



TWELFTH REGULAR SESSION

Bali, Indonesia

3 - 8 December 2015

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

WCPFC12-2015-20_rev5

8 Dec 2015

1:30pm

Proposal by TCC Vice Chair

**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 notably with respect to:

- (i) catch and effort limits for target species;
- (ii) catch and effort reporting for target species;
- (iii) reporting including with respect to implementation of measures for 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 its addendum) and the Scientific Data to be provided to the Commission; and
- (vii) submission of the Part II 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 SIDS or Participating Territory, or Indonesia or the Philippines cannot meet a particular obligation that is being assessed, due to a lack of capacity², that CCM shall provide a Capacity Development Plan to the Secretariat with their

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.

² Any CCM may identify a capacity assistance need through the CMS process; however, the application of paragraph 4bis is limited to those CCMs identified in the paragraph.

draft Compliance Monitoring Report (dCMR), that:

- (i) clearly identifies and explains what is preventing that CCM from meeting that obligation;
- (ii) identifies the capacity building 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.

The CCM may work together with the Secretariat to draft the Capacity Development Plan. This plan shall be attached to that CCM's comments to the dCMR.

Where TCC recognizes that a capacity assistance need has been identified in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, TCC shall assess that CCM as "Capacity Assistance Needed" for that obligation. TCC shall recommend to the Commission that it allow the Capacity Development Plan to run until the end of the anticipated timeframe and assistance delivery set out therein.

That CCM shall report its progress under the Capacity Development Plan every year in its Annual Report Part II. That CCM will remain assessed as "Capacity Assistance Needed" against that particular obligation until the end of the anticipated timeframe in the plan.

4ter. Where a CCM cannot complete an investigation prior to TCC, that CCM shall provide Status Report to the Secretariat with the dCMR, that:

- (i) describes the steps that have been taken to commence the investigation;
- (ii) describes the process that CCM will take to complete the investigation, within their relevant national processes and laws;
- (iii) describes, to the extent possible, actions proposed to be taken in relation to the alleged violation;
- (iv) sets out an anticipated timeframe in the Status report

The CCM may work together with the Secretariat to draft the Status Report. This report shall be attached to that CCM's comments to the dCMR.

TCC will consider the Status Report submitted by the CCM, and may suggest changes. Where the CCM agrees the Status Plan may be revised to reflect those suggestions.

Where TCC recognizes that an investigation of an alleged violation has commenced and is ongoing, as identified in a dCMR by a CCM, TCC shall assess that CCM as "Flag State Investigation" for that obligation.

That CCM shall provide a report of the progress of the investigation, including any action taken or proposed to be taken in relation to the alleged violation under the Status Report every year in its Annual Report Part II. Until the end of the anticipated timeframe in the plan that CCM shall remain assessed as “Flag State Investigation” against that particular obligation for that year.

4 quart. Notwithstanding paragraph 4bis and 4ter, where TCC does not consider that progress has been made against a Capacity Development Plan or a Status Report that CCM shall be assessed for that obligation in accordance with Annex I.

4 quin. If a CCM notifies the Commission that its capacity needs have been met, or an investigation has been completed and any required action taken, the Capacity Development Plan or Status Report for that obligation shall be deemed to have terminated early and the CCM’s compliance with that obligation shall then be assessed in accordance with Annex I.

4 six Once the timeframe in the Capacity Development Plan or Status Report has passed, that CCM’s compliance with that obligation shall then be assessed in accordance with Annex I.

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 objectives 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
- (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. A CCM shall not block its own compliance assessment if all other CCMs present have concurred with the assessment. If the assessed CCM disagrees with the assessment, its view will be reflected in the Provisional or Final CMR.

8ter. Where a CCM has missed a reporting deadline,³ but has submitted the required information, this obligation will be accepted by TCC, unless a CCM has a specific concern or if there are updates from the Secretariat based on new information received.

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 as reflected in paragraph 3 or modified by paragraph 5, 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 data and information, Vessel 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 at least 55 days prior to TCC each year.

12. Upon receipt of its dCMR, each CCM may, where appropriate, reply to the Executive Director no later than 28 days prior to TCC each year to:

³ For the purposes of the Compliance Monitoring Scheme, all reporting deadlines will be based on Universal Time Code (UTC) time unless the CMM establishing the deadline specifies otherwise.

- (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.

12bis. To facilitate meeting obligations under paragraph 12, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.

13. At least fifteen days 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 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 and 4ter, 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 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 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 CMR shall indicate the majority and minority views. A provisional assessment shall reflect the majority view and the minority view shall also be recorded.

