

DRAFT PRINCIPLES DOCUMENT REQUESTING CMS-IWG PARTICIPANTS PROVIDE COMMENTS AND INPUT

CMS IWG participant are asked to provide comments on the list of principles provided and add any others if they are missing. The comments should be in view of the working groups task to develop a CMM proposal for consideration at WCPFC15 this December.

DRAFT list of principles for the proposed CMM on CMS	Possible ref to current CMS (CMM 2017-07)	Comments
I. PREAMBLE	<i>preamble</i>	<i>Eg To be refined once draft CMM is further developed</i>
II. CMS PURPOSE	<i>para 1</i>	Consider that the current purpose of CMM 2017-07 is solid and should remain.
III. CMS SCOPE AND APPLICATION	<i>para 2 – 4, 8 – 11, 12 -14, 15 – 21 Annex I</i>	Consider that the current scope and application of CMM 2017-07 is solid and should remain, but the operationalization of the CMM is the issue that needs to be re-considered to take account of the Review.
a. BALANCE ACROSS FLEETS AND FISHERIES		Agree the CMS must provide a balanced review of all gears, fleets and fishing related activities operating in the WCPFC Convention Area.
b. CCM IMPLEMENTATION AS A FOCUS		<p>Develop criteria that identifies the highest priority CMMs based on a risk assessment of the impact of non-compliance on meeting the WCPF Convention objectives. For example:</p> <ul style="list-style-type: none"> • CMMs with catch or effort limits. Non-compliance with such CMMs would undermine the conservation and management of the resource, which would have impacts on economic development opportunities and food security for coastal States; • CMMs with closed areas or prohibitions (e.g., FAD temporal/spatial closures; at-sea transshipment for purse seine vessels; shark finning, retention of certain shark species or whale shark encirclement); • CCMs with specific procedures that are pre-requisites to allowing a particular activity (i.e., at-sea transshipment for longline, troll and other vessels); • CCMs or decisions for data reporting, both for target and non-target species, including observer • coverage requirements. Non-compliance with such CMMs would undermine the ability of the Commission to conduct stock assessments or other analyses, which would increase uncertainties in the scientific advice available to the Commission; and

DRAFT list of principles for the proposed CMM on CMS	Possible ref to current CMS (CMM 2017-07)	Comments
		<ul style="list-style-type: none"> • CMMs that have provisions where differing interpretations are impacting effective implementation of the CMM itself, and therefore could impact the conservation and management of the stock.
<p>c. HANDLING INVESTIGATIONS OF VESSEL LEVEL INFRINGEMENTS</p>		<p>As the CMS is for assessing CCM implementation of its obligations, it should provide a platform for CCMs to respond to evidence of non-compliance of CMMs, including by vessels flying its flag, and provide information to the Commission regarding its investigation or actions taken as a flag State. Assessing and sanctioning vessel-level non-compliance for serious infringements is more appropriately taken up through other mechanisms, e.g. the IUU Vessel Listing procedures, which would complement a well-designed and effective CMS.</p>
<p>d. ZONE-BASED MANAGEMENT ARRANGEMENTS</p>		<p>This may be a matter best taken up through the Review of the Part 2 Report. To that end, we suggest that draft Part 2 reports would remain non-public, but the reports presented to TCC would be public (to the greatest extent possible). The reason for this is that when implementation of zone based management arrangements are used to discharge a CCM's obligations under a WCPFC CMM, information on these arrangements should be transparent.</p>
<p>e. ACCEPTANCE OF NATIONAL LAWS AND JUDICIAL PROCESSES</p>		<p>While the CMS should not serve to evaluate a CCM's national laws and judicial processes, it should have a role in assessing if the response taken by a CCM is "adequate in severity" or constitutes "effective action" in accordance with Article 25 of the Convention. To facilitate this, the CMS could provide for:</p> <ol style="list-style-type: none"> 1. closer inspection of a CCM's implementation of particular CMMs, or its response to identified potential infringements, to be triggered based on the number of IUU cases/nominations under the IUU CMM. For example, if there are a number of vessels nominated from a single flag State or numerous ongoing cases of alleged IUU fishing, this may be indicative of either a failure of the flag State to (1) implement its WCPFC obligations or (2) impose penalties of 'adequate severity' or take 'effective action'.

DRAFT list of principles for the proposed CMM on CMS	Possible ref to current CMS (CMM 2017-07)	Comments
		2. implementation of a maximum number of successive years of 'under investigation' before the CCM is automatically escalated to the second-tier response for that obligation.
f. EFFECTIVE AND EFFICIENT CMS		<p>It is important to not only continue to prioritize the obligations to be assessed, but to also clarify why these obligations have been selected – refer above for ISSF ideas.</p> <p>The current CMS CMM requires that successive instances of non-compliance triggers the escalation of the response to the non-compliance. But, it is not clear how these obligations would trigger this response if the obligation was assessed only every two or three years. Moreover, the delayed assessment provides a protracted period during which the non-compliance could continue. One approach may be that for lower prioritized obligations that are only assessed periodically, any non-compliance is automatically escalated to the second-tier response and re-assessed for that CCM the following year.</p>
g. GUIDANCE TO CCMs AND CLEAR AUDIT POINTS		Should also articulate the role and function of the Secretariat.
h. EFFECTIVE CCM PARTICIPATION AND PROCEDURAL FAIRNESS		<p>Establish a more rigorous process to report on the status of investigations and actions taken by Members in relation to identified areas of non-compliance from year to year.</p> <p>Suggest that any capacity building / support items be made public and not assessed for compliance with the measure itself, but seek to work with the relevant CCM to develop a plan to address it.</p>
i. COLLABORATIVE, QUALITY IMPROVEMENT AND CORRECTIVE ACTION		Strongly support the development and adoption of a scheme of responses to non-compliance. We note the previous proposals from Australia in 2010-2012 - together with the ICCAT and CCSBT schemes - provide a solid starting point for discussions at WCPFC

