



TECHNICAL AND COMPLIANCE COMMITTEE
Fourteenth Regular Session
26 September – 2 October 2018
Majuro, Republic of Marshall Islands

REVIEW OF THE WCPFC COMPLIANCE MONITORING SCHEME
Compilation of CMS IWG Comments on the “Draft list of principles document”

WCPFC-TCC14-2018-10D

10 September 2018

Paper prepared by the Secretariat

1. The paper purports to consolidate for ease of reference the comments on the list of principles suggested by the Chair of the Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG) for the CMM for the CMS.
2. WCPFC14 established the Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG) under the chairmanship of Mr Glen Joseph of the Republic of Marshall Islands (WCPFC14 Summary Report, paragraph 461). The tasks of the CMS IWG are to facilitate consideration during 2018 of the Report from the Independent Review of the Compliance Monitoring Scheme (CMS) and develop a proposed CMM for the CMS for consideration at WCPFC15 (2018).
3. In April 2018, noting that IWG participants views seemed to differ on whether the existing CMM could be used as a starting point for developing a CMM for the CMS, the Chair asked IWG participants to provide input into a draft Principles Document as a starting point for the development of a consultative draft CMM for CMS. The list of principles was developed considering the topics in CMM 2017-07 and the issues covered in the comments submitted as an initial response to the Panel’s Report. The list of principles prepared by the Chair was noted to be non-exhaustive.
4. The following table compiles the comments on the proposed list of principles a CMM for the CMS that IWG participants submitted up to **19 June 2018** (left column). Some additions and amendments were suggested by IWG participants to the heading of the document and to the proposed principles (right column) and these are shown in **red**. It is noted that many of the comments were stated to be of a preliminary nature and views may have developed over the last few months. This document should also be read in light of the earlier and subsequent comments that IWG participants have submitted to the CMS IWG. Furthermore, comments were not submitted by all IWG participants and it follows that the absence of a comment should not be interpreted as either agreement or disagreement with a principle. A copy of all IWG comments submitted to date can be found at this link: <https://www.wcpfc.int/cms-iwg>
5. The paper is for information.

COMPILATION OF IWG PARTICIPANTS COMMENTS ON “PRINCIPLES FOR THE PROPOSED CMM ON CMS” (as at 19 June 2018)

DRAFT list of principles {outline} {topics} for the proposed CMM on CMS	<i>Possible references to current CMM for CMS</i>	IWG participants comments
<p><i>General overarching comment, including on heading of table</i></p>		<p>USA:= This document appears to more of a document to help <u>guide</u> the development of a revised CMS measure through the identification of key elements. We have no objection to preparation of that, but do not want to go down the road of trying to develop and agree on “principles”. We want to prioritize development of the updated measure. We suggest “principles” in the table is replaced with “<u>outline</u>”</p> <p>NZ:= We’re happy with the principles document, you’ve covered off the range of considerations required very well. This is a terminology comment, but the list seemed to be more <u>topics</u> [for further discussion] than principles.</p> <p>TW:= As we didn’t fully understand how some of the principles translate into provisions, what we could provide are the initial comments. We’d like to provide more inputs when we have better understanding of the principles. We look forward to learning from you and other members and engaging in further discussions.</p> <p>FFA Sect:= It [the draft principles document] carefully sets out key concepts which we can use as a basis for the measure. Detailed feedback on these principles will be provided following a FFA member meeting scheduled in June.</p> <p>AU:= We have sought to be comprehensive in providing responses and positions related to the principles outlined by the Chair. That said, we note there are some issues that require further discussion by the IWG – in particular, the inclusion or otherwise of considering vessel level infringements in a revised CMS is a complex issue that would warrant IWG discussion.</p>
<p>I. PREAMBLE</p>	<p><i>CMM 2017-07 preamble</i></p>	<p>PNAO:= Should be the last component of any measure as it should reflect the issues that the content is based on and the key principles used.</p>

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<p>II. CMS PURPOSE</p>	<p>CMM 2017-07 para 1</p>	<p>PNAO:= The description of “purpose” of the CMS in the existing measure is largely fit for purpose. The way the CMM has evolved and, more importantly the way that some CCMS have approached the process have not lived up to that description, especially in terms of 1(ii) and (iv).</p> <p>AU:= We suggest that the scope articulated in paragraph 1 is largely appropriate and in line with Convention requirements.</p> <p>ISSF:= <i>current purpose of CMM 2017-07 is solid and should remain</i></p>
<p>III. CMS SCOPE AND APPLICATION</p>	<p>CMM 2017-07 para 2 – 4, 8 – 11, 12 -14, 15 – 21 Annex I</p>	<p>PNAO:= The list of obligations to be assessed requires additional consideration in any future CMS. The list <u>must be prioritised on a risk basis</u>, with the risk of the Commission not meeting its objectives as the primary basis. Refer to comments under XIII about workload.</p> <p>AU:= Retain paragraph 2.</p> <p>Retain paragraphs 3i-3vii. Suggest that these paragraphs could form a basis for developing a hierarchy of importance, which could be linked to severity of responses to non-compliance. Noting that any responses to non-compliance may take place over a three year period (non-compliance occurs in year 1, CMR action in year 2, action implemented in year 3), non-compliance with the most important category should be addressed using more severe responses to non-compliance in the first instance.</p> <p>Suggested categories from most important to lesser:</p> <ul style="list-style-type: none"> Category 1: 3i, 3ii, 3iv Category 2: 3iii, 3v Category 3: 3vi, 3vii <p>Australia considers this is broadly in line with the previous FFA positions articulated in WCPFC11-2014-DP10, which identified exceeding catch and effort limits, provision of operational level data, FAD management measures as priority issues to be addressed by the CMS. This does not preclude a graduated response to persistent non-compliance. Retain paragraphs 8–11, with modification to instruct CCMS to use the WCPFC <i>investigation status report</i> template.</p> <p>Retain paragraphs 12–14.</p> <p>Suggest paragraphs 15–21 can be retained, noting amendments of paragraph 17 could be made in order to facilitate Observer participation during CMR discussions at TCC</p>

