2021 REPORT

SECOND VIRTUAL EXPERT WORKSHOP ON BEST PRACTICES IN COMPLIANCE IN RFMOS:
THE ROLE OF TRANSPARENCY IN IMPROVING RFMO COMPLIANCE

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

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I. Executive summary

Many global fish stocks that are managed by regional fisheries management organizations (RFMOs) remain over-exploited and the sustainability of such stocks, and their associated marine ecosystems, compromised. Addressing this global issue involves better compliance by RFMO members with existing obligations. Taking into consideration recommendations at the United Nations and RFMO levels to strengthen compliance mechanisms, and building on current initiatives in RFMOs to effectively assess and support improved member compliance with conservation measures and other obligations, The Pew Charitable Trusts, in collaboration with the International Seafood Sustainability Foundation (ISSF), is convening a series of expert workshops with the objective of identifying some of the challenges in current compliance review mechanisms and potential solutions that would strengthen these processes and lead to improved member compliance.

The first *Virtual Expert Workshop on Best Practices in Compliance in RFMOs* was convened in September 2020. It was attended by over 30 experts in RFMO compliance, including compliance officers from RFMO Secretariats and chairs of RFMO compliance committees. This first Workshop provided an opportunity to identify some of the main drivers for assessing and then promoting effective compliance by RFMO members with applicable conservation and management measures. More information on the first Workshop can be found in the [Workshop's report](#).

Given the interest expressed by Workshop participants in continuing this dialogue on RFMO compliance, a *Second Virtual Expert Workshop on Best Practices in Compliance in RFMOs* was convened in March 2021. The second Workshop, described in this report, focused on the issue of transparency, which was regarded by participants at the first Workshop as a potential driver of improved quality of information, better data exchange internal to RFMOs and among States and RFMOs, stronger verification mechanisms and increased external confidence in RFMO compliance processes.

The objective of the second Workshop was to provide an in-depth analysis of the various facets, roles and functions of transparency in RFMOs and, in particular, compliance review and assessment processes. The meeting brought together nearly 40 experts in compliance from RFMO Secretariats, RFMO compliance committees, international organizations, non-governmental organizations (NGOs), academia and civil society, who participated under the Chatham House rule.

The agenda explored all the facets of transparency in compliance review mechanisms, including transparency of information to be provided to and from the RFMO; transparency of the actual review mechanisms, including deliberations; and transparency in determining the outcomes of situations of non-compliance and follow-up actions for non-compliant members, as well as for the RFMO as a whole.

Workshop participants, by way of conclusion, extracted from their deliberations some key learnings on the role of transparency:

- Transparency is important and could be improved in RFMOs, particularly compliance processes, but not all RFMOs are alike.

- Transparency is multifaceted and needs to be targeted to its purpose.

- Greater participation of stakeholders (industry and NGOs) in decision-making is an important aspect of improving transparency.

- Transparency contributes to assessing RFMO performance.

- There are different stages of compliance (implementation, legislation).

- Tools exist (or should be created) to achieve more transparency and overcome concerns with data sharing, the use of third-party information, observer participation, reporting, etc.

- Trust is essential, and the lack of trust is a main driver for reduced transparency.

- Limits on transparency can be justified but should be used sparingly.

- There are challenges related to insufficient capacity of members to generate and provide information and to participate effectively in RFMO meetings.

- Some RFMO Secretariats have limited capacity to analyze and facilitate information to members and other stakeholders.

- Secretariats play a key role in fostering transparency.

- The narrative on compliance assessments should be changed — away from punitive measures to improving the performance and "health" of the RFMO in achieving its goals and objectives.

Working groups at the meeting also identified challenges in ensuring transparency in the three areas mentioned above and explored a range of concrete potential solutions to those challenges, which are described in the report and summarized below.

- Transparency of information to be provided to and from the RFMO:

  o Establish electronic/online reporting tools and forms.

  o Develop confidentiality agreements and standardized rules across RFMOs for data sharing, cooperation and transparency.

  o Harmonize reporting requirements and assessment procedures across ocean basins or among RFMOs with shared stocks or overlapping areas.

  o Rethink existing definitions and conceptions of "confidentiality" and data sharing rules in light of new and emerging technology.

  o Use third-party information/data for verification of self-reporting.

  o Strengthen the capacity of and empower Secretariats to analyze and identify compliance issues and present information in more intuitive ways (e.g., aggregate compliance tables or summaries).

- Transparency of the actual review mechanisms, including deliberations:

  o Establish audit points/performance requirements for measures/obligations.

  o Develop a risk-based approach to assessments that is adaptable to changing circumstances in fishing activities.

  o Automate aspects of the compliance review process to allow more time to consider systemic issues and serious compliance problems (e.g., "health checks").

  o Use independent chairs for compliance committees.

  o Develop confidentiality agreements to allow for observer participation.

- Transparency in determining the outcomes of situations of non-compliance and follow-up actions:

  o Track performance over time to target areas of improvement or where implementation is consistently lacking so solutions can be identified.

  o Consider creative approaches to using a range of tools to improve compliance (incentives and penalties).

  o Establish joint mechanisms to report on follow up actions.

II. Workshop report

1. Introduction

Many global fish stocks that are managed by RFMOs remain over-exploited and the sustainability of such stocks, and their associated marine ecosystems, compromised. Addressing this global issue also involves better compliance by RFMO members with existing obligations. In the past decade, independent performance reviews of a number of RFMOs have provided targeted recommendations to improve actions to ensure compliance, including following up on infringements or infractions and the functioning of RFMO compliance committees and assessment processes. In May 2019, the consultative meeting of States

Parties to the U.N. Fish Stocks Agreement (UNFSA) held consultations on the topic of "Performance reviews of regional fisheries management organizations and arrangements," which underscored that the full and effective implementation of the provisions of UNFSA depends on the effectiveness of RFMO/A performance in fulfilling the functions set out in that agreement. Other initiatives have explored, particularly at RFMO level, ways to assess and support better compliance with conservation measures.

In this context, Pew, the ISFF and other stakeholders identified the importance of strengthening compliance in order to further enhance the performance of RFMOs. With this objective, Pew, in collaboration with ISSF, convened in September 2020 a *Virtual Expert Workshop on Best Practices in Compliance in RFMOs*, which was attended by over 30 experts in RFMO compliance, including compliance officers from RFMO Secretariats and chairs of RFMO compliance committees. This first Workshop provided an opportunity to identify some of the main drivers of effective compliance by RFMO members with applicable conservation and management measures (CMMs). More information on the first Workshop can be found in the Workshop's report.

Given the interest expressed by Workshop participants in continuing this dialogue on RFMO compliance, a *Second Virtual Expert Workshop on Best Practices in Compliance in RFMOs* was convened in March 2021. The second Workshop focused on the issue of transparency, which was regarded by participants at the first Workshop as a potential driver of improved quality of information, better data exchange internal to RFMOs and among States and RFMOs, stronger verification mechanisms and increased external confidence in RFMO compliance processes.

The objective of the second Workshop was to provide an in-depth analysis of the roles and functions of transparency in RFMO compliance. The Workshop was designed to explore the many facets of transparency in the context of RFMO compliance review mechanisms, share experiences and discuss to what extent and in which ways transparency can strengthen RFMO compliance practices and with what results.

The Workshop brought together nearly 40 experts in compliance from RFMO Secretariats, RFMO compliance committees, international organizations, academia and civil society. The Workshop was conducted under the Chatham House rule. The full list of participants, who attended in their personal capacity, is available in Appendix 1.

The agenda explored all the facets of transparency in compliance review mechanisms, including transparency of information to be provided to and from the RFMO; transparency of the actual review mechanisms, including deliberations; and transparency in determining the outcomes of situations of non-compliance and follow-up actions for non-compliant members, as well as for the RFMO as a whole.

The Workshop was organized under the guidance of its steering committee: Gerry Leape, principal officer at Pew; Adriana Fabra, special adviser to Pew; Holly Koehler, vice president for policy and outreach at ISSF; Dr. Lara Manarangi-Trott, compliance manager at the Western Central Pacific Fisheries Commission (WCPFC); Osvaldo Urrutia, senior adviser to the Government of Chile; and Mark Young, executive director of the International MCS Network.

