

COMMENTS FROM THE UNITED STATES ON THE FINAL REPORT ON THE INDEPENDENT REVIEW OF THE COMPLIANCE MONITORING SCHEME

April 2018

The United States read the Final Report of the Independent Review of the Compliance Monitoring Scheme (CMS Report) with great interest. The United States has long been a strong supporter of the Commission's Compliance Monitoring Scheme (CMS) and looks forward to working with other CCMs to consider the CMS Report and its recommendations in developing a proposal to update and improve the CMS. We appreciate the comprehensive review and report by the Independent Review Panel, and believe they have served the CMS and the Commission well through their review.

We note that several of the recommendations of the CMS Report go beyond the CMS measure itself and are broader and more programmatic in scope. We do address some of those recommendations here, but will have further comments on those recommendations at the appropriate time. We have separated our comments below into two categories. First, we have a number of broad overarching comments related to the CMS and the CMS Report. Second, we have some specific comments related to the recommendations found in the CMS Report.

We look forward to discussing these comments and hearing from other CCMs through the CMS intersessional working group.

Overarching Comments:

1. A robust, meaningful, fair and transparent CMS is essential to the functioning and accountability of the Commission.
2. We were pleased to see the CMS Report recognize the many strengths of the existing CMS and the Information Management System (IMS) developed by the Secretariat to support its work. The United States is proud of what we have accomplished as a Commission in developing a robust, meaningful, fair and transparent CMS. While we share the views of our fellow CCMs that there are improvements that should be made to CMS, it is critical that we not lose sight of our achievements thus far.
3. We share the review panel's belief that any revised CMS should be based on the existing measure, rather than starting over with a brand new measure. The current measure reflects several years of lessons learned and improvements, and is fundamentally sound in its construct. The concerns that have been raised can be addressed by changes to the existing measure.
4. Furthermore, the Commission's IMS has been developed in conjunction with the existing CMS at considerable expense and effort. It has been recognized by CCMs and other international organizations as a leader in such systems amongst RFMOs and similar organizations. It is important that we consider the effects on the functionality of that system in making revisions to the CMS, so as not to undermine the IMS and generate new expenses unnecessarily. Obviously, if changes need to be made to the IMS in order to effectuate essential changes to the CMS, those should be done, but we recommend being mindful of the impact on the IMS.

5. The Commission must have a permanent CMS that does not expire automatically. This has led to enduring uncertainty for both CCMs and the Secretariat. There is benefit to periodic review of the CMS measure, and we would support a built in review period, but it should not be linked to automatic expiration of the measure.

6. We agree with the concerns raised by CCMs and the CMS Report that the CMS work is becoming unwieldy for the Secretariat, CCMs and TCC. We support efforts to prioritize and streamline the CMS work. However, we see the CMS as an integral function of the Technical and Compliance Committee, and think it appropriately constitutes a significant portion of its work. TCC used to function as a mini-Commission meeting, vetting all aspects of proposals before they went to the Commission. In recent years, there has been an effort to refocus the work of TCC on its core functions. The CMS is a core function of the TCC and should remain so.

7. As noted above, we share some of the concerns of other CCMs regarding the existing measure and see room for improvement. However, some of the concerns raised by CCMs are related less to the CMS than to broader Commission issues, and perhaps, Commission failures. Where the Commission has been unable to agree on measures to address issues of concern, we cannot fault the CMS for those failures. The CMS is not a substitute for a performance review of the Commission, but rather looks to evaluate how well we, as CCMs, are implementing, monitoring and enforcing those measures that we have been able to agree on.

8. We share the concern identified in the CMS Report of the “key person risk.” The high skill level of the Secretariat, particularly the Compliance Manager and Assistance Compliance Manager, in conducting the work of the CMS will not be easily replicated or replaced should that become necessary. We are open to ideas on how build and develop capacity to support their work so as to ensure long-term high level functioning of the Secretariat on CMS issues.

9. We appreciate the perspective of the Review Panel on improvements we could make to how we share and convey the information in the Final Compliance Report and how we can better share trends and patterns that emerge from the CMS. In addition, we agree with the need to look at the big picture and ensure that we learn from the outcomes of the CMS and work to implement the lessons from those outcomes.

