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RESPONSES TO NON-COMPLIANCE UNDER THE WCPFC COMPLIANCE MONITORING SCHEME

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Paper prepared by Australia

1. At the seventh annual session of the Western and Central Pacific Fisheries Commission in December 2010 (WCPFC7), the Commission adopted CMM 2010-03 *Conservation and Management Measure for Compliance Monitoring Scheme*, establishing a Scheme to monitor the compliance of Members, Co-operating Non-Members and Participating Territories (CCMs) with the obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission.

2. Paragraph 23 of CMM 2010-03 states that:
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 co-operative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs.

3. The WCPFC7 Meeting Report further states (at paragraph 376) that the Commission requested Australia to continue to work inter-sessionally through the Compliance with Conservation and Management Measures Working Group to develop a process that will identify a range of possible responses to non-compliance (as provided in paragraph 23 of CMM 2010-03), and report to TCC7. In order to fulfil this request, Australia has prepared this discussion paper. Building on the work undertaken in 2010 and reflected in CMM 2010-03, the paper proposes a process and options for the Commission to adopt responses to non-compliance identified through the Compliance Monitoring Scheme.

4. An earlier draft of this paper was circulated to all CCMs on 16 August 2011. Australia is grateful to those CCMs who provided feedback, and has revised the paper to take into account the comments received in response. CCMs are invited to further consider the paper, and provide any additional comments to Australia (via camille.goodman@daff.gov.au). We hope that this paper provides a helpful basis for the consideration and development of a process to complement the Compliance Monitoring Scheme. It is proposed that, following discussion and development of the ideas in this paper by CCMs at TCC7, they could be further developed inter-sessionally into an appropriate format for integration with CMM 2010-03¹ and put forward for consideration by the Commission at WCPFC8 in December 2011.

¹ This will need to take into account any amendments which may be made to CMM 2010-03 following the review of its operation by the Commission at its 2011 meeting pursuant to paragraph 26.

Responses to non-compliance under the WCPFC Compliance Monitoring Scheme

Introduction

1. The options developed for the Commission to use in responding to non-compliance must comply with the underlying purpose and objective of the Compliance Monitoring Scheme, and fit in with its design and operation. The Compliance Monitoring Scheme requires the Commission to assess the compliance of each CCM annually, with respect to five categories of obligations (set out in paragraph 3):

- (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.

2. Depending on the nature, severity and extent of the compliance issues identified, the Commission is to identify a Compliance Status for each CCM using the criteria and considerations set out in Annex 1 (Compliant; Compliance Review; Compliance Action Plan; Compliance Remedy), and recommend any corrective action needed.

3. The process and structure adopted for the Commission to respond to non-compliance should complement and build on the procedures and operation of the existing Compliance Monitoring Scheme, and should be able to be integrated into or attached to the measure establishing that Scheme.

Principles and process for responding to non-compliance

4. The process and options available for responding to non-compliance must reflect the underlying principles of **adequate information, transparency, objectivity and consistency** on which the Compliance Monitoring Scheme is based (as set out in the discussion paper presented to TCC6 (WCPFC-TCC6- 2010-21)). This means that all CCMs must be subject to the same process and held to the same standard through the Compliance Monitoring Scheme, both in reviewing compliance and in adopting responses to non-compliance. In addition, the process and options for responding to non-compliance must reflect the **graduated response to non-compliance** embodied in the Scheme, and enable the Commission to effectively **address the cause and effects** of the non-compliance. However, given the heavy workload of the Commission and its subsidiary bodies, and the short timeframe available for discussion of these issues, it is also necessary to ensure that the process and measures for responding to non-compliance are relatively **straightforward and easy to apply**.

