



**COMMISSION
THIRTEENTH REGULAR SESSION**
Denarau Island, Fiji
5 – 9 December, 2016

VIEWS ON INDEPENDENT AUDIT OF THE COMPLIANCE MONITORING SCHEME

WCPFC13-2016-DP12

4 November 2016

From FFA Member CCMs



4 November 2016

Feleti P. Teo OBE
Executive Director
Western and Central Pacific Fisheries Commission
PO Box 2356, Kolonia
Federated States of Micronesia

Dear Feleti,

Independent audit of the Compliance Monitoring Scheme

I write on behalf of the 17 members of the Forum Fisheries Agency in my capacity as the Chair of the Forum Fisheries Committee.

FFA Members remain firmly committed to a Compliance Monitoring Scheme to allow Commission Members to assure each other that critical obligations under the Convention and CMMs are being implemented.

Having said that, we are very keen to ensure that the Commission is heading in the right direction through implementation of this Scheme. Hence, we welcome the independent review that will be conducted in 2017, and sincerely thank you for your work to prepare terms of reference.

FFA Members have reviewed these in detail and make the following comments, in addition to the specific suggestions in Attachment 1:

1. Scope of the review: It would be useful to cover the whole 'CMS experience', rather than part of it, hence we propose 2011-2017. 2011 was the first year in which the CMS was implemented and this could essentially serve as the baseline year for the review. This would allow the Commission to more fully assess how far we have come in terms of **effectiveness, efficiency and fairness**, based on several lessons learnt over the years. This also allows the independent auditors to fully understand what has or has not worked, so that fully informed recommendations can be made.

It is also critical that any such process be very clear on its objective and the principles that underpin it. For FFA members, the objective must be crafted in a way that clarifies that the CMS is positive and proactive to assist Members to improve compliance, rather than punitive. In addition, the review must be forward-looking and provide clear ways forward on how we best implement such Scheme.

The review should consider fundamental principles to guide the development and operation of the CMS. For FFA members, these are **effectiveness, efficiency and fairness**. The process and outcomes of the current CMS need to be approached with those principles firmly in mind. Approaching the work with these principles means that we would be able to address some of the challenges we have been facing, for example, ensuring that we have a more objective and fair mechanism to conduct the compliance monitoring review.

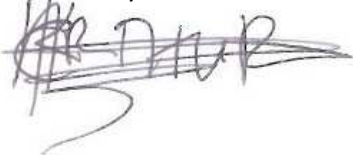
2. Timing of review: We reiterate our position advised at TCC12 to select the panel in early 2017, with a substantive progress report submitted to WCPFC 14 (December 2017) and a final report prepared by March 2018 for the consideration of Members, with a view to adopting a revised measure at WCPFC15. We see value in reviewing the whole process around compliance monitoring, including completion of reports, development of the dCMR, the TCC process and the Commission process.

3. Selection of panel: We agree to engage panellists that are as independent of our current WCPFC processes as possible. Also, to the extent possible, we request that at least one of these independent panellists have a sound understanding of the SIDS' context, and also recommend that the review process should include consultation to specifically identify SIDS issues.

In addition, we suggest that the review consider examples of other adjudication-type processes in international arrangements outside of fisheries, rather than focussing only on the CMS, as well as similar processes in other RFMOs.

FFA members look forward to your positive consideration of these views and to discussing this more fully at the meeting in Fiji and would welcome any inquiries, which should be directed to the FFA Secretariat (manu.tupou-roosen@ffa.int).

Yours sincerely

A handwritten signature in black ink, appearing to read 'CHRISTOPHER ARTHUR', with a long horizontal flourish extending to the right.

