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Recommendations related to the CMS not covered by Other Agenda Items

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Prepared by the Secretariat

Purpose and Introduction

1. This paper presents recommendations to the Commission from TCC19 that are related to the continued enhancement of the Compliance Monitoring Scheme (CMS), and which are not covered under other agenda items.
2. 2023 marks the thirteenth year of implementation of the CMS. The WCPFC18 adopted [CMM 2021-03](#) *Conservation and Management Measure for the Compliance Monitoring Scheme* for 2022-2023, and enhancement work is prioritized in accordance with the cover note to CMM 2021-03 and through the TCC Workplan 2022-2024. The purpose and principles of the CMS are provided for ease of reference in **Box 1** (next page).
3. The Commission tasked the CMS-IWG and the TCC with progressing a multi-year workplan of tasks to enhance the CMS, with the aim of making the CMS more efficient and effective by streamlining processes.
4. There are separate WCPFC20 papers covering proposals and updates related to the development of Audit Points (WP23), Corrective Actions (WP24), the provisional CMR recommended by TCC19 ([WP25](#)), the List of Obligations to be reviewed by the CMS in 2024 (WP26) and the expiry of CMM 2021-03 ([DP05](#)).
5. This paper covers the following topics:
 - Compliance Verification,
 - Annual Reporting Guidance, and
 - Compliance Case File System and process to refine aggregate tables.

Box 1: Excerpts from CMM 2021-03 Conservation and Management Measure for Compliance Monitoring Scheme

1. 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 purpose of the CMS is also to assess flag CCM action in relation to alleged violations by its vessels, not to assess compliance by individual vessels.

2. The CMS is designed to:

- (i) assess CCMs' compliance with their WCPFC obligations;
- (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance;
- (iii) identify aspects of CMMs which may require refinement or amendment for effective implementation;
- (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;¹ and
- (v) monitor and resolve outstanding instances of non-compliance by CCMs with their WCPFC obligations.

3. The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles for the purpose of the application of this measure:

- (i) **Effectiveness:** Effectively serve the purpose of this CMM to assess compliance by CCMs and assist the TCC in fulfilling the provisions of Article 14(1)(b) of the Convention;
- (ii) **Efficiency:** Avoid unnecessary administrative burden or costs on CCMs, the Commission or the Secretariat and assist TCC in identifying and recommending removal of duplicative reporting obligations; and
- (iii) **Fairness:** Promote fairness, including by: ensuring that obligations and performance expectations are clearly specified, that assessments are undertaken consistently and based on a factual assessment of available information and that CCMs are given the opportunity to participate in the process.
- (iv) **Cooperation towards Compliance:** 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 action.

Footnote 1: In accordance with the process for identifying corrective action, as provided for in paragraph 46(iv).

Compliance verification

Background

6. TCC19 considered a paper prepared by the Secretariat ([WCPFC20-2023-IP11](#)) that reviewed the status of available data currently used to support compliance reviews of individual obligations in the CMS, and the Secretariat’s approach to evaluating compliance based on the available data. The paper responds to a WCPFC19 task that identified the importance of information that supports strengthened independent verification of key obligations in future WCPFC compliance reviews.¹
7. The Cambridge Dictionary defines *verify* as “to make certain or prove that something is true or accurate.” It therefore follows that if something is *independently verified* “there is no influence or control in any way by other people, events or things, when checking or proving that something is true or correct”. Within the CMS context, the Secretariat independently verifying a report implies that the evaluation processes used by the Secretariat to check whether the report content is true or accurate has a sufficient degree of separation incorporated into it. For example, data supporting the evaluations of CCM-reported information should include data from multiple sources, and some of the data should be collected through one or more monitoring programs that operate *independently* from the CCM whose compliance is being reviewed, in order to be considered as *independent verification*.
8. The recent experience of applying the adopted Audit Points when developing the 2023 draft Compliance Monitoring Report (dCMR) as well as experience gained through work undertaken by two analytical consultancies has provided valuable insight to inform the Secretariat’s role in supporting compliance verification. Collectively, these areas of work have allowed for the opportunity to further consider where independent sources of information or data are not available to the Secretariat and where existing data sources are either not captured or not accessible in a form that is ready for use in assessments of individual obligations to support the preparation of the dCMR.

