



FFA
PACIFIC ISLANDS
FORUM FISHERIES
AGENCY

3 July 2018

Glen Joseph
WCPFC IWG-Chair
Western Central Pacific Fisheries Commission
Federated States of Micronesia

Dear Glen,

On behalf of FFA Members, I thank you for your leadership in the role as the Chair of the Intersessional Working Group on the Compliance Monitoring Scheme (IWG-CMS). We sincerely appreciate the steps you have taken, to date, to keep us on track. We underline our support to you in ensuring that the work of this IWG-CMS is successful.

FFA Members have had a successful meeting to consider our input into the IWG-CMS. On behalf of our FFA Members, please find attached the:

1. FFA Proposal on a CMS CMM;
2. Explanatory note;
3. 2013-06 SIDS Impact Assessment.

If you have any queries on this FFA Proposal, please do not hesitate to contact FFA Deputy Director-General Matt Hooper on matt.hooper@ffa.int and FFA Legal Counsel Manu Tupou-Roosen on manu.tupou-roosen@ffa.int.

We look forward to our continued cooperation in the IWG-CMS.

Yours sincerely,

Tapaeru Herrmann
2018/19 Forum Fisheries Committee Chair

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

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 adopted by the Commission,

Noting also that, in accordance with international law, Members, 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,

Acknowledging 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 by Members, Cooperating Non-Members and Participating Territories with management measures,

Recognising the sovereign rights of coastal States, in particular SIDS and territories in the Convention Area, to implement zone-based measures to ensure the sustainable management of fisheries within their Exclusive Economic Zones, including determining how to implement the obligations of the Commission in their national laws and enforcement of those laws,

Committed to Article 30 of the Convention which requires the Commission to give full recognition to the special requirements of developing States, in particular SIDS and territories, including the provision of financial, technical and capacity development assistance,

Recognising that smaller island developing States have unique needs which require special attention and consideration in the provision of financial, scientific and technological assistance,

Committed to the implementation of Conservation and Management Measure 2013-07 to give operational effect to the full recognition of the special requirements of SIDS and territories in the Convention Area, in particular such assistance as may be needed to implement their obligations,

Further committed to the implementation of Conservation and Management Measure 2013-06 by applying the criteria to determine the nature and extent of the impact of a proposal on SIDS and territories in the Convention Area, in order to ensure that they can meet their obligations, and to ensure that any measure does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories,

Recalling the specific function of TCC under Article 14(1)(b) to monitor and review compliance by CCMs with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary,

Recognising the responsibility of Members, Cooperating 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,

Cognisant of the MCS and enforcement framework developed by the Commission, *inter alia* the 2010-06 Conservation and Management Measure to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing activities in the WCPO, the online Compliance case file system, Article 25 of the Convention, which considers the compliance by individual vessels,

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 Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission. The purpose of the CMS is not to assess compliance by individual vessels.
2. The CMS is designed to:
 - (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 CMMs which may require refinement or amendment for effective implementation;
 - (iv) respond to non-compliance by CCMs through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations;¹ and
 - (v) monitor and resolve outstanding instances of non-compliance by CCMs with their obligations.

Section II – Principles

3. The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles:

¹ In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 37(iv).

- (i) Effectiveness: focus on meeting the purpose of this CMM and these Principles to assess compliance by CCMs;
- (ii) Efficiency: including avoiding unnecessary administrative burden or costs on CCMs or the Secretariat and removing duplicative reporting obligations; and
- (iii) Fairness: ensuring that CCMs are:
 - informed and understand their obligations and associated performance expectations;
 - informed of any potential non-compliance with their obligations;
 - given reasonable time and opportunity to respond to such potential non-compliance;
 - adequately represented;
 - given a fair and unbiased hearing and that any findings are based on evidence;
 - given the right to review any findings made against them.
- (iv) Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.

Section III - Scope and application

4. 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 CCM non-compliance, in accordance with the approach set out in this section.

