

## FAO Compliance Agreement

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (“Compliance Agreement”) was adopted under the auspices of FAO, by FAO Conference Resolution 15/93 at the 27th Session of the FAO Conference in November 1993. It was adopted as part of FAO’s work on the Code of Conduct for Responsible Fisheries (*see* 9.1.3) and was formally integrated as part of the Code when that instrument was adopted in 1995 (see Article 1(1) of the Code of Conduct). Unlike the other parts of the Code, however, the Compliance Agreement is a legally binding treaty. It entered into force on 24 April 2003, after acceptance by 25 Parties.

The main functions of the Agreement concern defining the responsibilities of flag States, particularly through authorizing fishing vessels to fish on the high seas, and establishing a system of information exchange on high seas fishing activities designed to improve compliance by high seas fishing vessels and to limit the freedom of vessels that have a bad compliance record to “shop around” for new flags. The original mandate for the negotiations leading to the Agreement was somewhat different, however, as it was intended that the Agreement should deal directly with the issue of reflagging, i.e. the practice of changing the national registration of a fishing vessel (and hence its flag) as a means of avoiding compliance with international conservation and management measures. Early negotiating drafts therefore included provisions dealing with rules for national registration of fishing vessels, grounds for refusal of registration and elaboration of the genuine link principle. Quite early in the negotiations, however, it became clear that agreement on such matters was never going to be reached, at least not in the time frame set for the negotiations, and so the focus of attention shifted from registration and reflagging to arrangements for authorizing fishing and defining elements of flag State responsibility.

Although the Compliance Agreement stops short of dealing with the central issue of reflagging, it nevertheless contains a number of measures of considerable importance to high seas fisheries management, and was the first instrument to develop principles of flag State responsibility on a global scale (although such principles had already begun to emerge in some regional instruments: e.g., Article 4 of the 1987 Multilateral Fisheries Treaty between the Government of Certain Pacific Island States and the United States of America, see Chapter 2.4.8). Indeed, at the time of its adoption the Agreement was acclaimed as “a momentous achievement and a milestone in the international management of high seas” (Resolution 15/93, operative paragraph 2).

Its impact has been somewhat limited, however, in particular as it took many years to enter into force; it has not been widely ratified (in particular because a number of important high seas fishing States consider it burdensome and a number of States, in particular in the South Pacific, dislike the exclusion in the Agreement for vessels under 24 metres); and because of practical difficulties in implementing its provisions. Nevertheless, the Agreement contains some important measures, both in respect of flag State responsibility and information exchange, which if implemented widely should improve compliance by high seas fishing vessels and should make it more difficult for vessels with poor compliance records to switch registries. The Agreement therefore warrants further attention than has so far been paid to it by States.

### Objectives and scope

The objectives of the Agreement are not expressly specified but include the deterrence of flagging or reflagging of vessels fishing on the high seas as a means of or in a way that results in avoiding compliance with international conservation and management measures; and specifying flag States' responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing [Preamble].

The Agreement applies in general to all fishing vessels that are used or intended for fishing on the high seas [Article II(1)]. Provision is made, however, for parties to exempt vessels of less than 24 metres in length from the application of the Agreement (except that the general obligation in Article III(1) still applies) [Article II(2)].

### **Participation**

The Agreement is open to acceptance by any Member or Associate Member of FAO, and to any non-member State that is a member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency. Procedures are specified for a regional economic integration organization Party to provide information as to which, as between it and its Member States, is responsible for the implementation of any particular matter covered by the Agreement.

### **Institutional mechanisms**

No specific institutional mechanisms are provided in relation to the Agreement's governance, although FAO is provided with several functions in the implementation of the Agreement (described below). Nevertheless, as part of its responsibilities to keep the implementation of the Code of Conduct for Responsible Fisheries under review, FAO also reviews implementation of the Compliance Agreement.

### **Main provisions and functions**

The Compliance Agreement is based on two main elements, namely the concept of flag State responsibility and promoting the free flow of information on high seas fishing activities.

#### *Flag State responsibility*

The general obligation on flag States under the Agreement is to take such measures as may be necessary to ensure that vessels flying their flags do not engage in any activity that undermines the effectiveness of international conservation and management measures [Article III(1)]. To this end, the Compliance Agreement sets out three key obligations concerning authorization. First, the Agreement also requires that a vessel should not be allowed to fish on the high seas unless it has been authorized to do so in accordance with appropriate authorization procedures established by the flag State [Article III(2)]. Second, a flag State is not to authorize a vessel to fish on the high seas unless it is able, taking into account the links that exist between it and the fishing vessel, to exercise effectively its responsibilities under the Agreement [Article III(3)].

The third aspect corresponds most closely to the original mandate for the negotiations, as it is designed specifically to discourage States from reflagging. Thus, States are not to authorize a fishing vessel to fish on the high seas where it is known to have engaged in activities that have undermined the effectiveness of international conservation and management measures whilst registered in another State (whether or not that State is a Party to the Compliance Agreement) unless: (i) any period of suspension by the other State of an authorization for such fishing vessel to be used for fishing on the high seas has expired; or (ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by the other State within the last three years [Article III(5)(a) and (b)]. Exceptions are allowed for the legitimate change of a vessel's ownership and – more generally – if the flag State determines, after having taken into account all relevant facts, that to grant an authorization to use the vessel for fishing on the high seas would not in any case undermine the object and purpose of the Agreement [Article III(5)(c) and (d)].

