



**COMMISSION
FOURTEENTH REGULAR SESSION**
Manila, Philippines
3 – 7 December 2017

**INDEPENDENT REVIEW OF THE COMPLIANCE MONITORING SCHEME:
SUBSTANTIVE PROGRESS REPORT BY THE REVIEW PANEL**

**WCPFC14-2017-25B
14 November 2017**

Paper by the Review Panel

Independent Review of the Compliance Monitoring Scheme: Substantive Progress Report by the Review Panel

Dear Colleagues,

The Secretariat's paper WCPFC14-2017-25 of 31 October 2017 gives an update on the Independent Review of the Compliance Monitoring Scheme (CMS).

In this respect, you will recall that the Terms of Reference for the Review includes the following:

“The Review Panel is expected...to ideally, be provided an opportunity to 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.”

In accordance with the Terms of Reference we are now attaching a Substantive Progress Report. It is set out in tabular form, which we hope will assist colleagues in considering its contents.

The Progress Report reflects our thinking on a large number of issues that have been identified during our extensive discussions with colleagues, as well as our own impressions. We are most appreciative of the extent to which colleagues have been willing to share their views, and their generosity with their time. As you know, this needs to be very much a Member-driven process, rather than one that derives from the Panel itself, and colleagues have laid the foundations for that in their discussions.

As regards the attachment, we would make the following points:

- The attachment is very much a work in progress. It is not necessarily where we will end up, but is intended to give colleagues some indication of our current lines of thinking;
- It follows that we would very much appreciate colleagues' thoughts and feedback on the matters dealt with in the attachment and the possible solutions that we have identified.
- We would also value colleagues' additional thoughts on any additional matters that we have not covered in the attachment. The attachment is not intended to close off any other possibilities, and our consideration remains open to further thoughts.

- The Commission meeting will provide a further opportunity for discussion with colleagues, and we look forward to that opportunity which will continue to inform our views

Kind regards

Don MacKay, Andrew Wright, Christopher Rogers

Issues	Possible Solutions	Considerations
<p>1. Systems support</p> <p>Continue to build and enhance the CMS Information Management System (IMS)</p>	<ul style="list-style-type: none"> i. The Commission should continue to provide resources to support the ongoing enhancement of the information management system. ii. In particular, pre-populate or auto-fill forms where fields are unchanged; issue alerts, etc. iii. The WCPFC Secretariat should continue to develop and roll out training modules (including on-line facilitation and teaching aids) on the IMS for CCMs, especially when new elements are introduced to it. iv. Identify cases by vessel name in the CMR report. v. Permit CCMs to access the Case Management System as a whole – including historical cases. 	<p>The system is positively viewed by most CCMs. Opportunities to further enhance the system will yield positive benefits in terms of its service within WCPFC and CCM engagement</p> <p>Make system more efficient for CCMs to use, by removing need for repetition of information previously provided, duplication, etc. (see also 10(i) below)</p> <p>TCC13; PCMR (para. 19): to assist CCMs identify and link cases.</p> <p>Important for CCMs to be able to see how cases are being managed, with relevant information, the basis they have been resolved or closed, etc.</p>

Issues	Possible Solutions	Considerations
<p>2. CMS utility for management decision making</p>	<p>i. The CMM drafting process to include provision for identification/description of individual, or suite of, audit points within each Measure that are critical to decision-making in the Commission (see also 3(i) below).</p>	<p>The resources and effort applied to the CMS does not reflect the extent to which CMS outcomes inform management decision-making in the Commission.</p> <p>To be implemented by CMM proposers</p>
<p>3. Interpretation and clarity of audit points in CMMs General difficulty with interpretation/Lack of clarity/inconsistency/ambiguity</p>	<p>i. Mandatory provision (drawn from a template, checklist or guidelines) in each CMM describing resource considerations for implementation and reporting (who, when and how), and how compliance will be evaluated (e.g. attach guidelines and a check list identifying this) (see also 2(i) above).</p> <p>ii. Extend the period for consideration of proposed CMMs before adoption, by providing a 12 months “development period” for review of draft CMMs before being tabled in the Commission for adoption (with the exception of the most <i>urgent</i> (to be defined) measures).</p> <p>iii. Review to include a “legal scrub” of the proposed new CMMs in a Legal Screening Group (chaired</p>	<p>CMMs are often drafted within tight timeframes and competing priorities in TCC and the Commission, which results in ambiguity and interpretative challenges – including for those CCMs for whom English is not their first language.</p> <p>The objective is to produce better quality CMMs, which subsequently don’t lead to interpretation and implementation issues and which are better tailored for compliance monitoring.</p>