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<p>a. BALANCE ACROSS FLEETS AND FISHERIES</p>		<p>USA:= This element should not be part of the CMS measure itself – but rather goes to the overall measures that are adopted by the Commission. We agree with the concept that there should be balance in the measures we adopt, but we do not agree with the inclusion of this as part of the measure.</p> <p>PNAO:= As per the letter from PNA Chair, this is the critical issue for many PNA members. PNA members have worked hard to drive the adoption of many WCPFC CMMs, including by taking bold leading action (VDS and 3IA). The outcome of that seems to have been that it has provided authority for the Commission and other CCMs to delve into national laws and legal processes in fine detail.</p> <p><u>Any future CMS must find better balance by focusing not only on the measures that are in place, but also on the patterns of reporting, compliance and enforcement.</u> The current CMS is excessively focused on the purse seine fishery simply because of the higher standard of monitoring and reporting that results from 100% observer coverage. As a related outcome the current CMS is also excessively focused on compliance in PNA waters where coastal state compliance and enforcement processes already apply rather than on the high seas.</p> <p>This issue is as much about the Commission’s overall approach to longline fisheries as it is about the CMS. The Commission simply must do better at introducing management and monitoring measures for the longline fishery, especially on the high seas.</p> <p>Some flag States already do this, and others have commenced.</p> <p>TW:= We’d like to have more information on how this concept can be addressed in the CMS measure. If involving the review obligations for fleets, this subsection can be incorporated into subsection f {Effective and efficient CMS}</p> <p>AU:= Support changes that ensure that the CMS process is balanced and fair in its treatment of all fleets and fisheries. We note the findings of the review that the CMS places disproportionate focus on the purse seine fishery, due to the higher level of transparency and control on this fishery.</p> <p>In response to this inequality, we suggest that until transparency and control in longline fisheries improves, CCMs reporting on their longline fleets should be asked to provide a higher burden of proof that they are compliant with their obligations.</p>

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		<p>PEW:= We support inclusion of this principle, but see balance being achieved by raising standards of oversight, data collection and management of fleets and fisheries to at least the minimum level achieved by the purse seine fishery, particularly with respect to the in-zone fishery. This requires additional CMMs, such as mandating 100% observer coverage of the longline fishery, that are outside the scope of this CMS. However, this principle in the CMS would set a key aspirational objective for the Commission, and the CMS could identify priority areas for the Commission to address.</p> <p>ISSF:= Agree the CMS must provide a balanced review of all gears, fleets and fishing related activities operating in the WCPFC Convention Area.</p>
<p>b. CCM IMPLEMENTATION AS A FOCUS</p> <p>c. HANDLING INVESTIGATIONS OF VESSEL LEVEL INFRINGEMENTS</p>		<p>PNAO:= This is another of the critical issues for many PNA members. The purpose of the CMS (current) makes it clear that this is about CCM level implementation and not about vessel level compliance. The Review Report provides a useful analysis of this and supports the concept that the CMS should not focus on individual infringements as it does now. Unfortunately, the recommendation to appoint an “FSI Officer” seems to contradict that concept and PNAO does not support it.</p> <p><u>Any future CMS must have a more clearly articulated starting and ending point when it comes to the information used and level of detail to demonstrate compliance or non-compliance.</u></p> <p>Information held by the Secretariat and/or CCMs about vessel level activity is a useful indicator and can be presented in some aggregate form that would allow the Commission to identify any anomalous cases that might deserve attention (if, for example a large proportion of a given fleet were found to be non-compliant with a rule then it would be legitimate for the Commission to question whether the CCM is truly meeting its due diligence obligations).</p> <p>But this cannot, under any circumstance, be allowed to grow into the current process which is far too detailed and time consuming and more importantly, places power in the hands of individuals to question national legal, law enforcement and judicial processes.</p> <p>Refer to comment below in (d) about PNA Compliance Committee</p> <p>NZ:= Please clarify whether it is CCM implementation [of obligations] that is the focus, or whether this was meant to be CMM implementation as a focus?</p>

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		<p>USA:= It is not clear to us what is intended by this item, and we would seek further clarification before we can either support or reject this element. We are generally supportive of continuing to evaluate CCM handling of alleged violations</p> <p>TW:= Although this concept is mentioned in the Report, we do not fully understand its indication at the time of reviewing this list. We may need elaborations to provide further comments.</p> <p>AU:= Australia is generally supportive of the CMS focus on CCM implementation as noted in (II CMS SCOPE) above.</p> <p>However, Australia notes that many of the Commission’s agreed measures create obligations at the vessel level. Further, we note that vessel level infringements—and flag State response to these—provide an important indicator of implementation of CCM obligations. We suggest that this is a key issue for the IWG to work through in developing a new CMS.</p> <p>Hence, Australia reserves its position on inclusion or exclusion of consideration of vessel level infringements, pending IWG discussions.</p> <p>Suggest that reporting on CCM-level implementation should include up to three key indicators:</p> <ul style="list-style-type: none"> i. Statement of implementation (e.g. captured in national law, license condition, etc.) with evidence available on request (copy of relevant provision); and ii. If necessary: Qualitative statement of whether any infringements with the above were noted; and iii. If necessary: Summary of actions taken (e.g. sanctions applied/capacity development actions taken/investigation ongoing). <p>A CMS should not punish those that are implementing but highlight those that need to do more. And also should consider what is needed to ensure consistent and sufficient implementation – definition of problem, clear obligations (range of options that take into account capabilities and cost benefit), education and capacity building, (delayed) implementation via national legislation and policy.</p>

