



Meeting of the Compliance Monitoring Scheme Intersessional Working Group (CMS IWG)

Majuro, Republic of Marshall Islands
25 September 2018

CONSERVATION AND MANAGEMENT MEASURE FOR COMPLIANCE MONITORING SCHEME

WORKING DOCUMENT

WCPFC-2018-CMSIWG-04_rev1¹

14 September 2018

Prepared by the Secretariat

The Provisional Agenda for the CMS IWG (**CMSIWG-01**) proposes that Agenda item 5 *discussions of the FFA proposal on CMM for CMS* would involve a structured review paragraph by paragraph of the proposal, with priority given to identifying elements of draft proposal that can be agreed or not. {and alternative drafts?}

This document has been prepared as an on-screen working document to support the discussions under Agenda 5.

The left column of the table is the text of the FFA proposal on CMM for CMS (**CMSIWG-03**), and the centre column are summarised comments and draft revisions (shown in red) that have been submitted by CMS IWG participants to date (ISSF, PEW, USA and Japan).

¹ This version has been updated to also include Japan's comments on and draft revisions to the FFA Proposed CMM for CMS (received by the Secretariat on 13 Sept 2018)

**CONSERVATION AND MANAGEMENT MEASURE FOR COMPLIANCE
MONITORING SCHEME**

WORKING DOCUMENT

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<i>The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Commission)</i>		
<i>In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):</i>		
<i>Recalling that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention,</i>		
<i>Noting that, in accordance with Article 25 of the Convention, Members of the Commission have undertaken to enforce the provisions of the Convention and any conservation and management measures adopted by the Commission,</i>		
<i>Noting also that, in accordance with international law, Members, Cooperating Non-Members of the Commission and Participating Territories have responsibilities to exercise effective control over their flagged vessels and with respect to their nationals,</i>		
<i>Acknowledging that Article 24 of the Convention obliges Members of the Commission to take the necessary measures to ensure that fishing vessels flying their flag comply with the provisions of the Convention and the conservation and management measures adopted pursuant thereto, as well as the obligations of chartering States with respect to chartered vessels operating as an integral part of their domestic fleets,</i>		
<i>Noting that, in a responsible, open, transparent and non-discriminatory manner, the Commission should be made aware of any and all available</i>		

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information that may be relevant to the work of the Commission in identifying and holding accountable instances of non-compliance by Members, Cooperating Non-Members and Participating Territories with management measures,		
<i>Recognising</i> the sovereign rights of coastal States, in particular SIDS and territories in the Convention Area, to implement zone-based measures to ensure the sustainable management of fisheries within their Exclusive Economic Zones, including determining how to implement the obligations of the Commission in their national laws and enforcement of those laws,		
<i>Committed</i> to Article 30 of the Convention which requires the Commission to give full recognition to the special requirements of developing States, in particular SIDS and territories, including the provision of financial, technical and capacity development assistance,		
<i>Recognising</i> that smaller island developing States have unique needs which require special attention and consideration in the provision of financial, scientific and technological assistance,		
<i>Committed</i> to the implementation of Conservation and Management Measure 2013-07 to give operational effect to the full recognition of the special requirements of SIDS and territories in the Convention Area, in particular such assistance as may be needed to implement their obligations,		
<i>Further committed</i> to the implementation of Conservation and Management Measure 2013-06 by applying the criteria to determine the nature and extent of the impact of a proposal on SIDS and territories in the Convention Area, in		