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

- (i) identification of any CMMs or obligations that should be reviewed to address implementation or compliance difficulties experienced by CCMs, particularly when TCC has identified ambiguity in the interpretation of or difficulty in monitoring and implementing that measure or obligation, including any specific amendments or improvements that have been identified,
- (ii) capacity building assistance or other obstacles to implementation identified by CCMs, in particular SIDS and Participating Territories, 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, where a CCM is able to provide additional information or advice that clearly addresses implementation issues identified in the Provisional Report, the CCM may provide the Commission with that additional advice or information.

20. Taking into account any additional information provided by CCMs, the Commission shall adopt a final Compliance Monitoring Report.

21. The final Compliance Monitoring Report shall include a Compliance Status for each CCM against each obligation and any corrective action needed, and also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 16 of this measure.

22. Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years.

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.

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 in 2017, and the terms of that review will be determined by TCC12 in 2016.

27. This measure will be effective for 2016 and 2017 only.] or

[26. This measure shall be reviewed in 2018, and the terms of that review will be determined by TCC13 in 2017. The review will be conducted by an independent panel selected by the Executive Director in conjunction with Members.

27. This measure shall be revised, as needed, by Commission in response to that review in 2019.]

Annex I

Compliance Status Table

Compliance Status ⁴	Criteria	Response
<i>Compliant</i>	<p>A CCM will be deemed Compliant with an obligation arising under the Convention, CMMs, Rules or obligations adopted by the Commission if the following criteria have all been met, as applicable:</p> <ul style="list-style-type: none"> a. reporting or submission deadlines; b. implementation of obligation through national laws or regulations; c. any alleged violations have been investigated and resolved in accordance with relevant Articles of the Convention; and d. submission of all mandatory information or data required, in the agreed format as applicable. 	None
<i>Non-Compliant</i>	<p>A CCM shall be deemed Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <ul style="list-style-type: none"> a. a CCM has failed to comply with an obligation or category of obligations not specifically identified as Priority Non-Compliant status; b. where TCC does not consider that progress has 	<p>Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report.</p> <p>Actions may include, one or more of the following:</p> <ul style="list-style-type: none"> a.; A CCM must address the issue to gain compliance by the next compliance assessment; or

⁴ This annex applies to compliance statuses assigned for each individual obligation.

	<p>been made on a Capacity Development Plan or an Status Report;</p> <p>c. information or data for the obligation has been submitted or reported in a way that is incomplete, incorrect, or wrongly formatted; or</p> <p>d. a CCM has failed to meet reporting or submission deadlines.</p>	<p>b. A CCM shall provide a Status Report to the Secretariat; or</p> <p>c. Other response as determined by the Commission.</p>
<i>Priority Non-Compliant</i>	<p>A CCM will be deemed Priority Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <p>a. exceeded catch and effort limits established by the Commission;</p> <p>b. failure to submit an Annual Report;</p> <p>c. repeated non-compliance with an obligation for two or more consecutively assessed years; or</p> <p>d. any other non-compliance identified as Priority Non-Compliant by the Commission.</p>	<p>Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report.</p> <p>Actions may include, one or more of the following:</p> <p>a. A CCM must address the issue to gain compliance by the next compliance assessment;</p> <p>b. Other response as determined by the Commission.</p>
<i>Capacity Assistance Needed</i>	<p>(i) When a SIDS or Participating Territory or Indonesia or the Philippines cannot meet an obligation that is being assessed due to a lack of capacity, that CCM shall provide a Capacity Development Plan to the Secretariat with the dCMR prior to TCC; and</p> <p>(ii) TCC accepts that a genuine capacity need exists.</p>	<p>(i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to become compliant with the obligation, and</p> <p>(ii) report progress against that plan every year in its Annual Report Part II until the end of the timeframe specified in that Plan.</p>

<p><i>Flag State Investigation</i></p>	<p>(i) Where TCC recognizes that an investigation of an alleged violation has commenced and is ongoing, as identified in a dCMR by a CCM; and</p> <p>(ii) that CCM has provided a Status Report to the Secretariat with the dCMR</p>	<p>(i) The CCM must complete the steps in the Status Report for that obligation; and take appropriate action in accordance with the relevant articles of the Convention</p> <p>(ii) report an update against that plan every year in its Annual Report Part II until the end of the anticipated timeframe in the Status Report.</p>
<p><i>CMM Review</i></p>	<p>There is a lack of clarity on the requirements of an obligation.</p>	<p>The Commission shall review that obligation and clarify its requirements.</p>