



TECHNICAL AND COMPLIANCE COMMITTEE
Eleventh Regular Session
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Pohnpei, Federated States of Micronesia

**DRAFT CONSERVATION AND MANAGEMENT MEASURE FOR COMPLIANCE
MONITORING SCHEME**

WCPFC-TCC11-2015-11
7 September 2015

Paper from Chair of Small Working Group on CMS

**CONSERVATION AND MANAGEMENT MEASURE FOR
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 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 issued by the Commission,

Noting also that, in accordance with international law, Members and Cooperating 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 that Article 23 of the Convention obliges Members of the Commission, to the greatest extent possible, to take 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 Cooperating Non-Members, particularly small island developing State (SIDS) Members and Participating Territories, as may be needed to assist them to meet their obligations and responsibilities, and

Recognizing further 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,

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 CMS 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, such penalties and other actions 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.

Section II - Scope and application

2. 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 non-compliance.

3. Subject to modification by paragraph 5, each year the Commission shall evaluate compliance by CCMs during the previous calendar year with the obligations in the Convention and CMMs adopted by the Commission with respect to:

- (i) catch and effort limits for target species;
- (ii) catch and effort reporting for target species;
- (iii) reporting for seabird and other non-target species;
- (iv) spatial and temporal closures, and restrictions on the use of fish aggregating devices;
- (v) authorizations to fish and the Record of Fishing Vessels, observer, VMS coverage, transshipment and the High Seas Boarding and Inspection Scheme;
- (vi) provision of scientific data through the Part 1 Annual Report (and addendum) and the Scientific Data to be provided to the Commission; and
- (vii) submission of the Part 2 Annual Report, including compliance with the obligations in paragraph 22, and compliance with other Commission reporting deadlines.

4. The Commission shall also evaluate compliance by CCMs during the previous calendar year with collective obligations arising from the Convention or CMMs related to fishing activities managed under the Convention.

[4bis.] Notwithstanding paragraph 3, where [a developing State CMM, particularly] a SIDS or Participating Territory cannot meet a particular obligation due to a lack of capacity, that SIDS or Participating Territory shall provide an implementation plan at least [two weeks] prior to TCC, that:

¹ In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 25 of this measure.

Alexa Cole 9/4/2015 5:28 PM

Comment [1]: Paragraph 4bis is not in the existing measure, but I have taken it out of redline so that the suggested edits can be more clearly seen. It is in brackets, however, to signify that it has not been previously agreed.

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- (i) clearly identifies what is preventing it from meeting that obligation;
- (ii) identifies the capacity building assistance needed to allow it to meet that obligation;
- (iii) sets out the estimated costs or resources associated with such assistance, including a budget which identifies the funding sources for any necessary financial assistance;
- (iv) sets out a timeframe in which, if the identified assistance needs are met, that CCM will be able to meet that obligation.

The CCM may work together with the Secretariat to draft an implementation plan. This plan shall be attached to that CCM's draft Compliance Monitoring Report, for review by TCC.

TCC will review and may, as appropriate, amend the implementation plan. Where TCC agrees that a genuine capacity assistance need has been identified, which has prevented a [developing State/SIDS] CCM from fulfilling a particular obligation, TCC shall assess that CCM as Capacity Assistance Needed for that obligation. TCC will recommend to the Commission that it allow the implementation plan to run until the end of the specified timeframe and assistance delivery set out therein. The maximum timeframe for an implementation plan is [three] years, after which it must be resubmitted to TCC for consideration and possible renewal.

Where TCC does not agree that a genuine capacity assistance need has been identified, the CCM will be assessed for that obligation.

Until the end of the agreed timeframe, that CCM will not be assessed against that particular obligation. That CCM shall report its progress under the implementation plan every year in [its Annual Report Part II/during the Compliance Monitoring Scheme process/both].

Unless the timeframe in the implementation plan is extended by TCC, once the timeframe has passed, it is assumed that that CCM's needs have been met. At that point, that CCM's compliance with that obligation shall be evaluated.

5. Each year, the Commission shall consider, taking into consideration any recommendations from TCC, whether all of the obligations identified in paragraph 3 shall be evaluated in the following year and identify whether any additional obligations shall be evaluated. In making this determination, the Commission shall take into account:

- (i) the needs and priorities of the Commission, including those of its subsidiary bodies;
- (ii) evidence of high percentages of compliance or persistent non-compliance with specific obligations for multiple years; and
- (iii) the potential risks posed by non-compliance with particular obligations to achieving the goals of the Convention or specific measures adopted thereunder.

