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**PROPOSED TERMS FOR A REVIEW OF THE COMPLIANCE MONITORING SCHEME**

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**WCPFC13-2016-24  
10 November 2016**

**Paper by the Secretariat**

**Purpose**

1. To provide an updated proposal for terms of the review of the Compliance Monitoring Scheme (CMS). Paragraph 40 of the current Conservation and Management Measure for the Compliance Monitoring Scheme (CMM 2015-07) says “This measure shall be reviewed in 2017, and the terms of that review will be determined by TCC12 in 2016.
2. TCC12 considered the matter of the review of the CMS and agreed that interested CCMS should provide the Secretariat with any additional comments on the draft terms of reference (WCPFC-TCC12-2016-11) by 21 October 2016, and the Secretariat will prepare a revised terms of reference for consideration at WCPFC13.
3. WCPFC13 is invited to consider the paper and the proposed terms for the review of the CMS.

**Background**

4. Since 2011, the Commission has been implementing the WCPFC Compliance Monitoring Scheme (CMS) through a series of CMMs that have applied the CMS on an annual basis. Subsequent CMMs have often included incremental changes to the assessment procedure and the breadth of coverage of the CMS. The suggestion that the CMS needed to be reviewed or audited was formally expressed in a delegation paper from FFA members at WCPFC11 (in December 2014).
5. At WCPFC11, FFA members tabled a delegation paper providing some comments on the CMS process (WCPFC11-2014-DP10). Within that delegation paper was the following statement...  
“We are generally supportive of the current process used to undertake the Compliance Monitoring Report (CMR). However, we believe that there is a need to task an independent review and audit of this process to take stock of where we stand in terms of its effectiveness and where efficiency gains can be made in meeting the CMS’ objectives.”

6. During WCPFC11 there was a mixture of support and hesitation in the views which were expressed by CCMs in response to the FFA proposal. The main views expressed included:
  - The need to properly assess the likely cost implications of an audit alongside other priorities within the 2015 budget;
  - Allow more time for the CMS to operate before a review is undertaken, noting that a revised measure will be developed in 2015; and
  - Undertake a review to make sure the CMS is meeting its objectives and making a positive contribution to the work of the TCC as it has been implemented for four years already.
7. The outcome from WCPFC11 was agreement “that there should be an audit of the CMS at some point. The Secretariat was tasked with preparing a paper for TCC11, which will include consideration of the costs of conducting an independent audit of the CMS” (WCPFC11 Summary Report paragraph 674).
8. During 2015, the Secretariat prepared a TCC11 paper on this matter as directed.<sup>1</sup> The TCC11 outcome was;

“TCC11 noted the paper provided by the Executive Director on the “Concept of an independent audit or independent review of the WCPFC Compliance Monitoring Scheme” and continues to support the concept, but agreed that now was not the right time for such a review. TCC11 noted that such a review might be appropriate after the revised CMS CMM has been in place for at least a couple of years” (TCC11 Summary Report paragraph 161).
9. During WCPFC12, there were a range of perspectives expressed by CCMs around the preferred duration for the revised CMS measure and the ideal timing and mechanism for undertaking a review of the CMS. The Commission did adopt CMM 2015-07 which is a revised measure, and agreed to the measure having a two-year duration, i.e. it is to be effective for 2016 and 2017.<sup>2</sup> 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.<sup>3</sup> CMM 2015-07 paragraph 40, tasks TCC12 with providing recommendations to WCPFC13 on the terms of the review.
10. A discussion paper<sup>4</sup> was prepared by the Secretariat for TCC12 and contained, in Annex 1, a possible template for the terms of reference, and included some questions to assist facilitate discussions among CCMs. The paper also suggested a possible process for appointing a panel, and possible costs, which would depend on how many members were on the panel and the scope of their work.

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<sup>1</sup> WCPFC-TCC11-2015-10

<sup>2</sup> 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.”