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

6. Each year, the Commission shall consider what obligations shall be assessed in the following year using a risk-based approach. In making this determination, the Commission shall take into account:

- (i) the needs and priorities of the Commission, including those of its subsidiary bodies;
- (ii) evidence of high percentages of non-compliance or persistent non-compliance by CCMs with specific obligations for multiple years;
- (iii) the risks associated with fisheries managed by the Commission that are not monitored independently and for which there is limited data; and
- (iv) the potential risks posed by non-compliance by CCMs with CMMs (or collective obligations arising from CMMs) to achieve the objectives of the Convention or specific measures adopted thereunder.

7. The Commission shall undertake an annual assessment of compliance by CCMs during the previous calendar year with the priority obligations identified under paragraph 6. Such assessment shall be determined based on two criteria:

- (i) Implementation – where an obligation applies, the CCM is required to provide evidence that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation; and
- (ii) Follow through on Compliance Outcomes – the CCM is required to provide evidence that it has a system or procedures to monitor compliance of vessels with these binding measures and to respond to non-compliance.

8. 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.

Section IV – Special Requirements of Developing States

9. Notwithstanding paragraph 4, where a SIDS or Participating Territory, or Indonesia or the Philippines cannot meet a particular obligation that is being assessed, due to a lack of capacity², that CCM shall provide a Capacity Development Plan to the Secretariat with their draft Compliance Monitoring Report (dCMR), that:

- (i) clearly identifies and explains what is preventing that CCM from meeting that obligation;
- (ii) identifies the capacity assistance needed to allow that CCM to meet that obligation;
- (iii) estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary;
- (iv) sets out an anticipated timeframe in which, if the identified assistance needs are provided, that CCM will be able to meet that obligation.

10. The CCM may work together with the Secretariat to draft the Capacity Development Plan. This plan shall be attached to that CCM's comments to the dCMR.

11. Where a capacity assistance need has been identified in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, TCC shall assess that CCM as "Capacity Assistance Needed" for that obligation. TCC shall recommend to the Commission that it allow the Capacity Development Plan to run until the end of the anticipated timeframe and assistance delivery set out therein.

12. That CCM shall report its progress under the Capacity Development Plan every year in its Annual Report Part II. That CCM shall remain assessed as "Capacity Assistance Needed" against that particular obligation until the end of the timeframe in the plan.

13. Where the Commission is identified in the Capacity Development Plan to assist that CCM, the Secretariat shall provide an annual report of such assistance to TCC.

² Any CCM may identify a capacity assistance need through the CMS process; however, the application of paragraphs 9 – 11 is limited to those CCMs identified in the paragraph.

14. If a CCM notifies the Commission that its capacity needs have been met, the Capacity Development Plan for that obligation shall be deemed completed and the CCM's compliance with that obligation shall then be assessed in accordance with Annex I.
15. Unless the SIDS, Participating Territory, Indonesia or Philippines amends its Capacity Development Plan, once the timeframe in that Plan has passed, that CCM's compliance with that obligation shall be assessed in accordance with Annex I.
16. The Commission recognises the special requirements of developing State CCMs, particularly SIDS 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:
 - (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 information, and
 - (ii) providing appropriately targeted assistance to improve implementation of, and compliance with, obligations arising under the Convention and CMMs adopted by the Commission, including through consideration of the options for capacity building and technical assistance.

Section V – Prior to TCC

17. 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) concerning each CCM and a section concerning collective obligations arising from the Convention or CMMs related to fishing activities managed under the Convention.
18. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations as identified under paragraph 6 as well as any potential compliance issues, where appropriate. Such information shall be sourced from reports submitted by CCMs as required in CMMs and other Commission obligations, such as the Annual Report Part II as well as information available to the Commission through other data collection programmes, including but not limited to, high seas transshipment reports, Regional Observer Programme data and information, 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.
19. The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.
20. At least 55 days prior to TCC each year, the Executive Director shall transmit to each CCM its dCMR.
21. At the same time, the Executive Director shall transmit to all CCMs a separate document containing aggregated vessel level data across all fleets, drawn from the online compliance case file system, to provide an indicator of potential anomalies in the implementation of the Convention and the CMMs by a CCM, with a view towards identifying implementation challenges. This document shall constitute Non-Public domain data. The

presence of potential vessel infringements in such aggregated data shall not be used to influence the compliance assessment of the CCM.

