



**EIGHTH REGULAR SESSION**

Tumon, Guam, USA

26 to 30 March 2012

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**REVIEW OF CMM 2010-03 ESTABLISHING THE  
COMPLIANCE MONITORING SCHEME**

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**WCPFC8-2011-DP/32**

**9 February 2012**

**Paper prepared by Australia**

1. The Compliance Monitoring Scheme (the Scheme) established in CMM 2010-03 *Conservation and Management Measure for Compliance Monitoring Scheme* has been implemented for the first time during 2011. The Secretariat prepared Draft Compliance Monitoring Reports (CMRs) which were reviewed by CCMs and the Technical and Compliance Committee (TCC), and used by the TCC to prepare Provisional CMRs for consideration by the Commission at WCPFC8.
2. CMM 2010-03 applies for 2011 only. Paragraph 26 provides that: *At its meeting in 2011, the Commission will review the operation of the measure during this trial period and, based on this review, consider and decide on a measure to apply after 2011.* TCC7 discussed the operation of the Scheme, and requested that CCMs provide comments on refining CMM 2010-03 to Australia by 5 November 2011 to enable Australia to prepare a proposal for consideration by WCPFC8. Comments were received from FFA members (WCPFC8-2011-DP/06) and the United States of America.
3. This paper makes recommendations for refining and improving the Scheme to ensure that it operates as effectively as possible and in the interests of CCMs, taking particular account of the need for a streamlined and efficient process, and the special needs of small island developing States. The recommendations in the paper are based on the comments received inter-sessionally and during discussions at TCC7, and address both:
  - (i) amendments needed to the framework of the Scheme established in CMM 2010-03, and
  - (ii) areas in which guidelines or procedures need to be developed to sit underneath the Scheme and ensure that its implementation is efficient, objective and consistent.

**Proposals for consideration:**

4. To facilitate the Commission's review of the Scheme, WCPFC8-2011-DP/33 sets out specific proposals for amendments to CMM 2010-03 to give effect to the recommendations made in the paper regarding the framework of the Scheme.
5. Where additional guidelines or procedures are needed to improve the implementation of the Scheme, these could be developed inter-sessionally by electronic means through the Compliance with Conservation and Management Measures Working Group. A draft set of guidelines or procedures could be circulated to all CCMs in advance of TCC8 and, if desired, trialled in the preparation and review of CMRs at that meeting before being considered for formal inclusion under the framework of the Scheme at WCPFC9.

## **Review of CMM 2010-03 establishing the WCPFC Compliance Monitoring Scheme**

### **Introduction**

1. The comments received at TCC7 and during the inter-sessional period showed that CCMs generally support extending the operation of the Compliance Monitoring Scheme, but that some amendments need to be made to streamline and refine the processes established in CMM 2010-03. The changes required include both some basic amendments to the overall framework of the Scheme, and the development of some guidelines for the implementation and operation of the Scheme. These are discussed in greater detail below.
2. Although some CCMs support the adoption of the Compliance Monitoring Scheme (with modifications) in a permanent measure, other CCMs noted that at this stage they would prefer to extend the Scheme for one further year. While it is important to ensure that the Scheme can continue to be developed, improved and refined, it might be useful to consider adopting the amended Scheme for a period of two years, with the option to revise it after the first year if CCMs consider necessary. This would give the Commission a more meaningful period over which to trial the operation of the Scheme in its amended form, as well as the opportunity to develop some guidelines to improve its implementation and consider a process for responding to non-compliance.
3. In the context of reviewing CMM 2010-03 it was also suggested that broader consideration needs to be given to the overall role, work and priorities of TCC. In particular, the TCC agenda needs to be structured in a way that provides adequate opportunity for CCMs to consider compliance and implementation issues through the Scheme and ensure the effectiveness of measures adopted by the Commission. One option would be for the TCC Compliance Working Group to meet for one or two days in advance of TCC to undertake a preliminary review of the Draft CMRs and prepare an initial draft of the Provisional CMR for discussion and consideration in the TCC plenary. FFA members noted that they intend to propose a streamlined agenda for TCC8 that will enable a stronger focus on the key matters requiring consideration by TCC.

### **Amendments to the framework of the Scheme**

4. Some amendments need to be made to the framework of the Scheme to improve or alter its operation. These changes would be made within the CMM itself, and include: the priorities or categories of obligations that should be assessed under the Scheme; the handling of public and non-public domain data; the timeframes for preparing CMRs, and the special requirements of small island developing States and territories (SIDS). To facilitate the Commission's consideration of these issues, specific proposals for amending CMM 2010-03 are set out in WCPFC8-2011-DP/33.

#### *Prioritising the most important types of obligation*

5. Instead of monitoring all of the obligations arising under the five categories in paragraph 5 of CMM 2010-03 every year, the number of obligations being assessed under the Scheme could be reduced. This would make the consideration of CMRs more manageable, and ensure that greater emphasis is given to addressing the implementation of high priority issues such as catch and effort limits and data submission. This could be done by:
  - (i) removing lower priority aspects of some measures from the scope of the Scheme (such as provisions relating to bycatch mitigation for seabirds and sea turtles, the technical requirements of the ROP and VMS, and handling of scientific data), and/or

(ii) monitoring lower priority obligations over a longer cycle (such as every second year rather than every year).

6. CCMs would continue to report on all obligations through their Part 1 and Part 2 Annual Reports, and consideration would still be given to their implementation through the Secretariat's annual report on CCMs' implementation of and compliance with CMMs not included in the Scheme. In addition, the Commission would retain the ability to identify, as necessary, additional obligations to be considered annually or in another specified time period, as provided under paragraph 4 of CMM 2010-03.