Issues	Possible Solutions	Considerations
	<p>by WCPFC Legal Adviser, during TCC) to ensure clarity and identify potential conflicts and inconsistencies. The Group would report to the full TCC.</p> <p>iv. Review also to include a scientific review to reconcile objectives with forecast outcomes. This will require re-structuring of the Scientific Committee agenda and the establishment of a SC Working Group on CMM appraisal.</p> <p>v. Review older CMMs utilising a similar appraisal process to assess interpretation issues that have arisen, and clarify.</p> <p>vi. Provide advice to CCMs, prepared by the WCPFC Legal Adviser, that describes the requirements of the Convention regarding the extent to which obligations are required (or not) to be explicitly enshrined in domestic legislation.</p> <p>vii. As SIDS CCMs are increasingly operating as flag States as well as coastal States, WCPFC should collaborate with regional agencies, such as FFA and PNA, to explore options for increasing advice and assistance with regard to flag State obligations and responsibilities.</p>	<p>A 2 year moratorium on new CMMs (unless urgent) would create time for this to be done</p> <p>There is an apparent difference of view amongst CCMs as to the extent to which obligations need to be enshrined in legislation, rather than implemented administratively, pursuant to the Convention. This protracts TCC discussion.</p> <p>SIDs have referred positively to workshops and assistance provided by FFA, during the Review.</p>

Issues	Possible Solutions	Considerations
<p>4. Capacity building</p> <p><i>Procedurally</i> Elevate the significance of the CDP process</p>	<ul style="list-style-type: none"> i. SIDs' needs for capacity assistance to implement a CMM to be identified prior to the adoption of each CMM and mechanisms to support capacity needs should be described in the Measure itself (refer CMM 2013-07). ii. The necessary capacity assistance should be provided before SIDs are assessed under the Measure. iii. Where measures are not capable of immediate implementation in full by SIDs, there should be provision for "progressive implementation" of some obligations by SIDs. iv. The SIDs checklist should be more assiduously applied (CMM 2013-07). v. While the Secretariat's current compilation of CMMs is useful, handbooks should be developed and then updated listing, by subject, the various CMM requirements for each fishery. 	<p>Build CCM capacity so as to minimise, and address, root causes of non-compliance.</p> <p>Further strengthen Secretariat support services focussing on capacity building, technical support and CCM outreach, which could be a candidate for collaboration with FFA (see 3(vii) above).</p> <p>This is the approach taken regarding the implementation of some international human rights obligations where it is not possible for States to implement them immediately.</p> <p>Some CCMs have already done this for their fleets, but it would be useful to develop them for use by all vessels.</p>

Issues	Possible Solutions	Considerations
<p><i>Operationally</i> Enhance the effectiveness of CDPs and the FSI</p>	<ul style="list-style-type: none"> vi. Revise FSI Information status reports (ISRs) to better identify minimum information requirements for flag States to report on the status and outcomes of investigations. vii. Increase the financial resourcing for CDPs development, implementation and reporting. viii. Employ a CDP Coordinator to support the operationalisation of CDPs. ix. Employ a Case File Support Officer to the WCPFC Secretariat. 	<p>At TCC13 there were discrepancies in FSI-related information provided by CCMs, particularly regarding the detail and quality of information provided by relevant flag States. (TCC13 Report para ref xx). Requests for additional information that are not identified in advance to the flag State may be unfair to and disadvantage smaller administrations</p> <p>Associated services available equally to all CCMs</p>
<p>5. CMS implementation challenges</p> <p>The number of obligations and associated resources required by CCMs, and the Secretariat, to monitor and report against accountabilities</p>	<ul style="list-style-type: none"> i. Undertake an appraisal of existing CMMs to identify (quantify) the utilisation of existing audit points to determine their continuing relevance in the CMS process (see also 2(i) and 3 (v) above). ii. As the 60-day period provided in the Convention before a Measure enters into force (eif) may not 	<p>Almost unanimous condemnation of the plethora of obligations subject to CMS audit.</p>

