



TECHNICAL AND COMPLIANCE COMMITTEE

Nineteenth Regular Session

20 – 26 September 2023

Pohnpei, Federated States of Micronesia

COMPLIANCE MONITORING SCHEME INTERSESSIONAL WORKING GROUP

OUTSTANDING AUDIT POINTS – UPDATE

WCPFC-TCC19-2023-10A

15 September 2023

CMS IWG Lead on Audit Points

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

Circular No.: 2023/76
Date: 15 September 2023
No of pages: 03

**Compliance Monitoring Scheme Intersessional Working Group – Update on
Outstanding Audit Points**

Dear Colleagues,

1. Draft outstanding Audit Points for comment

On 16 August 2023, Circular 2023/64 was distributed providing draft outstanding Audit Points for CMS IWG participants' consideration and comments. These draft Audit Points were prepared in consultation with the Secretariat. It included draft audit points for 120 obligations, the majority of which are derived from current Annual Report Part 2 reporting (for obligations with no currently agreed Audit Points in place).

All relevant documents for this work stream are posted on the CMS IWG webpage at https://www.wcpfc.int/cms-iwg_2020 (including both Word and PDF versions of documents).

Comments were requested by 1 September 2023. A number of CCMs have responded with comments (both general and specific) on the draft Audit Points, and we thank those CCMs for their input. However, a number of CCMs/participants have indicated that due to current workloads and available time prior to TCC, they intend to provide comments closer to TCC (or at TCC itself during Audit Point small group discussions).

As a result (and due to the size of the document), I do not intend to prepare and distribute a revised document at this stage. Instead, I am providing a brief overview of the nature of some of the comments received to date. I hope that this will assist in achieving a common understanding of some of the draft Audit Points and move us closer to agreement on their drafting.

2. Summary of types and nature of comments received

Approach to Audit Point drafting

CCMs' comments are generally consistent in acknowledging that the drafting of a particular audit point must directly align to the underlying obligation text. Where the intent

or expectation of an obligation is not clear, then the associated audit point cannot cure the underlying obligation. Instead, the underlying obligation requires redrafting.

Where CCMs are seeking stronger or different obligations to what is contained in an underlying obligation (i.e. the CMM paragraph), this can only be achieved through redrafting/amending the underlying obligation – not through creative drafting of an audit point.

Implementation obligations

A number of CCMs have commented on the scope of Implementation obligation audit points. Participants would recall that WCPFC19 adopted a range of Implementation audit points. These audit points followed a similar approach and wording, drawn directly from paragraph 7(ii) of CMM 2021-03 that provides the agreed assessment criteria for Implementation obligations: *Implementation – where an obligation applies, the CCM is required to provide information showing that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation.*

Based on this, the current format for Implementation audit points (for WCPFC19 agreed audit points, and the draft outstanding audit points) is as follows:

CCM submitted a statement in [ARPt2] that:

- a. confirms CCM's implementation through adoption of a national binding measure that requires [#].*
- b. describes how the CCM is monitoring and ensuring that [#], and how CCM responds to potential infringement or instances of non-compliance with this requirement.*

Some CCMs have queried the scope of what constitutes ‘*adoption of a national binding measure*’. In particular, where a CCM implements an obligation through national policies or procedures e.g. obligations on inspectors, obligations on national authorities and generally worded obligations. In these cases, CCMs have suggested three approaches to dealing with this issue:

- 1) Where appropriate, the obligation be considered only a reporting obligation (e.g. confirmation from a CCM that it completed an action).
- 2) To change the language in some Implementation audit points from ‘through adoption of national binding measure’ to ‘through adoption of national procedures’.
- 3) That a national binding measure that provides the authority or power to implement a particular type of obligation – that is more prescriptively executed through national procedures or policies - is sufficient to meet this element of an implementation obligation.

A discussion on the scope of Implementation audit points would be useful to ensure there is a consistent approach and understanding amongst participants/CCMs. To that end, I note that the Secretariat has also issued Working Paper 11 (WCPFC-TCC19-2023-11) which provides some useful commentary on the Secretariat’s application of audit points and associated verification of compliance.

Obligations to cooperate

There were differing views as to whether any obligations to cooperate should have associated audit points. Where there is a binding obligation to cooperate (e.g. ‘CCMs shall cooperate to...’), some CCMs supported maintaining an audit point for this, however only

as a reporting obligation rather than implementation obligation. Under this approach, CCMs would just be assessed on its own report of how it cooperated in line with a particular obligation.

Obligations with an existing adopted audit point for a category

The draft outstanding audit point document seeks participants' views as to whether an audit point is actually needed for a range of obligations. In these situations, the particular obligation(s) already have an adopted audit point for one category of obligation (e.g. as a Reporting obligation). In most cases, the existing adopted audit point aligns to the category based on past TCC accepted treatment or assessment. Therefore, participants' views are sought as to whether additional categories (Reporting, Implementation and/or Quantitative Limit) are needed.

The majority of CCMs' feedback has indicated comfort with not drafting additional audit points for other categories. Participants consider the existing audit points (and associated obligation category) sufficient and appropriate. However, one CCM indicated its preference to consider drafting audit points for certain Quantitative Limit obligations (even where those have existing Implementation Audit Points). Based on the current draft document, this relates to Audit Points 14 (2009-03 03), 17 (2011-03 01) and 73 (2018-05 Annex C 04).

Non-binding obligations

Participants provided consistent comments indicating that audit points are not required for non-binding obligations.

Convention obligations

Participants supported not drafting audit points for obligations derived directly from Convention text. The reasoning for this was a) due to the general nature of the Convention obligations; and b) the fact that these obligations were reflected more directly in relevant CMMs.

3. Progress at TCC

To facilitate participants' consideration of draft Audit Points during TCC itself, I intend to send a revised version of the draft Audit Points (incorporating comments received) prior to any TCC small group discussions. As noted above, I hope that participants can progress consideration of, and agree on, as many audit points as possible. This will ensure that a robust set of audits can be agreed and adopted at WCPFC20 to facilitate next year's Annual Report Part 2 preparation and reporting.

Any comments on the above information or the draft Audit Points themselves prior to TCC19 are very much welcomed. As with past practice, please send any comments to Viv Fernandes at viv.fernandes@afma.gov.au (cc : CMS IWG Chair ikna@korea.kr, Compliance Manager Lara.Manarangi-Trott@wcpfc.int).

Regards,



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