



WWF Smart Fishing Initiative

Links between Harvest Strategies and CMMs

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Summary

- CMMs and Resolutions
- Applications of CMMs and Other Instruments
- Compatibility with Subregional Measures and Agreements.
- One for Each or One for All?
- Giving Effect to HS Elements
- Consolidating CMMs



Implementation of the Harvest Strategy Approach

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CMMs and Resolutions

Overall, any substantive decision of the Commission must be given “due regard.” However, there are specific obligations as follows:

1. CMMs are binding obligations with which all CCMs must comply.
2. Resolutions, decisions, and other non-binding instruments are “highly persuasive” and CCMs are expected to perform them.
3. Regardless of whether binding or non-binding, the TCC retains authority to review and provide recommendations on decisions of the Commission.



Application of CMMs or Other Instruments

Definition of “Convention Area”

1. Ordinary meaning provides that Commission competence extends to all waters of the convention area.
2. Unless a CMM specifically excludes certain types of waters, it should be interpreted as including all waters within the convention area.
3. Current legal interpretations note a specific exemption for the “territorial sea, archipelagic waters and internal waters.”

Scope of Commission Authority

1. In a legal context, the scope of Commission authority is somewhat ambiguous.
2. Article 10 of the WCPF Convention confirms the authority of coastal States to exercise their sovereignty to develop measures that apply to their areas of national jurisdiction.
3. Within the exercise of their sovereign rights over their EEZs, CCMs must apply measures in a way that is consistent with the applicable CMM.



Application of CMMs or Other Instruments...

Compatibility of Measures in Areas under National Jurisdiction

1. Coastal States have a duty to apply CMMs in areas under national jurisdiction pursuant to sovereign rights.
2. States retain the right to adopt measures within their areas under national jurisdiction provided they are compatible with the Commission CMMs.
3. There is some ambiguity, but the current accepted interpretation suggests that coastal States retain authority to implement CMMs within their “territorial sea, archipelagic waters and internal waters.”
4. For the Harvest Strategy CMM, CCMs should presume the Convention Area as comprising “all waters” bounded by the WCPF Convention, as qualified that coastal States shall apply these measures in areas under national jurisdiction pursuant to their sovereign rights over the territorial sea, archipelagic waters and internal waters.



Compatibility with Subregional Measures and Agreements

1. Article 8(2)(c) directs the WCPFC to “take into account” previously agreed measures established and applied by a subregional organisation or RFMO.
2. Article 8(2)(b) directs the Commission to take into account other measures adopted and applied by coastal States as well as “previously agreed measures...for the high seas.”
3. The Commission needs to accord active and meaningful consideration to...national or subregional CMMs.



One for Each or One for All?

Overarching CMM

1. Advantages

- Less repetition of preamble text.
- Improved consolidation of CMMs.

2. Disadvantages

- Opening a single element opens the entire CMM.
- Opens CMM to protracted negotiation contrary to HS Approach.

Individual CMMs

1. Advantages

- Ability to address each stock or fishery individually.

2. Disadvantages

- Unnecessary repetition.



One for Each or One for All?

Combination Approach

Provide elements common to all harvest strategies in the main body of the CMM and then include elements of the HS unique to specific stocks or fisheries in individual annexes.

1. Advantages

- Less repetition of preamble text.
- Allows independent assessment and adoption on a fishery/stock basis.
- All HSs consolidated in a single document.
- All aspects of the HS are binding.

2. Disadvantages

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Consolidating and Simplifying CMMs

1. Several international organizations have made efforts to consolidate and simplify complex regulations with relative success.
2. The North East Atlantic Fisheries Commission (NEAFC) provides a reasonable example of how to consolidate and simplify CMMs.
3. There could be merit in seeking to consolidate the HS CMM.



Recommendations for Implementing the Harvest Strategy Approach

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Recommendations for Implementing HS Approach

1. The Commission should implement a single, binding CMM using a “Combination Approach.”
2. The Combination Approach would adopt provisions common to different fisheries and stocks in the main body of the CMM, while individual harvest strategies for individual fisheries or stocks , including LTRPs and HCRs, would be included in annexes.



Thank you!

