “negative impacts on the marine ecosystem/non target species” and over a 90% on “overfishing,” followed by nearly 80% agreeing on “uncertainty in stock assessments” and 70% on IUU fishing. Nearly 80% considered that non-compliance had also ramifications related to loss of public confidence.



### Which responses/tools to address non-compliance can be most effective?

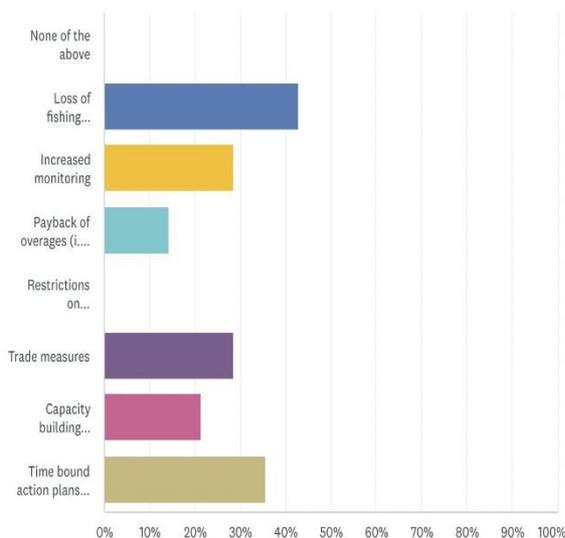
Nearly all respondents agreed that RFMOs have a role in taking action to address non-compliance by member States. However, they had differing views when asked which RFMO responses/tools would be effective to address non-compliance.<sup>1</sup> The following options were available in the question:

- Loss of fishing opportunities
- Increased monitoring
- Payback of overages (i.e., overfishing a quota)
- Restrictions on decision-making
- Trade measures
- Capacity building assistance
- Time bound action plans for remediation
- None of the above

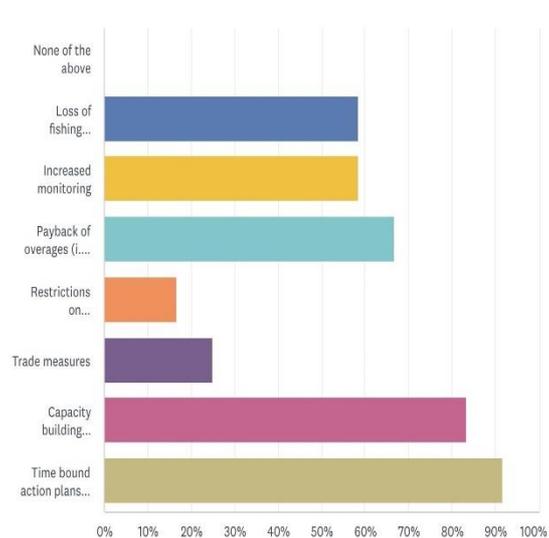
The least-favored option was the establishment of restrictions on decision-making (zero respondents chose this option). The **three most favored options were: setting time bound action plans for remediation, providing capacity assistance, and payback of overages (i.e., overfishing a quota)**. **Two other options received similar levels of preference: loss of fishing opportunities and increased monitoring.** Interestingly, imposition of trade measures was not identified as a particularly effective response by most of the respondents.

An individual comment indicated that responses to non-compliance should be addressed according to the severity of the impact on the stocks and sanctions, highlighting that the loss of fishing opportunity will depend on the severity of the negative impact on the stock.

Responses to Question 2



Responses to Question 3



<sup>1</sup> Please note that answers to this survey question may be distorted as, due to an error in the survey, the question was asked twice and initially only one option could be selected. Once errors were fixed four options could be selected.

There is broad support among survey participants that responses to non-compliance should be **proportional** to the type of infraction (and impact on the stock, as indicated above). In particular, some commenters indicated that international organizations should have a system to focus on systemic and egregious/persistent non-compliance as opposed to getting lost in relatively minor issues. There is also overwhelming support to **develop consequences for specific situations of non-compliance in advance** of any specific compliance assessment. One commenter highlighted that these pre-determinations often need to reflect on the severity of the transgression.