22. Upon receipt of its dCMR, each CCM may, where appropriate, reply to the Executive Director no later than 28 days prior to TCC each year to:

- (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.

23. Relevant CCMs may continue to provide additional information or clarification into the online compliance case file system. Where such additional information or clarification is provided, at least fifteen days in advance of the TCC meeting, the Executive Director shall circulate an updated version of the document referred to under paragraph 21.

24. To facilitate meeting obligations under paragraphs 22 and 23, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.

25. At least fifteen days in advance of the TCC meeting, the Executive Director shall compile and circulate to all CCMs the full Draft Report that will include any potential CCM compliance issues and requirements for further information to assess the relevant CCM's compliance status, in a form to be agreed to by the Commission, including all information that may be provided under paragraph 22.

26. 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 22 of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.

Section VI – Development of the Provisional Compliance Monitoring Report at TCC

27. Taking into account any Capacity Development Plans developed pursuant to paragraphs 9 – 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.

28. A CCM shall not block its own compliance assessment if all other CCMs present have concurred with the assessment. If the assessed CCM disagrees with the assessment, its view shall be reflected in the Provisional or Final CMR. Such CCM may also invoke the process set out in Section VII.

29. Where a CCM has missed a reporting deadline,³ but has submitted the required information, this obligation will be accepted by TCC, unless a CCM has a specific concern or if there are updates from the Secretariat based on new information received.
30. Subject to paragraph 28, a provisional assessment of each CCM's Compliance Status shall be decided by consensus. If every effort to achieve consensus regarding a particular CCM's compliance with an individual obligation has failed, the provisional CMR shall indicate the majority and minority views. A provisional assessment shall reflect the majority view and the minority view shall also be recorded.
31. The Provisional Report shall also comprise an executive summary including recommendations or observations from TCC regarding:
- (i) identification of any CMMs or obligations that should be reviewed to address implementation or compliance difficulties experienced by CCMs, particularly when TCC has identified ambiguity in the interpretation of or difficulty in monitoring and implementing that measure or obligation, including any specific amendments or improvements that have been identified,
 - (ii) capacity building assistance or other obstacles to implementation identified by CCMs, in particular SIDS and Participating Territories,
 - (iii) risk-based assessment of priority obligations to be assessed in the subsequent year.
32. The Provisional Report shall be finalised at TCC and forwarded to the Commission for consideration at the annual meeting.

Section VII – Process after TCC

[This is taken from the Independent Review Panel's Final Report and whilst FFA Members agree to the concept, we will need to further consider the details.]

Where a CCM is of the view that the TCC process has operated in a manner that has been procedurally unfair for it, or that it has produced an outcome that is unfair for it, that CCM may request an informal review of the process or outcome or both. The request shall be communicated to the Executive Director in writing not later than 30 days after the conclusion of the TCC in question.

The review will be conducted by the Chair of the Commission between the TCC in which the matter arose and the next Commission annual session. The Chair of the Commission will be assisted by the Vice-Chair and, if the CCM so requests, by two other CCMs one from FFA members and one from other States, who shall be selected by the Chair after consultation with those groups.

The review will normally be conducted by way of a written submission by the CCM, or by any individual or organization acting on behalf of the CCM. The Chair will also seek a report on the matter from the Chair of the TCC.

³ For the purposes of the Compliance Monitoring Scheme, all reporting deadlines will be based on Universal Time Code (UTC) time unless the CMM establishing the deadline specifies otherwise.

If the CCM requests, the CCM will also be given the opportunity to make oral submissions, which may also be made by any individual or organization acting on its behalf.

The Provisional Compliance Monitoring Report will refer to the request for a review, and will not make any finding as regards compliance or non-compliance with respect to the matter in question, pending the review.

