



TECHNICAL AND COMPLIANCE COMMITTEE

Fourteenth Regular Session

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Majuro, Republic of Marshall Islands

REVIEW OF THE WCPFC COMPLIANCE MONITORING SCHEME
Summary of CMS IWG Comments on the Report from the Independent Panel
to Review the CMS

WCPFC-TCC14-2018-10B

28 August 2018

Paper prepared by the Secretariat

1. WCPFC14 established an Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG) under the chairmanship of Mr Glen Joseph of the Republic of Marshall Islands (WCPFC14 Summary Report, paragraph 461). The tasks of the CMS IWG are to facilitate consideration during 2018 of the Report from the Independent Review of the Compliance Monitoring Scheme (CMS) and develop a proposed CMM for the CMS for consideration at WCPFC15 (2018).

2. The Final Report from the Independent Review of the CMS was circulated on 7 March 2018 (**Circular 2018-15/WCPFC-TCC14-2018-10C**). The Chair of CMS IWG invited interested parties to submit comments on the Panel's Report, in view of the working group's task to develop a CMM proposal for consideration at WCPFC15. In response a number of IWG participants submitted comments by 30 March 2018. It is noted that the FFA had previously submitted comments on the Panel's progress report in WCPFC14-2017-DP28. On the basis of these comments, the Chair of the CMS IWG prepared a draft list of principles to guide the development of a CMM on the CMS and invited comments on this document from IWG participants. Further comments were provided by participants on the draft principles. On 5 July the FFA submitted a proposal for a CMM on the CMS. The IWG Chair invited other IWG participants to consider submitting either draft texts and/or comments in response to the FFA proposal by Tuesday 31 July in order to assist him in preparing a draft proposed CMM for CMS due prior to TCC14.

3. In addition to the task of developing a draft CMM on the CMS, the CMS IWG is to facilitate consideration of the Report of the Independent Review of the CMS. To assist TCC in its consideration of the Report, the Secretariat has prepared the attached summary table of comments of IWG participants. This is the Secretariat's attempt to faithfully represent and summarise the submissions of members of the IWG. It should be read in light of the detailed comments in the papers submitted by IWG participants which can be found at <https://www.wcpfc.int/cms-iwg>. It should also be read in light of views submitted on the draft proposed CMM for the CMS. It is noted that many of the comments on the Report of the Independent Review were stated to be of a preliminary nature and views may have developed over the last few months. Furthermore, comments were not submitted by all IWG participants nor on all recommendations. It follows that the absence of a comment should not be interpreted as either agreement or disagreement with a recommendation.

Recommendation

<p>4. TCC is invited to note the progress made by the Intersessional Working Group in considering the recommendations of the Report of the Review of the Compliance and Monitoring Scheme.</p>
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**Review of the WCPFC Compliance and Monitoring Scheme
Recommendations and Summary of CMS IWG Comments**

Recommendation	Summary of Comments
Chapter 2. Background and role of the CMS in WCPFC: page 17	
a. Continue to research options for improving the presentation of CMS summaries that describe trends in compliance [Secretariat]	US: general support. ISSF: support. NZ: support but lower priority.
b. Additional consolidated summaries for historical FSI information be included in FSI reporting [Secretariat]	US: general support. ISSF: support. NZ: support but lower priority.
c. Additional consolidated summaries of historical capacity development information be included in capacity assistance reporting [Secretariat]	US: general support. ISSF: support. NZ: support but lower priority.
Chapter 3. The CMS as a compliance tool: page 23	
a. The Commission commit to a new process to develop and implement a response to non-compliance procedure [Commission]	<p>Australia: support; include a range of responses, including incentives and penalties.</p> <p>US: support; should be incorporated in CMS.</p> <p>PNAO: general support; ideally should be built into future CMMs.</p> <p>Pew: support; penalties should be imbedded in CMS CMM.</p> <p>ISSF: support with a shorter timeframe than 3 years.</p> <p>Japan: general support, but not all obligations should be subject to a compliance procedure; requires careful discussion.</p> <p>NZ: important, but lower priority and will take time and resources to address in a balanced way.</p> <p>Chinese Taipei: not a pressing task.</p>
Chapter 4. The effectiveness and efficiency of existing CMS review procedures: pages 29-30	
a. key audit points associated with in each CMM are identified and described during drafting and prior to adoption of a CMM and that, in relation to individual SIDS, it is determined that capacity building is required to assist in achieving compliance [CCMs, TCC and the Commission]	<p>NZ: support; a priority.</p> <p>PNAO: support.</p> <p>Australia: support.</p> <p>US: support.</p>
b. maintaining a consolidated list of all CMM audit points for assessment, which should be updated and annotated each year for each fishery, and the SIDS checklist (CMM 2013-06) should be more assiduously applied throughout the CMM drafting process and prior to CMM adoption [Secretariat]	<p>NZ: support; SIDS checklist recommendation should be separate; automatic referral of capacity needs to the strategic investment plan process.</p> <p>PNAO: strongly supports application of SIDS checklist.</p> <p>FFA: widely-consulted and well-informed SIDS 2013-06 assessment required.</p>

