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**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS AND  
PARTICIPATING TERRITORIES**

**Circular No.: 2013/83**

**Date: 30 August 2013**

**No. pages: 7**

**US Proposal for Conservation and Management Measure 2012-02 to be a  
permanent measure**

Dear all

Please find attached a revised draft proposal for the Compliance Monitoring Scheme from the United States. This proposal is circulated at the request of the United States, with the following cover note:

"The US circulated a proposal to revise CMM 2012-02 in July 2013 and sought comments from CCMs by mid-August. We received comments from Australia, Chinese Taipei, the European Union, and New Zealand. In addition, we sought and received comments from the Secretariat and TCC Chair based on their experience implementing the existing measure. We greatly appreciate the comments received and have revised our proposal in response to some of those comments. Of particular note, we wanted to highlight the changes we made to Annex I. These changes were based on a suggestion by the TCC Chair and we believe provide a more helpful guide for TCC and the Commission to evaluate compliance. In addition, we believe that these changes more accurately reflect the situations we have found in our first few years of evaluating compliance under the pilot program.

We look forward to discussing our proposal at TCC9 and welcome any thoughts, comments and suggestions on our proposal between now and then. Please send any comments to the attention of Alexa Cole ([alexa.cole@noaa.gov](mailto:alexa.cole@noaa.gov))."

Thanks



Professor Glenn Hurry  
Executive Director



**COMMISSION  
NINTH REGULAR SESSION  
Manila, Philippines  
2-6 December 2012**

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**CONSERVATION AND MANAGEMENT MEASURE FOR  
COMPLIANCE MONITORING SCHEME**

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**Conservation and Management Measure 2012-02<sup>1</sup>**

*The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Commission)*

*In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):*

*Recalling that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention,*

*Noting that, in accordance with Article 25 of the Convention, Members of the Commission have undertaken to enforce the provisions of the Convention and any conservation and management measures issued by the Commission,*

*Noting also that, in accordance with international law, Members and Cooperating Non-Members of the Commission and Participating Territories have responsibilities to exercise effective control over their flagged vessels and with respect to their nationals,*

*Noting further that Article 23 of the Convention obliges Members of the Commission, to the greatest extent possible, to take measures to ensure that their nationals, and fishing vessels owned or controlled by their nationals, comply with the provisions of this Convention, and that Article 24 of the Convention obliges Members of the Commission to take the necessary measures to ensure that fishing vessels flying their flag, comply with the provisions of the Convention and the conservation and management measures adopted pursuant thereto, as well as the obligations of chartering States with respect to chartered vessels operating as an integral part of their domestic fleets,*

*Noting that, in a responsible, open, transparent and non-discriminatory manner, the Commission should be made aware of any and all available information that may be relevant to the work of the Commission in identifying and holding accountable instances of non-compliance with management measures,*

*Recalling the recommendation of the second joint meeting of the tuna Regional Fisheries Management Organizations (RFMOs) that all RFMOs should introduce a robust compliance review mechanism by which the compliance record of each Party is examined in depth on a yearly basis,*

*Recognizing the need to provide such technical assistance and capacity building to developing State Members and Cooperating Non-Members, particularly small island developing State Members and Participating Territories, as may be needed to assist them to meet their obligations and responsibilities, and*

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<sup>1</sup> By adoption of this CMM (CMM-2013-XX) the Commission rescinds CMM-2012-02 which has been revised and replaced.

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Recognizing further the responsibility of Members, Co-operating Non-Members and Participating Territories to fully and effectively implement the provisions of the Convention and the conservation and management measures adopted by the Commission, and the need to improve such implementation and ensure compliance with these commitments,

Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:

#### **Section I - Purpose**

1. The purpose of the WCPFC Compliance Monitoring Scheme (CMS) is to ensure that Members, Cooperating Non-Members and, where appropriate, Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission. The CMS is designed to:

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- (i) assess CCMs' compliance with their obligations;
- (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance;
- (iii) identify aspects of conservation and management measures which may require refinement or amendment for effective implementation;
- (iv) respond to non-compliance through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, and include cooperative capacity-building initiatives and, in case of serious non-compliance, such penalties and other actions as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations;<sup>2</sup> and
- (v) monitor and resolve outstanding instances of non-compliance.