*Public domain and non-public domain data*

7. CMM 2010-03 should be clarified so that it is clear to both CCMs and members of the public whether or not the CMRs will be in the public domain at the various stages of the compliance process. This will depend on both (i) the nature of the information contained in the documents, and (ii) the purpose or stage of development of the documents.

8. With respect to the nature of the information contained in the documents: in preparing the Draft CMRs, the Secretariat is required to have regard to a combination of public domain data (such as the information in Part 1 Reports, annual catch estimates, catch and effort data, and data on annual vessel numbers) and non-public domain data (such as the information in Part 2 Reports, observer reports, VMS data, and operational level catch and effort data). The use of both types of data is necessary in the first instance, in order to enable meaningful review of the implementation of a range of obligations (such as catch and effort limits, gear restrictions, and observer and VMS coverage) and identify any areas of potential non-compliance. However, it should not be necessary to include any detailed information from these sources in the Provisional CMR or the final CMR adopted by the Commission.

9. With respect to the purpose or stage of development of the documents: the early stages of the compliance process are intended to enable CCMs to identify and work to address potential implementation issues through the development and review of the Draft CMR and Provisional CMR. Accordingly, it would be appropriate for these documents to be considered as non-public domain documents (since they are a work in progress). In contrast, the final CMR adopted by the Commission is intended to identify a final Compliance Status for each CCM for any particular year, and make recommendations about corrective action needed. Accordingly, it would be appropriate for the final CMR to be considered a public domain document.

10. This should be clearly set out in CMM 2010-03, by replacing paragraph 6 with specific details about what information will be considered public domain and non-public domain data.

*Timeframes for preparing CMRs*

11. The process established in CMM 2010-03 needs to be amended to both (i) provide a more workable timeframe for the preparation and review of Draft CMRs by the Secretariat and CMMs, and (ii) ensure that Draft CMRs are prepared for each CCM on the basis of all available information, even if a Part 2 Annual Report has not been submitted.

12. At present, the deadline for submitting Part 2 Annual Reports is 30 days before TCC (approximately 31 August each year). However, TCC7 recommended that the deadline for submission of Part 2 Annual Reports be moved to 1 July each year which, if approved by the Commission, would provide an additional two months for the preparation and review of Draft CMRs. The timeframes in CMM 2010-03 should be adjusted to reflect this:

- in paragraph 10, the Executive Director should transmit the Draft CMR to each CCM by 28 July each year (giving the Secretariat four weeks to incorporate information from the Part 2 Reports after the submission deadline)
- in paragraph 11, CCMs should reply to the Executive Director by 28 August each year (giving them four weeks to review their Draft CMR and provide additional information, clarifications, explanations of difficulties with respect to implementation and so forth), and
- in paragraph 12, the Executive Director should compile and circulate the full Draft CMR to all CCMs by 12 September each year (giving the Secretariat two weeks to update the Draft CMR, and CCMs roughly three weeks to consider the Draft CMR prior to TCC).

#### *Prioritising the effective participation of SIDS*

13. The need to recognise the special requirements of small island developing States (SIDS) is a key focus of the Scheme. However, some amendments are needed to CMM 2010-03 to ensure that, *in practice*, it actively facilitates the effective participation of SIDS CCMs in compliance processes. In particular, it should ensure that the sub-regional agencies which provide advice and assistance to SIDS CCMs in their engagement with the work of the Commission (the Forum Fisheries Agency, the PNA Office and the Secretariat of the Pacific Community) are able to participate in the processes established under the Scheme. This should include being able to participate in discussions on compliance issues, and having access to all relevant documents.

14. Providing for the full participation of these agencies is important to ensure that adequate support can be provided to effectively assist SIDS CCMs, including with respect to:

- discussions about SIDS CCMs' implementation of and compliance with the CMMs adopted by the Commission
- identifying and solving problems with the drafting or operation of particular CMMs; and
- identifying appropriately targeted assistance to improve SIDS implementation of CMMs (including practical options for providing capacity building and technical assistance).

15. The Commission will also need to give careful consideration to the practical implementation of paragraph 8 of CMM 2010-03 (on engagement and cooperation with developing State CCMs, particularly SIDS) in developing both guidelines for the implementation of the Scheme and responses to non-compliance.

#### Guidelines for the implementation of the Scheme

16. In addition to improving the framework of the Scheme by amending CMM 2010-03, a range of important issues have also been identified for which clear guidelines or procedures should be developed to guide the Secretariat, CMMs, the TCC and the Commission in implementing or giving effect to the Scheme. Issues identified include:

- (i) the **role** of the Secretariat and CCMs in preparing the Draft CMRs: the extent to which the Secretariat should be asked identify potential compliance issues, and how CCM comments should be incorporated into or reflected in Draft and Provisional CMRs
- (ii) the **process** to be followed at TCC: how TCC should review the Draft CMRs and develop the Provisional CMRs, including whether or not the initial work should be done by a Compliance Working Group, and what discussions should be held in plenary
- (iii) the **criteria** to be used to review the Draft CMRs: to develop clear and objective criteria that allow for the Provisional CMRs to distinguish more carefully between different

levels of non-compliance, ensure that the terms used in the Provisional CMRs reflect the idea of implementation not just compliance, and

- (iv) the **format** to be used for the CMRs: in particular, what level of information to include in the Draft, Provisional and Final CMRs, and how to ensure that the Provisional CMRs effectively highlight the most important compliance issues, identify collective implementation issues, develop recommendations to address problematic CMMs and enable SIDS to identify capacity building or other implementation requirements.

17. These issues could be addressed through guidelines or procedures to sit underneath the Scheme, which could be developed inter-sessionally by electronic means through the Compliance with Conservation and Management Measures Working Group.