



COMMISSION
Twentieth Regular Session
4-8 December 2023
Rarotonga, Cook Islands (Hybrid)

Explanatory Note for a PNA and Tokelau Proposal to Revise the CMS CMM

WCPFC20-2023-DP05_Rev01
7 December 2023

PNA and Tokelau



Draft Revisions to **CONSERVATION AND MANAGEMENT MEASURE FOR COMPLIANCE MONITORING SCHEME Rev2**

Conservation and Management Measure 2023-xx

Note> this version includes comments from Japan and responses.

The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Commission)

In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):

Recalling that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention,

Noting that, in accordance with Article 25 of the Convention, Members of the Commission have undertaken to enforce the provisions of the Convention and any conservation and management measures adopted by the Commission,

Noting also that, in accordance with international law, Members, Cooperating Non-Members of the Commission and Participating Territories have responsibilities to effectively exercise jurisdiction and control over their flagged vessels and with respect to their nationals,

Acknowledging that Article 24 of the Convention obliges Members of the Commission to take the necessary measures to ensure that fishing vessels flying their flag comply with the provisions of the Convention and the conservation and management measures adopted pursuant thereto, as well as the obligations of chartering States with respect to chartered vessels operating as an integral part of their domestic fleets,

Noting that, in a responsible, open, transparent and non-discriminatory manner, the Commission should be made aware of any and all available information that may be relevant to the work of the Commission in identifying and holding accountable instances of non-compliance by Members, Cooperating Non-Members and Participating Territories with management measures,

Committed to Article 30 of the Convention which requires the Commission to give full recognition to the special requirements of developing States, in particular SIDS and territories, which may include the provision of financial, technical and capacity development assistance,

Committed to the implementation of Conservation and Management Measure 2013-07 to give operational effect to the full recognition of the special requirements of SIDS and territories in the Convention Area, in particular such assistance as may be needed to implement their obligations,

Further committed to the implementation of Conservation and Management Measure 2013-06 by applying the criteria to determine the nature and extent of the impact of a proposal on SIDS

and territories in the Convention Area, in order to ensure that they can meet their obligations, and to ensure that any measure does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories,

Recalling the specific function of TCC under Article 14(1)(b) of the Convention to monitor and review compliance by CCMs with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary,

Recognising the responsibility of Members, Cooperating Non-Members and Participating Territories to fully and effectively implement the provisions of the Convention and the conservation and management measures adopted by the Commission, and the need to improve such implementation and ensure compliance with these commitments,

Recalling the recommendation of the second joint meeting of the tuna Regional Fisheries Management Organizations (RFMOs) that all RFMOs should introduce a robust compliance review mechanism by which the compliance record of each Member is examined in depth on a yearly basis,

Cognisant of the MCS and enforcement framework developed by the Commission, *inter alia* the 2010-06 Conservation and Management Measure to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing activities in the WCPO, the online Compliance case file system, Article 25 of the Convention, which considers the compliance by individual vessels,

Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:

Section I – Purpose

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.

Section II – Principles

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

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; and that there is a reasonable balance between fisheries and CCMs in the assessment 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.

Section III – Scope and application

4. The Commission, with the assistance of the Technical and Compliance Committee (TCC) shall evaluate CCMs' compliance with the obligations arising under the Convention and the CMMs adopted by the Commission and identify instances of CCM non-compliance, in accordance with the approach set out in this section.

5. The CMS shall not prejudice the rights, jurisdiction and duties of any CCM to enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with that CCM's international obligations.

[AU] TCC shall annually prepare a provisional list of obligations to be assessed in the following year's CMS using a risk-based approach. This will allow the Secretariat and TCC chair sufficient time to determine whether the Commission will need to adopt any additional audit points to inform the next year's CMS process.

PNA and Tokelau Response: Thank you for the suggestion. We agree with this suggestion.

6. Each year, the Commission shall update what obligations shall be assessed in the following year, [AU]: upon consideration of the provisional list provided by TCC, [Japan] using referring to a risk-based approach [Japan] as a possible guidance for each CCM. [AU]: Each year, the Commission shall adopt audit points for any obligations on the updated list of obligations that do not have adopted audit points. ~~one~~ developed and agreed. Until this risk-based approach is developed, the Commission shall take into account the following factors in considering the obligations to be assessed in the following year.

PNA and Tokelau Response to Australia: Thank you for the suggestion. We agree with this suggestion.

[Japan] proposes some amendments on the chapeau, in light of the fact that there is no agreed text of RBAF. Following is a quote from TCC18 conclusion: "TCC18 recommended the RBAF to the Commission as a useful tool that CCMs may use to guide their consideration of future lists of obligations to review during the Compliance Monitoring Report Review."

PNA and Tokelau Response to Japan: Thank you. We have included this suggestion and propose the following:

7. Each year, the Commission shall update what obligations shall be assessed in the following year, upon consideration of the provisional list provided by TCC using referring to a risk-based approach as a possible guidance for each CCM. Each year, the Commission shall adopt audit points for any obligations on the updated list of obligations that do not have adopted audit points. ~~once developed and agreed. Until this risk-based approach is developed, the Commission shall take into account the following factors in considering the obligations to be assessed in the following year.~~

- ~~(i) the needs and priorities of the Commission, including those of its subsidiary bodies;~~
- ~~(ii) evidence of high percentages of non-compliance or persistent non-compliance by CCMs with specific obligations for multiple years;~~
- ~~(iii) additional areas identified through the risk-based approach to be developed; and~~
- ~~(iv) the potential risks posed by non-compliance by CCMs with CMMs (or collective obligations arising from CMMs) to achieve the objectives of the Convention or specific measures adopted thereunder.~~

8. The Commission shall undertake an annual assessment of compliance by CCMs during the previous calendar year with the priority obligations identified under paragraph 6. Such assessment shall be determined based on the following criteria:

- (i) For a CCM-level quantitative limit or collective CCM quantitative limit, such as a limit on fishing capacity, fishing effort, or catch, verifiable data indicating that the limit has not been exceeded.
- (ii) For other obligations:
 - a. 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; and
 - b. Monitor and ensure compliance – the CCM is required to provide information showing that it has a system or procedures to monitor compliance of vessels and persons with these binding measures, a system or procedures to respond to instances of non-compliance and has taken action in relation to potential infringements.