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<p>order to ensure that they can meet their obligations, and to ensure that any measure does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories,</p>		
<p><i>Recalling</i> the specific function of TCC under Article 14(1)(b) to monitor and review compliance by CCMs with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary,</p>		
<p><i>Recognising</i> the responsibility of Members, Cooperating Non-Members and Participating Territories to fully and effectively implement the provisions of the Convention and the conservation and management measures adopted by the Commission, and the need to improve such implementation and ensure compliance with these commitments,</p>	<p>Pew: Add a preambular paragraph as follows: <u><i>Committed to Article 21 of the Convention, which requires the Commission to promote transparency in its decision-making, and affords representatives of non-governmental organizations the opportunity to participate in meetings of the Commission and its subsidiary bodies as appropriate.</i></u></p>	
<p><i>Cognisant</i> of the MCS and enforcement framework developed by the Commission, <i>inter alia</i> the 2010-06 <i>Conservation and Management Measure to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing activities in the WCPO</i>, the online Compliance case file system, Article 25 of the Convention, which considers the compliance by individual vessels,</p>		
<p><i>Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:</i></p>		

Section I – Purpose

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>1. The purpose of the WCPFC Compliance Monitoring Scheme (CMS) is to ensure that Members, Cooperating Non-Members and Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission. The purpose of the CMS is not to assess compliance by individual vessels.</p>	<p>USA: Agree subject to the following modification: “The purpose of the CMS <u>is also to assess flag state action in relation to alleged violations by its vessels</u>, not to assess compliance by individual vessels.”</p> <p>ISSF: Agree, but as aggregated vessel level non-compliance may be indicative of poor implementation or enforcement by the CCM, CMS should consider actions taken by flag State and work cohesively with IUU listing.</p>	
<p>2. The CMS is designed to:</p> <ul style="list-style-type: none"> (i) assess CCMs’ compliance with their obligations; (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance; (iii) identify aspects of CMMs which may require refinement or amendment for effective implementation; (iv) respond to non-compliance by CCMs through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other 	<p>ISSF: suggest:</p> <p>2. The CMS is designed to:</p> <ul style="list-style-type: none"> (i) assess CCMs’ compliance with their <u>WCPFC</u> obligations; (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance; (iii) identify aspects of CMMs which may require refinement or amendment for effective implementation; (iv) respond to non-compliance by 	

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<p>Commission obligations;² and</p> <p>(v) monitor and resolve outstanding instances of non-compliance by CCMs with their obligations.</p>	<p>CCMs through <u>with remedial options actions</u> that include a range of possible responses that take account of the reason for and degree of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations; and</p> <p>(v) monitor and resolve outstanding instances of non-compliance by CCMs with their <u>WCPFC</u> obligations.</p> <p>Pew: Suggest:</p> <p>(iv) respond to non-compliance by CCMs through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, <u>and in the case of serious non-compliance, such penalties</u> as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations.</p>	

² In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 37(iv).

Section II – Principles

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>3. The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles:</p> <p>(i) Effectiveness: focus on meeting the purpose of this CMM and these Principles to assess compliance by CCMs;</p> <p>(ii) Efficiency: including avoiding unnecessary administrative burden or costs on CCMs or the Secretariat and removing duplicative reporting obligations; and</p> <p>(iii) Fairness: ensuring that CCMs are:</p> <ul style="list-style-type: none"> • informed and understand their obligations and associated performance expectations; • informed of any potential non-compliance with their obligations; • given reasonable time and opportunity to respond to such potential non-compliance; • adequately represented; • given a fair and unbiased hearing and that any findings are based on evidence; • given the right to review any findings made against them. <p>(iv) Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.</p>	<p>USA: We do not think that the new principles section belongs in a CMM. We do not agree with including this language.</p> <p>ISSF: Has some questions including timing under (iii) and the stage in the process that (iv) is referring to. Suggest that any review might be best take up as part of a scheme of ‘graduated responses to non-compliance’.</p>	

