

**COMMISSION**

**FIFTEENTH REGULAR SESSION**

Honolulu, Hawaii, USA

10 – 14 December 2018

**REVIEW OF THE WCPFC COMPLIANCE MONITORING SCHEME**

**CMS IWG Working Draft Text – revision 3\_with edits from FFA-US**

**WCPFC15-2018-CMS IWG\_01**

**12 December 2018\_9pm**

Paper by the Chair of the CMS IWG

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

**WORKING DRAFT TEXT – revision 3 with edits from FFA-US**

| **Working Draft** | **Notes** |
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| *The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Commission)* |  |
| *In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):* |  |
| *Recalling* that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention, | Preamble not discussed  Proposed text from the USA, EU and Japan included in this Working Draft |
| *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, |  |
| *Noting also* that, in accordance with international law, Members, Cooperating Non-Members of the Commission and Participating Territories have responsibilities to effectively exercise jurisdiction and control over their flagged vessels and with respect to their nationals, | *USA change* |
| *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, |  |
| *Noting* that, in a responsible, open, transparent and non-discriminatory manner, the Commission should be made aware of any and all available 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, |  |
| **ALT 1** [*Recognising* the ~~sovereign~~ right~~s~~ 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, in accordance with international law including, as reflected in UNCLOS and to determine ~~including determining~~ how to implement their WCPFC ~~the~~ obligations ~~of the Commission~~ in their national laws and enforcement of those laws,] | *US preference*  EU suggested text:  “Recognising the right of all States to engage in fishing on the high seas in accordance of UNCLOS and the obligation of coastal States and other States fishing in high seas to cooperate, either directly or through the appropriate mechanisms in accordance with UNSFA to ensuring conservation and promoting the objective of optimum utilization of highly migratory Stocks in the WCPFC Convention area,  (Preamble on the rights of costal States) …and the requirement/obligation to cooperate with the competent international organizations/WCPFC… |
| **ALT 2** [*Recognising* the sovereign rights of coastal States~~, in particular SIDS and territories in the Convention Area,~~ to implement proper conservation and management ~~zone-based~~ measures within their Exclusive Economic Zones in accordance with international law including, as reflected in UNCLOS 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,] |  |
| **ALT 3** [Noting the commitment of FFA members to implement zone-based management within their exclusive economic zones in accordance with international law including, as reflected in UNCLOS to ensure the sustainable management of fisheries, and to determine how to implement their WCPFC obligations in their national laws and enforce those laws,] | Alternative proposal |
| *Committed* 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~~ which may include] the provision of financial, technical and capacity development assistance, |  |
| [*~~Recognising~~* ~~that smaller island developing States have unique needs which require special attention and consideration in the provision of financial, scientific and technological assistance,~~] |  |
| *Committed* 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, |  |
| *Further committed* 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 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, |  |
| *Recalling* the specific function of TCC under Article 14(1)(b) [of the Convention] 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, |  |
| *Recognising* 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, |  |
| [*Recalling* the recommendation of the second joint meeting of the tuna Regional Fisheries Management Organizations (RFMOs) that all RFMOs should introduce a robust compliance review mechanism by which the compliance record of each Member is examined in depth on a yearly basis,] |  |
| *Cognisant* of the MCS and enforcement framework developed by the Commission, *inter alia* the 2010-06 *Conservation and Management Measure to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing activities in the WCPO*, the online Compliance case file system, Article 25 of the Convention, which considers the compliance by individual vessels, |  |
| *Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:* |  |

**Section I – Purpose**

| **Working Draft** | **Notes** |
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| 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 also to assess flag State action in relation to alleged violations by its vessels, not to assess compliance by individual vessels.] | No agreement.  Further discussion required on issue of compliance by individual vessels.  {linked to paras 7 and 16} |
| 1. [The CMS is designed to:   (i) assess CCMs’ compliance with their WCPFC 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 and/or preventative options that include a range of possible responses that take account of the reason for and degree, the severity, consequences and frequency of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations;[[1]](#footnote-1) and  (v) monitor and resolve outstanding instances of non-compliance by CCMs with their WCPFC obligations.] | Partial agreement.  Revised following tasking group discussions.  No agreement on whether to include reference to penalties.  US – ok  GREEN |

**ALT 1**

**[Section II – Principles]**

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| **Working Draft** | **Notes** |
| 1. [The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles: 2. Effectiveness: focus on meeting the purpose of this CMM and these Principles to assess compliance by CCMs; 3. Efficiency: including avoiding unnecessary administrative burden or costs on CCMs or the Secretariat and removing duplicative reporting obligations; and 4. Fairness: ensuring that CCMs are:  * 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.  1. Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.] | No agreement.  Further discussion required. |