9. The preparation, distribution and discussion of compliance information pursuant to the CMS shall be in accordance with all relevant rules and procedures relating to the protection and dissemination of, and access to, public and non-public domain data and information compiled by the Commission. In this regard, Draft and Provisional Compliance Monitoring Reports shall constitute non-public domain data, and the Final Compliance Monitoring Report shall constitute public domain data.

Section IV – WCPFC Online Compliance Case file system

10. The Secretariat shall maintain the WCPFC online compliance case file system as a secure, searchable system to store, manage and make available information to assist CCMs with tracking alleged violations by their flagged vessels.

11. For each case in the online system, the following information shall be provided by the flag CCM:

- (a) Has an investigation been started? (Yes/No)
- (b) If yes, what is the current status of the investigation? (Ongoing, Completed)
- (c) If the alleged violations stem from an observer report, have you obtained the observer report? (Yes/No)
- (d) If no, what steps have you taken to obtain the observer report?
- (e) What was the outcome of the investigation? (Closed – no violation; Infraction – not charged; Infraction – charged)
- (f) If no violation, provide brief explanation
- (g) If infraction, but not charged, provide brief explanation
- (h) If infraction charged, how was it charged (e.g., penalty/fine, permit sanction, verbal or written warning, etc.) and level of charged (e.g., penalty amount, length of sanction, etc.)

12. A flag CCM shall provide updates into the online system on the progress of an investigation until its conclusion.

13. CCMs that are relevant to a case shall be allowed to view those cases for vessels flying other flags. Relevant CCMs shall comprise the CCM that notified the case to the flag CCM, and where applicable, the coastal CCM, the ROP observer provider and the chartering CCM.

14. The Secretariat shall notify relevant CCMs when a case is entered into the online system.

13 bis. In order to address the imbalance in observer coverage between the longline and purse seine fisheries in the online compliance case file system for the purpose of the Compliance Monitoring Report (CMR):

[EU] the imbalance does exist and should be firmly addressed, but this sampling mechanism seems likely to result inadvertently to a leveling down of the CMS rather than serving the ambition of the Commission to reinforcing the MCS measures on LL and address the imbalance.

PNA and Tokelau Response: PNA and Tokelau share the priority of reinforcing the MCS measures on LL in a way that would address the imbalance. But until the imbalance is addressed, the CMS cannot be used as a basis for corrective action and the Aggregate Tables cannot be used to contribute to comparative assessments of compliance by CCMs in the CMR.

[EU]: what does "for the purpose of the CMR" mean? Use of the aggregated tables for assessing compliance? Some clarifications would be useful.

PNA and Tokelau Response: The information in the online compliance case file system is used for purposes other than the CMR. For example, the information is made available to flag state CCMs to assist with tracking alleged violations by their flagged vessels. This element of the imbalance, that CCMs with longline fleets are not held to account for compliance by their vessels in the same degree, is not addressed by the proposed changes. The proposed changes only aim to correct the impact of the imbalance on the CMR, hence "for the purpose of the Compliance Monitoring Report (CMR)". But if this still a problem we propose the revision below

[Japan] The “right balance” in the process of MCS should be considered not only by the observer coverage for fishing vessels, but also other elements such as fishery scale/impact and the number of obligations for each fishery. 100% observer on longline carriers should also be taken into account.

PNA and Tokelau Response: The purse seine fishery takes around 70% of the catch of target stocks. But we also understand that the longline fishery takes over 90% of the billfish catch, over 90% of turtles that are caught, and nearly 90% of the shark catch. When the importance of observers for providing information on compliance with bycatch measures is taken into account, there is no apparent technical reason for the observed coverage of longline vessels for compliance purposes to be any less than on purse seine vessels. As for the relative balance of obligations and the observer coverage on longliners, we don’t see any major imbalance in other elements of monitoring. The poor state of knowledge and the poor stock status of several bycatch species that are taken mainly in the longline fishery is a measure of the weakness of monitoring and control of distant water longlining being the greatest single management weakness and priority for the Commission.

13 bis (Rev). In order to address the imbalance in observer coverage between the longline and purse seine fisheries in the online compliance case file system for the purpose of the Compliance Monitoring Report (CMR):

- a) By September 30 each year, the Science Service Provider shall determine the level of coverage for ROP longline trips in the most recent year for which this data is available.

[EU]: why this deadline? Considering that the TCC is generally meeting before this date.

PNA and Tokelau Response: This date is designed to enable the sampling plan to be agreed ahead of time. So the sampling rate to be applied in 2025 would be agreed by September 30, 2024. That might mean using the 2023 LL observer coverage level if there is not sufficient observer data available for 2024. And the data would be identified in the CCFS as a sample case as the data came in. But the sampling plan could be designed to apply retrospectively after the data for a particular has been received but in time to be available for TCC. We have left the data open to be part of the Scheme to be agreed by TCC.

