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TECHNICAL PAPER ON THE IMPLEMENTATION OF THE 1993 FAO AGREEMENT TO PROMOTE COMPLIANCE WITH INTERNATIONAL CONSERVATION AND MANAGEMENT MEASURES BY FISHING VESSELS ON THE HIGH SEAS

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Preparation of this document

At its Thirty-fourth Session (1-5 February 2021), the FAO Committee on Fisheries (COFI) encouraged FAO to further support the achievement by Members of Sustainable Development Goal (SDG) 14.6 through the promotion of FAO related instruments. In 2022, FAO initiated a study to review the relevance and implementation of the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (hereafter referred to as the Compliance Agreement), considering its importance for SDG 14.6 and specifically for the conservation and management of the living resources on the high seas. The results of the study were welcomed by the Thirty-fifth Session of COFI (1-7 July 2023) which then called for considering options to strengthen the effective implementation and enforcement of the Compliance Agreement. Subsequently, the first session of the COFI Sub-Committee on Fisheries Management (15-18 January 2024) requested FAO to follow up the study and examine institutional options to strengthen its implementation and to report the outcomes to the 36th Session of COFI. To this end, an informal expert workshop was held in Paris between 29-30 April 2024 to review and finalise the study which is carried in this Technical Paper.

This Technical Paper was written with overall technical backstopping by Matthew Camilleri (NFI). The authors extend their thanks to the participants in the informal expert workshop.

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Technical Paper on the Implementation of the FAO Compliance Agreement: Problems and Prospects

ABSTRACT

The doctrine of the freedom of fishing on the high seas made it challenging to enforce international conservation and management measures (CMM(s)) for high seas fisheries effectively, even where concerned States enter into arrangements either bilaterally or multilaterally to manage high seas fisheries.

This freedom (of fishing) meant that high seas fisheries was devoid of an effective framework including jurisdictional responsibility to enforce international CMMs on vessels outside the flag State measures. Agenda 21 of the United Nations Conference on Environment and Development (UNCED) acknowledged the problem of high seas fisheries in the following:

management of high seas fisheries, including the adoption, monitoring and enforcement of effective conservation measures, is inadequate in many areas and some resources are over utilized. There are problems of unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States. Action by States whose nationals and vessels fish on the high seas, as well as cooperation at the bilateral, sub regional, regional and global levels, is essential particularly for highly migratory species and straddling stocks.¹

In response to these concerns, the regional fisheries management organisations emerged to fill the gap. However, the measures put in place by these organisations are binding only to their Member States and their fishing vessels. Reflagging fishing vessels with flags of non-parties became a way of avoiding control.²

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement)³ is a direct response by the Food and Agriculture Organization (FAO) to the problem of reflagging of fishing vessels seeking to avoid control of their activities on the high seas. The Compliance Agreement was approved by the FAO Conference at its 27th session in November 1993 and entered into force on 24 April 2003. The Agreement has officially 45 parties⁴ including the European Union.⁵

¹ Agenda 21, UNCED, Para. 17.45. See, <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

² *Guifang Xue*, China and International Fisheries Law and Policy, Leiden, Nijhoff, 2005, p. 44.

³ Multilateral agreement, 24 November 1993, United Nations Treaty Series, vol. 2221, pp. 91, 120-129 (2005). This agreement entered into force on 24 April 2003.

⁴ This figure is based on information provided by the United Nations Treaty Collection. The FAO Treaties Database misses one party (see <https://www.fao.org/treaties/results/details/en/c/TRE-000023/>).

⁵ Whether the Compliance Agreement forms an exclusive competence of the European Union was a matter finally settled by the European Court of Justice (Commission v. Council, Case C-25/94, 19 March 1996), as the Council argued that the function of licences to fish on the high seas are comparable to those of authorizations to fly a particular flag, a Member State competence (Para. 46). The Court concluded however that the agreement concerned exclusive Community competence, as clearly stated in its declaration of competence when acquiring FAO membership (Para. 43) and moreover specified that the draft convention no longer contained the provision on flagging (Para. 45). On the latter point, see *infra* note 6. It is therefore interesting to see that Sweden is still listed separately as a party to the Compliance Agreement. But this can probably be explained by the fact that this country deposited its acceptance a few months before joining the European Union on 1 January 1995, and that it formed part of that organization when the Compliance Agreement entered into force many years later. Also the listing of Cyprus needs to be noted in this respect, as this country became part of the European Union on 1 May 2004.

In order to avoid interfere with State sovereignty on vessel registration requirements⁶ the Compliance Agreement aimed instead to enhance the role of flag States, and ensure that flag States strengthen their control over fishing vessels flying their flag to ensure compliance with international CMMs.

It acknowledges the special responsibility of flag States to ensure none of their vessels is fishing on the high seas without authorization and that flag States are able to exercise effectively their responsibilities to ensure their vessels comply with international CMMs.

The Compliance Agreement, by focusing on flag State responsibilities, also indirectly seeks to prevent the “re-flagging” of high seas fishing vessels to flags of States that are unable or unwilling to enforce international fisheries CMMs on their vessels. Other important elements of the Agreement include the maintenance of high seas fishing vessels records, international cooperation and enforcement. It requires parties to maintain a record of fishing vessels entitled to fly their flag and authorized to carry out fishing on the high seas and provide information on those vessels to FAO. By requesting parties to cooperate in exchanging information on vessels authorized to fish on the high seas, the Compliance Agreement also contributes to realizing the duty of States to cooperate in the conservation and management of fisheries under the 1982 United Nations Convention on the Law of the Sea (LOSC).⁷

It could be discerned from above that the success of the Compliance Agreement is therefore inextricably linked to and dependent on two prerequisites. First, States that have vessels entitled to fly their flags which fish on high seas are parties to the Compliance Agreement and, second, the willingness and/or ability of flag States Parties to effectively implement the Agreement. The latter includes requiring vessels entitled to fly their flag to meet certain requirements for fishing on the high seas through their national legislation and enforce the same on their high seas fishing vessels. However, the fact that the problem of reflagging/flag hopping still subsists and non-compliance with relevant international fisheries CMMs continues unabated are indications that the Compliance Agreement may be suffering from low acceptance globally,⁸ and low implementation among flag States with high seas fishing fleet. It may also be the case that even the parties are not effectively implementing the Compliance Agreement in their national legal frameworks or have poor institutional frameworks, capacities and operational tools including inadequate fisheries monitoring, control and surveillance (MCS) capacities. At the furthest extreme of the spectrum, the question could even be raised whether the Agreement is simply not inherently defective as an international legal framework.

The progressive development of international law does not stop at the coming into force of an international instrument, which only marks its birth. It must constantly be surveyed and analysed against the emerging challenges and be updated accordingly, through evolving State practice. The Compliance Agreement is not an exception. The process of assessing the effectiveness of the Agreement and the adequacy of its provisions, can be facilitated though a review mechanism in place, such as provided by the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of

⁶ This initial approach pursued by the negotiators of the Compliance Agreement, which focused on the allocation of the flag and the genuine link requirement, ran however into difficulties at an early state of these negotiations and was abandoned. *Gerald Moore*, *The FAO Compliance Agreement*, in: *Myron H. Nordquist and John Norton Moore* (eds.), *Current Fisheries Issues and the Food and Agriculture Organization of the United Nations*, The Hague, Martinus Nijhoff Publishers, 2000, pp. 77, 78-79.

⁷ Multilateral convention, 10 December 1982, United Nations Treaty Series, vol. 1833, pp. 3, 397-581 (1998). This convention entered into force on 16 November 1994. This was the first multilateral agreement of a universal nature that the European Union was able to become a party to, as provide in Annex IX to the LOSC, entitled “international organizations”, specifically elaborated for that purpose. As this is a mixed agreement, where the organization and the Member States each have certain exclusive competence, while other competence is shared between them, both were allowed to adhere to this convention. In accordance with Art. 3 (1) of Annex IX, the organization would only be allowed to become bound, after half of the Member States had already done. At present all 27 Member States, besides the European Union itself, are all parties to the LOSC.

⁸ Compare this figure with the adherence to two more recent and related agreements, mentioned infra notes 9 and 11 .

the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA),⁹ which created a one-time review conference after four years of operation,¹⁰ or the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA),¹¹ setting up a monitoring, review and assessment mechanism through convening a meeting of the parties after four years of operation, with the explicit possibility for parties to convene further such meetings as necessary.¹²

The question for this study is whether the implementation of the Compliance Agreement has been effective, in the sense of whether flag States Parties to the Agreement are able:

1. To ensure that its fishing vessels do not undermine the effectiveness of international CMMs by not allowing such vessels to fish in the high seas unless authorized.
2. To grant authorization to its vessels to fish on the high seas only when it is able to exercise effectively its responsibility under the Compliance Agreement (competence to control vessels authorized, including through effective MCS).
3. To refuse the grant of high seas fishing authorization to any fishing vessel with a history of non-compliance.
4. To reduce reflagging as a means to avoid monitoring.

The study further asks whether the Compliance Agreement, as a legal framework, is not inherently defective and devoid of mechanisms that ensures effective implementation and enforcement.

To answer these questions, the study adopts the following approaches:

1. To analyse the status of ratification to determine whether States Parties to the Compliance Agreement are high seas fishing/distant water fishing nations or whether they are majorly coastal States.
2. To analyse critically, the relevant provisions of the Agreement where terms used weaken rather than strengthen the instrument or that such terms are rather less rigorous and mainly optional.
3. Through functional comparison, to analyse the provisions of the Agreement vis-à-vis similar international binding instruments such the LOSC, the UNFSA and the PSMA.

⁹ Multilateral convention, 4 December 1995, United Nations Treaty Series, vol. 2167, pp. 3, 88-137 (2003). This agreement entered into force on 11 December 2001. There are at present 92 parties to this agreement, including the European Union for which this agreement is a mixed agreement, meaning that the European Union and its Member States are included in this list of parties. It thus resembles in this respect the LOSC, even though this time it was agreed internally that the organization and all the Member States would join at the same time while making the same declaration (Council Decision 98/414/EC, Official Journal, L 189/14 of 3 July 1998).

¹⁰ *Ibid.*, Art. 36. After the end of the review conference, held in 2006, it was however decided to keep the agreement under review by not closing the review conference, but rather suspending it (see UN Doc. A/CONF.210/2006/15, Paras 134-137). The agreement has been further reviewed every four year since, at least that seems to be the intention of the parties. Besides, at the request of the General Assembly (UN Doc. A/RES/56/13, Para. 6) the Secretary-General was tasked, once the agreement entered into force, to consult with those parties that had either ratified or acceded to the agreement. Since 2002 such meetings were convened almost on a yearly basis ever since.

¹¹ Multilateral agreement, 25 November 2009, United Nations Treaty Series, N° 54133, no volume number has yet been determined. This agreement entered into force on 5 June 2016. There are at present 72 parties to the agreement, including the European Union. This figure is based on information provided by the FAO Treaties Database, which is more complete than the list to be found on the United Nations Treaty Collection (missing 4 parties). In a declaration made by the latter organization in accordance with Art. 28 (2)(a), it stated that the organization had exclusive competence over all the matters governed by the agreement, resulting in the fact that the Member States could only become a party in respect to territories over which the European Union has no responsibility (Official Journal, L 191/18 of 22 July 2011).

¹² Art. 24 of the PSMA. Parties have made use of the possibility provided in that article to convene further meetings, which have been held biannually ever since the first meeting was held in 2017.

4. From a functional perspective, examine if the FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (Global Record) serves the purpose of the Compliance Agreement, first, to allow flag States to identify vessels with a non-compliance history and thus make it difficult for flag hopping of non-compliance vessels and, second, to exchange information as provided under Article VI.
5. To critically analyse relevant States practice and practice of regional and sub-regional fisheries management organisations or arrangements in the implementation of the other international agreements such as the UNFSA, the PSMA and State practice in the implementation of other treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and to determine whether such practice can offer options to strengthen the implementation of the Compliance Agreement even if the provisions of the Agreement remain unchanged.

The study analyses each of the issues raised and makes appropriate recommendations on what prospects there are for the Compliance Agreement to deliver its promise to regulate high seas fishing and ensure compliance with relevant international CMMs, including identifying pragmatic options for the States Parties to the Agreement.

The study was reviewed by an expert workshop held in Paris between 29-30 April 2024. Expert discussions in the workshop led to a supported option of strengthening the implementation of the Compliance Agreement within the broader framework of enhancing flag State performance. Specifically, the set of concrete recommendations under this option could include:

- Considering that the Compliance Agreement forms an integral part of the 1995 FAO Code of Conduct for Responsible Fisheries (the Code), as recognized by FAO Conference Resolution 15/93, paragraph 3, the COFI could, within the context of monitoring the implementation of the Code, review the implementation of the Compliance Agreement and propose actions to strengthen its implementation.
- Such a review should be based on the current situation and in the context of reviewing flag State responsibilities more generally, taking into account relevant instruments such as the UNFSA and more recent instruments including the Voluntary Guidelines for Flag State Performance (VGFSP), as well as the work on compliance in the context of Regional Fisheries Bodies.
- The Global Record, developed by FAO through the Global Record Open-Ended Technical and Advisory Working Group established by COFI, may support the exchange of information on fishing vessels authorized to be used for fishing on the high seas, as required by Article VI of the Compliance Agreement.
- Recognizing that the PSMA provides an international legal and operational framework for verifying compliance of vessels entering foreign ports with applicable fisheries conservation and management measures, including on the high seas, and the important role of flag States in the implementation of the PSMA, aspects of the implementation of the Compliance Agreement may be considered through PSMA meetings of the parties and supporting working groups, as appropriate.
- Flag States should, including through RFMO/As, periodically conduct flag State performance assessments, and take measures to strengthen compliance with their international obligations regarding the flagging and control of fishing vessels, as guided by the VGFSP which cover key

provisions of the Compliance Agreement, and report to FAO the outcomes of the performance assessments so conducted.

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1 INTRODUCTION

The LOSC, Part VII, section 2 deals with conservation and management of the living resources of the high seas. States had, however, during the 1980s mainly focused on issues related to the exclusive economic zones (EEZs) and to a certain extent ignored high seas fishing. In the early nineties in particular two problems were of concern: (i) the conservation and management of straddling fish stocks and highly migratory fish stocks (e.g. stocks occurring both within the EEZs and on the high seas) and (ii) reflagging of fishing vessels in order to avoid application of high seas CMMs established by regional fisheries management organizations or arrangements (RFMO/As).

Formally, the problem of reflagging was first raised during the International Conference on Responsible Fishing in 1992 through a declaration (the Declaration of Cancun) that called upon States to “take effective action, consistent with international law, to deter reflagging of fishing vessels as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas”.¹³

A similar call for action was made by UNCED later that year. UNCED also called for a conference to address straddling fish stocks and highly migratory fish stocks, which led to the development of the UNFSA.

The problem identified with reflagging was that only vessels flying the flags of the parties to an RFMO/A were compelled to comply with the CMMs established by it. To avoid this compliance compulsion, some vessels began reflagging to States that were not members of the relevant RFMO.

The FAO Council agreed in 1992 that the reflagging issue should be dealt with as a matter of urgency and mandated the FAO Secretariat to facilitate the negotiation of an international agreement, which was negotiated under Article XIV of the FAO Constitution. The Compliance Agreement was adopted by the FAO Conference on 24 November 1993, and it entered into force on 24 April 2003, the date of receipt of the twenty-fifth instrument of acceptance.

A State with an open ship registry is referred to as a “flag of convenience” (FOC). In the fisheries sector, this notion received a more specific and somewhat broader content since the 1990s.¹⁴ In a fisheries context it is not only “convenient” in terms of the ease with which the vessel can be registered or given nationality based on its physical attributes, but moreover the owners or operators of the vessel have first and foremost ascertained that the flag State does not exercise responsibility over the behaviour of the vessel conducting fishing or related activity. In the latter case, the choice of the owners of the vessel to register under a specific flag is associated with the desire to avoid being legally bound by international fisheries CMMs. In this context, even States with restricted shipping registers could be regarded as FOC

¹³ Declaration of the International Conference on Responsible Fishing, Cancun, Mexico, 6-8 May 1992, Para. 13.

¹⁴ *Doris König and Tim Salomon, René*, Flags of Convenience, Max Planck Encyclopedia of Public International Law Online (Oxford, Oxford University Press, Anne Peters ed.), Paras. 14-23 and 28.

in relation to fishing. Thus, it would be preferable to use the term “flags of non-compliance”¹⁵ instead of “flags of convenience” for the fisheries sector. The term “flags of convenience” distracts from the fact that the main problem is not whether States regulate their registries but whether they are able to and indeed can control their vessels.¹⁶

Once the vessel registers with a State, the vessel is entitled to fly the flag of the registry State (the flag State). The LOSC provides that the flag State assumes jurisdiction in respect of administrative, technical and social matters concerning the vessel, such as labour conditions and seaworthiness. The flag State provides diplomatic and naval protection of its flagged vessels. Under the LOSC, the Compliance Agreement and the UNFSA, the flag State is responsible for the vessel’s compliance with applicable laws and international fisheries CMMs on the high seas.

While some States operate open registries and have taken positive steps to meet international flag State compliance responsibilities in respect of fishing vessels, others have not. The latter group are neither members nor cooperating non-members of RFMO/As that have adopted international CMMs and they do not exercise effective flag State control and responsibilities over their fishing fleets to ensure compliance with such measures.

Over the years, several initiatives have been taken to trace owners and/or beneficial owners of vessels involved in illegal, unreported and unregulated (IUU) fishing, the so-called IUU-vessels. One of the most difficult aspects of the IUU fishing problem is trying to track the true ownership of the vessels involved. IUU operators regularly use “dummy” or “shell” companies to hide their true owners or the persons benefiting from the operations of the vessels. Ownership structures, flag States, operational bases and names of IUU vessels are changing numerous times in an endeavour to conceal their true identity and purpose. This, in turn, makes it extremely difficult to find and penalize the owners or beneficial owners of the vessels when these are caught poaching or engaged in other illegal activities, particularly for such activities on the high seas.

The Compliance Agreement aims to elaborate the role and responsibilities of flag States and by ensuring that they strengthen control over their vessels to ensure compliance with international CMMs. It emphasizes the special responsibilities of flag States and requires them to ensure that none of the vessels flying their flags are fishing on the high seas unless authorized, and that they can effectively exercise their responsibilities to ensure their vessels comply with international CMMs. The Compliance Agreement also seeks to prevent the “flagging” of vessels fishing on the high seas by States that are unable or unwilling to enforce international fisheries CMMs. FAO assumed responsibility for the Compliance Agreement¹⁷ and its implementation by providing, inter alia, support to parties for the exchange of information as well as guidance on implementation matters.¹⁸

As already indicated before,¹⁹ there are currently 45 parties to the Compliance Agreement. The accession rate has been generally low and implementation of some provisions of the Agreement have also been extremely low, such as those referring to the exchange of information on the fleet licensed to operate on the high seas, seriously hindering progress towards achieving the objectives of the Agreement. In the framework and context of the need for a coordinated implementation of relevant global international instruments, regional mechanisms and tools, it is timely to conduct a study on the status of implementation

¹⁵ As the term was for instance used in the framework of the Convention on the Conservation of Antarctic Marine Living Resources (Multilateral convention, 20 May 1980, United Nations Treaty Series, vol. 1329, pp. 47, 48-59 (1994). This convention entered into force on 7 April 1982), where the Commission adopted a resolution entitled “Flags of non-compliance” in 2002 (Resolution 19/XXI).

¹⁶ *FAO, Report of the Expert Consultation on Flag State Performance* (Rome, 23–26 June 2009), Rome, Food and Agriculture Organization, 2009, p. 9 (available at <<https://www.fao.org/3/i1249e/i1249e.pdf>>).

¹⁷ See for instance the many articles ascribing specific functions to the Director-General of FAO in the final clauses of the agreement, namely Arts X-XV.

¹⁸ *Ibid.*, Arts. III (6), VI and VII.

¹⁹ See *supra* note 4 and accompanying text.

of the Compliance Agreement. Such a study will shed some light on various aspects of its implementation, including weaknesses and strengths, that would guide a work plan for coordinated support for strengthened implementation of the provisions of the Compliance Agreement with special attention to the authorization of vessels and sharing of information. The results are to be presented to the parties of the Compliance Agreement through the appropriate means in order to receive guidance on ways of improving the operationalization of the Compliance Agreement. This work will also support further efforts to increase accession to the Agreement by FAO Members (through awareness raising and capacity development support) and refocus the attention of the organization itself on this particular agreement.

2 ANALYSIS/REVIEW

2.1 Parties to the Compliance Agreement also parties to the LOSC, the UNFSA and/or the PSMA

The LOSC provides a framework for all maritime activities, including conservation and utilization of living marine resources. Other treaties that directly relate to fisheries include the UNFSA, the Compliance Agreement, and the PSMA.

The flag State exercises jurisdiction over vessels entitled to fly its flag, and in that regard has the primary responsibility for implementing and ensuring compliance by its nationals with the CMMs adopted by the RFMO/A.

The Compliance Agreement was the first international legally binding instrument completely devoted to elaborating flag State control and responsibilities and sets out requirements for strengthening the role of the flag States in exercising its responsibilities over its vessels on the high seas. It strives to elaborate the requirements of Articles 91-94 of the LOSC which provide the legal basis for flag States to exercise effective jurisdiction and control over ships flying their flag, including fishing vessels. In particular, the Compliance Agreement notes the responsibility of flag States to ensure that none of their vessels can operate on the high seas unless authorized, and that they can effectively exercise control over them to ensure their compliance with international fishery CMMs. Additionally, the Agreement provides for enhanced international cooperation and increased transparency through information sharing, particularly through the FAO.

Flag State responsibilities concerning fishing vessels on the high seas are also spelled out in part V of the UNFSA. Although the UNFSA does not explicitly say so, it builds on the requirements of the Compliance Agreement, and sets out specific obligations that the flag State must fulfil before allowing its vessels to conduct fishing operations on the high seas, including in areas managed by RFMO/As. These duties set out under the UNFSA are related to conservation and management of high seas fisheries in particular straddling and highly migratory fish stocks, but it could be argued that they are becoming common standards relevant to fishing operations wherever they occur. The essential obligation of the flag State is to ensure that it cooperated with coastal States and other States with a real interest, in establishing RFMO/As where they do not exist or participate in the work of existing RFMO/As. Specifically, a flag State shall ensure that vessels flying its flag comply with RFMO/As CMMs and do not undermine their effectiveness. To this end, a flag State should not authorize its vessels to fish unless it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UNFSA, the Compliance Agreement and relevant RFMO/A obligations.