Section III - Scope and application

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>4. The Commission, with the assistance of the Technical and Compliance Committee (TCC) shall evaluate CCMs' compliance with the obligations arising under the Convention and the CMMs adopted by the Commission and identify instances of CCM non-compliance, in accordance with the approach set out in this section.</p>		
<p>5. The CMS shall recognise and shall not prejudice the rights, jurisdiction and duties of coastal States to adopt and enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with that CCM's international obligations.</p>	<p>USA: We do not agree with the changes that have been made to this paragraph from the current measure. If to be included, the original language from para 18 in the current measure needs to be retained.</p> <p>Japan: Suggests: "5. The CMS shall recognise and shall not prejudice the rights, jurisdiction and duties <u>any CCM of coastal States</u> to adopt and enforce..."</p>	
<p>6. Each year, the Commission shall consider what obligations shall be assessed in the following year using a risk-based approach. In making this determination, the Commission shall take into account:</p> <ul style="list-style-type: none"> (i) the needs and priorities of the Commission, including those of its subsidiary bodies; (ii) evidence of high percentages of non-compliance or persistent non-compliance by 	<p>ISSF: May create a burden on the Commission if undertaken annually. Should develop criteria that identifies the highest priority CMMs based on a risk assessment of the impact of non-compliance on</p>	

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>CCMs with specific obligations for multiple years;</p> <p>(iii) the risks associated with fisheries managed by the Commission that are not monitored independently and for which there is limited data; and</p> <p>(iv) the potential risks posed by non-compliance by CCMs with CMMs (or collective obligations arising from CMMs) to achieve the objectives of the Convention or specific measures adopted thereunder.</p>	<p>meeting the WCPF Convention objectives. Not clear how (ii) would be identified.</p> <p>Pew: Annual assessment may be burdensome. A risk-based approach may be beneficial in focusing the CMS process. A minimum list of obligations to be assessed should be specifically named. Regarding (ii), experience with the current CMS should provide guidance in considering which obligations to assess.</p> <p>Japan: Suggests:</p> <p>6. Each year, the Commission shall consider, <u>taking into consideration any recommendations from TCC</u>, what obligations shall be assessed in the following year using a risk-based approach. In making this determination, the Commission shall take into account:</p> <p>(i) the needs and priorities of the Commission, including those of its subsidiary bodies;</p> <p>(ii) evidence of high percentages of</p>	

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
	<p>non-compliance or persistent non-compliance by CCMs with specific obligations for multiple years; <u>and</u></p> <p>(iii) — the risks associated with fisheries managed by the Commission that are not monitored independently and for which there is limited data; and</p> <p><u>(iiiv)</u> the potential risks posed by non-compliance by CCMs with CMMs (or collective obligations arising from CMMs) to achieve the objectives of the Convention or specific measures adopted thereunder.</p>	
<p>7. The Commission shall undertake an annual assessment of compliance by CCMs during the previous calendar year with the priority obligations identified under paragraph 6. Such assessment shall be determined based on two criteria:</p> <p>(i) Implementation – where an obligation applies, the CCM is required to provide evidence that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation; and</p> <p>(ii) Follow through on Compliance Outcomes – the</p>	<p>USA: We cannot agree that the assessment will be based only on the two criteria identified. There needs to be a third element that demonstrates that in the event of noncompliance, the CCM has, in fact, taken effective action.</p> <p>ISSF: Concerned over classifying these and discussion of them, as non-</p>	

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<p>CCM is required to provide evidence that it has a system or procedures to monitor compliance of vessels with these binding measures and to respond to non-compliance.</p>	<p>public, which does not provide for knowledge of how CCMs have implemented and enforced their obligations nor the actions taken to ameliorate any historical issues.</p>	
<p>8. The preparation, distribution and discussion of compliance information pursuant to the CMS shall be in accordance with all relevant rules and procedures relating to the protection and dissemination of, and access to, public and non-public domain data and information compiled by the Commission. In this regard, Draft and Provisional Compliance Monitoring Reports shall constitute non-public domain data, and the Final Compliance Monitoring Report shall constitute public domain data.</p>	<p>ISSF: Recall Recommendation 6e of the Review Panel’s report regarding a phased process for Observers to participate and prefer an approach which treats all stakeholders equitably.</p> <p>Pew: Reiterate importance of addressing observer participation and access to non-public domain data. Suggest replacing second sentence with:</p> <p><u>Contingent on a signed statement in agreement with those rules, non-governmental organization representatives, participating as observers, shall be given the opportunity to participate in discussions of, and be given access to Draft and Provisional</u></p>	

