



SEVENTH REGULAR SESSION

Honolulu, Hawaii, USA

6-10 December 2010

**AUSTRALIA PROPOSED CMM ON THE WCPFC COMPLIANCE MONITORING
SCHEME**

WCPFC7-2010 – DP/12

Paper prepared by Australia



SEVENTH REGULAR SESSION

Honolulu, USA

6 – 10 December 2010

**WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION
COMPLIANCE MONITORING SCHEME**

Draft proposal by Australia

1. At WCPFC6 in December 2009, the Commission approved Australia's proposal to convene discussions on a Compliance Monitoring Scheme through the Compliance with Conservation and Management Measures (CCMM) Working Group inter-sessionally, in accordance with the Terms of Reference set out in WCPFC6-2009/DP17.
2. In 2010, Australia developed a Working Paper outlining options for a structure and process for the Compliance Monitoring Scheme (WCPFC-TCC6-2010/21) which was circulated to the CCMM Working Group, and discussed at TCC6 in October 2010. TCC6 recommended that the Commission continue to progress work on the Compliance Monitoring Scheme through the CCMM Working Group, with Australia to lead the process and develop a draft conservation and management measure to be brought forward to WCPFC7 for consideration.
3. The structure and process of the Compliance Monitoring Scheme in the draft CMM is based on the underlying principles and graduated approach described in the Working Paper and discussed at TCC6. It is based on the framework adopted by the Commission in 2006, and builds on existing structures and processes in place in the Commission. To assist with consideration of the draft measure, we have prepared a one-page flowchart showing a summary of the proposed Compliance Monitoring Scheme for information (**Attachment A**).
4. CCMs are invited to consider the draft measure, and are welcome to provide comments to Australia by email in advance of WCPFC7 (Camille Goodman camille.goodman@daff.gov.au and Terri McGrath terri.mcgrath@daff.gov.au). We look forward to discussing the draft measure at WCPFC7 with a view to having a WCPFC Compliance Monitoring Scheme in place for 2011.

Information Paper: Summary of WCPFC Compliance Monitoring Scheme

Section I: Purpose

To ensure that Members, Co-operating Non-Members and Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures adopted by the Commission, by

- assisting CCMs to identify and address compliance gaps, including through providing appropriate capacity building
- identifying aspects of conservation and management measures which may be impractical or ineffective, and
- addressing serious or repeated non-compliance, including through appropriate remedial action, and
- monitoring and resolving outstanding instances of non-compliance.

Section II: Scope and Application

Scope: Commission can monitor all obligations arising under the Convention and conservation and management measures adopted by the Commission.

Application: Commission will adopt a **Compliance Monitoring Schedule** which sets out the obligations which will be monitored by the Commission over particular time periods, including:

- (i) core categories of obligations which will be considered annually, and
- (ii) additional categories of obligation which are identified as priorities for a particular time period.

Section III: Draft Compliance Monitoring Report

1. Executive Director compiles Draft Compliance Monitoring Report with respect to each CCM, preliminarily identifies potential compliance issues, and circulates to CCMs.
2. CCMs review Draft Compliance Monitoring Report and provide clarification or further information, including causes of non-compliance or implementation difficulties, and capacity-building or technical assistance which may be needed.
3. Executive Director provides updated Draft Compliance Monitoring Report to TCC.

Section IV: Provisional Compliance Monitoring Report

4. TCC reviews Draft Compliance Monitoring Report and any further advice or information which CCMs wish to provide.
5. TCC identifies and assesses potential compliance issues with respect to each CCM in accordance with criteria for Compliance Status set out in Section VI and any additional guidelines adopted by the Commission in the Compliance Monitoring Schedule.
6. TCC adopts Provisional Compliance Monitoring Report, including recommendations for:
 - (i) provisional Compliance Status for each CCM, and
 - (ii) measures to be taken to give effect to Compliance Status.

Section V: Compliance Monitoring Report

7. Commission reviews Provisional Compliance Monitoring Report and any further information from CCMs.
8. Commission adopts Compliance Monitoring Report including:
 - (i) Compliance Status for each CCM, and
 - (ii) measures to be taken to give effect to Compliance Status.
9. CCMs implement measures in Compliance Monitoring Report, and report on implementation in Part II Annual Report.