Article 20 of the PSMA addresses the role of flag States. The PSMA requires the flag State as a party to request the port State to inspect a vessel entitled to fly its flag where the flag State has clear ground to believe that such vessel has engaged in IUU fishing or fishing related activities in support of such fishing. As IUU fishing can occur anywhere including the high seas, the PSMA is clearly concerned that the flag State cooperates with a port State Party and takes specific actions set out under Article 20 of the PSMA to ensure that action is taken to prevent, deter and eliminate IUU fishing and ensure compliance with international CMMs on the high seas thus establishing an obvious connection between flag State obligations and port State measures.

The Compliance Agreement provides a sound basis for ensuring the exercise of flag State responsibility including through authorizations and information exchange, but the low rate of adhesion to it has hindered effective implementation. The Compliance Agreement took a decade to reach the required target of 25 parties for it to enter into force in 2003. The entry into force itself, had a knock-on effect as ten additional States ratified during the next three years. However, the trend rapidly declined from 2009 onwards with a decade of non-adhesion broken only by Vanuatu's accession to the agreement in 2018, Trinidad and Tobago's in 2019 and the United Kingdom in 2021.

There are close linkages between the Compliance Agreement and the LOSC and the UNFSA as they all address cooperation and fishing on the high seas and the PSMA in respect of ensuring compliance with international CMMs with non-compliance constituting IUU fishing. The Compliance Agreement, Article V (2) deals with the situation where a fishing vessel is voluntary in a port of a party other than the flag State and there are reasonable grounds to believe it has been used for an activity that undermines the effectiveness of international CMMs. Pursuant to Article 23 of the UNFSA the port State has the right and duty to take measures, in accordance with international law, to promote the effectiveness of international CMMs. Although some guidance is provided by the UNFSA, the duties of port States are elaborated in the PSMA.

Below is table showing the parties to the Compliance Agreement in comparison with parties to the other treaties. There are officially 45 parties to the Compliance Agreement. But given the fact that Cyprus and Sweden are today subsumed under the European Union, as already explained,²⁰ it appears more accurate when comparing numbers to put this figure at 43. At the same time it should be noted that an additional 27 States are at present bound as members of the European Union, bringing this figure in reality at 70.²¹ All, but three parties to the Compliance Agreement are parties to the LOSC, and of those, one is also a party to the UNFSA and two to the PSMA. The third is party to only the Compliance Agreement. 30 parties to the Compliance Agreement are parties also to the UNFSA and 33 are also parties to the PSMA.

Table 1: Parties to the Compliance Agreement and also parties to the LOSC, the UNFSA and/or the PSMA

Parties to the Compliance Agreement	LOSC Parties	UNFSA Parties	PSMA Parties
Albania	✓		✓
Angola	✓		✓
Argentina	✓		
Australia	✓	✓	✓
Barbados	✓	✓	✓
Belize	✓	✓	
Benin	✓	✓	✓
Brazil	✓	✓	
Cabo Verde	✓		✓
Canada	✓	✓	✓
Chile	✓	✓	✓
Cook Islands	✓	✓	
Egypt	✓		
European Union	✓	✓	✓
Georgia	✓		
Ghana	✓	✓	✓
Japan	✓	✓	✓

²⁰ See *supra* note 5.

²¹ In the supposition that like the LOSC, being a mixed convention, the Member States could have become a party alongside the European Union. All of them are parties to the LOSC (see *supra* note 7) as well as to the UNFSA (see *supra* note 9) and through the European Union also to the PSMA (see *supra* note 11).

Parties to the Compliance Agreement	LOSC Parties	UNFSA Parties	PSMA Parties
Madagascar	✓		✓
Mauritius	✓	✓	✓
Mexico	✓		
Morocco	✓	✓	✓
Mozambique	✓	✓	✓
Myanmar	✓		✓
Namibia	✓	✓	✓
New Zealand	✓	✓	✓
Norway	✓	✓	✓
Oman	✓	✓	✓
Peru			✓
Philippines	✓	✓	✓
Republic of Korea	✓	✓	✓
Saint Kitts & Nevis	✓	✓	✓
Saint Lucia	✓	✓	
Senegal	✓	✓	✓
Seychelles	✓	✓	✓
Sierra Leone	✓		✓
Sri Lanka	✓	✓	✓
Syrian Arab Republic			
Trinidad and Tobago	✓	✓	✓
United Kingdom	✓	✓	✓
United Republic of Tanzania	✓		
United States of America		✓	✓
Uruguay	✓	✓	✓
Vanuatu	✓	✓	✓

2.2 Parties to the Compliance Agreement as members of RFMO/As

Concerning fishing on the high seas, Articles 117 and 118 of the LOSC provide for the duty to take or cooperate with other States in taking measures for the conservation and management of living marine resources, and to enter into negotiations with other States for such purposes. In relation to straddling fish stocks and highly migratory fish stocks, the relevant provisions of Articles 63 and 64 require that States cooperate, either directly or through appropriate subregional or regional organizations in taking measures necessary for conservation of such the stocks occurring in specified areas.

RFMO/As have long been considered to be the mechanism through which States cooperate for conservation and management of fisheries resources and promoting the objective of optimal utilization in respect of highly migratory fish stocks. RFMO/As are authorities which have the mandate established by their constituting agreements to adopt international legally binding fisheries CMMs. The LOSC, the UNFSA, the Compliance Agreement and the PSMA are the key global treaties relevant to RFMO/As. Since the advent of the UNFSA in particular, RFMO/As have taken a prominent role in cooperation. The UNFSA encourages States having an interest in the fisheries concerned to establish regional organizations where there is none or become members of existing ones. The Agreement stipulates that only those States that are members of the relevant organization, or that agree to apply the measures established by the organization, shall have access to the fisheries resources in question. There are basically two types of

RFMO/As: generic RFMO/As (e.g. responsible for conservation and management of living marine resources or fishery resources in general in their area of competence) and species-specific RFMO/As (e.g. responsible for the conservation and management of a particular stock or species). There are 16 RFMO/As with mandates to manage fisheries on the high seas, of which eight are generic, and the others are species-specific (five are tuna RFMO/As, two manage anadromous stocks, and one manages whales).

Prior to the adoption of the Compliance Agreement and the UNFSA, the following RFMO/As managed fisheries on the high seas: (i) the tuna organizations: the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), (ii) the anadromous fish organizations: the North Atlantic Salmon Conservation Organization (NASCO) and the North Pacific Anadromous Fish Commission (NPAFC) and (iii) the generic organizations: the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)²², the General Fisheries Commission for the Mediterranean (GFCM), the Northwest Atlantic Fisheries Organization (NAFO) and the North East Atlantic Fisheries Commission (NEAFC). Tuna organizations manage highly migratory species, while anadromous fish organizations manage straddling fish stocks, and the generic organizations manage straddling stocks and discrete high seas fish stocks. IATTC has agreed to a new treaty (the Antigua Convention). ICCAT, GFCM, NAFO and NEAFC have amended/updated their founding treaties. The new and the amended treaties take into account relevant provisions of the new global framework for fisheries management, including flag State responsibilities.

Seven RFMO/As have been established after the adoption of the Compliance Agreement and the UNFSA. These are (i) the tuna organizations: the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and the Western Central Pacific Fisheries Commission (WCPFC), and (ii) the generic organizations: the North Pacific Fisheries Commission (NPFC), the Regional Commission for Fisheries (RECOFI),²³ the South East Atlantic Fisheries Organization (SEAFO), the Southern Indian Ocean Fisheries Agreement (SIOFA) and the South Pacific Regional Management Fisheries Organization (SPRFMO). The mandates of these new RFMO/As, take into account relevant provisions of the global legal framework for fisheries management, including flag State responsibilities.

See section 2.7.1 for details concerning implementation of the Compliance Agreement through RFMO/As.

Below is a table showing parties to the Compliance Agreement as members of RFMO/As. Five parties to the Compliance Agreement are not member of any RFMO/A, while 12 are members of one RFMO/A. Five parties, on the other hand, are members of between 9 and 14 RFMO/As.

Table 2: Parties to the Compliance Agreement as members of RFMO/As

Parties to the Compliance Agreement	RFMO/A
Albania	GFCM, ICCAT
Angola	ICCAT, SEAFO
Argentina	CCAMLR
Australia	CCAMLR, CCSBT, IOTC, SIOFA, SPRFMO, WCPFC
Barbados	ICCAT
Belize	IATTC, ICCAT
Benin	
Brazil	CCAMLR, ICCAT
Cabo Verde	ICCAT
Canada	CCAMLR, IATTC, ICCAT, NAFO, NASCO, [NEAFC],* NPAFC, NPFC, WCPFC
Chile	CCAMLR, [IATTC],** SPRFMO
Cook Islands	CCAMLR, SIOFA, SPRFMO, WCPFC

²² CCAMLR is a conservation organization with some attributes of an RFMO. See CCAMLR, Report of the Twenty-first Meeting of the Commission (21 October-1 November 2002), Doc. CCAMLR-XXI, Paragraph 15.2.

²³ Because of lack of documentation, this organization has not been included in the present analysis.

Parties to the Compliance Agreement	RFMO/A
Egypt	GFCM, ICCAT
European Union	CCAMLR, [CCSBT],*** GFCM, IATTC, ICCAT, IOTC, NAFO, NASCO, NEAFC, NPFC, SEAFO, SIOFA, SPRFMO, WCPFC
Georgia	
Ghana	ICCAT
Japan	CCAMLR, CCSBT, GFCM, IATTC, ICCAT, IOTC, NAFO, NPAFC, NPFC, SEAFO, SIOFA. WCPFC
Madagascar	IOTC
Mauritius	CCAMLR, IOTC, SIOFA
Mexico	IATTC, ICCAT
Morocco	GFCM, ICCAT
Mozambique	IOTC
Myanmar	
Namibia	CCAMLR, ICCAT, SEAFO
New Zealand	CCAMLR, CCSBT, SPRFMO, WCPFC
Norway	CCAMLR, ICCAT, NAFO, NASCO, NEAFC
Oman	IOTC
Peru	CCAMLR, IATTC, SPRFMO
Philippines	ICCAT, IOTC, WCPFC
Republic of Korea	CCAMLR, CCSBT, IATTC, ICCAT, IOTC, NAFO, NPAFC, NPFC, SEAFO, SIOFA, SPRFMO, WCPFC
Saint Kitts & Nevis	
Saint Lucia	
Senegal	ICCAT
Seychelles	IOTC, SIOFA
Sierra Leone	ICCAT
Sri Lanka	IOTC
Syrian Arab Republic	GFCM, ICCAT
Trinidad and Tobago	ICCAT
United Kingdom	CCAMLR, ICCAT, IOTC, NAFO, NASCO, NEAFC
United Republic of Tanzania	IOTC
United States of America	CCAMLR, IATTC, ICCAT, NAFO, NASCO, NPAFC, NPFC, SPRFMO, WCPFC
Uruguay	CCAMLR, ICCAT
Vanuatu	CCAMLR, IATTC, NPFC, SPRFMO, WCPFC

* As a cooperating non-member.

** As a cooperating non-contracting party.

*** As a member of the Extended Commission.

2.3 Provisions of the Compliance Agreement

The scope of application

According to Article II (1) the Compliance Agreement applies to “all fishing vessels that are used or intended for fishing on the high seas.” However, this broad application is limited by allowing the parties to exempt certain vessels from the detailed administrative provisions of the agreement.

The definition of fishing vessels in Article I(a) covers “any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other

vessels directly engaged in such fishing operations.” This definition excludes any support vessels not directly engaged in fishing operations.

Parties to the agreement may exempt vessels of less than 24 meters in length from the application of some of the detailed administrative provisions of the agreement. It is important to note that this exemption does not apply to the Compliance Agreement’s main obligation, which is ensuring that the vessels concerned do not undermine the effectiveness of international CMMs.

Flag State responsibility

Article III of the Compliance Agreement spells out the concept of flag State responsibility in respect of fishing vessels operating on the high seas. It requires parties to take such measures as may be necessary to ensure that fishing vessels entitled to fly their flag do not engage in any activity that undermines the effectiveness of any international CMMs.

Fishing authorization

According to Article III (2-6) a party shall not allow any of its vessels to fish on the high seas unless they have been authorized to do so, and each party must ensure that its vessels fish in accordance with the conditions of the authorization. An important obligation is placed on States to refrain from granting fishing authorizations if a vessel has changed flag and is still in a period of suspension of its authorization in the former flag State, or during a three-year period following the withdrawal of the fishing authorization by the former flag State that is a party to the Compliance Agreement. The purpose of this provision is to prevent so-called flag-hopping, whereby a vessel circumvents a fishing ban by simply changing flag. However, authorizations might be granted if it can be verified that there is no link between the new and the former owner or if the new flag State determines that granting the authorization would not undermine the objective and purpose of the agreement. It should be noted that any State would have the necessary discretion to decide on which vessels should be granted fishing authorizations.

Record

Pursuant to Article IV the Compliance Agreement, parties shall maintain a record of their fishing vessels that are authorized to be used for fishing on the high seas which, pursuant to Article VI, shall contain name of fishing vessel, registration number, previous names (if known), port registry, previous flag (if any), International Radio Call Sign (if any), name and address of owner or owners, where and when built, type of vessel and length. Furthermore, to the extent practicable, a record shall contain the following additional information: name and address of operator (manager) or operators (managers) (if any), type of fishing method or methods, moulded depth, beam, gross register tonnage and power of main engine or engines.

Marking of vessels

According to Article III (6) the flag State shall ensure that its vessels are properly marked. The Compliance Agreement refers to the FAO Standard Specifications for the Marking and Identification of Fishing Vessels as an example of a generally agreed standard to be applied.

Reporting

According to Article III (7) the vessels of a flag State are to provide the party with the necessary information on their operation, including fishing area, catch, and landing data, as may be necessary to enable the State to fulfil its obligations under the agreement.

Enforcement

Article III (8) requires parties to take enforcement measures against any of their flag vessels that act in contravention of the agreement provisions. Sanctions must be of sufficient gravity to be effective in

securing compliance and to deprive offenders of the benefits accruing from their illegal activities and are to include, for serious offenses, refusal, suspension, or withdrawal of the authorization to fish on the high seas.

Exchange of Information

Article VI deals with the exchange of information. It is designed to ensure an adequate flow of information about high seas fisheries. Each party to the agreement shall make certain that information regarding high seas fisheries outlined in Article VI is available to FAO, which will pass this information on to all other parties, and, upon request, individual parties or to RFMO/As and other relevant organizations. In the latter case, the transmission of information by FAO is subjected to any restrictions imposed by the party concerned.

Each party shall make available to FAO information on each fishing vessel entered into the record that each party is required to maintain under Article IV and, to the extent practicable, certain additional information from the same record. Each party shall also notify FAO promptly of any modifications to this information and of additions and deletions, including the reasons for deletion, of a vessel from the record. In turn, FAO shall circulate this information periodically. Information regarding additions to, or deletions from, the record shall be circulated promptly to all parties and also, upon request, to RFMO/As.

Each party is also required to provide FAO promptly with all information regarding activities of fishing vessels flying its flag that undermine the effectiveness of international CMMs, including the identity of the vessel and of any measures imposed.

Each party, if it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of such CMMs, is to draw this to the attention of the flag State concerned and, as appropriate, may provide FAO with a summary of such evidence. Each party is also required to inform FAO of any authorization in respect of a vessel previously registered in the territory of another party where a period of suspension has not expired, or where an authorization to fish has been withdrawn. Reports on measures imposed by a party may be subject to such limitations as may be required by national legislation with respect to confidentiality.

In support of the Compliance Agreement, FAO has established a High Seas Vessels Authorization Record (HSVAR) to facilitate the monitoring of vessels licensed to fish on the high seas. Flag States can in any event provide such information quite apart from the Agreement, subject only to confidentiality requirements and other restraints that might be imposed by national law.

The information to be provided according to Article VI already should be available from the record required under Article IV of the Compliance Agreement, from the operation of the authorization scheme in Article III, and from the international cooperation provisions in Article V.

Article V provides also for the provision of evidentiary information on vessels allegedly engaged in activities that undermine the effectiveness of international CMMs. This would include, not only information on non-compliant domestic vessels but also on non-compliant vessels flying the flag of another party and non-party.

2.4 Comparison between the Compliance Agreement's provisions and the relevant provisions of the UNFSA

The UNFSA was adopted in 1995, and its objective is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the LOSC. To this end, the UNFSA establishes a clear set of rights and obligations for States to conserve and manage the two types of stocks and associated and dependent species as well as to protect biodiversity in the marine environment. It requires States to cooperate with other States directly or through appropriate RFMO/As for the

conservation and management of straddling fish stocks and highly migratory fish stocks, including cooperation for the establishment of new RFMO/As where none exist in a particular region or subregion.

States having a real interest in the fisheries concerned are encouraged by the UNFSA to become members of such RFMOs. The UNFSA also provides that only States that are members of an RFMO, or those that agree to apply the CMMs established by such organization or arrangement, shall have access to the fishery resources to which the measures apply.

The UNFSA provides for a significant reinforcement of flag State duties concerning control over fishing vessels to ensure the effectiveness of international CMMs. It also contains enhanced compliance control mechanisms, including strengthened enforcement by flag States.

Application

Pursuant to Article 3 (1) the UNFSA applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction,²⁴ while the Compliance Agreement applies to fishing vessels on the high seas.

This means that the UNFSA applies to the water column and in principle also to the Area, but that would not be the case as the agreement addresses straddling fish stocks and highly migratory fish stocks. Such stocks straddle or migrate between EEZs and the high seas. But since the provisions of the UNFSA that are relevant in the context of the present study refer to the “high seas area” anyway, this difference is of no particular importance here.

The Compliance Agreement defines in Article I (a) a fishing vessel as any vessel used for the commercial exploitation of living marine resources. Consequently, the Compliance Agreement applies to straddling fish stocks, highly migratory fish stocks, and high seas discrete fish stocks as well as to any other species of fish to be found on the high seas.²⁵

References in the UNFSA to “fishing vessels” in various provisions include all vessels, while a party to the Compliance Agreement may pursuant to Article II (2) exempt fishing vessels of less than 24 metres in length. As the UNFSA covers support vessels, it is wider than the Compliance Agreement which excludes support vessels not directly engaged in fishing operations from its scope of application.

Flag State duties

Article 18 of the UNFSA provides for flag State duties concerning control over fishing vessels, which in essence is the objective of the Compliance Agreement. The provision contains, particular in Paragraph 3, rather detailed specifications of the required suite of measures that would be necessary to comply with flag State duties. These are much more detailed than the similar measures contained in the Compliance Agreement, with a few exceptions.

General

Paragraph 1 imposes the basic obligation for a flag State to ensure that vessels flying its flag comply with subregional and regional CMMs and do not undermine the effectiveness of such measures.

Article III of the Compliance Agreement spells out the concept of flag State responsibility in respect of fishing vessels operating on the high seas. It requires parties to take such measures as may be necessary to ensure that fishing vessels entitled to fly their flag do not engage in any activity that undermines the effectiveness of any international CMMs.

There is a minor difference between the two as the UNFSA refers to “subregional and regional conservation and management measures”, while the Compliance Agreement refers to “any international

²⁴ Articles 5 (general principles), 6 (application of the precautionary approach) and 7 (compatibility of conservation and management measures) nevertheless apply to the conservation and management of fish stocks in areas under national jurisdiction.

²⁵ The UN General Assembly has continuously, since 2006, called upon states to adopt conservation and management measures also for discrete high seas fish stocks, consistent with the general principles set forth in the UNFSA. See e.g. Para. 48 of A/RES/76/71 (2021).

conservation and management measures.” This would mean that the UNFSA excludes any global measures in this context, while the Compliance Agreement does not.

Authorizations

Paragraph 2 provides that a flag State shall authorize its vessels to fish on the high seas only when able to effectively exercise its duties in accordance with the LOSC and the UNFSA.

According to Article III (2-6) of the Compliance Agreement a party shall not allow any of its vessels to fish on the high seas unless they have been authorized to do so, and each party must ensure that its vessels fish in accordance with the conditions of the authorization.

In addition to the UNFSA requirements, the Compliance Agreement places an important obligation on States to refrain from granting fishing authorizations if a vessel has changed flag and is still in a period of suspension of its authorization in the former flag State, or during a three-year period following the withdrawal of the fishing authorization by the former flag State. As explained above, the purpose of this provision is to prevent so-called flag-hopping and certain exceptions apply..

Records and exchange of information

Pursuant to Paragraph 3 (c) of the UNFSA, States shall establish a record of fishing vessels authorized to fish on the high seas, and to make the information available on request by interested States subject to national restrictions of the State providing the information.

Each party to the Compliance Agreement is according to Article IV required to maintain record of fishing vessels authorized to be used for fishing on the high seas. Article VI contains mandatory and optional information to be included in the record.

Where the UNFSA requests States to make record information available on request to interested States, Article VI of Compliance Agreement provides for the systematic exchange of information regarding high seas fishing vessels. Each party shall make available to FAO information on each fishing vessel entered into the record that and, to the extent practicable, certain additional information from the same record. FAO will pass this information on to all other parties, and, upon request, to RFMO/As and other relevant organizations subject to national restrictions of the State providing the information.

Vessel marking

According to Paragraph 3 (d) States shall make requirements concerning marking of fishing vessels and fishing gear, while the Compliance Agreement in Article III (6) requires marking of only fishing vessels. For vessels both treaties refer to the FAO Standard Specifications for the Marking and Identification of Fishing Vessels as an example of either “an internationally recognizable vessel ... marking system” (UNFSA) or a “generally accepted standard” (Compliance Agreement).

Fishing gear should according to this same Paragraph 3 (d) also be marked taking due account of uniform and internationally recognizable gear marking systems. There are no requirements related to gear marking in the Compliance Agreement.

Monitoring

According to Paragraph 3 (e) A State shall make requirements for recording and timely reporting of vessel position, catch of target and not-target species, fishing effort and other relevant data by fishing vessels entitled to fly its flag.