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	<p><u>Compliance Monitoring Reports. Allegations of disclosure of non-public domain data by any participant shall be resolved by ensuring the participant is:</u></p> <ul style="list-style-type: none"> <u>• informed of any potential non-compliance with their obligations;</u> <u>• given a reasonable time and opportunity to respond to such potential compliance;</u> <u>• adequately represented;</u> <u>• given a fair and unbiased hearing and that any findings are based on evidence;</u> <u>• given the right to review any findings made against them.</u> 	

Section IV – Special Requirements of Developing States

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>9. Notwithstanding paragraph 4, where a SIDS or Participating Territory, or Indonesia or the Philippines cannot meet a particular obligation that is being assessed, due to a lack of capacity³, that CCM shall provide a Capacity Development Plan to the Secretariat with their draft Compliance Monitoring Report (dCMR), that:</p> <p style="padding-left: 40px;">(i) clearly identifies and explains</p>	<p>ISSF: “Shall” should be a “may” to allow a choice for SIDS.</p> <p>Capacity Development Plan should be public.</p> <p>Disconnect between timing and para 22.</p>	

³ Any CCM may identify a capacity assistance need through the CMS process; however, the application of paragraphs 9 – 11 is limited to those CCMs identified in the paragraph.

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<p>what is preventing that CCM from meeting that obligation;</p> <p>(ii) identifies the capacity assistance needed to allow that CCM to meet that obligation;</p> <p>(iii) estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary;</p> <p>(iv) sets out an anticipated timeframe in which, if the identified assistance needs are provided, that CCM will be able to meet that obligation.</p>	<p>Items (i) to (iv) may create significant work for small administrations. Consider how to streamline</p>	
<p>10. The CCM may work together with the Secretariat to draft the Capacity Development Plan. This plan shall be attached to that CCM’s comments to the dCMR.</p>	<p>ISSF: May be a need to ensure that this element does not generate a burden at the Secretariat.</p>	
<p>11. Where a capacity assistance need has been identified in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, TCC shall assess that CCM as “Capacity Assistance Needed” for that obligation. TCC shall recommend to the Commission that it allow the Capacity Development Plan to run until the end of the anticipated timeframe and assistance delivery set out therein.</p>	<p>USA & Japan: recommend revising paragraph 11 to read as it does in para 6 of the current measure: “Where <u>TCC recognizes that</u> a capacity assistance need ...”</p> <p>ISSF: Consider a maximum timeframe for the plan, eg 5 years.</p>	
<p>12. That CCM shall report its progress under the Capacity Development Plan every year in its Annual Report Part II. That CCM shall remain assessed as “Capacity Assistance Needed” against that particular obligation until the end of the timeframe in the plan.</p>		
<p>13. Where the Commission is identified in the Capacity Development Plan to assist</p>	<p>ISSF: Unclear how the Commission itself can support the</p>	

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<p>that CCM, the Secretariat shall provide an annual report of such assistance to TCC.</p>	<p>capacity of a State. Consider better framing, eg as WCPFC Members etc.</p> <p>Japan: Suggests:</p> <p>13. Where the Commission is <u>involved identified</u> in the Capacity Development Plan to assist that CCM, the Secretariat shall<u>may</u> provide an annual report of such assistance to TCC <u>on behalf of that CCM.</u></p>	
<p>14. If a CCM notifies the Commission that its capacity needs have been met, the Capacity Development Plan for that obligation shall be deemed completed and the CCM's compliance with that obligation shall then be assessed in accordance with Annex I.</p>	<p>ISSF: Paras 14 and 15 repetitive of para 11. Could incorporate as part of para 11.</p>	
<p>15. Unless the SIDS, Participating Territory, Indonesia or Philippines amends its Capacity Development Plan, once the timeframe in that Plan has passed, that CCM's compliance with that obligation shall be assessed in accordance with Annex I.</p>	<p>USA: there needs to be some element of TCC's review of the proposal to extend the timeframe of the capacity assistance need.</p> <p>Japan: Suggests: "15. Unless <u>TCC agrees that ...</u>"</p> <p>Pew: Consideration should be given to the length of a timeframe, and whether consecutive Capacity Development Plans are allowable, if a first plan has expired.</p>	