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		<p>We also suggest further work is needed to facilitate availability of previously submitted information. A statement of implementation should only need to be submitted once, with subsequent (years) CMS reporting referring to this implementation report and providing for CCMs to update if necessary. Further work on the Commission IMS to support a revised CMS should seek to facilitate reductions in duplicative/repetitive provision of information, both within and between CMS years.</p> <p>The following comments relating to vessel level infringements and compliance status are provided without prejudice to Australia's final position.</p> <ul style="list-style-type: none"> * Australia considers information provided as part of flag State investigations provides an indicator of whether a flag State has implemented its obligations and can exercise flag State control over its vessels. An assessment that a CCM has not implemented its obligations should not rely solely on whether a CCM has undertaken or completed a FSI. Strongly support consideration of other indicators to inform a Commission decision on whether a country has implemented its obligations (eg national laws, education, deterrence mechanisms (eg effective penalties)). * Australia considers the review of flag state investigations (FSI) on vessel level infractions during TCC to currently be a difficult and time consuming process. While we would prefer discussions at TCC focus on compliance at the flag State/CCM level, we also recognize that FSIs are necessary to assess CCM compliance on certain matters and increase procedural fairness. * Australia would support further work on determining what FSIs are actually discussed during TCC, however we need to further consider whether this should be determined by TCC, or another body (e.g. a friends of the Chair arrangement). * In line with the CMS Review Report paragraph 6.12, Australia supports minimum standards in reporting of FSIs, including further scrutiny of FSIs which do not meet minimum standards. <p>ISSF:= <i>Develop criteria that identifies the highest priority CMMs based on a risk assessment of the impact of non-compliance on meeting the WCPF Convention objectives. For example:</i></p> <ul style="list-style-type: none"> • <i>CMMs with catch or effort limits. Non-compliance with such CMMs would undermine the conservation and management of the resource, which would have impacts on economic development opportunities and food security for coastal States;</i>

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		<ul style="list-style-type: none"> • CMMs with closed areas or prohibitions (e.g., FAD temporal/spatial closures; at-sea transshipment for purse seine vessels; shark finning, retention of certain shark species or whale shark encirclement); • CCMs with specific procedures that are pre-requisites to allowing a particular activity (i.e., at-sea transshipment for longline, troll and other vessels); • CCMs or decisions for data reporting, both for target and non-target species, including observer • coverage requirements. Non-compliance with such CMMs would undermine the ability of the Commission to conduct stock assessments or other analyses, which would increase uncertainties in the scientific advice available to the Commission; and • CMMs that have provisions where differing interpretations are impacting effective implementation of the CMM itself, and therefore could impact the conservation and management of the stock. <p>As the CMS is for assessing CCM implementation of its obligations, it should provide a platform for CCMs to respond to evidence of non-compliance of CMMs, including by vessels flying its flag, and provide information to the Commission regarding its investigation or actions taken as a flag State. Assessing and sanctioning vessel-level non-compliance for serious infringements is more appropriately taken up through other mechanisms, e.g. the IUU Vessel Listing procedures, which would complement a well-designed and effective CMS.</p>

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<p>d. ZONE-BASED MANAGEMENT ARRANGEMENTS</p>		<p>PNAO:= Any future CMS must enhance and not undermine zone based management. <u>In any list of “obligations to be assessed” there should be a distinction between those that are flag State-based (especially on the high seas) and those that are zone-based. Each category needs to be approached differently in recognition of the vastly different rights, opportunities and responsibilities that apply to coastal States and flag States in each respective area.</u></p> <p>PNA has recently (March) established a Compliance Committee as an inwards-looking process to support and enhance the integrity of the VDS and to address other areas of compliance, such as PNA flag State interactions, which are currently borne out in the CMS. PNA members see this as a responsible response to the need to ensure that zone based measures are fully implemented. It is also an important step towards resolving incidents of vessel-level compliance though a bilateral process rather than through the current unwieldy whole-of Commission process. Other CCMs should be encouraged to form or renew bilateral arrangements around cooperation in investigation and resolution of vessel-level incidents.</p> <p>TW:= We’re unsure if zone-based arrangement here suggests collective obligation as in para 4 of current CMS. Our comment is that the collective obligations are difficult to review. To enhance effectiveness of the measure, manageability of the Secretariat and assist capacity building for the CCMs in need, reviews should be based on individual CCMs.</p> <p>USA:= It’s not clear to us what is intended here. If the intent is that the measure should be able to assess zone based arrangements, they we are supportive, but if it is that they would NOT be included as part of the CMS, then we do not support this item.</p> <p>AU:= Australia assumes this is about giving effect to Article 8 in the Convention (compatibility of CMMs). If this is the case, we support ensuring due consideration of high seas arrangements.</p> <p>ISSF: <i>This may be a matter best taken up through the Review of the Part 2 Report. To that end, we suggest that draft Part 2 reports would remain non-public, but the reports presented to TCC would be public (to the greatest extent possible). The reason for this is that when implementation of zone based management arrangements are used to discharge a CCM’s obligations under a WCPFC CMM, information on these arrangements should be transparent.</i></p>