Conclusions and materials from the Workshop are available for use by all participants with an interest in RFMO compliance review mechanisms. The outcomes and initial key learnings of the first and second Workshops will provide the basis for Pew's development of initiatives to enhance compliance in RFMOs, including new resources and research on the subject and an in-person Expert Workshop on Best Practices

in Compliance in RFMOs, to be convened in 2022. The expected outcome of the in-person workshop is a best practices document that governments can take to RFMOs to adopt in whole or in part.

2. Workshop's agenda and organization

Considering the virtual and global nature of the Workshop, working sessions were organized according to compatible time zones. Taking into consideration feedback provided by participants at the first Workshop, discussions were structured in two working groups, corresponding to two geographical areas. Regional sessions were held in parallel, but all participants met for an initial opening session, with an expert panel discussion, and a final joint session where the key learnings from each working group were presented. The expert panel was moderated by Judge Tomas Heidar, vice president of the International Tribunal for the Law of the Sea, and integrated by David Balton, former U.S. ambassador for oceans and fisheries; Dr. Quentin Hanich, Fisheries Governance Research Program leader, University of Wollongong; and Dr. Penny Ridings, legal adviser at the WCPFC. The panel considered the meaning of transparency and current transparency levels of international organizations, and RFMOs in particular. The panel explored the boundaries of transparency and the tension between the need for transparency and confidentiality.

Both Workshop regional groups covered the following agenda items:

- Transparency in information sharing.
- Transparency in compliance review mechanisms.
- Transparency of outcomes of compliance review procedures.

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

Group 1[*]	Group 2[**]
DAY 1: 15 MARCH (4 P.M. EST)/16 MARCH (7 A.M. AEDT)	
Opening and panel discussion (1.5 hours)	
DAY 2: 16 MARCH (9 A.M. EST)	DAY 2: 17 MARCH (11 A.M. AEDT)
Sessions 1 and 2 (3 hours)	Sessions 1 and 2 (3 hours)
DAY 3: 17 MARCH (9 A.M. EST)	DAY 3: 18 MARCH (11 A.M. AEDT)
Sessions 3 and 4 (3 hours)	Sessions 3 and 4 (3 hours)
DAY 4: 18 MARCH (4 P.M. EST)/19 MARCH (7 A.M. AEDT)	
Conclusions and next steps (1.2 hours)	

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

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

Detailed Workshop agendas are available in Appendix 2. Group facilitators summarized the key points from each session, which were shared immediately with all participants. The conclusions from each Group provided the basis for drawing the key learnings from the Workshop, which were presented in the final plenary session.

3. Workshop materials

All materials for the Workshop were made available to workshop participants on the Basecamp online platform, which also offers dedicated space for communication among participants. The Workshop Basecamp hosts a "Compliance Library," which includes a collection of research and RFMO materials

relevant to compliance review mechanisms, with a dedicated section on transparency in RFMOs that features most recent research on the topic. Workshop participants were invited to send their contributions to this library. All materials in the Compliance Library, including RFMO compliance profiles developed for the first Workshop, will remain available online for Workshop participants and the future RFMO compliance forum on Basecamp. The compliance forum will serve as the place for open discussions on RFMO compliance issues. There will also be a calendar of events and a bulletin board for posting of relevant articles and publications. The forum will be moderated, and participants will join by invitation. All participants to the first and second Workshops will be invited to join, and they may suggest new forum participants.

As part of the Workshop preparations, more than half of the participants responded to a pre-Workshop survey, which helped gather information on the experts' background and on their views on transparency in RFMO compliance review mechanisms. Conclusions from this survey, available in Appendix 3, were very useful to frame the regional group discussions.

4. Workshop proceedings: Challenges and potential solutions

This section provides a summary of the challenges and potential solutions that were identified by Workshop participants. These are structured along the three main themes discussed at the Workshop:

- Transparency of information to be provided to and from the RFMO.

- Transparency of the actual review mechanisms, including deliberations.

- Transparency in determining the outcomes of situations of non-compliance and follow-up actions for non-compliant members, as well as for the RFMO as a whole.

A. Transparency in information sharing

Experts at the Workshop considered transparency of information coming into and from the RFMO. On the former, they considered whether RFMOs were obtaining all information necessary to assess compliance and if information should be provided from other sources besides the RFMO members themselves. On the information to be provided from the RFMO, there was emphasis on the type of information to be shared and on the format in which this information was to be presented. The role of confidentiality as a potential limit to transparency in information sharing was particularly considered.

In particular, Workshop participants considered the rationale for sharing information relevant to compliance with the public and other stakeholders, including companies like retailers that purchase fisheries products, as well as opportunities for RFMOs to share data with each other. Both working groups considered that sharing information has advantages. Several participants considered that restrictions to the sharing of information should be minimal, perhaps only when relating to personal data. A number of participants viewed that the sharing of data should be targeted to its purposes; there may be no need for all data to be public.

In addition, as in the first Workshop, participants of this Workshop also discussed the need for clear CMMs as a driver of better compliance in RFMOs. This need was acknowledged in relation to improving the quality and quantity of data to be reported on and processed by the RFMO Secretariat, but also as a tool to add clarity to compliance review processes and their outcomes.

1. Quantity and quality of information to be provided to and assessed by the RFMO

Challenges

- Quantity of information.

  o There is no universality on the data front; some RFMO compliance teams have sufficient information, some too much and others too little. It is both a function of scale of fisheries in their Convention areas and the ability to sort the data. Depending on the RFMO, its size, makeup of members, etc., the amount and type of information managed varies greatly.

  o There are big demands on members to provide information, but it should be considered whether they are asked for the right data. It is not about having more information available but about having the capacity to evaluate information in a meaningful way. Obtaining data for data's sake is not useful if one does not have the ability to use it.

  o Sometimes too much data creates opacity through sheer volume.

- Quality of information.

  o Data quality is very important. Often, data is poor, and much information is not thoroughly tested or cannot be tested by its nature. This correspondingly means that the models upon which decisions may be made are also poor.

  o Participants stressed that information cannot always be verified. Member self-assessments are not always provided in a format that can then be evaluated effectively by RFMO Secretariats. Independent verification of data could be justified, welcome or desirable in some cases (see section on third-party data below).

  o Huge amounts of information are provided, but it is not always the right information. Whether information is useful depends on the purpose/priorities of the RFMO. Information gaps may be found everywhere, depending on your perspective.

  o There are many different data sources available, but because of the different forms and media through which they arrive (vessel monitoring systems [VMSs], observer reports, port inspection reports) they are difficult to filter or correlate with each other. However, doing that is very important, and is not always done because of data processing challenges.

- Capacity.

  o Information overload is a real issue for some Secretariats, as is having very tight timelines for turning around data. Often data does not arrive until the last moment. This results in not having time to do anything more than the bare necessity and just ensuring that everyone reports what they are supposed to report. Just assessing whether members have submitted all necessary data is a big task.

  o Often information is to be processed manually, which can be a problem and reduces analytical capacity and time.

  o In the context of Covid, RFMOs are certainly not receiving all necessary data.

Potential solutions

- RFMOs should make better use of the data they have and determine if they need more and then how to get it.

- In some cases, information gaps could be addressed intersessionally, aiming at facilitating the compliance evaluation at the annual meeting.

- There is also value in using risk analysis and focusing on key conservation measures to prioritize information needs.

2. Use of third-party data

Challenges

- There are concerns about the degree to which self-reporting has to be relied upon. Independent verification of data, including from third-party sources, can help improve the quality of data.

- Having data/information verified by independent sources should be considered in some cases. Some participants considered that independent verification generates fairness and equity. However, the difficulties in finding accepted, independent validators were recognized.

- There is insufficient use of technology for verification. For example, VMS is independent data and can be handled differently from national sources. On the use of information from sources such as automatic identification systems (AIS) for verification, some participants considered that this can be part of the answer, while others considered that it could be used to show trends or provide background information but should not be used to assess compliance.

- Members are reluctant to allow comparisons of different data sets, but across multiple RFMOs there is a need for a mechanism that allows analysis/comparison of data.

- Using information from third parties could result in imbalances or issues of due process (especially if it related to one member only), so some process for how to assess third-party information is needed, as well as how to use it in the RFMO compliance processes.

Potential solutions

- Independent verification by third parties could have value. Third parties may have capacity and external data sets that can contribute to analysis. Information from NGO observers can be really important for compliance reviews.