c. Handbooks should be developed (and then updated) listing, by subject, the various CMM requirements for each fishery [Secretariat]	NZ: address together with the consolidated list of all CMM audit points; not a priority.
d. Finalise 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 [TCC and Commission]	US: support, but must be a dedicated session for CMS WG to complete review of additional information. Chinese Taipei: support submitting supplementary information regarding individual cases of violation via online case file system. NZ: support finalising pCMR at TCC; does not support submission of additional information to change the status of an assessment.
e. Consult with SPC to develop procedures to remove the requirement for duplicate data submissions [Secretariat]	Support: Japan; US; NZ; PNAO; Australia; and FFA.
f. Develop, and implement, off-line data entry and batch submission systems for the IMS [Secretariat]	Support: NZ; Australia. US: support subject to considering financial implications.
g. Implement improved IMS data submission systems utilizing iterative text, pre-population of data and auto-fill capabilities [Secretariat]	Support: Australia; FFA; NZ, but lower priority; and US, but subject to considering financial implications.
h. 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 [CCMs, TCC]	US: sees merit, but concerns over practicalities in terms of timing and substance, and Legal Advisor chairing; needs further consideration. Australia: needs further consideration. Chinese Taipei: has questions. NZ: if introduced should occur during the Commission meeting since CMM proposals are still subject to negotiation at Commission. PNAO: unlikely to be of value.
i. The review period prior to adoption of CMMs should also include a scientific review to reconcile objectives with forecast outcomes. This will require re-structuring of the Scientific Committee agenda and the establishment of a Scientific Committee Working Group on CMM appraisal. [Scientific Committee, TCC and the Commission]	NZ: agree should occur but may require that SC is more structured in its approach to CMM proposals. Australia: should consider further. Chinese Taipei: has questions.
j. Each CMM should be formally reviewed after a fixed period of 3 years, to ensure its continuing relevance and adequacy, and whether it needs to be maintained or revised. This should happen even if has been subject to annual review in the TCC. This review could be done initially in the Friends of the Chair Group.	NZ: may create work unnecessarily; CCMs can propose a review of CMMs when they consider this necessary. PNAO: cautious over Friends of Chair Group.
k. The verbal presentation of supplementary information to address reporting gaps discussed in TCC should be discontinued [TCC].	Support: Chinese Taipei, US, Australia, and NZ.

Chapter 5. Effective participation of CCMs in the review process: pages 37-38	
a. Continue to develop, and expand the scope and nature of, training resources and learning aids for the IMS particularly when new elements are introduced [Secretariat].	NZ: support but lower priority. US: support subject to consideration of financial implications.
b. As SIDS CCMs are increasingly operating as flag States as well as coastal States, WCPFC should collaborate with regional agencies, such as FFA and PNA, to explore options for increasing advice and assistance with respect to flag State obligations and responsibilities. [Commission]	NZ: part of ongoing capacity development by the WCPFC.
c. Facilitate increased use of small groups to negotiate and deal with discrete issues [TCC]	US: do not support. Japan: do not support, including because of small delegations. PNAO: cautious. NZ: would need rules of engagement to make sure views of key interested parties can be represented.
d. Fund two representatives from SIDS to TCC [Commission]	FFA: strongly support. NZ: support.
e. Produce information, and facilitate knowledge transfer, for all CCMs, relating to the different nature of responsibilities associated with compliance [Secretariat]	NZ: support.
f. Establish balance in the CMS by ensuring CMMs and CMS requirements are balanced across all fleets operating in the Convention Area [TCC and Commission].	PNA+Tokelau and FFA: support. ISSF: support. Australia: support; a function of differences in control. US: is a function of adopted CMMs, not CMS; agree should be balance, but not part of measure. NZ: need to address reporting requirements for longline fishery. Pew: agree should be balance, but achieved by raising levels of oversight.
Chapter 6. Fairness of CMS review procedures: pages 44-45	
a. Draft model responses and preparation guidelines for FSI Reports [Secretariat]	Support: Australia, NZ. ISSF: support and should be applied to all WCPFC reporting.
b. Consider the appointment of an independent chair for the TCC or CMR negotiations [Commission]	US: do not support. Australia and NZ: too costly and not an effective use of funds. Chinese Taipei: requires further consideration.
c. Alternatively, consider the appointment of co-chairs for the TCC or CMR negotiations [Commission]	US: do not support building in required chairing process. Australia: cautious. Chinese Taipei: requires further consideration.