<sup>3</sup> 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)

<sup>4</sup> WCPFC-TCC12-2016-11

11. TCC12 agreed that interested CCMs should provide the Secretariat with any additional comments on the draft terms of reference (WCPFC-TCC12-2016-11) by 21 October 2016, and the Secretariat will prepare a revised terms of reference for consideration at WCPFC13.<sup>5</sup>

### **Revised Proposed Terms for the Review of CMS**

12. The Secretariat received comments from Australia, New Zealand and Chinese Taipei by the 21 October. Comments received from United States of America on 25 October and from FFA members on 4 November<sup>6</sup> were also able to be considered by the Secretariat in the preparation of the revised Proposed Terms. The Secretariat also considered the views of CCMs expressed during TCC12 (as recorded in the draft Summary Report of TCC12).

13. The revised proposed Terms for the Review of CMS includes as its structure:

- a. A *Background* section that provides some context to the review and the CMS Scheme;
- b. A *Scope of the review* section which overviews aspects such as where the CMS has come and what it currently does, and what it is trying to achieve. The title of general question used in the original proposal was rephrased, noting that many of the comments during TCC12 and subsequently referenced the scope of the review;
- c. An expanded set of *Specific questions that should be addressed by the Review* and which are grouped into substantive, procedural (ie the CMS procedures) and administrative questions. The reworking and expanded list of questions took into account suggestions and comments from CCMs;
- d. A section on *Methodology* outlining the process that the Review Panel will use and includes some of the non-WCPFC considerations as proposed by CCMs;
- e. A section on *Scheduling* that retains two options for a review in either 2017 or 2018, and includes a proposed timeline for the Review; and
- f. A section on *Composition of Review Panel* which includes a process for fall-back in the event it is not possible to form a Review Panel.

14. A copy of the proposed Terms for the Review of CMS is provided at Attachment 1.

### **Indicative Budget for the Review**

15. An indicative budget is provided in the table below which is based on fees for three (3) Consultants, their travel to Pohnpei to engage with the Secretariat on the preparation of the draft CMR, and to observe a TCC meeting. An indicative additional provision has been also included for the Chair of the Panel to observe the Commission CMS process and report to the Commission on its recommendations.

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<sup>5</sup> TCC12 draft summary report, paragraph 139

<sup>6</sup> WCPFC13-2016-DP12

## Indicative Budget for Review of CMS

Purpose	Indicative cost
Consultants fees x 3	72,000
Travel to Pohnpei x 3 (~6 days travel to Pohnpei to meet with Secretariat and FSM reps)	19,260
Travel to Pohnpei for TCC x 3 (~7 days to observe TCC process)	19,830
<b>Subtotal</b>	<b>111,090</b>
+ Presentation at Annual Meeting	13,500
<b>Total Indicative Budget</b>	<b>124,590</b>

## Discussion

16. The Commission has decided on some aspects of the Review of the CMS process including that it will take place at the end of 2017. During TCC12 and in comments received from CCMs since TCC12, there remain some differences among CCMs as to whether the Review should take place in 2017 or 2018.
17. Despite some difference on the review occurring during 2017 or 2018, there was similarity in the comments received on the timelines for the Review. Based on the comments received the proposed timeline for the CMS Review are:
- a. *Before March*: Review Panel to be selected and appointed.
  - b. *In April – May*: Review Panel is to travel to Pohnpei first to meet with the Secretariat and the CCM representative (Federated States of Micronesia). This timing is in advance of the more intense period in the Compliance teams work on dCMRs and preparations for TCC.
  - c. *In September*: Review Panel is to travel to Pohnpei to observe the TCC process CMS procedures.
  - d. *In December*: Review Panel/Chair to observe CMS procedures and provide a substantive progress report to that WCPFC session.
  - e. *By March of the following year*: The Review Panel is to submit the final report of Review for consideration by Members.
18. In respect of the process to select and appoint the Review Panel it is proposed that the Secretariat will be responsible for administering the process for the selection and contracting of the Independent Panel for the Review of the CMS. Members will be provided with the opportunity to nominate and provide advice on their ranking of candidates to be considered for the panel. The Executive Director would finalize the list of participants on the Independent Panel for the Review, taking into account the rankings and the availability of the candidates. It should be noted that the process to select and appointment of the Review Panel will need to be expedited if the review is to take place in 2017, and if the first visit by the Review Panel to Pohnpei to occur before May 2017.