In the same vein the Compliance Agreement in Article III (7) provides that the vessels of a flag State are to provide the party with the necessary information on their operation, including fishing area, catch, and landing data, as may be necessary to enable the State to fulfil its obligations under the agreement.

Compliance and enforcement

Articles 19–22 of the UNFSA deal with international compliance and enforcement and oblige flag States to enforce RFMO/A measures. Article 19 requires that the flag State ensures compliance by its vessels, which would require the UNFSA parties to have in place mechanisms, both legal and administrative, and to investigate alleged violations, institute proceedings, ensure that in the case of a serious violation the

vessel in question does not engage in high seas fishing until any outstanding sanctions have been complied with, and apply sanctions that are adequate in severity. Article 21 states that in any high seas area covered by an RFMO/A, an UNFSA party, which is a member of that RFMO/A, may board and inspect fishing vessels flying the flag of another UNFSA party, whether or not that party is also a member of the RFMO/A concerned. The basic procedures for boarding and inspection are set out in Article 22.

The Compliance Agreement deals only with a fraction of the comprehensive and rather detailed framework for compliance and enforcement contained in the UNFSA. Pursuant to Article III (8), parties are required, but also limited, to take enforcement measures against any of their own flag vessels that act in contravention of the agreement provisions. Sanctions must be of sufficient gravity to be effective in securing compliance and to deprive offenders of the benefits accruing from their illegal activities and are to include, for serious offenses, refusal, suspension, or withdrawal of the authorization to fish on the high seas.

2.5 The Compliance Agreement and other FAO instruments

The FAO has adopted several so-called soft law instruments, such as codes, action plans and guidelines, that address fishing, e.g. instruments that do not have formal binding force. Particular relevant in the context of the Compliance Agreement are the Code of Conduct for Responsible Fisheries, the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), the Voluntary Guidelines for Flag State Performance and the International Guidelines for the Management of Deep-sea Fisheries in the High Seas.

2.5.1 The Code of Conduct for Responsible Fisheries (Code)

The Code was adopted by the FAO in 1995 in order to provide a framework for national and international efforts to ensure sustainable exploration of aquatic living resources in harmony with the environment. Although the Code is voluntary, certain parts of it are based on relevant rules of international law, including those reflected in LOSC. The Code also contains provisions given binding effect by means of other obligatory legal instruments amongst the parties, such as the Compliance Agreement, which according to FAO Conference Resolution 15/93, Paragraph 3, forms an integral part of the Code. States not party to the Compliance Agreement should, pursuant to Subparagraph 8.2.6 of the Code be encouraged to accept the agreement and to adopt laws and regulations consistent with the provisions of that Agreement.

The overall objective of the Code is to promote a framework for sustainable use of fisheries resources, foster protection of the aquatic environment and maintain biodiversity while also making a contribution to the safety of fishing operations. The Code contains principles and standards applicable to the conservation, management and development of all fisheries.

The Code is global in scope and relates to all living resources. Thus, its scope is broader than that of the Compliance Agreement as the latter applies only to the high seas. There is a general call by Subparagraph 6.11 of the Code on flag States to exercise control over their vessels and to ensure that they do not undermine the effectiveness of international or national CMMs. The flag State duties are in particular addressed in Paragraph 8.2 of the Code.

Vessel record

A flag State should maintain a record of its fishing vessels authorized for fishing, which should indicate details of the vessel, the ownership and the authorization to fish.

The details of the required record information are not spelled out in the Code, but as the Compliance Agreement forms an integral part of the Code, Article VI of the Compliance Agreement, as explained above, provides guidance.

Authorization

Pursuant to Subparagraph 8.2.2 of the Code a flag State should ensure that no fishing vessels entitled to fly its flag unless such vessels have been issued with a Certificate of Registry and have been authorized to fish by the competent authorities. These documents should be carried on board.

Article III (2-6) of the Compliance Agreement provides that a party should not allow any of its vessels to fish on the high seas unless they have been authorized to do so, and each party must ensure that its vessels fish in accordance with the conditions of the authorization. There is no reference to a Certificate of Registry, and it is not required to carry authorizations on board.

Marking

The flag State should pursuant to Subparagraph 8.2.3 of the Code ensure that its vessels are properly marked, and the FAO Standard Specifications for the Marking and Identification of Fishing Vessels is given as an example of a uniform and internationally recognizable vessel marking system. This is the same example as reflected in Article III (6) of the Compliance Agreement, where the verb “shall” is used.

Fishing gear should according to Subparagraph 8.2.5 of the Code also be marked taking due account of uniform and internationally recognizable gear marking systems. There are no requirements related to gear marking in the Compliance Agreement.

Monitoring, control, surveillance and enforcement

Subparagraph 6.11 of the Code calls on flag States to exercise control over their vessels and to ensure that they do not undermine the effectiveness of international or national CMMs. This is the same requirement as set out in Article III(1)(a) of the Compliance Agreement.

States should also pursuant to Subparagraph 6.11 of the Code ensure that vessels entitled to fly its flag fulfil obligations concerning the collection and provision of data relating to their activities. Similar requirements are set out in Article III (7) of the Compliance Agreement according to which each party shall ensure provision of information by vessels entitled to fly its flag that may be necessary to enable the party to fulfil its obligations under the agreement.

Pursuant to Subparagraph 7.1.7 of the Code, States should also establish effective mechanisms for MCS and enforcement of fishing vessels, while according to Subparagraph 8.4.3 States should ensure that documentation with regard to fishing operations, retained catch of fish and non-fish species is collected, and States should establish programmes, such as observer and inspection schemes, in order to promote compliance with applicable measures. The Compliance Agreement does not contain any specific actions required in addition to the general obligation set out in Article III (7).

A flag State should according to Subparagraph 8.2.7 of the Code take enforcement measures against any of its vessels that have contravened applicable CMMs, including, where appropriate, making such contravention an offence under national legislation. Sanctions should be of adequate severity to be effective in securing compliance and discouraging violations and should deprive offenders of the benefits accruing from their illegal activities, and they are to include, for serious offences, refusal, suspension, or withdrawal of the authorization to fish.

Article III (8) of the Compliance Agreement contains almost identical language to Subparagraph 8.2.7.

2.5.2 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)

The objective of the IPOA-IUU, adopted in 2001, is to prevent, deter and eliminate IUU fishing through comprehensive, effective and transparent measures. Although it is not binding, the action plan contains measures for combating IUU fishing, including those measures to be used by flag States, coastal States, port States and RFMO/As. The IPOA-IUU calls on States, through RFMO/As, to take various actions, such as developing boarding and inspection schemes, implementing a vessel monitoring system (VMS)

and observer programmes, identifying vessels that are engaged in IUU fishing, regulating transshipment operations, as well as adopting port inspection schemes, certification and/or trade documentation schemes and other market-related measures.

Flag State responsibilities are addressed in a specific section of the IPOA-IUU, building of course on legal obligations set out in the LOSC, the UNFSA and the Compliance Agreement. The IPOA-IUU gives a more comprehensive overview of the details deriving from those instruments, including issues related to fishing vessel registration, record of fishing vessels and authorisation to fish.

The IPOA-IUU encourages in its Paragraph 11 States, as a matter of priority, to become a party not only to the Compliance Agreement, but to the LOSC and the UNFSA as well.

Registration

Concerning fishing vessel registration, States should, in accordance with Paragraph 36, avoid flagging vessels with a history of non-compliance, except where the ownership has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or the flag State determines that flagging the vessel would not result in IUU fishing.

In the same vein is Paragraph 39, which calls on States to deny authorization and flag to prevent flag hopping, e.g. the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing relevant CMMs.

This is the same approach as reflected in Article III (5) of the Compliance Agreement, although that paragraph refers to “would not undermine the object and purpose of this Agreement” instead of “would not result in IUU Fishing”.²⁶

Records

According to Paragraphs 42 and 43, a flag State should maintain a record of fishing vessels entitled to fly its flag. The IPOA-IUU requirements apply to all fishing vessels and not only to high seas fishing vessels as the Compliance Agreement. Concerning the content of such record, the two abovementioned paragraphs make a cross-reference to Article VI (1-2) of the Compliance Agreement. The IPOA-IUU refers to additional information that could be included *inter alia* in the record: Nationality of owner and manager, information about beneficial owner, compliance history and photo of the vessel.

Authorizations

The IPOA-IUU deals with fishing authorizations and their conditions in its Paragraphs 44-47.

A flag State should not allow its vessels to fish unless so authorized and should ensure that each vessel fishing beyond national waters holds a valid authorization. This is the same as the obligation set out in the Compliance Agreement Article III (2).

Minimum content of such an authorization is listed in Paragraph 46 (vessel and owner identification, fishing areas, scope, duration, species and gear) of the IPOA-IUU. Required content of authorizations is not included in the Compliance Agreement.

Authorization conditions are outlined in a rather extensive list in Paragraph 47 of the IPOA-IUU, which include VMS, catch and transshipment reporting, observer coverage, maintenance of fishing logbooks and marking of fishing vessels. The latter makes a reference to the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

²⁶ This is due to the fact that the term “IUU fishing” was not used at the time when the Compliance Agreement was developed.

The Compliance Agreement sets out a couple of conditions. Article III (6) of the Compliance Agreement includes a reference to the same FAO document concerning marking, while required catch reporting is included in Article III (7) of the Compliance Agreement, which in general terms requires parties to ensure that vessels entitled to fly its flag shall provide it with such information necessary in order for the party to fulfil obligations under the agreement.

According to Paragraph 48, flag States should ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. It is the responsibility of the flag State to ensure that none of its vessels resupply fishing vessels engaged in IUU fishing or transship fish to or from such vessels. Paragraph 49 of the IPOA-IUU calls on flag States to ensure that their vessels involved in transshipment operations have a prior authorization and apply reporting requirements concerning the operation, which include date and location, weight of species and catch area, and identification of vessels involved in transshipment.

The Compliance Agreement does not address transshipment as such and does not cover support vessels not directly engaged in fishing operations.

2.5.3 FAO Voluntary Guidelines for Flag State Performance (Flag State Guidelines)

The Flag State Guidelines were finalised in 2013 and endorsed by Committee on Fisheries (COFI) in 2014. The Flag State Guidelines are not legally binding, but they are an important tool for assessing what flag States may need to do in order to comply with their obligations under the LOSC, the UNFSA, the Compliance Agreement and RFMO/A instruments. The Flag State Guidelines apply to fishing in areas beyond national jurisdiction, which in principle would include sedentary species in the Area,²⁷ while the Compliance Agreement applies to the high seas.

Although not directly stated in the Flag State Guidelines, the text clearly shows that these Guidelines apply to fishing and fishing related activities. The latter is defined in the PSMA, which include a series of activities in support of fishing, while the application of the Compliance Agreement is limited to fishing and direct engagement in fishing.²⁸

The Voluntary Guidelines make reference to the Compliance Agreement, as they do with respect to the LOSC and the UNFSA in different provisions, but in neither case do they urge States to become parties to these respective documents.

Registration

States should establish grounds for refusal of registration of a vessel, vessels holding a registration from another State, and vessels with a history of non-compliance. The latter vessels may only be registered where the ownership of the vessel has changed and the new owner demonstrates that the previous owner has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account all relevant facts, the State determines that flagging the vessel would not result in IUU fishing.

This is a summary of Article III (5) of the Compliance Agreement, although that paragraph refers to “would not undermine the object and purpose of this Agreement” instead of “would not result in IUU Fishing”.²⁹

Vessel records

According to the Flag State Guidelines States should maintain up-to-date records of vessels authorized to engage in fishing on the high seas. Concerning its content there is cross-reference to Article VI (1-2) of

²⁷ See LOSC Articles 77 and 133.

²⁸ See Compliance Agreement Article I (a) and Article II (1).

²⁹ This is also because, as already mentioned *supra* note 26, the term “IUU fishing” was not used at the time when the Compliance Agreement was developed.

the Compliance Agreement, which sets out required mandatory information in Paragraph 1 and optional information in Paragraph 2. In addition, according to the Flag State Guidelines, the record may *inter alia* include information about nationality of owner and manager, beneficial owner, compliance history and photo of the vessel. These possible additions were already suggested by the IPOA-IUU.

Authorizations

Pursuant to the Flag State Guidelines, States should ensure that no vessel is allowed to operate unless authorized by them. Furthermore, States are to establish appropriate scope for such authorization and should also include minimum information requirements that include the name of the vessel and the owner of the vessel, the areas and duration of the authorization, as well as the species targeted and the fishing gear used.

The Compliance Agreement deals with similar issues in Article III (2-4).

Vessel marking

States should, pursuant to the Flag State Guidelines, mark fishing vessels entitled to fly its flag in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels and relevant requirements of the International Maritime Organization (IMO), which is considered to represent a minimum requirement, amongst others.

Article III (6) of the Compliance Agreement includes a reference to the same FAO document in similar terms, but there is no reference to IMO requirements to be found there.

Monitoring, control, surveillance and enforcement

The Flag State Guidelines require States to implement a control regime. Such a regime should include the legal authority to take control of the vessels (e.g. denial of sailing, recall to port), as well as monitoring tools such as VMS, logbooks/documentation and observers. In addition, a regime should include mandatory requirements regarding fisheries-related data that must be recorded and reported in a timely manner (e.g. catches, effort, bycatches and discards, landings and transshipments) and an inspection regime.

States should prohibit high seas fishing by a vessel flying its flag where such vessel has been involved in the commission of a serious violation of relevant CMMs applicable to the high seas, until such time as all outstanding sanctions imposed in respect of the violation have been complied with in accordance with its laws. States should implement sanctions that are proportionate to the seriousness of the violation and are adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and deprive offenders of benefits accruing from their illegal activities.

Concerning MCS, Article III (7) of the Compliance Agreement includes general references to fishing vessels provision of information necessary to fulfil obligations under the agreement, in including particular information pertaining to the fishing areas, catches and landings.

Concerning enforcement, Article III (8) of the Compliance Agreement, requires parties to take enforcement measures against any of their flag vessels that act in contravention of the agreement provisions. Sanctions must be of sufficient gravity to be effective in securing compliance and to deprive offenders of the benefits accruing from their illegal activities and are to include, for serious offenses, refusal, suspension, or withdrawal of the authorization to fish on the high seas.

2.5.4 The International Guidelines for the Management of Deep-sea Fisheries in the High Seas (Deep-sea Fisheries Guidelines)

FAO adopted the Deep-sea Fisheries Guidelines in 2008 as an instrument to directly address the challenges associated with the management of deep-sea fisheries in areas beyond national jurisdiction.

CMMs for deep-sea fishing should be established in conformity with relevant rules of international law, in particular the LOSC and the UNFSA, which are both mentioned in the text, and in a manner consistent with other international instruments, which would seem to include the Compliance Agreement. The latter, even though incorporated in the list of acronyms and abbreviations, did not find its way into the Deep-sea Fisheries Guidelines themselves.

Registers and records

According to Paragraph 56 of the Deep-sea Fisheries Guidelines, States should establish and maintain registers and records of authorized fishing vessels, which should contain detailed information on each vessel including length, tonnage, types of gear, fishing areas and species.

This is minimum required information, and additional relevant information could be based on Article VI (1-2) of the Compliance Agreement.

Exchange of information

Article 57 of the Deep-sea Fisheries Guidelines requires States to, where applicable, annually submit registers and records to RFMO/As, or, for areas where RFMO/As do not exist to the FAO.

According to Article VI of the Compliance Agreement, each party shall make certain that information regarding high seas fisheries outlined in Article VI is available to FAO, which will pass this information on to all other parties, and, upon request, to RFMO/As and other relevant organizations, be it subject to national restrictions of the State providing the information. Even then, the scope of the exchange requirements related to the FAO of the Compliance Agreement are significant broader than those of the Deep-sea Fisheries Guidelines.

Vessel marking

Pursuant to Paragraph 56 of the Deep-sea Fisheries Guidelines, States should ensure that all vessels fishing for deep-sea species are marked with identification, such as the IMO number.

Article III (6) of the Compliance Agreement contains an obligation for the parties to mark fishing vessels entitled to fly its flag, and refers to the FAO Standard Specifications for the Marking and Identification of Fishing Vessels as a possible generally accepted standard, but there is no specific reference to IMO requirements.

Monitoring, control, surveillance and enforcement

According to Paragraph 35 of the Deep-sea Fisheries Guidelines, States should monitor and ensure reporting of the location and activities of vessels flying their flag as close to real time as possible. States should, pursuant to Paragraph 21 (vi), implement and enforce CMMs through effective MCS. Enforcement and compliance issues are specifically dealt with in Paragraphs 54–60 of the Deep-sea Fisheries Guidelines. States should establish effective MCS frameworks that may include on-board observers, and VMS.

Concerning such monitoring, Article III (7) of the Compliance Agreement includes general references to fishing vessels provision of information necessary to fulfil obligations under the agreement, in including particular information pertaining to the fishing areas, catches and landings, while Article III (8) requires parties to take enforcement measures against any of their flag vessels that act in contravention of the agreement provisions. Sanctions must be of sufficient gravity to be effective in securing compliance and to deprive offenders of the benefits accruing from their illegal activities and are to include, for serious offenses, refusal, suspension, or withdrawal of the authorization to fish on the high seas.

2.5.5 Other FAO instruments

In 1997 COFI agreed to develop a voluntary International Plan of Action (IPOA) in order to assist States to manage incidental catch of seabirds in longline fisheries, the conservation and management of sharks and the management of fishing capacity in compliance with the Code. The three texts were developed in the course of two intergovernmental meetings, open to all FAO Members, held in 1998. The IPOAs were adopted by on COFI in 1999 and endorsed by the FAO Council that year.

Of those three IOPAs, only the IPOA for the management of fishing capacity includes provisions relevant to the implementation of Compliance Agreement.

2.5.5.1 *International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity)*

The IPOA-Capacity, adopted in 1999, i.e. at a time that neither the Compliance Agreement nor the UNFSA had entered into force, specifically provides in Paragraph 29 that States should consider participating in these two agreements.

The objective of the IPOA-Capacity is to support States and RFMO/As to achieve an efficient, equitable and transparent management of fishery capacity.

Pursuant to Paragraph 17, States should develop and maintain appropriate and compatible national records of fishing vessels, further specifying conditions for access to information.

In accordance with Article IV of the Compliance Agreement, parties shall maintain a record of their fishing vessels that are authorized to be used for fishing on the high seas, including a list of compulsory and facultative items to be included, as mentioned above.

Paragraph 16 of the IOPA-Capacity calls on States to support FAO in the development of appropriate and compatible standards for records of fishing vessels, and according to Paragraph 18 States should support the establishment by FAO by the end of 2000 of an international record of fishing vessels operating in the high seas, following the model indicated in the Compliance Agreement.

2.6 The Compliance Agreement as a FAO Article XIV Agreement

As noted in the last preambular paragraph of the Compliance Agreement, the latter has been concluded within the framework of FAO, under Article XIV of its Constitution. As such, it was approved on 24 November 1993 by Resolution 15/93 of the 27th session of the FAO Conference.

This has implications, for instance, as far as membership and depositary functions are concerned. First, with respect to membership, Article XIV (3)(b) of the FAO Constitution restricts acceptance to FAO members and to “any non-member States as are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency, and regional economic integration organizations, including Member Organizations, to which their Member States have transferred competence over matters within the purview of the conventions, agreements, supplementary conventions and agreements, including the power to enter into treaties in respect thereto”. This implies for instance that the European Union, if they comply with the requirements provided in Article II (5) and (7) of the FAO Constitution concerning their declaration of competence, can become a party to such an Article XIV agreement, whereas Taiwan Province of China cannot. Articles I I and X (1) and (4) of the Compliance Agreement reflect these provisions. Second, with respect to certain depositary functions mentioned in Article XIV of the FAO Constitution, they are foremost reflected in Article XV of the Compliance Agreement.

In this, the Compliance Agreement resembles the PSMA, which is another agreement concluded within the framework of Article XIV of the FAO Constitution, but distinguishes itself from the UNFSA, which is one of the so-called implementing agreements of the LOSC, resulting in the fact that, like the LOSC, it is open to a larger potential membership (UNFSA Articles 1 (2)(b) and 47, the former making further reference to the LOSC Article 305 (1)(c-e) and Annex IX, Article 1) and that the depositary functions are in the hands of the Secretary-General of the United Nations (UNFSA Article 49).

It has been argued that the Compliance Agreement is a dynamic instrument with great potential of adaptation to new developments and insights exactly because it has been adopted in the framework of Article XIV of the FAO Constitution as that entails that the FAO Conference will act as the governing body “while relying on the technical advice and monitoring of the FAO Committee on Fisheries”.³⁰ It should finally be noted that Article XIV of the FAO Constitution also provides the possibility for FAO Council to conclude supplementary agreements designed to possibly implement the Compliance Agreement.

2.7 Examination of the Compliance Agreement’s provisions (and their effectiveness) and implementation, relevance of the Compliance Agreement today

2.7.1 RFMO/As implementation of relevant provisions of the Compliance Agreement

Under RFMO/A regimes, the contracting party/member flag State is required to take measures to control its vessels by means of licences or authorizations. RFMO/As have also agreed that parties shall authorize the use of fishing vessels only where it is able to exercise effectively their responsibilities in respect of such vessels and ensure that their vessels comply with applicable measures adopted under the respective treaties.

RFMO/As are usually tasked with collecting fisheries statistics, assessing resources, making conservation and management decisions, and monitoring activities. RFMO/As responsible for the management of marine living resources in the high seas have established a series of measures, including concerning flag State responsibilities.

In accordance with the UNFSA, States that are not contracting parties to a relevant RFMO/A shall implement equivalent measures in order to have access to the resources in question (see section 2.4 above). Some RFMO/A have established systems through which non-contracting parties are granted statuses as cooperation parties based on their commitments to implement relevant measures. In areas not covered by an RFMO/A, or in areas where the relevant RFMO/A has not established appropriate measures, flag States should implement adequate measures unilaterally.

Below is an overview of actions taken by RFMO/As with competence to establish CMMs on the high seas. The overview contains relevant provisions of RFMO/A treaties and measures established by each RFMO/A that are directly relevant to the implementation of the Compliance Agreement, which in essence are related to general flag State obligations, authorizations, vessels records, vessel marking and monitoring. An important element of the Compliance Agreement is the obligation of its parties to provide information about their vessels to the FAO, which is not directly relevant in the context of RFMO/As. But RFMO/As have established systems for the exchange of information among members or parties, and between RFMO/As that include the details identical to those required for submission to FAO.