[EU]: The duration of longline trips are completely different from the duration of purse seine trips. How do you intend to address it?

PNA and Tokelau Response: That’s a good point. There is a much greater range of trip lengths in the longline fishery than the purse seine fishery. It would be better to use a more appropriate metric for longline coverage than trips. The change in language proposed below would provide for coverage to be determined by hooks set or any other metric. This would be included in the scheme to be agreed under paragraph b.

- a) (Rev) ~~By September 30~~ Each year, the Science Service Provider shall determine the level of **observer** coverage ~~for~~ **of fishing on** ROP longline trips in the most recent year for which this data is available.

In addition, there is a key element that is missing and this related to the lack of consideration of the huge difference in the amount of total catch taken by the PS compared to the LL

PNA and Tokelau Response: The purse seine fishery takes around 70% of the catch of target stocks. But we also understand that the longline fishery takes over 90% of the billfish catch, over 90% of turtles that are caught, and nearly 90% of the shark catch. When the importance of observers for providing information on compliance with bycatch

measures is taken into account, there is no apparent technical reason for the observed coverage of longline vessels for compliance purposes to be any less than on purse seine vessels.

Also the proposed approach does not take into account feasibility issues related to the large number of LL vessels (approx. 3000) compared to the number of PS vessels (approx. 300).

PNA and Tokelau Response: SPC already make estimates of the overall coverage rates for longline fleets (4.2% and 4.4% respectively for 2021 and 2022), and that is all that is needed (see para 23, WCPFC-SC19-2023/ST-IP-02: Status Of Observer Data Management).

- b) TCC shall [adopt] a [scheme for randomly sampling observer-related cases] from the online compliance case file system for the purse seine fishery on a trip basis designed [to achieve the level of coverage in the CMR for ROP purse seine trips determined for the longline fishery] under paragraph a).

[EU]: Deadline and clear process/workplan is missing to develop and then adopt the scheme on time for TCC20.

PNA and Tokelau Response: We expect that the Secretariat could be tasked to present to TCC20 a draft sampling scheme and plan for implementation of the scheme for agreement by TCC.

[EU]: how random should the selection be? Random will not provide any representative picture and therefore offer very little added value.

PNA and Tokelau Response: We expect that using information on reported cases from a random sample of purse seine trips would be representative of reported cases across the purse seine fishery, and would be clearly more representative than the current pattern of coverage of the longline fishery.

Selecting random observer related cases from the CCFS for the purse seine fishery can completely distort and bias the CMS exercise. We could end up considering vessels only from a few flags and operating in certain months where potential non compliances would have a different impact on the fishery (for instance the importance of non-compliances during the FAD closures could have a bigger impact than those committed out of the FAD closure).

PNA and Tokelau Response: With a random sample we expect the result to be broadly representative. Please imagine how representative are the results of a longline coverage of 5% where the flag states can largely determine the pattern of coverage.

[EU]: What would be the purpose of having 100% observers on board purse seiners if we are not going to take into account this work? In addition, 100% coverage in the PS is necessary for implementing FADs closure, whereas LL are not required to implement such provisions.

PNA and Tokelau Response: The purpose of having 100% observers on board purse seiners will be exactly as it is now, and as it was for several years before the CMS was first adopted. The 100% observer coverage of the purse seine fishery was introduced by PNA in PNA waters for the purpose of monitoring catch retention requirements. And nobody could believe that purse seiners need higher observer coverage for compliance purposes, especially when the longline fisheries are largely managed by unverified catch limits and the low level of logline coverage is the main reason for the poor state of knowledge and the poor stock status of several bycatch species .

- c) Observer-related cases from the sample of trips by purse seine vessels identified under the paper above will be used for the CMR, including [for the purposes of paragraphs 21 to 30].

[EU]: Could you please clarify what this mean? Not all the paragraphs here seem relevant and it does not give clear indication to the Secretariat on how to use the "sample".

PNA and Tokelau Response: Thank you for pointing this out. We have made the paragraph reference more precise. We think this also clarifies how the Secretariat will use the sample.

- c) Observer-related cases from the sample of trips by purse seine vessels identified under the paper above will be used for the CMR, including for the purposes of paragraphs ~~21 to 30~~23 and 26.

Does this mean integrating some CCFS within the CMR? Or within the aggregated tables?

PNA and Tokelau Response: This means that all the relevant classes of longline fishery cases in the CCFS will be drawn on for the extraction of the aggregated tables exactly as now, and a matching balanced sample of the purse seine fishery cases will be drawn on for the aggregated tables.

- d) Until the sampling scheme referred to in sub-paragraph b) above is adopted and applied, observer-related cases from the online compliance case file system for the purse seine fishery will not be used for the CMR.

[EU]: But would 100% of the cases still be shown in the aggregated table?

PNA and Tokelau Response: No. 100% of the longline cases will still be shown in the aggregated table. No purse seine cases will be shown in the aggregated table until the sampling scheme is applied.

Section V – Special Requirements of Developing States

15. Notwithstanding paragraph 4, where a SIDS or Participating Territory, or Indonesia or the Philippines cannot meet a particular obligation that is being assessed, due to a lack of capacity², that CCM shall provide a Capacity Development Plan to the Secretariat with their draft Compliance Monitoring Report (dCMR), that:

- (i) clearly identifies and explains what is preventing that CCM from meeting that obligation;
- (ii) identifies the capacity assistance needed to allow that CCM to meet that obligation;
- (iii) estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary;
- (iv) sets out an anticipated timeframe in which, if the identified assistance needs are provided,

² Any CCM may identify a capacity assistance need through the CMS process; however, the application of paragraphs 14-16 is limited to those CCMs identified in the paragraph.

that CCM will be able to meet that obligation.

