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**DRAFT COMPLIANCE MONITORING SCHEME**

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**WCPFC7-2010 -DP/28 Rev 2**

## Draft Compliance Monitoring Scheme

*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 that~~ Articles 23 of the Convention and 24 of the Convention for obliges Members of the Commission, to the greatest extent possible, to take effective measures to ensure that their nationals, and fishing vessels owned or controlled by their nationals, comply with the provisions of this Convention, and 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 with management measures,]

*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 responsibility of Members, Co-operating 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,

*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, Cooperating Non-Members and, where appropriate, Participating Territories (**CCMs**) implement and comply with obligations arising under the Convention and conservation and management measures (**CMMs**) adopted by the Commission. The Scheme is designed to:
  - (i) assess CCMs' compliance with their obligations;

- (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance;
- (iii) identify aspects of conservation and management measures which may require refinement or amendment for effective implementation;
- (iv) respond to non-compliance through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, and include cooperative capacity-building initiatives and, in case of serious non-compliance, as appropriate, such penalties and other actions as may be necessary and appropriate to promote compliance with CMMs;<sup>1</sup> and
- (v) monitor and resolve outstanding instances of non-compliance.

## **Section II - Scope and application**

2. The Commission will evaluate CCMs' compliance with the obligations arising under the Convention and the CMMs adopted by the Commission and identify instances of non-compliance.
3. Each year the Commission will evaluate compliance with the obligations in the Convention and CMMs adopted by the Commission with respect to:
  - (i) catch and effort limits;
  - (ii) catch and effort reporting;
  - (iii) spatial and temporal closures, and gear restrictions;
  - (iv) observer and VMS requirements; and
  - (v) scientific data provision, reporting and handling.
4. The Commission may identify additional obligations that will be considered annually or in another specified time period, taking into account:
  - (i) the needs and priorities of the Commission, including those of its subsidiary bodies;
  - (ii) the need to assess and address consistent non-compliance; and
  - (iii) the potential risks posed by non-compliance with particular obligations.
5. 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.
6. 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.
7. The Scheme 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.

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<sup>1</sup> In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 23 of this measure.

8. The Commission will engage with and cooperate with developing State CCMs, particularly small island developing State Members and Participating Territories, in order to provide 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 III - Draft Compliance Monitoring Report**

9. Prior to the annual meeting of the TCC, the Executive Director shall compile information received through Part 1 and 2 Annual Reports, other reporting obligations, the transshipment program, the regional observer program, the Vessel Monitoring System and any other data collection programs of the Commission, [and any suitably documented information provided by non-government organisations] and shall prepare a Draft Compliance Monitoring Report (**the Draft Report**) containing sections with respect to each CCM.
10. The Executive Director shall transmit the relevant section of the Draft Report to each CCM 5 days after the receipt of the CCM's Part 2 Annual Report or at least 25 days in advance of the annual TCC meeting, whichever is earlier.<sup>2</sup>
11. Upon receipt of the relevant section of the Draft Report, each CCM may reply to the Executive Director, if possible at least 12 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 needed to assist the CCM to address potential compliance issues.
12. At least 7 days in advance of TCC, the Executive Director will compile and circulate to all CCMs the full Draft Report, including all information provided under paragraph 11 of this measure.
13. The TCC shall review the Draft Report, focusing on any potential compliance issues identified with respect to each CCM, and in particular will consider any information provided by CCMs in accordance with paragraph 11 of this measure. CCMs may provide additional information to TCC with respect to the issues identified.

### **Section IV – Provisional Compliance Monitoring Report**

14. Taking into account any additional information provided by CCMs, [and, where appropriate, non-government organisations] the TCC shall develop a Provisional Compliance Monitoring Report (**the Provisional Report**) that will include a provisional assessment of each CCM's Compliance Status and recommendations for any corrective action needed, based on potential compliance issues identified in respect of that CCM and using the criteria and considerations for assessing **Compliance Status** set out in Annex I of this measure.
15. The Provisional Report will also include recommendations or observations from TCC regarding:

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<sup>2</sup> The timeframes identified in paragraphs 10, 11 and 12 of this measure will be taken into account by TCC in its consideration of the Draft Report and development of the Provisional Report in 2011. TCC may make recommendations in the 2011 Provisional Report regarding the appropriateness of these timeframes.

- (i) recommendations for amendments or improvements to existing CMMs to address implementation or compliance difficulties experienced by CCMs, and
  - (ii) additional priority obligations that should be reviewed under the Scheme pursuant to paragraph 4 of this measure.
16. The Provisional Report shall be forwarded to the Commission for consideration at the annual meeting.

### **Section V - Compliance Monitoring Report**

17. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.
18. Prior to or during the Commission meeting, CCMs may provide the Commission with additional advice or information relating to the Provisional Report, including any steps taken to address identified compliance issues.
19. Taking into account any additional information provided by CCMs, the Commission shall adopt a **Compliance Monitoring Report** that includes a Compliance Status for each CCM and recommendations for any corrective action needed, based on non-compliance identified with respect to that CCM.
- ~~Each CCM shall include, in its Part 2 Annual Report, any actions it has taken to address its non-compliance the previous year.~~
20. The Commission shall also consider any recommendations or observations made by the TCC pursuant to paragraph 15 of this measure.
21. Each CCM shall include, in its Part 2 Annual Report, any actions it has taken to address its non-compliance in the previous year.

### **Section VI – Responses to Non Compliance**

~~The Commission will engage with and cooperate with developing State CCMs, particularly small island developing State Members and Participating Territories, in order to provide 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.~~

22. The Commission shall take a graduated response to non-compliance, taking into account the type, severity, degree and cause of the non-compliance in question.
23. The Commission, at its Annual Meeting in 2011, will develop and consider adopting a process to complement the Scheme that will identify a range of responses to non-compliance that can be applied by the Commission through the implementation of the Scheme, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs.
24. Once the Commission adopts a ~~CMM process~~ process identifying a range of responses to non-compliance, the TCC will include a recommendation on the response to non-compliance in its Provisional Compliance Monitoring Report for consideration by the Commission. The Commission will identify a response to non-compliance in its Compliance Monitoring Report.

### **2011 Implementation Application and review**

25. This measure shall apply for 2011 only.

26. At its meeting in 2011, the Commission will review the operation of the measure during this trial period and, based on this review, consider and decide on a measure that will apply after 2011.
27. This measure will be reviewed and revised, as needed, by the Commission to ensure its effectiveness.

## Annex I

### Compliance Status Table

<b>Compliance Status</b>	<b>Criteria for assessing Compliance Status</b>
<b><i>Compliant</i></b>	No compliance issues identified with respect to the relevant obligations.
<b><i>Compliance Review</i></b>  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, <del>or</del> (ii) actions or omissions which constitute a minor violation of relevant obligations, <u>or</u> (iii) <u>ambiguity or misunderstanding of relevant obligations.</u>
<b><i>Compliance Action Plan</i></b>  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.	Non-compliance may be due to:  (i) actions or omissions that constitute a serious violation (ii) non-compliance that has undermined the effectiveness of the Convention or conservation and management measures adopted by the Commission, or (iii) failure to comply with previous Compliance Monitoring Report recommendations after sufficient time and assistance has been provided.
<b><i>Compliance Remedy</i></b>  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.	Non-compliance may be due to:  (i) actions or omissions that constitute a repeated serious violation (ii) repeated non-compliance that has undermined the effectiveness of the Convention or conservation and management measures adopted by the Commission, or (iii) repeated failure to comply with previous Compliance Action Plans after sufficient time and assistance have been provided.