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PROPOSED TERMS FOR A REVIEW OF THE COMPLIANCE MONITORING SCHEME

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Background

The Compliance Monitoring Scheme (the CMS Scheme) was established by Conservation and Management Measure for Compliance Monitoring Scheme (CMM 2010-03). Implementation of the CMS Scheme in 2011 – 2015 was through CMMs that had a duration of one-year and were intended to operate the CMS Scheme as an “initial trial”. Over the initial trial periods, refinements were made to the CMS Scheme through adjustments to the applicable CMM, the obligations to be assessed were rationalized and TCC and CCMs developed experience that improved the efficiency and consistency of the processes to review the draft Compliance Monitoring Report (CMR) and to develop the recommended provisional CMR report. In addition commencing in 2012, the Secretariat was provided resources to develop the online reporting and associated Information Management system to support the CMS: including CCMs submission of Annual Report Part 2, the development of the draft CMR by the Secretariat, the assessment by TCC of the provisional CMR, collation of CCM responses to the draft and provisional CMR and recording of the decision by the Commission of the final CMR. In 2016, a further revised Conservation and Management Measure for Compliance Monitoring Scheme CMM 2015-07 was agreed which among other things added new compliance categories. This CMM is to be implemented during 2016 and 2017.

The overall purpose of the CMS Scheme has been unchanged since the adoption of CMM 2010-03 and has been described in the five subparagraphs of paragraph 1 of the applicable CMM:

- (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; and
- (v) monitor and resolve outstanding instances of non-compliance.¹

¹ These five subparagraphs are unchanged from the original measure with the sole exception of the insertion of the words “and other Commission obligations” added to the end of subparagraph (iv) to capture obligations that stem from the Convention or scientific data provision obligations.

In addition, references reflecting the basis of the CMS Scheme in the Convention, particularly Article 23, 24 and 25, have been included in the preamble of the applicable CMM since CMM 2010-03.²

In 2015 (WCPFC11), the Commission discussed a proposal that a review or audit of the CMS Scheme should be conducted (WCPFC11-2014-DP10). In adopting CMM 2015-07 the Commission agreed to a two-year duration for the CMS Scheme, i.e. it is to be effective for 2016 and 2017.³ The Commission has also agreed that the Scheme will be reviewed at the end of 2017 by an independent panel selected by the Executive Director in consultation with Members.⁴

Scope of the Review

The Review will assess the processes and procedures used in the CMS process to evaluate the effectiveness of the CMS in meeting the purpose of the CMS and the Convention. The objective of the review is to assist CCMs to improve compliance with the Convention and CMMs and to this end the review will be forward looking and provide clear recommendations on how best to implement the CMS. The review will consider the entire period of the CMS Scheme development and implementation (since 2011), and ideally include the complete 2017 year (final year of implementation) of CMM 2015-07. This period is expected to ensure due consideration is given by the Review to the background of operation of the CMS Scheme, including the refinements that have been made to the CMS Scheme over time.

The Review will consider the framework and annual timelines within which the CMS Scheme operates, that commences with submission by CCMs of the Annual Report Part 1 and Part 2, referred to by the Secretariat in its development of the draft CMR for an individual CCMs review. Within the current CMS procedures, the draft CMR is the basis for TCCs development of the provisional CMR and the adoption of final CMR by the Commission. The review of the complete CMS Scheme structure, processes and procedures is expected to provide findings around the continued efficacy of such a structure and where improvements could be made. The findings of the Review shall be considered in the Commission's next performance review noting the importance of compliance to the wider operation of the Commission.

Specific questions to be addressed in the Review of the CMS

In line with the purpose and scope of the Review, there are a number of specific questions that

² The preamble to CMM 2015-07 includes: 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 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,

³ Paragraphs 40 and 41 of CMM 2015-07 provide: "40. This measure shall be reviewed in 2017, and the terms of that review will be determined by TCC12 in 2016. 41. This measure will be effective for 2016 and 2017 only."

⁴ The specific WCPFC12 decision was "Subject to the recommendations from TCC12 (CMM 2015-07, para 40) a review of the CMS will be conducted by an independent panel selected by the Executive Director in consultation with Members at the end of 2017." (WCPFC12 Summary Report paragraph 696)

the Review should address as follows:

Substantive question

- a. In what ways has the CMS contributed to the work of the TCC and WCPFC?
- b. What impact has the CMS had on levels of compliance by CCMs with their obligations under the Convention and CCMs? In what ways, and to what extent, have CCMs improved in meeting their obligations over time and since this CMS has been in place? What are the obstacles to effective implementation of CMMs, for example, to what extent are the obligations within CMMs clear and able to be implemented?
- c. What refinements should be made to the CMS to improve its efficiency, effectiveness and fairness? How can the CMS take into account the root causes that lead to non-compliance? How can the CMS assist members to achieve compliance? What are the most appropriate methods for ensuring compliance including potential use of sanctions as a deterrent? What are the recommended ways to manage frequent or serious non-compliance in a manner that aims to improve overall compliance? What is the most effective process for encouraging and recognizing improvements in compliance by CCMs?