Section VI: Compliance Status

The Commission will assess the **Compliance Status** of each CCM, and the measures to be taken to give effect to that Status, on the basis of the criteria set out in the Compliance Status Table in Section VI, and any additional guidelines adopted by the Commission in the Compliance Monitoring Schedule.

**WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION
COMPLIANCE MONITORING SCHEME**

Proposal by Australia

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 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 issued by the Commission,

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

Noting further the obligations in Articles 23 and 24 of the Convention for Members of the Commission to take effective measures to ensure that their nationals, fishing vessels owned or controlled by their nationals, and fishing vessels flying their flag, comply with the provisions of the Convention and the conservation and management measures adopted pursuant thereto,

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 Party is examined in depth on a yearly basis,

Recognizing the need to provide such technical assistance and capacity building to developing State Members and Co-operating Non-Members, particularly small island developing State Members and Participating Territories, as may be needed to assist them to meet their obligations and responsibilities, and

Recognizing further the need to improve implementation and compliance by Members, Co-operating Non-Members and Participating Territories with the provisions of the Convention and the conservation and management measures adopted by the Commission,

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 (**the Scheme**) is to ensure that Members, Co-operating Non-Members and Participating Territories (**CCMs**) implement and comply with obligations arising under the Convention and conservation and management measures adopted by the Commission. The Scheme is designed to:
 - (i) assist CCMs to verify if they are taking all necessary steps to comply with their obligations
 - (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to address compliance gaps
 - (iii) identify aspects of conservation and management measures which may be ineffective or impractical to implement
 - (iv) respond to serious or persistent non-compliance through remedial options including, where appropriate, sanctions, and
 - (v) monitor and resolve outstanding instances of non-compliance.

Section II - Scope and application

2. The Commission may consider and address CCMs' compliance with any of the obligations arising under the Convention or in any conservation and management measure adopted by the Commission.
3. To ensure that the Scheme addresses the compliance issues of most importance to meeting the objective of the WCPF Convention, and to establish fair, transparent, consistent and objective procedures for identifying and addressing non-compliance, the Commission shall adopt a Compliance Monitoring Schedule (**the Schedule**). The Schedule will set out:
 - (i) the scope of obligations with which compliance will be monitored over agreed timeframes, and
 - (ii) guidelines for the Commission to use in assessing and responding to any non-compliance identified.
4. The scope of obligations set out in the Schedule shall include:
 - (i) core categories of obligations which shall be considered annually, including the requirements in conservation and management measures adopted by the Commission with respect to:
 - a. catch and effort limits
 - b. catch and effort reporting
 - c. spatial and temporal closures, and gear restrictions, and
 - d. observer coverage, and
 - (ii) additional categories of obligations which shall be considered in a particular time period, identified by the Commission taking into account:
 - a. the needs and priorities of the Commission, including those of its subsidiary bodies
 - b. the need to assess and address consistent non-compliance, and
 - c. the potential risks posed by non-compliance with particular categories of obligations.

5. The Schedule shall be updated by the Executive Director following the annual meeting of the Commission, in order to reflect any changes adopted by the Commission with respect to the requirements in the conservation and management measures set out in paragraph 4(i). The Commission shall review and update the Schedule with regard to paragraphs 3(ii) and 4(ii) as necessary, taking into account advice provided by the Technical and Compliance Committee (TCC) in accordance with paragraph 16 of this measure.
6. Through the Scheme, the Commission shall also consider and address:
 - (i) compliance by CCMs with recommendations adopted pursuant to the Scheme the previous year, and
 - (ii) responses by CCMs to alleged violations reported under Article 23(5) or 25(2) of the Convention.
7. The preparation, distribution and discussion of compliance information pursuant to the Scheme 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.
8. The Scheme shall not prejudice the rights, jurisdiction and duties of CCMs to enforce their national laws.