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<p>e. ACCEPTANCE OF NATIONAL LAWS AND JUDICIAL PROCESSES {replace “JUDICIAL PROCESSES” with “SANCTIONS”}</p>		<p>PNAO:= This should be (but is not now) a given. The authority, sovereignty and sovereign rights of Commission members, as reflected in their accession to the Convention, should not be called into question by any CMS.</p> <p><u>This issue should largely be resolved/avoided by removing the current focus on vessel-level interactions and through considerations such as Principle (g) below.</u></p> <p>USA:= Again, here it is not clear to us what the meaning of this item is – so we cannot accept or reject this item until we better understand what is intended. But we want to flag potential concerns.</p> <p>AU:= Sanctions is the word used in the Convention and extends beyond judicial processes. Suggest this wording would be more appropriate as it is consistent with the Convention. Australia is still determining a position on this principle.</p> <p>ISSF: <i>While the CMS should not serve to evaluate a CCM’s national laws and judicial processes, it should have a role in assessing if the response taken by a CCM is “adequate in severity” or constitutes “effective action” in accordance with Article 25 of the Convention. The facilitate this, the CMS could provide for:</i></p> <ol style="list-style-type: none"> <i>1. closer inspection of a CCM’s implementation of particular CMMs, or its response to identified potential infringements, to be triggered based on the number of IUU cases/nominations under the IUU CMM. For example, if there are a number of vessels nominated from a single flag State or numerous ongoing cases of alleged IUU fishing, this may be indicative of either a failure of the flag State to (1) implement its WCPFC obligations or (2) impose penalties of ‘adequate severity’ or take ‘effective action’.</i> <i>2. implementation of a maximum number of successive years of ‘under investigation’ before the CCM is automatically escalated to the second-tier response for that obligation.</i>

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<p>f. EFFECTIVE AND EFFICIENT CMS</p>		<p>PNAO:= A given. Assessing compliance is one of the major functions of TCC, so there should not be difficulty spending time on it. However, the time currently dedicated to the CMS (in TCC and intersessionally) is disproportionate to the value of the outcomes. <u>Any future CMS must find a better balance between cost (resource time and political) of inputs and value of outputs.</u></p> <p>TW:= Support the original text in para 15 and 16, and add the concept that during discussions on the obligations to be reviewed, audit points shall also be considered.</p> <p>AU:= Support improving efficiency and effectiveness of the CMS through:</p> <ul style="list-style-type: none"> i. continuing ongoing process of initial assessment by Secretariat (Compliance Manager); ii. prioritization of obligations considered by CMSWG as follows: <ul style="list-style-type: none"> a. high priority obligations considered by CMSWG; b. lower priority obligations considered by sub-group (maybe a virtual IWG?); c. reporting deadlines taken on Secretariat assessment by exception. iii. Responses to non-compliance formalized (see III - SCOPE AND APPLICATION and X - FOLLOW THROUGH ON COMPLIANCE OUTCOMES). <p>Australia also suggests that the function of the revised CMS, including ongoing implementation of responses to non-compliance, may benefit from direct/formalised links with existing or developing national/sub-regional frameworks. Australia suggests this should be discussed by the IWG.</p> <p>ISSF:= <i>It is important to not only continue to prioritize the obligations to be assessed, but to also clarify why these obligations have been selected – refer above for ISSF ideas. The current CMS CMM requires that successive instances of non-compliance triggers the escalation of the response to the non-compliance. But, it is not clear how these obligations would trigger this response if the obligation was assessed only every two or three years. Moreover, the delayed assessment provides a protracted period during which the non-compliance could continue. One approach may be that for lower prioritized obligations that are only assessed periodically, any non-compliance is automatically escalated to the second-tier response and re-assessed for that CCM the following year.</i></p>

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<p>g. GUIDANCE TO CCMs AND CLEAR AUDIT POINTS</p>		<p>PNAO:= Again, the Review Report provides very useful coverage of this issue and PNAO supports the general outcomes of that analysis. The Commission should do a better job of considering “how will this be assessed” when agreeing to CMMs, and having an agreed set of audit points for each CCM that not only determine how CCMs will be assessed against each obligation, but also why it is important to assess that obligation.</p> <p>Having said that, the simple reality is that CMMs are a product of negotiation and (so far) consensus. Much of the uncertainty in them is a result of these negotiations, including “crafted ambiguity” in some cases to resolve or avoid substantial disagreements. This is important for two reasons:</p> <ul style="list-style-type: none"> • Any future CMS must respect that background. If the Commission can’t reach full agreement on an issue in the negotiation then a CMS process should not simply be the opportunity for CCMs of one view to impose that view on others. • Recommendations like a legal scrub amongst a group of lawyers from different delegations are unlikely to add much value as they will all be bound by the national positions that went into the negotiation. <p><u>This is a very useful topic for discussion amongst the IWG. Having as clear an understanding of what obligations apply to whom, and guidance as to the level of detail required to demonstrate implementation, will be essential to any future CMS.</u></p> <p>TW:= Can be addressed in subsection f {Effective and efficient CMS}.</p> <p>AU:= Support articulating audit points for each CMM for clear reporting of implementing obligations. Australia could support a checklist approach to the development of new measures.</p> <p>Australia seeks IWG and Commission discussion for a longer-term process to develop this, including a process for new measures and for review of existing measures.</p> <p>ISSF: <i>Should also articulate the role and function of the Secretariat.</i></p>

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<p>h. EFFECTIVE CCM PARTICIPATION AND PROCEDURAL FAIRNESS</p>		<p>USA:= We certainly support a process that is procedurally fair, and believe that we have such a process already. We should focus on maintaining (and improving, where necessary) clear, transparent and fair procedures rather than building in a concept of procedural fairness into the measure.</p> <p>PNAO:= Once again, the Review Report examines this in detail and provides some useful guidance, but PNAO, and PNA members, do not accept the conclusion that the current CMS achieves these requirements.</p> <p>Procedural fairness requires that every CCM have adequate and equal opportunity to participate, including knowing exactly what is required of them, what they will need to demonstrate and what parameters other CCMs will operate within to question them.</p> <p><u>If other fundamental principles here are adequately addressed then procedural fairness will follow as a result.</u></p> <p>Once critical aspect of procedural fairness (and outcome fairness) is a review process. In this regard the Review recommendation for a simple process of Chair review at the request of a CCM seems useful.</p> <p>TW:= This concept is related to other subsections and therefore requires further clarification on the content.</p> <p>AU:= Ensure clarity of reporting obligations to ensure fair reporting and assessment for all CCMs.</p> <p>Australia supports an informal right to appeal process, noting the formal process included in Article 31 of the Convention may not be practical for disputes of the CMS. Australia would seek to ensure that any informal review process was in alignment with existing Commission rules regarding transparency.</p> <p>Australia could support an informal appeals process similar to that outlined in Annex G of the review report, however notes Annex G requires modification in order to achieve this purpose.</p> <p>Annex G paragraph f allows CCMs up to 30 days post-TCC to submit a request for review, while paragraph j notes the <i>pCMR will refer to the request for a review, and will not make</i></p>