6. Through the CMS, the Commission shall also consider and address:

- (i) compliance by CCMs with recommendations adopted pursuant to the Scheme the previous year, and

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Comment [2]: The issue of funding – where it comes from, who decides, etc. – needs some additional discussion and may need some additional language here.

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- (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 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.

8. 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.

8bis. Throughout the compliance review process, a CCM cannot prevent consensus on an assessment for itself if all other CCMs have reached consensus on that assessment.

8ter. During the TCC compliance review process, where the Secretariat has identified that a CCM has missed a reporting deadline,² but has submitted the required information, the CCM will accept a compliance status of Non-Compliant with respect to that reporting deadline and the matter will not be considered further unless the relevant CCM can demonstrate compliance or the Secretariat has a relevant update.

9. The Commission recognises the special requirements of developing State CCMs, particularly SIDS Members 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 documents, 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 III - Draft Compliance Monitoring Report

10. 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. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations in the Convention and CMMs adopted by the Commission, 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 Parts 1 and 2 of the Annual Reports as well as information available to the Commission through other data collection programs, including but not limited to, high seas transshipment reports, regional observer program reports, Vessel

² For the purposes of the Compliance Monitoring Scheme, all reporting deadlines will be based on UTC time unless the CMM establishing the deadline specifies otherwise.

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Comment [3]: One CCM suggested adding the following sentence to the end of 8bis: "If every effort to achieve consensus on that assessment among the other CCMs has been exhausted, the compliance status of that CCM shall be assessed as "not assessed" with the majority and minority views."

I did not accept that suggestion.

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Comment [4]: One CCM suggests replacing this language with: "be considered with that information."

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Monitoring System information, High Seas Boarding and Inspection Scheme reports, and charter notifications; and where appropriate, any additional suitably documented information regarding compliance during the previous calendar year. The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.

11. The Executive Director shall transmit to each CCM its dCMR by 28 July each year.
12. Upon receipt of its dCMR, each CCM may, where appropriate, reply to the Executive Director by 28 August 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 [which shall be set out in an implementation plan].

13. At least three weeks 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 12 of this measure.

14. 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 12 [and 13] of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.

Section IV – Provisional Compliance Monitoring Report

15. Taking into account any implementation plans developed pursuant to paragraph 4bis, 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 provisional assessment of each CCM's overall Compliance rating and 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 paragraph 20 and Annex I of this measure.

[15bis. Subject to paragraph 8bis, 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 assessment shall indicate the majority and minority views and may include the differing views of the representatives of the members.]

16. The Provisional Report will also include an executive summary including recommendations or observations from TCC regarding:

- (i) identification of any CCMs or obligations that should be reviewed to address implementation or compliance difficulties experienced by CCMs, particularly

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Comment [5]: See Annex II for a draft implementation plan template. Please provide any thoughts/edits/comments/additions to that template.

New Comment: One CCM has suggested that only developing State CCMs should complete an implementation plan.

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Comment [6]: Some of this may need to be revised pending comments on paragraph 20 and Annex I.

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Comment [7]: One CCM suggested deleting this paragraph, but because I did not take the suggested language on paragraph 8bis, I have kept this language here. This is an acceptable process for the TCC stage of the CMS.

Several CCMs also suggested that a provisional score be given based on the majority opinion, but noting that there was no consensus and including the minority views.

when TCC has identified ambiguity in the interpretation of that measure or obligation, including any specific amendments or improvements that have been identified,

- (ii) capacity building requirements or other obstacles to implementation identified by CCMs, in particular SIDS and Participating Territories, as identified and agreed to be addressed in an implementation plan, and
- (iii) additional priority obligations that should be reviewed under the CMS the following year pursuant to paragraph 5 of this measure.

17. The Provisional Report shall be forwarded to the Commission for consideration at the annual meeting.

Section V - Compliance Monitoring Report

18. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.

19. Up to 30 days prior to 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.

20. Taking into account any additional information provided by CCMs, the Commission shall adopt, subject to paragraph 8bis, a final Compliance Monitoring Report. The final Compliance Monitoring Report will include a Compliance Status for each CCM and recommendations for any corrective action needed, based on compliance issues identified with respect to that CCM.

21. The final Compliance Monitoring Report shall also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 16 of this measure.

21bis. After the adoption of the final Compliance Monitoring Report, the Secretariat shall prepare a letter to each CCM of its final Compliance Status and enclosing a copy of the Final Compliance Monitoring Report.

22. Each CCM shall include, in its Part 2 Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years, including any required Implementation Plan or Compliance Action Plan, as appropriate.

Section VI – Responses to Non Compliance

23. The Commission shall take a graduated response to CCMs identified as having compliance issues, taking into account the type, severity, degree and cause of the non-compliance in question.

