



TECHNICAL AND COMPLIANCE COMMITTEE

Nineteenth Regular Session

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Pohnpei, Federated States of Micronesia

COMPLIANCE MONITORING SCHEME INTERSESIONAL WORKING GROUP

**UPDATES ON THE PROGRESS IN THE DEVELOPMENT OF CORRECTIVE
ACTIONS AND PROPOSED WAY FORWARD**

WCPFC-TCC19-2023-10B

12 September 2023

TCC Vice Chair & Chair of the CMS-IWG



**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS,
PARTICIPATING TERRITORIES AND OBSERVERS**

**Circular No.: 2023/74
Date: 12 September 2023
No. pages: 05**

**Compliance Monitoring Scheme Intersessional Working Group – Updates on the
Progress in the Development of Corrective Actions and Proposed Way Forward**

Dear All,

Following the Circular 2023/31 dated 6 April 2023 on commencing the CMS-IWG work on Corrective Actions which requested comments and feedback on a draft Terms of Reference (TOR), the CMS-IWG WCPFC Lead on the Development of Corrective Actions, Ms. Elizabeth O’Sullivan (USA), has incorporated several comments from CCMs into the draft TOR. They are provided in the attached Word document as track changes. I would like to thank the work lead for her hard work and those who submitted their feedback for their contribution.

As you will see in the updated draft TOR, one of the comments suggests that the Commission should look first at the use of cooperative and supportive actions as opposed to disciplinary corrective actions. However, as the WCPFC19-adopted TCC work plan for 2022-2024 (page 282 of [WCPFC19 Summary Report](#)) is silent on “cooperative and supportive actions”, it may not be appropriate for the CMS-IWG to work on those aspects first without guidance from the TCC and the Commission.

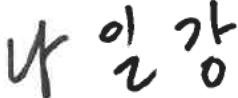
According to the TCC work plan, corrective actions are supposed to be incorporated into the review of dCMR on a trial basis in 2024. So, one possible way forward could, subject to the endorsement of TCC and the Commission, be to develop the cooperative and supportive actions separately but in parallel with the corrective actions by the TCC20 meeting next year or the earliest time possible, if this approach is agreeable to everyone.

I would like to invite you to submit your views on this proposed way forward as well as any further comments you may have on the draft TOR, **by close of business on Monday 18 September 2023 (Pohnpei time)** to the CMS IWG Chair at ikna@korea.kr (cc : work lead elizabeth.osullivan@noaa.gov, Compliance Manager Lara.Manarangi-Trott@wcpfc.int).

Depending on the availability of time and guidance of the TCC Chair, there will be an opportunity for us to sit together and have some brief discussion during the TCC19.

Thank you very much and I look forward to seeing you all in Pohnpei soon.

Sincerely,

Handwritten signature in Korean: 나 일 강 (Na Il-gang)

Ilkang Na
TCC Vice Chair & Chair of the CMS IWG

DRAFT: Terms of Reference for the Development of Corrective Actions

Background

1. Acting on the advice of TCC18, WCPFC19 identified a lead to work through the Compliance Monitoring Scheme Intersessional Working Group (CMS IWG) to develop corrective actions to encourage and incentivize CCMs' compliance with the Commission's obligations. The WCPFC19 Summary Report states:

386. WCPFC19 welcomed the nomination by the United States for Ms. Elizabeth O'Sullivan to lead work through the CMS IWG to develop corrective actions to encourage and incentivize CCM's compliance with the Commission's obligations, where non-compliance is identified, and encourages CCMs to participate in this work.

2. The development of corrective actions is a part of the future work identified in the CMS CMM 2021-03, which states:

2. The CMS is designed to:

(iv) respond to non-compliance by CCMs through remedial and/or preventative options that include a range of possible responses that take account of the reason for and degree, the severity, consequences and frequency of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations; and

46. The Commission hereby commits to a multi-year workplan of tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining processes. This workplan should include the development of guidelines and operating procedures to support the implementation of the Compliance Monitoring Scheme, and shall include inter alia:

(iv) the development of corrective actions to encourage and incentivize CCMs' compliance with the Commission's obligations, where non-compliance is identified;

3. At WCPFC19, some CCMs requested the development of terms of reference (TOR) to ensure the scope of the work undertaken on corrective actions was clear.

385. Samoa on behalf of FFA Members stated that they wanted to ensure that the scope of work on the issue was clear, and recommended that the first task for CCMs was to develop a clear TOR to guide the work. FFA members advocated looking first at the use of cooperative and supportive actions as opposed to corrective actions, and stated they would be prepared to consider corrective actions once the current imbalance and bias in the CMS was addressed. They stated that this was in line with the principle of cooperation towards compliance, as stated in paragraph 3 of the CMS measure, to promote a supportive, collaborative, and non-adversarial approach where possible, with

the aim of ensuring long-term compliance, including considering capacity assistance needs or other quality improvement and corrective actions.

4. These TOR define the objectives, process, tasks and timeframe for the development of corrective actions through the CMS IWG.

Objective

The CMS IWG and the corrective actions lead will:

5. Identify cooperative, supportive, and if necessary, corrective actions to address non-compliance by CCMs that will incentivize and encourage CCMs compliance with the obligations of the Commission thus making the WCPFC CMS more effective and achieve the mandate of the Commission.

6. Recommend to TCC and the Commission the adoption-consideration of such corrective actions.

Process

7. The CMS IWG and the corrective actions lead will:

a. Compile, review and analyze information about how other RFMOs have addressed non-compliance with RFMO obligations by their members;

b. Develop a list of potential supportive and corrective actions that are designed to incentivize compliance and deter non-compliance by CCMs with WCPFC obligations; and

c. Propose recommended supportive and corrective actions for the Commission, with the advice and recommendation of TCC.

8. The work to develop supportive and corrective actions is open to all participants of the CMS-IWG, including any interested WCPFC observers. The CMS IWG will conduct its work to develop corrective actions electronically, though it may request time to meet during TCC.

Tasks

9. Information referenced in paragraph 7 will be compiled by the corrective actions lead with the assistance of the Secretariat.

10. A summary of this information and some potential paths forward on the deployment of WCPFC corrective actions will be circulated to the CMS IWG for discussion.

11. A virtual meeting will be held to discuss the options for corrective actions that are most appropriate to incentive compliance with CMMs. The CMS IWG will consider any relevant information to the development of effective corrective actions.

12. The CMS IWG and the corrective actions lead shall report to TCC as appropriate and seek advice and recommendations.

Commented [GCES1]: FFA first look at use of cooperative and supportive actions as opposed to disciplinary corrective actions.

Commented [GCES2]: FFA

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13. The CMS IWG and the corrective actions lead shall develop recommendations for [supportive](#) corrective action in WCPFC to the Commission ~~for adoption~~ [consideration and possible adoption](#).

Commented [GCES6]: CTP

Timeframe

Progress towards the development of [supportive and](#) corrective actions will be reviewed at WCPFC20.

ADDITIONAL COMMENTS FOR DISCUSSION

CTP additional comment: seek advice whether the materials we use for discussion to develop CA contain detailed violations and infringements which are non-public domain and should not be open to all participants.

PEW: Should consider CITIES the Extractive Industry Transparency Initiative and the UN Environmental Programme.