16. The CCM may work together with the Secretariat to draft the Capacity Development Plan. This plan shall be attached to that CCM's comments to the dCMR.

17. Where a capacity assistance need has been identified, through the preparation of a Capacity Development Plan, in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, and TCC has confirmed that all of the elements of the Capacity Development Plan as stated in paragraph 14 are included, TCC shall assess that CCM as "Capacity Assistance Needed" for that obligation. TCC shall recommend to the Commission that it allow the Capacity Development Plan to run until the end of the anticipated timeframe and assistance delivery set out therein.

18. That CCM shall report its progress under the Capacity Development Plan every year in its Annual Report Part II. That CCM shall remain assessed as "Capacity Assistance Needed" against that particular obligation until the end of the timeframe in the plan.

19. Where the Commission is identified in the Capacity Development Plan to assist that CCM, the Secretariat shall provide an annual report of such assistance to TCC.

20. If a CCM notifies the Commission that its capacity needs have been met, the Capacity Development Plan for that obligation shall be deemed completed and the CCM's compliance with that obligation shall then be assessed in accordance with Annex I.

21. Unless the SIDS, Participating Territory, Indonesia or Philippines amends the Capacity Development Plan that it submitted under paragraph 16 in its dCMR and TCC has confirmed that all the elements of that Plan as stated in paragraph 14 are included, once the timeframe in that original Plan has passed, that CCM's compliance with that obligation shall be assessed in accordance with Annex I.

22. The Commission recognises the special requirements of developing State CCMs, particularly SIDS and Participating Territories, and shall seek to actively engage and cooperate with these CCMs and facilitate their effective participation in the implementation of the CMS including by:

- (i) ensuring that inter-governmental sub-regional agencies which provide advice and assistance to these CCMs, are able to participate in the processes established under the CMS, including by attending any working groups as observers and participating in accordance with Rule 36 of the Commission's Rules of Procedure, and having access to all relevant information, and
- (ii) providing appropriately targeted assistance to improve implementation of, and compliance with, obligations arising under the Convention and CMMs adopted by the Commission, including through consideration of the options for capacity building and technical assistance.

Section VI – Prior to TCC

23. Prior to the annual meeting of the TCC, the Executive Director shall prepare a Draft Compliance Monitoring Report (the Draft Report) that consists of individual draft Compliance Monitoring Reports (dCMRs) concerning each CCM and a section concerning collective obligations arising from the Convention or CMMs related to fishing activities managed under the Convention.

24. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations as identified under paragraph 6 as well as any potential compliance issues, where appropriate. Such information shall be sourced from reports submitted by CCMs as required in CMMs and other Commission obligations, such as:

- i. information available to the Commission through data collection programmes, including but not limited to, high seas transshipment reports, Regional Observer

Programme data and information, Vessel Monitoring System information, High Seas Boarding and Inspection Scheme reports, and charter notifications;

- ii. information contained in an Annual Report which is not available through other means; and
- iii. where appropriate, any additional suitably documented information regarding compliance during the previous calendar year.

25. The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.

26. At least 55 days prior to TCC each year, the Executive Director shall transmit to each CCM its dCMR.

27. At the same time, the Executive Director shall draw from the online case file system and transmit to:

- (i) each flag CCM, the infringement identification relating to alleged violations by its flagged vessels on the online system for the previous year, for that CCM to review with its dCMR. Relevant CCMs, as described in paragraph 12, shall also be provided this same information; and
- (ii) all CCMs, aggregated information across all fleets based on the information reported by CCMs pursuant to paragraph 10, for the previous 5 years. The templates attached as Annex II will serve as the basis for the data fields that will be included. This will be used to provide an indicator of potential anomalies in the implementation of obligations by a CCM, with a view towards identifying implementation challenges for that CCM and identifying systemic failures to take flag state action in relation to alleged violations. This information shall be considered by TCC alongside the Draft Compliance Monitoring Report.

28. Upon receipt of its dCMR, each CCM may, where appropriate, reply to the Executive Director no later than 28 days prior to TCC each year to:

- (i) provide additional information, clarifications, amendments or corrections to information contained in its dCMR;
- (ii) identify any particular difficulties with respect to implementation of any obligations; or
- (iii) identify technical assistance or capacity building needed to assist the CCM with implementation of any obligations.

29. Relevant CCMs may continue to provide additional information or clarification into the online compliance case file system. Where such additional information or clarification is provided, at least fifteen days in advance of the TCC meeting, the Executive Director shall circulate an updated version of the documents referred to under paragraph 26.

30. To facilitate meeting obligations under paragraphs 27 and 28, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.

31. At least fifteen days in advance of the TCC meeting, the Executive Director shall compile and circulate to all CCMs the full Draft Report that will include any potential compliance issues and requirements for further information to assess the relevant CCM's compliance status, in a form to be agreed to by the Commission, including all information that may be provided under paragraph 28.

32. TCC shall review the Draft Report and identify any potential compliance issues for each CCM, based on information contained in the dCMRs, as well as any information provided by

CCMs in accordance with paragraph 27 of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.