TCC19 Recommendation

9. In noting the value of the paper in guiding and enhancing the work of TCC and the Commission, as well as relevant intersessional working groups, TCC19 **recommended** that the Secretariat provide this paper as a standing paper and agenda item for TCC in the future ([TCC19 Summary Report paras 222 and 223](#)).

Annual Reporting Guidance

Background

10. TCC19 reviewed the Secretariat’s approach to roll-out additional resources including training resources and learning aids to support CCM’s use of the IMS and resources to assist CCMs

¹ The Secretariat “develop a paper, which identifies those obligations for which there is a lack of independently verifiable data, as well as potential sources of data that could provide independent verification of those obligations, for review by TCC19.” (WCPFC19 Summary Report para 351(ii))

with improved annual reporting ([TCC19 working paper 19](#)). The approach included an update confirming that the online guidance to fulfilling AR Pt2 requirements had been refreshed now that many Audit Points had been adopted, and the Secretariat had drafted some guidance for CCMs on defining applicability and responding to statements of implementation.

TCC19 recommendations

11. TCC19 **recommended** that such support to CCMs continue and that the Secretariat update and maintain the Annual Reporting guidance (Annex 2 of WCPFC-TCC19-2023-19) to provide CCMs clarity on their reporting requirements for further discussion at future TCC meetings. (*TCC19 Summary Report, para 424*)

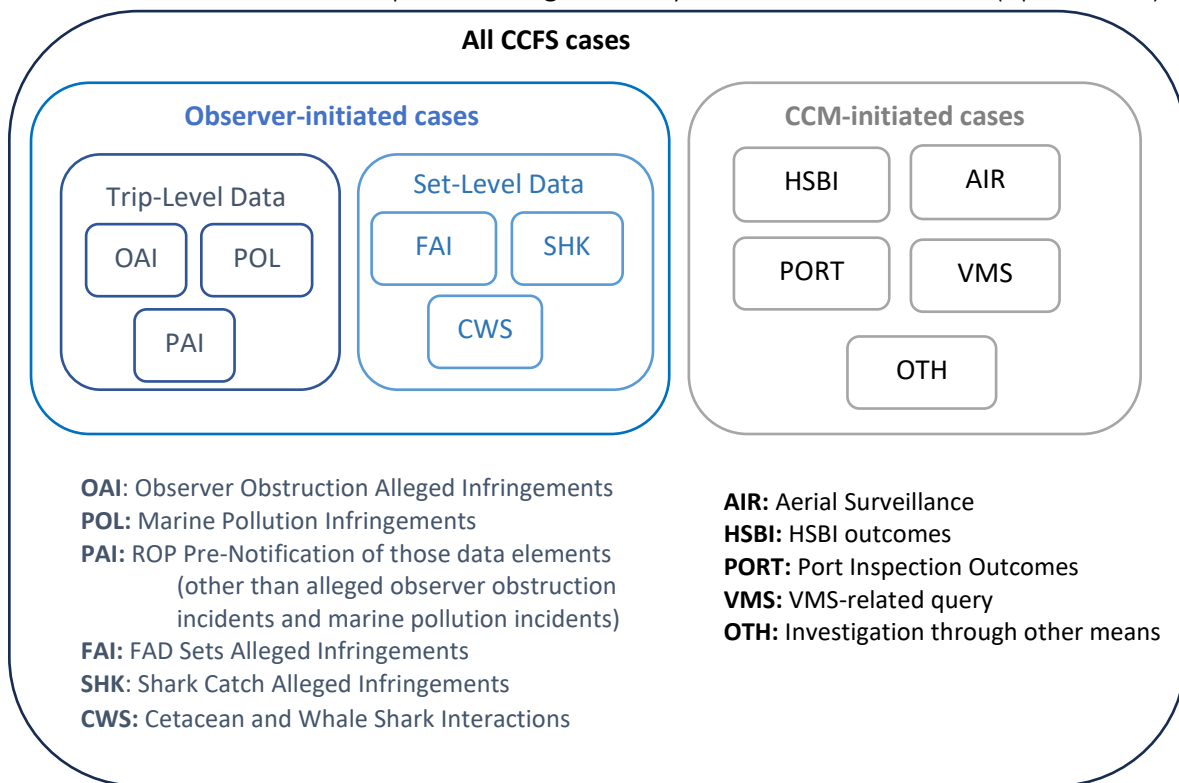
Compliance Case File System and process to refine aggregate tables