- Third-party data should be used, as long as it is suitably documented and provided in good faith. Some instruments such as catch documentation schemes work well for individual RFMOs, but for it to work broadly you would need to involve States that are not members.

- Greater transparency can help, as third parties may have the motivation and capacity to dig deeper into the massive data that Secretariats have.

3. Clarity of conservation and management measures

Challenges

- Measures can look good on paper but become problematic at the point of implementation. It would be ideal to have very clear conservation measures and the obligations on which members will be assessed. However, new measures are often drafted based on the old measures, along with unclear provisions.

- Often measures are too complex and filled with extraneous information that makes assessments more complicated.

- Measures should have clarification/discussion on how the measure should be implemented, but in practice this is not easy to achieve due to finalizing negotiations in a rush, last-minute changes, etc.

- If penalties/responses for significant non-compliance were clearer up font (perhaps in a measure), this could change behavior. If there are no consequences, there is no reason to change.

Potential solutions

- While there are too many CMMs and their reporting requirements are very different, the key advantage of having requirements set out in a CMM is that it creates an obligation to report by members.

- Given the ambiguity of some measures, it would be useful to keep institutional records of negotiations of a measure to understand the rationale as it was drafted.

- Move away from last-minute negotiations and incorporate planned measures, which allow focus on implementation and details.

- Have the correct people around the table when a measure is negotiated. Consider having a drafting committee, guided by instructions from the relevant experts.

- Draft measures or agreements in bullets, for simplicity, but also provide full text that led to those agreements.

- While RFMOs often have limited capacity to conduct analyses, if the problem is clearly identified and if people agree it should be solved, then the resources can be found.

- Secretariats should analyze data and point out any inconsistencies.

4. **Presentation of compliance information and results, including Secretariat reports**

Challenges

- There is a distinction between the capacity and the mandate of the Secretariat. Members are often not resourcing Secretariats sufficiently to do the necessary work, and Secretariats do not have much time/capacity to do sufficient data analysis and provide a deep dive to determine compliance, etc. At the same time, the Secretariat needs to be explicitly given the mandate to analyze and knit together the information. If there is no mandate, there is no budget and no capacity.

- Data presentation is getting better, but it can be a bit esoteric to newcomers; the detail creates opacity and disadvantages new members to the compliance committee. Information presented in compliance reports is not always intuitive in terms of what the assessments actually mean. Reports can provide a more informed message on what an RFMO is doing well and what it is not, and what it is doing about it.

- It could be helpful to have other data sets, etc., to draw a complete picture. However, it is very challenging to get members' approval to use other data sets.

- A lot of the compliance assessments are administrative and mundane (i.e., are data provided in the correct templates, etc.) and are not focused on compliance review priorities.

- Public naming and shaming of non-compliant activity should be avoided until the remediation process is complete.

Potential solutions

- On reporting, and building on existing models of reporting, RFMOs can make information more manageable for parties (reporting sheets, etc.) and help visualize the data (IT tools). Providing

more transparent presentation of information would strengthen the legitimacy of the compliance processes (and RFMO) and demonstrate that there is a robust process behind it and that there is accountability.

- Routine publication of compliance committee activity would be useful to demonstrate how well the RFMO is performing and whether it is done.

- Changing the narrative of what the compliance process is for, switching from the notion of penalties to one of improving capacity, could help promote trust and transparency (both among members and in terms of increasing inclusivity of NGOs). It would be helpful to look at the results of the compliance review process with a constructive approach, in the context of improving the health of the RFMO. Members could then be more open about providing information.

- Large amounts of information can be handled if RFMOs adopt a schedule to do deeper dives into different measures over several years.

- It is useful for Secretariat reports to point out data deficiencies and be explicit about it, and to present compliance information in an integrated fashion.

5. Sharing information/data among RFMOs, other organizations and the public

Challenges

- Transparency has levels, and sharing of data may depend on the source of information and the intended use.

- Data should be provided in a public manner as it is about public fisheries, mainly in international waters. However, the default is that it is only provided upon request with confidentiality requirements. Some data may be sensitive, also commercially, but there should be rules for determining which data is confidential. The default should be to release, as secrecy breeds mistrust.

- Releasing all data, however, does not ensure getting over lack of trust. A step forward would be to share more targeted data that achieves a clear purpose. This would build confidence in RFMOs among markets and general society.

- Data ownership is a key challenge to information sharing. Some data is proprietary, and someone gets to decide on who can use it.

- Regarding information sharing among RFMOs, some members are skittish about sharing data within RFMOs and across RFMOs due to confidentiality and ownership issues/concerns.

Potential solutions

- Clarify and update the definition of "confidentiality," also considering all the new technology that can show where vessels are, for example. Establish rules and a review process for determining which data are confidential to prevent arbitrariness.

- Sharing of information could be helped by having clear rules that allow the Secretariats to do this with clarity and without risk.

- Not all information needs to be shared in real time, but there could be some utility in making information available for non-RFMO members once it has been considered by the RFMO. The former could then analyze it retroactively.

- Compliance evaluations should be released publicly.

- Regarding the sharing of data among RFMOs, memorandums of understanding (MoUs), or even a global agreement on data release, would be helpful steps. However, RFMO members need to keep in mind that adopting these agreements is no guarantee of meaningful interaction.

- There should also be overarching transparency provisions or guidelines for RFMOs (to be adopted, for example, at the U.N. Fish Stocks Agreement Review Conference), which could be used by all RFMOs.

- Developing and using standard wording and procedures for the same ocean basin/adjacent overlapping RFMOs could promote cooperation, information sharing and strengthen implementation (especially for industry since the regulations would not be so diverse and remove loopholes/ambiguity).

- Convening panel discussions across RFMOs, scientists, observers, etc., is useful for promoting transparency.

B. Transparency in compliance review mechanisms

Workshop participants considered the role of transparency in RFMO compliance processes and how the reviews could be improved to both enhance implementation and compliance, such as by the introduction of audit points or performance metrics and automatizing elements of the assessments. The working groups also explored whether and, if so, when, limits on transparency were warranted, such as the participation of observers or non-members in compliance process discussions or making public identified compliance issues or trends.

Regarding audit points or performance metrics, this was an issue that was touched on in the first Workshop but not discussed in depth. Most RFMOs have not yet developed audit points. Two RFMOs — the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and the WCPFC — have developed or are developing such metrics. During the Workshop, an expert from the WCPFC discussed its ongoing work to develop audit points. This presentation informed the working group discussions. The main purpose of audit points is to clarify the Commission obligations assessed under the Compliance Monitoring Scheme and to provide a checklist to be used by proponents to include in any proposal submitted to the Commission for consideration. The role of audit points is to remove subjectivity, clarify how obligations are to be met and improve transparency of CMMs. Workshop participants considered that the use of audit points can also be helpful in identifying the overall performance of an RFMO and assessing their performance from a global perspective.

Regarding automatized assessments (on submission of reports, meeting deadlines, completeness of reports, for example), Workshop participants considered that automating certain aspects of compliance assessments can provide important benefits, such as:

- Helping identify where a deeper dive in the assessment is necessary. It can help focus on more critical compliance areas given the limited time to conduct compliance reviews. If the Secretariat can review issues that are binary (e.g., whether a member met a deadline) and determine compliance or non-compliance in advance of the compliance meetings, this would make the volumes of data more manageable and allow the assessment to focus on serious issues of non-compliance.

- Allowing RFMOs to identify areas for improvement but also successes, and facilitate information sharing.

- Helping to achieve greater harmonization among RFMOs and improve transparency.

On the issue of transparency in deliberations and decision-making and the results of compliance reviews, Workshop participants acknowledged that, overall, there should be full transparency within the compliance committee and data should be shared among all members (and authorized observers). There was a recognition that, at the moment, public reports are fairly "sanitized." Some participants considered that if data sharing and assessment procedures are broadened, there will be greater ownership and parties will understand the compromises better and be more likely to implement the measures. However, it was also noted that there are data that are sensitive to share with observers and that some discussions may need to happen in closed sessions to find a solution.

1. **Transparency in assessment criteria and audit points**

Challenges

- Development of audit points is still relatively new in RFMOs and, at present, WCPFC and CCSBT are most advanced in the development of this tool.

- Use of audit points may require consistent and regular review, as they need to adapt to changing circumstances and needs in the RFMO. Their introduction into current RFMO processes may impact the current status quo. This needs to be factored in.