Section VII – Development of the Provisional Compliance Monitoring Report at TCC

33. (i) Taking into account any Capacity Development Plans developed pursuant to paragraphs 14-16, reports and other information described in paragraph 26(ii), any additional information provided by CCMs, and, where appropriate, any additional information provided by non-government organisations or other organisations concerned with matters relevant to the implementation of this Convention, TCC shall develop a Provisional Compliance Monitoring Report (the Provisional Report) that includes a compliance status with respect to all applicable individual obligations as well as recommendations for any corrective action(s) needed by the CCM or action(s) to be taken by the Commission, based on potential compliance issues it has identified in respect of that CCM and using the criteria and considerations for assessing Compliance Status set out in Annex I of this measure.

(ii) In the development of the Provisional Report, TCC shall not assess compliance by individual vessels.

34. When considering the aggregated report described in paragraph 26(ii), alongside the Draft Report, and where an implementation challenge has been identified by a CCM, the TCC shall, in consultation with the CCM:

- a. Identify any targeted assistance that might be required to address the challenge;
- b. Determine a timeframe for the resolution of the challenge;
- c. Report to the Commission on how that CCM will be able to satisfactorily meet its obligations; and
- d. Where the CCM is a SIDS or Participating Territory or Indonesia or the Philippines, Section V of this measure shall apply.

35. When considering the aggregated report described in 26(ii), alongside the Draft Report, and where cases have been in the compliance case file system for two or more years, remains open, and are not subject to paragraph 33, TCC shall, in consultation with the CCM:

- e. Identify what is needed to progress or resolve these cases;
- f. Determine a timeframe for resolution of the cases; and
- g. Report to the Commission on how that CCM will be able to satisfactorily meet its obligation.

36. A provisional assessment of each CCM's Compliance Status shall be decided by consensus. If every effort to achieve consensus regarding a particular CCM's compliance with an individual obligation has failed, the Provisional Report shall indicate the majority and minority views. A provisional assessment shall reflect the majority view and the minority view shall also be recorded.

37. Notwithstanding paragraph 35 above, a CCM shall not block its own compliance assessment if all other CCMs present have concurred with the assessment. If the assessed CCM disagrees with the assessment, its view shall be reflected in the Provisional Report or the final Compliance Monitoring Report.

38. Where a CCM has missed a reporting deadline,³ but has submitted the required information, this obligation will be accepted by TCC, unless a CCM has a specific concern or if there are updates from the Secretariat based on new information received.

39. The Provisional Report shall also comprise an executive summary, as well as tables including aggregated data (templates attached in Annex III) relating to the information provided in paragraph 10, including recommendations or observations from TCC regarding:

(i) identification of any CMMs or obligations that should be reviewed to address implementation or compliance difficulties experienced by CCMs, particularly when TCC has identified ambiguity in the interpretation of or difficulty in monitoring and implementing that measure or obligation, including any specific amendments or improvements that have been identified,

(ii) capacity building assistance or other obstacles to implementation identified by CCMs, in particular SIDS and Participating Territories,

(iii) ~~[Japan] risk based assessment of priority obligations to be assessed in the subsequent year (once the risk based assessment is developed).~~

[Japan] Since we did not agree on the text of risk based assessment

PNA and Tokelau Response: we have taken this suggestion as below:

~~(iii) risk based assessment of priority obligations to be assessed in the subsequent year once the risk based assessment is developed.~~

40. The Provisional Report shall be finalised at TCC and forwarded to the Commission for consideration at the annual meeting.

41. CCMs may provide additional information up to 21 days after TCC. Additional information is restricted to that which only requires administrative consideration by the Secretariat to fill an information gap. This paragraph shall not apply to substantive issues. TCC shall consider whether a particular obligation may be met with the provision of additional information.

42. The Secretariat shall update the compliance status of CCMs, 21 days after the deadline to submit additional information, based on the additional information provided by CCMs as outlined in paragraph 40. A summary of these updates shall be submitted to the Commission for their consideration, along with the pCMR.

Section VIII – Process at the Commission

43. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC, as well as any submission from a CCM indicating that its compliance assessment for a specific obligation at TCC was undertaken in a manner that the CCM deems to be procedurally unfair.

44. Taking into account any reviews undertaken after TCC under paragraph 42, the Commission shall adopt a final Compliance Monitoring Report.

³For the purposes of the Compliance Monitoring Scheme, all reporting deadlines will be based on Universal Time Code (UTC) time unless the CMM establishing the deadline specifies otherwise.

45. The final Compliance Monitoring Report shall include a Compliance Status for each CCM against each assessed obligation and any corrective action needed, and also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 38 of this measure, and include tables of aggregated data relating to the information provided in paragraph 10, as referenced in paragraph 38.

46. Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years.

Section IX – Future Work

EU: The EU is surprised and concerned with the proposal to delete this section. We kindly remind to PNA members that a commitment was made when the measure was adopted to progress on all these strands of work. The issue of the imbalance was already on the table at that time and it would be inappropriate to use this argument for breaking that commitment.

PNA and Tokelau Response: Agreed. Korea made a similar comment when DP05 was introduced.

[Japan] thinks at least ongoing works such as development of audit points should be retained.

PNA and Tokelau Response: Agreed

47. 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*:

During 2020

(i) the development of audit points to clarify the Commission obligations assessed under the CMS, as well as the development of a checklist to be used by the proponents of any proposal to include a list of potential audit points for the consideration of the Commission;

(ii) explore investment in technology solutions to facilitate improvements to the compliance case file system.

During 2020-2021

(iii) the development of a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission;

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

[EU]: we note this work is still to be undertaken and the EU strongly supports keeping this para.

PNA and Tokelau Response: agreed.

~~(v) the development of the guidelines for participation of observers in closed meetings of the Commission and its subsidiary bodies which consider the Compliance Monitoring Report.~~

[EU]: We note this work is still to be undertaken and still relevant, especially if the imbalance is addressed. The EU strongly supports keeping this para.