Members and contracting parties of each RFMO/A that are also parties to the Compliance Agreement are marked in bold.³¹

CCAMLR

³⁰ Moore, *supra* note 6, p. 83.

³¹ This includes Members States of the European Union as are they formally bound by the Compliance Agreement through that membership. In some RFMO/As, however, Member States of the European Union have a separate membership because they represent territories not covered by European Union law. In such case, they are strictly speaking not bound by the membership of the European Union to the Compliance Agreement, as the latter does not extend to those territories. In such a case, the Member States of the European Union will not be marked in bold.

CCAMLR was established through the Convention for the Conservation of Antarctic Living Marine Resources, which entered into force in 1982. As this convention predates the Compliance Agreement, no reference is made to it. Its objective is “the conservation of Antarctic marine living resources”, which include populations of finfish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic convergence. The convention area comprises a vast area in the Southern Ocean.

Members of CCAMLR are: **Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, China, Cook Islands, Ecuador, European Union, France (on behalf of Kerguelen and Crozet), Germany, Greece, India, Italy, Japan, Mauritius, Netherlands, Namibia, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Republic of Korea, Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Vanuatu.**

Flag State responsibility

The CCAMLR Convention or CMMs do not directly point to flag State responsibilities as reflected in Article III (1)(a) of the Compliance Agreement. However, preambles of various CMMs include language that points to the duties of flag State, for example the preamble to conservation measure 10-05(2021) states that “...noting that IUU fishing is inconsistent with the objective of the CCAMLR Convention and undermines the effectiveness of its conservation measures, and underlining the responsibilities of flag States to ensure that their vessels conduct their fishing activities in a responsible manner”.

Authorizations / Record of vessels

Each contracting party shall pursuant to Conservation C10-02 (2016) prohibit fishing by its flag vessels in the convention area except pursuant to a licence that the contracting party has issued setting forth the specific areas, species and time periods for which such fishing is authorised and all other specific conditions to which the fishing is subject to give effect to conservation measures and requirements under the Convention.

A contracting party may only issue such a licence to fish in the convention area to a vessel flying its flag, if the vessel has an IMO number and if the contracting party is satisfied of the vessel’s ability to exercise its responsibilities under the Convention and its conservation measures.

Licences shall include the following: name of fishing vessel (any previous names if known), registration number, IMO number, external markings and port of registry, the nature of the authorisation to fish granted by the flag State, specifying the date issued, time periods authorised for fishing (start and end dates), area(s), subareas or divisions of fishing, species targeted and gear used, previous flag (if any), international radio call sign, vessel communication types and numbers, name and address of vessel’s owner(s), and any beneficial owner(s) if known, name and address of licence owner (if different from vessel owner(s)), type of vessel, where and when built, length and photographs of the vessel. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

Marking of vessels

All contracting parties shall pursuant to Conservation Measure 10-01 (2014) ensure that their fishing vessels are marked in such a way that they can be readily identified, with markings prominently displayed at all times. Specifically, the vessel’s name and international radio call sign (IRCS) shall be marked on the vessel’s side or superstructure, port and starboard, and on a deck. Also fishing gear needs to be marked, an element not provided in the Compliance Agreement.

Monitoring

Each contracting party shall pursuant to Conservation Measure 10-04 (2018) ensure that its licensed fishing vessels are equipped with automatic location communicators (ALCs), and shall forward VMS reports and messages received, pursuant to Paragraphs 2 and 4, to the CCAMLR secretariat as soon as possible. Without prejudice to its responsibilities as a flag State, a contracting party may require its fishing vessels to transmit VMS data directly to the secretariat.

There are information requirements for entry, exit and movement reports by vessels, which include the international radio call sign, IMO number, vessel name, latitude and longitude, date and time of entry, exit or movement, CCAMLR subarea or division being entered or exited or moved to, as well as targeted fish, transiting or transshipping.

CCAMLR has adopted various reporting schemes. According to conservation measure 23-07 (2016) all contracting parties with vessels operating in exploratory fisheries, with the exception of exploratory krill fisheries, shall provide a daily report to the secretariat. The daily report shall include the total green weight caught, by vessel, of each target catch by species and by-catch by species for which there is a catch limit in that area. Conservation measure 23-01 (2016) deals with a five-day catch and effort reporting system. At the end of each reporting period, each contracting party shall obtain from each of its vessels its total target catch by species and its total by-catch reported by species or to the lowest taxonomic level possible (e.g. species or genus), and total days and hours fished for that period and shall transmit the aggregated catch and days and hours fished for its vessels to the secretariat. Conservation measure 23-02 (2016) deals with a ten-day catch and effort reporting system. At the end of each reporting period, each contracting party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall transmit the aggregated catch and days and hours fished for its vessels so as to reach the secretariat not later than the end of the next reporting period.

These measures reflect requirements under Article III (7) of Compliance Agreement.

CCSBT

CCSBT was established when the Convention for the Conservation of Southern Bluefin Tuna came into force in 1994. As this convention predates the adoption of the Compliance Agreement, no reference is made to it. It applies to the management of southern bluefin tuna throughout its distribution, rather than in a particular geographical region. The objective of CCSBT is to ensure, through appropriate management, the conservation and optimum utilization of southern bluefin tuna.

Contracting parties of CCSBT are: **Australia**, Indonesia, **Japan**, **New Zealand**, **Republic of Korea** and South Africa.

Members of the extended commission are the **European Union** and Taiwan Province of China. Topics addressed below apply also to those members.

Flag State responsibility / Record of vessels

According to Paragraph 7 of the Resolution on a CCSBT record of authorised vessels, flag States of the vessels shall authorise their fishing vessels only if they are able to fulfil in respect of these vessels the requirements and responsibilities under the Convention and its CMMs and take necessary measures to ensure that their fishing vessels comply with all the relevant CMMs, which reflects obligations under Article III (1)(a) of the Compliance Agreement.

Furthermore, flag States shall affirm that if those vessels have record of IUU fishing activities, the owners have provided sufficient evidence demonstrating that they will not conduct such activities anymore. This provision addresses some elements contained in Article III (5) of the Compliance Agreement, but does not deal with the issue of flag hopping as such.

Authorizations

By Resolution on a CCSBT record of vessels authorised to fish for southern bluefin tuna, the extended commission agreed to establish and maintain a record of fishing vessels authorised to fish for southern bluefin tuna.

Pursuant to Paragraph 4 each member of the extended commission, shall submit to the executive secretary, the list of fishing vessels flying its flag that are authorised to fish for southern bluefin tuna. This list shall include the following information: Lloyds/ IMO number (if available), name of vessel(s), register number(s), previous name(s) (if any), previous flag(s) (if any), previous details of deletion from other registries (if any), international radio call sign(s) (if any), type of vessel(s), length overall and gross registered tonnage, name and address of owner(s), name and address of operator(s), gear(s) used, and time period authorised for fishing and /or transshipping. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

Monitoring

Pursuant to Resolution on the CCSBT VMS, members of the extended commission shall for vessels flying their flag and fishing for southern bluefin tuna within the areas of competence of CCAMLR, ICCAT, IOTC and WCPFC adopt and implement their satellite-linked VMS programmes and measures respectively. The IOTC measures also apply to areas beyond any of those RFMO/A areas. The application of the VMS shall be consistent with any modifications to those VMS requirements that may be adopted by those respective commissions.

This measure to some extent reflects requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

GFCM

GFCM was established in 1949 under the provisions of Article XIV of the FAO Constitution, and entered into force in 1952. Its founding document, as last amended in 2014, today explicitly refers to the 1993 Compliance Agreement in its preamble. It manages fisheries in the Mediterranean, Black Sea and connecting waters. Its objective is to promote the development, conservation, rational management and best utilization of living marine resources. GFCM applies to all living resources in its area of competence, which comprises all marine waters of the Mediterranean and the Black Seas.

Contracting parties of GFCM are: **Albania**, Algeria, **Bulgaria**, **Croatia**, **Cyprus**, **Egypt**, **European Union**, **France**, **Greece**, Israel, **Italy**, Lebanon, Libya, **Malta**, Monaco, Montenegro, **Morocco**, **Romania**, **Slovenia**, **Spain**, **Syrian Arab Republic**, Tunisia and Turkey.

Bosnia and Herzegovina, **Georgia**, Jordan, Moldova, Saudi Arabia and Ukraine have been granted status as cooperating non-contracting parties. Topic addressed below apply also to those States.

Flag State responsibility

According to Paragraph 5 of the Recommendation GFCM/33/2009/6, the flag States of the vessels in the record, established by the GFCM, shall authorize their vessels only if they are able to fulfil, in respect of these vessels, the requirements and responsibilities under the GFCM Agreement and CMMs and take necessary measures to ensure that their vessels comply with all the relevant CMMs, which reflects obligations under Article III (1)(a) of the Compliance Agreement.

Furthermore, flag States shall ensure that their vessels have no history of IUU fishing activities or, if those vessels have such history, that the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels, or that having taken into account all relevant facts, their vessels are not engaged in or associated with IUU fishing. This provision implements the elements contained in Article III (5) of the Compliance Agreement.

Authorizations / Record of vessels

GFCM has pursuant to Recommendation GFCM/33/2009/6 established a record of vessels over 15 metres authorized to operate in the GFCM area of application. Information to be provided to the secretariat by the flag States include the following (as updated by Recommendation GFCM/44/2021/18): country, reference year, registration authority, vessel name (if any), previous vessel name (if any), national registration number, vessel registration number, international radio call sign (if applicable), maritime mobile service identity (if applicable), IMO number (if applicable), operational status (activity indicator), port of registration, year of entry into fishing activity (if any), authorization to fish (licence indicator), geographical subarea, secondary fishing statistical area (if any), tertiary fishing statistical area, type of vessel, main fishing gear, subsidiary fishing gear, third fishing gear (if any), length overall, gross tonnage, construction year, power of main engine, owner name and address, operator name and address, minimum number of the crew, maximum number of the crew, VMS, authorization to fish in a fisheries restricted area and name of that area. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement. In addition to the record of authorized fishing vessels described above, GFCM has by Recommendation GFCM/33/2009/5 established a GFCM regional fleet register. Information required by flag States is the same as for the record of authorizations.

Monitoring

By Recommendation GFCM/35/2011/1, GFCM has established a logbook, which shall be filled for each fishing operation carried out every day and before port arrival. Minimum standard information includes master name and address, date and time of departure and return from/to port, vessel name, call-sign, GFCM unique number and IMO number (if available), fishing gear, geographical positions, and record of catches by species. The implementation of an electronic logbook is now in the process of being established (Recommendation GFCM/43/2019/3).

By Recommendation GFCM/33/2009/7, GFCM has established minimum standards for the establishment of VMS that apply to vessels authorized to operate in the GFCM area. Each contracting party shall implement a satellite-based VMS for its commercial fishing vessels exceeding 15 metres in length overall. They shall ensure that the satellite tracking devices fitted on board fishing vessels shall enable those fishing vessels to continuously collect and transmit automatically at least every two hours to the fisheries monitoring centre (FMC) in the flag State the GFCM unique identifier and the geographical position of the vessel (longitude and latitude), the date and time of the fixing of the vessel's position, and the vessel's speed and course.

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

IATTC

IATTC was established by the Convention for the Establishment of an InterAmerican Tropical Tuna Commission in 1949. That convention was replaced in 2003 by the Antigua Convention, which entered into force in 2010. The latter explicitly refers to the 1993 Compliance Agreement in its preamble. The objective of the Commission is to ensure the long-term conservation and sustainable use of the fish stocks covered by the Convention. IATTC manages tuna and tuna-like species in the Eastern Pacific Ocean. It covers areas of high seas under national jurisdiction.

Contracting parties of IATTC are: **Belize**, **Canada**, China, *Colombia*, Costa Rica, Ecuador, El Salvador, **European Union**, France (on behalf of Clipperton Island and French Polynesia), Guatemala, **Japan**, Kiribati, **Mexico**, Nicaragua, Panama, **Peru**, **Republic of Korea**, Taiwan Province of China, **United States of America**, *Vanuatu* and *Venezuela* (Bolivarian Republic of) [the countries in italics are Parties to the 1949 Convention that did not withdraw from the Commission after the entry into force of the Antigua Convention and are not still Parties to the latter convention].

There are also five cooperating non-members, namely Bolivia, **Chile**, Honduras, Indonesia and Liberia. Topics addressed below apply to these States.

Flag State responsibility

According to Article XX of the Antigua Convention each party shall, in accordance with international law, take such measures as may be necessary to ensure that vessels flying its flag comply with the provisions of the Antigua Convention and the CMMs adopted pursuant thereto, and that such vessels do not engage in any activity which undermines the effectiveness of such measures. These obligations build on Article III (1)(a) of the Compliance Agreement.

Authorizations

According to Article XX of the Antigua Convention no party shall allow any vessel entitled to fly its flag to be used for fishing for fish stocks covered by the Convention unless it has been authorized to do so by the appropriate authority or authorities of that party. A party shall authorize the use of vessels flying its flag for fishing in the convention area only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention.

Record of vessels

Article XII (2)(k), of the Antigua Convention stipulates that the director shall maintain the record of vessels fishing in the convention area based, inter alia, on the information provided pursuant to Annex 1 of the IATTC Convention. A regional vessel register was established pursuant to Resolution C-18-06. Each contracting party shall supply the following information with respect to each vessel under its jurisdiction to be included in the record: the nature of the authorization, name of vessel, registration number, previous names (if known), and port of registry, a photograph of the vessel, previous flag (if any), international radio call sign (if any), name and address of owner or owners, where and when built, length, beam, and moulded depth, freezer type and freezer capacity, in cubic meters, number and capacity of fish holds, in cubic meters and, in the case of purse-seine vessels, capacity breakdown by fish hold if possible, name and address of operator(s) and/or manager(s)(if any), type of vessel, type of fishing method, gross tonnage, power of main engine, and IMO or Lloyd's number (if issued). Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

Monitoring

By Resolution 14-02 IATTC established VMS, requiring contracting parties to ensure that all their commercial fishing vessels 24 meters or more in length shall be equipped with a satellite-based VMS. Contracting parties shall ensure that the information collected by the VMS for each vessel shall contain the vessel's identification, the vessel's geographical position (latitude and longitude), the date and time of the fixing of the vessel's position, and the vessel's speed and course. The information shall be collected at least every four hours for long-liners and two hours for other vessels by the land-based FMC of the flag State. The implementation of an electronic logbook is now in the process of being established (Resolution C-21-03).

Resolution C-03-04 on at-sea reporting requires all purse-seine vessels which carry an on-board observer to transmit to the secretariat a weekly report by the observer, by fax, e-mail, or radio, as appropriate. Pursuant to Resolution C-14-02 the VMS equipment should, if practicable, be usable to transmit the data required in C-03-04. The report shall be prepared by the observer and shall include the estimated catch of tuna, by species and set type, and the mortalities of dolphins by stock.

Resolution C-03-05 on data provision recommends that contracting parties take the necessary steps to ensure that all pertinent catch information is provided to the director on an annual basis, for all of their vessels fishing for species under the purview of the commission, and that the data be provided, by species

and fishing gear, where practical, via vessel logbooks and unloading records, and otherwise in aggregated form catch and effort data and length frequency data.

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

ICCAT

ICCAT was established by the International Convention for the Conservation of Atlantic Tunas, which was signed in 1966 and entered into force in 1969. As this convention predates the Compliance Agreement, no reference is made to it. The objective of the ICCAT Convention is to conserve tuna and tuna-like species in the Atlantic Ocean and to maintain the populations of these fishes at levels that will permit the maximum sustainable catch.

Contracting parties of ICCAT are: **Albania**, Algeria, **Angola**, **Barbados**, **Belize**, **Brazil**, **Canada**, **Cabo Verde**, China, Côte d'Ivoire, Curaçao, **Egypt**, El Salvador, Equatorial Guinea, **European Union**, France (on behalf of Saint Pierre and Miquelon), Gabon, **Ghana**, Grenada, Guatemala, Guinea, Guinea-Bissau, Honduras, Iceland, **Japan**, Liberia, Libya, Mauritania, **Mexico**, **Morocco**, **Namibia**, Nicaragua, Nigeria, **Norway**, Panama, **Philippines**, **Republic of Korea**, Russian Federation, Saint Vincent and the Grenadines, Sao Tome and Principe, **Senegal**, **Sierra Leone**, South Africa, **Syrian Arab Republic**, The Gambia, **Trinidad and Tobago**, Tunisia, Turkey, **United Kingdom of Great Britain and Northern Ireland**, **United States of America**, **Uruguay** and Venezuela (Bolivarian Republic of).

Bolivia (Plurinational State of), Costa Rica, Guyana, Suriname and Taiwan Province of China have been granted the status of cooperating non-contracting party. Topics addressed below apply also to those States.

Flag State responsibility / Record of vessels

The flag States of the vessels on the ICCAT record shall pursuant to Recommendation 21-14 authorize their vessels to operate in the convention area only if they are able to fulfil in respect of these vessels the requirements and responsibilities under the Convention and its CMMs and take necessary measures to ensure that their vessels comply with all the relevant measures, which reflects obligations under Article III (1)(a) of the Compliance Agreement.

The flag States shall also ensure that their vessels on the record have no history of IUU fishing activities or that, if those vessels have such history, the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels, or that having taken into account all relevant facts, their vessels are not engaged in or associated with IUU fishing. This provision builds on elements contained in Article III (5) of the Compliance Agreement.

Authorizations

Pursuant to Recommendation 21-14 the Commission shall establish and maintain an ICCAT record of fishing vessels 20 meters in length overall or greater authorized to fish for tuna and tuna-like species in the convention area. Each contracting party shall submit to secretariat, the list of its vessels that are authorized to operate in the convention area. This list shall include the following information: name of vessel, register number, IMO or Lloyd's number, previous name (if any), previous flag (if any), previous details of deletion from other registries (if any), international radio call sign, type of vessels, length, and gross registered tonnage, name and address of owner(s) and operator(s), gear used and time period authorized for fishing. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

Vessel marking

According to Recommendation 03-12, Paragraph 3 each flag State shall ensure that its fishing vessels authorized to fish species managed by ICCAT in the convention area are marked in such a way that they can be readily identified in accordance with generally accepted standards such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. This is the same reference to a generally accepted standard as in Article III (6) of the Compliance Agreement.

Monitoring

According to Recommendation 03-13 each flag State shall ensure that all fishing vessels flying its flag and authorized to fish species managed by ICCAT in the convention area be subject to a data recording system. All commercial fishing vessels over 24 m length overall shall keep a bound or electronic logbook recording the information required in the ICCAT field manual for statistics and sampling.³² The implementation of an electronic logbook is now in the process of being established (Recommendation 21-17).

According to Recommendation 18-10 each flag State shall implement VMS for its commercial fishing vessels exceeding 20 meters between perpendiculars or 24 meters length overall, and those above 15 meters length overall authorized to fish in waters beyond jurisdiction of the flag State. Flag States shall require its fishing vessels to be equipped with an autonomous, tamper-evident system that continuously, automatically, and independent of any intervention by the vessel, transmits messages to the FMC of the flag State to track the position, course, and speed of a fishing vessel by the flag State of that vessel. They shall ensure that the satellite tracking device fitted on board the fishing vessel collects and transmits continuously to the FMC of the flag State the following data: the vessel's identification, the geographical position of the vessel (longitude, latitude) and the date and time.

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

IOTC

IOTC was established in 1993 under the provisions of Article XIV of the FAO Constitution and entered into force in 1996. It was signed one day after the Compliance Agreement had been adopted, but makes no reference to it. It manages tuna and tuna-like species in it was Indian Ocean and adjacent seas. Its objective is to ensure, through appropriate management, the conservation and optimum utilization of these fish stocks and to encourage sustainable development of the fisheries in all water areas north of the Antarctic Convergence.

Contracting parties of IOTC are: **Australia**, Bangladesh, China, Comoros, Eritrea, **European Union**, **France**, India, Indonesia, Iran (Islamic Republic of), **Japan**, Kenya, **Madagascar**, Malaysia, Maldives, **Mauritius**, **Mozambique**, **Oman**, Pakistan, **Philippines**, **Republic of Korea**, **Seychelles**, Somalia, South Africa, **Sri Lanka**, Sudan, Thailand, **United Kingdom of Great Britain and Northern Ireland**, **United Republic of Tanzania** and Yemen.

The following State has been granted the status of cooperating non-contracting party: Liberia. Topics addressed below apply also to that State.

Flag State responsibility / Record of vessels

According to Resolution 19/04, Paragraph 11 the flag States the vessels shall authorise their vessels to operate in the IOTC area of competence only if they are able to fulfil in respect of these vessels the requirements and responsibilities under the IOTC Agreement and its CMMs and take necessary measures

³² See <<https://www.iccat.int/Documents/SCRS/Manual/FieldManual1990.pdf>>.

to ensure that their vessels comply with all the relevant measures, which reflects the obligation under Article III (1)(a) of the Compliance Agreement.

They shall further ensure that their vessels on the IOTC record have no history of IUU fishing activities or that, if those vessels have such a history, the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels, the parties of the IUU incident have officially resolved the matter and sanctions have been completed or that, having taken into account all relevant facts, their vessels are not engaged in or associated with IUU fishing. This provision reflects elements contained in Article III (5) of the Compliance Agreement.

Authorizations

Resolution 19/04 provides that the Commission shall maintain an IOTC record of fishing vessels that are 24 metres in length overall or above, or in case of vessels less than 24 meters, those operating in waters outside the EEZs of the flag State and that are authorised to fish for tuna and tuna-like species in the IOTC area of competence.

Each contracting party shall submit to the secretariat a list shall include the following information: name of vessel(s), and national or European Union registration (Common Fleet Register) number(s), IMO number (if eligible), previous name(s) (if any), previous flag(s) (if any), previous details of deletion from other registries (if any), international radio call sign(s) (if any), port of registration, type of vessel(s), length overall and gross tonnage, total volume of fish hold(s), name and address of owner(s) and operator(s), name and address of beneficial owner(s), name and address of company operating the vessel and company registration number (if any), gear(s) used, time period(s) authorised for fishing and/or transshipping, and photographs of the vessel. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

Vessel marking

According to Resolution 19/04, Paragraph 18 each contracting party shall ensure that its fishing vessels authorised to fish in the IOTC area of competence are marked in such a way that they can be readily identified with generally accepted standards such as the FAO Standard Specifications for the Marking and Identification of Fishing vessels, which is the same as Article III (6) of the Compliance Agreement.