- Specifically on the use of audit points in the development of new measures, there is a concern that, despite them offering a template on assessment criteria, often circumstances change significantly between the point of introducing a new proposal and the end of a negotiation. There may be the need for negotiations of a new proposal to go back to the initial guiding criteria.

Potential solutions

- Implementation of audit points needs to be coupled with a risk-based needs assessment, which continually assesses risks and residual risks following application of appropriate responses. Risks may change over time.

- When implementing new systems or introducing new elements or concepts, it is important to consider their impact to the current status quo.

- Audit points can provide consistency across RFMOs. Even if acknowledging the different needs for a regional and global approach, there are huge benefits to having a consistent approach — however culture and relationship differ. There should be a way to find harmonization and identify high-level elements that are the same that can be adopted by all.

2. **Automatization of assessments**

Challenges

- There is a difference between collecting statistics and assessing compliance. Automatized assessment should not lead to oversimplified assessments.

- Assessments can be automated, at least to some extent, particularly when there are no grey areas in the information that is being used and responses are binary (i.e., yes/no). For other matters, some weighting may need to be taken into account, which allows a prioritization of what to assess. It might be difficult to automate things without that.

- A few Secretariats are already moving toward automation, especially when it comes to yes/no information, and successfully implementing online reporting. In other RFMOs, there is very little information related to compliance provided electronically. This needs to improve.

Potential solutions

- Ensure that the design and presentation of the automation is transparent.

- Categorize and deal with cases of egregious or repeated non-compliance of missing deadlines or not submitting reports (like port inspections), which can undermine the effectiveness of an RFMO (linked to trend tracking). Designations like "priority non-compliant" that then trigger a response (capacity building or improvement plan) could be a potential option/solution. Penalties should be developed if the incentive of capacity building is insufficient in improving behavior.

3.   Transparency in deliberations and decision-making

Challenges

- Full transparency can act as a disincentive to share compliance data as it can end up prejudicing the member that submitted it within the RFMO — but also make it subject to unilateral action taken outside the RFMO (i.e., trade measures).

- There is the paradox that when compliance systems work well, and/or members comply with their obligations, there is less interest by observers to participate in compliance meetings. This is the manifestation of how transparency of information breeds self-correcting behavior. Observer interest wanes where there are high levels of compliant behavior as the compliance system is seen to be working as it should.

- It should be noted that members are the focus of compliance sessions, not vessels per se. The activities of the vessels are discussed, but it is up to the flag State to ensure compliance. At the same time, in situations such as illegal, unreported and unregulated (IUU) vessel listing, processes are not as transparent as they could be and there should be more information on listings, beneficial owners and whether any penalties have been imposed.

Potential solutions

- Compliance reviews should be open to accredited observers and non-members with no restrictions except potentially confidentiality agreements. If deliberations need to happen behind closed doors, there needs to be transparency regarding the outcomes once the decisions are made. Deliberations could be documented better.

- At least one RFMO (CCSBT) has a public corrective actions policy, whereby the response to an infraction is already agreed in principle and identifies in advance what must be public. RFMOs could establish compliance control rules (as in harvest control rules), which would take the politics out of what the response will be to specific infractions.

- Need to look at compliance from different perspectives: (1) flag States, (2) coastal States and (3) vessels (why there are IUU vessel lists) and beneficial owners/operators. More emphasis needs to be placed on flag State performance.

- Country audits could look into the reasons for non-compliance and look for ways to support, build capacity and improve implementation.

- Annual meetings are vital, but increasingly it is important to have intersessional working groups between the RFMO members and the Secretariat. This allows more timely remediation and clears the agenda for the plenary of the compliance committee. The Covid pandemic has made people more open to intersessional work.

C. Transparency of outcomes of compliance review procedures

Workshop participants considered the role of transparency in the outcomes of RFMO compliance review processes, including with respect to the consequences for non-compliance and the follow-up actions by members or the RFMO Secretariat, as well as tracking trends of compliance over time. The working groups also explored how transparency in compliance assessments could improve the performance of RFMOs.

1. Transparency of reporting on consequences of non-compliance

Challenges

- Assessments of non-compliance can be embarrassing for RFMO members. These assessments could be made available only to members and not to the public. Some Workshop participants noted that perhaps the knowledge that information on non-compliance will be published by the RFMO could lead to members being reluctant to identify other members as non-compliant. Overall, experts considered that restricting access to compliance information to only members should be the exception, not the rule.

- There are differences among RFMOs. Some have thorough reports, which provide follow-up actions and a comparison of how individual members have been doing over years.

- Need to ensure that members understand the information provided and that access is granted to all members at the same time.

- There are situations where standards are not applied consistently or fairly. Currently, some States get to resolve their issues behind closed doors while others do not.

Potential solutions

- Issues of non-compliance by members and action by the Commission should be publicly available, at least in the reports.

- The RFMO should adopt corrective actions policies, mentioned above, which identify in advance the consequences of non-compliance and what needs to be made public in their regard.

- Lack of capacity can be behind situations of non-compliance, and States in this situation may be reluctant to accept more transparency in the compliance process. It is necessary to ensure capacity assistance as part of the compliance assessment process. That needs to be part of the support to assist and not be punitive.

- Embarrassment at RFMO level can have positive aspects and act as a driver to promote action by the flag State against actions caused by its nationals.

- Once the compliance committee has adopted its report, the information that was used for compliance review should be made available to the public. The report also has to be clear on outcomes or consequences of non-compliance for RFMO non-members.

- The Covid pandemic and the need for virtual meetings has facilitated making information more accessible within the organization. This has also increased transparency for those outside the organization.

2. Transparency of follow-up actions by members and by the RFMO Secretariat

Challenges

- There are serious challenges in the veracity of reporting on domestic responses after situations of non-compliance, which undermine the entire compliance monitoring. There should be a joint mechanism to report after the fact. Follow-up actions by members should be made public.

- Members should provide reports back on what they are doing to address infractions/missing reports/lack of implementation of measures. Information on responses should be made public.

- The issue of transparency is not as relevant because the follow-up only happens a year later. The follow-up process does not feel meaningful at some RFMOs**.** Until processes are more automated, it is difficult to turn around and act during the year.

- Some members do not want information to be released publicly intersessionally due to concerns over confidentiality, data ownership or misuse of information, etc.

Potential solutions

- If capacity is needed to address situations of non-compliance, it should be provided. Secretariats can emphasize where more effort is needed. Countries receiving assistance need to provide information on what they need and show improvement — linked to tracking trends.

3. Transparency and tracking compliance trends

Challenges

- To track trends, it is important to have a baseline. Governmental and non-governmental organizations are looking at trends of compliance over time. It is difficult because processes and measures have changed over time, and they are not comparable. Given limited time to review compliance of numerous measures, some RFMOs prioritize the review of different measures in different years. This may affect the perception of a member's overall compliance rate and may complicate compliance review processes for those measures not reviewed on a regular basis. Capturing all these variables is very hard in practice.

- Members are likely to make slow progress in the implementation of a measure shortly after it has been adopted. There is some consideration of giving members a grace period of sorts, after which assessment of progress begins.

- Tracking should be not only about identifying problems but also about identifying successes.

- Designations/status/labels of compliance status, such as "compliant," "non-compliant," etc., are not always used. Without such designations, trends in compliance by members could be harder to track. However, having or not having such labels could complicate the compliance review process (e.g., if there is no label, is that a disincentive to improve? Or too much time is often spent debating what labels/status/designation to apply to a member as opposed to addressing serious non-compliance or how to improve compliance).

Potential solutions

- Good to set a baseline and aim for improvement. Compliance tables are a useful tool to show progress.

- There is great value in tracking trends over time. This is useful for creating knowledge; demonstrating that there is a level of rigor that goes into the compliance process, which can be shared publicly. Tracking is also helpful to understand the reasons that drive non-compliance and improve the performance of the RFMO.

- Incentivize improvement for the serious non-compliers through penalties, capacity building, calling out publicly, etc.

- Consider rewarding members (and fleets) that do more than required. Can this be a good incentive for compliance?

- RFMOs need to be seen to be doing their jobs, so the value is also in making sure that they are actively trying to improve.

4. **Transparency in the use of compliance assessments to improve the performance of the RFMO, particularly the quality of CMMs**

Challenges

- Conservation measures are not always sufficiently clear, and there may be two different interpretations of a measure.