10. Finally, we reiterate a point made at WCPFC14, that we must recognize with pride the increasing sophistication with which we have engaged in the work of the CMS over the past seven years. We have moved from tepid acceptance of self-reporting to robust evaluation of implementation through available data. The fact that the work can be challenging, at times boring, and resource-intensive, is not a reason to not do the work. Building our capacity to engage in the CMS process builds our capacity to implement the obligations of the Commission by increasing our understanding of what is needed to implement, monitor and enforce those obligations.

Comments on Specific Recommendations:

As noted above, we have not provided comments on every recommendation in the CMS Report, but are highlighting here our comments on some of the key recommendations.

1. *Recommendation: Commit to a new process to develop and implement a response to non-compliance procedure.*

The United States supports the development and implementation of a response to non-compliance procedure. We note that the existing measure includes a framework for responses to non-compliance, which has not yet been used as CCMs wanted to develop a process for how decisions would be made for assessing responses to non-compliance before they were used. We strongly prefer that this process be incorporated within the CMS measure rather than as a stand-alone measure. We have some suggested revisions to Annex I that can be shared with the working group when it begins discussions on this issue.

2. *Recommendation: The review period prior to adoption of CMMs should include a “legal scrub” of the proposed new CMMs in a Legal Screening Group, chaired by the WCPFC Legal Adviser during TCC, to ensure clarity and identify potential conflicts and inconsistencies. The Group would report to the full TCC.*

We can see the merit of a “legal scrub” of measures and the benefit it could provide to the quality of the measures. However, we have some concerns on the practicalities of the review both in terms of timing and substance. To the extent that we are able to overcome some of the logistical hurdles, we would be willing to discuss this idea further. However, it will be important to ensure that the legal review team does not supplant the decision-making authority of the Commission, but serves only to flag legal issues for consideration by the Commission. In addition, the conflicts in interpretation are often the only way CCMs will be able to reach agreement on measures and requiring agreement from a legal team on the interpretation of every measure may well prove counter-productive

We also have concerns about having the Legal Advisor chair this effort. We see this as having the potential of putting the Legal Advisor in the unenviable, and inappropriate, role of arbitrating between disputing CCMs. We do support the active participation of the Legal Advisor in any legal review group

We are interested in discussing this recommendation with other CCMs and hearing their views on this issue.

3. *Recommendation: The verbal presentation of supplementary information to address reporting gaps discussed in TCC should be discontinued*

The United States supports this recommendation. As was noted at TCC this year, CCMs have numerous opportunities to fill reporting gaps in the existing process. Allowing them to be filled across the floor during the CMS Working Group is time-consuming and unnecessary, and is unfair to CCMs that provide information on time. Eliminating this practice will shave many hours off the CMS process and help ensure that all CCMs are treated equally.

4. *Recommendation: Finalize the pCMR at TCC. Permit CCMs to advise TCC additional information relating to their assessment will be provided in advance of the Commission meeting where a supplementary CMR would be adopted for those cases only*

There are obvious benefits to both sides of the issue of allowing additional information to be submitted after TCC but before the Commission meeting. If verbal interventions to fill reporting gaps were eliminated, we would support continuing to allow additional information to be submitted in writing between TCC and the Commission. However, we strongly believe that if this practice is continued then the revised CMS measure should establish a dedicated period at or before the Commission meeting for the CMS working group to meet to complete its review of the additional information. Reviewing the

information in short broken sessions during the margins of the annual meeting imperils the fairness and consistency of the process.

5. *Recommendation: Consult with SPC to develop procedures to remove the requirement for duplicate data submissions*

We supported a similar recommendation at WCPFC14 and continue to support the effort to eliminate any duplicate data submission where possible.