PNA and Tokelau Response: agreed

(v) the development of the guidelines for participation of observers in closed meetings of the Commission and its subsidiary bodies which consider the Compliance Monitoring Report.

47. TCC shall consider any workplan and resourcing requirements to facilitate the work of the Secretariat in this regard.

Section X – Application and review

~~48. This measure may be reviewed and enhanced in 2020 as determined by progress with the future work in Section IX, or other refinements and adjustments needed.~~

49. This measure shall expire 31st December ~~2021~~2026.

Annex I

COMPLIANCE STATUS TABLE

Compliance Status ⁴	Criteria in 2019 ²³ Interim criteria <u>where audit points have not been</u>	Criteria Once the audit points are developed	Response
<i>Compliant</i>	A CCM will be deemed Compliant with an obligation if the following criteria have all been met: a. reporting or submission deadlines; b. implementation of obligations through national laws or regulations; c. submission of all mandatory information or data required, in the agreed format, as applicable.	Compliance with the audit points	None
<i>Non-Compliant</i>	A CCM will be deemed Non-Compliant with an obligation if any of the following have occurred, as applicable: a. a CCM has failed to comply with an obligation or category of obligations not specifically identified as Priority Non-Compliant ; b. information or data for the obligation has been submitted or reported in a way that is incomplete, incorrect. c. Where TCC does not consider that progress has been made on a CDP or flag CCM investigations, or wrongly formatted; or d. a CCM has failed to meet reporting or submission deadlines.	Failure to meet the audit points	Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report. Actions may include, one or more of the following: a. A CCM must address the issue to gain compliance by the next compliance assessment; or b. A CCM shall provide a Status Report to the Secretariat; or c. Other response as determined by the Commission.

⁴ This annex applies to compliance statuses assigned for each individual obligation.

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Compliance Status⁴	Criteria in 201923 Interim criteria <u>where audit points have not been</u>	Criteria Once the audit points are developed	Response
<i>Priority Non-Compliant</i>	A CCM will be deemed <i>Priority Non-Compliant</i> with an obligation if any of the following have occurred, as applicable: a. exceeded quantitative limit established by the Commission; b. failure to submit its Part II Annual Report; c. repeated non-compliance with an obligation for two or more consecutively assessed years; or d. any other non-compliance identified as Priority Non-Compliance by the Commission.	a. non-compliance with high-risk priority obligations and associated audit points b. repeated non-compliance with an obligation for two or more consecutively assessed years; or c. any other non-compliance identified as Priority Non-Compliant by the Commission.	Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report. Actions may include, one or more of the following: a. A CCM must address the issue to gain compliance by the next compliance assessment; b. Other response as determined by the Commission.
<i>Capacity Assistance Needed</i>	A SIDS or Participating Territory or Indonesia or the Philippines will be deemed <i>Capacity Assistance Needed</i> where they cannot meet an obligation and the following have occurred: a. that CCM has provided a Capacity Development Plan to the Secretariat with its dCMR prior to TCC; and b. TCC confirms that all the elements of paragraph 14 are included in that Plan.	When a SIDS or Participating Territory or Indonesia or the Philippines cannot meet an obligation that is being assessed due to a lack of capacity, that CCM shall provide a Capacity Development Plan to the Secretariat with the dCMR prior to TCC.	(i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to become compliant with the obligation, and (ii) report progress against that plan every year in its Annual Report Part II until the end of the timeframe specified in that Plan.
<i>CMM Review or Audit Point Review</i>	There is a lack of clarity on the requirements of an obligation.	There is a lack of clarity on the requirements of an obligation.	The Commission shall review that obligation and clarify its requirements.

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Annex II

TWO PART TEMPLATE FOR THE AGGREGATED REPORT DESCRIBED IN PARAGRAPH 26(II)

PART A:-Template for Summary Tables related to each list in the WCPFC Online Compliance Case File System⁵

Summary tables derived from the online compliance case file system and intended to provide summaries by topic of flag CCMs responses to compliance cases in the online compliance case file system.

Annex 1:- Summary Tables of Flag CCM responses to Article 25(2) requests for investigation notified in the WCPFC online Compliance Case File System

Data is based on High Seas Boarding and Inspection Report, Aerial Surveillance or Port Inspection Reports, and Reports on Observer Safety Incidents

Table 1A: Counts of all Article 25(2) cases by CCM by Investigation Status

		Flag CCM Notified	Flag CCM Investigation Completed				Total Compliance cases
			Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
CCMxx	Year 2017						
	Year 2018						
...	...						

Table 1B-1X: Summary Tables of Article 25(2) alleged infringements grouped by topic* and by CCM by year showing counts of cases by Investigation Status

*eg bycatch-related, vessel-related, VMS-reporting, others

			Flag CCM Notified	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
CMM / CMM para A	Year 2017	CCMxx						
		CCMxy						

⁵ Update of **WCPFC-TCC15-2019-dCMR02_rev1** Summary Tables of Flag CCM responses to alleged infringements notified in the WCPFC online compliance case file system 2019 (17 September 2019)

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	Year 2018	CCMxx						
...	...							

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Annex 2: Summary Tables of Flag CCM responses to FAD Sets Alleged Infringements notified in the WCPFC online Compliance Case File System based on ROP data

Includes cases where ROP data indicates setting on FADs during a specified time period and/or in specific waters in the Convention Area, when the prohibition on setting on FADs was in effect.