Section III - Draft Compliance Monitoring Report

9. Prior to the annual meeting of the TCC, the Executive Director shall collate information relevant to each CCM's compliance with the categories of obligation in the Schedule and paragraph 6 of this measure, and compile a Draft Compliance Monitoring Report (**the Draft Report**) with respect to each CCM. This shall include information received through Part I and II Annual Reports, the transshipment program, the regional observer program, the Vessel Monitoring System and any other data collection programs of the Commission,
10. The Executive Director shall undertake a preliminary review and analysis of the information in the Draft Report, and, in consultation with the Chair of the TCC, identify potential compliance issues with respect to each CCM, including instances where information is missing or unclear.
11. The Executive Director shall transmit the relevant section of the Draft Report to each CCM at least 30 days in advance of the annual TCC meeting, noting the potential compliance issues identified in consultation with the Chair of the TCC.
12. Taking into account the potential compliance issues identified in the Draft Report, each CCM may reply to the Executive Director at least 14 days in advance of TCC in order to (where appropriate):
 - (i) provide additional information, clarifications, amendments or corrections necessary to resolve the potential compliance issues identified in the Draft Report or respond to any other information
 - (ii) identify any particular causes of the potential compliance issues or difficulties with respect to implementation of the obligation in question, or circumstances which may mitigate the potential compliance issues, or
 - (iii) in the case of developing CCMs, particularly small island developing State Members and Participating Territories, identify technical assistance or capacity-building which may be needed to assist the CCM to address potential compliance issues.
13. The Executive Director shall revise the Draft Report with respect to each CCM, to reflect any information received in accordance with paragraph 12, and note any

potential compliance issues identified in consultation with the Chair of the TCC that have not been resolved through the additional information provided by the CCM.

14. The Executive Director shall compile the revised Reports with respect to each CCM into one Draft Report covering all CCMs, and circulate it to all CCMs at least 7 days prior to the annual TCC meeting.

Section IV – Provisional Compliance Monitoring Report

15. The TCC shall review the Draft Report, having particular regard to any potential compliance issues identified with respect to each CCM, and any information provided by CCMs in accordance with paragraph 12 of this measure. CCMs may provide additional advice to TCC with respect to the issues identified in that paragraph.
16. Taking into account any additional advice provided by CCMs, the TCC shall adopt a Provisional Compliance Monitoring Report (**the Provisional Report**) containing recommendations developed in accordance with the criteria and considerations for assessing **Compliance Status** set out in Section VI of this measure, including:
 - (i) a provisional assessment of each CCM's Compliance Status, based on potential compliance issues identified in respect of that CCM, and
 - (ii) measures to be taken by, or in respect of, each CCM to give effect to its provisional Compliance Status.
17. The Provisional Report may also include recommendations or observations from TCC regarding:
 - (i) the overall implementation of, or compliance with, particular obligations or conservation and management measures, including suggestions for amendments or improvements to address implementation or compliance difficulties experienced by CCMs, and
 - (ii) amendments to the Schedule with respect to guidelines for the Commission to use in assessing and responding to non-compliance pursuant to paragraph 3(ii) of this measure, and/or the additional categories of obligations which should be included in the Schedule pursuant to paragraph 4(ii) from time to time.
18. The Provisional Report shall be forwarded to the Commission for consideration at the annual meeting.

Section V - Compliance Monitoring Report

19. At each annual Commission meeting, the Commission shall consider the Provisional Report.
20. Prior to or during the Commission meeting, CCMs may provide the Commission with additional advice or information relating to the Provisional Report, including with respect to any steps taken to address the potential compliance issues identified, or to respond to the actions recommended by the TCC with respect to the CCM's provisional Compliance Status.
21. Taking into account any additional advice provided by CCMs, the Commission shall adopt a **Compliance Monitoring Report** that includes:
 - (i) a Compliance Status for each CCM, based on non-compliance identified in respect of that CCM, and
 - (ii) measures to be taken by, or in respect of, each CCM to give effect to its Compliance Status.