Background

12. In April 2016, the Secretariat launched the Compliance Case File System (CCFS) with the requirement of providing the Secretariat with a mechanism for the structured and centralized recording of correspondence related to potential alleged infringements of CMMs. As such, the CCFS was originally a tool to support the Secretariat's delivery of tasks under the CMS. However, the eventual design of the CCFS included allowing relevant CCMs to view "cases" and to submit information that they considered relevant to a case.
13. In the initial design of the CCFS the Secretariat took into consideration Convention Article 25(2):
"Each member of the Commission shall, at the request of any other member, and when provided with the relevant information, investigate fully any alleged violation by fishing vessels flying its flag of the provisions of this Convention or any conservation and management measure adopted by the Commission. A report on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to the member making the request and to the Commission as soon as practicable and in any case within two months of such request and a report on the outcome of the investigation shall be provided when the investigation is completed."
14. In recent years, the CMS CMM ([CMM 2021-03](#)) has elaborated the purpose of the CCFS, and currently the stated purpose is that the CCFS is to be maintained "as a secure, searchable system to store, manage and make available information to assist CCMs with tracking alleged violations by their flagged vessels." The measure also confirms which CCMs should have access to a case, directs that notifications should be sent when new cases are created, and guides what the aggregated summary tables generated from the CCFS should contain and what information flag CCMs are to provide in response to each case related to their vessels.
15. Figure 1 shows there are two main groups of cases in the CCFS are differentiated by the way that cases are initiated:

- **Observer-initiated cases** are cases that are created by queries against the fields in the WCPFC ROP data. Observer-initiated cases may be further grouped based on whether the ROP data is collected on the WCPFC Observer Trip Monitoring Summary (Trip Level Data) or collected based on vessel activity, set-type, species codes and/or fate codes (Set Level Data). There are currently six types of Observer-initiated cases, and data in the CCFS commences from 2015/16.²
- **CCM-initiated cases** are for alleged infringements in which a flag State investigation has been requested by a WCPFC member, in accordance with Article 25(2) of the Convention. These cases are created by the Secretariat individually, based on email communications from one CCM to another CCM to request an explanation or investigation into the conduct of its vessel and/or its nationals. Data commences from 2013.

Figure 1: Schematic diagram of current CCFS case types, to illustrate the groupings based on how a case is initiated, and within the Observer initiated group whether the ROP data is based on the observer trip monitoring summary or is based on set-level (operational) data.



² Additional information on observer initiated cases is provided in [WCPFC20-2023-IP14 Use of ROP Data in CMS](#)

TCC19 recommendations

16. TCC19 considered the process to refine the aggregate tables which summarized the CCFS cases in a way that concentrated the attention of the TCC on CCM-level compliance rather than vessel-level compliance. TCC19 noted the usefulness of the process for using the aggregate tables and the broad support within TCC19 for the continuation of the process. TCC19 accepted that there was still work required to refine the process and some lessons learned from the use of the aggregated tables over the previous two years.
17. TCC19 **recommended** to WCPFC20 that the Commission request CCMs to provide to the Secretariat information on the domestic statute of limitations, the allowable period to bring a prosecution, for various types of cases: fisheries offences and criminal offences (TCC19 Summary Report para 170(b)).
18. TCC19 also identified the following two areas where policy guidance from the Commission was **requested** from WCPFC20:
 - There is an issue of cases older than 24 months in the CCFS which needs to be addressed in a systematic way, not through automatic close-out of old cases, but with CCMs providing explanation as to why the case needs to be closed before completing the investigation, noting the requirement for flag CCMs to take action in response to alleged violations.
 - There is also a need to consider ways to rationalize and streamline data flows so that only genuine cases were included in the CCFS. (TCC19 Summary Report, para 170 (d, e)).

Recommendation

19. The Commission is invited to consider TCC19's recommendations and outcomes contained in this paper and decide accordingly.