- The compliance committee and the Secretariat have a vital relationship in making the necessary changes identified as needed in CMMs, but this too often breaks down. Secretariats lack capacity and have limited mandates.

Potential solutions

- Information gathered in compliance assessments can be used in improving clarity of new conservation measures and in assessing existing measures.

- Within Secretariat capacities, there is lots of work underway, also in cooperation with chairs of compliance committees, to improve and smooth compliance reporting requirements. Current initiatives can be developed and expanded to other RFMOs.

- Identify conflicting CMM requirements or duplicative ones and suggest changes.

- Clarify the meaning of some measures.

- Improve compliance templates for reporting and harmonize them to make the data input easier. The use of compliance tables should be encouraged. They also help with tracking.

- Undertake in-country missions to work with members and help them understand their obligations.

- Provide summaries and simple "eye-shot" visuals of a member compliance situation. Perhaps this can be replicated in other RFMOs.

- Secretariats ought to be empowered, have some degree of independence.

D. **Future opportunities**

During the closing session of the Workshop, the participants discussed future opportunities to take forward some of the key learnings from this and the first Workshop. It was noted that some countries operate in several RFMOs, and they can improve standards across RFMOs.

Participants also explored the idea of using existing forums as a place for RFMOs to discuss common issues, perhaps in the framework of the Regional Fishery Body Secretariats Network(RSN) of all RFMOs, the U.N. Fish Stocks Agreement Review Conference or through existing collaborative initiatives, like the Tuna Compliance Network and the International Monitoring Control and Surveillance (IMCS) Network.

Finally, participants recognized that there is a thirst for change, but it will require the breaking of established systems. Some emphasized that for real change to happen there needs to be political will that comes from outside the RFMO or technical bodies and that includes a global perspective. One opportunity that was noted is the ongoing negotiation in the U.N. on a new implementing agreement under the U.N. Convention on the Law of the Sea, where the need for greater sharing of data across regional bodies and for greater coordination and exchange of information/data among RFMOs and other international institutions to better manage fisheries and ocean uses collectively is an active part of these discussions. It was also emphasized that changes also must come from inside the RFMO, driven by members and Secretariats.

5. Workshop outcomes

A. Cross-cutting themes

Each regional working group had very detailed and rich deliberations on the themes of the Workshop over two days. The key learnings from each working group were captured by the Workshop facilitators. These key learnings were circulated to the Workshop participants through Basecamp, and from them a number of cross-cutting themes were identified. These were presented to the participants during the closing plenary session:

- Transparency is important and could be improved in RFMOs, particularly compliance processes, but not all RFMOs are alike.
- Transparency is multifaceted and needs to be targeted to its purpose.
- Greater participation of stakeholders (industry and NGOs) in decision-making is an important aspect of improving transparency.
- Transparency contributes to assessing RFMO performance.
- There are different stages of compliance (implementation, legislation).
- Tools exist (or should be created) to achieve more transparency and overcome concerns with data sharing, the use of third-party information, observer participation, reporting, etc.
- Trust is essential, and the lack of trust is a main driver for reduced transparency.
- Limits on transparency can be justified but should be used sparingly.
- There are challenges related to insufficient capacity of members to generate and provide information and to participate effectively in RFMO meetings.
- Some RFMO Secretariats have limited capacity to analyze and facilitate information to members and other stakeholders.
- Secretariats play a key role in fostering transparency.

- The narrative on compliance assessments should be changed — away from punitive measures to improving the performance and "health" of the RFMO in achieving its goals and objectives.

B. What is transparency and how useful is it to RFMOs?

The discussions in the two working groups, and also the outcomes of the pre-Workshop survey, pointed to several common themes and indicated that Workshop participants shared similar perspectives on transparency. At the same time, contributions from experts reflected the multifaceted nature of transparency in compliance review mechanisms and showed that proper analysis of the matter requires a high level of detail and that this detail leads to a wide range of differentiated perspectives. The responses of Workshop participants to the pre-meeting survey (Appendix 3), and the discussions in the two working groups during the Workshop, indicated that most viewed transparency as having two principal components: 1) allowing broad participation in decision-making and assessment processes; and sharing information and documents. The discussions also repeatedly emphasized that transparency is essential to accountability, but this cannot be achieved without openness, fairness and trust.

Experts emphasized that transparency has not only an *external* component, related to sharing information outside of the RFMO, or with observers, but also an *internal* component, which determines the relationships among RFMO members and can have implications in terms of fairness and mutual trust. Participants at the Workshop acknowledged in their discussions the connection between transparency and other aspects identified in the first Workshop to be important drivers of compliance, such as the form and content of information requirements established by the RFMO and the importance of capacity building.

Participants supported the notion that some limits to transparency may be justified to protect sensitive data or facilitate negotiations, although the majority of them considered that limitations to transparency should be used sparingly. Overall, participants agreed that transparency has so far benefited RFMOs and that there is more RFMOs should do, and can do, to strengthen transparency in compliance processes.

It was noted during the Workshop that transparency levels vary significantly among RFMOs and that this is due to, among other things, the amount of information different RFMOs receive, the kinds of technology used, the levels of analysis conducted, and their general openness toward observers and non-members. Workshop participants considered that improving RFMO capabilities to assess, verify and present data and information relevant to applicable obligations and compliance with such obligations — both internal to the RFMO (e.g., the national government members) and external to the RFMO (e.g., NGOs, other non-members, the public) would enhance the transparency of RFMO compliance assessment processes, their perceived effectiveness and accountability, and the utility of such processes in improving the performance of RFMOs.

It was also noted that there is a "range" of transparency, whereby some situations may require greater transparency than others (i.e., transparency of negotiations of a measure versus transparency in the implementation of this measure once adopted); there are also "layers" of transparency, where different stakeholders can be transparent in different ways for different purposes.

Some participants emphasized the question of whether there can be a trade-off between ensuring transparency and adopting good measures or implementing them effectively, which is the ultimate objective of an RFMO. Could transparency be counterproductive for good governance? Other experts

considered that transparency is a tool to improve the performance of an RFMO and that, with greater harmonization of assessment criteria, it could be a tool to assess all RFMOs globally.

C. Potential solutions identified in the Workshop

Workshop participants identified a range of concrete potential solutions to the challenges identified in the three main themes discussed at the Workshop:

- Transparency of information to be provided to and from the RFMO.

- Transparency of the actual review mechanisms, including deliberations.

- Transparency in determining the outcomes of situations of non-compliance and follow-up actions for non-compliant members, as well as for the RFMO as a whole.

Transparency of information to be provided to and from the RFMO, and among RFMOs:

- Establish electronic/online reporting tools and forms.

- Develop confidentiality agreements and standardized rules across RFMOs for data sharing, cooperation and transparency.

- Harmonize reporting requirements and assessment procedures across ocean basins or among RFMOs with shared stocks or overlapping areas.

- Rethink existing definitions and conceptions of "confidentiality" and data sharing rules in light of new and emerging technology.

- Use third-party information/data for verification of self-reporting.

- Strengthen the capacity of and empower Secretariats to analyze and identify compliance issues and present information in more intuitive ways (e.g., aggregate compliance tables or summaries).

Transparency of the actual review mechanisms, including deliberations:

- Establish audit points/performance requirements for measures/obligations.

- Develop a risk-based approach to assessments that is adaptable to changing circumstances in fishing activities.

- Automate aspects of the compliance review process to allow more time to consider systemic issues and serious compliance problems (e.g., "health checks").

- Use independent chairs for compliance committees.

- Develop confidentiality agreements to allow for observer participation.

Transparency in determining the outcomes of situations of non-compliance and follow-up actions:

- Track performance over time to target areas of improvement or where implementation is consistently lacking so solutions can be identified.

- Consider creative approaches to using a range of tools to improve compliance (incentives and penalties).

- Establish joint mechanisms to report on follow-up actions.

- Develop pre-agreed responses to non-compliance: compliance control rules.

- Harness political will (external to the RFMO) to improve transparency.

