

US Comments on FFA Proposal for a Revised Compliance Monitoring Scheme

We appreciate the effort that FFA Members made to put together a proposal for a revised Compliance Monitoring Scheme (CMS) for consideration of other CCMs. We also appreciate that FFA used the existing measure as the model for much of the language in their proposal. We are providing our initial comments below, but reserve the right to provide some additional comments, redlined suggested edits or other drafting suggestions in the near future.

Comments:

1. *FFA's Explanatory Note*

a. We agree with several of the operating guidelines that FFA identifies, namely – consistency with the Convention text, cost effectiveness, the CMS should add value, reducing duplicative reporting requirements, the CMS process should be fair, and that the goal of the CMS should be to encourage compliance by CCMs. While we agree on many of these concepts, we have some different ideas on how to achieve them. In addition, as we note below, we do not think these concepts belong in the measure itself.

b. We disagree with some of the operating guidelines as well:

i. We do not see the role of the CMS as establishing balance across fisheries. The role of the CMS is to evaluate implementation of the measures that have been adopted. If the interest is to make the CMS review/workload more efficient, we would not seek an arbitrary balance based on fishery, rather a prioritization based on demonstrated need. It would be useful to know what aspects of non-compliance in high seas and longline fisheries are in need of closer scrutiny.

ii. We believe that the goal of the CMS is beyond merely to encourage compliance, but to “improve” compliance, so there needs to be some mechanism to more strongly address non-compliance than we have currently.

c. We strongly disagree with the removal of the “Flag State Investigation” element of the current measure. Ensuring that CCMs are taking effective flag state action in the event of alleged violations by their vessels is an essential element of an effective, robust and meaningful CMS. We disagree with the characterization of this as not being at the flag state level – this is ALL about flag state action. CCMs are not deemed non-compliant for the actions of the vessels, but only their response to those actions. Those actions must demonstrate that their implementation has the enduring ability to meet their obligation. We do, however, think that this process can be improved by setting clearer and more objective standards for evaluating flag state actions.

Furthermore, FFA's concerns on this issue are inconsistent with the real, tangible progress that we have seen over the past 7 years of the CMS on this issue. In the early days of the

CMS, there was little evidence that most CCMs were taking effective flag state action in response to alleged violations by their vessels – both investigations and prosecutions were clearly lacking. By last year, it was clear that most CCMs were now fully engaged in ensuring that they conducted real investigations into the alleged violations, and when appropriate, instituting sanctions. This is in part a result of the CMS process and is one of the successes of the Commission as a whole. It is also essential to ensuring fairness and a level playing field to vessels from all CCMs. In addition, we do not think that FFA’s suggestion of developing an aggregated form to go alongside the CMS is a reasonable alternative nor likely to achieve the goal of ensuring that CCMs take effective flag state action against violations by their vessels. Removing this element would be a significant step backward in our view.

d. We agree with the need to develop a better mechanism to prioritize our assessments and establish some risk-based assessment. We note, however, that all CCMs have agreed on this point for several years, but the Commission has not made much progress in achieving this goal. We welcome new ideas on how to prioritize our review in a fair and balanced manner.

e. We recognize the views of FFA related to effective CCM participation in the TCC, including with respect to FFA’s request that the Commission provide additional funding for SIDS CCMs to attend meetings. We are reserving comment on that issue pending further discussions in other intersessional working groups, the Finance and Administration Committee, and the Commission. Our comments in this document focus on the drafting of the revised CMS measure consistent with the scope of this intersessional working group.

2. *FFA’s Proposed Measure*

a. Purpose – FFA has added a sentence that reads “The purpose of the CMS is not to assess compliance by individual vessels” – we can agree with this addition with the following modification: “The purpose of the CMS **is also to assess flag state action in relation to alleged violations by its vessels**, not to assess compliance by individual vessels.”

b. Principles – We do not think that the new principles section belongs in a CMM. We do not agree with including this language.

c. Para 5 – We do not agree with the changes that have been made to this paragraph from the current measure. There is no reason why this paragraph should only apply to coastal states. Furthermore, while we can agree that the CMS shall not prejudice a CCMs rights, responsibilities and duties under its national laws, we do not agree that it need “recognize” them. If this paragraph is to be included, the original language from para 18 in the current measure needs to be retained.

d. Para 7 – We cannot agree that the assessment will be based only on the two criteria you have identified. Under your proposed language, a CCM would need demonstrate only that it is has implemented the obligation and that it has a process to

monitor compliance and take action. That is insufficient – having a process is not the same thing as using the process. In order to demonstrate an enduring ability to meet their obligation, there needs to be a third element that demonstrates that in the event of non-compliance, that the CCM has, in fact, taken effective action.

e. Para 11 – The language “Where TCC recognizes that” has been removed from the beginning of the first sentence. This language was discussed in great detail and was a compromise from the language in the FFA proposal in para 11 and language that a number of CCMs wanted that would read “Where TCC agrees ...”. In order to ensure a fair and meaningful process, there has to be some ability for TCC to note where the capacity assistance need has not been fully or properly identified. We recommend revising paragraph 11 to read as it does in para 6 of the current measure: “Where TCC recognizes that a capacity assistance need ...”

f. Para 15 – Once again, there needs to be some element of TCC’s review of the proposal to extend the timeframe of the capacity assistance need.

g. Para 18 – We do not agree that AR part I reports should no longer be one of the sources of information for the CMS. Recommend adding that back in.

h. Para 21 – We will need to give this paragraph some additional thought. We see some value in this document and think it could be of some use in evaluating overall compliance and areas of concern. As noted above, however, we do not agree with this document replacing the flag state investigation process, which we believe must be reinserted into the measure.

i. Section VII – Like our FFA colleagues, we will also need to give this concept some additional thought before we could agree to its inclusion.

j. Para 34 – This pends the decision on Section VII.

k. Para 37 – We generally agree with this paragraph, but wish to give it additional thought as this process continues to develop.

l. Para 38 – As we mentioned earlier, we do not agree with the inclusion of the principles in this measure, but we are open to discussing the development of guidelines for the process. This will need further discussion.

m. Paras 40 and 41 – We must get away from adopting one-year measures. If we can reach agreement on a revised measure, there should be no time limit on the measure. We can agree that it be reviewed in three years.

n. Annex I – As noted by FFA, the changes to Annex I reflect future work that is needed, so cannot be adopted as drafted this year. We can work to come up with the right language until the future work is completed.