Procedural questions

- d. Are the CMS procedures fair, effective, and efficient? Can elements of the CMS procedures be improved to be more fair, effective and efficient, and if so, which ones and how?
- e. Which elements of the TCC and Commission review procedures including the timeframes for submission and review of information, and the transparency of the CMR consideration, are effective, and why? How can they be improved?
- f. In what ways have the CMS online reporting systems contributed to the efficiency of the CMS Scheme procedures? Are there elements of the CMS online reporting systems that are not user-friendly? How could the CMS online reporting systems be refined to better support the CMS procedures?
- g. In what ways have the CMS procedures ensured the effective participation of all CCMs throughout all stages of the CMS process, and ensured that consistent standards are applied amongst obligations and amongst CCMs and a consistent level of scrutiny applied to CCMs? Are there elements of the CMS procedures where this has not been achieved, why and how can they be improved?
- h. What is the most appropriate method for determining compliance status? How effective have the CMS procedures been in identifying CMMs that require modification to improve implementation with their objectives, or require clarification? How could these CMS procedures be improved?
- i. How effective have the CMS procedures been in identifying areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance? How

could they be improved?

j. What aspects of other RFMOs CMS procedures or experiences could strengthen the WCPFC CMS and why⁵?

Administrative

k. What are the budgetary and resource implications of the CMS procedures, both within the Secretariat and across the Commission?

l. Should a regular review process of the CMS be considered, and if so what aspects of the CMS should be reviewed and how frequently? What do you recommend as a suitable duration for this type of measure?

Methodology

The Review Panel will evaluate the CMS in light of the questions set out in the Terms of Reference and prepare a report which makes recommendations to the Commission for consideration by Members. In conducting the Review, the Panel will seek the views of the Secretariat and CCMs and in particular will:

- engage with the Secretariat on its processes and procedures for the CMS;
- undertake a documentary review of the CMS process since its inception;
- consider the compliance processes and procedures of other tuna RFMOs, as appropriate;
- consider examples of other adjudication-type processes in international arrangements outside of fisheries, as may be appropriate;
- consult with CCMs and other stakeholders in the CMS process;
- observe the TCC processes; and
- conduct an in-country consultation to obtain the views of a CCM.

Scheduling

The commencement date for the Review will depend on the approval by the Commission of a suitable budgetary allocation and the successful completion of the Review Panel selection and appointment process.

If the Review takes place in 2017, it will take place during the second year of implementation of CMM 2015-07. A one-year extension of CMM 2015-07 should be considered to cover the implementation of the CMS Scheme in 2018, while Members consider the report of the Review in 2018. The process to select and appoint the Review Panel will need to be expedited.

If the Review takes place in 2018, it will have the benefit of two complete years of implementation of the CMM 2015-07 and there will be more time for the successful completion of the Review Panel selection and appointment process. A two-year extension of CMM 2015-07 should be considered to cover the implementation of the CMS Scheme in 2018 and 2019, while Members consider the report of the Review in 2019.

⁵ [To be conducted by way of desktop study.](#)

The Review Panel is expected:

1. Before ~~Feb—March~~April-May: to be selected and appointed.
2. In ~~June-July~~April—May: at least one member of the panel will travel to Pohnpei first to meet with the Secretariat and the Federated States of Micronesia as a CCM representative.

The timing of this visit as part of the Review must minimize interference with or burden to the work of the Secretariat, recognizing that the preparation of the dCMR is already a very large burden on the Secretariat.

3. In September: the Panel will travel to Pohnpei to observe the TCC process CMS procedures. During TCC the Panel should also meet with as many CCMs as is practicable.

This will require suitable confidentiality arrangements to be finalised to address the WCPFC data confidentiality rules and any concern of Members over access to meetings.

4. In December: to ideally, be provided an opportunity observe and consider the Annual Commission meeting CMS process in December. A substantive progress report should be submitted by the Panel to that WCPFC session.

5. By March of the following year: to submit the final report of Review for consideration by Members.

Composition of Review Panel

~~Ideally, T~~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. The Review Panel should be comprised of individuals that together would provide a balance of experiences which would be relevant to the membership of the Commission. At least one (1) expert should have a sound knowledge and understanding of the strengths and weaknesses of SIDs. The Review Panel should be determined by nomination and ranking by Members. The Executive Director would finalize the list of participants on the Independent Panel for the Review, taking into account the rankings, the availability of the candidates, a balance of experiences which would be relevant to the membership of the Commission and include, in so far as possible, experts from a reasonable geographical selection.

In the event that it is not possible for a suitable arrangements to be made to form a Review Panel that can complete the Review based on the proposed schedule, the Executive Director should inform Members and seek their views on alternative running of the Review Process, for example through a consultancy arrangement.

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