#### **Section II - Scope and application**

2. The Commission, with the assistance of the Technical and Compliance Committee (TCC), shall evaluate CCMs' compliance with the obligations arising under the Convention and the CMMs adopted by the Commission and identify instances of non-compliance.

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3. Each year the Commission shall evaluate compliance by CCMs during the previous calendar year with the obligations in the Convention and CMMs adopted by the Commission with respect to:

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- (i) catch and effort limits for target species;
- (ii) catch and effort reporting for target species;
- (iii) spatial and temporal closures, and restrictions on the use of fish aggregating devices;
- (iv) observer and VMS coverage;

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(v) provision of scientific data through the Part 1 Annual Report and the Scientific Data to be provided to the Commission; and

<sup>2</sup> In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 23 of this measure.

(vi) submission of the Part 2 Annual Report.

3bis. The Commission shall also evaluate compliance by CCMs during the previous calendar year with collective obligations related to the catch of stocks managed under the Convention.

4. Each year, the Commission shall consider and identify whether additional obligations should be evaluated annually or in another specified time period, taking into account:

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(i) the needs and priorities of the Commission, including those of its subsidiary bodies;

(ii) the need to assess and address persistent non-compliance; and

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(iii) the potential risks posed by non-compliance with particular obligations to achieving the goals of the Convention or specific measures adopted thereunder.

5. Through the CMS, the Commission shall also consider and address:

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(i) compliance by CCMs with recommendations adopted pursuant to the CMS, the previous year, and

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(ii) responses by CCMs to alleged violations reported under Article 23(5) or 25(2) of the Convention.

6. The preparation, distribution and discussion of compliance information pursuant to the CMS, shall be in accordance with all relevant rules and procedures relating to the protection and dissemination of, and access to, public and non-public domain data and information compiled by the Commission. In this regard, Draft and Provisional Compliance Monitoring Reports shall constitute non-public domain data, and the Final Compliance Monitoring Report shall constitute public domain data.

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7. The CMS shall not prejudice the rights, jurisdiction and duties of any CCM to enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with that CCM's international obligations.

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8. The Commission recognises the special requirements of developing State CCMs, particularly small island developing State Members and Participating Territories, and shall seek to actively engage and cooperate with these CCMs and facilitate their effective participation in the implementation of the CMS, including by:

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(i) ensuring that inter-governmental sub-regional agencies which provide advice and assistance to these CCMs are able to participate in the processes established under the CMS, including by attending any working groups as observers and participating in accordance with Rule 36 of the Commission's Rules of Procedure, and having access to all relevant documents, and

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(ii) providing appropriately targeted assistance to improve implementation of, and compliance with, obligations arising under the Convention and CCMs adopted by the Commission, including through consideration of the options for capacity building and technical assistance.

### **Section III - Draft Compliance Monitoring Report**

9. Prior to the annual meeting of the TCC, the Executive Director shall prepare a Draft Compliance Monitoring Report (the Draft Report) that consists of individual draft Compliance Monitoring Reports (dCMRs) for each CCM and a section concerning collective obligations related to the catch of stocks managed under the Convention. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations in the

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Convention and CMMs adopted by the Commission. Such information shall be sourced from reports submitted by CCMs as required in CMMs and other Commission obligations, such as Parts 1 and 2 of the Annual Reports as well as information available to the Commission through other data collection programs, including but not limited to, high seas transshipment reports, regional observer reports, Vessel Monitoring System information, High Seas Boarding and Inspection Scheme reports, and charter notifications; and, where appropriate, any additional suitably documented information regarding compliance during the previous calendar year. The Draft Report shall present all available information relating to each CCMs implementation of obligations for compliance review by TCC.

10. The Executive Director shall transmit the relevant dCMR of the Draft Report to each CCM by 28 July each year.

11. Upon receipt of the relevant dCMR of the Draft Report, each CCM may reply to the Executive Director by 28 August each year in order to (where appropriate):

- (i) provide additional information, clarifications, amendments or corrections to information contained in its dCMR;
- (ii) identify any particular difficulties with respect to implementation of any obligations; or
- (iii) identify technical assistance or capacity building needed to assist the CCM with implementation of any obligations.

12. At least three weeks in advance of the TCC meeting, the Executive Director shall compile and circulate to all CCMs the full Draft Report, including all information that may be provided under paragraph 11 of this measure.

