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Implementation of CMM 2013-06 on the criteria for the consideration of conservation and management proposals

WCPFC-TCC20-2024-30

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Submitted by the Secretariat

Purpose

1. The purpose of this paper is to support TCC's review and assessment of the Commission's implementation of, and compliance with, [CMM 2013-06: Conservation and Management Measure on the criteria for the consideration of conservation and management proposals](#), for the previous calendar year (2023). This agenda item is a standing item for TCC starting with TCC20, following a directive from the Commission at WCPFC20.¹

Overview of obligations in CMM 2013-06

2. The Commission's adoption of CMM 2013-06 reflects a commitment to supporting the special requirements of developing States, particularly small island developing States (SIDS) and participating territory members, in the work of the Commission. The CMM is based on the principles outlined in [WCPFC Convention](#) Articles 10 and 30.
3. CMM 2013-06 places obligations on CCMs and on the Commission, set out in paragraphs 1, 2, and 3 of the CMM, with the key action contained in paragraph 3. Paragraph 4 provides for responsive actions to be taken by CCMs where disproportionate burden has been demonstrated by a SIDS or territory.² A more detailed consideration of each of the obligations in CMM 2013-06 is provided later in this paper.

¹ Paragraph 753(a) of [WCPFC20 Summary Record_Rev01](#): "753. The Commission endorsed the following recommendations of the CMS-IWG drawn from its work developing audit points in 2023: a. TCC, as a standing agenda item relating to the Special Requirements of Developing States, review and assess the Commission's implementation of, and compliance with, CMM 2013-06 for the previous calendar year."

² If a SIDS or territory demonstrates that a conservation action imposes a disproportionate burden, CCMs must collaborate to reduce this burden. This can be done through delaying the implementation timeline for SIDS or territories, provision of exemptions, or establishment of compensatory funding mechanisms consistent with the Commission's financial regulations.

4. The CMM requires that CCMs develop, interpret, and implement conservation and management measures in alignment with the 1982 United Nations Convention on the Law of the Sea and specific Articles (24, 25, 26) of the United Nations Fish Stocks Agreement. This includes a commitment to cooperate—either directly or through the Commission—to support developing States, especially the least developed and SIDS within the Convention Area, in building their fisheries for highly migratory fish stocks, including in the high seas within the Convention Area.
5. The CMM obligates the Commission to ensure that any conservation and management measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories. This obligation is partially achieved through the implementation of a checklist of questions (CMM paragraph 3) designed to identify the nature and extent of impacts of new measures on SIDS and territories before the new measure takes effect.
6. [CMM 2013-07](#) on the *Special Requirements of Small Island Developing States and Territories* further operationalizes Articles 10 and 30 of the Convention and reinforces the obligation by CCMs to cooperate, either directly or through the Commission, to enhance the ability of developing States, particularly the least developed among them and SIDS and territories in the Convention Area, to develop their own domestic fisheries for highly migratory fish stocks, including but not limited to the high seas within the Convention Area.³
7. In addition, [CMM 2023-04](#) on the *Compliance Monitoring Scheme* commits to the implementation of CMM 2013-06 and CMM 2013-07, as well as Article 30 of the Convention.

Reporting on implementation of CMM 2013-06

8. Reporting against paragraph 1 of CMM 2013-06 has been included in Annual Report Part 2 since 2015, covering reporting year 2014. In the absence of a reporting template, responses have varied widely. In 2023, the Commission adopted the first audit point for CMM 2013-06 to cover the Reporting (RP) obligation contained in paragraph 1 of the CMM, as follows:

The Secretariat confirms receipt of a report outlining efforts by the reporting CCM to cooperate, either directly or through the Commission, to enhance the ability of developing States, particularly the least developed among them and SIDS and territories in the Convention Area, to develop their own fisheries for highly migratory fish stocks, including but not limited to the high seas within the Convention Area.

9. Since its adoption, implementation of CMM 2013-06 during regular annual sessions of the Commission has been mixed, both in terms of the checklist as well as other obligations of the CMM. The requirement in paragraph 3 of the CMM applies to the Commission and in practice, it has been implemented by individual CCMs when submitting a new proposal or

³ CMM 2013-07 also requires the Commission to ensure that any conservation and management measure does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories.

an amendment to an existing proposal. FFA members have guided the Commission’s implementation of paragraph 3 since the CMM took effect in 2014 and in 2018, submitted an annotated version⁴ of the 2013-06 criteria to assist CCMs in fulfilling the requirement outlined in paragraph 3 of the CMM. Since 2014, the Summary Reports of WCPFC Annual Sessions has often recorded the views of CCMs as to the adequacy or sufficiency of the consultation to support the CMM 2013-06 assessments.