Table 2A: Counts of all FAD Sets Alleged infringement cases by CCM by year showing counts of cases by Investigation Status and counts of cases where ROP Observer Report was received

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed	Total Compliance cases	ROP_rpt received count
CCMxx	Year 2017					
	Year 2018					
...						

Table 2B-2X: Summary Tables of FAD closure Tropical Tunas alleged infringements grouped by topic* and by CCM by year showing counts of cases by Investigation Status

**eg 3 month FAD closure (1 July – 30 Sept), 4th Month FAD closure (1 – 31 Oct), High Seas FAD closure*

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
Year 2017	CCMxx							
	CCMxy							
...								

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Annex 3: Summary Tables of Flag CCM responses to Observer Obstruction Alleged Infringements notified in the WCPFC online Compliance Case File System based on ROP data

Includes cases where ROP data reports observer obstruction incidents

Table 3A: Counts of all Observer Obstruction Alleged infringement cases by CCM by year showing counts of cases by Investigation Status and counts of cases where ROP Observer Report was received

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed	Total Compliance cases	ROP_rpt received count
CCMA	Year 2017					
	Year 2018					
...						

Table 3B-3D: Summary Tables of Observer Obstruction alleged infringements grouped by topic and by CCM by year showing counts of cases by Investigation Status

RS-A: *Did the operator or any crew member assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observer in the performance of their duties*

RS-B: *Request that an event not be reported by the observer;*

RS-D: *Did the operator fail to provide the observer, while on board the vessel, at no expense to the observer or the observer’s government, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel;*

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
Year 2017	CCMxx							
	CCMxy							
...								

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Annex 4: Summary Tables of Flag CCM responses to Shark catch Alleged Infringements notified in the WCPFC online Compliance Case File System based on ROP data

Includes cases where ROP data indicates retention in part or whole of catches by vessels of shark species that are prohibited or a fate code that may indicate shark finning activities.

Table 4A: Counts of all Shark Catch Alleged infringement cases by CCM by year showing counts of cases by Investigation Status and counts of cases where ROP Observer Report was received

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed	Total Compliance cases	ROP_rpt received count
CCMxx	Year 2017					
	Year 2018					
...						

Table 4B-4D: Summary Tables of Shark Catch Alleged Infringements grouped by topic and by CCM by year showing counts of cases by Investigation Status

CMM 2010-07 09: *CCMs shall take measures necessary to prohibit their fishing vessels from retaining on board, transshipping, landing, or trading any fins harvested in contravention of this Conservation and Management Measure (CMM).*

CMM 2011-04: *1. Members, Cooperating Non-Members and Participating Territories (CCMs) shall prohibit vessels flying their flag and vessels under charter arrangements to the CCM from retaining on board, transshipping, storing on a fishing vessel, or landing any oceanic whitetip shark, in whole or in part, in the fisheries covered by the Convention. 2. CCMs shall require all vessels flying their flag and vessels under charter arrangements to the CCM to release any oceanic whitetip shark that is caught as soon as possible after the shark is brought alongside the vessel, and to do so in a manner that results in as little harm to the shark as possible.*

CMM 2013-08: *1. Commission Members, Cooperating Non-Members and Participating Territories (CCMs) shall prohibit vessels flying their flag and vessels under charter arrangements to the CCM from retaining on board, transshipping, storing on a fishing vessel, or landing any silky shark caught in the Convention Area, in whole or in part, in the fisheries covered by the Convention. 2. CCMs shall require all vessels flying their flag and vessels under charter arrangements to the CCM to release any silky shark that is caught in the Convention Area as soon as possible after the shark is brought alongside the vessel, and to do so in a manner that results in as little harm to the shark as possible.*

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
Year 2017	CCMxx							
	CCMxy							
...								

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Annex 5: Summary Tables of Flag CCM responses to Cetacean and Whale Shark Internation Alleged Infringements notified in the WCPFC online Compliance Case File System based on ROP data

Includes cases where ROP data indicates one or more interaction/s occurred between a purse seine vessel and individual cetacean species or whale shark/s during a trip (as cases are by individual species and fate code, there are may be multiple cases per observed trip).

Relevant WCPFC requirements include: prohibiting purse seine vessels from setting if a whale shark or cetacean is sighted prior to the commencement of the set; required reporting of any incidents of unintentional encircling; and guidelines for safe release.

Table 5A: Counts of all Purse Seine and Whale Shark Alleged infringement cases by CCM by year showing counts of cases by Investigation Status and counts of cases where ROP Observer Report was received

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed	Total Compliance cases	ROP_rpt received count
CCMxx	Year 2017					
	Year 2018					
...						

Table 5B-5C: Summary Tables of Purse Seine Alleged Infringements grouped by topic and by CCM by year showing counts of cases by Investigation Status

CMM 2011-03: 1. CCMs shall prohibit their flagged vessels from setting a purse seine net on a school of tuna associated with a cetacean in the high seas and exclusive economic zones of the Convention Area, if the animal is sighted prior to commencement of the set.

CMM 2012-04: 1. This measure shall apply to the high seas and exclusive economic zones of the Convention Area. CCMs shall prohibit their flagged vessels from setting a purse seine on a school of tuna associated with a whale shark if the animal is sighted prior to the commencement of the set.

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
Year 2017	CCMxx							
	CCMxy							
...								

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Annex 6. Summary Table of Flag CCM responses to ROP Pre-Notification Issues, other than alleged observer obstruction, presently notified in WCPFC online Compliance Case File System

Commented [...1]: How are they notified?