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		<p>any findings as regards to compliance or non-compliance to the mater in question, pending the review.</p> <p>Australia believes this creates an inconsistency where reviews requested by CCMs prior to the finalization of the pCMR during TCC would be reflected as per paragraph j, while any appeals lodged in the 30 days post-TCC would have a compliance status recorded for the matter.</p> <p>ISSF:= Establish a more rigorous process to report on the status of investigations and actions taken by Members in relation to identified areas of non-compliance from year to year. Suggest that any capacity building / support items be made public and not assessed for compliance with the measure itself, but seek to work with the relevant CCM to develop a plan to address it.</p>
<p>i. ROBUST, MEANINGFUL AND TRANSPARENT EVALUATION OF COMPLIANCE</p>		<p>USA:= For the United States, this is an essential element of our CMS – that it be robust, meaningful and transparent.</p>
<p>j. COLLABORATIVE, QUALITY IMPROVEMENT AND CORRECTIVE ACTION</p> <p>IV. SPECIAL REQUIREMENTS OF DEVELOPING STATES, PARTICULARLY SIDS AND TERRITORIES</p> <div data-bbox="472 1295 667 1377" style="border: 1px solid black; padding: 5px; margin-top: 20px;"> <p>CMM 2017-07 para 21</p> </div>		<p>PNAO:= Throughout its design and subsequent evolution, the intention for the current CMS was that it would encourage such collaboration and cooperative action to improve compliance. PNA and FFA members were at pains to ensure that it should be a process that supports and assists CCMs (especially SIDS) to comply, rather than a simple punitive measure. That has not eventuated to an extent that most PNA members expect. It is rather a combative process where CCMs sit in judgement of each other.</p> <p>The “capacity assistance needed” process was a good faith attempt on the part of the Commission to find a mechanism to deliver against this principle, but it has been largely ineffective. Some CCMs approach the capacity assistance debate with a degree of skepticism and distrust, making the process, and more importantly, the way it is implemented one that actually threatens SIDS rather than supporting them as they are then held to account for achievement against their capacity development plan even though the Commission is not held to account against things like the provision of resources to do so.</p> <p>Any future CMS must incorporate SIDS special requirements, capacity requirements, available resources for capacity building and specific mechanisms for how SIDS will be</p>

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<p>V. TECHNICAL ASSISTANCE & CAPACITY DEVELOPMENT</p>	<div data-bbox="478 505 667 610" style="border: 1px solid black; border-radius: 10px; padding: 5px; width: fit-content; margin-left: auto; margin-right: auto;"> <p><i>CMM 2017-07 para 5 – 7, 12 - 14, Annex I</i></p> </div>	<p>assessed and how those findings will be conveyed. <u>These must be starting points in the design process rather than an “add-on”.</u></p> <p>This is closely related to implementation of CMM 2013-06. If that process is embraced by the Commission and by CMMs, there will be fewer incidents of “capacity-needed” because these considerations will be built into the CMMs themselves.</p> <p>AU:= CMS can identify issues with CMMs/capacity gaps to be addressed in non-CMS processes. Non-compliance should be addressed in formalized responses to non-compliance (see Section X FOLLOWING THROUGH ON COMPLIANCE OUTCOMES).</p> <p>Australia supports recognition of the special requirements of Developing States, especially SIDS and Territories. It is unclear what this means in terms of the CMS and how it intersects with CMM2013-6.</p> <p>We suggest this should be also be considered in broader Commission process when developing/adopting measures (implementing the 13-06 assessment) and in responding to identified capacity needs (including process to develop a Strategic Investment Plan through the SRFWG)</p> <p>Strongly support the CMS process being used as a mechanism for CCMs to highlight capacity gaps and strategies to rectify. , Addressing capacity gaps is not a function of the CMS.</p> <p>Australia notes that all CCMs may experience capacity gaps, and supports retention of the current process that allows CCMs to alert the Commission of the need for technical assistance and capacity development for developing States.</p> <p>PEW: <i>The principles should explicitly reference penalties for non-compliance. Once a CMS is in place, it would be difficult to develop penalties. Establishing them as a principle at the outset is essential. Without penalties, the effectiveness of the CMS in encouraging compliance with conservation measures will be undermined, threatening its validity as a deterrent to bad behavior and the ability of the Commission to achieve its conservation and management goals.</i></p>