	NZ: could avoid appearance of conflict of interest and good for succession planning.
d. Establish an informal review process of TCC decisions for CCMs which are dissatisfied with the process or outcomes [Commission]	PNAO and FFA: support a review process. Australia: support; but need to consider details of process. NZ: some questions over how it would be implemented.
e. Adopt a phased process for Observers to participate in all CMS discussions [TCC and Commission]	Support: US and Chinese Taipei . NZ: focus first on getting the CMS fair and equitable then consider observer participation. Pew: oppose; should be open to all accredited observer delegations wanting to participate. ISSF: need greater transparency; not sure how a phased process would be operationalised equitably.
Chapter 7. Determining Compliance Status: page 49	
a. Identify and describe requirements associated with key audit points in each CMM during drafting [CCMs, TCC and the Commission]	Support: Japan and FFA . Australia: support; consider longer term process for developing audit points, including of existing CMMs. NZ: support, provided also address ecosystems; setting criteria for CCMs to be assessed as compliant requires consideration.
b. Additional consolidated summaries for historical FSI information be included in FSI reporting [Secretariat]	ISSF: support. Chinese Taipei: consider in other WGs. NZ: lower priority.
c. Establish a Friends-of-the-Chair arrangement to reduce the demands on TCC to consider and address matters of an administrative and low-priority nature while identifying high priority issues/cases for consideration by the TCC as provided for in Chapter 9 [TCC and the Commission]	Japan: may be good option; also compliance assessment could look at whether the flag State has the requisite law in place, and deal with individual vessel violations through on-line case file. Australia: agree on need to prioritise, but need to consider further the Friends of the Chair proposal. US: support having ability to establish such groups, not that it be hardwired into revised CMS measure. PNAO: cautious over Friends of the Chair proposal. NZ: Not a priority; may not be useful. ISSF: support focus on CCM compliance not individual vessel compliance, but could consider

	options for triggering closer inspection of CCM implementation.
Chapter 8. Technical Assistance and Capacity Building: page 56	
a. establish a post of Capacity Development Assistance Officer to coordinate the WCPFC Secretariat's support to CCMs-related capacity building and technical assistance.	<p>FFA: must create enabling environment for SIDS with capacity needs, including through strategic investment plan.</p> <p>Australia: need to consider in context of addressing SIDS capacity needs, including strategic investment plan.</p> <p>NZ: could apply the strategic investment plan for the next 3 years and then consider the need for this.</p> <p>Chinese Taipei: requires further consideration.</p>
Chapter 9. The procedures and experience of other RFMOs and other multilateral bodies: p. 63	
a. Establish a Friends-of-the-Chair arrangement to reduce the demands on TCC to consider and address matters of an administrative and low-priority nature and to prioritize issues cases for TCC review [TCC and the Commission]	<p>Australia: agree on need to streamline and prioritise, but need to consider Friends of the Chair.</p> <p>PNAO: cautious.</p> <p>NZ: not a priority; possible co-chair idea.</p>
b. Pilot a Quality Assurance Review procedure where there appear to be serious or systemic compliance issues for a CCM [Commission]	<p>US: Could be beneficial but some practical concerns; willing to discuss further.</p> <p>NZ: lower priority; review every three years should pick up systemic compliance issues.</p> <p>Chinese Taipei: requires further consideration.</p>
Chapter 10. Follow-through on compliance outcomes: page 67-68	
a. Develop a capacity building and training support programme to strengthen the effectiveness of ROP information in the CMS [Commission]	<p>Chinese Taipei: consider in other WG.</p> <p>NZ: part of ongoing capacity building.</p>
b. Continue the practice of restricting pre-notified cases for TCC consideration to those involving observer interference and obstruction [TCC]	Support: Chinese Taipei, US, and NZ.
c. Commit to a new process to develop and implement a response to non-compliance procedure [Commission]	<p>Australia: support; include incentives and penalties.</p> <p>US: support; should be incorporated in CMS.</p> <p>PNAO: general support; ideally should be built into future CMMs.</p> <p>Pew: support; should include penalties.</p> <p>ISSF: support.</p> <p>NZ: Agree it's needed but later down the track.</p>