III. Appendices

Appendix 1. List of participants

Hrannar Már Ásgeirsson, monitoring control and surveillance officer, North East Atlantic Fisheries Commission

David Balton, former U.S. ambassador for oceans and fisheries

Derek Campbell, chair, Compliance Committee, International Commission for the Conservation of Atlantic Tunas

Gabrielle Carmine, Stockholm Resilience Centre

Sangaa Clark, Parties to the Nauru Agreement policy adviser, including on WCPFC

Alexa Cole, former chair, Technical and Compliance Committee, WCPFC

Duncan Currie, independent expert

Ruth Davis, Australian National Centre for Ocean Resources and Security, University of Wollongong

Robin Davies, The Pew Charitable Trusts

Robert Day, chair, Technical and Compliance Committee, North Pacific Fisheries Commission (NPFC)

Gerard Domingue, compliance officer, Indian Ocean Tuna Commission

Todd Dubois, fisheries monitoring and compliance manager, Commission for the Conservation of Antarctic Marine Living Resources

Laura Eeles, The Pew Charitable Trusts

Adriana Fabra, adviser, The Pew Charitable Trusts

Johanne Fischer, expert, international fisheries

Peter Flewwelling, compliance manager, NPFC

Solène Guggisberg, Netherlands Institute for the Law of the Sea

Quentin Hanich, Fisheries Governance Research Program leader, University of Wollongong

Judge Tomas Heidar, vice president, International Tribunal for the Law of the Sea

David Hogan, chair, Compliance Committee, Inter-American Tropical Tuna Commission

Peter Horn, The Pew Charitable Trusts

Susie Iball, compliance manager, CCSBT

Randy Jenkins, compliance manager, South Pacific Regional Fisheries Management Organization

Jung-re Riley Kim, chair, WCPFC

Kristín von Kistowski, MCS and compliance expert, U.N. Food and Agriculture Organization (FAO)

Holly Koehler, vice president, policy and outreach, ISSF

Gerald Leape, principal officer, The Pew Charitable Trusts

Sarah Lenel, consultant, FAO

Antonia Leroy, head of ocean policy, WWF European Policy Office

Lara Manarangi-Trott, compliance manager, WCPFC

Frank Meere, chair, Compliance Committee, CCSBT

Erik Molenaar, Netherlands Institute for the Law of the Sea

Dae-Yeon Moon, executive secretary, NPFC

Rhea Moss-Christian, lead for WCPFC Intersessional Working Group on the Review of the Compliance Monitoring Scheme's work to develop audit points

Guillermo Ortuño Crespo, Stockholm Resilience Centre

Alberto Parrilla, compliance officer, ICCAT

Penny Ridings, legal adviser, WCPFC

Eirdre Sharp, assistant compliance manager, WCPFC

Lizette Voges, executive secretary, South East Atlantic Fisheries Organization

Osvaldo Urrutia, legal and policy adviser, international fisheries, Government of Chile

Mark Young, executive director, International MCS Network

APPENDIX 2. Workshop Agendas

GROUP 1: UTC−7, UTC−6, UTC−5, UTC−4, UTC−3, UTC−2, UTC, UTC+1, UTC+2, UTC+3

MARCH 15 | 4–5:30 P.M. ET (UTC−5)

Chair: Gerald Leape, The Pew Charitable Trusts

Opening session // Expert panel discussion & webinar

10' Opening

50' Panel discussion on "The role of transparency in the performance of RFMOs"

- Moderator: Judge Tomas Heidar, vice-president, International Tribunal for the Law of the Sea
- Panelists:
  - David Balton, former U.S. Ambassador for oceans and fisheries
  - Quentin Hanich, Fisheries Governance Research Program leader, University of Wollongong
  - Dr. Penny Ridings, legal adviser at WCPFC

30' Questions & answers

MARCH 16 | 9 A.M.–12 P.M. ET (UTC−5)

FACILITATORS:
Robin Davies*, The Pew Charitable Trusts;* ***Adriana Fabra****, independent advisor;* ***Peter Horn****, The Pew Charitable Trusts*

Session 1 // Introduction & background

10' Presentation of goals, objectives and organization of the working group and participant introductions

10' Conclusions & lessons learned from first *Virtual Expert Workshop*

20' Introductory discussion: Presentation of the survey results, impressions from the opening panel discussion, and initial remarks from group members

Session 2 // Transparency and information for compliance assessment

5' Organization Session 2

55' **BREAKOUT GROUP 1:** Information for compliance review: from RFMO members; RFMO Secretariats; from observers and non-members. | **BREAKOUT GROUP 2:** Information for compliance review: from RFMO members; RFMO Secretariats; from observers and non-members.

Preliminary questions to consider:
- Are RFMOs obtaining all the information necessary to assess compliance?
- Which additional information should be obtained? From where?
- Should there be more information requested from fisheries operators (i.e. VMS)?
- How is the information need or requirement defined? Is it to be determined in the conservation measure itself?
- Can conservation measures be drafted to be clearer in how compliance is going to be assessed?
- Should information from observers and non-members be used for compliance reviews (note that some RFMOs already allow this), and if so, for what uses?
- Are there limits on the type and sources of data or information to be requested and provided (i.e., confidentiality, volume of information, type of organization or institution)?

20' Reporting back on information for compliance review. Discussion.

10' **BREAK**

40' BREAKOUT GROUP 3: Presenting information used in compliance review procedures, including Secretariat reports.

BREAKOUT GROUP 4: Presenting information used in compliance review procedures, including Secretariat reports.

Preliminary questions to consider:
- What and how much information used for compliance reviews should be made available by RFMO Secretariats? To whom?
- How should this information be presented?
- Are there alternative methods of presenting compliance material that could make it more easily evaluated by compliance committees and members?

BREAKOUT GROUP 3: Sharing information among RFMOs, other organizations, the public, etc.

BREAKOUT GROUP 4: Sharing information among RFMOs, other organizations, the public, etc.

Preliminary questions to consider:
- What information related to compliance reviews should be shared with other international organizations and representatives of civil society?
- Are there examples of data sharing MoUs?
- Are there limits to such sharing among RFMOs, other international organizations or with civil society?

20' Reporting back and agreement on main conclusions from discussion

MARCH 17 | 9 A.M.–12 P.M. ET (UTC−5)

FACILITATORS:
Robin Davies, The Pew Charitable Trusts; Adriana Fabra, independent advisor; Peter Horn, The Pew Charitable Trusts

5' Reporting from previous days

Session 3 // Transparency in Compliance Review Mechanisms

5' Organization Sessions 3 & 4

25' The role for transparency in assessment criteria and audit points. Examples and practical recommendations

Preliminary questions to consider:
- How can audit points/performance metrics promote clarity and transparency in the design of measures?
- Can audit points enhance implementation and strengthen compliance?
- Are there specific elements that should be considered in designing and implementing audit points?

40' BREAKOUT GROUP 5: The role for transparency in deliberations and decision-making.

BREAKOUT GROUP 6: The role for transparency in deliberations and decision-making.

Preliminary questions to consider:
- Can assessments be automatized? If so, what impact can this have on transparency? How can this be addressed?
- Should there be any limits to transparency in decision-making processes among members of an RFMO?
- Should there be any limits to the participation by non-members and observers in compliance review mechanisms?

BREAKOUT GROUP 5: Transparency and tracking compliance trends.

BREAKOUT GROUP 6: Transparency and tracking compliance trends.

Preliminary questions to consider:
- Is there value in RFMOs tracking trends (by member and/or by measure) over time?
- If a Commission tracks identified compliance issues, how does it convey this to other members and/or outside the RFMO? Can this be improved?
- Should this information be available to accredited observers?
- Should this information be made public?

10' BREAK

Session 4 // Outcomes of compliance review mechanisms and transparency

75' **BREAKOUT GROUP 7:** Transparency in the consequences of non-compliance: RFMO outcomes and reporting

BREAKOUT GROUP 8: Transparency in the consequences of non-compliance: RFMO outcomes and reporting

Preliminary questions to consider:
- Should all responses to a situation of non-compliance taken by the member concerned or taken by the Commission in accordance with its procedures be made public?
- What information regarding the deliberations in a compliance assessment procedure should be included in RFMO reports? Are there limits to what information should be disclosed?

BREAKOUT GROUP 7: Transparency of responses to situations of non-compliance or results of the review: Follow-up actions by members and by the RFMO Secretariat.

BREAKOUT GROUP 8: Transparency of responses to situations of non-compliance or results of the review: Follow-up actions by Members and by the RFMO Secretariat.