5. Taking these things into account, the options for responding to non-compliance identified through the Compliance Monitoring Scheme should include:

- (i) in the first instance, straightforward measures to remedy the **effects** of non-compliance and to assist CCMs to identify and understand its cause (Compliance Review)
- (ii) in cases of repeat non-compliance, measures to address the **causes** of non-compliance, including through the specification of capacity-building initiatives to assist CCMs to rectify gaps in implementation, and alternative means for CCMs to remedy the effects of the non-compliance while improving their compliance with the actual obligation (Compliance Action Plan), and

(iii) in cases of severe or persistent non-compliance, where non-compliance is not adequately addressed even after sufficient time and assistance is provided under a Compliance Action Plan, additional measures to be adopted as a final resort. These measures should be sufficient to **provide a disincentive** and to **promote compliance** with the relevant obligations (Compliance Remedy).

6. This would provide a relatively straightforward and objective system for the Commission to adopt responses to non-compliance.

7. In addition, the Commission may choose to include specific remedies for particular forms of non-compliance within the framework of individual CMMs (for example, paragraph 9 of CMM 2009-03 *Conservation and Management for Swordfish* specifies that CCMs will be subject to a reduction in their catch equal to any amount by which they exceed their catch limit). In this case, the specific remedies contained in the CMM would apply in the first instance. However, if a CCM failed to comply with a specific remedy applied through a CMM, that non-compliance should be brought within the framework of the Scheme. For example, if a reduced catch limit was applied to a CCM pursuant to the specific remedy in CMM 2009-03, any failure by that CCM to comply with the reduced limit would then constitute non-compliance with a catch or effort limit, and should be addressed through the Compliance Monitoring Scheme.

Range of options to address non-compliance

8. The five categories of obligation with which compliance will be assessed under the Compliance Monitoring Scheme comprise the key tools in use by the Commission for conservation and management of the fishery resources under its competence: catch and effort limits; catch and effort reporting; temporal and spatial closures and gear restrictions; observer and VMS requirements; and scientific data, reporting and handling. Similarly, the options for responding to non-compliance should contribute as much as possible to the effectiveness and operation of these measures and the Commission's overall ability to effectively fulfil the objectives of the Convention.

9. Accordingly, the following discussion identifies the underlying purpose or objective of each category of obligation, and suggests some options for responding to non-compliance that specifically address the key elements of each obligation, in order to maximise the overall effectiveness of the Compliance Monitoring Scheme.

(i) Catch and effort limits

10. Catch and effort limits are management tools applied by the Commission to keep fishing mortality within levels estimated to achieve agreed management objectives. Catch and effort limits are necessary to fulfil the objective of ensuring the long term conservation and sustainable use of the fish stocks in the Convention Area, in accordance with Article 2 of the Convention. Any catch or effort in excess of the limit set by the Commission for a particular stock directly impacts the catch rates and the long term sustainability of the stock and the fishery. This affects the overall effectiveness of the management measure and of the Commission, as well as the profitability and food security of compliant CCMs. In order to specifically address this type of non compliance, the catch and effort limits of the CCM in question should be adjusted, so that the overall limits adopted by the Commission are respected and the effectiveness of the Commission is ensured.

(ii) Catch and effort reporting

11. Catch and effort reporting requirements provide crucial data on fishing activity which underpins the Commission's ability to set appropriate catch and effort limits, assess the

effectiveness of management measures, monitor compliance with those measures and adopt other appropriate measures to sustainably manage the fishery resources under its competence. Failure by CCMs to provide complete, accurate and timely catch and effort data impacts on the Commission's ability to effectively manage these resources for the overall benefit of members. In order to specifically address non-compliance with this type of obligation, additional monitoring and reporting mechanisms may be needed to assist the CCM in question in meeting its obligations and thus enable the Commission to fulfil its functions effectively.

(iii) Spatial and temporal closures and gear restrictions

12. Spatial and temporal closures and gear restrictions are used to protect specific stages of the species life cycle, to target a specific size or age class of the population and to manage the impact of fishing on the broader ecosystem and on associated or dependent species. To make these measures effective, CCMs must take steps to ensure that their vessels give effect to them: firstly, by implementing domestic measures requiring their vessels to comply with the relevant closures and restrictions; secondly, by having adequate domestic MCS measures or controls to allow for an assessment of compliance; and thirdly, by taking action in respect of any non-compliance by their vessels. Accordingly, in order to specifically address non-compliance with this type of obligation, additional mechanisms may be needed to monitor or regulate the activities of vessels flagged to the CCM in question. These mechanisms would increase the visibility of and control over those vessels and ensure their compliance with relevant closures and restrictions.