Includes notifications to aggregated across all CCMs of those data elements (other than alleged observer obstruction incidents) that were answered in the affirmative by a ROP observer on the WCPFC Observer Trip Monitoring Summary, or which are included in SPC/FFA General Form 3.

***WCPFC14 accepted the TCC13 recommendation that the process of not considering the information contained in the ROP Pre-notification List, for the purpose of assessing any obligations for which it was relevant, with the exception of those cases related to observer interference or obstruction be followed in future years (WCPFC14 final CMR).*

WCPFC ROP Pre-notification codes

- LC-A inaccurately record retained “target species” in the vessel log
- LC-B inaccurately record “target species” discards
- LC-C: record species inaccurately
- LC-E inaccurately record bycatch species discards
- LC-F inaccurately record retained bycatch species
- LP-A inaccurately record vessel positions on vessel log sheet for sets, hauling and catch
- ~~WC-b~~ ~~high grade the catch~~ [EU]: Not clear why this is proposed. We do not see reason to remove this pre-notification
- ~~SI-b~~ ~~Interact (not land with SSLs)~~
- WC-a Fail to comply with any Commission Conservation and Management Measures
- NR-a Fish in any areas where the vessel is not permitted to fish
- NR-c Use a fishing method other than the method the vessel was designed or licensed
- NR-e Transfer or transship fish from or to another vessel
- NR-g Fail to stow fishing gear when entering areas where vessel is not authorised to fish
- LP-b Fail to report vessel positions to countries, where required when entering and leaving an EEZ(crossing to or from an EEZ into or out of the High Seas)
- PN-a Dispose of any metals, plastics, chemicals or old fishing gear
- ~~PN-b~~ ~~Discharge any oil~~ [EU]: Not clear why this is proposed. We do not see reason to remove this pre-notification
- ~~PN-c~~ ~~Lose any fishing gear~~
- ~~PN-d~~ ~~Abandon any fishing gear~~ [EU]: Not clear why this is proposed. We do not see reason to remove this pre-notification

PNA and Tokelau Response: the only binding requirement in CMM 2017-04 is paragraph CCMs which requires CCMs to “prohibit their fishing vessels operating within the WCPFC Convention Area from discharging any plastics (including plastic packaging, items containing plastic and polystyrene) but not including fishing gear”. So PN-b, PN-c, and PN-d cases do not

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involve potential infractions. Requiring busy national Compliance Officers to have to investigate and report on cases which they know can never be non-compliance undermines the standing of the Commission’s compliance resources, wastes compliance resources and weakens compliance in WCPO tuna fisheries. This is one of the CMMS that needs strengthening but can’t be strengthened until there is strengthened monitoring of the longline fishery. PN-e

Fail to report any abandoned gear

SS-a Fail to monitor international safety frequencies

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
Pre-notification code	Year							
...								

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PART B:-Template for Summary Tables related to each CCM on cases in the WCPFC Online Compliance Case File System

Summary tables derived from the online compliance case file system and intended to provide summaries of an individual flag CCMs responses to compliance cases in the online compliance case file system.

CCMxx

Table 1:- Counts of all Alleged Infringement cases in the compliance case file system by year showing count of cases for each CCM by Investigation Status and where applicable counts of cases where ROP Observer Report was received

A25: Article 25(2)

FAI: FAD Sets Alleged infringements **OAI:** Observer Obstructions Alleged Infringements

SHK: Shark Catch Alleged Infringements

CWS: Cetacean and Whale Shark Interaction Alleged infringements

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed	Total Compliance cases	ROP_rpt received count
FAI	Year 2017					
	Year 2018					
...						

Table 2:- Summary Tables of Flag CCM responses to compliance cases notified in WCPFC online Compliance Case File System that were based on ROP data

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
CMM / CMM para A	Year 2017							
	Year 2018							

Table 3:- Summary Tables of Flag CCM responses to Article 25(2) requests for investigations notified in WCPFC online Compliance Case File System

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
CMM / CMM para A	Year 2017							

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	Year 2018							

ANNEX III

TEMPLATE FOR AGGREGATED TABLES TO BE APPENDED TO THE PROVISIONAL CMR

[Note: the aggregated tables are those from the previous reports and included summary by obligation (and not CCM) and include information on: Flag CCM notified; Flag CCM investigation in progress; Flag CCM investigation completed (including infraction – no sanction, infraction – sanction, infraction – warning, no infringement); total.]

Table I: Counts of all Alleged Infringement cases based on ROP observer data by year showing count of cases by Investigation Status and counts of cases where ROP Observer Report was received

FAI: FAD Sets Alleged infringements

OAI: Observer Obstructions Alleged Infringements

SHK: Shark Catch Alleged Infringements

CWS: Cetacean and Whale Shark Interaction Alleged infringements

		Flag CCM Notified	Flag CCM investigation in Progress	Flag CCM Investigation Completed	Total Compliance cases	ROP_rpt received count
Year 2015	FAI					
Year 2016						
...						

Table II-xx: Summary Tables of outcome of flag CCM investigations of alleged infringements that were notified to WCPFC as Article 25(2) matters or in ROP observer data grouped by CMM/obligation and by year showing counts of cases by Investigation Status

*For ease of readability, groups of CMM/obligations may be presented by tables of similar topic eg alleged FAD sets, bycatch-related, observer obstruction and safety incidents, vessel-related, VMS-reporting, others

		Flag CCM Notified	Flag CCM Investigation in Progress	Flag CCM Investigation Completed				Total Compliance cases
				Infraction-no sanction	Infraction-sanction	Infraction - warning	No infraction	
CMM / CMM para A	Year 2017							
	Year 2018							
...	...							

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