The outcome of the review will be decided by a majority of those conducting the Review, with the Chair having a deciding vote if necessary. The outcome will be communicated to the meeting of the Commission following the TCC in question. The Commission will take the outcome into account in adopting the final Compliance Monitoring Report including its decision regarding compliance or non-compliance with respect to the matter in question.]

Section VIII – Process at the Commission

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

34. Taking into account any reviews undertaken after TCC under Section VII, the Commission shall adopt a final Compliance Monitoring Report.

35. The final Compliance Monitoring Report shall include a Compliance Status for each CCM against each assessed obligation and any corrective action needed, and also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 30 of this measure.

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

Section IX – Future Work

37. The Commission hereby establishes an intersessional working group to develop a multi-year workplan with tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining processes. This workplan shall include *inter alia*:

- (i) a comprehensive review of all the Commission's reporting requirements, with recommendations to remove duplicative reporting as well as ensure the Commission's data and information needs are met;
- (ii) the development of audit points to clarify the Commission obligations assessed under the CMS, as well as the development of a checklist to be used by the proponents of any proposal to include a list of potential audit points for the consideration of the Commission;
- (iii) the development of a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission;
- (iv) the development of corrective actions to encourage and incentivise CCMs' compliance with the Commission's obligations, where non-compliance is identified. This may include the revision of existing measures and building these actions into future measures; and
- (v) any other tasks as required by the Commission.

38. The Commission shall develop overarching guidelines for the CMS, including operating procedures and systems to guide the work of the Secretariat, consistent with the Principles in this measure. TCC shall consider any workplan and resourcing requirements to facilitate the work of the Secretariat in this regard.

Section X – Application and review

- 39. This measure shall be reviewed in 2019.
- 40. This measure will be effective for 2019 only.

[Annex I - Compliance Status Table

FFA Members recognise the future work required to develop audit points (as set out above in future work). Further consideration will be needed on the criteria for the transitional period in 2019.

Compliance Status⁴	Criteria	Response
<i>Compliant</i>	Compliance with the audit points	None
<i>Non-Compliant</i>	Failure to meet the audit points	<p>Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report.</p> <p>Actions may include, one or more of the following:</p> <p>a. A CCM must address the issue to gain compliance by the next compliance assessment; or</p> <p>b. A CCM shall provide a Status Report to the Secretariat; or</p> <p>c. Other response as determined by the Commission.</p>

⁴ This annex applies to compliance statuses assigned for each individual obligation.

Compliance Status⁴	Criteria	Response
<i>Priority Non-Compliant</i>	<p>a. non-compliance with high-risk priority obligations and associated audit points</p> <p>b. repeated non-compliance with an obligation for two or more consecutively assessed years; or</p> <p>c. any other non-compliance identified as Priority Non-Compliant by the Commission.</p>	<p>Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report.</p> <p>Actions may include, one or more of the following:</p> <p>a. A CCM must address the issue to gain compliance by the next compliance assessment;</p> <p>b. Other response as determined by the Commission.</p>
<i>Capacity Assistance Needed</i>	<p>When a SIDS or Participating Territory or Indonesia or the Philippines cannot meet an obligation that is being assessed due to a lack of capacity, that CCM shall provide a Capacity Development Plan to the Secretariat with the dCMR prior to TCC.</p>	<p>(i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to become compliant with the obligation, and</p> <p>(ii) report progress against that plan every year in its Annual Report Part II until the end of the timeframe specified in that Plan.</p>
<i>CMM Review</i>	<p>There is a lack of clarity on the requirements of an obligation.</p>	<p>The Commission shall review that obligation and clarify its requirements.</p>

EXPLANATORY NOTE TO ACCOMPANY FFA PROPOSED CMS MEASURE

Introduction

FFA members are steadfast in our commitment to ensuring that the Commission maintains a scheme to assess whether each CCM is meeting its obligations under the Convention and CMMs.

The independent review was a timely and necessary exercise to reset the Commission's approach to compliance monitoring. Whilst many lessons have been learned and improvements made over time, its evolution has resulted in unintended scope creep and consequences such as a burdensome workload on the Secretariat and CCMs, procedural unfairness and inefficiency in its operation.