### **What could promote or incentivize compliance?**

When considering the drivers of compliance more generally, respondents agreed that the tools mentioned above would promote or incentivize increased compliance. In particular, some respondents emphasized the importance of the fear of losing fishing privileges and the application of trade measures, and that the payback of overages of quotas had worked well in some RFMOs. One respondent considered that more fishing opportunities could lead to better compliance, another suggested that recognition for leadership could incentivize compliance as would a mix of “carrot and stick” approaches.

However, 50% of respondents agreed that increased transparency would be an important driver of better compliance, also as it concerns fishing activity itself, actions taken at domestic level to implement their international obligations, compliance statuses and progress towards compliance, and making information available to the public. One commenter indicated “improving from a foundation of improved transparency will help, in addition to fair and equitable approaches—this latter point is essential so as to ensure the buy-in of smaller nations.”

According to respondents, other drivers of compliance include:

- Clearer measures and pre-determined consequences and assistance options in case of non-compliance
- Independent assessment of compliance
- Rational and graduated responses, which could be developed by Members, including civil society specialists
- Regular follow-up and reporting actions
- Adequate domestic legal frameworks and direct involvement of members in determining plans of compliance
- Recognition for leadership
- Reputational risks
- Better understanding of the economic value lost due to non-compliance
- A combination of carrot and stick type of measures

### **What one change to the current systems do you think would really improve RFMO member compliance?**

Respondents had differing views on priorities to initiate reform for better compliance in RFMOs. Three respondents emphasized the importance of improving transparency and greater public scrutiny, one commenter indicating that “transparency of information breeds self-correcting behavior.” More generally, another respondent considered that there was a need for the international community to

recognize that “RFMO member states” are not free to act as they wish under international law - and that there are consequences to their actions, within and outside of RFMOs.

More specifically, two respondents highlighted the establishment of independent verification of implementation of management measures (“trust but verify”) and two others the relevance of increased reporting and monitoring, particularly through an annual and transparent formal process to follow up on actions to address previous non-compliance.

Two commenters supported the need to make the systems as objective as possible, pre-establishing sanctions/consequences, which should be developed with input from members and devising a graduated sanction/action scheme for non-compliance. One comment pointed to the usefulness of looking at what other regimes have done, such as CITES. Other respondents identified, respectively, the need to have sanctions for significant or persistent non-compliance and that clear consequences for non-compliance should be consistently executed.

## Appendix: Survey

### Pre Workshop Survey: RFMO Tools to Respond to Non Compliance

⊕ PAGE TITLE

1. Should RFMOs have a role in taking action to address non-compliance by member States?  0

- Yes
- No
- Don't know

Other (please specify)

2. All RFMOs have compliance assessment processes, but few have actual responses/tools to address non-compliance. Which of the following do you think would be effective responses/tools to address non-compliance? (Please select one priority and use the "other" section for additional options).  0

- Loss of fishing opportunities
- Increased monitoring
- Payback of overages (i.e., overfishing a quota)
- Restrictions on decision-making
- Trade measures
- Capacity building assistance
- Time bound action plans for remediation
- None of the above

Other (please specify)

3. All RFMOs have compliance assessment processes, but few have actual responses/tools to address non-compliance. Which of the following do you think would be effective responses/tools to address non-compliance? (Please do not select more than four options).  0

- Loss of fishing opportunities
- Increased monitoring
- Payback of overages (i.e., overfishing a quota)
- Restrictions on decision-making
- Trade measures
- Capacity building assistance
- Time bound action plans for remediation
- None of the above

Other (please specify)

4. Should an international organization respond differently depending on the type of non-compliance?  0

Yes

No

Provide further details for your answer (optional):

5. What do you think could incentivize/promote RFMO member compliance?  0

6. Should consequences for specific situations of non-compliance be developed in advance? (e.g., a "compliance control rule"?)  0

Yes

No

Other (please specify)

7. What are the ramifications of poor compliance in RFMOs?  0

Negative impacts on the marine ecosystem/non target species

Uncertainty in stock assessments

Market pressure

Overfishing

Reduced trust

Loss of public confidence

Negative impacts on food security, especially for developing nations

Reduction in transparency

IUU fishing

None of the above

Other (please specify)

8. What one change to the current systems do you think would really improve RFMO member compliance?

 0