Monitoring

According to Resolution 15/01 each flag State shall ensure that all purse seine, longline, gillnet, pole and line, handline and trolling fishing vessels flying its flag and authorised to fish species managed by IOTC be subject to a data recording system, applicable to vessels over 24 metres length overall and those under 24 metres if they fish outside the EEZs of their flag States within the IOTC area of competence. All vessels shall keep a bound paper or electronic logbook to record data that includes, as a minimum requirement, the information and data such as vessel identification, departure and arrival date and port, cruise information, gear information, records once per set/shot/operation, and catch and species allocated on various gear types.

According to Resolution 15/03 each contracting party shall adopt a satellite-based VMS for all vessels flying its flag 24 metres in length overall or above or in case of vessels less than 24 meters, those operating in waters outside the EEZ of the flag State fishing for species covered by the IOTC Agreement within the IOTC area of competence.

Information collected shall include the vessel identification, the current geographical position of the vessel (longitude, latitude), the date and time of the fixing of the said position of the vessel. Each contracting party shall take the necessary measures to ensure that their land-based national FMC receives

through the VMS that information. Each contracting party shall ensure that the required information is transmitted to the FMC at least once every four hours.

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

NAFO

The NAFO Convention was agreed in 1978, entered into force in 1979 and was comprehensively amended in 2007, with the amendments coming into force in 2017. The latter now contains an explicit reference in its preamble to the Compliance Agreement. NAFO is responsible for the conservation and management of fisheries in the Northwest Atlantic. The amended convention asserts that NAFO's objective is to ensure the long-term conservation and sustainable use of the fishery resources in the convention area and, in so doing, to safeguard the marine ecosystems in which these resources are found. NAFO has authority to adopt CMMs in all parts of the convention area, but measures for areas under national jurisdiction are conditional on the relevant coastal State proposing and supporting them. Thus, in practice NAFO is largely focused on the parts of the convention area that are beyond national jurisdiction, referred to as the "regulatory area".

Contracting parties of NAFO are: **Canada**, Cuba, Denmark (on behalf of the Faroe Islands and Greenland), **European Union**, France (on behalf of Saint Pierre and Miquelon), Iceland, **Japan**, **Norway**, **Republic of Korea**, Russian Federation, Ukraine, **United Kingdom of Great Britain and Northern Ireland** and **United States of America**.

Flag State responsibility

Article XI of the NAFO Convention provides that each contracting party shall ensure that fishing vessels entitled to fly its flag comply with the provisions of the NAFO Convention and with the CMMs adopted by the commission and that such vessels do not engage in any activity that undermines the effectiveness of such measures. Each contracting party shall refrain from authorizing fishing vessels entitled to fly its flag to engage in fishing activities unless it is able to exercise effectively its responsibilities in respect of such vessels pursuant to this Convention and consistent with international law. This reflects the obligation under Article III (1)(a) of the Compliance Agreement.

Authorizations

According to Article 25 of the Conservation and Enforcement Measures (2022), each contracting party shall transmit to the secretariat a list of its vessels entitled to fly its flag which it may authorize to conduct fishing activities. Subsequently, the contracting party shall submit the individual authorization for each vessel from the list of notified vessels. Each authorization shall in particular identify the start and end dates of validity and, the species for which directed fishery is allowed. The authorization shall include vessel name, the port or district in which it is registered, the number(s) under which it is registered (if any), the IMO number, international radio call sign, the names and addresses of the owner(s) and, where applicable, the charterers, length overall, engine power, capacity plan (i.e. a drawing or description of its fish storing place, including the storage capacity of each fish storage place in cubic meters) and estimation of freezing capacity. Information required includes and adds a few items compared to the obligations set out in Article VI (1) of the Compliance Agreement.

Vessel marking

Pursuant to Article 25 (7) of the Conservation and Enforcement Measures (2022), every fishing vessel shall bear markings that are readily identified in accordance with internationally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, which is the same reference as in Article III (6) of the Compliance Agreement. Moreover, no fishing can be conducted

in the regulatory area unless all eligible vessels have been issued an IMO number according to Article 25 (2)(b) of the Conservation and Enforcement Measures (2022).

Record of vessels

According to Article XI (2) of the NAFO Convention each contracting party shall maintain a record of fishing vessels entitled to fly its flag that it has authorized to fish, which reflects Article IV of the Compliance Agreement.

Monitoring

According to Article 28 of the Conservation and Enforcement Measures (2022), each fishing vessel shall maintain a fishing logbook that accurately records catch of each tow/set, indicates the disposition of the catch of each tow/set, including the amount of each stock that is retained on board, discarded, offloaded, or transhipped during the current fishing trip.

Every vessel shall communicate catch reports to its FMC advance of each entry into the regulatory area, and shall include entering date, time, geographical position of the vessel and the quantity of fishery resources on board by species. Vessels shall also report exiting date, time, geographical position of the vessel, the number of fishing days and the catch taken by species since the commencement of fishing

According to Article 29 of the Conservation and Enforcement Measures (2022), every fishing vessel shall be equipped with a satellite monitoring device capable of continuous automatic transmission of position to its land-based FMC no less frequently than once an hour, the following VMS data: vessel identification, most recent vessel position (by latitude and longitude), date and time of the fixing of the position, and vessel course/heading and speed. Electronic transmission of catch reporting and transshipment is provided for by Article 28 (6) of the Conservation and Enforcement Measures (2022).

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

Enforcement

According to Article XI (3) of the NAFO Convention enforcement actions taken or sanctions applied pursuant to subparagraph shall be adequate in severity to be effective in securing compliance, discouraging further infringements and depriving offenders of the benefits accruing from their illegal activities. Article III (8) of the Compliance Agreement requires parties to take similar enforcement measures.

NASCO

The NASCO Convention entered into force in 1983 and applies to the salmon stocks that migrate beyond areas of fisheries jurisdiction of coastal States of the North Atlantic Ocean throughout their migratory range. As this convention predates the Compliance Agreement, no reference is made to it. The objective of NASCO is to conserve, restore, enhance and rationally manage Atlantic salmon through international cooperation. It only applies beyond areas of fisheries jurisdiction of the coastal States.

Contracting parties of NASCO are: **Canada**, Denmark (on behalf of the Faroe Islands and Greenland), **European Union**, **Norway**, Russian Federation, **United Kingdom of Great Britain and Northern Ireland** and **United States of America**.

According Paragraph 3 of Council Resolution for fishing salmon in the high seas (1992) the contracting parties should take appropriate measures for discouraging its nationals and to prohibit vessels owned by its nationals from engaging in any activity contrary to the provisions of the NASCO Convention, while according to Paragraph 4 the contracting parties should transmit to the secretariat information concerning

sightings of fishing activities on the high seas of the North Atlantic which may undermine the conservation measures adopted by NASCO.

Even though Article 14 of the NASCO Convention contains an enforcement provision similar to Article III (8) of the Compliance Agreement, NASCO has not adopted measures relevant to the implementation of the Compliance Agreement.

NEAFC

NEAFC was originally established in 1959, but a new convention entered into force in 1982, which has since been amended twice, in 2004 and 2006, of which only the latter amendments, relating inter alia to the preamble, entered into force in 2013. Today the NEAFC Convention makes an explicit reference to the Compliance Agreement in the preamble. NEAFC's objective is to ensure the long-term conservation and optimum utilization of the fishery resources in the convention area, providing economic, environmental and social benefits. NEAFC has authority to adopt CMMs in all parts of the convention area, but its management role within areas under national jurisdiction is conditional on the relevant coastal State proposing and supporting such measures. Thus, in practice NEAFC is largely focused on the parts of the convention area that are beyond national jurisdiction, referred to as the "regulatory area".

Contracting parties of NEAFC are: Denmark (on behalf of Faroe Islands and Greenland), **European Union**, Iceland, **Norway**, Russian Federation and **United Kingdom of Great Britain and Northern Ireland**.

Bahamas, **Canada** and Panama have been granted status as cooperating non-contracting parties. Topics addressed below also apply to these States.

Flag State responsibility

Pursuant to Article 4 of the NEAFC scheme of control and enforcement (Scheme), each contracting party shall authorise the use of fishing vessels flying its flag for fishing activities only where it is able to exercise effectively its responsibilities in respect of such vessels, ensure that only authorised fishing vessels flying its flag conduct fishing activities and ensure that fishing vessels flying its flag comply with applicable recommendations adopted under the NEAFC Convention. This obligation builds on Article III (1)(a) of the Compliance Agreement.

Authorizations

Article 5 of the Scheme requires each contracting party to notify all fishing vessels authorised to fish, and no fishing vessel shall conduct fishing activities unless it is listed as a notified vessel. The notification shall contain for each fishing the following information: vessel name, vessel IMO number (where available), flag State, external registration number (where available), international radio call sign, vessel type, vessel tonnage, vessel length and vessel power. Compared to the mandatory elements contained in Article VI (1) of the Compliance Agreement a good number of elements are missing (namely: previous flag, previous name (if known), port of registry, name and address of owner or owners, and where and when built).

Vessel marking

Article 6 (1) of the Scheme requires each contracting party shall ensure that its fishing vessels are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, which is the same as Article III (6) of the Compliance Agreement.

Record of vessels

Although not a requirement of the NEAFC contracting parties to maintain a national record of fishing vessels, it is noted that the NEAFC secretariat pursuant to Article 5 of the Scheme shall maintain lists of all fishing vessels notified and all fishing vessels authorised to fish in the area of NEAFC's competence based on information provided by the contracting parties.

Monitoring

Pursuant to Article 12 of the Scheme, each contracting party shall ensure that its fishing vessels engaged in fishing activities shall submit daily catch reports by electronic means to its FMC.

Each contracting party shall according to Article 9 of the Scheme ensure that all fishing vessels entitled to fly its flag keep either fishing logbook or an electronic logbook and, where appropriate, a production logbook and stowage plan. Fishing logbooks shall contain the following recordings: catches, estimated cumulative catch since entry into the regulatory area, type of gear, the number of fishing operations per day (where appropriate), the small statistical rectangle or fishing location (longitude and latitude), the amount of fish discarded, the fishing depth (where appropriate), and on each occasion when fish is transhipped, where appropriate, the quantities by species on-loaded and off-loaded. In addition, there are specific logbook requirements concerning joint fishing operations.

Each contracting party shall ensure that its vessels communicate catch reports to its FMC in advance of each entry into the regulatory area, and shall include entering date, time, geographical position of the vessel and the quantity of fishery resources on board by species. Vessels shall also report exiting date, time, geographical position of the vessel, the number of fishing days and the catch taken by species since the commencement of fishing.

Each contracting party shall pursuant to Article 11 of the Scheme also implement a VMS for its fishing vessels to be equipped with an autonomous system able to automatically transmit messages to a land-based FMC allowing a continuous tracking of the position of a fishing vessel. The contracting party shall ensure that the satellite device of a fishing vessel is able to communicate by satellite to the contracting party messages relating to the following data: the vessel identification, the most recent geographical position of the vessel (longitude, latitude), the date and time of the fixing of the said position of the vessel, the speed and course at the time of fixing of the said position of the vessel, where applicable, data relating to the catch on board, and where applicable, data relating to transshipment.

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

Enforcement

Pursuant to Article 31 of the Scheme, each contracting party shall ensure that the appropriate measures be taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where NEAFC measures have not been respected. Such proceedings shall be capable of effectively depriving those responsible of the economic benefit of the infringements or of providing sanctions proportionate to the seriousness of such infringements, thus effectively discouraging future infringements. Article III (8) of the Compliance Agreement requires parties to take similar enforcement measures.

NPAFC

The NPAFC Convention, adopted in 1992, entered into force in 1993. As this convention predates the Compliance Agreement, no reference is made to it, but after the seizure of one vessel driftnet-fishing in 1995, the parties were recommended to encourage States to become a party to the Compliance

Agreement.³³ The primary objective of the Commission is to promote the conservation of anadromous stocks in the international waters of the North Pacific Ocean and adjacent seas.

Contracting parties are: **Canada, Japan, Republic of Korea, Russian Federation and United States of America.**

Flag State responsibility

According to Article IV (3) and V (1) of the NPAFC, Convention each party shall take all necessary measures to ensure that its nationals and fishing vessels flying its flag comply with the provisions of the Convention.

According to Article IV (3) of the Convention each party shall take appropriate measures aimed at preventing vessels registered under its laws and regulations from transferring their registration for the purpose of avoiding compliance with the provisions of the Convention, which reflects the idea of Article III (5) of the Compliance Agreement concerning flag-hopping.

NPAFC has not adopted any further measures relevant to the implementation of the Compliance Agreement.

NPFC

The NPFC Convention was agreed in 2013 and entered into force in 2015. Its preamble refers explicitly to the Compliance Agreement. The Commission is responsible for managing fisheries resources in the North Pacific Ocean, excluding sedentary and catadromous species, marine mammals and those species managed through other international instruments. The objective is to ensure the long-term conservation and sustainable use of the fisheries resources while protecting the marine ecosystems in which they occur. The NPFC Convention applies to the high seas.

Contracting parties of NPFC are: **Canada, China, European Union, Japan, Republic of Korea, Russian Federation, Taiwan Province of China, United States of America and Vanuatu.**

Panama is a cooperating non-contracting party. Topics addressed below also apply to it.

Flag State responsibility

Article 13(1) of the NPFC Convention provides that each contracting party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag comply with the provisions of the Convention and measures adopted pursuant to the Convention and that such vessels do not engage in any activities that undermine the effectiveness of such measures. This reflects the obligation under Article III (1)(a) of the Compliance Agreement.

Article 13(2) of the NPFC Convention provides that each contracting party shall not allow any fishing vessel entitled to fly its flag to be used for fishing activities in the convention area unless it has been authorized to do so by the appropriate authority or authorities of that contracting party. Each contracting party shall authorize the use of vessels entitled to fly its flag for fishing activities in the convention area only where it is able to exercise effectively its responsibilities in respect of those vessels under the NPFC Convention, the LOSC and the UNFSA.

Authorizations

According to Article 1 (2) of the CMM 2021 and the Annex attached thereto, the information to be submitted to the secretariat concerns the following initial data required to commence fishing activities in the Convention area: flag State, authorizing member, name of vessel, registration number, IMO number for eligible vessels, name of owner(s), address of owner(s), name of master, citizenship of master,

³³ See <<https://npafc.org/enforcement-activities/>>.

international radio call sign, vessel photo, where built, when built, type of vessel, length (including type of length and length measurement unit), type of beam (including type of beam and beam measurement unit), tonnage (and type of tonnage), domestic licence authorization and NPFC authorization period. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

According to Article 1 (7) of the CMM 2021 each contracting party shall attest that the authorized vessel or vessels being added to the list are not vessels with a history of IUU fishing, unless the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no legal, beneficial or financial interest in, or control of the vessels, or the contracting party concerned is satisfied that, having taken into account all relevant facts, the vessel is no longer engaged in or associated with IUU fishing. This requirement reflects the obligation set out in Article III (5) of the Compliance Agreement.

Record of vessels

Article 13 (8) of the NPFC Convention provides that each contracting party shall maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing activities in the convention area. The Commission shall maintain its own record of fishing vessels, based on the information provided by each contracting party.

Vessel marking

Pursuant to Article 1 (5) of the CMM 2021 each contracting party shall ensure that every fishing vessel authorized to fly its flag bear markings that are readily identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, which is somewhat stricter than the provision of Article III (6) of the Compliance Agreement, as it obliges parties to enforce this particular generally international standard developed by FAO.

Monitoring

Pursuant to Article 13 (4) of the NPFC Convention each contracting party shall require fishing vessels that are entitled to fly its flag and that are engaged in fishing activities in the convention area to use real-time satellite position-fixing transmitters. Article 15 of the CMM 2021 sets out the details of that obligation. The VMS applies to all authorized vessels in the convention area. Each contracting party shall ensure vessels provide accurate VMS data to the secretariat via its FMC. All contracting parties shall ensure that its flagged vessels transmit VMS data every hour to their FMC. A contracting party may require its fishing vessels to transmit VMS data directly to the secretariat. Each contracting party shall ensure that their FMC automatically transmits VMS data to the secretariat, which shall be received no later than 60 minutes upon receipt of the data at their FMC. This partly reflects requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

SEAFO

The SEAFO Convention was agreed in 2001 and entered into force in 2003. Its preamble contains an explicit reference to the Compliance Agreement. SEAFO manages fishery resources in the high seas of the south-eastern Atlantic Ocean, but excludes highly migratory species (typically tuna and tuna-like fish). Its objective is to ensure the long-term conservation and sustainable use of the fisheries resources.

Contracting parties of SEAFO are: **Angola, European Union, Japan, Namibia, Republic of Korea** and South Africa.

Flag State responsibility

Article 14 of the SEAFO Convention provides that each contracting party shall take such measures as may be necessary to ensure that vessels flying its flag comply with the CMMs adopted by the commission

and that they do not engage in any activities which undermine the effectiveness of such measures, and shall authorise the use of vessels flying its flag for fishing only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention. This obligation reflects Article III (1)(a) of the Compliance Agreement.

Record of vessels

According to Article 14 (3) each contracting party shall take appropriate measures in respect of vessels flying its flag, including the establishment of a national record of fishing vessels authorised to fish in the convention area and provision for sharing this information with the commission on a regular basis.

Authorizations

Pursuant to Article 4 (1) of the System of observation, inspection, compliance and enforcement (System), each contracting party shall submit the list of its vessels that are authorised. This list shall include the following information: name of vessel, registration number, previous names (if known), port of registry, previous flag (if any), international radio call sign, IMO number, name and address of owner or owners, where and when built, type of vessel, length, name and address of operator (manager) or operators (managers) (if any), type of fishing method or methods, moulded depth, beam, gross tonnage, and power of main engine or engines. This requirement includes and exceeds the obligation set out in Article VI (1) of the Compliance Agreement.

Furthermore, Article 4 (4)(d) of the System provides that each contracting party shall ensure that its vessels on the SEAFO record have no history of IUU fishing, and if those vessels have such history, the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels, or that having taken into account all relevant facts, its vessels are not engaged in or associated with IUU fishing. This requirement builds on the obligation set out in Article III (5) of the Compliance Agreement.

Vessel marking

Article 6 (2) of the System requires that each contracting party shall ensure that its vessels authorised to operate in the convention area are marked in such a way that they can be readily identified with generally accepted international standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessel, which is the same reference as in Article III (6) of the Compliance Agreement.

Monitoring

According to Article 10 of the System each contracting party shall ensure that its vessels keep a fishing logbook, which shall contain a long list of items, including catches by species, the type of gear, the longitude and latitude co-ordinates of shooting and hauling, and the date and time of shooting and hauling.

Article 11 of the System provides that each contracting party shall ensure that its vessels communicate catch reports to its FMC advance of each entry into the convention area and shall include entering date, time, geographical position of the vessel and the quantity of fishery resources on board by species. Vessels shall also report exiting date, time, geographical position of the vessel, the number of fishing days and the catch taken by species since the commencement of fishing.

Each contracting party shall also ensure that its vessels implement VMS able to automatically transmit messages to a land-based FMC allowing a continuous tracking of the position of a fishing vessel according to Article 13 of the System. The contracting party shall ensure that the satellite device of a fishing vessel is able to communicate by satellite to the contracting party messages relating to the following data: the vessel identification, the most recent geographical position of the vessel (longitude,

latitude), the date and time of the fixing of the said position of the vessel, the speed and course at the time of fixing of the said position of the vessel, and where applicable, data relating to the catch on board.

These measures reflect requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

SIOFA

The SIOFA Agreement was adopted in 2006 and entered into force in 2012. Its preamble makes an explicit reference to the Compliance Agreement. It concerns the management of fishery resources on high-sea areas in the southern part of the Indian Ocean. Its objective is to ensure the long-term conservation and sustainable use of the resources under its auspices, through regular studies of the fish stocks and the impact of fishing on the environment as well as the implementation of CMMs.

Contracting parties of SIOFA are: **Australia**, China, **Cook Islands**, **European Union**, France (on behalf of its Indian Ocean Territories), **Japan**, **Mauritius**, **Republic of Korea**, **Seychelles** and Thailand.

SIOFA moreover has one participating fishing entity, namely Taiwan Province of China, and two cooperating non-contracting parties, to wit Comoros and India. Topics addressed below also apply to these parties.

Flag State responsibility

Pursuant to Article 11 (1)(a) of the SIOFA Agreement each contracting party shall take such measures as may be necessary to ensure that fishing vessels flying its flag comply with the provisions of the agreement and adopted CMMs, and that such vessels do not engage in any activity which undermines the effectiveness of such measures. This obligation reflects Article III (1)(a) of the Compliance Agreement.

Authorizations / Record of vessels

Each contracting party shall, pursuant to CMM 2019/07, Paragraph 2, submit to the secretariat the list of vessels flying their flag that are authorised to operate in the agreement area, which shall include the following information: name of vessel, registration number, previous names (if known), port of registry, previous flag (if any), international radio call sign (if any), IMO number (if issued), name and address of owner or owners, type of vessel, length and length type, name and address of operator (manager) or operators (managers) (if any), type of fishing method or methods, gross tonnage, power of main engine or engines, fish hold capacity, freezer type, number of freezing units, freezing capacity, vessel communication types and numbers, certified drawings or description of fish holds, VMS system details and photo. Information required includes and exceeds the obligations contained in Article VI (1) of the Compliance Agreement.

According to Paragraph 6 (d) of CMM 2019/07 each contracting party shall ensure that the vessels flying their flag on the SIOFA record have no history of IUU fishing, or, if those vessels have such history, the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels, or that having taken into account all relevant facts, its vessels are not engaged in or associated with IUU fishing. This requirement builds on the obligation set out in Article III (5) of the Compliance Agreement.

Monitoring

According to Article 10 (1)(c) of the SIOFA Agreement, the vessels of a flag State are to collect and exchange data with respect to fishery resources, as may be necessary to enable the State to fulfil its obligations under the agreement.

Each contracting party shall according to CMM 2019/10, Paragraph 1 ensure that its vessels maintain either an electronic fishing logbook or a bound fishing logbook containing the information relevant for

their compliance with the data collection and submission requirements. There are no specifications on the details.