Issues	Possible Solutions	Considerations
<p>TCC meeting processes: volume of material processed; the need for prioritisation</p>	<p>always allow adequate time for all CCMs to implement them, consider mechanisms which would allow more time before eif where required. This might be done, for example, through the use of language that stipulates the eif in the Measure itself.</p> <p>iii. Focus on those aspects of CMMs that are critical for the sustainable management of the stock (see 2(i) above).</p> <p>iv. Reduce the volume of minor compliance issues being dealt with in the full TCC by establishing a small, but representative, intersessional Working Group that would meet a few weeks before the TCC to pre-screen compliance issues. The Working Group would go through the compliance reports, and identify those matters that are significant that require the attention of the full TCC. The WG would be authorised to resolve minor matters including minor issues relating to observer reports, flag State investigation status and obligations relying on self-reporting and self-verification. Its report would be considered by the full TCC on the basis that any matters dealt with in it could be raised for discussion by any CCM in the TCC if they wished.</p>	<p>For example, catch limits, gear restrictions etc), and prioritise particular CMMs, e.g. the Tropical Tuna CMM, to address the current preoccupation with minor detail.</p> <p>The Working Group would be representative of CCMs, and could be comprised of the TCC chair (or co-chairs – see 6(ii) below), and one or two CCM representatives, supported as necessary by experts.</p> <p>A similar process is followed by ICCAT, which enables the ICCAT meeting itself to focus its attention on serious or repetitive issues of non-compliance, including systemic issues.</p> <p>“When everything is important, nothing is important”</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> <li data-bbox="577 276 1370 419">v. The focus on key aspects of CMMs (see (iii) above) could be coupled with a case study each year of matters of lesser priority (e.g. data provision, transshipment, etc.). <li data-bbox="577 459 1370 635">vi. Greater use should be made of informal small groups for negotiations during the TCC, including on matters of drafting, rather than doing this in the TCC itself, which would increase the efficiency of and best use of the TCC's time. <li data-bbox="577 675 1370 786">vii. This might include at least one small group, in addition to the Legal Screening Group, meeting simultaneously with the TCC Plenary on occasion. <li data-bbox="577 826 1370 1002">viii. To assist small delegations to cover two meetings simultaneously when necessary, consideration should be given to WCPFC funding for two representatives from SIDS (rather than one as at present). <li data-bbox="577 1042 1370 1153">ix. Discontinue the current practice of submission of supplementary information verbally at TCC to address reporting gaps. 	<p data-bbox="1404 459 1964 603">The TCC is a very large and expensive meeting to be used for negotiating matters of detail. It is also too large a body to negotiate efficiently.</p> <p data-bbox="1404 683 1986 858">Reducing the number of minor matters would enable the TCC to focus on policy issues and outcomes, including systemic issues, and other important aspects where greater attention is warranted.</p> <p data-bbox="1404 1050 2009 1375">TCC13 recommended the verbal presentation of supplementary information to address reporting gaps discussed in TCC is <i>minimised</i> (PCMR, para.15) This is very difficult to manage unless ceased entirely. Information is currently formally tabled in Annual Reports Parts 1 and 2, responses to dCMR no later than 28 days prior to TCC and also up until 30 days</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> x. Whether or not it has been subject to annual review in TCC, formally review each CMM after a fixed period, of 3 years. xi. Consider ending the process of allowing additional information to be provided to the CMS Working Group at the beginning of the Commission <i>[the Panel currently favours cessation of this, but will review again after observing the process at the forthcoming Commission meeting]</i>. xii. The WCPFC Secretariat to prepare guidelines/templates for the information that should be provided to the TCC by, for example, a flag State when reporting on a FSI. 	<p>prior to the Commission Meeting (currently – but proposed to be discontinued see 5 (xi) below).</p> <p>The current practice makes a significant contribution to the inability of TCC to complete its work at its own meeting, and means there is no final TCC report for the start of the Commission meeting.</p> <p>See also 4(vi) above</p>
<p>6. TCC processes and efficiency, including ‘natural justice’ considerations</p>	<ul style="list-style-type: none"> i. Quarantine the handling of the CMS from any perceived national delegation influences by, for example, appointing an “independent chair” of the CMS process, without linkages to a national delegation, as is found in CCSBT. 	<p>At no stage has it been suggested that any of the TCC chairs have been other than scrupulously fair and neutral. However it is necessary to have a process that is not only fair but is also seen or perceived to be fair.</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> ii. An alternative would be two co-chairs, with staggered terms. iii. The minimum information required to adequately respond to questions about, for example, FSI, should be clearly articulated/described (see also 4 (vi) and 5(viii) above). 	<p>This approach is often used in United Nations forums (and was also used by the previous chair of the TCC for discussion of the CMS). It would also assist with succession risks in the event of a chair retiring.</p>
<p>7. Consequences for (persistent/serious) non-compliance</p>	<ul style="list-style-type: none"> i. At least as an interim measure, until CCMs have sufficient confidence in CMS to agree to a schedule of sanctions, adopt a CCSBT Quality Assurance Review (QAR) type of system for targeted application where there is a pattern of serious non-compliance by a CCM, or possibly systemic failures. As in the case of CCSBT, the purpose would be to assist the CCM in identifying how well their management systems function with regard to their obligations, and to provide recommendations on areas where improvement is required. 	<p>Other RFMOs provide for sanctions, but there may not be sufficient confidence in the CMS at this stage to support such a function. On the other hand, there is a desire for the CMS to “have teeth”, as is recognised in 2015-07 (paragraph 38) which states that an intersessional working group is to be established to (i) “develop a process to complement the CMS...to identify the range of responses to non-compliance (ii) progress its work electronically to the extent possible”. The Intersessional working group was to “endeavour to develop a process for consideration no later than TCC12 and adoption no later than WCPFC13”.</p> <p>CCSBT provides for routine QAR auditing on a regular basis, subject to funding availability, but has a much smaller membership;</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> ii. Subsequently develop, then implement, a work plan for to draft a Schedule of Sanctions complete with categories, criteria, and remedial expectations. iii. There is no reason why an IWG could not start work in 2018 on a preliminary basis developing a work plan and giving initial consideration to candidate responses that may be available to mitigate non-compliance. 	<p>A not dissimilar approach was taken by IOTTC recently, when it decided to send a compliance mission to Pakistan to assess/assist it with systemic non-compliance issues (refer to Karachi “Daily Times” of 21/9/17);</p> <p>The CMS needs to respond to the current lack of consequences for non-compliance including to build capacity to mitigate persistent non-compliance.</p> <p>Guiding principle could be to build CCM capacity to minimise and address root causes of non-compliance.</p> <p>Implementation of a schedule of sanctions would be facilitated with a prior agreed set of non-negotiable decision rules for different categories of non-compliance and associated sanctions.</p> <p>For TCC at present “the product is the outcome”.</p>
<p>8. Regional Observer Programme</p>	<ul style="list-style-type: none"> i. Improve communication, including through direct communication and utilisation of templates, for flag States to liaise with Observer Service Providers and/or regional agencies in relation to ROP incidents. 	<p>The Regional Observer Programme requires some attention in relation to its interaction with the CMS. A particular issue is flag States’ difficulty in obtaining observer reports and other relevant</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> ii. The WCPFC Secretariat, in collaboration with regional agencies, should prepare a capacity building program, including workshop(s), targeting fisheries investigation and prosecution experts from CCMs, to deepen the understanding of legal requirements in relation to the application of observer generated information in the CMS. iii. Discontinue the pre-notification process. 	<p>information required to support an investigation/alleged infraction.</p> <p>Significant issues are associated with observer/de-briefer reports, particularly as to the extent they can be used as evidence in investigations and prosecutions by flag States.</p> <p>This should also address difficulties some coastal State CCMs face in providing observer and investigative information to flag States while their own investigations (as a ROP Observer Provider and possibly as a coastal State) are under way.</p> <p>TCC13 also agreed to form an IWG to address the need for CCMs to obtain copies of observer reports for their vessels in a timely manner.</p> <p>Capacity building and training support for fishery managers, prosecution and legal personnel, observers and de-briefers will strengthen the utility and effectiveness of ROP information in the CMS.</p>

