



TECHNICAL AND COMPLIANCE COMMITTEE

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UPDATE ON INDEPENDENT REVIEW OF THE COMPLIANCE MONITORING SCHEME

WCPFC-TCC13-2017-10

2 September 2017

Paper prepared by the Secretariat

Purpose

1. To provide an update for the information of TCC13 on the progress of the Independent Review of the Compliance Monitoring Scheme (CMS).

Background

2. Since 2011, the Commission has been implementing the WCPFC Compliance Monitoring Scheme (CMS) through a series of Conservation and Management Measures (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 overall purpose of the WCPFC CMS has been mostly unchanged since the adoption of CMM 2010-03 and has been described in the five subparagraphs of paragraph 1 of the applicable CMM:

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; and

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

3. 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). During WCPFC12 (in December 2015), there was a range of perspectives expressed by CCMs around the preferred duration for the revised CMS measure and the ideal timing and modality for undertaking a review of the CMS. In adopting CMM 2015-07 the Commission agreed for the first time to a two-year duration for the CMS Scheme, i.e. it is to be effective for 2016 and 2017.²
4. In December 2016, the Commission approved the Terms for the Independent Review of the Compliance Monitoring Scheme (WCPFC13 Summary Report paragraph 142 and Attachment H). A copy of the approved terms for the review is provided as **Attachment 1** to this paper.
5. 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.
6. The Commission also agreed to a schedule for the Review to commence in 2017, with the Review to be undertaken by a three member Panel who will be charged with evaluating the CMS in light of the questions set out in the Terms of Reference and by March 2018 prepare a report which makes recommendations to the Commission for consideration by Members.

Update on the Progress of the Independent Review to date

7. On 7 March 2017, the Executive Director invited CCMs to provide nominations for the Review Panel (WCPFC Circular 2017/17). In response, the Secretariat received nominations of three experts for the Independent Panel for the CMS Review.
8. On 5 April 2017, the Executive Director advised CCMs through WCPFC Circular 2017/25 that the appointed members of the Panel to Review the Compliance Monitoring Scheme were:
 - Don MacKay (Chair)
 - Andrew Wright
 - Dr Christopher Rogers
9. Soon after their appointment to the Review Panel, the Panel members began to work electronically, with support and guidance from the Secretariat. Each member of the Panel has signed a contract with the Secretariat that includes suitable confidentiality arrangements to address the WCPFC data confidentiality rules. Following the signing of the contract, the Secretariat has provided each member of the Panel with a user login and guide, to enable their remote access to review the WCPFC online annual reporting and compliance monitoring report

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.

² 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.”

systems on WCPFC Intranet. A dedicated secure page was created on the secure side of the WCPFC website in May 2017, to facilitate access for the Panel to background documentation for the CMS Review (<https://www.wcpfc.int/background-documents-cms-review>).

10. On 12 June 2017 and 12 July 2017, the Panel wrote to provide an update to CCMs and observers on their work to date (WCPFC Circular 2017/41 and 2017/45). The Secretariat facilitated the preparation and distribution of the questionnaire on 12 June 2017. In the words of the Panel ...

“We very much look forward to working with you on this important Review.

The key to a successful review process and outcome will be the Panel’s ability to engage comprehensively with CCMs, so as to ensure that the Panel is fully apprised of the views of CCMs, any concerns they may have regarding the CMS, and their suggestions for improvement. The Panel is of course specifically tasked under the Methodology Section of the Terms of Reference to seek the views of CCMs, and as noted we are fully aware that this will be key to a successful outcome.

At this stage we are undertaking preparatory work regarding the Review, and we are planning to have an initial preparatory meeting of the Panel for internal planning purposes beginning on 6 August.

To assist us with this, we have developed a questionnaire for CCMs, with the objective of obtaining an initial understanding of the views of CCMs, and to assist our initial discussions at our meeting in August. This information will of course be enhanced by discussions which we will have subsequently with CCMs, including in the margins of the TCC, and in the course of the in-country consultation prescribed in the Methodology Section.

We realise that the questionnaire is quite broad in the matters it covers, as we wanted to give colleagues the opportunity to express their views on a wide range of issues.

Colleagues should not however feel it necessary to give detailed responses on everything. It is more essential for us to know what aspects of the process are of particular importance to countries, or what may be of particular concern, rather than necessarily covering the waterfront with detailed answers. We hope that this may help you in responding.”

11. From 6 – 9 August 2017, the three members of the Panel met in Sydney, Australia, with support from the Secretariat’s Compliance Manager and Assistant Compliance Manager. The Secretariat presented an overview of the WCPFC CMS and its various CMMs, provided an introduction to the WCPFC online reporting systems, and introduced the background to the Review. During the meeting the Panel had discussions around the list of questions to be answered by the Review (refer to **Attachment 1**) and considered some views on the CMS from a few questionnaires from CCM and NGO representatives. As a way of supplementing the limited questionnaires received, some phone/skype interviews were also able to be arranged during the occasion of the Panel’s meeting. The Panels plans for the next steps in the Review Process were also discussed.

Next steps

12. Outside of formal meeting times, the Members of the Panel continue to work electronically, with support from the Secretariat.
13. From 24 September – 3 October, Mr Don MacKay and Dr Christopher Rogers will travel to Pohnpei for TCC13. Prior to TCC13, an in-country consultation with representatives from the Federated States of Micronesia has been arranged, as well as meetings with the Secretariat and TCC Chair/TCC Vice-Chair. Interviews and consultations with interested TCC13 delegates are also expected to take place in the margins of the TCC13 meetings.
14. Although after the initial date requested for submissions, the Panel will continue to receive any additional submissions of questionnaires or views that additional CCMs or observers would like to provide them in advance of TCC13. A link to the copy of the questionnaire form is provided on the WCPFC website: <https://www.wcpfc.int/doc/questionnaire-cms-review-panel-2017> The dedicated email address to receive the completed questionnaires is: **cmsreview2017@wcpfc.int**
15. At least one member of the Panel will travel to the Philippines in December 2017 for WCPFC14 and to provide an update to the Commission of its findings. The final review report is expected to be provided to CCMs for their consideration by March 2018.

Recommendation

16. TCC13 is invited to note this paper.



**APPROVED TERMS FOR A REVIEW OF THE
COMPLIANCE MONITORING SCHEME IN 2017**

Reference: WCPFC13 Summary Report, Attachment H

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.³

³ 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 2010-03.⁴

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 2017.⁵ 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.⁶

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.

⁴ 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,

⁵ 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."

⁶ 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)

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:

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 why⁷?

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.

⁷ To be conducted by way of desktop study.

The Review Panel is expected:

1. Before April-May: to be selected and appointed.
2. In June-July: 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

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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