DRAFT list of principles for the proposed CMM on CMS	Possible ref to current CMS (CMM 2017-07)	Comments
IV. SPECIAL REQUIREMENTS OF DEVELOPING STATES, PARTICULARLY SIDS AND TERRITORIES	<i>para 21</i>	Should be up front, public (so investments/action can be provided to the State on the issues they've have identified and want assistance on). Issues identified here should not be assessed for that CCM through the CMS, but the progress against a workplan should be tracked so that the is a level of comfort that the issue is being addressed.
V. TECHNICAL ASSISTANCE & CAPACITY DEVELOPMENT	<i>para 5 – 7, 12 - 14, Annex I</i>	Make as public as possible so that the CCM can attract as much support as possible from a diverse range of donors. Workplan to be developed for the TACP including the support elements so that progress against the identified milestone can be tracked (but not assessed for compliance as such unless the work gets right off the rails) Would be useful to have a single information source summarizing the technical assistance requirements and the programs going on to assist so that there is not duplication of resources and/or effort.
VI. PROCESS PRIOR TO TCC	<i>para 22 - 26</i>	Establish minimum information requirements to enable CCMs to be prepared for possible questions at TCC and help address the concern that some CCMs are asked to provide more information at TCC as compared to others (Recommendation 6.5(a)). The Part 2 Report – with the exception of data that clearly meets the WCPFC ISP policy, make the submitted reports public so it can be clearly understood how any CCM has given effect to their obligations.
VII. PROCESS DURING TCC	<i>para 27 – 31, Annex I</i>	The work occurs through TCC (not in separate WG), transparently and inclusively in accordance with Article 21 of the WCPFC Convention. ISSF considers that civil society participation in the CMS will provide a platform for greater accountability, equity and fairness in the process. Further, paragraph 28 of the current CMS allows NGO input on but NGOs are not allowed to engage in the WG at present.

DRAFT list of principles for the proposed CMM on CMS	Possible ref to current CMS (CMM 2017-07)	Comments
		<p>28. Taking into account any Capacity Development Plans or Status Reports developed pursuant to paragraphs 5 – 7 and 6 – 11, any additional information provided by CCMs, and, where appropriate, any additional information provided by non-government organisations or other organisations concerned with matters relevant to the implementation of this Convention, TCC shall develop a Provisional Compliance Monitoring Report (the Provisional Report) that includes a compliance status with respect to all applicable individual obligations as well as recommendations for any corrective action(s) needed by the CCM or action(s) to be taken by the Commission, 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.</p>
<p>VIII. PROCESS FOR DETERMINING COMPLIANCE STATUS AND ENSURING FAIRNESS IN OUTCOME</p>	<p><i>para 19 – 20, Annex I</i></p>	
<p>IX. ANNUAL COMMISSION MEETING</p>	<p><i>para 32 – 35, Annex I</i></p>	<p>Final approval only (no further work of the TCC CMS WG).</p>
<p>X. FOLLOW THROUGH ON COMPLIANCE OUTCOMES</p>	<p><i>para 32 – 36, Annex I</i></p>	<p>Establish a more rigorous process to report on the status of investigations and actions taken by Members in relation to identified areas of non-compliance. Although we note that there is partial information made available through paragraphs 8 and 24, and paragraph 36, of the current CMS CMM these provisions should be strengthened to provide for public summary updates of the status reports of investigations (all such information now is not public as the Part 2 reports in their entirety are non-public).</p> <p>Such public summary updates would balance the importance of transparent reporting on the efforts being taken to address non-compliance with a Member’s national regulatory and confidentiality requirements regarding ongoing investigations.</p>

DRAFT list of principles for the proposed CMM on CMS	Possible ref to current CMS (CMM 2017-07)	Comments
XI. APPLICATION AND REVIEW PROCESS FOR CMS	para 40 - 41	ISSF agrees with the Panel recommendation that the new or amended CMM be durable for a five-year period with an external review completed in year five only (Recommendation 12.5(b)). This will allow time for the CMS mature in its functioning, and for a body of experience with it to develop
XII. TRANSPARENCY	para 17	<p>This paragraph in the current CMS deals with the public or non-public nature of the draft and provisional CMR reports. By classifying all of these, and thereby any discussion of them, as non-public, this does not provide for transparency but completely restricts it. The new CMS needs to address the issue of transparency openly and fairly.</p> <p>It is ISSF's preference that the new CMS CMM should not need a specific section on transparency creates a bureaucratic burden on the Sect, observers or CCMs. Rather, providing for transparency should just be addressed by the way the CMS is structured and operates in practice, which should be that accredited observers are allowed to participate in meetings of the CMS in accordance with Article 21 of the Convention and under the Commission ROPs.</p> <p>Per earlier comments, if data reported in draft CMRs or Part 2 reports clearly meets the WCPFC ISP classification of NP domain data, then the CMS should articulate that only such data is to be treated under the WCPFC Data ROPs and the remaining data/reports/discussion should remain in the public domain.</p>
XIII. ADDRESSING ADMINISTRATIVE BURDEN AND RESOURCE IMPLICATIONS FROM CMS		
a. FOR CCMs		
b. FOR THE SECRETARIAT		
XIV. OTHERS		Eg as proposed by CMS IWG participants