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Manila Philippines
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Progress Report on the Independent Review of the Compliance Monitoring Scheme

**WCPFC14-2017-DP28
03 December 2017**

**Presented by
FFA Members**



3 December 2017

Feleti P. Teo OBE
Executive Director
Western and Central Pacific Fisheries Commission
PO Box 2356, Kolonia
Federated States of Micronesia

Dear Feleti,

Progress Report on the Independent Review of the Compliance Monitoring Scheme

I write on behalf of the 17 members of the Forum Fisheries Agency in my capacity as the Chair of the Forum Fisheries Committee.

FFA Members thank the independent panel for their hard work on the review of the CMS, and for their progress report. We had provided our preliminary views in Delegation Paper 6, prior to the submission of this progress report. Having received the report, FFA Members have submitted another Delegation Paper setting out our detailed response to some of the issues raised.

At the outset, we make the following general comments:

1. there are some useful points raised in the report which have been highlighted in our recent Delegation Paper, such as the need to explicitly cover audit points in the design of each CMM, resource considerations, clear reporting requirements and how compliance will be assessed;
2. it is essential for the Scheme to recognise and address two key fundamental areas (i) the need to build capacity, and to do so in a manner that complements existing national processes and (ii) the need to ensure that the Scheme is procedurally fair and produces fair outcomes;
3. there is a clear need to improve the CMS in order to ensure that it is robust, fair, transparent and efficient, and produces meaningful assessments in a timely manner which can inform management decisions;
4. the current CMS has become a long, drawn out process and unsustainable, and it would be critical to revisit the timing of review processes and the current list of obligations to be assessed;
5. it is essential to clarify the scope of the Scheme such that it properly and fairly assesses implementation of CCM obligations, including meeting flag State responsibilities; and
6. that a process needs to be set up to commence the development of remedial responses which help countries work towards compliance.

Looking at the operation of the existing process over the last few years, it is clear to us that some of these points will demand re-design of the CMS that goes beyond mere tweaks to the existing measure. We look forward to further discussions with the Panel this week to ensure that we can improve the CMS.

Please also find attached our specific comments on each of the key areas highlighted in the Panel's report.

We look forward to discussing this at the upcoming meeting. In the meantime, any queries should be directed to the FFA Secretariat (manu.tupou-roosen@ffa.int).

Yours sincerely

A handwritten signature in cursive script that reads "J Baldwin".

Jenny Baldwin

Chair

Cc: Rhea Moss-Christian, Chair of the WCPFC14 Commission meeting

SPECIFIC COMMENTS ON THE KEY AREAS SET OUT IN THE INDEPENDENT PANEL'S REPORT

1. Systems support

FFA Members fully agree with the Panel's recommendation to make the Commission's information management system more efficient to use and remove the need for repetitive information. This is in line with our FFA position to **remove duplicate reporting** as this is unnecessary and burdensome especially on SIDS, and we would like to see this addressed at this Commission meeting. This is also our position on issue 10 in the Panel report on duplication of information/data requirements

We also support the suggestion for the WCPFC Secretariat to assist CCMs, especially when new elements are added to the system. Specifically, for FFA Members, we value collaboration with the WCPFC Secretariat in assisting our Members at our annual MCS Working Group meeting and support its continuation.

We do not support the suggestion to allow CCMs to access the Case File Management System. Improvements are required to the system, for example, filtering the information to ensure genuine cases are included, as well as improvements to the process such as increasing reports on other fisheries, apart from the purse seine fishery. Until such time, providing greater access opens CCMs to risks of inappropriate use of the information and exacerbates some of the issues of balance and fairness discussed below.

2. CMS utility for management decision-making

FFA Members support the suggestion that proponents of a proposal clearly identify the obligations which are to be assessed that are critical for management decision-making.

3. Interpretation on and clarity of audit points

FFA Members agree that there is a fundamental issue with the lack of clarity or the ambiguity in several obligations which has consequently meant some key obligations cannot be assessed. This then defeats the purpose of the measure to ensure that such obligations are fully implemented. Such lack of clarity or ambiguity is normally only identified when CCMs come to implement that obligation or the obligation is assessed. In some cases, FFA Members' view is that there is no lack of clarity and this is being used as an 'excuse' to not implement an obligation. Having a clear-cut checklist which records the policy intent should address this.

Hence, FFA Members support the suggestion to **explicitly state the resource considerations, clear reporting requirements and how compliance will be assessed in each CMM**. Particularly with resource considerations, this is in line with CMM 2013-06 and the requirements for a SIDS impact assessment.

FFA Members agree that there is a need for the Commission to prioritise what it will focus on at each Commission meeting, including consideration of what is urgent to be adopted that year. Any other proposals are then given more space and time to be developed as well as to seriously consider a 2013-06 assessment in consultation with SIDS.

FFA Members also agree to the concept of a 'legal scrub', noting the difficulties encountered to date of negotiated text being developed in rushed manner in a tightly scheduled week for the Commission

meeting. We recognise that each CCM has its own legal advisers and their interpretations and approaches often vary greatly. Hence, we view the legal scrub as a tool to clarify the policy intent so that the scope for various interpretations is removed. An appropriate and useful point in the process needs to be identified for this legal scrub to take place.