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		<p>ISSF: Strongly support the development and adoption of a scheme of responses to non-compliance. We note the previous proposals from Australia in 2010-2012 - together with the ICCAT and CCSBT schemes - provide a solid starting point for discussions at WCPFC Special requirements, should be up front, public (so investments/action can be provided to the State on the issues they've have identified and want assistance on). Issues identified here should not be assessed for that CCM through the CMS, but the progress against a workplan should be tracked so that there is a level of comfort that the issue is being addressed. Technical assistance and capacity development, make as public as possible so that the CCM can attract as much support as possible from a diverse range of donors. Workplan to be developed for the TACP including the support elements so that progress against the identified milestone can be tracked (but not assessed for compliance as such unless the work gets right off the rails) Would be useful to have a single information source summarizing the technical assistance requirements and the programs going on to assist so that there is not duplication of resources and/or effort.</p>
<p>VI. PROCESS PRIOR TO TCC</p> <div data-bbox="464 849 667 930" style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>CMM 2017-07 para 22 - 26</p> </div>		<p>PNAO:= The letter from the PNA Chair included the following:</p> <p><i>Having said that, PNA do not agree with the overarching premise of the recommendations, which is that the current CMS is “fundamentally sound” and “achieves its objectives” and therefore do agree that the current CMM is an adequate starting point for the future of the CMS.</i></p> <p>There is unfortunately a serious omission in the conclusion to this sentence, which should read:</p> <p><i>... and therefore do NOT agree that the current CMM is an adequate starting point for the future of the CMS.</i></p> <p>As such, PNAO views that it is too early to discuss matters of process as this assumes that the overall nature of a future CMS will be the same as the current CMM. The discussion on the fundamental principles should inform the development of a process well.</p> <p>AU:= Although CMM 2017-07 (22) provides guidance to the Secretariat on what information they should use to prepare the dCMR, it may not be necessary to provide such an extensive list of documents.</p>

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		<p>Suggest modification of paragraph 22: <i>Prior to the annual meeting of the TCC, the Executive Director shall prepare a Draft Compliance Monitoring Report (the Draft Report) that consists of individual draft Compliance Monitoring Reports (dCMRs) concerning each CCM and a section concerning collective obligations arising from the Convention or CMMs related to fishing activities managed under the Convention. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations as reflected in paragraph 3 or modified by paragraph 15, as well as any potential compliance issues, where appropriate. Such information shall be sourced from <u>all information available to the Secretariat, including reports submitted by CCMs as required in CMMs and other Commission obligations, such as Parts 1 and 2 of the Annual Reports as well as information available to the Commission through other data collection programs, including but not limited to, high seas transshipment reports, regional observer program data and information, Vessel Monitoring System information, High Seas Boarding and Inspection Scheme reports, and charter notifications; and where appropriate, any additional suitably documented information regarding compliance during the previous calendar year.</u> The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.</i></p> <p>Retain paragraphs 23–26.</p> <p>Australia notes that careful consideration will need to be given to the workload of the WCPFC Secretariat in addressing this in the development of a draft CMR and seek that the IWG seek advice/input from the Secretariat in developing this.</p> <p>ISSF:= <i>Establish minimum information requirements to enable CCMs to be prepared for possible questions at TCC and help address the concern that some CCMs are asked to provide more information at TCC as compared to others (Recommendation 6.5(a)). The Part 2 Report – with the exception of data that clearly meets the WCPFC ISP policy, make the submitted reports public so it can be clearly understood how any CCM has given effect to their obligations.</i></p>

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<p>VII. PROCESS DURING TCC</p>	<p style="border: 1px solid black; padding: 5px; text-align: center;">CMM 2017-07 para 27-31, Annex I</p>	<p>PNAO:= as explained above, PNAO views that it is too early to discuss matters of process as this assumes that the overall nature of a future CMS will be the same as the current CMM. The discussion on the fundamental principles should inform the development of a process well.</p> <p>TW:= Support the practice to restrict pre-notified cases for TCC considerations to those involving observer interference and obstruction. Support discontinuing verbal presentation of supplementary information to address reporting gaps discussed in TCC.</p> <p>AU:= Suggest modification of paragraph 27: <i>TCC shall review the Draft Report and identify any potential compliance issues for each CCM, based on information contained in the dCMRs, as well as any information provided by CCMs in accordance with paragraph 24 of this measure. CCMs may also provide additional <u>written</u> information to TCC with respect to implementation of its obligations.</i></p> <p>ISSF:= <i>The work occurs through TCC (not in separate WG) transparently and inclusively in accordance with Article 21 of the WCPFC Convention. ISSF considers that civil society participation in the CMS will provide a platform for greater accountability, equity and fairness in the process. Further, paragraph 28 of the current CMS allows NGO input on but NGOs are not allowed to engage in the WG at present.</i></p>
<p>VIII. PROCESS FOR DETERMINING COMPLIANCE STATUS AND ENSURING FAIRNESS IN OUTCOME</p>	<p style="border: 1px solid black; padding: 5px; text-align: center;">CMM 2017-07 para 19 – 20, Annex I</p>	<p>TW:= “Process for determining compliance status” can be addressed in Section VI, VII and IX {Process Prior to TCC, Process during TCC and Process between TCC and Annual Commission meeting} “Ensuring fairness in outcome” can be addressed in Section VIII. Regarding the definition of fair outcome, we’d like to learn from other members in this WG.</p> <p>USA:= See comment above – we want to focus on having fair procedures, not building in a “fairness” check.</p> <p>PNAO:= The same comment as above applies to process.</p>

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		<p>AU:= Retain current process.</p> <p>Outcome fairness requires that all CCMs have been assessed to the same degree. It also requires that that the findings are presented in a way that responds to the Purpose of the CMS. At present, despite the potentially positive development of the “capacity-assistance needed” process, PNA members do not feel that there is adequate context given as to the reasons for any non-compliance. <u>Any future CMS must adequately distinguish between different reasons for non-compliance to provide the basis for what actions are needed to address it.</u></p>
<p>IX. PROCESS BETWEEN TCC AND AT ANNUAL COMMISSION MEETING</p> <div data-bbox="468 743 667 857" style="border: 1px solid black; border-radius: 10px; padding: 5px; margin: 10px auto; width: fit-content;"> <p><i>CMM 2017-07 para 32 – 35, Annex I</i></p> </div>		<p>USA:= We agree that we need to make some decisions about how we handle CMS at the annual meeting – e.g., whether we consider additional information and if so, in what kind of session. But it is not clear from this bullet point what direction this is going in, so have provided some edits.</p> <p>TW:= Suggest including a process between TCC and annual meeting to cover CMS process more accurately. Support submitting supplement information regarding individual cases of violation via online case file system</p> <p>PNAO:= The same comment as above applies to process.</p> <p>AU:= Retain paragraph 32. Suggest modification to paragraph 33: <i>Up to 30 days prior to the Commission meeting, where a CCM is able to provide additional <u>written</u> information or <u>written</u> advice that clearly addresses implementation issues identified in the Provisional Report, the CCM may provide the Commission with that additional advice or information.</i></p> <p>ISSF: <i>Final approval only (no further work of the TCC CMS WG).</i></p>

