

**Council**

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***Compliance and Accountability Mechanisms  
in Six International Environmental Treaties***

***(paper tabled by World Wildlife Fund (US)  
at Open Session on 'Next Steps for NASCO')***

## **Introduction**

In the early 1990s, international environmental treaties included few mechanisms to hold parties accountable for compliance with their provisions. Since then, however, a number of environmental conventions have responded to this challenge by creating reporting and compliance mechanisms that are potentially powerful tools for ensuring accountability and effective implementation of treaty provisions.

This brief paper outlines the structures and procedures adopted under six international environmental treaties - two regional fisheries conventions and four others - to encourage compliance with treaty obligations. The Conventions discussed include NAFO and ICCAT, as well as the treaties dealing with ozone, climate and international trade in hazardous wastes and trade in endangered species. Each of the six has some mechanism for securing and reviewing information about compliance that goes beyond simply passively accepting and distributing self-reporting by the parties. In most cases, this includes the existence of Standing Committees with responsibility for handling compliance issues. In one case, the Secretariat itself analyzes data on compliance and reports objectively on apparent cases of non-compliance. These six international environmental conventions provide different models for NASCO to consider as it reviews the recommendations made in this area by the Next Steps Working Group.

### **1. International Commission for the Conservation of Atlantic Tunas (ICCAT)**

At its November 1995 meeting, ICCAT strengthened the mandate of its Compliance Committee (previously called the Infractions Committee), to give it greater capacity to evaluate compliance by Contracting Parties. The Compliance Committee now has the authority to make recommendations to the Commission on how to resolve problems of non-compliance by Contracting Parties and to provide for the development of suitable and effective measures to ensure proper application of Convention provisions.

The Committee's authority also extends to reporting by the Contracting Parties. In 1995 the Committee proposed and the Commission adopted a new format for National Reports, calling for the inclusion of additional information that the Committee believed would be necessary to evaluate compliance with ICCAT conservation and management measures.

### **2. Northwest Atlantic Fisheries Organization (NAFO)**

In 2002, NAFO created a Standing Committee on International Control which had the authority to:

- a. review and evaluate the effectiveness of the Conservation and Enforcement Measures established by the Fisheries Commission;
- b. review and evaluate the compliance by Contracting Parties with the Conservation and Enforcement Measures established by the Fisheries Commission;
- c. review and evaluate reports on the inspection and surveillance activities carried out by the Contracting Parties;
- d. review and evaluate reports on infringements, including serious infringements, and the follow-up thereto by the Contracting Party; produce an annual report on compliance by all Contracting Parties for the preceding calendar year. The report is based on a comprehensive provisional compilation by the Executive Secretary of

relevant reports submitted by Contracting Parties and any other information available to the Executive Secretary.

- e. promote the co-ordination of inspection and surveillance activities carried out by the Contracting Parties;
- f. develop inspection methodologies;
- g. consider the practical problems of international measures of control;
- h. consider such other technical matters as may be referred to it by the Fisheries Commission; and
- i. make appropriate recommendations to the Fisheries Commission.

In 2004, NAFO adopted the first compliance review, the goal of which was to identify areas in which compliance with the NAFO measures could be improved. The report will be accessible to the public on the NAFO public website. The compliance review is to be based on a data compilation by the Executive Secretary which would facilitate comparison of data not only from states themselves but from other sources (NAFO STACTIC, 2003; NAFO, 2004).

### **3. Montreal Protocol:**

The Montreal Protocol on Substances that Deplete the Ozone Layer adopted a procedure for dealing with non-compliance at the Fourth Meeting of the Parties in Copenhagen in 1992. Under the "Non-Compliance Procedure" (NCP), any Party or group of Parties that has a reservation about the Implementation of the treaty by another Party can address such a reservation to the Secretariat of the Vienna Convention. The Secretariat, after having made the grounds of the reservation known to the Party whose implementation is in question, gives that Party an opportunity to reply.

The submission and the reply are then forwarded to the Implementation Committee, consisting of representatives of Parties elected by the Meeting of the Parties for two years, which is to achieve an equitable geographic balance. The Committee reports to the Meeting of the Parties on its findings, including any recommendations.