Preliminary questions to consider:
- Does the Commission follow up on responses by the member concerned to situations of non-compliance? Does the Commission follow up on sanctions or responses to non-compliance it has imposed through its own procedures? If so, how and how frequently?
- Should there be feedback from members regarding identified areas of non-compliance to ensure that the problem is resolved? Should this response be publicly available or available to accredited observers? Are there or should there be other follow-up mechanisms?
- What follow-up actions and information should be made public (e.g., included in annual RFMO reports)?

BREAKOUT GROUP 7: Transparency in the use of compliance assessments to improve the performance of the RFMO.

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- Does the Commission take action (such as on recommendations by the compliance committee)to address conservation measures that are unclear?
- Does the Commission take action to ensure that new CMMs include clarity in the obligations/what will be assessed, etc.?
- Is the Secretariat empowered to take action to improve reporting requirements, etc.?
- How fully are compliance considerations incorporated into day-to-day deliberations of the Commission?

20' Reporting back and agreement on main conclusions from discussion

MARCH 18 | 4–5:30 P.M. ET (UTC–5)   *Chair: Gerald Leape, The Pew Charitable Trusts*

30' Report back on outcomes from previous two days

30' Key findings and conclusions

10' Closure

MARCH 16 | 7–8:30 A.M. AEDT (UTC+11)

Chair: Gerald Leape, The Pew Charitable Trusts

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    - Dr. Penny Ridings, legal adviser at WCPFC

30' Questions & answers

MARCH 17 | 11 A.M.–2 P.M. AEDT (UTC+11)

FACILITATORS:
Quentin Hanich, U. of Wollongong; **Holly Koehler**, ISSF;
Osvaldo Urrutia, Government of Chile;

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- Should there be any limits to transparency in decision-making processes among members of an RFMO?
- Should there be any limits to the participation by non-members and observers in compliance review mechanisms?

BREAKOUT GROUP 5: Transparency and tracking compliance trends. BREAKOUT GROUP 6: Transparency and tracking compliance trends.

Preliminary questions to consider:
- How does the Commission follow up on identified compliance issues? Can this be improved?
- Is there value in RFMOs tracking trends (by member and/or by measure) over time?
- Should this information be available to accredited observers?
- Should this information be made public?

10' BREAK

Session 4 // Outcomes of compliance review mechanisms and transparency

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MARCH 19 | 7-8:10 A.M. AEDT (UTC+11) *Chair: Gerald Leape, The Pew Charitable Trusts*

30' Report back on outcomes from previous two days

30' Key findings and conclusions

10' Closure

Appendix 3. Conclusions from pre-Workshop survey

At the time of closing this report, more than half of the participants at the Workshop (26) completed the pre-Workshop survey (see survey questions in Appendix 4 below), which focused specifically on the issue of transparency in improving compliance in RFMOs. Answers brought useful quantitative and qualitative information, as respondents provided extensive comments.

What is transparency about?

More than 90% of respondents considered that transparency is about participation and, to a smaller degree, about disclosure of documents. Also, more than half of participants (61.5%) considered that transparency involves ensuring full publicity of decisions undertaken by government officials.
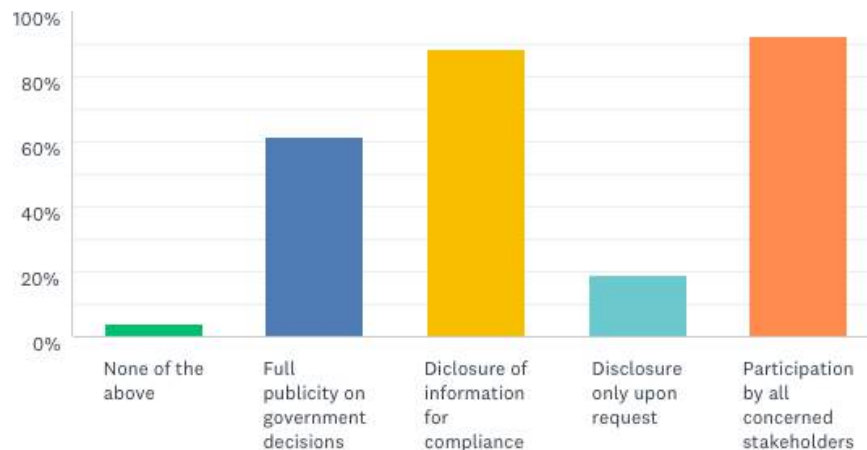
Comments clarified that transparency is also about the quality and the type of the information: Information should be "accurate and complete" and be made available in a "timely" way; on the type of information, some comments indicated that the organization "must provide information about its activities and governance," also referred to in another comment as its "management arrangements and implementation." A commenter emphasized that information should go to stakeholders, whose input should be taken into consideration "before making a decision."

One comment stressed the importance of equality of involvement in participation and decision-making. Some respondents referred to the need to place some limits on sharing certain information or delay its release, for example "for security reasons and to protect the innocent."

When given a choice of words to relate to the notion of transparency, respondents considered that transparency is most closely related to "accountability," "openness" and "trust," in this order. One respondent suggested that it was also related to "independent verification."
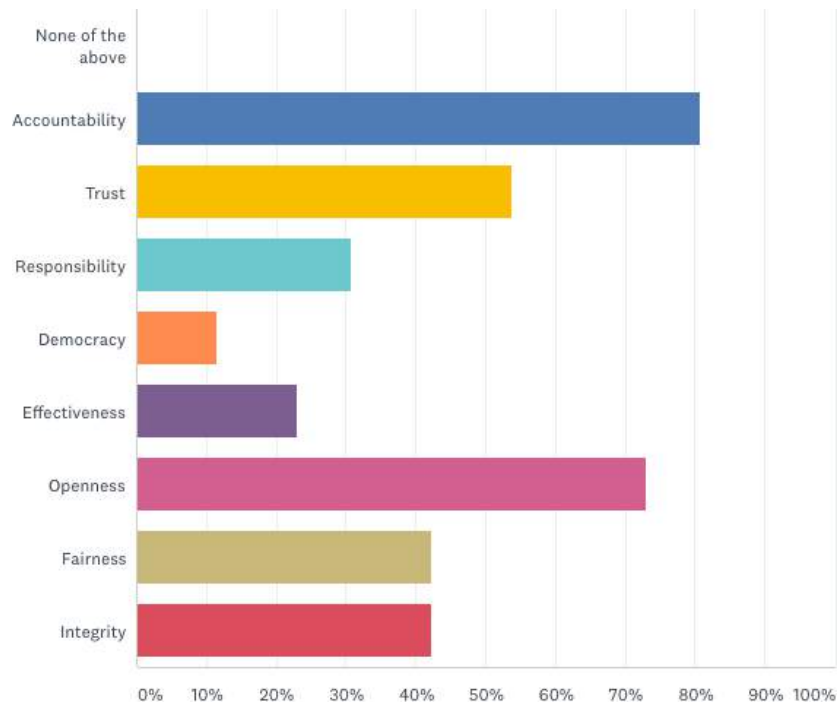
Should transparency have limits?

All respondents agreed that some limits on transparency are justified. There is high support (92%) for the notion that limits should be placed if disclosing information can create a risk to the health or safety of a person or result in the violation of a human right or law. Respondents also broadly supported (68%) the idea that less transparency could be acceptable if helpful to reaching better decisions or more effective implementation. However, in the comments, a respondent indicated that this latter option could only be used as a "last resort," and another indicated that full disclosure "should be the starting position." Limiting disclosure of information due to real or likely economic impacts was perceived as a less valid ground (32%).
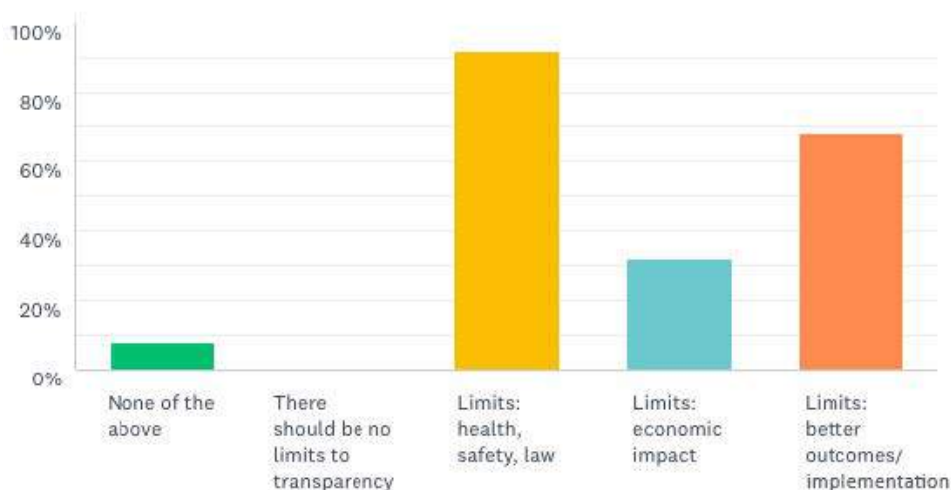
One commenter noted that grounds for limiting transparency, such as those provided in the survey, could best be viewed as a ranked list. It was also suggested that specific limits should be developed for the specific circumstance of each RFMO.

