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CONSIDERATIONS FOR THE DEVELOPMENT OF A WCPFC SCHEME FOR MONITORING COMPLIANCE WITH CONSERVATION AND MANAGEMENT MEASURES

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Proposal by Australia

1. This paper has been developed in response to agreement at the Fourth Regular Session of the Technical and Compliance Committee (TCC4) to progress development of a compliance monitoring scheme.
2. The issues discussed in the paper are suggested as a starting point for discussions in a Compliance with Conservation and Management Measures (CCMM) working group that will report to TCC5, as recommended by TCC4.
3. The paper:
 - suggests objectives and a structure for a WCPFC Compliance Monitoring Scheme;
 - suggests components necessary for an effective scheme;
 - notes progress on, and challenges to, similar schemes in other regional fisheries management organisations; and
 - proposes draft terms of reference for the CCMM working group.

Objectives

4. The Western and Central Pacific Fisheries Convention (the Convention) establishes various obligations on members that are essential for the effective operation of the WCPFC. These include obligations for Commission Members, Cooperating Non-Members, and participating Territories (CCMs) to:
 - implement CMMs
 - report on compliance with CMMs
 - provide scientific, catch and effort data
 - deter fishing vessels, which undermine or violate CMMs and exchange information on such activities
5. Accordingly, the objectives for a WCPFC Compliance Monitoring Scheme (the Scheme) should be:
 - i) Monitor compliance with reporting and implementation obligations under the Convention

- ii) Monitor compliance with conservation and management measures and other WCPFC decisions
- iii) Recommend actions to be taken in response to non-compliance.

Scope

6. A WCPFC compliance monitoring scheme should consider the following three matters:

- the process should distinguish between monitoring, control and surveillance (MCS) schemes that focus on the activities of fishing vessels and those schemes that focus on the compliance by States;
- a key compliance issue is ensuring that CCMs meet their reporting obligations. Without this information, the effectiveness of the WCPFC is significantly undermined and compliance with CMMs difficult to assess; and
- any compliance monitoring process and structure must address compliance by both CCMs and non-CCMs in a fair, transparent and non-discriminatory manner. The process should be consistent with international law and the objectives of the WCPFC and should support the effective implementation of WCPFC provisions and CMMs.

Scheme Components

7. An effective compliance monitoring scheme requires three integrated components for it to effectively meet the Convention's requirements. First, the scheme requires sufficient information to assess compliance with WCPFC obligations and implementation of conservation and management measures. Secondly, the scheme requires a fair and transparent process that enables the WCPFC to review this information and assess if a CCM or non-CCM is failing to meet its obligations. Finally, the scheme must have the capacity to agree on effective responses to non-compliance.

Table 1. Examples of Information, Review and Response Considerations.

Information	Discussion & Review	Response & Solutions
<ul style="list-style-type: none"> • information on fishing vessel activities that is sufficient to assess their implementation of conservation and management measures; • information on violations against conservation and management measures by CCM fishing vessels; • information on violations against conservation and management measures by non-CCM fishing vessels; • information on the actions taken by CCMs to implement their RFMO obligations; • information on the responses taken by CCMs to violations by their 	<ul style="list-style-type: none"> • a process that collates and summarises all information; • a process for reviewing information and identifying gaps or questions of accuracy; • a process for verifying information where questions of accuracy have been raised; • a process that enables flag CCMs to address gaps in information or concerns regarding its accuracy; • a fair and transparent process for identifying failures by CCMs to meet RFMO obligations; • a fair and transparent process for identifying non-CCMs whose fishing vessels are 	<ul style="list-style-type: none"> • a fair and transparent process for requesting non-compliant CCMs and non-CCMs implement RFMO obligations and/or conservation and management measures in a reasonable time; • a fair and transparent process for discussions with non-compliant CCMs and non-CCMs that addresses obstacles to implementation (such as capacity) and assists with implementation; • guidelines that prescribe sanctions to be applied to CCMs and non-CCMs in response to repeated failures to implement obligations and/or conservation and management measures; • sanctions could include: <ul style="list-style-type: none"> - non-discriminatory WTO compliant trade prohibitions on species regulated by the RFMO; - punitive quota adjustments (whether for immediate allocations or to be recorded against future allocations); - landing and transshipment prohibitions on species regulated by the RFMO; - listing of non-compliant flag State and/or vessels