FFA Members view the scientific review as the tasks already being undertaken at SC and by the SPC, and would appreciate clarification if something in addition to this is being sought.

FFA Members agree that we could review older measures, and we would prefer to focus that task by reviewing those obligations that have been highlighted in the CMR process as problematic or with interpretation issues.

4. Capacity Building

FFA Members fully support the Panel's suggestion that **2013-06 SIDS impact assessments are completed to clearly identify the support mechanisms required before a measure is adopted**, and that the **assistance is provided before SIDS are assessed** under that measure. We support that consideration be given to "progressive implementation", as provided for in CMM 2013-06.

FFA Members take the view that more clarity on the details required for FSI reports is required. In FFA DP06 to WCPFC14, FFA members stated that *"[s]pecifically on the FSI reports, it was clear that there were "significant discrepancies" in the information provided by CCMs, particularly on the level of detail provided by relevant flag States"*. Hence, we support the suggestion that there is clear criteria on the information that must be provided by Flag States, as submitted in the recommendation from TCC13 which was pushed by FFA Members.

We also support that financial resources are made available, where required, for the development and implementation of Capacity Development Plans. We query the need for a CDP coordinator and a case file support officer, and what their roles would entail.

5. CMS implementation challenges

FFA Members agree with the Panel highlighting the issue that a large amount of obligations get adopted each year and subsequently assessed in the CMS. There has to be a 'smarter' and sustainable way to assess priority obligations. The list of obligations selected for assessment is still too large and this has contributed significantly to the need for the current review.

FA Members have previously proposed this concept of a priority list of obligations for assessment to assist with managing the CMS process. There needs to be a **careful review of the current list of obligations, noting and pinpointing what are critical for management decisions**.

As suggested in Delegation Paper 6, we propose to **significantly cut back the amount of obligations assessed in 2018. This would allow far less time for the CMS process and more time dedicated to a comprehensive review of the CMS CMM**.

We also support the concept of having a list of 'lesser priority' items that would still warrant dedicated analysis and staggered timing for undertaking such analyses.

We agree with the Panel's suggestion to reduce the volume of minor issues and reflective of FFA Members' discussions to prioritise the review work to key issues rather than 'everything'. This would also help to identify the significant compliance issues that need to be addressed going forward, as more time is freed up for such analyses.

The concept of an intersessional Working Group could be useful in reducing the review workload at TCC itself. However, FFA Members will need further clarity on its intended scope of work and authority, including what minor issues it could deal with; how members are selected; whether there is a chairperson elected to report to TCC. Such report could be provided at the start of the CMR WG and would specifically identify what matters are then put to TCC for their targeted review. Consideration would also need to be provided to the timing of such working group, noting that currently the full Draft Report is circulated at least 15 days before the TCC meeting.

FFA Members do not support completely discontinuing verbal reports to the CMR Working Group at TCC. Whilst we recognise that it draws out this review process, there needs to be a balance between encouraging Members to work towards compliance and ensuring that the process is manageable and fair. One possible approach could be to identify the specific obligations where verbal reports will continue to be allowed – again using the premise of those that are critical to management decisions.

FFA Members would also like to give some serious consideration to **ending the review at the TCC meeting**, noting a fundamental issue arising is that the Commission cannot use this information for its management decisions as it remains Non-public domain data until it is adopted normally towards the end of the meeting. This does not make sense as the compliance review process is meant to inform the management decision-making.

Consideration should be given to ending the review process at TCC and not allowing for further information to be provided to WCPFC. This would have the added benefit of removing the need for yet another substantive working group at WCPFC and free up delegates' time to focus on priority issues in that tight one-week timeframe. The same level of scrutiny applied at TCC is not made at WCPFC, and allowing further information to be provided for assessment at WCPFC takes the pressure off delegates from undertaking this work fully at TCC. In addition, unlike TCC, this working group at WCPFC is mostly attended just by those States that have compliance issues identified.

Moreover, the data being discussed is from the previous year(s), so **it is important to look at the "root causes" and target assistance to collating and making available the required data before TCC.**

We agree to the suggestion for a strategic review of a measure as to what value the measure provides and whether it is still needed, distinct from the substantive review of the measure.

The Panel's suggestion for 2 SIDS' participants is supportive of the FFA proposal on the Special Requirements Fund to WCPFC13 and FFA Delegation paper 07 to WCPFC14. However, even with two participants, simultaneous meetings are not the preferred option. There are many discussions where it is would be very important for both participants to discuss and reflect together.

6. TCC processes and efficiency, including Natural Justice considerations

FFA Members are concerned to ensure that this process is **procedurally fair and produces fair outcomes**. There needs to be a proper enquiry to establish whether there is a case to answer, timely notification to a CCM that there is a case to answer, robust processes in place to allow the relevant CCM

to be heard, for the matter to be decided, as well as a proper appeal process. The nature of the current process allows for different CCMs and different obligations to be treated differently, based on the approach and attitude of other CCMs. Such variability undermines fairness in the process and outcomes and denies natural justice to those CCMs that come under greater scrutiny than others.