13. The TCC shall review the Draft Report and identify any potential compliance issues for each CCM, based on information contained in the dCMRs, as well as any information provided by CCMs in accordance with paragraph 11 of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.

#### **Section IV – Provisional Compliance Monitoring Report**

14. Taking into account any additional information provided by CCMs, and, where appropriate, any additional information provided by non-governmental organisations or other organisations concerned with matters relevant to the implementation of this Convention, the TCC shall develop a Provisional Compliance Monitoring Report (the Provisional Report) that will include a provisional assessment of each CCM's Compliance Status and recommendations for any corrective action needed, based on potential compliance issues it has identified in respect of that CCM and using the criteria and considerations for assessing Compliance Status set out in Annex I of this measure.

15. The Provisional Report will also include an executive summary including recommendations or observations from TCC regarding:

- (i) identification of any CMMs that should be reviewed to address implementation or compliance difficulties experienced by CCMs, including any specific amendments or improvements that have been identified,
- (ii) capacity building requirements or other obstacles to implementation identified by CCMs, in particular small island developing State Members and Participating Territories, and

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(iii) additional priority obligations that should be reviewed under the CMS, pursuant to paragraph 4 of this measure.

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16. The Provisional Report shall be forwarded to the Commission for consideration at the annual meeting.

### **Section V - Compliance Monitoring Report**

17. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.

18. Prior to or during the Commission meeting, CCMs may provide the Commission with additional advice or information relating to the Provisional Report, including any steps taken to address identified compliance issues.

19. Taking into account any additional information provided by CCMs, the Commission shall adopt a final Compliance Monitoring Report that includes a Compliance Status for each CCM and recommendations for any corrective action needed, based on compliance issues identified with respect to that CCM.

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20. The final Compliance Monitoring Report shall also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 15 of this measure.

21. Each CCM shall include, in its Part 2 Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years.

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### **Section VI – Responses to Non Compliance**

22. The Commission shall take a graduated response to CCMs identified as having compliance issues, taking into account the type, severity, degree and cause of the non-compliance in question.

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23. The Commission hereby establishes an intersessional working group to develop a process to complement the CMS that shall identify a range of responses to non-compliance that can be applied by the Commission through the implementation of the CMS, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs. The intersessional working group shall progress its work electronically to the greatest extent possible. The intersessional working group shall endeavour to develop a process for consideration no later than TCC11 and adoption no later than WCPFC12.

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24. Once the Commission adopts a process establishing the range of possible responses to non-compliance, the TCC shall include a recommendation on the response to non-compliance in its Provisional Compliance Monitoring Report for consideration by the Commission. The Commission shall identify a response to non-compliance in its Compliance Monitoring Report.

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### **Application and review**

25. This measure shall be reviewed and revised, as needed, by the Commission to ensure its effectiveness.

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<#>At its tenth meeting, the Commission will review the operation of the measure during this trial period and, based on this review, consider and decide on measure that will apply after 2013. ¶

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## Annex I

### Compliance Status Table

Compliance Status	Next Steps	<b>Deleted:</b> Criteria for assessing Compliance Status
<i>Compliant</i>	<u>None</u>	<b>Deleted:</b> compliance issues identified with respect to the relevant obligations
<u><i>Non-Compliant and ...</i></u> <u>(all non-compliant statuses will be subject to review during subsequent years until compliance is reached)</u>	<u>a. Further clarification of obligation and one or more of b, c, or d</u> <u>b. Capacity building or technical assistance required</u> <u>c. Additional information required by XX date</u> <u>d. Rectify by XX date</u> <u>e. XX response (based on Commission's Response to Non-Compliance Framework - to be developed)</u>	<b>Deleted: Compliance Review</b> <b>Deleted:</b> Non-compliance may be due to: ¶ (i) insufficient, unclear or incorrect data or information ¶ (ii) actions or omissions which constitute a minor violation of relevant obligations ¶ (iii) ambiguity or misunderstanding of relevant obligations. <b>Deleted:</b> The purpose of a Compliance Review is to identify non-compliance of a technical or minor nature, or which requires the provision of further information, in order to identify implementation gaps and improve compliance.
		<b>Deleted: Compliance Action Plan ¶</b> The purpose of a Compliance Action Plan is to assist CCMs to actively take steps to respond to and rectify non-compliance, remove obstacles to non-compliance, or improve implementation of relevant obligations, including through the provision of technical assistance or capacity building, as appropriate.