Another respondent indicated that requiring high levels of transparency could have the opposite of the desired effect and result, in practice, in more informal negotiations and the sharing of less information among decision-makers. It was noted that the limited capacity of the RFMO to provide information on request could end up being a barrier to transparency.

Specifically on the issue on how to address confidentiality concerns, respondents unanimously agreed that there are ways to address these concerns, even if some respondents indicated that sharing information can be challenging. Comments provided some suggestions on mechanisms that could be considered before, during and after the meeting:

- Establish data sharing agreements among RFMOs (at least those in the same ocean space).

- Adopt well-defined confidentiality measures with a view of maximizing public transparency without compromising internal access to sensitive data and documents or effective negotiations and free speech during meetings.

- Ensure that non-public meetings follow formal procedures, including equal opportunity for all members (and stakeholders concerned) to participate, nomination of a chairperson and taking internal minutes.

- Arrange for all materials to be, in principle, made public after decisions.

- If needed, establish access to information policies, with clear procedures.

- Establish non-disclosure agreements, confidentiality procedures and agreements, numbered documents so all are returned at the end of the meeting, no internet access so nothing is reported during the compliance sessions, etc.

One comment noted that governments and the fishing industry need to move beyond their historical view that operations should be confidential.

Transparency in RFMOs

There was no unanimity on whether RFMOs are, in general, sufficiently transparent: 79% of respondents considered they are not, but a 21% found them to be sufficiently transparent.

Several respondents highlighted in their comments that levels of transparency vary among RFMOs ("there is a real mix," "it depends on the organization," "some are fairly transparent — others not so much"). One comment added that "all have significant room for improvement in transparency of their compliance regimes."

Other comments pointed to the fact that levels of transparency vary also depending on the *RFMO bodies and actors* involved ("transparency in the context of RFMOs isn't just about the wider global community") and on the *types of issues*. It was noted that transparency is also determined by the *quality of the information and the way it is provided* ("simple, concise and publicly evident summaries of non-compliance are difficult to find") and by the *design of compliance review mechanisms* (two respondents highlighted that they happen "behind closed doors"; two other comments referred to the "opaqueness" in decision-making and compliance review mechanisms). On the contrary, another respondent considered that "RFMO processes and measures themselves are often reasonably transparent."

Some respondents explained that opaqueness occurs "where individual members often pursue national priorities and block attempts to independently verify implementation," or that it is driven by an "old-fashioned paranoia and distrust of observers and civil society."

Some comments pointed to possible steps forward, such as making data and documents publicly available through websites, rendering stakeholder involvement more transparent, and building trust to not misuse sensitive information.

Over 90% of respondents considered that greater transparency has or could have benefited RFMOs. Several comments indicated that more transparency could incentivize improved behavior and accountability. This could occur through versions of "naming and shaming" and allowing stakeholders to utilize compliance information in their advocacy. A respondent noted that more transparency can help provide trends, general issues with measures or differences in implementation that result in more clarity regarding issues to resolve ("without the need for name and shame").

Two comments highlighted the contribution of having greater transparency for better monitoring and control, particularly for preventing IUU fishing activities (i.e., information on vessel registrations, owner/operator information, VMS and AIS data, etc.). Making this information accessible could also benefit those who are abiding by the rules.

Some respondents emphasized that transparency could help build trust in the process. At the same time, compliance processes benefit from greater trust by stakeholders. Another commenter explained that building such trust may require time and there may be a need for confidentiality until there is "greater comfort that processes are fair and cooperative towards improving compliance." More transparency could "improve equal participation of members."

Two respondents were more uncertain about transparency necessarily being beneficial to RFMOs. One comment indicated that this "may be" the case, and another response explained that "there is limited evidence" of its benefits and wondered "if increased transparency may increase concerns for secrecy and privacy and thus limit the provision of required data and information and robust discussion."

How to improve transparency in RFMOs?

95% of respondents considered that there is more that RFMOs should do to strengthen transparency in their compliance processes. Of them, nearly 50% considered that improvements need not be "significant," but not minor either.

Comments offered ideas on how such processes could be improved:

- Enable compliance officials to fully utilize all new monitoring tools available to ensure sustainable resource and ecosystem management of our oceans.

- Provide greater dissemination of "sanitized" VMS positional data or tracks.

- Ensure discussions and evaluations occur in plenary including meaningful discussions that at times occur bilaterally (e.g., IUU list and Compliance Monitoring Report).

- Introducing independent verification of compliance by members. This would aid overall confidence in the appropriateness of measures and compliance generally.

- Make documentation available to non-governmental stakeholders (some comments add: "who agree to be bound by appropriate confidentiality agreements").

- Allow greater observer viewing and/or participation in subcommittees/working group activities.

- Allow greater participation by observers in compliance review mechanisms. Stakeholders should be offered opportunities and incentives to be openly involved in the decision-making process.

- Provide more detailed information about compliance of members, including enforcement actions.

- Ensure that meeting reports include arguments, not just decisions. Decisions and actions (including confidentiality requirements) should be explained and justified in a clear and intelligible manner.

- Provide more detailed reporting on the response by members to identified non-compliance and their proposed actions to address/investigate.

- Provide more detailed reporting on the types of non-compliances over time so patterns can be identified and addressed ("track compliance").

- Share information on potential obstacles to implementation so capacity building or other supportive remedies can be offered (including by NGOs).

Access by observers to documentation and participation in working groups and compliance procedures was highlighted by more than half of the commenters.

Appendix 4. Survey

RFMO Compliance Second Workshop - Pre-Event Questionnaire about Transparency

⊕ PAGE TITLE

1. In your opinion, is "transparency" about any of the issues below? You may choose more than one option.

☐ Full publicity of any information relative to decisions undertaken by government or public officials and how those decisions are taken

☐ Disclosure of documents and procedures used to ensure compliance with decisions

☐ Disclosure only on upon request of all documents and procedures necessary to make decisions and ensure compliance with decisions

☐ Participation (including through observing) by all concerned stakeholders in deliberation, decision-making and implementation processes, even if not in the same manner as officials

☐ None of the above

Other (please specify)

2. Should transparency have limits (e.g., are there acceptable and necessary situations where data or reports should not be made public or discussions should occur in closed sessions) ? You may choose more than one option below.

☐ There should be no limits to transparency

☐ There should be limits if disclosing information can create a risk to the health or safety of a person or result in the violation of a human right or law

☐ There should be limits if disclosing information can result in a real or likely economic damage

☐ There should be limits if preservation of confidence can result in reaching better decisions/more effective implementation

☐ None of the above

Optional - Please explain your answer or provide examples:

3. Do you think that RFMOs are, in general, sufficiently transparent?

○ Yes

○ No

Please explain your answer:

4. In your experience, do you think greater transparency in RFMOs has or could have benefited those organizations?

○ Yes

○ No

Please provide examples or explain your answer:

5. Is there more that RFMOs can or should do to strengthen transparency in their compliance processes?

Nothing more is needed; RFMO compliance processes are transparent		Additional transparency would be an improvement		RFMOs compliance processes should be significantly more transparent than they are
★	★	★	★	★

Please explain your answer or provide examples of potential improvements:

6. Do you think there are ways to address concerns with increased transparency in RFMOs, in particular the compliance processes (e.g., confidentiality agreements or limitations on use or retention of materials)?

○ Yes

○ No

If you answered yes, please provide examples:

7. Which of the words below are in your opinion more closely related to the notion of transparency? Please choose only two.

☐ Accountability

☐ Trust

☐ Responsibility

☐ Democracy

☐ Effectiveness

☐ Openness

☐ Fairness

☐ Integrity

☐ None of the above