Christopher Arthur
Chair
Forum Fisheries Committee

Draft Terms of reference	FFA Members' views
<p>Scope of review</p> <p>General question – “During 2016[-2017], did the CMS adequately meet the purpose set out in CMM 2015-07?”</p>	<p>At TCC12, FFA Members requested that the scope include the implementation of 2015-07 and earlier measures since 2010 as well as the history of the CMS' operation in the Commission process (including all past and current CMMs). This needs to be reflected in the general question.</p> <p>“During 2016[-2017] Since it was first implemented in 2011, did the CMS adequately meet the purpose set out in CMM 2015-07?”</p>
<p>Specific questions to be answered by the Review of the CMS –</p> <p>a. To what extent does the CMS contribute to the work of the TCC and WCPFC?</p> <p>b. How effective are the CMS procedures, and in particular how user-friendly are the CMS online reporting systems?</p> <p>c. How effective are the TCC procedures in considering the draft Compliance Monitoring Report (CMR), particularly in light of requests for greater transparency?</p> <p>d. What are the budgetary and resource implications of the CMS, both within the Secretariat and across the Commission?</p> <p>e. What refinements should be made to the CMS to improve its efficiency and effectiveness?</p> <p>f. Should a regular review process of the CMS be considered, and if so what aspects of the CMS should be reviewed and how frequently?</p>	<p>At TCC12, FFA Members requested that the scope include:</p> <p>(i) the most suitable duration for any new measure;</p> <p>(ii) IUU high risk areas when assessing the efficacy of the current CMS, including high seas monitoring and control; and</p> <p>(iii) the effectiveness of responses to capacity constraints in developing country CCMs relating to the implementation of obligations.</p> <p>These remain valid for FFA Members and we continue to seek their reflection into the specific questions.</p> <p>It would be very useful to consider including the more specific question on what impact has the CMS had on CMMs' behaviour? This is the foremost question in assessing the effectiveness of the CMS (bearing in mind however that responses to non-compliance are yet to be developed).</p> <p>In addition, splitting out some of the concepts in these questions as well as including other key questions would be useful as follows:</p> <p><u>What impact has the CMS had on members' levels of compliance?</u></p> <p>a. To what extent does the CMS contribute to the work of the TCC and WCPFC?</p> <p>b. How effective are the CMS procedures, <u>including the timeframes for review of information and the nature of closed sessions,</u> and in particular how user friendly are the CMS online reporting systems?</p> <p>c. How effective are the TCC procedures in considering the draft Compliance Monitoring Report (CMR), <u>including consistency and the level of scrutiny,</u> particularly in light of requests for greater transparency?</p> <p><u>c bis. How can the CMS take into account the root causes that lead to non-compliance?</u></p> <p><u>c ter. How can the CMS assist members to achieve compliance?</u></p> <p><u>c quater. Is the CMS process procedurally fair, and produce fair and reasonable outcomes?</u></p>

	<p>d. What are the budgetary and resource implications of the CMS, both within the Secretariat and across the Commission?</p> <p>e. What refinements should be made to the CMS to improve its <u>fairness</u>, efficiency and effectiveness?</p> <p>f. Should a regular review process of the CMS be considered, and if so what aspects of the CMS should be reviewed and how frequently?</p> <p>Consideration to be given to (i) having another review once we have developed responses to non-compliance as one would expect this would also reveal further positive changes to CCMs' behaviour and (ii) placing substantive questions first, then procedural questions, before asking the administrative questions.</p>
<p>Timing of review</p> <p>Timing of the Review depends on whether one or two years of implementation of CMM 2015-07 is to be reviewed.</p> <p>The Review Panel is expected to travel to Pohnpei to meet with the Secretariat and to observe the TCC process.</p>	<p>Noting the FFA position that the review is to take into account the entire CMS 'experience since 2011, at TCC12, FFA Members recommended that</p> <ul style="list-style-type: none"> (i) the panel is selected in early 2017 so that they can observe the entire CMS process including at TCC; and (ii) prepare a final report by March 2018 for the consideration of Members. <p>In addition, FFA Members recommend that the Panel conduct at least one in-country consultation with a SIDS to appreciate the context of the CMS, and to save on costs, this could be FSM.</p> <p>This timeframe allows for a more thorough review of the Measure, in particular the implementation of the new concepts on SIDS capacity assistance needs and Flag State investigation.</p>
<p>Selection of the panel</p> <p>The Review Panel should comprise [three (3)] independent experts with no recognized affiliation with TCC that have significant experience in Compliance Monitoring Schemes in RFMOs, one of whom will be assigned the role of Chair.</p>	<p>FFA Members fully agree with the need for "independent" experts. We request that, to the extent possible, that at least one of the consultants has sound knowledge and understanding of the strengths and weaknesses of SIDS.</p>