10. To date, the provisions of CMM 2013-06 have not been assessed under the Commission’s Compliance Monitoring Scheme (CMS) and none of its provisions are included in the list of obligations to be assessed in the 2024 Compliance Monitoring Report (CMR) covering 2023 activities.⁵
11. The outcome from the CMS-IWG’s consideration in 2023 of Audit Points for CMM 2013-06 obligations was two-fold:
 - The CMS-IWG recognized that paragraph 3 was an obligation on the Commission, and this led to the Commission’s decision that TCC review implementation of CMM 2013-06 as a standing agenda item; and
 - The Commission adopted a Report (RP) Audit Point for [CMM 2013-06 paragraph 1](#) (WCPFC19 Summary Report, paragraph 753 (a) and (b)).

Options for reviewing and assessing the Commission’s implementation of, and compliance with, CMM 2013-06

12. This section reviews the potential approaches that TCC could employ to review and assess the Commission’s compliance with CMM 2013-06. Consistent with the approach currently taken in the CMS, the obligations of CMM 2013-06 are categorized and considered in turn:

Reviewing compliance with CMM 2013-06, Paragraph 1

REPORT (RP) *currently included in Annual Report Part 2

CCMs shall develop, interpret and apply conservation and management measures in the context of and in a manner consistent with the 1982 Convention and Articles 24, 25 and 26 of the Agreement. To this end, CCMs shall cooperate, either directly or through the Commission, to enhance the ability of developing States, particularly the least developed among them and SIDS and territories in the Convention Area, to develop their own fisheries for highly migratory fish stocks, including but not limited to the high seas within the Convention Area.

13. The current Annual Report Part 2 reporting obligation in paragraph 1 could be further strengthened through development of a standard reporting template or reporting guidelines

⁴ See <https://meetings.wcpfc.int/node/11075>.

⁵ The list of obligations including in the CMR may be accessed by applying the “CMR Inclusion” and “Historical” filters on the Obligations tab of *WCPFC Monitoring and Evaluation Incorporating CMMs* page at this link <https://cmm.wcpfc.int/obligations>

that allows for more consistent reporting by CCMs without being unduly restrictive or narrow in scope. The range of activities that could be undertaken in support of the obligation in this paragraph, such as cooperating to enhance the ability of developing States to develop their own fisheries, is potentially vast and this will need to be considered in the reporting template. General questions could seek detailed information on the following actions that a CCM has taken in support of the requirements of the paragraph along the following categories of actions:

- a. any laws, regulations, or policies adopted by the CCM
- b. projects or activities under exploration, underway, or completed
- c. updates on partnerships, commercial and non-commercial

Reviewing compliance with CMM 2013-06, Paragraph 2

IMPLEMENTATION (IM)

The Commission shall ensure that any conservation and management measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories.

14. As written, the obligation in paragraph 2 is a collective one to be undertaken by the Commission as a whole, including SIDS and territory CCMs, through the application of a reporting template approach, like the one outlined in paragraph 3 of the CMM. Assessing implementation of the obligation in paragraph 2 is partially dependent on whether a determination is made by a SIDS or territory CCM that a disproportionate burden exists, pursuant to paragraph 4 of the CMM.
15. The CMS CMM states that the assessment of IMPLEMENTATION obligations shall be determined based on the following criteria: *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.*⁶ In the case of paragraph 2 where the obligation is on the Commission, a parallel application of the criteria could be an assessment of how the Commission addressed the adoption of measures where a SIDS or territory demonstrated a transfer of disproportionate burden. In making the assessment for the previous year, the approach could be focused on actions taken by the Commission in the previous year for measures adopted in any prior year, as well as measures adopted in the previous year. In other words, the assessment would be focused on the mitigating action taken by the Commission in response to a demonstration of disproportionate burden.
16. In 2023, 42 conservation and management measures were in effect, representing over 150 distinct obligations. In the absence of a clear metric to determine or quantify the degree of “impact” of measures, a reasonable proxy could be found in accounts by SIDS or territory CCMs, either as official statements to the record or in a more formal, standardized format, that articulate how measures have resulted in, or in the case of a proposed measure, would

⁶ [CMM 2023-04, para 8\(ii\)\(a\)](#).

result in a disproportionate burden of conservation action. Clarity in the demonstration of disproportionate burden would contribute to more effective mitigating outcomes. The mitigating action taken by the Commission in response would then be the focus of TCC's review and assessment of the implementation of paragraph 2.