(iv) Observer and VMS requirements

13. The Commission's observer and VMS programs contribute to data collection and verification of fishing activity, including catch and effort reporting and collection of scientific data related to the fishery and/or ecosystem. Like closures and restrictions, the implementation of observer and VMS obligations relies on CCMs to ensure that their vessels comply with the relevant requirements, and take actions in respect of any non-compliance. In order to specifically address non-compliance with this type of obligation, additional forms of monitoring and analysis, such as port inspections and cross-checking of datasets, could be used to verify the actions of vessels or to collect and verify the relevant data.

(v) Scientific data provision, reporting and handling

14. The provision of complete and accurate scientific data in the required format is vital for the ongoing improvement of the Commission's conservation and management measures for fishery resources. Data submissions need to be in the correct format to allow comparison of data across all members. Accurate scientific data contributes to greater understanding of the impacts of fishing on fishery resources and on the broader ecosystem, and of the effectiveness of CMMs in ameliorating these impacts. Failure to comply with data handling and confidentiality requirements reduces the confidence of CCMs in providing scientific data, and may undermine the provision of complete and accurate data. In order to specifically address failure to provide scientific data, other forms of monitoring could be implemented to obtain the relevant information, such as port or market sampling programs, or additional observer coverage. To address non-compliance with handling standards, access to information could be restricted until adequate systems and processes are in place to protect the confidentiality of data in accordance with the relevant data rules and procedures.

Proposed Compliance Response Schedule

15. In order to integrate the broad range of considerations raised for discussion in this paper into one process for responding to non-compliance, a draft Compliance Response Schedule is

included at **Attachment A**. The draft Schedule aims to provide a process which is as simple, objective and transparent as possible, as well as sufficiently flexible to respond appropriately to the full range of compliance issues. The process proposed is that:

- (i) A **Compliance Review** should be adopted to address the first instance of non-compliance by a CCM with a particular category of obligations. This should be the **initial tool for identifying and responding to non-compliance**, and should either resolve compliance issues or allow the underlying causes of non-compliance to be identified, providing a basis for the development of a Compliance Action Plan.
- (ii) A **Compliance Action Plan** should be adopted if a CCM does not comply with a Compliance Review. This should be the **principal tool for helping CCMs address the cause and effects of non-compliance**, and should result in the successful resolution of compliance issues by providing targeted responses to help CCMs overcome difficulties in complying with their obligations and fully implement the Commission's CMMs. A Compliance Action Plan should specify a timeframe for implementation (within one year or phased implementation over the course of two or more years).
- (iii) A **Compliance Remedy** should be adopted if a CCM fails to comply with a Compliance Action Plan. This compliance tool should be used as a **last resort to address cases of serious and persistent non-compliance** where a CCM has failed to address non-compliance even after sufficient time and assistance have been provided through a Compliance Action Plan. Reflecting the persistence and severity of the non-compliance being addressed, Compliance Remedies should impose cuts on the CCM's participatory rights in the fisheries managed by the Commission, and provide for non-discriminatory trade measures consistent with Article 25(12) of the Convention and the international obligations of CCMs.

16. The draft Schedule includes a range of proposed options for responding to non-compliance, which are intended to effectively address the specific cause and effects of the particular obligations in question, and suggests the circumstances under which those options should be applied.

17. For the purposes of this discussion paper, the draft Schedule has been kept simple and straightforward, to make the underlying principles and process clear and provide a basic outline for discussion by CCMs at TCC. However, the Schedule could be broadened, or adapted into a matrix style, to allow for more detailed or specific remedies to be provided in relation to specific kinds of non-compliance, or in relation to the particular gravity or extent of non-compliance within each category. The proposed responses are examples only, and there are likely to be additional or more appropriate options which should also be included in the range of options available to address non-compliance. In addition, CCMs may wish to consider whether additional flexibility should be built into the Schedule to allow the Commission to take alternative appropriate action in certain limited circumstances. For example, in circumstances where there is particularly egregious or damaging non-compliance, a more expeditious or immediate response might be necessary. Alternatively, the Commission may need to adapt the response to non-compliance to ensure that the remedy applied does not exacerbate the circumstances which caused the non-compliance in the first place.