In order to help enforcement, flag States are to ensure that their boats are properly marked in a way that permits ready identification and are to supply full details of their operations to State authorities to enable the latter to comply with the obligations under the Agreement [Articles III(6) and (7)]. Flag State Parties

are also required to take enforcement measures in respect of vessels which act in contravention of the Agreement, including, where appropriate, the imposition of sanctions, including refusal, suspension or withdrawal of authorization to fish [Article III(8)]. Such sanctions must be “of sufficient gravity” as to be effective in securing compliance with the requirements of the Agreement and to deprive offenders of the benefits accruing from their illegal activities.

#### *Exchange and free flow of information*

The second branch of the Compliance Agreement is designed to ensure the adequate flow of information on high seas fisheries activities. States are required to establish and maintain a record of their fishing vessels authorized to fish on the high seas [Article IV] and the Agreement specifies in some detail the information to be included in such records [Article VI]. The Agreement sets out four mechanisms to promote the exchange and free flow of information. First, States Parties are required to exchange information on fishing vessels’ activities, in order to help identify the fishing vessels flying their flags that are reported to have engaged in activities undermining international conservation and management measures [Article V(1)]. Second, where a (non-flag State) Party has reasonable grounds for believing that a fishing vessel voluntarily in its port has been used for an activity that undermines the effectiveness of international conservation and management measures, that party is required to notify the relevant flag State accordingly [Article V(2)]. Third, the Agreement urges States, when and as appropriate, to enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis [Article V(3)]. Fourth, the Agreement provides for FAO to have a central role in receiving, organizing and distributing information.

Thus, flag States are to make the information detailed in their vessel records available to FAO and, in turn, FAO is to make this information available to other contracting States and to fisheries management organizations [Article VI(4)]. FAO has implemented this system by developing the High Seas Vessel Authorization Record (HSVAR), an online database, but only a small number of States currently contribute to the database (part of the problem being that very few States have developed comprehensive national records).

Flag States are also obliged to inform FAO promptly concerning violations by their fishing vessels, including information on action taken against those vessels that undermine the effectiveness of international conservation and management measures [Article VI(8)(a)]. Other States may also draw a flag State’s attention to violations by its vessels and may also provide a report to FAO, which can then circulate this information to other contracting States, provided that the flag State concerned has an opportunity to comment on the allegations [Article VI(8)(b)].

#### *Developing States*

The Agreement obliged Parties to cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties that are developing countries in order to assist them in fulfilling their obligations under the Agreement [Article VII].

### **Dispute settlement**

The Compliance Agreement, in contrast to the LOS Convention and the UN Fish Stocks Agreement, does not contain a compulsory dispute settlement procedure. Disputes in the first place are to be settled by consultations, with a view to reaching a satisfactory solution as soon as possible [Article IX(1)]. If such consultations fail, although the Agreement sets out obligations concerning further submission of the dispute to a variety of fora, such action in all cases is dependent upon the consent of all parties to the dispute [Article IX(2) and (3)]. If agreement cannot be reached on how to settle the dispute, the Agreement merely provides that the Parties continue to consult and cooperate with a view to reaching settlement of the dispute

in accordance with the rules of international law relating to the conservation of living marine resources. Several commentators have criticized this part of the Agreement on the ground that – by providing differing procedures than other instruments for the settlement of disputes relating to high seas fisheries – it contributes to the fragmentation of the legal regime governing such fishing activities.

### **Further information and references**

#### *- Internet sources*

FAO Fisheries Department website

[www.fao.org/fishery](http://www.fao.org/fishery)

- Code of Conduct for Responsible Fisheries section  
[www.fao.org/fishery/ccrf](http://www.fao.org/fishery/ccrf)
- Compliance Agreement section  
[www.fao.org/fishery/ccrf/2,2](http://www.fao.org/fishery/ccrf/2,2)
- High Seas Vessels Authorization Record (HSVAR)  
[www.fao.org/fishery/collection/compliance-agreement](http://www.fao.org/fishery/collection/compliance-agreement)

#### *- Selected bibliographic references*

Balton, D. 'The Compliance Agreement' in E. Hey (ed.) *Developments in International Fisheries Law*. (Kluwer, 1999)

Birnie, P. 'New Approaches to Ensuring Compliance at Sea: The FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas'. 8 *Review of European Community and International Environmental Law* 48 (1999)

Grainger, R. 'High Seas Fishing Vessel Database' in M. H. Nordquist and J. N. Moore (eds) *Current Fisheries Issues and the Food and Agriculture Organization of the United Nations*. (Kluwer, 2000)

Moore, G. 'The FAO Compliance Agreement' in M. H. Nordquist and J. N. Moore (eds), above

Moore, G. 'The Food and Agriculture Organization of the United Nations Compliance Agreement'. 9 *International Journal of Marine and Coastal Law* 412 (1994)

#### *- Treaty references*

33 *ILM* 968 (1994); *FAO Treaties* No. 12; 2004 *ATS* 26; *IFTD*

### **Citation**

This profile may be cited as: C. Hedley. 'FAO Compliance Agreement' in *International Fisheries Agreements*, Vol. 1, section 1.3. (London: Ocean Law Publishing, 2008).