6. *Three Recommendations related to the IMS:*
a. *Develop, and implement, off-line data entry and batch submission systems for the IMS*
b. *Implement improved IMS data submission systems utilizing iterative text, pre-population of data and auto-fill capabilities*
c. *Continue to develop, and expand the scope and nature of, training resources and learning aids for the IMS particularly when new elements are introduced to it.*

We support conceptually continuing changes and improvements to the IMS that will facilitate the ability for CCMs to input, download, access and use the IMS. We recognize that such changes may have financial implications for the Commission, and so we will reserve full support for these recommendations until we have a chance to consider the full financial implications.

7. *Recommendation: Facilitate increased use of small groups to negotiate and deal with discrete issues*

Although not entirely evident from the short recommendation text quoted above, the larger discussion in the CMS Report related to moving the work of the CMS into a working group to potentially be operated concurrently with TCC plenary sessions. We would first note that the CMS work is not done in TCC plenary session, but is handled in a CMS Working Group. Given the practicalities of the review, it is conducted in the plenary room. The United States does not support conducting the CMS work in a concurrent working group session. We see the CMS as a core function of TCC and believe that CCMs should be allowed to give it their full attention. We do believe it should continue to be handled in a working group, as it is currently, so that it can remain not a rapporteured session.

8. *Recommendation: Consider the appointment of an independent chair for the TCC or CMR negotiations.*

All chairs are expected to act independent of their national interests, and there is no reason to single out the TCC Chair or CMS working group chair role as needing some special independence. The Commission already has a built in practice of having Chairs rotate chambers and having chairs and vice chairs be from different chambers, generally. CCMs must be able to trust each other to serve as chairs. The United States does not support having a non-CCM chair the TCC or CMR process.

There was an additional recommendation that there be co-chairs for TCC or the CMS Working Group. We note that there is no built in required chair-ship of the CMS working group. We do not support building in any required chairing process.

9. *Recommendation: Adopt a phased process for Observers to participate in all CMS discussions*

The United States supports this recommendation.

10. Recommendation: Identify and describe requirements associated with key audit points in each CMM during drafting

The United States supports the idea of identifying key audit points in a measure when it is being drafted and prior to adoption and think this practice could be very helpful in clarifying, for both the Secretariat and CCMs, what obligations should be assessed and what implementation metrics are appropriate. In addition, identifying key audit points should help us prioritize measures or obligations. We recognize that it may be challenging to implement, but think this idea is worth considering further and could be instrumental in helping to prioritize and streamline the obligations that are assessed.

11. Recommendation: Establish a Friends-of-the-Chair arrangement to consider and address matters of an administrative and low-priority nature while identifying high priority issues/cases for consideration by the TCC.

We recognize that this recommendation has some potential benefits, but think it has significant potential downside as well. First, it places an additional burden on the TCC Chair, the Secretariat and the friends of the Chair to participate and prepare for an additional session and possibly could include additional travel. Second, we think it is likely that regardless of the composition of the friends of the chair group, there will be members that seek to revisit issues covered by that group, which then invalidates the purpose of the group. We have tried, several times, to use friends of the chair groups and small working groups in the margin of TCC and they have always failed to be a good use of participants' time as some CCMs insisted on revisiting all the same issues again in plenary. Third, timing of this work will be challenging given the current tight timeline from submission of the annual reports through production of the full draft CMR.

Despite these concerns, there may be circumstances where such a group will prove beneficial. Just as we have been able to establish such groups in the past, we would support having the ability to establish some groups in the future. We do not think it needs to be or should be hardwired into any revision CMS measure.

12. Recommendation: Pilot a Quality Assurance Review procedure

We think this recommendation could be beneficial, but have some concerns about how it will realistically and practically operate. We look forward to discussing this idea more with the others in the working group.

13. Recommendation: Continue the practice of restricting pre-notified cases for TCC consideration to those involving observer interference and obstruction

We support this recommendation.

14. Recommendation: Establish balance in the CMS by ensuring CMMS and CMS requirements are balanced across all fleets operating in the Convention Area

We note the point made in the CMS Report that the CMS process has focused more on purse seine vessels than other fleets, due to the larger volume of information available about the activities on these

vessels. We see this more a function of the measures that we have adopted as a Commission, and less of a CMS process issue, but agree this is an issue that should be given further consideration in an effort to achieve a better balance across all fleets operating in the Convention Area.