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<p>16. The Commission recognises the special requirements of developing State CCMs, particularly SIDS and Participating Territories, and shall seek to actively engage and cooperate with these CCMs and facilitate their effective participation in the implementation of the CMS including by:</p> <ul style="list-style-type: none"> (i) ensuring that inter-governmental sub-regional agencies which provide advice and assistance to these CCMs, are able to participate in the processes established under the CMS, including by attending any working groups as observers and participating in accordance with Rule 36 of the Commission’s Rules of Procedure, and having access to all relevant information, and (ii) providing appropriately targeted assistance to improve implementation of, and compliance with, obligations arising under the Convention and CMMs adopted by the Commission, including through consideration of the options for capacity building and technical assistance. 	<p>ISSF: Suggest that WCPFC reviews the IOTC Compliance Missions Program which has been highly successful in supporting developing States.</p>	

Section V – Prior to TCC

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (USA, ISSF, Pew)	NOTES
<p>17. 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.</p>	<p>Pew: It's unclear how the Draft Reports will inform the discussion within TCC. Although Pew supports the concept of the risk-based approach to identify obligations to be assessed, the contents of the Draft Reports should be clearly linked to the identification of priorities for discussion.</p>	
<p>18. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations as identified under paragraph 6 as well as any potential compliance issues, where appropriate. Such information shall be sourced from reports submitted by CCMs as required in CMMs and other Commission obligations, such as the Annual Report Part II as well as information available to the Commission through other data collection programmes, including but not limited to, high seas transshipment reports, Regional Observer Programme 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.</p>	<p>USA: We do not agree that AR part I reports should no longer be one of the sources of information for the CMS. Recommend adding that back in.</p>	
<p>19. The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.</p>		
<p>20. At least 55 days prior to TCC each year, the Executive Director shall transmit to each CCM its dCMR.</p>		

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<p>21. At the same time, the Executive Director shall transmit to all CCMs a separate document containing aggregated vessel level data across all fleets, drawn from the online compliance case file system, to provide an indicator of potential anomalies in the implementation of the Convention and the CMMs by a CCM, with a view towards identifying implementation challenges. This document shall constitute Non-Public domain data. The presence of potential vessel infringements in such aggregated data shall not be used to influence the compliance assessment of the CCM.</p>	<p>USA: We will need to give this paragraph some additional thought. However, we do not agree with this document replacing the flag state investigation process, which we believe must be reinserted into the measure.</p> <p>Pew: However, if the aggregated data indicates a pattern with respect to the actions taken, or not taken, by the flag State in response to potential vessel infringements, the data should be used in discussions of the State's compliance assessment.</p>	
<p>22. Upon receipt of its dCMR, each CCM may, where appropriate, reply to the Executive Director no later than 28 days prior to TCC each year to:</p> <ul style="list-style-type: none"> (i) provide additional information, clarifications, amendments or corrections to information contained in its dCMR; (ii) identify any particular difficulties with respect to implementation of any obligations; or (iii) identify technical assistance or capacity building needed to assist the CCM with implementation of any obligations. 	<p>ISSF: Cross-reference with para 9 regarding timing.</p>	
<p>23. Relevant CCMs may continue to provide additional information or clarification into the online compliance case</p>		