According to Paragraphs 4 and 5 of CMM 2019/10 each contracting party shall ensure that all fishing vessels flying its flag are fitted with an operational ALC unit reporting back to its competent authority and shall ensure that ALC units on vessels flying their flag remain operational at all times while in the agreement area.

Each contracting party shall pursuant to Paragraph 14 of the CMM 2019/10 require their vessels or relevant authorities to notify the secretariat each entry to or exit from the agreement area. In addition to vessel identification, the notification shall include position (latitude and longitude), date and time.

These measures partly reflect those to be found in the Compliance Agreement.

SPRFMO

The SPRFMO Convention was agreed in 2010 and entered into force in 2012. The preamble of the SPRFMO contains an explicit reference to the Compliance Agreement. SPRFMO manages fishery resources in high-sea areas of the southern Pacific Ocean. The objective of the Convention is to ensure, through the application of the precautionary approach and an ecosystem approach to fisheries management, the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

Contracting parties of SPRFMO are: **Australia, Chile, China, Cook Islands, Cuba, Ecuador, European Union, Denmark (on behalf of Faroe Islands), New Zealand, Panama, Peru, Republic of Korea, Russian Federation, Taiwan Province of China, United States of America and Vanuatu.**

Cooperating non-contracting parties are **Belize, Curaçao and Liberia.** Topics addressed below also apply to these States.

Flag State responsibility

Article 25 (1)(a) of the SPRFMO Convention requires that each member of the commission shall take all necessary measures to ensure that fishing vessels flying its flag comply with the provisions of the Convention and the CMMs adopted by the Commission and that such vessels do not engage in any activity which undermines the effectiveness of such measures when operating in the convention area. This requirement reflects the obligation set out in Article III (1)(a) of the Compliance Agreement.

Authorizations / Record of vessels

Paragraph 1 of CMM 05-2022 requires that members shall only authorise fishing vessels flying their flag to fish in the convention area where they are able to exercise effectively their responsibilities in respect of such vessels under the Convention, including relevant CMMs adopted by the commission, and in accordance with relevant international law.

The information required for the authorization is contained in annex 1 to that CMM, and include the following mandatory elements: current vessel flag, name of vessel, registration number, international radio call sign (if any), unique vessel identifier/IMO number (if issued), previous names (if known), port of registry, previous flag (if any), type of vessel, type of fishing method(s), length and type of length, gross tonnage, gross register tonnage, power of main engine(s), hold capacity, freezer type (if applicable), number of freezers units (if applicable), freezing capacity (if applicable), vessel communication types and numbers, VMS system details, name of owner(s), address of owner(s) and photographs of the vessel. Information required includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

According to Paragraph 2 of CMM 05-2022, each member will take into account the history of fishing vessels and operators with respect to their compliance (or non-compliance) with relevant CMMs when considering whether or not to authorise a particular fishing vessel flying its flag to fish in the convention area. Members shall ensure that no authorisation to fish in the convention area is issued to or maintained for a vessel included on IUU vessel list of any RFMO/As. This provision reflects the ideas behind Article III (5) of the Compliance Agreement.

Vessel marking

According to Paragraph 1 of CMM 19-2021 members shall by 1 January 2023 ensure that fishing vessels are marked in such a way that they can be readily identified, with markings prominently displayed at all times. Specifically, the vessel's name and IRCS shall be marked on the vessel's hull or superstructure, port and starboard, and in addition, the vessel's IRCS shall be marked on a deck. As the preamble to this CMM specifically refers back to the FAO Standard Specifications for the Marking and Identification of Fishing Vessel, which is said to have become the standard in the region, it conforms to Article III (6) of the Compliance Agreement.

Monitoring

The commission has adopted CMM 6-2020 to provide for the implementation of VMS that includes applicability, nature and specification, procedure for manual reporting and measures to prevent tampering with ALCs, which certainly can be fitted under the general requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

WCPFC

WCPFC was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which entered into force in 2004. Being one of the first regional fisheries agreements to be adopted since the conclusion of the UNFSA, it makes multiple references to this particular multilateral agreement in the preamble as well as in the WCPFC Convention itself, but not to the Compliance Agreement. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in this area in their entirety, including areas under national jurisdiction.

Contracting parties of the WCPFC are: **Australia, Canada, China, Cook Islands, European Union, Fiji, France** (allowing French Polynesia, New Caledonia and Wallis and Futuna to take part in the Commission in accordance with Article 43 of the WCPFC Convention), **Indonesia, Japan, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Taiwan Province of China, Tonga, Tuvalu, United States of America and Vanuatu.**

WCPFC also has seven participating territories: American Samoa, French Polynesia, Guam, New Caledonia, Northern Mariana Islands, Tokelau and Wallis and Futuna Islands, as well as eight cooperating non-member States: Curacao, Ecuador, El Salvador, Liberia, Nicaragua, Panama, Thailand and Vietnam. Topics addressed below also apply to all those entities.

Flag State responsibilities

Article 24 (1)(a) of the WCPFC Convention provides that each member of the Commission shall take such measures as may be necessary to ensure that fishing vessels flying its flag comply with the provisions of this Convention and the CMMs adopted pursuant hereto and that such vessels do not engage in any activity which undermine the effectiveness of such measures. This requirement reflects the obligation set out in Article III (1)(a) of the Compliance Agreement.

Authorizations

Paragraph A (1)(a) of CMM 2018-06 requires that a member shall only authorize fishing vessels flying their flag to fish in the convention area where it is able to exercise effectively its responsibilities in respect of such vessel. This obligation corresponds with Article III (3) of the Compliance Agreement. According to Paragraph A (1)(f) of CMM 2018-06 each member is obliged not to grant an authorization to a vessel that has a history of IUU fishing, with certain exceptions reflecting Article III (5) of the Compliance Agreement.

Record of vessels

According to Article 24 (4) of the WCPFC Convention each member of the commission shall, for the purposes of effective implementation of the Convention, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing in the convention area beyond its area of national jurisdiction, and shall ensure that all such fishing vessels are entered in that record.

Pursuant to Annex IV of the WCPFC Convention the following information shall be provided to the commission in respect of each fishing vessel entered in the record: name of fishing vessel, registration number, previous names (if known), port of registry, name and address of owner or owners, name and nationality of master, previous flag (if any), international radio call sign, vessel communication types and numbers, photograph of vessel, where and when built, type of vessel, normal crew complement, type of fishing method or methods, length, moulded depth, beam, gross register tonnage, power of main engine or engines, the nature of the authorization to fish granted by the flag State, and carrying capacity, including freezer type, capacity and number and fish hold capacity. Paragraph B (6) of CMM 2018-06 adds the IMO or Lloyd's register number, if issued, to this list. Information required includes and exceeds the obligations set out in Article VI (1) in the Compliance Agreement.

Vessel marking

According to Paragraph 2 (1)(1)(a-b) of CMM 2004-03 each member of the Commission shall ensure that operators of vessels are required to mark the vessels for their identification with their international telecommunication union radio call signs (IRCS) or, if no such number is assigned, by fishing authorization or vessel registration number assigned by the Commission. As the purpose of this particular CMM, according to its Paragraph 1 (1)(1), is to implement the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, it conforms to Article III (6) of the Compliance Agreement.

Monitoring

According to Article 24 (8) each member of the Commission shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the convention area to use near real-time satellite position-fixing transmitters while in such areas. The Commission has by CMM 2014-02 adopted a process relating to the implementation of the WCPFC vessel monitoring system, called Commission VMS. This can be fitted under the general requirements under Article III (7) of Compliance Agreement while at the same time exceeding it.

Enforcement

Pursuant to Article 25(4) of the WCPFC Convention, each member of the Commission shall ensure that, where it has been established, in accordance with its laws, that a fishing vessel flying its flag has been involved in the commission of a serious violation of the provisions of this Convention or of any CMMs adopted by the Commission, the vessel concerned ceases fishing activities and does not engage in such activities in the convention area until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with. That captures that idea expressed in Article III (8) of the Compliance Agreement.

2.7.1.1 Summary

Flag States shall not undermine the effectiveness of international CMMs (Article III (1)(a) of the Compliance Agreement)

Treaties of seven RFMO/As (IATTC, NAFO, NPFC, SEAFO, SIOFA, SPRFMO and WCPFC) contain provisions addressing this general flag State responsibility, while CMMs of seven additional RFMO/As (CCAMLR, CCSBT, GFCM, ICCAT, IOTC, NEAFC and NPAFC) include such references. NASCO has not established such a provision.

Fishing authorizations for vessels fishing on the high seas (Article III (2), cf. Articles IV and VI (1) of the Compliance Agreement)

All RFMO/As, except NASCO and NPAFC, have established mandatory authorization obligations for their members/contracting parties concerning fishing vessels operating in the RFMO/A areas of competence. NAFO requires that authorization shall in particular identify the start and end dates of validity and the species for which directed fishery is allowed, while other RFMO/A include general references to the nature of the authorizations. Vessel information required by RFMO/As includes and exceeds the obligations set out in Article VI (1) of the Compliance Agreement.

Measures to avoid flag hopping (Article III (5) of the Compliance Agreement)

CMMs of eight RFMO/As and convention text of one RFMO/A (GFCM, ICCAT, IOTC, NPAFC, NPFC, SEAFO, SIOFA, SPRFMO and WCPFC) include provisions that addresses the elements of Article III (5). The NPAFC Convention requires each party to take appropriate measures aimed at preventing vessels registered under its laws and regulations from transferring their registration for the purpose of avoiding compliance with the provisions of the Convention. These other RFMO/As require that flag States shall ensure that their vessels have no history of IUU fishing activities or, if those vessels have such history, that the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels, or that having taken into account all relevant facts, their vessels are not engaged in or associated with IUU fishing.

Marking of fishing vessels (Article III (6) of the Compliance Agreement)

CCAMLR, SPRFMO and WCPFC require that the vessels shall be marked with name and international radio call sign (IRCS), while ICCAT, IOTC, NAFO, NEAFC, NPFC and SEAFO require vessels to be marked in accordance with internationally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

Establishment and maintenance of record of vessels fishing on the high seas (Article IV of the Compliance Agreement)

All RFMO/As, except NASCO and NPAFC, require contracting parties to submit details of their authorizations of fishing vessels to the respective secretariats. The RFMO/As include the information in RFMO/A records of authorized fishing vessels. NAFO, NPFC and SEAFO require their contracting parties to maintain national records of fishing vessels entitled to fly its flag that it have been authorized to fish in the respective convention areas. Members/contracting parties the other RFMO/A are indirectly requested to establish national records as they shall submit lists (“records”) of their authorized vessels.

Information on fishing operations (monitoring)

All RFMO/As, except NASCO and NPAFC have established mandatory VMS for vessels operating within their areas of competence. GFCM, IATTC, ICCAT, IOTC, NEAFC, SEAFO and SIOFA require vessels to keep fishing logbooks. CCAMLR, NAFO, NEAFC, NPFC, SEAFO and WCPFC have established near to real-time catch reporting systems.

Enforcement measures (Article III (8) of the Compliance Agreement)

NAFO and WCPFC conventions include provisions that reflect the obligation set out in Article III (8) of the Compliance Agreement. NEAFC has adopted a CMM to the same effect.

The relevance of the Compliance Agreement to RFMO members/contracting parties as non-parties of the Compliance Agreement

Below is a table of the 87 non-parties to the Compliance Agreement that are members/contracting parties/cooperating non-members/cooperating non-contracting parties to one or more RFMO/As, and which of the relevant parts of the Compliance Agreement (general flag State duties, authorizations, flag hopping, vessel marking, vessel record, monitoring and enforcement) are implemented at the regional levels. Only one (WCPFC) of the RFMO/As meet all criteria.

The table shows that 31 non-parties are bound by ICCAT measures related to six of the seven relevant parts (“enforcement” excluded) of the Compliance Agreement. The same applies to 15 additional non-parties of the Compliance Agreement that are contracting parties of IOTC and two that are contracting parties to SPRFMO. There are additional 13 non-parties that are contracting parties to WCPFC and three of NAFO that also have implemented six of the seven relevant parts (“flag hopping” excluded). In sum 64 non-parties have implemented six of seven relevant parts of the Compliance Agreement.

Of the remaining 23 non-parties, 14 have implemented five of the relevant parts (“vessel marking” and “enforcement” excluded) as contracting parties to GFCM, while three have implemented four of the relevant parts (“flag hopping”, “vessel marking” and “enforcement” excluded) as contracting parties to IATTC.

Table 3: Non-parties* to the Compliance Agreement that are members/contracting parties of one or more RFMO/As

Non-parties to Compliance Agreement	Flag State responsibility	Authorizations	Provisions to avoid flag hopping	Vessel marking	Record of vessels	Monitoring	Enforcement
1. Algeria	GFCM, ICCAT	GFCM, ICCAT	GFCM, ICCAT	ICCAT	GFCM, ICCAT	GFCM, ICCAT	–
2. Bahamas	NEAFC	NEAFC	–	NEAFC	NEAFC	NEAFC	NEAFC
3. Bangladesh	IOTC	IOTC	IOTC	IOTC	IOTC	IOTC	–
4. Belgium	CCAMLR	CCAMLR	–	CCAMLR	CCAMLR	CCAMLR	–
5. Bolivia	IATTC, ICCAT	IATTC, ICCAT	ICCAT	ICCAT	IATTC, ICCAT	IATTC, ICCAT	–
6. Bosnia and Herzegovina	GFCM	GFCM	GFCM	–	GFCM	GFCM	–
7. Bulgaria	CCAMLR, GFCM	CCAMLR, GFCM	GFCM	CCAMLR, GFCM	CCAMLR, GFCM	CCAMLR, GFCM	–
8. China	CCAMLR, IATTC, ICCAT, IOTC, NPFC, SIOFA, SPRFMO, WCPFC	CCAMLR, IATTC, ICCAT, IOTC, NPFC, SIOFA, SPRFMO, WCPFC	ICCAT, IOTC, NPFC, SPRFMO, WCPFC	CCAMLR, ICCAT, IOTC, NPFC, SPRFMO, WCPFC	CCAMLR, IATTC, ICCAT, IOTC, NPFC, SIOFA,	CCAMLR, IATTC, ICCAT, IOTC, NPFC, SIOFA,	WCPFC

Non-parties to Compliance Agreement	Flag State responsibility	Authorizations	Provisions to avoid flag hopping	Vessel marking	Record of vessels	Monitoring	Enforcement
					SPRFMO, WCPFC	SPRFMO, WCPFC	
9. Colombia	IATTC	IATTC	–	–	IATTC	IATTC	–
10. Comoros	IOTC, SIOFA	IOTC, SIOFA	IOTC	IOTC	IOTC, SIOFA	IOTC, SIOFA	–
11. Costa Rica	IATTC, ICCAT	IATTC, ICCAT	ICCAT	ICCAT	IATTC, ICCAT	IATTC, ICCAT	–
12. Cote d'Ivoire	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
13. Croatia	GFCM	GFCM	GFCM		GFCM	GFCM	–
14. Cuba	NAFO, SPRFMO	NAFO, SPRFMO	SPRFMO	NAFO, SPRFMO	NAFO, SPRFMO	NAFO, SPRFMO	NAFO
15. Curaçao	ICCAT, SPRFMO, WCPFC	ICCAT, SPRFMO, WCPFC	ICCAT, SPRFMO, WCPFC	ICCAT, SPRFMO, WCPFC	ICCAT, SPRFMO, WCPFC	ICCAT, SPRFMO, WCPFC	WCPFC
16. Cyprus	GFCM	GFCM	GFCM	–	GFCM	GFCM	–
17. Ecuador	CCAMLR, IATTC, SPRFMO, WCPFC	CCAMLR, IATTC, SPRFMO, WCPFC	SPRFMO, WCPFC	CCAMLR, SPRFMO, WCPFC	CCAMLR, SPRFMO, WCPFC	CCAMLR, SPRFMO, WCPFC	WCPFC
18. El Salvador	IATTC, ICCAT, WCPFC	IATTC, ICCAT, WCPFC	ICCAT, WCPFC	ICCAT, WCPFC	IATTC, ICCAT, WCPFC	IATTC, ICCAT, WCPFC	WCPFC
19. Equatorial Guinea	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
20. Eritrea	IOTC	IOTC	IOTC	IOTC	IOTC	IOTC	–
21. Fiji	WCPFC	WCPFC	WCPFC	WCPFC	WCPFC	WCPFC	WCPFC
22. France	GFCM, IOTC, WCPFC	GFCM, IOTC, WCPFC	GFCM, IOTC, WCPFC	IOTC, WCPFC	GFCM, IOTC, WCPFC	GFCM, IOTC, WCPFC	WCPFC
23. Gabon	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
24. Gambia	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
25. Germany	CCAMLR	CCAMLR	–	CCAMLR	CCAMLR	CCAMLR	–
26. Greece	CCAMLR, GFCM	CCAMLR, GFCM	GFCM	CCAMLR	CCAMLR, GFCM	CCAMLR, GFCM	–
27. Grenada	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
28. Guatemala	IATTC, ICCAT	IATTC, ICCAT	ICCAT	ICCAT	IATTC, ICCAT	IATTC, ICCAT	–
29. Guinea	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
30. Guinea-Bissau	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
31. Guyana	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
32. Honduras	ICCAT, IATTC	ICCAT, IATTC	ICCAT	ICCAT	ICCAT, IATTC	ICCAT, IATTC	–
33. Iceland	ICCAT, NAFO, NEAFC	ICCAT, NAFO, NEAFC	ICCAT	ICCAT, NAFO, NEAFC	ICCAT, NAFO, NEAFC	ICCAT, NAFO, NEAFC	NAFO, NEAFC
34. India	CCAMLR, IOTC, SIOFA	CCAMLR, IOTC, SIOFA	IOTC	CCAMLR, IOTC	CCAMLR, IOTC, SIOFA	CCAMLR, IOTC, SIOFA	–
35. Indonesia	CCSBT, IOTC, WCPFC, IATTC	CCSBT, IOTC, WCPFC, IATTC	IOTC, WCPFC	IOTC, WCPFC	CCSBT, IOTC, WCPFC, IATTC	CCSBT, IOTC, WCPFC, IATTC	WCPFC
36. Iran	IOTC	IOTC	IOTC	IOTC	IOTC	IOTC	–
37. Israel	GFCM	GFCM	GFCM		GFCM	GFCM	–
38. Italy	CCAMLR	CCAMLR		CCAMLR	CCAMLR	CCAMLR	–
39. Jordan	GFCM	GFCM	GFCM		GFCM	GFCM	–
40. Kenya	IOTC	IOTC	IOTC	IOTC	IOTC	IOTC	–
41. Kiribati	IATTC, WCPFC	IATTC, WCPFC	WCPFC	WCPFC	IATTC, WCPFC	IATTC, WCPFC	WCPFC

Non-parties to Compliance Agreement	Flag State responsibility	Authorizations	Provisions to avoid flag hopping	Vessel marking	Record of vessels	Monitoring	Enforcement
73. South Africa	CCAMLR, CCSBT, ICCAT, IOTC, SEAFO	CCAMLR, CCSBT, ICCAT, IOTC, SEAFO	ICCAT, IOTC	CCAMLR, ICCAT, IOTC, SEAFO	CCAMLR, CCSBT, ICCAT, IOTC, SEAFO	CCAMLR, CCSBT, ICCAT, IOTC, SEAFO	–
74. Spain	CCAMLR	CCAMLR	–	CCAMLR	CCAMLR	CCAMLR	–
75. St. Vincent & Grenadines	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	ICCAT	–
76. Sudan	IOTC	IOTC	IOTC	IOTC	IOTC	IOTC	–
77. Suriname	<i>ICCAT</i>	<i>ICCAT</i>	<i>ICCAT</i>	<i>ICCAT</i>	<i>ICCAT</i>	<i>ICCAT</i>	–
78. Sweden	CCAMLR	CCAMLR	–	CCAMLR	CCAMLR	CCAMLR	–
79. Thailand	IOTC, SIOFA, <i>WCPFC</i>	IOTC, SIOFA, <i>WCPFC</i>	IOTC, <i>WCPFC</i>	IOTC, <i>WCPFC</i>	IOTC, SIOFA, <i>WCPFC</i>	IOTC, SIOFA, <i>WCPFC</i>	<i>WCPFC</i>
80. Tonga	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>
81. Tunisia	GFCM, ICCAT	GFCM, ICCAT	GFCM, ICCAT	ICCAT	GFCM, ICCAT	GFCM, ICCAT	–
82. Turkey	GFCM, ICCAT	GFCM, ICCAT	GFCM, ICCAT	ICCAT	GFCM, ICCAT	GFCM, ICCAT	–
83. Tuvalu	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>
84. Ukraine	CCAMLR, NAFO, <i>GFCM</i>	CCAMLR, NAFO, <i>GFCM</i>	<i>GFCM</i>	CCAMLR, NAFO, <i>GFCM</i>	CCAMLR, NAFO, <i>GFCM</i>	CCAMLR, NAFO, <i>GFCM</i>	NAFO
85. Venezuela	IATTC	IATTC	–	–	IATTC	IATTC	–
86. Viet Nam	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>	<i>WCPFC</i>
87. Yemen	IOTC	IOTC	IOTC	IOTC	IOTC	IOTC	–

* In italics the RFMO/As for which the non-parties to the Compliance Agreement are cooperating non-contracting parties to or cooperating non-members of the RFMO/As

2.7.2 Implementation at national level

While the rate of accession to the Compliance Agreement increased shortly after its adoption in 1993, it has slowed down since 2009 with a few additional recent accessions since 2017 (see figure 1 below). The self-reporting of FAO Members in the biennial questionnaires of the Code allows the monitoring of progress in the implementation of the Code and its related instruments, as required in Subparagraph 4.2 of the Code, including in the implementation of the Compliance Agreement. Responding countries have varied in number and composition over the years and at times information provided in the questionnaire has been insufficient to reflect the status of implementation. However, based on the self-reporting some general conclusions can be drawn related to the implementation of the Compliance Agreement at national level without revealing the results of individual Member States.