Issues	Possible Solutions	Considerations
		<p>At TCC13, pre-notified information [544 possible cases] was not used to assess obligations (except cases involving observer interference or obstruction). This pre-notification was intended to provide flag States with more timely information regarding alleged violations. It was recommended that this practice be followed in future (PCMR, para.19). Continuing this would appear not to pose a risk because significant cases are generally identified in the online case management file system. On this basis, and the fact that it does free time for consideration of more substantive matters in TCC, the Panel supports the TCC13 recommendation.</p>
<p>9. Fairness, equivalence</p>	<p>i. Reporting and other requirements should be extended as far as possible to vessels fishing on the high seas, so as to ensure as far as possible equivalence of treatment under the CMS between vessels fishing in the high seas and those fishing in EEZs.</p>	<p>Specifically targeting longline and long-distance pole and line fleets operating solely on the high seas in the Convention Area. Compliance information is currently constrained by less than 5% observer coverage.</p>
<p>10. Duplication of information/data requirements</p>	<p>i. Remove the burden on CCMs of providing Part I reports, which are duplicative of information already provided.</p> <p>ii. Authorise SPC to pass on information to WCPFC at the same time information is provided to CCMs.</p>	<p>Part 1 Report – duplication of information already provided by CPCs to SPC.</p> <p>As well as being more efficient, and reducing duplication, some SIDS face difficulties in transferring large amounts of data due to internet limitations.</p>

Issues	Possible Solutions	Considerations
11. Transparency	<p><i>i.</i> Consider a phased process to allow NGO and IGO Observers to participate in the CMS.</p>	<p>Confidence and faith remain significant issues for CCMs in the CMS process.</p> <p>At the same time, Observers are, rightly, requesting a participatory role.</p> <p>The Convention includes a commitment to transparency.</p> <p>Other non-State actors are already in the room, including industry.</p> <p>Independent observers can add to the incentive for compliance.</p> <p>NGOs already have a history of cooperation with CCMs.</p> <p>A staged approach to gradually increasing the exposure of Observers to the CMS has the potential to address the interests of both Observers and CCMs e.g. a representative group of NGOs (2 or 3) evolving to all NGOs after a certain period if no problems arise.</p>