22. Each CCM shall implement the measures adopted by the Commission in the Compliance Monitoring Report and report on such implementation in the Part 2 Annual Report each year advising, as relevant, the steps taken to:
 - (i) comply with the measures adopted by the Commission to address non-compliance by that CCM; and
 - (ii) give effect to measures adopted by the Commission requiring CCMs to take specific actions with respect to other CCMs.
23. The Commission shall also consider any recommendations or observations made by the TCC pursuant to paragraph 17 of this measure.

Section VI – Compliance Status

24. The Commission shall take a graduated response to non-compliance, taking into account the type, severity and cause of the non-compliance in question.
25. The Compliance Status of each CCM, and the measures to be taken to give effect to that Status, shall be assessed and developed on the basis of the criteria set out in the Compliance Status Table below, and any additional guidelines adopted by the Commission in the Schedule.
26. In particular, the Commission shall seek to engage and co-operate with developing State CCMs, particularly small island developing State Members and Participating Territories, in order to provide appropriately targeted assistance which will assist to improve implementation of, and compliance with, obligations arising under the Convention and conservation and management measures adopted by the Commission, including through consideration of the options for capacity building and technical assistance identified in the Schedule.

Compliance Status Table

Compliance Status	Criteria for assessing Compliance Status	Measures to give effect to Compliance Status
<i>Compliant</i>	No compliance issues identified with respect to the relevant obligations.	CCM identified as Compliant.
<i>Compliance Review</i> The purpose of a Compliance Review is to identify non-compliance of a technical or minor nature, or which requires the provision of further information, in order to identify implementation gaps and improve compliance.	Non-compliance may be due to: (i) insufficient, unclear or incorrect data or information, or (ii) actions or omissions which constitute a minor violation of relevant obligations.	Measures in a Compliance Review may include: (i) engagement by the CCM with the Executive Director or the Chair of the TCC, to ensure particular issues or information are reviewed or clarified by a certain date or to a certain standard (ii) review of the CCM's procedures for gathering, recording, analysing and reporting data and information, and/or (iii) notice to the CCM to take the action necessary to rectify minor non-compliance by a

		certain date, or to provide a plan and timeline by which it will do so.
<p><i>Compliance Action Plan</i></p> <p>The purpose of a Compliance Action Plan is to assist CCMs to actively take steps to respond to and rectify non-compliance, remove obstacles to non-compliance, or improve implementation of relevant obligations, including through the provision of technical assistance or capacity building, as appropriate.</p>	<p>Non-compliance may be due to:</p> <p>(i) actions or omissions that constitute a serious violation</p> <p>(ii) non-compliance that has undermined the effectiveness of the Convention or conservation and management measures adopted by the Commission, or</p> <p>(iii) failure to comply with previous Compliance Monitoring Report recommendations after sufficient time and assistance has been provided.</p>	<p>Measures in a Compliance Action Plan should address the specific nature or cause of non-compliance, and may include:</p> <p>(i) a general direction to cease or rectify non-compliant conduct</p> <p>(ii) specific action to be taken by the CCM to rectify serious non-compliance, and/or</p> <p>(iii) engagement with the CCM to provide capacity building or technical assistance necessary to address non-compliance or improve implementation.</p>
<p><i>Compliance Remedy</i></p> <p>The purpose of a Compliance Remedy is to address instances of serious or persistent non-compliance which have not been resolved even after sufficient time and assistance have been provided through a Compliance Action Plan.</p>	<p>Non-compliance may be due to:</p> <p>(i) actions or omissions that constitute a repeated serious violation</p> <p>(ii) repeated non-compliance that has undermined the effectiveness of the Convention or conservation and management measures adopted by the Commission, or</p> <p>(iii) repeated failure to comply with previous Compliance Action Plans after sufficient time and assistance have been provided.</p>	<p>Measures in a Compliance Remedy should address the cause of non-compliance and provide effective disincentives to non-compliance, and may include:</p> <p>(i) specific remedial responses to address the particular nature or cause of the non-compliance</p> <p>(ii) notification to other regional fisheries management organisations and arrangements regarding the serious non-compliance by the CCM in question, and/or</p> <p>(iii) institutional options, including with respect to participation in the governance and decision-making of the Commission, and/or participation in fishing for the resources managed by the Commission, which are consistent with the provisions of the Convention.</p>