24. The Commission hereby establishes an intersessional working group to develop a process to complement the CMS that shall identify a range of responses to non-compliance that can be applied by the Commission through the implementation of the CMS, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs. The intersessional working group shall progress its work electronically to the greatest extent possible and will seek to ensure that all CCMs, particularly SIDS and Participating Territories, have an opportunity to participate. The intersessional working group shall endeavour to develop a process for consideration no later than TCC12 and adoption no later than WCPFC13.

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Comment [8]: Several CCMs continue to support the deletion of paragraph 19.

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Comment [9]: Changes may be made to paragraph 20 pending comments on it and Annex I.

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Comment [10]: It is an issue for discussion whether a final overall compliance status is needed. CCMs expressed views both for and against the inclusion of an overall compliance status.

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Deleted: 20bis. In accordance with Article 20, paragraph 1 of the Convention, each CCM's Compliance Status shall be decided by consensus. For the purposes of this CMM, "consensus" means the absence of any formal objection made at the time the decision was taken. If every effort to achieve consensus has failed, the CCM's Compliance Status shall indicate the majority and minority views and may include the differing views of the representatives of the Members. -

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Comment [11]: FFA proposed concept. There's been no agreement to include yet.

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25. Once the Commission adopts a process establishing the range of responses to non-compliance, the TCC shall include a recommendation on the response to non-compliance in its Provisional Compliance Monitoring Report for consideration by the Commission. The Commission shall identify a response to non-compliance in its Compliance Monitoring Report.

Application and review

26. This measure shall be reviewed and revised, as needed, by the Commission to ensure its effectiveness.

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Annex I

Compliance Status Table

Compliance Status ³	Criteria	Next Steps ⁴
<i>Compliant</i>	A CCM will be deemed Compliant with an obligation <u>arising under the Convention or CMMs or obligations adopted by the Commission</u> if the following criteria have [all] been met, as applicable: a. reporting or submission deadlines; b. implementation of obligation through national laws or regulations; c. any alleged violations have been [fully] investigated [as much as practicable] and/or resolved by charging or other appropriate resolution; and d. submission of all <u>mandatory information or data required, [in the agreed upon format][in accordance with CMMs and other Commission obligations]</u> .	None
<i>Capacity Assistance Needed</i>	A CCM will be deemed <u>Capacity Assistance Needed</u> if the Commission has <u>accepted that a genuine capacity assistance need exists for a particular obligation.</u>	<u>Follow the steps of the implementation plan for that obligation.</u>
<i>Compliance Issue</i>	A CCM will be deemed <u>as having a Compliance Issue</u> , with an obligation if any of the following have occurred,	One or more of the following: a. Commission must clarify the obligation;

³ This annex applies to compliance statuses assigned for each individual obligation. A CCM's overall compliance status will be determine by [the highest status of non-compliance].

⁴ Identifies the activity or activities required to achieve a Compliant status in the future for any obligation(s) where a CCM has been found to be Non-Compliant, or Priority Non-Compliant,

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Comment [12]: This entire column is new and does not exist in the current CMS CMM.

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Comment [13]: This is a proposed new status based on paragraph 4bis.

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Comment [14]: This is a proposed new status. Some CCMs have indicated that they are not comfortable with this new proposed status. All columns related to this new proposed status should be understood to be in square brackets.

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	<p>as applicable:</p> <p>a. submission or reporting of incomplete or incorrect information or data, or not in the agreed format;</p> <p>c. non-compliance with an obligation due to misunderstanding of obligation or a lack of consensus on the requirements of an obligation; and</p> <p>d. alleged incidents of non-compliance by a CCM's flagged vessels have not been addressed by the CCM (e.g., by charging or dismissing due to a lack of a violation) or remain under investigation;</p>	<p>b. Commission must modify the measure;</p> <p>c. Capacity building or technical assistance required to come into compliance. The CCM requesting the capacity building or technical assistance must clearly articulate what assistance is needed to come into compliance;</p> <p>d. Additional information required by XX date;</p> <p>e. CCM must complete an Implementation Plan, to be submitted by X date/with its Annual Report Part II, detailing how the CCM intends to achieve, if it has not already done so, implementation of the obligation;</p> <p>f. CCM must rectify or resolve the non-compliance by XX date;</p> <p>g. CCM must investigate and take appropriate action in relation to alleged violations by its vessels and report back to the Commission; and</p> <p>h. Other remedial action as determined by the Commission</p>
Non-Compliant	<p>A CCM will be deemed Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <p>a. failure to take action identified in the previous year as a "next step" to come into compliance with the obligation⁶;</p> <p>b. exceeding catch and effort limits established by the Commission;</p> <p>e. failure to submit an</p>	<p>One or more of the following:</p> <p>a. Any of the options identified under the next steps for Non-Compliant status;</p> <p>b. CCMs must complete a Compliance Action Plan, to be submitted by _____, that details how the CCM is going to come into compliance with its obligation(s); and</p> <p>c. Other remedial action as determined by the Commission / Alternative CCM proposed replacement language:</p>