FFA members have spent considerable time and resources reviewing the outcomes of the review panel's report, and express our appreciation to the panel for their consideration of issues and concerns raised during the review process.

In order to facilitate early and constructive progress amongst CCMs towards the development of a new CMM for the Compliance Monitoring Scheme (CMS) for adoption at WCPFC15, FFA members have developed a draft CMM for consideration by the Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS-IWG).

FFA members submit this proposal in good faith and without prejudice to the positions of FFA members, individual or collective, in the forthcoming deliberations of the CMS-IWG, TCC and Commission. While it is a work in progress, it frames an approach that will add value and contribute to the Commission's overall management objectives.

The review has also highlighted the need for the Commission to undertake some longer term work across its broader management framework, which we will discuss further below.

Operating principles and guidelines

Several operating principles must apply in a new CMS:

- Consistency with Art 14.1(b) of the Convention and ensuring the CMS is kept separate from TCC's other functions, namely policy advice and review of the Commission's MCS programs. This will address issues with scope creep, including by focusing assessments at the CCM level rather than delving into vessel level infringements. We discuss this in further detail below.
- Cost effectiveness and ensuring the CMS adds value – as highlighted in the report, the construct of the current scheme poses a significant risk to its sustainability and effectiveness due to its sheer magnitude, and the associated resourcing and investment requirements by the Secretariat and CCMs.
- Rationalisation and streamlining – Reducing duplicative reporting requirements will require a comprehensive review of all reporting obligations. The use of filtering, pre-population and other such methods to reduce workloads for all affected parties must be further investigated.
- Balance across fisheries – A priority for FFA members is the need to address the current imbalance from assessments being heavily swayed towards the purse seine fishery. There is a clear need for the Commission to address deficiencies in management and reporting needs, including on the high seas and in longline fisheries, to ensure that the CMS contributes to the overall objectives of the Commission across all key fisheries.

- Fairness and due process - developing clear audit points will enhance CCMs' comprehension of their obligations, by setting out well defined and concise benchmarks specifying performance expectations. It will also provide the Secretariat clear guidance on what support systems may be needed, and inform how initial assessments should be approached, as well as address data flow issues. Stipulating what the burden of proof is for implementation will ensure all CCMs are measured or assessed equitably.
- Encouraging compliance rather than punitive action – the scheme must be geared towards encouraging compliance through corrective or remedial actions, including by providing the necessary assistance and capacity building that CCMs may require to implement obligations. Engendering effective cooperation amongst CCMs must be at the core of the measure.

Roles and Responsibilities

Clarity with regard to the roles and responsibilities of key actors will be essential to the successful implementation of the revised CMS proposed by FFA members. This includes the role of:

- the Commission as the decision making body responsible for setting direction, including with respect to the work of its subsidiary bodies, and making final determinations on outcomes;
- the TCC as the subsidiary body responsible for implementing Commission decisions with respect to the CMS;
- the WCPFC Secretariat to provide independent analysis of and reporting on information submitted by members and to ensure the integrity of the CMS process; and
- CCMs to provide accurate and timely information in accordance with their obligations under the CMS and other CMMS.

Handling Investigations of Vessel Level Infringements

An important distinction to make is that the CMS is not an MCS programme. While MCS information is an input that can help inform assessments, the scheme itself is not an MCS activity. Rather it is a tool to determine the compliance of WCPFC CCMs with their obligations, consistent with Article 14.1(b).

As such, one of the very substantive changes that FFA members are advocating for is the removal of all consideration of individual vessel activities in the determination of a CCM's compliance, including the flag State investigation process. This is consistent with the analysis provided by the independent panel.

Removing individual vessel level activities from consideration under the CMS will have positive benefits to the Commission in six ways because it:

1. promotes fairness by removing the current ability for individuals to impose their own standards and expectations on national legislative, investigative and judicial processes;
2. addresses the gross imbalance in focus of the current scheme by ensuring that obligations in different fisheries are not assessed to vastly different standards simply because there is greater monitoring and data collection;
3. respects and promotes the sovereign right of coastal States to consider and take action against potential non-compliance by foreign vessels in their EEZs;

4. removes much of the animosity and subjectivity of discussions in the TCC that currently delve into individual vessel cases;
5. greatly reduces the workload and burden on CCMs; and
6. reduces and regulates the workload of the WCPFC Secretariat and the cost to the Commission, including removing the need for additional staff positions.