18. If CCMs consider that the approach proposed in this paper is a useful one, a Schedule of this type could be developed as an Annex to the Compliance Monitoring Scheme established in CMM 2010-03.

Attachment A

Draft Compliance Response Schedule

Compliance Review

A Compliance Review should be adopted to address the first instance of non-compliance by a CCM with a particular category of obligations. This should be the initial tool for identifying and responding to non-compliance, and should either resolve compliance issues or allow the underlying causes of non-compliance to be identified, providing a basis for the development of a Compliance Action Plan.

The Compliance Review should include two elements:

- (i) measures which will directly address the effect of the non-compliance with the relevant obligations (in accordance with the table below), and
- (ii) a requirement for the CCM to review its domestic arrangements in order to identify any measures necessary to address the underlying cause of the non-compliance and report on the outcome in its Part 2 Annual Report the following year.

Catch and effort limits	<ul style="list-style-type: none"> • CCM to reduce catch or effort in the following year to repay the amount by which it exceeded its catch or effort limit
Catch and effort reporting	<ul style="list-style-type: none"> • CCM to provide information to address outstanding reporting requirements by specific timeframe
Spatial and temporal closures and gear restrictions	<ul style="list-style-type: none"> • If a CCM has not put domestic measures in place to implement a closure or gear restriction, the CCM is to comply with outstanding implementation requirements by specific timeframe • If a CCM has put domestic measures in place, but its vessels have not complied with the measures and the CCM has failed to address the non-compliance, the CCM is to take action to address the non-compliance and report on the outcome in its Part 2 Annual Report the following year
Observer and VMS requirements	<ul style="list-style-type: none"> • If a CCM has not put domestic measures in place to implement observer or VMS requirements, the CCM is to comply with outstanding requirements by specific timeframe • If a CCM has put domestic measures in place, but its vessels have not complied with the measures and the CCM has failed to address the non-compliance, the CCM is to take action to address the non-compliance and report on the outcome in its Part 2 Annual Report the following year
Scientific data provision, reporting and handling	<ul style="list-style-type: none"> • CCM to provide information to address outstanding data provision or reporting requirements by specific timeframe • If a CCM has failed to maintain the confidentiality of scientific data, the CCM is to take action to address the non-compliance and report on the outcome in its Part 2 Annual Report the following year

Compliance Action Plan

A Compliance Action Plan should be adopted if a CCM does not comply with a Compliance Review. This should be the principal tool for helping CCMs address and rectify non-compliance, and should result in the successful resolution of compliance issues. A Compliance Action Plan should encourage compliance by providing measures to help CCMs address the causes of non-compliance and fully implement their obligations. The elements of a Compliance Action Plan should respond to the causes of non-compliance identified by CCMs in their Compliance Review reports, and any information provided by the CCM about the measures or assistance necessary to address difficulties in implementing obligations or achieving full compliance.

The Compliance Action Plan should include three elements:

- (i) measures to directly **address the accumulated or outstanding effect** of non-compliance with the relevant obligations
- (ii) measures to **address the causes** of non-compliance identified through the Part 2 Report pursuant to the Compliance Review and, where possible, alternative means for the CCM to **remedy the effects** of the non-compliance while compliance with the actual obligation is achieved (as set out in the table below), and
- (iii) where necessary and appropriate, **capacity-building or other assistance** which can be provided to help the CCM address any difficulties in addressing the underlying causes of non-compliance (whether by the WCPFC Secretariat or through other bodies or mechanisms).

Elements (ii) and (iii) should be developed in consultation with the CCM concerned.

The Compliance Action Plan should specify a timeframe for the CCM to implement its requirements. This may provide for implementation within one year or phased implementation over the course of two or more years.