	<p>Japan: general support, but not all obligations should be subject to a compliance procedure; requires careful discussion.</p> <p>Chinese Taipei: not a pressing task.</p>
d. Pilot a Quality Assurance Review procedure [Commission]	<p>Australia: need to consider; not clear what target would be or goal; directly linked to development of responses to non-compliance; significant budget implications.</p> <p>Chinese Taipei: requires further consideration.</p> <p>NZ: lower priority.</p>
Chapter 11. Resource implications of the CMS: page 72	
a. The Commission instruct TCC to prepare a multi-year strategic plan for the on-going development of the CMS [Commission and TCC]	<p>Australia: cautious; avoid duplication; should be a work plan to develop the CMS.</p> <p>NZ: Not a priority.</p>
b. That once adopted, the Commission commit to a 3-year funding cycle to support implementation of the CMS strategic plan [Commission]	<p>Chinese Taipei: not a pressing task.</p> <p>NZ: Not a priority.</p>
c. The Commission request that the Secretariat present an annual report on the implementation of the CMS strategic plan [Commission and Secretariat]	<p>Chinese Taipei: not a pressing task.</p> <p>NZ: Not a priority.</p>
d. The Commission instruct the TCC to consider options to mitigate the impacts of an unscheduled disruption to Secretariat services to the CMS [Commission]	<p>US: agree is an issue; open to ideas to address.</p> <p>NZ: succession planning through co-chair and chairs of SWG.</p> <p>Australia: succession planning through vice-chairs.</p>
e. The Commission establish a post of CDP Officer and FSI Officer in the Secretariat [Commission]	<p>PNAO: do not support FSI Officer.</p> <p>Australia: FSI Officer not in line with purpose of CMS.</p> <p>NZ: part of ongoing capacity building.</p> <p>Chinese Taipei: requires further consideration.</p>
Chapter 12. Regular Review Process of the CMS: page 74	
a. Consider adopting an extended (18-month) negotiating time frame for CMM development, drafting and adoption The CMS should be established for a period of five years [Commission]	<p>NZ: do not support 18-month time frame for CCM development.</p> <p>Japan: support spirit of recommendation, but some CMMs urgent; requires careful discussion.</p> <p>Australia: to consider further.</p> <p>Chinese Taipei: has questions.</p> <p>NZ: split out CMS recommendation. Once a CMM is agreed, could have a 5-year timeframe.</p>

	<p>Australia: CMS should be permanent but could accept a 5-year term with mid-term and end-term review.</p> <p>Chinese Taipei: 5-year term with 3-year review.</p> <p>ISSF: support 5-year term.</p> <p>US: CMM should be permanent with review not linked to automatic expiration.</p> <p>Pew: prefer permanent with external and Commission reviews at appropriate intervals.</p>
<p>b. A comprehensive, all-inclusive review, be undertaken during Year 5. The Review should be commenced well in advance of TCC of that year, so that an interim report is presented to the Commission and then a CMM, if required, is adopted for implementation in the following year [Commission]</p>	<p>ISSF: support.</p> <p>NZ: lower priority.</p>
<p>c. The Secretariat be tasked with preparing a mid-term Implementation Report (to the Year 3 Commission meeting), reporting on trends, issues and challenges associated with the CMS. CCMs should be prepared to provide views and observations in association with that Implementation Report. The 5-year Review could be brought forward at that time if considered necessary [Commission, TCC and Secretariat].</p>	<p>NZ: agree but recognises difficulty of doing so.</p>