19. It should be noted that suitable confidentiality arrangements will also need to be finalised to address the WCPFC data confidentiality rules and any concern of Members over access by the Review Panel to the relevant meetings. This is a matter that should be resolved prior to the commencement of the Review Panel selection process.
20. Irrespective of whether the Review occurs in 2017 or 2018, an extension of the CMM 2015-07 should be considered by the Commission to cover, as applicable,
  - a. the continued implementation of the CMS Scheme,
  - b. the period of the CMS Review, and
  - c. the period when Members are considering the Report of the Review.
21. The indicative budget provided here may need to be expanded, depending on whether the Chair or the full Review Panel is to observe the Commission CMS process and report to the Commission on its recommendations. This would be an additional cost that would need to be considered if decided as part of the Terms of the Review.

## **Recommendation**

22. WCPFC13 is invited to

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| <ol style="list-style-type: none"><li>i) consider the paper;</li><li>ii) consider the indicative budget;</li><li>iii) consider for adoption the proposed Terms for the Review of the Compliance Monitoring Scheme (Attachment 1); and</li><li>iv) consider taking a decision to extend CMM 2015-07 for [(one year) or (two years)] to cover the implementation of the CMS Scheme, while the Review is taking place and Members are considering the Report of the Review.</li></ol> |
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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.<sup>7</sup>

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<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

### **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.

### **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 the Review should address as follows:

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<sup>8</sup> 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,

<sup>9</sup> 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.”

<sup>10</sup> 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)

*Substantive question*

- a. In what ways has the CMS positively contributed to the work of the TCC and WCPFC, why? Has the CMS targeted the high risk areas for IUU fishing? Are there ways that the CMS has not positively contributed, why?
- b. What impact has the CMS had on levels of compliance by CCMs with their obligations under the Convention and CCMs? In what ways have CCMs improved in meeting their obligations over time and since this CMS has been in place, why? How much have CCMs improved in meeting their obligations over time and since the CMS has been in place? Have all management measures been implemented, and if so how effectively?
- c. What refinements should be made to the CMS to improve its efficiency, effectiveness and fairness? What is the most appropriate method for determining compliance status? 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. Which elements of the CMS procedures are most effective, why? Are there elements of the CMS procedures that are not effective, why? How could these be refined to make them more effective?
- e. How effective are the TCC procedures in considering the draft Compliance Monitoring Report (CMR) and the Commission procedures to adopt the final CMR, including the timeframes for review of information, and the transparency of the CMR consideration? Are there elements of the TCC and Commission procedures reviewing and developing the CMR that are not effective, why?
- 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? How could the CMS procedures be refined to make them more effective in these respects?
- h. In what ways have the CMS procedures identified CMMs that require altering to improve implementation with their objectives, and those which need further clarification/reviewing? How could the CMS procedures be refined to make them more effective in these respects?
- i. In what ways have the CMS procedures identified assistance needs for CCMs, particularly SIDS? How effectively has assistance in response to those needs been delivered



to improve CCMs' capacity to meet their obligations over time? How could the CMS procedures be refined to make them more effective in these respects?

j. What aspects of other RFMOs CMS procedures might be applicable to this Review, why? Which elements of WCPFC's CMS procedures and experience might be useful for other RFMOs to reflect on, why? How could WCPFC's CMS procedures be refined considering other RFMOs experience?

*Administrative*

k. What are the budgetary and resource implications of the CMS procedures, both within the Secretariat and across the Commission? How do the direct costs of the CMS procedures to the Commission compare to the positive contribution of the CMS to the work of the Commission? Are there ways that the CMS procedures could be refined to make them more efficient and cost-effective?

l. What do you recommend for a CMS that could be adopted on a permanent basis? 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 any new 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.

The Review Panel is expected:

1. Before Feb – March: to be selected and appointed.
2. In April – May: 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: travel to Pohnpei to observe the TCC process CMS procedures.  
*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, 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 and the availability of the candidates.

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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