<p>flagged fishing vessels;</p> <ul style="list-style-type: none"> • information on failures by CCMs to implement their RFMO obligations or respond adequately to violations by their flagged fishing vessels; • information on actions by CCMs to address compliance failures and abide by WCPFC requirements; 	<p>undermining conservation and management measures;</p>	<p>on IUU list;</p> <ul style="list-style-type: none"> - increased application of MCS instruments on vessels flagged to non-compliant State (i.e increased observer coverage, boarding and inspections, etc); • a fair and transparent process for applying sanctions to CCMs and non-CCMs that do not comply with requests to implement WCPFC obligations and/or implement conservation and management measures; • fair and transparent decision making processes that prevent a non-compliant party from blocking punitive actions.
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Working Group on Compliance with Conservation and Management Measures

8. As noted, TCC4 recommended the formation of a CCMM working group which would be tasked with preparing a draft approach for consideration at TCC5.

9. Draft terms of reference for such a working group are provided at Attachment A. It is recommended that, in light of the busy meeting schedule anticipated for the Commission through 2009, the working group should undertake its work electronically, where possible. The Executive Director should be tasked with calling for nominations from CCMs for the working group early in 2009.

Benchmarks in Reporting, Review and Responses to Non-Compliance

10. Many regional fisheries management organisations (RFMOs) have established monitoring schemes that incorporate these three components. The table at Attachment B analyses current RFMO practice and extrapolates benchmarks in reporting requirements, review mechanisms and responses to non-compliance with conservation and management measures. The table then compares this with the current WCPFC requirements for monitoring compliance. The table demonstrates that the Convention, and subsequent conservation and management measures, provide a sufficient framework to enable the WCPFC to meet and improve upon current benchmarks in RFMO practice.

Recommendations

11. The Commission is invited to:

1. Discuss the elements to be considered in the development of a compliance monitoring scheme, including the Objectives, Scope and Scheme Components outlined in this paper
2. Consider and agree terms of reference for the Compliance with Conservation and Management Measures (CCMM) working group

Draft Terms of Reference for the Compliance with Conservation and Management Measures Working Group

The Compliance with conservation and management measures (CMMs) Working Group (the C-CMM Working Group) shall comprise a Chair, the Executive Director and any WCPFC Member wishing to participate. The working group will convene intersessionally and, to the extent possible, progress its work through electronic means.

The Working Group shall recommend to TCC5 options for an effective structure and process for a WCPFC Compliance Monitoring Scheme in light of the direction provided by WCPFC5 in regard to the objective and scope for such a scheme.

The Working Group shall consider:

1. Procedures for analysis and reporting of CCM compliance, including tasks for the Secretariat and the timing and frequency
 - work under this item could include consideration of processes to ensure that information is available in a form and within a timeframe that supports consideration under a Compliance Monitoring Scheme
2. Process to review information on compliance by CCMs
 - work under this item could include consideration of a process to verify the accuracy of information presented and potential categorisation of any instances of non-compliance detected according to severity
3. Options available to respond to non-compliance
 - work under this item could include establishing processes to engage with non-compliant CCMs / non-CCMs, addressing obstacles to compliance (including consideration of the special requirements of small island developing States) and guidelines for prescribing sanctions
4. Procedures for recommending action to be taken where compliance obligations have not been met
 - work under this item could include establishing a fair and transparent process to recommend any actions to be taken, including any punitive actions, and consideration of decision-making processes that prevent a non-compliant party from blocking punitive action
5. Structure/s required to support the Compliance Monitoring Scheme
 - work under this item would include identifying options for creating new sub-committees or working groups under existing committees or the Commission to be responsible for the Scheme

Attachment B:

RFMO Benchmarks in Reporting, Review and Responses to Non-Compliance

Benchmarks in RFMO Reporting Requirements	Benchmarks in RFMO Review Mechanisms	Benchmarks in RFMO Responses to Non-Compliance
<p>CCAMLR, CCSBT, ICCAT and IOTC (to varying degrees) require members to submit the following information to the relevant RFMO Committees or Commissions:</p> <ul style="list-style-type: none"> • fisheries and scientific data; • information regarding implementation and enforcement of the Convention; • trade data. 	<p>All the included RFMOs have established a Committee or body of some form that is mandated to review compliance with conservation and management measures.</p> <p>Decision making processes within these Committees either require consensus, some form of majority limited by an objection/opt out clause or requirement that the member under discussion consents to the decision.</p>	<p>ICCAT and IOTC (to varying degrees) explicitly provide for the following responses to non-compliance:</p> <ul style="list-style-type: none"> • quota adjustments (ICCAT provides for the imposition of punitive quota reductions of 125% of overharvest amounts); • WTO compliant trade measures; • request non-compliant State to comply; <p>All the included RFMOs provide for the suspension of voting rights, and authority to object, when members have not paid their contribution for 2 or more years.</p>
WCPFC Reporting requirements	WCPFC Review Mechanisms	WCPFC Responses to Non-Compliance
<p>Articles 23, 24, 25, 32 and Annex 7 of the WCPFC Convention, plus conservation and management measures, require members to submit fisheries and scientific data and information regarding implementation and enforcement of the Convention:</p> <ul style="list-style-type: none"> • fisheries and scientific data; <ul style="list-style-type: none"> - <i>Part A annual reports;</i> - <i>Record of fishing vessels (CMM 2004-01);</i> - <i>Authorisations to fish (CMM 2004-01);</i> - <i>Bigeye and yellowfin (CMM 2005-01/06-01)</i> - <i>North pacific albacore (CMM 2005-03);</i> - <i>Seabirds (CMM 2007-04);</i> - <i>Swordfish (CMM 2006-03);</i> - <i>Striped Marlin (CMM 2006-04);</i> - <i>Sharks (CMM 2006-05);</i> - <i>Turtles (Res 2005-04).</i> • information on implementation & enforcement; <ul style="list-style-type: none"> - <i>Part B Annual Reports;</i> - <i>Boarding and Inspection (CMM 2006-08);</i> - <i>IUU list (CMM 2007-03)</i> - <i>VMS (Convention text & CMM 2007-02).</i> 	<p>Article 14 establishes the Technical and Compliance Committee (TCC) which shall (amongst other things):</p> <ul style="list-style-type: none"> • report to the WCPFC on the implementation of, and compliance with, conservation and management measures; • report to the WCPFC on the extent of compliance with conservation and management measures; <p>Article 14 allows the TCC to establish such subsidiary bodies (with WCPFC approval) as may be necessary.</p> <p>The WCPFC Convention and the Rules of Procedure allow for decision to be passed by a two-chamber ¾ vote if consensus fails. There is no opt out clause, nor special recognition given to members who might be the subject of discussions. Article 20 and Annex II describe a review process that may be instigated by members who have lost a vote.</p> <p>While Article 14 describes the TCC functions, it does not detail how the TCC shall monitor compliance. Consequently, it is up to the Commission and/or TCC to further develop the detail for how the TCC shall monitor compliance by CCMs and non-CCMs.</p> <p>In 2006, the WCPFC adopted a broad outline of a process and structure (Appendix B) for monitoring compliance with conservation and management measures.</p>	<p>Article 25 requires the WCPFC to develop procedures, when necessary, which allow for non-discriminatory trade measures to be taken on any WCPFC species, consistent with WCPFC member's international obligations, against any State or Entity whose vessels undermine conservation and management measures.</p> <p>Article 10 requires the WCPFC to consider participant's record of compliance when developing allocation criteria.</p> <p>Article 32 obliges members to take actions against non-party non-compliant States and to request they cooperate fully with conservation and management measures.</p> <p>Article 20 provides for the suspension of voting rights when members have not paid their contribution for 2 or more years.</p> <p>Article 14 describes the TCC functions but does not prescribe what actions the TCC shall take in response to non-compliance by CCMs or non-CCMs. Consequently, it is up to the Commission and/or TCC to further develop the detail for how the TCC shall respond to non-compliance.</p> <p>In 2006, the WCPFC adopted a process and structure for monitoring compliance with conservation and management measures (Appendix B). This process allowed for the WCPFC to develop further mechanisms and procedures, consistent with the international obligations of the members of the Commission, against any State or entity whose vessels fish in a manner that undermines the effectiveness of conservation and management measures. These mechanisms and procedures have not yet been prescribed.</p>