We do not think that the proposal for an independent Chair or the co-Chairs sufficiently addresses this fundamental concern as it is more about the process itself rather than the way it is managed in-session. FFA Members believe that further work needs to be undertaken by the Panel on this key area. We think that addressing unfairness in this process is bigger than the CMS, it also goes to how the Commission does its work. There is a need to make the Commission processes work for Members.

7. Consequences for non-compliance

Commission Members have been hesitant to commence discussions on the question of ‘sanctions’ or consequences for non-compliance. It is understandable considering the importance during these initial years of getting a fair, efficient and effective process in place for undertaking the assessments.

FFA Members advised in Delegation Paper 6 that on **Responses to non-compliance** – *FFA Members view this as a critical piece of the puzzle in the CMS, and note that this work is outstanding according to the current measure. It is important for the revised measure to include a clear process for how this work is to be developed. We reiterate our views to WCPFC13 in DP12 that our preferred approach for the CMS is that it is positive and proactive to assist Members to improve compliance, rather than punitive.*

This is in line with the FFA position that the “root causes” must be addressed. This means that the first question to be asked, especially where there is repeat non-compliance, is what is preventing that CMM from complying and what assistance is required to help that CMM work towards compliance; rather than what is the penalty.

The suggestion of a Quality Assurance Review raises a number of questions for FFA Members, including how feasible and affordable is it for the size of this Commission (more analysis would be required as to what number of CCMs would require such review and what the costs would be); how reviewers would be selected; how often such reviews would need to be undertaken and how would that review feed into a ‘schedule of sanctions’.

Consistent with Delegation Paper 6, consideration should be given to setting up a workplan for how/what/when/by whom this work is to be undertaken.

We also take the view that the term “sanctions” carries a negative connotation. Consideration could be given to a term that is less confronting and is in line with the FFA position not to be punitive. Instead of a ‘schedule of sanctions’, **this could be positively framed as ‘Remedial Options’ or “Remedial Responses” – a remedy to assist towards compliance rather than a sanction or punishment for non-compliance.** This would still have the same effect of providing consequences for non-compliance and giving “teeth” to the Scheme.

8. Regional Observer Programme

FFA Members recognise this is a fundamental issue and stated in Delegation Paper 6 to WCPFC14: ***FFA Members note the ongoing challenge between flag States and observer providers to facilitate the provision of observer reports, and underline that there is a joint responsibility to resolve this, noting that this is a primary source of evidence and that several cases relate to the safety of our observers.***

We strongly encourage flag States and observer providers to find a way forward through continued dialogue, including flag States providing advice to FFA members or directly to observer providers at WCPFC14 on whom they are awaiting reports from as well as exploring a longer term solution to strengthen these relationships - whether this be through an arrangement between the flag State and an observer provider, individually or collectively.

This issue has been raised several times at Commission-related meetings. At TCC13, the meeting “agreed to form an intersessional working group, which would work electronically and in the margins of meetings if convenient, and report back to TCC14. The group will address the need for CCMs to obtain copies of observer reports for their vessels in a timely manner so that they may fulfil their responsibility to undertake investigations of possible violations. The group will explore ways to facilitate access to observer reports from both ROP Providers and the Secretariat, and will recommend possible improvements to the CMM for the Regional Observer Programme, the Agreed Minimum Standards and Guidelines of the Regional Observer Programme, and/or other Commission decisions”.

FFA Members with observer programmes look forward to participating in this working group to help shape a workable solution which respects national laws and processes. **It would be equally important to ensure that resources are put towards progressing this in face-to-face meetings where the opportunity arises, including at the TCC itself.**

The suggestion for capacity-building and training support at national level would be valuable to appreciating the value of timely access to ROP information, and promoting cooperation between relevant States.

Rather than discontinue the use of information from pre-notifications as suggested by the Panel, noting the high priority placed by FFA Members on observer safety, we support the TCC13 recommendation to only use the pre-notifications for those cases related to observer obstruction and their safety.

9. Fairness, equivalence

This important issue was raised by PNA Members. The CMS process is reliant on reports, the majority of which are drawn from the purse seine fishery, particularly given it has 100% observer coverage. The unfortunate consequence of this is that the CMS spends a disproportionate amount of time examining the implementation of the finer points of purse seine management while largely ignoring longline management. FFA members have consistently highlighted that longline management is a higher priority for the Commission given the management and MCS regime in place for the purse seine fishery.

Consideration needs to be given to how the level of scrutiny can be levelled out and made fairer; and how additional reporting can be sought particularly from longline activities on the high seas.

10. Duplication of information/data requirements

See comments above under 1. Support systems.

11. Transparency

FFA Members agree that there is a need to improve the process and make it fairer, more efficient and effective. However, this is not simply a matter of deciding whether or not to allow observers into the room. The fundamental concerns about the CMS that led to the initiation of this review need to be addressed, and the overall process strengthened before FFA Members are in a position to agree to allow observers into the CMR process.