Reviewing compliance with CMM 2013-06, Paragraph 3

REPORT (RP)

In considering any new proposal the Commission shall apply the following questions to determine the nature and extent of the impact of the proposal on SIDS and territories in the Convention Area:

- *Who is required to implement the proposal?*
- *Which CCMs would this proposal impact and in what way(s) and what proportion?*
- *Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation?*
- *Does the proposal affect development opportunities for SIDS?*
- *Does the proposal affect SIDS domestic access to resources and development aspirations?*
- *What resources, including financial and human capacity, are needed by SIDS to implement the proposal?*
- *What mitigation measures are included in the proposal?*
- *What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?*

17. Paragraph 3 requires that the Commission determine the nature and extent of the impact of new proposals on SIDS and territories by considering a set of questions in relation to the proposal. This obligation could therefore be categorized as a REPORT obligation. In practice, this obligation has been applied at the level of individual CCM who submits a completed "13-06 checklist" together with a new proposal.⁷ While the obligation does not set out a reporting standard, FFA members have provided an [annotated checklist](#)⁸ as a guide to assist CCMs.
18. A robust and meaningful compliance assessment relies on clear and unambiguous criteria for measuring compliance. In the case of paragraph 3, a review and assessment of compliance could be based on one of the following criteria:
 - a. A CCM submitting a new proposal has also submitted a completed "13-06 checklist".

⁷ [Refer to a paragraph in a summary report] The obligation does not specify how that determination is to be reached and FFA members have expressed their view that consultation with SIDS and territory CCMs is required.

⁸ Submitted by FFA members at the 15th Regular Session of the WCPFC and contained in [WCPFC15-2018-DP12_rev1](#).

- b. A CCM submitting a new proposal has also submitted a completed “13-06 checklist” **AND** has consulted with FFA members and territories in the completion of the checklist.
 - c. A CCM submitting a new proposal has also submitted a completed “13-06 checklist” **AND** FFA members and territories have reviewed and concurred with the information in the checklist.
19. The “degree” of the assessment increases with each of the options set out in the above paragraph. For example, the option in 18.c. addresses the issue of quality and accuracy of responses in addition to the report submission, while the option in 18.a. is limited to the submission of a report without a review of the responses. One caveat in each of the three above options is in the case where a new proposal is subject to negotiations over the course of a meeting to the extent that the original proposal changes substantially and updating of checklists as well as close consultation with SIDS and territories to update checklists is less practical.
20. In these cases, assessment could follow a similar approach as proposed for paragraph 2, which is determined by the presence (in an agreed format) of a determination by a SIDS or territory CCM that a disproportionate burden exists, and a corresponding mitigating response is taken by the Commission. It is also noted that in taking this approach, the demonstration and concurrence that disproportionate burden exists may also be the subject of negotiation.

Reviewing compliance with CMM 2013-06, Paragraph 4

IMPLEMENTATION (IM)

In cases where the transfer of a disproportionate burden of conservation action has been demonstrated by a SIDS or territory, CCMs shall cooperate, to mitigate the burden for the implementation by the relevant SIDS and territories of specific obligations including through:

- a. Phased or delayed implementation of specific obligations;*
- b. Exemption of specific obligations;*
- c. Proportional or rotational implementation;*
- d. Establishment of a compensatory funding mechanism in accordance with the financial regulations of the Commission.*

21. Paragraph 4 provides SIDS and territories with a mechanism to raise concerns about the transfer of disproportionate burden of conservation action that might occur because of a new conservation and management measure. Where disproportionate burden is demonstrated, CCMs are required to take action to mitigate the burden of implementation on the SIDS or territory (or group thereof) that raised the concern, with some examples provided of mitigating actions.
22. In practice, the demonstration of disproportionate burden is in the first instance undertaken through the negotiating process that follows the introduction of proposals to amend existing CMMs or of new CMMs. The extent to which the burden from an individual

obligation or from a CMM is mitigated, can in some cases be seen in the final recorded outcomes from a Commission meeting, which can also include the rejection of a new measure.

23. In addition, the CMS and Annual Report Part 2 report processes, have as a principle “cooperation towards compliance” with the stated intention 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 or improvements and corrective action.”* Section V of [CMM 2023-04](#) the CMM for the Compliance Monitoring Scheme operationalizes this principle through providing opportunities for SIDS or territories, as well as Indonesia or the Philippines, where they cannot meet a particular obligation that is being assessed, due to a lack of capacity, to submit a Capacity Development Plan with their dCMR. The points that are to be included in the Capacity Development Plan are listed in the box below. In practice, this process can provide SIDS or territories with a way, after a CMM has been adopted, for any disproportionate burden impacts to be identified and as needed addressed. The mitigating action taken by the Commission in response/s to identified Capacity Development needs, would be the focus of TCC’s review and assessment of the implementation of paragraph 4.