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<p>X. FOLLOW THROUGH ON COMPLIANCE OUTCOMES / RESPONSES TO NON-COMPLIANCE</p>	<p>CMM 2017-07 para 32 – 36, Annex I</p>	<p>USA:= include consideration of “Responses to Non-Compliance”</p> <p>PNAO:= Again, it is a little early to comment on this given the PNAO view that the principles should inform the assessment process, which will then inform the follow-through process. As identified in the Review Report, the lack of “responses to non-compliance” is a serious weakness in the current CMS. The fact that no such framework exists does not reflect the lack of effort that has gone into the matter over a period of years.</p> <p>Ideally, <u>guidance on responses to non-implementation should be built into any future CMS rather than being an “add-on” after the fact as is the current case.</u> This would help to ensure that the measure itself is built to suit the potential outcomes and ramifications.</p> <p>TW:= This concept is related to other subsections and therefore requires further clarification on the content.</p> <p>AU:= It is not clear if this should differ to Section IX above?</p> <p>If this relates to paragraphs 37–39 and Annex I, Australia supports development of graduated responses to non-compliance as a priority for the Commission, including preparation of some responses to be included in the current measure for adoption this year if possible. This would not preclude development of further responses in future years.</p> <p>Australia has previously provided comment on responses to non-compliance, including Australia’s work identified in paragraph 3.17 of the CMS Review Report, and by the FFA in WCPFC11-2014-DP10</p> <p>Australia would also support all future CMMs clearly identifying appropriate responses to non-compliance, where possible (also see III SCOPE AND APPLICATION). We note the clear link between this and clear identification of how obligations will be assessed; Australia suggests that the identification of clear audit points (refer IIIg) will facilitate this.</p> <p>Suggest modification of paragraph 37: <u>taking into account paragraph 3, the Commission shall take a graduated response to CCMS identified as having compliance issues, taking into account the type, severity, degree and cause of the non-compliance in question.</u></p> <p>Suggest modification of paragraph 38: <i>The Commission hereby establishes an intersessional working group to develop a process to complement the CMS that shall identify a range of responses to non-compliance that can be applied by the Commission through</i></p>

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		<p><i>the implementation of the CMS, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs. The intersessional working group shall progress its work electronically to the greatest extent possible and will seek to ensure that all CCMS, particularly SIDS and Participating Territories, have an opportunity to participate. The intersessional working group shall endeavour to develop a process for consideration no later than TCC14/TCC12 and adoption no later than WCPFC15 WCPFC13.</i></p> <p>ISSF:= <i>Establish a more rigorous process to report on the status of investigations and actions taken by Members in relation to identified areas of non-compliance. Although we note that there is partial information made available through paragraphs 8 and 24, and paragraph 36, of the current CMS CMM these provisions should be strengthened to provide for public summary updates of the status reports of investigations (all such information now is not public as the Part 2 reports in their entirety are non-public). Such public summary updates would balance the importance of transparent reporting on the efforts being taken to address noncompliance with a Member’s national regulatory and confidentiality requirements regarding ongoing investigations.</i></p>
<p>XI. APPLICATION AND REVIEW PROCESS FOR CMS</p> <div data-bbox="470 922 667 1003" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p><i>CMM 2017-07 para 40 - 41</i></p> </div>		<p>PNAO:= As mentioned above, such a process is important to ensuring fairness, and the Review recommendations seem useful.</p> <p>TW:= Support a 5-year CMM, with reviews conducted every 3 years.</p> <p>AU:= Australia supports the adoption of a permanent CMS measure. Australia could accept adoption of a 5 year CMS measure, including mid-term and end-term review, but its position is that the Commission needs a permanent mechanism that holds each CCM to account with respect to meeting obligations.</p> <p>PEW:= <i>Predictability and efficiency would be enhanced by specifying the CMS applies without an end date, on a permanent basis, with provisions for external and Commission review at appropriate intervals.</i></p> <p>ISSF:= <i>ISSF agrees with the Panel recommendation that the new or amended CMM be durable for a five-year period with an external review completed in year five only (Recommendation 12.5(b)). This will allow time for the CMS mature in its functioning, and for a body of experience with it to develop</i></p>