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file system. Where such additional information or clarification is provided, at least fifteen days in advance of the TCC meeting, the Executive Director shall circulate an updated version of the document referred to under paragraph 21.		
24. To facilitate meeting obligations under paragraphs 22 and 23, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.	<p>Pew: For greater transparency propose adding a sentence as follows:</p> <p><u>Where agreement is reached, the outcome shall be notified to the Executive Director and noted on the flag State’s dCMR.</u></p>	
25. At least fifteen days in advance of the TCC meeting, the Executive Director shall compile and circulate to all CCMs the full Draft Report that will include any potential CCM compliance issues and requirements for further information to assess the relevant CCM’s compliance status, in a form to be agreed to by the Commission, including all information that may be provided under paragraph 22.	<p>ISSF: Also add para 23 together with para 22?</p> <p>Japan suggests:</p> <p>“25. At least fifteen days in advance of the TCC meeting, the Executive Director shall compile and circulate to all CCMs the full Draft Report that will include any potential CCM compliance issues...”</p>	
26. 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 22 of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.		

Section VI – Development of the Provisional Compliance Monitoring Report at TCC

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (USA, ISSF, Pew)	NOTES
<p>27. Taking into account any Capacity Development Plans developed pursuant to paragraphs 9 – 11, any additional information provided by CCMs, and, where appropriate, any additional information provided by non-government organisations or other organisations concerned with matters relevant to the implementation of this Convention, TCC shall develop a Provisional Compliance Monitoring Report (the Provisional Report) that includes a compliance status with respect to all applicable individual obligations as well as recommendations for any corrective action(s) needed by the CCM or action(s) to be taken by the Commission, based on potential compliance issues it has identified in respect of that CCM and using the criteria and considerations for assessing Compliance Status set out in Annex I of this measure.</p>		
<p>28. A CCM shall not block its own compliance assessment if all other CCMs present have concurred with the assessment. If the assessed CCM disagrees with the assessment, its view shall be reflected in the Provisional or Final CMR. Such CCM may also invoke the process set out in Section VII.</p>		
<p>29. Where a CCM has missed a reporting deadline,⁴ but has submitted the required information, this obligation will be accepted by TCC, unless a CCM has a specific concern or if there are updates from the Secretariat based on new information received.</p>	<p>ISSF: Suggest consideration of ‘within a specified timeframe of the deadline’ e.g. 7 days to reduce the risk that some data will not be submitted for years.</p> <p>Pew: The length of the lapse in meeting the reporting deadline should be considered in</p>	

⁴ For the purposes of the Compliance Monitoring Scheme, all reporting deadlines will be based on Universal Time Code (UTC) time unless the CMM establishing the deadline specifies otherwise.

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	accepting the satisfaction of the obligation.	
<p>30. Subject to paragraph 28, a provisional assessment of each CCM's Compliance Status shall be decided by consensus. If every effort to achieve consensus regarding a particular CCM's compliance with an individual obligation has failed, the provisional CMR shall indicate the majority and minority views. A provisional assessment shall reflect the majority view and the minority view shall also be recorded.</p>		
<p>31. The Provisional Report shall also comprise an executive summary including recommendations or observations from TCC regarding:</p> <ul style="list-style-type: none"> (i) identification of any CMMs or obligations that should be reviewed to address implementation or compliance difficulties experienced by CCMs, particularly when TCC has identified ambiguity in the interpretation of or difficulty in monitoring and implementing that measure or obligation, including any specific amendments or improvements that have been identified, (ii) capacity building assistance or other obstacles to implementation identified by CCMs, in particular SIDS and Participating Territories, (iii) risk-based assessment of priority obligations to be assessed in the subsequent year. 		
<p>32. The Provisional Report shall be finalised at TCC and forwarded to the Commission for consideration at the annual meeting.</p>		

Section VII – Process after TCC

[This is taken from the Independent Review Panel’s Final Report and whilst FFA Members agree to the concept, we will need to further consider the details.]