FFA members are of course mindful of the need to ensure that vessels are complying with the laws of their flag State and of coastal States in whose waters they fish. As such, we have proposed that the Secretariat would continue its very robust work in reviewing data and information that is submitted to the Commission. This work would be presented in two ways:

1. Through the case file management system. This process allows affected CCMs to cooperate with each other bilaterally, or to take unilateral action in accordance with international law, in particular through established WCPFC mechanisms such as the IUU listing process, and Article 25 provisions.
2. In aggregate form alongside the Draft CMR. This aggregated information would provide summaries of potential vessel infringements for each obligation as well as an opportunity for a CCM to provide further information, such as how many cases are under investigation and the outcome of any completed investigations. The purpose of this information would not be to drive the compliance rating of a CCM, but to assist TCC and the Commission to identify anomalies, such as where a CCM has complied in implementing an option, but there appears to be a high level of vessel non-compliance. Such anomalies would be addressed outside of the CMS process, such as through the Quality Assurance Review process recommended by the review panel.

FFA members are willing to consider an additional process for the Commission to discharge its duties in managing high seas fisheries by looking into issues of potential vessel level non-compliance on the high seas in more detail if that is considered necessary.

Effective CCM participation and procedural fairness

Creating an enabling environment to ensure effective CCM participation in the CMS, particularly of SIDS, is critical for supporting the operationalisation of Article 30 of the Convention. Participation not only in the Technical and Compliance Committee, but specifically the CMS, requires a wide range of technical skills creating significant demands on the small fisheries administrations of SIDS. In line with the report, FFA members strongly support the recommendation for the Commission to provide support for two members of each SIDS CCM to attend TCC.

We note the IWG-SRF is currently considering work to respond to such needs. Regardless of the delivery method, the Commission must commit to providing the necessary level of support to ensure effective SIDS participation before a new CMS measure is adopted.

Capacity building and special requirements of SIDS

Clarity is needed around processes for the delivery of assistance and capacity building support. The 'Capacity Assistance Needed' element in the existing scheme has developed into a useful process to respond to challenges experienced by SIDS in meeting the implementation of Commission obligations.

The development of a Strategic Investment Plan and the work of the SRF Working Group must deliver a framework that will create an enabling environment for SIDS that have capacity needs, particularly where identified through the CMS process. In doing so, the Commission must be mindful to avoid burdensome processes, and adding additional administrative and technical hurdles that may stifle accessibility to much needed assistance.

Reluctance by CCMs in the last few years to genuinely support Commission mechanisms to deliver SIDS capacity assistance is a significant concern to FFA members. The distribution of SIDS across the Convention Area is a poignant reminder of this core responsibility, binding the Commission and CCMs to recognise and respond to developing State needs, in particular those of SIDS.

Development of risk-based assessment

The CMS should be focused on assessing areas that are of high risk or impact and that may undermine Commission management objectives. Enabling the Commission to identify and respond to high IUU and compliance risks, particularly persistent or systematic non-compliance issues, is essential.

Development of a risk based framework for the CMS will require significant commitment by the Commission and its members to identify and promote the consideration of linkages between particular obligations, and their value within the Commission's management regime. This work is inextricably linked to the development of audit points against each obligation, and will create a sound foundation on which to focus compliance assessments, reduce scope creep, direct the Commission's attention to remedial efforts and streamline compliance assessments.

a. Who is required to implement the proposal?