Any decisions made by the Implementation Committee can be adopted by the Meeting of the Parties. The Meeting of the Parties provided an "indicative list" of measures that can be taken in the event of non-compliance (Ozone Secretariat, 1992):

- Assistance in the collection and reporting of data, technical assistance and financial assistance and technology transfer;
- Issuing cautions;
- Suspension of privileges under the Protocol.

### **4. Kyoto Protocol**

At the Seventh Conference of the Parties, a decision was adopted on the compliance mechanism for the Kyoto Protocol which makes it one of the most comprehensive and rigorous systems for accountability of any international treaty. The compliance mechanism consists of a Compliance Committee made up of two branches: a Facilitative Branch and an Enforcement Branch.

The facilitative branch provides advice and assistance to Parties to promote compliance, whereas the enforcement branch has the authority to determine consequences for

Parties which do not meet their commitments under the treaty. Each of the two branches is composed of 10 members, with representation from each of the five official UN regions, one from the small island developing states, and two each from Annex I and non-Annex I Parties. Decisions of the Facilitative Branch may be taken by a three-quarters majority, but decisions of the Enforcement Branch require, in addition, a double majority of both Annex I and non-Annex I Parties. The Committee also meets in a Plenary composed of members of both branches. A Bureau, made up of the Chair and Vice-Chair of each branch, supports its work.

A potential compliance problem can be raised either by an expert review team, which examines national reports, by a Party about its own compliance, or by a Party raising concerns about another Party. After a preliminary examination, the question of implementation will be considered in the relevant branch of the Compliance Committee. The Compliance Committee bases its deliberations on reports from expert review teams, the subsidiary bodies. Parties and other official sources (Wiser, 2002; Crossen, 2004).

## **5. Basel Convention**

At its sixth Conference of the Parties in 2002, the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes adopted a "Mechanism for Promoting Implementation and Compliance," centered on a Committee with 15 members reflecting a geographic balance among regions. The mechanism provides a non-confrontational, non-binding way of helping parties implement provisions of the Convention, including reporting requirements.

Submissions to the Committee may be made by a Party, in relation to inability or failure of a Party to comply with and/or implement a Convention provision, or by the Secretariat in regard to possible difficulties of any Party in complying with its reporting requirements. A submission by a Party may include relevant and appropriate information provided by civil society organizations on compliance difficulties. The Committee may, inter alia, review the national reports of Parties provided under article 13 of the Convention.

In addition to its role in helping to resolve compliance difficulties, the Committee may, at the direction of the Conference of the Parties, review general issues of compliance and implementation, including matters of monitoring, assessing and facilitating reporting by the Parties (Secretariat of the Basel Convention, 2005).

## **6. CITES**

The Convention on International Trade in Endangered Species (CITES) has a compliance mechanism that relies on independent data rather than exclusively on self-reporting by the parties, which is the general practice of international environmental agreements. The Secretariat of the convention receives information on alleged infractions of CITES from NGOs, through WWF/IUCN Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC), and through information submitted by the Wildlife Trade Monitoring Unit (WTMU) of the World Conservation Monitoring Centre in Cambridge, UK. The Secretariat analyses all the data and published confirmed case of violations, which are then brought up at Conferences of the Parties (Tenner, 2000).

## **Conclusion**

The compliance mechanisms of these six environmental treaties offer a wide range of alternatives for NASCO to consider in regard to strengthening compliance with NASCO decisions. Options include

1. Create a Compliance Committee with authority to receive information about non-compliance from a Party or Parties.
2. Give the Compliance Committee authority to make recommendations to the meeting of the Parties regarding any non-compliance case brought it.
3. Give the Compliance Committee the authority to make decisions about the information needed from the Parties in order to assess adequacy the degree of compliance with the decisions by the convention.
4. Give the Compliance Committee authority to issue a regular report on compliance with decisions of the convention.
5. Give the Compliance Committee the authority to review national reports in order to assess and report on compliance issues.
6. Allow the Compliance Committee to receive data on compliance from independent "expert review teams" on specific matters.
7. Give the Compliance Committee the authority to issue public information on case where it has found non-compliance.
8. Allow a Party to submit data on a compliance issue from non-government organizations.
9. Allow the Compliance Committee to receive data on compliance issues directly from non-government organizations.

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