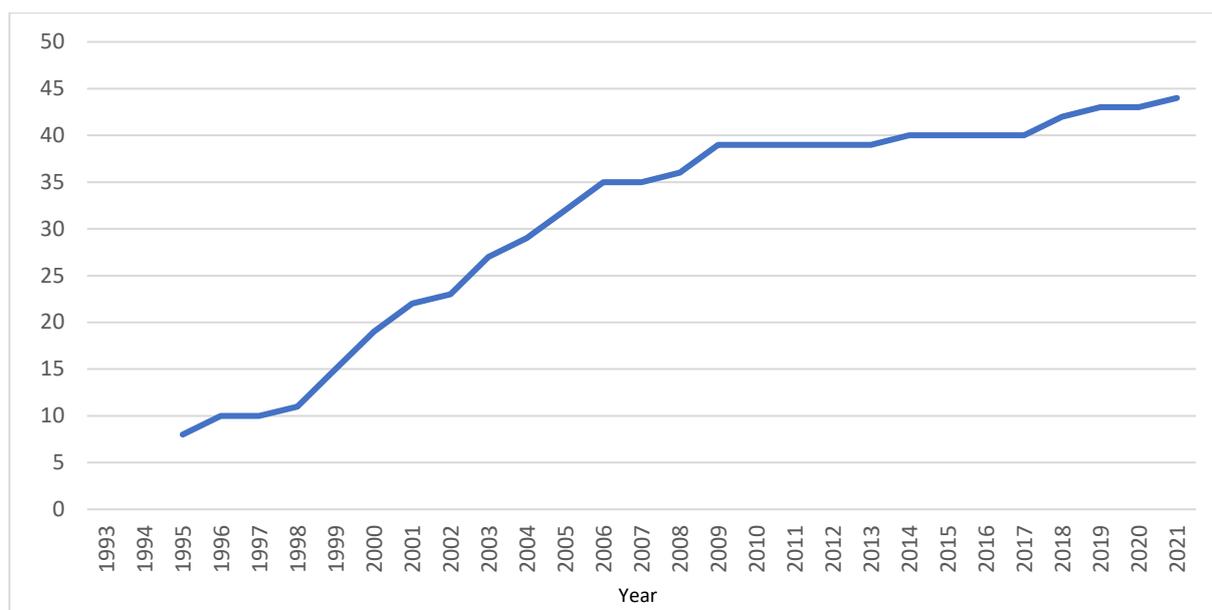


Fig. 1: Number of Accessions to the Compliance Agreement since its adoption in 1993

Since 2018, FAO Members have been invited to report on the implementation of their flag State responsibilities in more detail. Using a 1-5³⁴ scale, Members have reported an average degree of implementation of the provisions of the Compliance Agreement and/or flag State responsibilities with regard to policy (2018: 3.47; 2020: 3.37; 2022: 3.48), legislation (3.49; 3.44; 3.56), institutional framework (3.30; 3.27; 3.56), and operations and procedures (3.28; 3.23; 3.58) (table 67 in statistical tables).³⁵ The results of this self-assessment included some regional differences with highest degrees of implementation in Northern America (with only two countries: United States and Canada), and higher degrees in the Southwest Pacific and Europe. Comparatively low degrees of implementation were reported in the Near East in 2022. The differences may, among others, reflect needs in capacity development to be able to effectively implement international obligations as flag States.

Referring to the 2015 Voluntary Guidelines for Flag State Performance, FAO Members were further asked to report on some specific flag State responsibilities (table 68 in the statistical tables). Around two-thirds of the Members reported to supply a record of vessels authorized to operate on the high seas that are conducting fishing and fishing related activities, following the model indicated in the Compliance Agreement – with an increasing trend (2018: 66 percent; 2020: 60 percent; 2022: 74 percent). Members have also increasingly ensured that vessels flying its flag and conducting fishing and fishing related activities have not previously engaged in activities that undermine CMMs unless it has satisfied certain requirements in line with the provisions of the Compliance Agreement, with an increasing trend (2018: 82 percent; 2020: 74 percent; 2022: 85 percent). A high percentage of Members also reported to ensure that their flagged vessels conducting fishing or fishing related activities provide their authorities with information on its operations as may be necessary to enable the FAO Member to fulfil its obligation as a flag State (2018: 88 percent; 2020: 78 percent; 2022: 88 percent). Furthermore, around two-thirds of Members reported to ensure to have access agreements with the coastal State, prior to any fishing or fishing related activities occurring in that coastal State’s jurisdiction by vessels entitled to fly their flags (2018: 76 percent; 2020: 67 percent; 2022: 69 percent).

An increasing number of Members reported to have undertaken an assessment of its performance as flag State in accordance with the FAO Voluntary Guidelines of Flag State Performance, with 28 percent

³⁴ FAO Members were asked to rate the extent of implementation from “1” being “Not at all” to “5” being “Fully”.

³⁵ For example, the most recent one of July 2022 (FAO Doc. COFI/2022/SBD/2), was compiled in preparation for the 35th session of the Committee on Fisheries, 5-9 September 2022, available at <<https://www.fao.org/3/cc1094en/cc1094en.pdf>>.

reporting so in 2018, 33 percent in 2020 and 38 percent in 2022. Of the remaining FAO Members, many intended to do so in the future (2018: 80 percent; 2020: 65 percent; 2022: 74 percent).

2.7.3 HSVAR and comparison with the Global Record

Each party to the Compliance Agreement shall pursuant to Article VI make readily available to FAO detailed information about fishing vessels entitled to fly its flag. A Circular State Letter (G/FI-24/PR) was sent in 1995 to inform all parties that FAO had developed a prototype database named the High Seas Vessels Authorization Record (HSVAR). To test it, the parties were also requested to provide data. Soon after the entry into force of the Compliance Agreement in 2003, a second Circular State Letter (G/X/FI-30) was sent to remind all parties about their obligations under Article VI of the agreement.

The Global Record is a fully-fledged operational information system requested by FAO members firstly at the Rome Declaration on Illegal, Unreported and Unregulated (IUU) Fishing adopted by the FAO Ministerial Meeting on Fisheries in 2005. Since then, the Global Record has been strongly supported by COFI, who recognized its role, as an essential tool to combat IUU fishing and to ensure the effective implementation of international instruments designed to combat IUU fishing.

The Global Record was conceived as a collaborative and voluntary tool to combat IUU fishing through increased transparency and traceability. In particular, it provides FAO members an online platform where to share data not only on their own vessels' identities and activities, but also on foreign vessel's level of compliance with existing relevant management measures, including reflagging, double flags, changes of names, ownership, etc.

The Global Record was initiated more than a decade later of the HSVAR, at a time where the devastating effects of IUU fishing raised serious concerns and demanded a more ambitious tailor-made solution to effectively combat it. Within this context, although in essence the scope remained more or less unchanged in terms of fleet type, the Global Record incorporated crucial improvements with reference to data requirements, mechanisms and standards for data exchange, data privacy, etc. As a result, the Global Record offered a more evolved and powerful solution to tackle IUU fishing, and gained predominance over the HSVAR.

Some of the major improvements introduced by the Global Record compared to the HSVAR are the following:

- (i) Voluntary tool: its voluntary nature makes the Global Record an agile and versatile tool, adaptable to current needs and very attractive to States, whose participation is not tied by political formalities and rigid commitments. States willing to contribute and cooperate to eradicate IUU fishing therefore find it an excellent opportunity to gain visibility and reinforce their positions.
- (ii) Notwithstanding the foregoing, the Global Record could become a mandatory tool if tied to the implementation of binding agreements such as, but not limited to, the Compliance Agreement. This would allow the Global Record to create important synergies that would expand and secure State participation.
- (iii) Eligible fleet: both the Global Record and HSVAR consider any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources on the high seas as eligible. The major difference being that the Global Record requires the provision of a Unique Vessel Identifier (UVI), which is the IMO number of the vessel. The UVI or IMO number, although not relied upon by the Compliance Agreement as the introduction of such numbers to fishing vessels only gained traction afterwards, will strengthen its purpose due to the fact that it increases vessel transparency and traceability. In fact, currently 94% of the RFMO/As (counting the EU), include the IMO number on their data reporting requirements.
- (iv) Participation: as of today, the Global Record exceeds the HSVAR on number of States (65 compared to 42) and vessel records (11 772 compared to 6 350). A difference that tends to get wider due in part to the move from a great number of the States (85%) that provided data to the HSVAR, to convert to the Global Record. This tendency has had impacts on the

frequency of updates received into the HSVAR, which only amounts to four States during the last eight years. As result, the number of vessels with authorizations to fish on the high seas in force has fallen to only 25.

- (v) Data requirements: the Compliance Agreement obliges parties to transmit to the FAO the twelve mandatory and seven optional data fields listed in Table 4 below. The Global Record in turn, only requires the submission of a minimum set of five essential data fields to streamline State participation, but expands its number of the optional fields to close to a hundred. This vast array of data fields, as presented in Table 5 below, are distributed in different information modules that cover compliance details, flag State actions and other reporting requirements established within Articles V and VI, which are currently far from the scope of the HSVAR.

Advance Copy

Table 4

Compliance Agreement

Mandatory data fields
Name of fishing vessel
Registration number
Previous names (if known)
Port of registry
Previous flag (if any)
IRCS (if any)
Name of owner(s)
Address of owner(s)
Where built
When built
Type of vessel
Length.
Optional data fields
Name of operator(s)/manager(s) (if any)
Address of operator(s)/manager(s) (if any)
Type of fishing method(s)
Moulded depth
Beam
GRT
Power of main engine(s)

Table 5

Global Record

Mandatory data fields
UVI/IMO number
Name of fishing vessel
Current flag State
Length overall
GR or GRT
Optional data fields
Close to a hundred, sorted in different modules of information that include:
- Vessel details (<i>52 data fields</i>)
- Historical details (<i>8 data fields</i>)
- Authorizations (<i>13 data fields</i>)
- Port entry denials (<i>6 data fields</i>)
- Inspection & surveillance (<i>18 data fields</i>)
- IUU vessel lists
- Ports (<i>2 data fields</i>)

It is important to note that all data fields described under the Compliance Agreement are comprised within the Global Record, but not vice versa. Nonetheless, the missing data fields required for the Global Record, with the exception from the IMO number, are already included in the HSVAR, due that the flag State data field is inherent to the party providing the data, and the tonnage expressed in GRT is an optional field of the HSVAR.

- (vi) Use of standards: unlike the HSVAR, the development of the Global Record Information System has been guided by the FAO members through COFI and its Working Group meetings. Due to this, it uses internationally agreed standards, mechanisms and protocols for data exchange to guarantee the harmonization of data entries and units used. The Global Record would also include automated data exchange mechanisms to optimize data upload.

- (vii) Data privacy and protection: within the HSVAR, as per the Compliance Agreement, the data access is restricted to the parties and upon request to global, regional or subregional fisheries organizations subjected to the restrictions imposed by the party concerned. Strategy that has given low visibility of the efforts made by the parties, limited the use and sharing of data, and therefore, hindered the implementation of the HSVAR and purposes of the Compliance Agreement. The Global Record, in contrast, following the example of RFMO/As, opens the access to information to the general public in an unprecedented step towards transparency.

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3 PRELIMINARY CONCLUSIONS

The present study has first of all tried to unearth the problems with the Compliance Agreement. Starting from the obvious, i.e. the rather low number of accessions, which moreover seems to have a stagnating tendency at present, the reasons behind this reluctance of States to become Parties have been pinpointed. Being a precursor at the time that it was concluded, the Compliance Agreement has today somewhat been overtaken by developments elsewhere. If the establishment of a centralized database of vessels authorized to fish on the high seas was a novelty in 1993, RFMO/As quickly started to move beyond the restraints burdening the HSVAR, not only concerning the kind of information to be provided, but also the restrictions attached to the dissemination of this information. All of that could easily have been remedied, if the Compliance Agreement had contained a provision on monitoring, review and assessment, *quod non* unfortunately. This puts the Compliance Agreement at a disadvantage with respect to some later agreements in this domain, such as the UNFSA and the PSMA.

At the same time, it cannot be denied that the Compliance Agreement has influenced the later developments that took place in these same RFMO/As, as many of their founding documents not only expressly refer to Compliance Agreement, but many of the latter's provisions are moreover reflected in the daily operations of these regional bodies.

As almost all of the parties to the Compliance Agreement are member to at least one, but sometimes even as much as 14 RFMO/As, they have been moving forward beyond the restrictions imposed by Compliance Agreement, as just mentioned. There seems, in other words, to exist a certain implied acceptance that a Compliance Agreement without such restrictions is perfectly possible for its present parties. Moreover, Table 3 illustrates that almost 90 non-parties to Compliance Agreement are member of a RFMO/A as well, already applying through their membership elements contained in the Compliance Agreement, without its restrictions. In other words, there seems to exist, at least in theory, a great potential for further accessions to the Compliance Agreement.

How to tap this potential resource very much relates to the issue of how to reinvigorate the Compliance Agreement and make it more attractive. This will be addressed next.

4 OUTLOOK AND OPTIONS FOR STRENGTHENING COMPLIANCE AGREEMENT AND ITS IMPLEMENTATION

The above analysis demonstrates that the Compliance Agreement today finds itself in a somewhat dormant position as the membership curve has clearly flattened out around 45 parties. The first question to be addressed, consequently, appears to be its present-day relevance and whether this international instrument still has a role to play. One can subsequently look for ways and means to revitalize this dormant agreement and try to improve its relevance. The last part of this study will follow this two-pronged approach, but only if the answer to this first question is positive.

4.1 Does the Compliance Agreement still have a role to play?

If with a membership of 39 States Parties to the Convention on Fishing and Conservation of the Living Resources of the High Seas³⁶ has been described as the failed convention of the four instruments relating to the law of the sea that were adopted in 1958,³⁷ would it be appropriate to consider whether the Compliance Agreement, with 45 parties, and stagnating, should not be described likewise?³⁸ The answer to this question, however, should be negative for at least two reasons.

First, the Compliance Agreement has a number of “hidden” parties. Because only the European Union, as a regional organization being exclusively competent in the domain covered, adhered to this agreement,³⁹ this single acceptance in fact represents 27 Member States, bringing the grand total to 70 for comparative purposes.⁴⁰ Moreover, this study has indicated that many RFMO/As have taken over provisions of the Compliance Agreement, indirectly obliging non-parties to fulfil the standards it contains while at the same time creating a hidden pool of countries who should not have too much difficulty to formally accede as they already comply with many of its provisions.

Second, and much more important as it concerns substance, the Compliance Agreement still remains a solid building block in the general conservation and management strategy that has been developed in order to regulate and protect the living resources at sea. Coming from a time that an almost unbridled regime of freedom of fishing governed the high seas, it was the International Court of Justice that in 1974 presaged a new era by declaring that “the former *laissez-faire* treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to the rights of other States and the needs of conservation for the benefit of all”.⁴¹ However, the decision came at a rather awkward moment in time, as the Third United Nations Conference on the Law of the Sea had just started. It has consequently been one of the very rare decisions of the Court that have never been implemented in practice by the countries involved, for the simple reason that the law fundamentally changed soon afterward with Iceland claiming a 200 nautical mile zone instead of the disputed 50 nautical mile zone that the Court had tried to settle. In other words, the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which did not create a fishing zone, was superseded by emerging State practice and the quick crystallization of a new rule of customary international law concerning the

³⁶ Multilateral convention, 29 April 1958, UNTS, vol. 559, pp. 285, 286-300 (1967). This convention entered into force on 20 March 1966.

³⁷ *Francisco Orrego Vicuña*, Law Governing High Seas Fisheries: In Search of New Principles, *Ocean Yearbook*, vol. 18, 2004, pp. 383, 384. The author relies on a source of 1992 to substantiate this proposition.

³⁸ Since 1992, indeed, more than ten countries have joined the United Nations.

³⁹ See *supra* note 5.

⁴⁰ See *supra* note 21.

⁴¹ International Court of Justice, Fisheries Jurisdiction Case (United Kingdom v. Iceland), Merits, Judgement of 25 July 1974, I.C.J. Reports 1974, p. 3, 31.

EEZ by the middle of the 1980s, i.e. about a decade before the LOSC, codifying that new notion, finally entered into force.

The Compliance Agreement, on the other hand, is not based on an outdated concept of the international law on fisheries conservation and management on the high seas, to wit flag State jurisdiction, but rather still reflects the first and foremost governing principle in that area. It is only because, as it turns out, flag States are not always strictly complying with their obligations in this domain, that States have sought to find other ways to improve the system, by giving either the RFMO/As and later port States additional competence in the area through the UNFSA and the PSMA respectively. This evolution to be witnessed in the area of fisheries was not novel, as a similar logical development, following a ditto chronological order could already be witnessed in the domain of vessel-source pollution. As the many major oil pollution incidents at sea, that started to occur during the 1970s, had demonstrated the insufficiency of flag State competence in this domain as well, a good number of universal and regional conventions were concluded, finally resulting in a conceptually totally new provision in the LOSC, namely Article 218, providing for a quasi-universal port State jurisdiction in this domain.

The Compliance Agreement, in other words, is most certainly not outdated or surpassed by new developments. It still forms part of the first and foremost building block of the present-day conservation and management system of living resources on the high seas, i.e. flag State jurisdiction, and arguably even beyond.⁴²

4.2 Possible ways to reinvigorate the Compliance Agreement

Having concluded that the Compliance Agreement still has a role to play at present, the next issue to be addressed concerns the manner in which this Agreement can be improved to better reflect its importance in the global framework of conservation and management of the living resources of the high seas.

Different options are available in this respect, going from the formal extreme of the spectrum, represented by applying the amendment procedure provided for in the Compliance Agreement itself, to the most informal ones, as the parties to the agreement could spontaneously set up a meeting to discuss the way forward. In between, a number of intermediary steps are possible, such as the conclusion of a supplementary agreement, the adaptation, because of the later development of new rules of customary international law or by relying on the instrument of interpretation of treaties, on the formal side, and an FAO body requesting the parties to convene or provide information, or a particular initiative taken by the parties to the Compliance Agreement themselves, on the informal side. These informal means can be subdivided according to whether the initiative is taken by an outside body, or rather by the parties themselves.

4.2.1 The amendment of the Compliance Agreement

The Compliance Agreement provides an amendment procedure, which is however particularly burdensome to apply in practice as this Agreement, as explained in 2.6 above, was concluded within the framework of Article XIV of the FAO Constitution. Indeed, Article XIII of the Compliance Agreement provides that each proposal for an amendment needs to be submitted to the Director-General of FAO, who in turn has to present it to a two-yearly regular or special session of the FAO Conference, which is a body where all members of the organization have one vote according to Article III (1) of the FAO Constitution. If the proposed amendment involves important technical changes or imposes additional obligations, an advisory committee of specialists need to be convened prior to the Conference where the proposal will be discussed. Amendments need to be approved by the Conference by means of a majority vote (Rule XII (2)(a) of the General Rules of the Organization) and normally enter into force 30 days

⁴² According to Judge Paik, in his separate opinion in the Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, pp. 4, 113-114 (Paras 28-29), the principles contained in the Compliance Agreement today even apply to foreign fishing in the EEZ of coastal States.

after the acceptance by two-thirds of the parties. This may, at first glance constitute a rather easy procedure. However, first, the rule changes if the amendment contains new obligations, in which case parties only become bound after individual acceptance and, second, any amendment is as a rule considered to involve new obligations unless the Conference by consensus decides otherwise.

4.2.2 The conclusion of a supplementary agreement

Having been concluded within the framework of Article XIV of the FAO Constitution, the Compliance Agreement has the additional option, besides the amendment procedure just discussed, to move it forward by way of supplementary agreement. This possibility, not specifically provided for in the Compliance Agreement itself, is rather based on Article XIV of the FAO Constitution and involves a procedure which is substantially different from the amendment procedure just explained. Instead of a FAO Conference, it is the FAO Council which becomes involved, as it is this body that can, by a two-thirds majority, approve such supplementary agreements designed to implement an earlier agreement adopted in the framework of Article XIV of the FAO Constitution, as stipulated in its Paragraph (2)(b). Moreover, Paragraph 4 of that same article allows the supplementary agreement to decide on the modalities of its entry into force.

This procedure is already more accessible for making the Compliance Agreement stand the test of time. Nevertheless, the Council, consisting of 49 members, may not be the ideal body to promote the further development of the Compliance Agreement either, because a majority of its members, in its present composition, are not parties to it (directly or through their membership of the European Union). In fact, the two-thirds majority required in the voting could almost be obtained by non-parties alone. As such, it is also a procedure that must not immediately appeal to parties of the Compliance Agreement wanting to further develop this agreement.

4.2.3 The Compliance Agreement influenced by the development of customary international law

Every treaty, once concluded, is subject to new rules of customary law that may have come to crystallization at a later date. As international law is based on the consent of states, if this consent is so overwhelmingly expressed, even outside the framework of a particular convention, the parties to the latter will be unable to stop such development unless all of them become persistent objectors to the new customary rule. That is why a non-party to the LOSC, which is still a party to the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, can nevertheless validly claim an exclusive economic zone.

What the Compliance Agreement seems to lack at present is not a change of the basic principle of international law that it contains, namely flag State competence over vessels fishing on the high seas and its attempt, by enhancing flag State obligations, to promote the conservation and management of the living resources on the high seas. It is rather the lack of some procedural rules allowing the parties to permanently assess the work accomplished as well as some technical changes with respect to the collection, nature and dissemination of data that have rendered the agreement less attractive at present. Unfortunately, if customary international law is well suited to develop general principles, it is rather incapable of developing technical and very detailed rules of international law.

Once again, therefore, the option does not seem to be well-suited for present purposes.

4.2.4 Interpretation of the Compliance Agreement

This subsection relies on the customary rules of interpretation under present-day international law, as codified in the Vienna Convention on the Law of Treaties,⁴³ primarily in its Articles 31 and 32. A treaty is normally to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. Of special importance for

⁴³ Multilateral convention, 22 May 1969, UNTS, vol. 1155, pp. 331, 332-353 (1987). This convention entered into force on 27 January 1980.

the present study is that, besides the context, one can also rely on “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions” or “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”.

A case in point is the centralized FAO database that was created under the Compliance Agreement to record all the vessels of the parties that were allowed to fish on the high seas. In 1993 this was the first attempt ever to formalize a call for a centralized record of fishing vessels.⁴⁴ The Compliance Agreement only describes the kind of information that needs to be included and the way the information is to be shared and tasks FAO to become the repository for this information. In order to fulfil this function FAO created HSVAR, but the technology used for the creation of the database has now become outdated.⁴⁵ Main problems today remain the nature of the information requested in Article VI of the Compliance Agreement and the conditions attached to the dissemination of that information.