CMM 2023-04 paragraph 16

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 capacity 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, that CCM will be able to meet that obligation.*

Assessment of implementation of and compliance with CMM 2013-06 for 2023 activities

24. Based on the approaches discussed in the above section, a reasonable option for assessing compliance with CMM 2013-06 is to take the four operative paragraphs collectively, in addition to individually in the case of paragraphs 1 and 3. Each of the operative paragraphs of the CMM (paras 1-4) are related, with paragraph 4 providing for the mechanism that allows SIDS and territories to review actions undertaken pursuant to paragraphs 1-3, and seek remedy where those actions present a transfer of disproportionate burden.
25. To meaningfully assess the obligations individually or collectively requires a pragmatic approach with a certain degree of subjectivity. There are potentially numerous sources of information which could support a review of compliance, however not all these sources

would be easily accessible to TCC, such as the arrangements between CCMs at a bilateral level or records of discussions outside the WCPFC framework. For purposes of a review by TCC of implementation of, and compliance with, CMM 2013-06, a review of the relevant WCPFC meeting reports, including the adopted Final CMR and Strategic Investment Plan, completed CMM 2013-06 template assessments submitted with CMM proposals⁹, and the adopted CMMs provides the most transparent and accessible sources of information from which to review implementation of CMM 2013-06.

26. The reporting requirement in paragraph 1 can continue to be assessed through the adopted audit point, which confirms receipt by the Secretariat of a report by the CCM in its Annual Report Part 2.
27. Paragraphs 2, 3, and 4 can be approached in a collective manner, beginning with a review of compliance against the requirement in paragraph 3 for the Commission to determine the nature and extent of the impact of new proposals on SIDS and territories through completion of a questionnaire, or checklist. Again, this has been applied at the individual CCM (or group of CCMs) level when submitting new proposals for Commission consideration.
28. The following Table reflects nine new proposals submitted to the Commission at WCPFC20 in 2023, along with the status of submission of a completed 13-06 checklist, and the relevant discussions and outcomes as captured by the meeting report.

#	CCM	Proposal summary	13-06 checklist? Y/N	Discussions/Outcome (refer WCPFC20 Summary Report_Rev01)
1	Korea	Proposed temporary high seas purse seine allocation of 50% to CCMs with limits and 50% to CCMs with no limits and Philippines; transferability of in-zone catch and/or effort limit and high seas effort limits (tropical tuna CMM).	Y	No consensus led to Korea’s notice in the interests of time and cooperation to not to pursue discussions further, but with an indication that they would revisit the proposal at the next revision of the tropical tuna CMM (see paras 438-440).
2	United States and Chinese Taipei	Option for addressing climate change at TCC; proposal for two co-leads of intersessional work to develop a climate change work plan; TCC assessment of climate vulnerability of CMMs.	N	Co-leads identified from US and RMI to lead intersessional development of a climate change work plan; Secretariat and SSP to review scope and feasibility of climate vulnerability assessment of WCPFC CMMs (see paras 222-225).

⁹ The [Article 30 webpage on the WCPFC website](#), contains copies of past CMM 2013-06 template assessments. The update of the list of past CMM 2013-06 templates is a work in progress.

#	CCM	Proposal summary	13-06 checklist? Y/N	Discussions/Outcome (refer WCPFC20 Summary Report_Rev01)
3	United States	CCMs to limit the deployment of drifting FADs to those of biodegradability categories I, II, IIIa or IIIb beginning in 2026, and only categories I or II beginning in 2029, and the submission of satellite buoy data from FADs (tropical tuna CMM).	Y	Negotiated compromise on implementation of bioFAD requirements and definition of “biodegradable; requirement for monthly reporting of all active FADs referred to FAD Management Options IWG (see paras 417-423).
4	American Samoa /United States	For high seas purse seine effort limits applicable to US, an exception for US flagged vessels notified as operating as an integral part of America Samoa economy (tropical tuna CMM).	Y	Not agreed (see paras 441-470).
5	FFA members	Set fishing levels for purse seine and pole-and-line effort, and domestic fisheries catch of assessment region 5, for the period 2024-26 (tropical tuna CMM).	Y	Withdrawn, with intent to raise at later stage (see para 440).
6	FFA members	To apply the term “actively fishing for” in CMM 2015-02 to “vessels fishing south of 20 degree South with an annual catch of albacore in that area with South Pacific albacore greater than 50% of the catch of potential target tuna (albacore, yellowfin and bigeye, southern bluefin, skipjack and swordfish.)”	Y	Agreed (see paras 274-289).
7	PNA + Tokelau	Implementation of skipjack management procedure, output of the SKJ MP and relation to existing limits, FAD management provisions in the tropical tuna measure, increase MCS elements in tropical tuna measure.	Y	Partially reflected in negotiated outcome of revised tropical tuna measure contained in CMM 2023-01.
8	PNA + Tokelau	Address the imbalance of information used in the CMS	Y	Reflected in the revised CMS CMM 2023-04.
9	SPG and Australia	Revised interim TRP for South Pacific Albacore.	Y	Revised iTRP adopted (see paras 236-242 and Attachment 18).