⁶ A CCM will not be deemed Non-Compliant if it has 1) taken significant steps toward or made significant progress in completing an identified Next Step, including an implementation plan; and 2) has provided information and documentation of those efforts in its Annual Report Part II, however, it will be deemed Compliance Issue until it is fully Compliant.

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Comment [15]: One CCM suggested that all text in this column be replaced by the following: "A CMM will be deemed Non-Compliant with an obligation arising under the Convention or CMMs adopted by the Commission if that CCM fails to comply with that obligation (except non-compliance identified as Priority Non-Compliant.)"

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Comment [16]: If we are going to include the option of a Compliance Action Plan – there should be a template, just as for the Implementation Plan.

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	Annual Report before TCC ; d. any other non-compliance with an obligation or category of obligations not specifically identified as Priority Non-Compliant ; and [e. failure to submit operational level data pursuant to any applicable data rules] .	<p>a. Commission must clarify the obligation;</p> <p>b. Commission must modify the measure;</p> <p>c. Capacity building or technical assistance required to come into compliance. The CCM requesting the capacity building or technical assistance must clearly articulate what assistance is needed to come into compliance;</p> <p>d. Additional information required by XX date;</p> <p>e. CCM must rectify or resolve the non-compliance by XX date; and</p> <p>f. other remedial action as determined by the Commission.]</p>
Priority Non-Compliant	<p>A CCM will be deemed Priority Non-Compliant with an obligation arising under the Convention or CMMs adopted by the Commission if any of the following have occurred, as applicable:</p> <p>a. failure, for two or more years, to take action identified in prior years as a “next step” to come into compliance with the obligation^{8,10};</p> <p>b. exceeding catch and effort limits established by the Commission for two or more years;</p> <p>c. failure to submit an Annual Report [for two or</p>	<p>One or more of the following:</p> <p>a. Any of the options identified under the next steps for Non-Compliant and Priority Non-Compliant statuses; and</p> <p>b. Additional compliance remedies, consistent with the Convention including, but not limited to: loss of quota, denial of access to data; fines and penalties, etc.</p> <p>Alternative CCM proposed replacement language:</p> <p>a. Undertake additional review of compliance with WCPFC obligations; and</p> <p>b. Other remedial actions as determined by the Commission.</p>

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⁸ A CCM will not be deemed Priority Non-Compliant if it has 1) taken significant steps toward or made significant progress in completing an identified Next Step; and 2) has provided information and documentation of those efforts in its in Annual Report Part II; however, it will remain Non-Compliant until it is fully Compliant.

¹⁰ A CCM will not be deemed Priority Non-Compliant for missing a reporting deadline, other than for Annual Reports, in more than two years.

	more years];	
	<u>d. repeated non-compliance with an obligation for two or more years¹¹;</u>	
	<u>e. any other non-compliance identified as Priority Non-Compliance by the Commission; and</u>	
	<u>[f. failure to submit operational level data for two or more years.]</u>	

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¹¹ All references to multiple years in Annex I means consecutive years.

ANNEX II

Implementation Plan Template¹²

IMPLEMENTATION PLAN

CCM: _____

Obligation: CMM _____ ; paragraph(s) _____

1. Explanation for lack of implementation:

2. Identify the specific capacity building assistance needed in order to implement this obligation:

3. Identify the anticipated costs or resources associated with the specific capacity building assistance needed, including a budget which identifies the funding sources for any necessary financial assistance:

4. Identify the timeframe within which the CMM will come into compliance, if the capacity building assistance is provided:

¹² The Implementation Plan can either be a paper form, an electronically filled out form or both.

ALTERNATIVE TEMPLATE FOR ANNEX II

Proposed CMS CMM - Annex II

Implementation Plan Template¹³

<u>Reference</u> e.g. Convention Art. N.N(x) or CMM20XX-XX para	<u>Implementation issue</u>	<u>Specific capacity building assistance needed to implement obligation</u>	<u>Anticipated costs/resources associated with the specific capacity building assistance needed</u>	<u>Estimated implementation timeframes to achieve compliance, if capacity building assistance is provided.</u>

¹³ The Implementation Plan can either be a paper form, an electronically filled out form or both.