In the meantime, however, RFMO/As have on a regional basis been able to do away with most of these limitations, as well as FAO itself with the creation of a Global Record. But none of these systems, as of present, is able to provide a fully satisfactory system. The former has the limitation of being regional in nature, creating a patchwork of separate systems, whereas the latter is restricted by the fact that it remains voluntary, not only with respect to whether States contribute to it or not, but also with respect to the content of their contribution, besides a small core of mandatory fields.

It is here that an opportunity would seem to present itself for the Compliance Agreement to regain some traction. Based on the membership of many parties to the Compliance Agreement to several RFMO/As, as indicated in Table 2, the explicit reference in many founding documents of RFMO/As to the Compliance Agreement,⁴⁶ as well as the further developments of the principles contained the Compliance Agreement by these RFMO/As, as demonstrated under 2.7.1, a sound argument can be developed that, by applying the rules of interpretation just developed, certain provisions of the Compliance Agreement may have received a content not explicitly provided in the text of the agreement. A good example would be the IMO number, originally devised for the merchant shipping sector, which in 1993 was unavailable for fishing vessels. This exclusion was only lifted in 2013 and today there seems indeed to be broad recognition that the most effective manner to expand the use of the system of unique vessel identifier into the fishery sector is to build on the well-established IMO Ship Identification Number. It can therefore credibly be argued that “registration number” in Article VI (1)(a) of the Compliance Agreement can today be read to mean “IMO number”.

Whether using this method of interpretation would be equally suitable to tackle other present weaknesses of the Compliance Agreement that are articulated more clearly, such as the restrictions on the exchange of information to non-parties to be found in Article VI (4) and (10), is somewhat less certain. And going one step further, by considering whether the HSVAR can be replaced by the Global Record within the framework of the Compliance Agreement, requiring even more explicit provisions to be re-interpreted,

⁴⁴ *David Midson*, A New Global Record for an Old Threat, *Australian and New Zealand Maritime Law Journal*, vol. 23, issue 1, 2009, p. 69, 69.

⁴⁵ For a good overview of the early developments and problems surrounding the creation of HSVAR, see *Richard Grainger*, High Seas Fishing Vessel Database, in: *Myron H. Nordquist and John Norton Moore* (eds.), *Current Fisheries Issues and the Food and Agriculture Organization of the United Nations*, The Hague, Martinus Nijhoff Publishers, 2000, pp. 93-106.

⁴⁶ Of the 15 RFMO/As analysed under 2.7.1, six were created after the adoption of the Compliance agreement. Of this group, four explicitly refer to that document in their preamble. Moreover, of the nine RFMO/As that preceded the Compliance Agreement, four have in the meantime amended/replaced the original basic document and all of them now explicitly refer to the Compliance agreement. The other five, logically, do not.

namely those of Article VI (1),⁴⁷ would seem even more problematical as this would tend towards an outright teleological interpretation, something that the Vienna Convention on the Law of Treaties does not permit and that Court and Tribunals dealing with high seas fisheries do not tolerate.⁴⁸

It might therefore be advisable, if the realization of such more profound changes were to be envisaged, to turn to the less formal ways for improving the functioning of the Compliance Agreement.

4.2.5 Informal initiative undertaken by an external body

The first, and obvious body to consider in this respect is the FAO Conference, as the Compliance Agreement was concluded within the framework of Article XIV of the FAO Constitution. Relying on this specificity, it has been argued that FAO Conference acts as the governing body of the Compliance Agreement, with COFI monitoring its implementation relying on its technical advice.⁴⁹ However, it seems fair to state based on the above analysis, that this mechanism has so far not allowed the Compliance Agreement to become the dynamic instrument that the FAO Conference had in mind when approving it in 1993.⁵⁰ But nothing prevents the FAO Conference in the future to take an initiative in this respect, with COFI for instance making specific recommendation to endorse a particular action to be undertaken by the parties to the Compliance Agreement.

A second possible role that FAO can play with respect to the Compliance Agreement, is somewhat more indirect, and implies the Code, of which the Compliance Agreement forms an integral part in accordance with Article 1 (1) of the Code, as already explained under 2.5.1. The resolution adopting the Code further called upon FAO to monitor and report on the implementation of the Code. But once again, the implementation of the Compliance Agreement has so far only been monitored only in a limited way through the Code's biennial questionnaire.

A third, and even more remote avenue would seem to be the requirement of the Fisheries and Aquaculture Division of FAO to report on the progress in the implementation of the IPOAs. For present purposes, the IPOA-IUU is relevant and specifically instructs COFI, based on a detailed analysis by the Secretariat, to evaluate the progress made towards its implementation on a two-yearly basis (Paragraph 93 of the IPOA-IUU). As mentioned above under 2.5.2, the IPOA-IUU certainly touches upon a number of aspects of the Compliance Agreement, but certainly not all. This avenue, in other words, would at best be able to give only a partial solution to the issues raised by this study.

4.2.6 Informal initiative undertaken by the parties to the Compliance Agreement

The most informal method, while also the simplest to apply in practice, seems to be that the parties would themselves create the element most lacking in the Compliance Agreement, namely a follow-up procedure allowing for the monitoring, review and assessment of the instrument, to be found in many later agreements such as the UNFSA and the PSMA. This seems to be an essential complement that the parties to these two latter agreements have tried to use to its fullest extent, as already explained above.⁵¹

The first step the parties to the Compliance Agreement could take in this respect is to create a possibility for them to meet and discuss the progress towards implementation. As this is the most informal kind of initiative, it leaves the parties with the greatest possible flexibility in how far and fast they want to make

⁴⁷ It is of course true that the HSVAR is a creation of FAO in fulfilment of the Compliance Agreement and that the organisation could consequently easily replace it with a more modern version. However, the new version would still need to comply with the explicit provisions of the Compliance Agreement that at present seem somewhat dated as mentioned under 3.

⁴⁸ The exception being human rights courts where the teleological interpretation has found its apogee by means of the principle of the *effet utile* or effectiveness principle.

⁴⁹ As already mentioned *supra* note 30 and accompanying text.

⁵⁰ Moore, *supra* note 6, p. 87.

⁵¹ Concerning the UNFSA, see *supra* note 10; concerning the PSMA, see *supra* note 12.

progress. It would thus seem counterproductive to try to produce a detailed roadmap here of how exactly the parties should move about.

What is clear, however, is that FAO, based on the analysis made under 4.2.5, can certainly play an accommodative role helping the parties to monitor, review and assess the implementation of the Compliance Agreement and try to improve its functioning. If certain improvements can already be presumed to have clarified particular wording of the Compliance Agreement at present, as discussed under 4.2.4, for the more fundamental changes, going against the plain reading of its text, the parties should strive to arrive at an agreement between themselves regarding the interpretation of the treaty or the application of its provisions. As many of them already apply these developments in the RFMO/As to which they are a party, this would ease the process and enhance the chances of success.

4.3 The way forward

Following the call of the 35th session of COFI to “consider options to strengthen effective implementation and enforcement of the FAO Compliance Agreement” and the request of the first session of the FAO Sub-Committee on Fisheries Management (SC-FM) to “examine institutional options to strengthen its implementation”, an expert workshop was held in Paris between 29-30 April 2024 to review and finalise the “Study on the Implementation of the 1993 FAO Compliance Agreement”. The outcome of the Paris expert workshop is summarized below, and forms an integral part of the study.

4.3.1 Discussions at the expert workshop

The expert workshop took note of the baseline information that the number of ratifications of the Compliance Agreement plateaued after 45 Member Nations had become parties to it, including the European Union⁵².

Based on the considerations presented by the 2022 study and the supplementary information provided to the expert workshop, there are a number of possible ways to reinvigorate the Compliance Agreement, ranging between very formal means, such as amending the Compliance Agreement, to the less formal option of, for example, an initiative taken by the State parties to the Compliance Agreement. The options for reinvigorating the Compliance Agreement that were deemed feasible are through: an initiative taken by the State parties themselves; a formal amendment procedure; an initiative taken by an external body (like the FAO COFI or the recently established SC-FM); a supplementary convention; and, finally, through interpretation, the latter being a limited option as the threshold for allowing an interpretation *contra legem* seems to be rather high. At the workshop, the experts⁵³ discussed options for improvement of the implementation and effectiveness of the Compliance Agreement. The options can be summarized as follows:

- The Compliance Agreement still has relevance, but its implementation now is being realized at the regional level. The Compliance Agreement could be one of the avenues to bolster flag State performance in view of the challenges faced by RFMO/As such as the effectiveness of IUU vessel lists, compliance committees, and the limitation in species and geographic coverage;

⁵² According to the United Nations Treaty Series, the Parties to the Compliance Agreement are: Albania, Angola, Argentina, Australia, Barbados, Belize, Benin, Brazil, Cabo Verde, Canada, Chile, Cook Islands, Cyprus, Egypt, European Union, Georgia, Ghana, Japan, Madagascar, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, New Zealand, Norway, Oman, Peru, Philippines, Republic of Korea, Saint Kitts & Nevis, Saint Lucia, Senegal, Seychelles, Sierra Leone, Sri Lanka, Sweden, Syrian Arab Republic, Trinidad and Tobago, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, and Vanuatu. The listing of Cyprus and Sweden is remarkable, as both form at present part of the European Union while this agreement has been decided by the European Court of Justice (Commission v. Council, Case C-25/94, 19 March 1996) to form an exclusive competence of that organization.

⁵³ A full list of experts to the workshop can be found in Annex 1.

- Breathe new life into the Compliance Agreement through new narratives and regular meetings of the parties, and develop resolutions, guidelines, protocols, non-binding instruments, or reports to reflect best practices;
- Enhance States' participation in the Compliance Agreement and set up an informal meeting of the parties, modelled on the Informal Consultations of State parties under the UNFSA;
- FAO should take the lead to link the Global Record with the Compliance Agreement and add it as standing agenda item of the SC-FM;
- Incorporate the IMO number in the Compliance Agreement and expand the definition of fishing vessel to allow for the inclusion of vessels engaged in fishing related activities;
- Create the possibility of flag State responsibilities in the Compliance Agreement to be applied to foreign fishing vessels in the EEZ of coastal States as well;
- Further acknowledge special requirements of developing States and consider setting up a funding mechanism for capacity development when revisiting the Compliance Agreement;
- Design and deliver an awareness raising campaign to enhance ratification of the CA, including using opportunities to build linkages between the Compliance Agreement and the PSMA, and rationalize workload and resourcing;
- The UNFSA also elaborates flag State responsibilities and there is a difference in participation to the Compliance Agreement with that of the UNFSA. To mutually reinforce implementation of both instruments, State parties to the UNFSA are encouraged to join the Compliance Agreement and vice versa;
- The Compliance Agreement may face some challenges to gather funding for the creation of a meeting of the parties. Pursue preferably a non-legally binding route with respect to flag State responsibilities;
- Keep the Compliance Agreement, while focusing more on flag State responsibility and performance to rectify the present over-reliance on port States to ensure compliance with relevant conservation and management measures;
- Make use of other instruments (VGFSP), bodies (RFMO/As), tools and processes (self-assessment) and capacity building programmes to enhance flag State responsibilities which supports implementation of the Compliance Agreement;
- Focus on the regional level (RFMO/As) and ensure RFMO/As work towards enhancing their consistency with minimal requirements of the Compliance Agreement;
- The Compliance Agreement did not receive the necessary tools at the start to make it adjust to new circumstances. Those means should be provided;
- Initiate an amendment procedure to establish an institutional arrangement to allow parties to dialogue and review and monitor the implementation of the Compliance Agreement. This process would give parties ownership to identify substantive technical matters to be addressed in revisiting the Compliance Agreement;
- Incorporate the Compliance Agreement and the relevant provisions of the UNFSA into the PSMA; and
- Rely on the concept of regulating flagging out and encourage parties to record and exchanging information through the FAO on penalties in their registers of fishing vessels as a way to curb flag-hopping, when the objective of such flag hopping is the lowering of standards of compliance with relevant conservation and management measures.

4.3.2 Conclusions of the expert workshop

The discussions at the expert workshop on the options for invigorating the Compliance Agreement were framed by two main considerations: First, there was the general understanding that as the Compliance Agreement is based on flag State responsibility, it still has a crucial role to play in the present-day conservation and management of living resources at sea. Second, there was a prevailing feeling that the Compliance Agreement, at least in its present form lacks the attractiveness for States to subscribe to it, as a number of its provisions have been overtaken in the meantime by developments elsewhere.

Expert discussions on the ideas summarized above led to three options. These options are set out below, in descending order starting from the most supported option to the less supported one, each with an associated set of practical steps to be taken in the realization of such option. While the first option did not raise particular concern and did not appear exclusive of the others, the other two raised some questions in terms of process, legal and resource implications (both human and financial).

4.3.2.1 Strengthening the implementation of the Compliance Agreement within the broader framework of enhancing flag State performance

Considering that the Compliance Agreement forms an integral part of the 1995 FAO Code of Conduct for Responsible Fisheries (the Code), as recognized by FAO Conference Resolution 15/93, paragraph 3, the COFI shall, within the context of monitoring the implementation of the Code, periodically review the implementation of the Compliance Agreement and define actions to strengthen its implementation, including through the SC-FM.

Such a review should be based on the current situation and in the context of reviewing flag State responsibilities more generally, taking into account relevant instruments such as the UNFSA and more recent instruments including the VGFSP, as well as the work on compliance in the context of Regional Fisheries Bodies.

The Global Record, developed by FAO through the Global Record Open-Ended Technical and Advisory Working Group established by COFI, shall support the exchange of information on fishing vessels authorized to be used for fishing on the high seas, as required by Article VI of the Compliance Agreement.

Recognizing that the PSMA provides an international legal and operational framework for verifying compliance of vessels entering foreign ports with applicable fisheries conservation and management measures, including on the high seas, and the important role of flag States in the implementation of the PSMA, as defined in Article 20, aspects of the implementation of the Compliance Agreement are to be considered through PSMA meetings of the parties and supporting working groups, as appropriate.

Flag States should, including through RFMO/As, periodically conduct flag State performance assessments, and take measures to strengthen compliance with their international obligations regarding the flagging and control of fishing vessels, as guided by the VGFSP which cover key provisions of the Compliance Agreement, and report to FAO the outcomes of the performance assessments so conducted.

4.3.2.2 State parties to the Compliance Agreement take the initiative to revitalize the Agreement in an informal manner

The most informal manner to proceed is to leave the initiative of revitalizing the Compliance Agreement in the hands of the State parties to the Agreement, including setting up a meeting to discuss the present status of the agreement and to create a follow up procedure allowing for the monitoring, review and assessment of the instrument. Of all the instruments created under the aegis of Article XIV of the FAO Constitution, the Compliance Agreement is the only instrument not possessing an institutionalized body which enables the parties to meet on a regular basis to discuss implementation and related issues. As this is the most informal option, it depends on the motivation of the parties and provides them the greatest possible flexibility in how far they want to go and how fast they want to make progress. Such an informal meeting may then be the place to discuss the way forward, including even establishing a formal meeting of the parties through an amendment to the Compliance Agreement.

Consequently, it would seem counterproductive to try to generate a detailed plan of action for this option. Nevertheless, the first step to be taken is quintessential and needs some concrete action to be taken by one or more parties in order to initiate discussions inter partes. It suffices in this respect that one of the present State parties to the Compliance Agreement takes the initiative to organize a meeting of the parties in order to initiate the process. COFI could also recommend a meeting of the parties to the Compliance Agreement.

4.3.2.3 State parties to the Compliance Agreement take the initiative to revitalize the Agreement in a formal manner by amending it

It was recalled that the 2022 study had determined that the amendment procedure and the conclusion of a supplementary convention, as specifically provided in Article XIV of the FAO Constitution, were potential formal options to strengthen the implementation of the Compliance Agreement. In preparation of the expert workshop, an informal issue paper on FAO practice with respect to Article XIV conventions and agreements was developed to facilitate discussions on specific institutional issues. Since no supplementary agreements or conventions had been concluded thus far, the different amendment procedures that had been initiated under instruments concluded under the aegis of the FAO would merit examination for a possible way forward.

The expert workshop was informed that out of the 17 instruments concluded within the framework of FAO under its Article XIV, 11 have been subject to an amendment procedure. A careful analysis of these amendments indicates that numerous types of modifications can be achieved through amendment procedures. Consultations of procedural history files of the amendments, confirmed that the creation of a new principal body was realized in the past using the amendment procedure⁵⁴.

By amending the Compliance Agreement, its present deficiencies could be adjusted in a formal manner such that the instrument is more responsive to future developments. The background information for the expert workshop indicates that other Article XIV instruments were able to create a body, such as a Commission or institutionalize a meeting of the parties, but also finds that the FAO Committee on Constitutional and Legal Matters in examining the 1997 amendment of International Plant Protection Convention that established the Commission on Phytosanitary Measures did not consider the creation of such institutional mechanisms as involving new obligations when certain conditions were met, implying that such amendment becomes operational for all State parties in a uniform manner after adoption.

In order to realize this option in practice, Article XIII of the Compliance Agreement provides that a State party communicates a proposal for amendment to the Director General of FAO, who presents it to the Conference for approval. The entry into force of such approved amendment subsequently requires the acceptance by two-thirds of the State parties to the Compliance Agreement, after which it normally becomes operational 30 days later for all State parties to the Compliance Agreement, unless new obligations are involved, in which case the amendment only binds those State parties to the Compliance Agreement that have accepted it.

It should be noted, however, that this amendment procedure in the Compliance Agreement does not reflect the present day principles on amendment as set forth in Principles and Procedures Governing Article XIV, XV and VI Agreements, Volume II, Part O, FAO Basic Texts. Like other Article XIV instruments, it might therefore be advisable that the State parties to the Compliance Agreement also amend Article XIII, in order to have more control over the amendment procedure, with the FAO Council or Conference only retaining a post factum right of control, as amendments would then become operative unless and until disallowed by the FAO Council or Conference for being inconsistent with the objectives of the Organization according to the relevant principles in the FAO Basic Texts.

Once such amendment has been made and enters into force, State parties to the Compliance Agreement should be able to resolve technical and operational matters, or even complementary regulatory measures that bolster flag State performance.

5 SUMMARY CONCLUSIONS

After having come to the conclusion that the Compliance Agreement still has a role to play today, this study enumerated the different options at the disposal of the parties to the Compliance Agreement to pursue that goal. Some of the formal procedures, like amending the agreement, concluding a supplementary agreement or relying on customary international law to improve its functioning, would certainly need further consideration and discussion. This study nevertheless concluded that applying the rules of interpretation under international law showed some potential, be it of a rather limited nature. A further research on FAO practice with respect to Article XIV conventions and agreements showed that no supplementary agreements or conventions had been concluded thus far. The research also suggested the different amendment procedures had been initiated under different instruments. By amending the Compliance Agreement, its present deficiencies could be adjusted in a formal manner such that the instrument is more responsive to future developments.

One informal way forward suggested is an initiative taken by the parties to the Compliance Agreement to ultimately try to establish an agreement between themselves regarding the interpretation of the treaty or the application of its provisions. To reach that goal a first and necessary step appears to be an initiative to meet and set up a process of monitoring, review and assessment. Once established, the parties can subsequently try to find consensus on the way to interpret certain provision of the Compliance Agreement that today prove somewhat problematical, or even decide establishing a formal meeting of the parties through an amendment to the Compliance Agreement. As this is the most informal manner available, it leaves much to the inspiration of the parties to fill in the details of the process as well as the goals they want to achieve.

The other informal procedures is to make active use of FAO's role, either through its Conference, as governing body of the Compliance Agreement, or COFI, to move the Compliance Agreement forward, provided by the fact that the Compliance Agreement is an legal instrument concluded under the framework of Article XIV of the FAO Constitution. This also emerged as the preferred option in the expert workshop in concluding this study. It was emphasized the review of the Compliance Agreement should be based on the current situation and in the context of reviewing flag State responsibilities more generally, taking into account relevant instruments such as the UNFSA and more recent instruments including the VGFSP, as well as the work on compliance in the context of Regional Fisheries Bodies.

6 LIST OF ABBREVIATIONS

ALC	automatic location communicator
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CMM(s)	conservation and management measure(s)
Code	The Code of Conduct for Responsible Fisheries (1995)
COFI	Committee on Fisheries
Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993)
Deep-sea Fisheries Guidelines	International Guidelines for the Management of Deep-sea Fisheries in the High Seas (2008)
EEZ	exclusive economic zone
FAO	Food and Agriculture Organization
Flag State Guidelines	Voluntary Guidelines for Flag State Performance (2013)
FMC	fisheries monitoring centre
GFCM	General Fisheries Commission for the Mediterranean
GIES	Global Information Exchange System
Global record	FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels
HSVAR	High Seas Vessels Authorization Record
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
IPOA-Capacity	International Plan of Action for the Management of Fishing Capacity (1999)
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001)
IUU	illegal, unreported and unregulated
LOSC	United Nations Convention on the Law of the Sea (1982)
MCS	monitoring, control and surveillance
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North East Atlantic Fisheries Commission

NPAFC	North Pacific Anadromous Fish Commission
NPFC	North Pacific Fisheries Commission
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2009)
RECOFI	Regional Commission for Fisheries
Scheme	NEAFC scheme of control and enforcement (2022)
SEAFO	South East Atlantic Fisheries Organisation
SIOFA	Southern Indian Ocean Fisheries Agreement
SPRFMO	South Pacific Regional Management Fisheries Organization
System	system of observation, inspection, compliance and enforcement (2019)
UNCED	United Nations Conference on Environment and Development (1992)
UNFSA	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995)
VMS	vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission

Annex 1

List of experts to the Compliance Agreement Expert Workshop

	Name	Designation
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2	Andrew Serdy	Professor, University of Southampton, UK
3	Annick VanHoutte	Former Deputy Legal Counsel, FAO
4	Brice Martin-Castex	Deputy Director, Maritime Safety Division, International Maritime Organization
5	Camille Goodman	Associate Professor, University of Wollongong, Australia
6	Darius Campbell	Secretary, North East Atlantic Fisheries Commission
7	Elda Belja	Senior Lecturer, International Maritime Law Institute
8	Erik Molenaar	Deputy Director, Netherlands Institute for the Law of the Sea, Kingdom of the Netherlands
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