29. If the approach shown in paragraph 18.a above is taken, where a compliance assessment is taken against whether a 13-06 checklist is submitted, then eight of the nine submitted

proposals met the criteria in 2023.¹⁰ If the approaches reflected in paragraph 18.b or 18.c are used, then the assessment should account for the outcomes of the proposals, some of which reflect negotiated outcomes where considerations for the special requirements of SIDS and territory CCMs are captured in the meeting's Summary Report and the adopted CMM. This latter approach would capture the requirements outlined in paragraphs 2 and 4 of the CMM.

30. The expanded, qualitative approaches to assessing paragraph 3 of the CMM could also reasonably cover the requirements of paragraph 1 of the CMM. In this case, a fair amount of subjectivity and pragmatism in making the compliance assessment is required. Although this approach moves the TCC further away from the streamlined and transparent approach intended through the adoption of audit points to enhance the CMS, the assessment required by CMM 2013-06 is inherently different because of the outcomes that the CMM obligations seek to achieve. These outcomes –enhancing the participation of and support for SIDS and territories in the fisheries managed by the WCPFC—will vary across each of the SIDS and territory CCMs, which requires a degree of flexibility in the evaluation of the impacts of Commission measures.
31. Finally, in reference to paragraph 4, the TCC each year could also through this new standing agenda item, consider reviewing the mitigating actions taken by the Commission in response/s to Capacity Development needs identified through the Compliance Monitoring Scheme. TCCs approach to this discussion would need to accord with the “cooperation towards compliance” principle of the CMS and focus on considering the extent to which capacity assistance needs or other quality or improvements and corrective actions have been taken or are in progress to address the Capacity Development needs identified. Where there is a lack of progress, or absence of a response to a Capacity Development need, this would be indicative of disproportionate burden and importantly highlight a need for greater commitment and support by the Commission to mitigate the impacts of the obligations on a SIDS or participating territory.

Recommendations

32. TCC20 is invited to consider the below approaches for reviewing and assessing the Commission's implementation of, and compliance with, CMM 2013-06 for the 2023 reporting year:
 - a. Assess compliance with paragraph 1 based on the adopted Audit Point:

The Secretariat confirms receipt of a report outlining efforts by the reporting CCM to cooperate, either directly or through the Commission, to enhance the ability of developing States, particularly the least developed among them and SIDS and territories in the Convention Area, to develop their own fisheries for highly migratory fish stocks, including but not limited to the high seas within the Convention Area.
 - b. Agree that an assessment of implementation and compliance by the Commission with paragraph 2 is dependent on (1) the demonstration by a SIDS or territory of a disproportionate burden caused by a conservation action, and (2) a corresponding

¹⁰ No proposals were submitted to TCC19 that required a 2013-06 checklist.

mitigating action taken by the Commission, as reflected in the WCPFC20 Summary Report or adopted CMM or other decision.¹¹

- c. Agree that an assessment of implementation and compliance by the Commission with paragraph 3 and paragraph 4 shall be based on:
 - i. confirmation that a CCM submitted a completed 13-06 checklist together with any new proposal (including a proposed amendment to an existing measure)¹²,
and
 - ii. consideration of the approach taken to assess compliance with paragraph 2, to ensure that where Capacity Development Needs are identified for a SIDS or participating territory, through the Compliance Monitoring Scheme, that adequate assistance or other quality or improvements and corrective actions have been taken or are in progress to address the identified Capacity Development needs by the Commission in accord with paragraph 4.
33. For future assessments, TCC20 is invited to recommend that the Commission adopt reporting guidelines, and consider any necessary revisions to the Audit Points, to further standardize CCM reporting against paragraph 1 in Annual Report Part 2.

¹¹ Pursuant to paragraph 4 of CMM 2013-06.

¹² With the exception that where a new proposal was further negotiated, a 13-06 checklist was not required for any subsequent iterations of that proposal.