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<p>Where a CCM is of the view that the TCC process has operated in a manner that has been procedurally unfair for it, or that it has produced an outcome that is unfair for it, that CCM may request an informal review of the process or outcome or both. The request shall be communicated to the Executive Director in writing not later than 30 days after the conclusion of the TCC in question.</p> <p>The review will be conducted by the Chair of the Commission between the TCC in which the matter arose and the next Commission annual session. The Chair of the Commission will be assisted by the Vice-Chair and, if the CCM so requests, by two other CCMs one from FFA members and one from other States, who shall be selected by the Chair after consultation with those groups.</p> <p>The review will normally be conducted by way of a written submission by the CCM, or by any individual or organization acting on behalf of the CCM. The Chair will also seek a report on the matter from the Chair of the TCC.</p> <p>If the CCM requests, the CCM will also be given the opportunity to make oral submissions, which may also be made by any individual or organization acting on its behalf.</p> <p>The Provisional Compliance Monitoring Report will refer to the request for a review, and will not make any finding as regards compliance or non-compliance with respect to the matter in question, pending the review.</p> <p>The outcome of the review will be decided by a majority of those conducting the</p>	<p>USA: Like our FFA colleagues, we will also need to give this concept some additional thought before we could agree to its inclusion.</p> <p>ISSF: May want to consider burden this places on the Commission Chair. Any submission must come from/be signed by the CCM itself as they are the party with the obligation under the WCPF Convention, although this does not preclude those groups from assisting in the preparation of the submission. Need to consider cost and burden on SIDS.</p> <p>Japan: Also agrees with the concept. However, it is hard to expect how many of reviews will be conducted and whether it is feasible. For example, if 100 requests are sent to the Chair, it is not manageable. So, Japan proposes to include the sentence</p>	

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
Review, with the Chair having a deciding vote if necessary. The outcome will be communicated to the meeting of the Commission following the TCC in question. The Commission will take the outcome into account in adopting the final Compliance Monitoring Report including its decision regarding compliance or non-compliance with respect to the matter in question.]	such as <u>“this process is conducted a trial for 2 years and then reviewed”</u> .	
	Japan suggests to insert para 33 of current measure as a new paragraph: <u>“XX. Up to 30 days prior to the Commission meeting, a CCM may provide the Commission with additional information or advice that it believes clearly addresses implementation issues identified in the Provisional Report.”</u>	

Section VIII – Process at the Commission

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
33. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.	ISSF: Note, no inclusion of a scheme of responses to non-compliance including any reference to the Review Panels Recommendation 3(a) to commit to a new process to develop and implement a response to non-	

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
	compliance procedure.	
34. Taking into account any reviews undertaken after TCC under Section VII, the Commission shall adopt a final Compliance Monitoring Report.	<p>USA: This depends on the decision on Section VII.</p> <p>Japan suggests: “34. Taking into account any reviews undertaken after TCC under Section VII <u>and/or any additional information or advice provided by CCMs</u>, the Commission shall...”</p>	
35. The final Compliance Monitoring Report shall include a Compliance Status for each CCM against each assessed obligation and any corrective action needed, and also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 30 of this measure.	<p>Pew: What constitutes as ‘corrective action’ should be defined, and as before, Pew is concerned the process lacks identification of penalties to deter serious instances of non-compliance.</p>	
36. Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years.	<p>ISSF: Highlight the need to review the Pt 2 report relating to the nature of the information as truly non-public domain.</p>	

Section IX – Future Work

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
37. The Commission hereby establishes an intersessional working group to develop a multi-year workplan with tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining	<p>USA: We generally agree with this paragraph, but wish to give it additional thought as this</p>	

