



TECHNICAL AND COMPLIANCE COMMITTEE

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TERMS FOR A REVIEW OF THE WCPFC COMPLIANCE MONITORING SCHEME

WCPFC-TCC12-2016-11

31 August 2016

Purpose

1. To provide some discussion points for consideration by TCC12 in formulating its recommendations on the terms for the review of the Compliance Monitoring Scheme (CMS). Paragraph 40 of the current Conservation and Management Measure for the Compliance Monitoring Scheme (CMM 2015-07) says “This measure shall be reviewed in 2017, and the terms of that review will be determined by TCC12 in 2016.
2. TCC12 is invited to consider the paper and in accordance with CMM 2015-07 paragraph 40, make recommendations to WCPFC13 regarding the terms for the review of the CMS.

Background

3. Since 2011, the Commission has been implementing the WCPFC Compliance Monitoring Scheme (CMS) through a series of CMMs that have applied the CMS on an annual basis. Subsequent CMMs have often included incremental changes to the assessment procedure and the breadth of coverage of the CMS. The suggestion that the CMS needed to be reviewed or audited was formally expressed in a delegation paper from FFA members at WCPFC11 (in December 2014).
4. At WCPFC11, FFA members tabled a delegation paper providing some comments on the CMS process (WCPFC11-2014-DP10). Within that delegation paper was the following statement...

“We are generally supportive of the current process used to undertake the Compliance Monitoring Report (CMR). However, we believe that there is a need to task an independent review and audit of this process to take stock of where we stand in terms of its effectiveness and where efficiency gains can be made in meeting the CMS’ objectives.”

5. During WCPFC11 there was a mixture of support and hesitation in the views which were expressed by CCMs in response to the FFA proposal. The main views expressed included:
 - The need to properly assess the likely cost implications of an audit alongside other priorities within the 2015 budget;
 - Allow more time for the CMS to operate before a review is undertaken, noting that a revised measure will be developed in 2015; and
 - Undertake a review to make sure the CMS is meeting its objectives and making a positive contribution to the work of the TCC as it has been implemented for four years already.
6. The outcome from WCPFC11 was agreement “that there should be an audit of the CMS at some point. The Secretariat was tasked with preparing a paper for TCC11, which will include consideration of the costs of conducting an independent audit of the CMS” (WCPFC11 Summary Report paragraph 674).
7. During 2015, the Secretariat prepared a TCC11 paper on this matter as directed. The TCC11 outcome was;

“TCC11 noted the paper provided by the Executive Director on the “Concept of an independent audit or independent review of the WCPFC Compliance Monitoring Scheme” and continues to support the concept, but agreed that now was not the right time for such a review. TCC11 noted that such a review might be appropriate after the revised CMS CMM has been in place for at least a couple of years” (TCC11 Summary Report paragraph 161).
8. During WCPFC12, there were a range of perspectives expressed by CCMs around the preferred duration for the revised CMS measure and the ideal timing and mechanism for undertaking a review of the CMS. The Commission did adopt CMM 2015-07 which is a revised measure, and agreed to the measure having a two-year duration, i.e. it is to be effective for 2016 and 2017.¹ The Commission has also agreed that the Scheme will be reviewed at the end of 2017 by an independent panel selected by the Executive Director in consultation with Members.² CMM 2015-07 paragraph 40, tasks TCC12 with providing recommendations to WCPFC13 on the terms of the review.
9. Noting the decisions from WCPFC12, this paper builds on the TCC11 paper “Concept of an independent audit or independent review of the WCPFC Compliance Monitoring Scheme”³, with a view to providing some discussion points for consideration by

¹ Paragraphs 40 and 41 of CMM 2015-07 provide: “40. This measure shall be reviewed in 2017, and the terms of that review will be determined by TCC12 in 2016. 41. This measure will be effective for 2016 and 2017 only.”

² The specific WCPFC12 decision was “Subject to the recommendations from TCC12 (CMM 2015-07, para 40) a review of the CMS will be conducted by an independent panel selected by the Executive Director in consultation with Members at the end of 2017.” (WCPFC12 Summary Report paragraph 696)

³ WCPFC-TCC11-2015-10

TCC12. In particular, this paper considers the scope of the review, the timing of the review, the proposed selection process for the independent review team, and costs.