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<p>XII. TRANSPARENCY</p>	<div data-bbox="470 358 667 440" style="border: 1px solid black; border-radius: 10px; padding: 5px; width: fit-content; margin: 10px auto;"> <p style="text-align: center;">CMM 2017-07 para 17</p> </div>	<p>PNAO:= Transparency needs to be a consideration in two ways:</p> <ul style="list-style-type: none"> • Transparency between CCMs to achieve mutual assurance and confidence about the true state of implementation. This best advanced by some of the suggestions in the Review Report and covered above about having a <u>single consistent understanding of who needs to implement a given obligation, how it will be assessed and what information a CCM would need to provide to demonstrate implementation. Any such understanding will need to embrace and recognise the legitimacy of the different approaches that CCMs take to implement measures (legislation, subordinate legislation, license conditions, access agreements etc).</u> • External transparency. To be useful, the outcomes of the CMS need to be robust and transparent, but it is important to note the vast difference between using transparency as a tool to achieve an objective, and the application of transparency as an objective in and of itself. Any future CMS must pursue the former. <u>The potential benefits of a transparent system need to be identified so that they can be weighed against risks.</u> There are two dimensions that need to be considered on external transparency: <ul style="list-style-type: none"> ○ Output/outcome transparency – <u>to be achieved by ensuring that any future CMS produces outputs that CCMs are comfortable with being made public (as they are at present), but also that will actually be useful to external stakeholders.</u> This highlights the importance of getting the procedural fairness, and scope principles correct as well as developing agreed responses to non-compliance. That will allow the Commission to produce a final output that cannot be misconstrued and that gives a casual reader an accurate picture of where the problems lie. ○ Process/input transparency – much has been made about the current provisions that preclude registered observers from participating in the TCC and Commission sessions on the CMS report. These are a matter for CCMs to comment on rather than PNAO, however at the level of Principles, we note that none of the submissions or public commentary that we have seen actually presents a case as to <u>what value observation would add to the process or the outcome.</u> That is a matter worth exploring as it relates to the question above about transparency for

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		<p>transparency sake compared to transparency to improve the process and/or outcomes.</p> <p>AU:= Australia notes the importance of reviewing non-public domain data as part of the CMS process and recognises the importance of protecting this data in line with agreed WCPFC policies. Australia also encourages transparency of WCPFC processes, including the CMS.</p> <p>Australia notes that although <i>The Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission</i> provide opportunity for observers to gain access to non-public domain data, these are onerous.</p> <p>Australia suggests that additional provisions could be inserted between paragraphs 17 and 18 in order to facilitate observer participation. These provisions should be consistent with existing WCPFC governance procedures.</p> <p>PEW:= <i>Article 21 of the WCPF Convention</i> The principle of transparency in a proposed CMS should refer to the language of the WCPFC Convention, including Article 21 on the rights of observers to participate in the meetings of the Commission and subsidiary bodies. In addition, the principle of transparency relates to the communication of outcomes. The CMS should result in an output that is easy to comprehend with respect to compliance, non-compliance and the need for capacity assistance. A well-designed CMS should confer benefits on flag and coastal States that are meeting their responsibilities and obligations and should recognize those flag and coastal states in a transparent manner. This would send a clear signal to civil society, industry and market actors relative to where investments and buying decisions should be made, and identify areas in which capacity development assistance can be provided.</p> <p>ISSF:= This paragraph in the current CMS deals with the public or nonpublic nature of the draft and provisional CMR reports. By classifying all of these, and thereby any discussion of them, as non-public, this does not provide for transparency but completely restricts it. The new CMS needs to address the issue of transparency openly and fairly. It is ISSF's preference that the new CMS CMM should not need a specific section on transparency creates a bureaucratic burden on the Sect, observers or CCMs. Rather, providing for transparency should just be addressed by the way the CMS is</p>

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		<p><i>structured and operates in practice, which should be that accredited observers are allowed to participate in meetings of the CMS in accordance with Article 21 of the Convention and under the Commission ROPs. Per earlier comments, if data reported in draft CMRs or Part 2 reports clearly meets the WCPFC ISP classification of NP domain data, then the CMS should articulate that only such data is to be treated under the WCPFC Data ROPs and the remaining data/reports/discussion should remain in the public domain.</i></p>
<p>XIII. ADDRESSING ADMINISTRATIVE BURDEN AND RESOURCE IMPLICATIONS FROM CMS</p> <p>a. FOR CCMs</p> <p>b. FOR THE SECRETARIAT</p>		<p>PNAO:= The need to reduce the burden across the board appears to be one for the few areas of unanimous agreement in the submissions to date.</p> <p>As a general observation, supported by the findings of the Review Report, all participants (CCMs, Secretariat and subsequent TCC Chairs) have made enormous effort to make the current CMS work. The increase in workload that this has required on each of these, as well as the regional/sub-regional organisations that support WCPFC SIDS has been substantial.</p> <p>The Review Report acknowledges this well, but PNAO does not necessarily agree with the recommendations in the report, many of which actually increase the workload (admittedly by sharing it around through additional staff members and processes like Friends of the Chair, small working groups etc).</p> <p><u>Many of the principles above should deliver reduced burden across the board</u>, especially removing the current cumbersome fixation on vessel incidents and flag State investigations. Having clear and common understanding of what is to be assessed (and a smaller list than the current one – even for 2018) and what burden of proof is required will also help significantly, as will removing duplication between Part 1 and 2 Annual Reports, Scientific Data provision, CMM level reports and any future CMS.</p> <p>AU:= Support minimizing submission of data requests [for CCMs]. Where possible, reporting burdens [for CCMs] should be minimized and where information is already available to the Secretariat, this information could be used to prepopulate other reports.</p> <p>Continue to support reasonable and cost effective development of the Commission IMS to support the CMS process [for the Secretariat]</p>

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<p>XIV. OTHERS</p> <p>CMM 2013-06</p>		<p>PNAO:= CMM 2013-06 – This is referenced above in the sense that if the Disproportionate Burden CMM was applied more rigorously before the Commission adopts CMMs, then SIDS implementation issues will not continue to be an issue.</p> <p>Additionally, the IWG should use the elements of the checklist in CMM 2013-06 as principles when designing any future CMS as this will ensure that issues such as capacity to implement, accurate characterisation of capacity needs and identification of support mechanisms will be considered throughout the design process.</p> <p><u>There will be a need for the IWG to formally complete the checklist and the PNAO recommends that this happen regularly</u> as our experience has been that this is what it takes to reformulate proposals in ways that will not result in disproportionate burden or other implementation issues.</p>