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>processes. This workplan shall include <i>inter alia</i>:</p> <ul style="list-style-type: none"> (i) a comprehensive review of all the Commission’s reporting requirements, with recommendations to remove duplicative reporting as well as ensure the Commission’s data and information needs are met; (ii) the development of audit points to clarify the Commission obligations assessed under the CMS, as well as the development of a checklist to be used by the proponents of any proposal to include a list of potential audit points for the consideration of the Commission; (iii) the development of a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission; (iv) the development of corrective actions to encourage and incentivise CCMs’ compliance with the Commission’s obligations, where non-compliance is identified. This may include the revision of existing measures and building these actions into future measures; and (v) any other tasks as required by the Commission. 	<p>process continues to develop.</p> <p>Pew: see above regarding meaning of “corrective actions”.</p> <p>Japan suggests: “37. ... (iv) the development of corrective actions to encourage and incentivise CCMs’ compliance with the Commission’s obligations, where non-compliance is identified. This may include <u>the possible requesting each CCM to develop its Action Plan to comply with the Commission’s obligations</u>, the revision of existing measures and building these actions into future measures; <u>(v) the development of the guideline for participation of observers in closed meetings of the Commission and its subsidiary bodies which consider the Compliance Monitoring Report;</u> and (vi) any other tasks as required by the Commission.</p>	

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>38. The Commission shall develop overarching guidelines for the CMS, including operating procedures and systems to guide the work of the Secretariat, consistent with the Principles in this measure. TCC shall consider any workplan and resourcing requirements to facilitate the work of the Secretariat in this regard.</p>	<p>USA: We do not agree with the inclusion of the principles in this measure, but we are open to discussing the development of guidelines for the process. This will need further discussion.</p>	

Section X – Application and review

FFA Proposal (CMSIWG-2018-03)	CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
<p>39. This measure shall be reviewed in 2019.</p>	<p>USA: If we can reach agreement on a revised measure, there should be no time limit on the measure. We can agree that it be reviewed in three years.</p> <p>Japan suggests: “... in 2019 <u>2020</u>.”</p>	
<p>40. This measure will be effective for 2019 only.</p>	<p>USA: As above.</p> <p>ISSF: Need to consider the actions under Section IX in relation to a CMM for one year only. Suggest a longer term measure to enable these additional elements to be developed.</p> <p>Japan suggests: “... for 2019 <u>and 2020</u> only.”</p>	

[Annex I - Compliance Status Table

FFA Members recognise the future work required to develop audit points (as set out above in future work). Further consideration will be needed on the criteria for the transitional period in 2019.

FFA Proposal (CMSIWG-2018-03)			CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
Compliance Status ⁵	Criteria	Response	USA: As noted by FFA, the changes to Annex I reflect future work that is needed, so cannot be adopted as drafted this year.	
<i>Compliant</i>	Compliance with the audit points	None		
<i>Non-Compliant</i>	Failure to meet the audit points	Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report. Actions may include, one or more of the following: <ul style="list-style-type: none"> a. A CCM must address the issue to gain compliance by the next compliance assessment; or b. A CCM shall provide a Status Report to the Secretariat; or 		

⁵ This annex applies to compliance statuses assigned for each individual obligation.

FFA Proposal (CMSIWG-2018-03)			CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
		c. Other response as determined by the Commission.		
Priority Non-Compliant	<p>a. non-compliance with high-risk priority obligations and associated audit points</p> <p>b. repeated non-compliance with an obligation for two or more consecutively assessed years; or</p> <p>c. any other non-compliance identified as Priority Non-Compliant by the Commission.</p>	<p>Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report. Actions may include, one or more of the following:</p> <p>a. A CCM must address the issue to gain compliance by the next compliance assessment;</p> <p>b. Other response as determined by the Commission.</p>		
Capacity Assistance Needed	When a SIDS or Participating Territory or Indonesia or the Philippines cannot meet an obligation that is being assessed due to a lack of capacity, that CCM	(i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to		

FFA Proposal (CMSIWG-2018-03)			CMS-IWG Comments (Japan, USA, ISSF, Pew)	NOTES
	shall provide a Capacity Development Plan to the Secretariat with the dCMR prior to TCC.	become compliant with the obligation, and (ii) report progress against that plan every year in its Annual Report Part II until the end of the timeframe specified in that Plan.		
<i>CMM Review</i>	There is a lack of clarity on the requirements of an obligation.	The Commission shall review that obligation and clarify its requirements.		