<p>Catch and effort limits</p>	<ul style="list-style-type: none"> • particular steps to effectively manage catch or effort limits domestically, based on the causes of non-compliance identified pursuant to the Compliance Review report • reporting to the Commission monthly on catch or effort for the fishery to enable ongoing monitoring and assist the CCM to remain within its limits • specification of particular methods by which the CCM is to reduce its catch or effort (developed in consultation with the CCM), such as implementing temporal restrictions or capacity limits, and/or • other measures decided by the Commission, in consultation with the CCM.
<p>Catch and effort reporting</p>	<ul style="list-style-type: none"> • particular steps to improve domestic reporting procedures or systems, based on the causes of non-compliance identified pursuant to the Compliance Review report • reporting to the Commission monthly on catch or effort for the relevant fishery, to break the reporting requirement down into more achievable elements • requiring the CCM to ensure double the required level of observer coverage for the fishery (for long-line vessels) in order to address the lack of data, and/or • other measures decided by the Commission, in consultation with the CCM.
<p>Spatial and temporal closures and gear restrictions</p>	<ul style="list-style-type: none"> • keeping relevant vessels in port to ensure compliance with temporal closures • increasing the VMS polling rate for relevant vessels to monitor compliance with spatial closures • conducting port inspections on relevant vessels prior to allowing them to leave port and on arrival in port to verify compliance with gear restrictions • doubling the level of observer coverage for the relevant fishery to verify that vessels comply with closures and restrictions, and/or • other measures decided by the Commission, in consultation with the CCM.
<p>Observer and VMS requirements</p>	<ul style="list-style-type: none"> • conducting port inspections prior to vessels leaving port, to ensure compliance by vessels with observer coverage levels and VMS operational requirements • doubling the level of observer coverage for vessels which fail to comply with VMS requirements • conducting port inspections on vessels returning to port to compensate for lack of observer coverage, and • other measures decided by the Commission, in consultation with the CCM.
<p>Scientific data provision, reporting and handling</p>	<ul style="list-style-type: none"> • if a CCM has failed to maintain confidentiality or handling standards for scientific data, the CCM is to take action to address the non-compliance and report on the outcome in its Part 2 Annual Report the following year, and • other measures decided by the Commission, in consultation with the CCM.

Compliance Remedy

A Compliance Remedy should be adopted if a CCM fails to comply with a Compliance Action Plan. This is the compliance tool of last resort, which should only be used to address cases of serious and persistent non-compliance where a CCM has failed to address non-compliance even after sufficient time and assistance have been provided through a Compliance Action Plan. A Compliance Remedy should reflect the persistence and severity of the non-compliance, and a list of CCMs which are subject to a Compliance Remedy could be maintained on the Commission's website.

The Compliance Remedy should include two elements :

- (i) measures to directly address the accumulated effect of the non-compliance by requiring compliance with the outstanding requirements of the Compliance Action Plan, and
- (ii) a reduction in the CCM's participatory rights in the fisheries managed by the Commission (in accordance with the table below) in order to address the serious nature of the non-compliance, and the persistent failure of the CCM to address it. This should reflect the severity and persistence of the violation.

In addition, a Compliance Remedy should provide that while a CCM is subject to a Compliance Remedy, non-discriminatory trade measures should be applied by other CCMs, prohibiting the trade of any fishery resources under the competence of the Commission from that CCM.

Initial Compliance Remedy	If a CCM fails to comply with a Compliance Action Plan, the CCM's participatory rights in the fisheries under the competence of the Commission should be reduced by X% with respect to each species.
Secondary Compliance Remedy	If a CCM fails to comply with an Initial Compliance Remedy, the CCM's participatory rights in the fisheries under the competence of the Commission should be reduced by Y% with respect to each species.
Final Compliance Remedy	If a CCM fails to comply with a Secondary Compliance Remedy, the CCM's participatory rights in the fisheries under the competence of the Commission should be further reduced until the accumulated amount (including the reductions applied through Compliance Remedies) is repaid.