Scope of Review

10. The FFA proposal to WCPFC11 stated purpose was a “need to task an independent review and audit of this process to take stock of where we stand in terms of its effectiveness and where efficiency gains can be made in meeting the CMS’ objectives.” Most CCMs that spoke in favor of the FFA proposal at WCPFC11 suggested that priorities for such an “audit or review” were to check implementation against the stated objectives for the Compliance Monitoring Scheme, and to ensure that the overall Compliance Monitoring Process was having the appropriate impact and making a difference. The scope of the Review wasn’t discussed in detail during WCPFC12.

11. The purpose of the WCPFC Compliance Monitoring Scheme is described in paragraph 1 of CMM 2015-07:

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 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 conservation and management measures which may require refinement or amendment for effective implementation;
- (iv) respond to non-compliance through remedial options that include a range of possible responses that take account of the reason for and degree of noncompliance, and include cooperative capacity-building initiatives and, in case of serious non-compliance, such penalties and other actions 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.

Footnote 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 38 of this measure.

12. At the core of the Review of the CMS will be an assessment of how the scheme has achieved its central purpose of ensuring that CCMs implement and comply with their obligations under the Convention and CMMs adopted by the Commission. In addition to that basic assessment, discussions at WCPFC indicate that the review should also consider the effectiveness and

efficiency of the CMS. This suggests that the review may consider such other matters as:

- a. the contribution of the CMS to the work of the TCC and WCPFC;
- b. the effectiveness of the CMS procedures, including how user-friendly is the CMS report template;
- c. an assessment of the TCC procedures in considering the draft Compliance Monitoring Report (CMR), particularly in light of requests for greater transparency;
- d. an assessment of the budgetary and resource implications of the CMS;
- e. refinements to the CMS to improve its efficiency and effectiveness; and
- f. the establishment of a regular review process.

13. TCC12 might consider elaborating on a series of questions to be addressed by the Review as part of the recommendations to WCPFC13.

Time period for the Review and its associated scheduling

14. Most CCMs that spoke during WCPFC12 in regard to the review of the CMS, had recognized that CMM 2015-07 incorporated some new elements in the CMS, such as the Capacity Development Plans and Investigation Status Report assessment processes. Some CCMs suggested that the revised CMS needed to be in operation for more than a year to see if these new elements improved the CMS. However other CCMs were cautious about agreeing to implement CMM 2015-07 for a period of more than two years noting these new elements were untested.

15. In order to ensure the most effective review process, the Review should consider the complete CMS process under CMM 2015-07, commencing with the preparation by the Secretariat of the online CMR reporting systems, the submission by CCMs of Annual Report Part 1 and Part 2 and the development by the Secretariat of draft CMRs. The Review should also consider the review of draft CMR by TCC in September, TCC's preparation of a provisional CMR and the adoption by the Commission of the final CMR. It would also be efficient for the review to consider the operation of the CMS as amended in 2015 through at least one complete year, otherwise the review will consider features of the CMS that may have already been addressed through adoption of CMM 2015-07.

16. Noting that the key reporting deadlines in the CMS process are during the second half of a calendar year, it would be helpful to the Secretariat, if the Review process were to commence early in the calendar year. For example, the Review team could visit Pohnpei in the first half of the year to meet with the Secretariat and to discuss and review the previous year/s final CMR reports. This timing could provide the Review team with a useful context for their observations of TCC processes later in that year.

17. The WCPFC12 decision is for the Review to be conducted "at the end of 2017". Taking into account the timing issues mentioned above, the Review Panel could be selected in late 2017 to commence in early 2018. This would provide a period of up to two years of implementation of CMM 2015-07 to be considered in the Review

process, with a report presented to WCPFC15 in 2018. Alternatively, if the Review Panel were selected earlier in 2017, the Review team would review CMR documentation for only the first year of implementation of CMM 2015-07 (in 2016 only), and may need to focus more on observing the process undertaken during the second year of operation of CMM 2015-07 at TCC13. However, it could provide a report a year earlier to WCPFC14 in 2017.

18. A clear recommendation from TCC12 on the appropriate time period for the Review and its associated scheduling will be helpful in guiding the development of the terms of reference for the Review and may be reflective of CCMs experiences of the process of implementing CMM 2015-07 during TCC12.