As with the current CMS, this proposal will require implementation across all CCMs, the WCPFC Secretariat and supporting regional agencies. Most substantive elements of the current measure (cooperative preparation of a dCMR between CCMs and the Secretariat, annual reporting, consideration by TCC and the Commission) are maintained, although the focus of such activities is rectified to align with the Convention to ensure assessments are made at CCM level and not at vessel level. As outlined in the Explanatory Note, further work will be done to clearly specify the roles and responsibilities of all key actors in the CMS process, including the Commission, the TCC, the WCPFC Secretariat and CCMs.

b. Which CCMs would this proposal impact and in what way(s) and what proportion?

Again, as with the current measure, this proposal would impact all CCMs, the WCPFC Secretariat and supporting regional agencies. The importance of this proposal is that it is dedicated to rectifying the approach to assessments to ensure this is undertaken at CCM level and addressing serious issues of unfair application to SIDS that compromise the integrity of the current measure and process.

The key points in the proposal can be summarised as follows:

- Removing the vessel level focus, with the associated benefits across fairness, time efficiency, workload and balance that are outlined in the Explanatory Note;
- Improving the SIDS capacity process and seeking to better link the measure to CMM 2013-06 to provide a proactive and supportive mechanism for capacity needs and appropriate assistance to be identified, as well as monitoring such assistance to ensure it's delivery;
- Introducing a more formal risk-based framework to determine the operational focus of the process in order to regulate workloads and clarify CCMs' expectations of each other.

c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation?

Yes, there are strong linkages between this process which focuses on CCM level assessments and other measures and instruments that form part of the WCPFC and CCM MCS framework which delve into potential vessel level infringements. The flag State investigation process (Article 25), CMM 2013-06 for IUU listing and the Compliance case file system are particularly important, along with bilateral and unilateral MCS and enforcement actions.

There is also a very strong linkage to CMMs 2013-06 and 2013-07. If those measures are properly embraced by the Commission-at-large, then CCMs will not be adopted that impose disproportionate burden, or that include obligations that SIDS have no capacity to meet.

There is also a link to the work of the IWG on the Special Requirements Fund to develop a Strategic Investment Plan which connects the needs of developing States, particularly SIDS

and territories, with assistance mechanisms. Part of this IWG's work is the consideration of the FFA proposal for 2 SIDS' participants to be funded to WCPF-related meetings, as part of the effort to promote effective participation.

d. Does the proposal affect development opportunities for SIDS?

The proposal will **facilitate** development opportunities for SIDS. By ensuring that the Scheme is fair, efficient and effective, this allows SIDS to focus on priority tasks such as development of their fisheries. This includes the use of a risk-based framework to determine which obligations are actually important to the Commission meeting its objectives, removing duplicative reporting, clear audit points, and being better informed on obligations and performance expectations.

In addition, full and proper implementation of CMM 13-06 and CMM 13-07 are important so that the Commission ensure the measures to be assessed using this CMS do not place undue constraints on development.

e. Does the proposal affect SIDS domestic access to resources and development aspirations?

This is largely addressed in (d) above. Again, full and proper implementation of CMM 13-06 and CMM 13-07 are important so that the Commission ensure the measures to be assessed using this CMS do not place undue constraints on development.

f. What resources, including financial and human capacity, are needed by SIDS to implement the proposal?

The CMS Review Panel's report highlights that there has been a marked improvement in compliance since the inception of the CMS and assigns this to the process itself. It is important to recognise that improvement is also attributable to the substantial investment made by CCMs, and in the case of FFA members, by FFA, PNAO and SPC, to assist Members to work towards compliance.

Going forward, the removal of the flag State investigation process and better definition of the burden of proof for compliance with obligations at CCM level will regulate this workload and investment.

The enhanced SIDS capacity process provides the Commission as a whole with the opportunity to identify and provide necessary financial and other assistance that will be required from time to time.

The Review Panel's recommendation for an additional funded delegate per SIDS is consistent with the FFA proposal to help promote their effective participation and is a very important component of any future CMS.

g. What mitigation measures are included in the proposal?

These are discussed above and in the attached Explanatory Note, and key to this proposal are the enhanced SIDS process and clarification that these assessments are undertaken at CCM level.

h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?

These are discussed above and in the Explanatory Note, and key to this proposal are the enhanced SIDS process and clarification that these assessments are undertaken at CCM level.