Proposed process for selection of the independent panel and consideration of possible costs

19. WCPFC12 agreed that the Review of the CMS would be undertaken by an independent panel selected by the Executive Director in consultation with Members.
20. It is expected that the Secretariat will be responsible for administering the process for the selection and contracting of the Independent Panel for the Review of the CMS. In addition, noting that Members are to be consulted by the Executive Director in his selection of the Panel, one approach could be to establish a process that provides Members with the opportunity to nominate and provide advice on their ranking of candidates to be considered for the panel. The Executive Director would finalize the list of participants on the Independent Panel for the Review, taking into account the rankings and the availability of the candidates.
21. Indications of possible costs were provided in the TCC11 paper, which were based on the actual costs from recent WCPFC independent reviews and regular annual financial and security audits. The costs provided in Table 1 and the associated terms of reference for each activity do vary. For example, the annual financial and annual security audits terms of reference tend to be more defined, and activities are focused on reviews to check the consistency of observed Secretariat practices with agreed standards and rules. Whereas, the terms of reference for the “reviews” tend to be more broad, and focused on review of processes and procedures, collation of views of CCMs, and recommendations on a range of areas for improvement including decisions and actions that should be taken by the Commission and practices that the Secretariat should employ. The CMS Review appears to have the characteristics of this latter kind of review.

Table 1. Costings for WCPFC recently-undertaken Independent Reviews or Audits

Type of Review or Audit	Description	Total cost (USD)
Joint VMS review (2011) jointly undertaken by FFA and WCPFC	Consultants fees (x1) and some travel	46,000
Bigeye stock assessment peer review (2014/2013)	Consultants fees (x1) and travel	30,000
Independent review of WCPFC (2012)	Consultants fees (x3) and travel	80,000
Annual RFV/IMS and VMS security Audit (2014)	Cost including travel	7,300
Annual Financial Audit (2014)	Cost including travel	7,000

22. The key considerations affecting the costs of previous reviews, have been the number of consultants and any needed travel. It is expected that Review team would need to travel to Pohnpei to meet with the Secretariat and to observe the TCC process. It probably isn't essential that the Review team would meet with all CCMs in advance of TCC, but the merits of this might be something for TCC to consider. One approach could be that the Review team is asked to develop a questionnaire to obtain feedback from CCMs on the operation of the CMS.

Discussion

23. The Commission has decided on some aspects of the Review of the CMS process including that it will take place at the end of 2017. There are a number of details for the Review that TCC12 will need to further consider and elaborate as needed.

24. The scheduling for the Review will depend on CCMs thoughts on the appropriate time period for the operation of the revised CMS prior to its review. This will likely depend on CCMs experiences during TCC12 of implementing CMM 2015-07.

25. The indicative costs of the independent review are likely to depend on factors such as the number of consultants (and consultant hours) that would undertake the review and the extent of any travel that is expected. Subject to the considerations regarding the time period and scheduling of the review noted above, a suitable budgetary allocation may need to be considered at this year's FAC related to proposed expenditure for the Review during 2017.

26. Obviously a terms of reference will need to be developed for the Review, and a draft outline has been prepared by the Secretariat to assist TCC12s consideration (**Annex 1**).

27. It is therefore suggested that TCC12 review the WCPFC12 decisions and provide guidance on how to progress the review of the CMS and discuss possible elements for the terms of reference for such a review.

Recommendation

28. TCC12 is invited to

- consider the paper and make recommendations to WCPFC13 regarding the terms of the review of the Compliance Monitoring Scheme in 2017.

DRAFT Terms of Reference for the Review of the CMS

General question

“During 2016 [– 2017], did the CMS adequately meet the purpose set out in CMM 2015-07?”

Specific questions to be answered by the Review of the CMS

- a. To what extent does the CMS contribute to the work of the TCC and WCPFC?
- b. How effective are the CMS procedures, and in particular how user-friendly are the CMS online reporting systems?
- c. How effective are the TCC procedures in considering the draft Compliance Monitoring Report (CMR), particularly in light of requests for greater transparency?
- d. What are the budgetary and resource implications of the CMS, both within the Secretariat and across the Commission?
- e. What refinements should be made to the CMS to improve its efficiency and effectiveness?
- f. Should a regular review process of the CMS be considered, and if so what aspects of the CMS should be reviewed and how frequently?

Scheduling

Timing of the Review depends on whether one or two years of implementation of CMM 2015-07 is to be reviewed.

The Review Panel is expected to travel to Pohnpei to meet with the Secretariat and to observe the TCC process.

Composition

The Review Panel should comprise [three (3)] independent experts with no recognized affiliation with TCC that have significant experience in Compliance Monitoring Schemes in RFMOs, one of whom will be assigned the role of Chair.