**ALT 2**

**[Section II – ~~Principles~~ Guidelines]**

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| **Working Draft** | **Notes** |
| 1. [The implementation of the CMS and its associated processes shall be conducted ~~in accordance with the following principles~~ to: 2. ~~Effectiveness: focus on~~ Effectively serve ~~meeting~~ the purpose of this CMM ~~and these Principles~~ to assess compliance by CCMs and assist in fulfilling the provisions of Article 25 of the Convention; 3. ~~Efficiency: including avoiding~~ Avoid unnecessary administrative burden or costs on CCMs or the Secretariat and ~~removing~~ assist in identifying duplicative reporting obligations; and 4. Promote ~~F~~fairness, including by~~:~~ ensuring that CCMs are:  * informed ~~and understand~~ of 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~~ able to participate adequately in the process and state their views; * ~~given a fair and unbiased hearing and that any findings are based on evidence~~ engaged in decision-making based on a factual assessment of available information; * given the right to review any ~~findings~~ assessments made ~~against them~~.  1. Promote a supportive, collaborative, and non-adversarial approach where possible, with the aim of ensuring long-term compliance, including considering capacity assistance needs or other responses to non-compliance. ~~Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.~~] | Alternative proposal.  Further discussion required. |

**ALT 3**

**[Section II – Principles ~~Guidelines~~]**

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| **Working Draft** | **Notes** |
| 3. [The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles for the purpose of the application of this measure:   1. Effectiveness: Effectively serve the purpose of this CMM to assess compliance by CCMs and assist the TCC in fulfilling the provisions of ~~Article 25~~ Article 14(1)(b) of the Convention; 2. Efficiency: Avoid unnecessary administrative burden or costs on CCMs, the Commission or the Secretariat and assist TCC in identifying and recommending removal of duplicative reporting obligations; and 3. Fairness: Promote fairness, including by~~:~~ ensuring that CCMs are:  * informed of 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; * able to participate adequately in the process and state their views; * engaged in decision-making based on a factual assessment of available information; * given the right to review any assessments made.  1. Cooperation towards Compliance: Promote a supportive, collaborative, and non-adversarial approach where possible, with the aim of ensuring long-term compliance, including considering capacity assistance needs or other ~~responses to non-compliance~~ quality improvement and corrective action.] | Additional alternative proposal.  ORANGE  FFA is looking at revised language for 3 (iii) |

**Section III - Scope and application**

| **Working Draft** | **Notes** |
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| 1. 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. | No comment |
| 1. [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.] | No agreement.  Tasking group made progress but no agreement reached. |
| **ALT 1:**  5. [The CMS (shall recognise) and shall not prejudice the sovereign rights, jurisdiction and duties of all CCMs, including the sovereign rights 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.] | Alternative proposal  alternative language being considered. |
| 1. [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:   (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 CCMs with specific obligations for multiple years;  (iii) the risks associated with fisheries managed by the Commission that are not monitored independently and for which there is limited data; and  (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.] | No agreement.  Further discussion required including on inclusion of risk based approach to prioritisation. |
| **ALT 1:**  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:  (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 CCMs with specific obligations for multiple years;  ~~(iii) the risks associated with fisheries managed by the Commission that are not monitored independently and for which there is limited data;~~ and  (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.] | Alternative proposal  US – ok  ORANGE |
| 1. [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: 2. 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 3. Follow through on Compliance Outcomes – the 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.] | No agreement.  Further discussion required on the criteria on which to base assessments.  Await FSI |
| **ALT 1:**   1. [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~~on two~~ the following criteria: 2. For a CCM-level quantitative limit or collective CCM quantitative limit, such as a limit on fishing capacity, fishing effort, or catch, verifiable data indicating that the limit has not been exceeded. 3. For other obligations:    1. Implementation – where an obligation applies, the CCM is required to provide [evidence] [information showing] that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation; and    2. ~~Follow through on Compliance Outcomes~~ Monitor and ensure compliance – the CCM is required to provide ~~evidence~~ information showing that it has a system or procedures to monitor compliance of vessels and persons with these binding measures, a system or procedures ~~and~~ to respond to instances of non-compliance and has taken action in the event of potential non-compliance to investigate and respond to any non-compliance.] | Alternative proposal.  Further discussion required on the criteria on which to base assessments.  Some support for (i) |
| 1. 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. | No comment. |

**ALT**

| **Working Draft** | **Notes** |
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| [*WCPFC Online Compliance Case file system*  8 bis. The Secretariat shall maintain the WCPFC online compliance case file system as a secure, searchable system to store, manage and make available information to assist CCMs with tracking alleged violations by their flagged vessels.  8 ter. A flag CCM shall provide updates into the online system on the progress of investigation until its conclusion.  8 quater. CCMs that are relevant to a case shall be allowed to view those cases for vessels flying other flags. Relevant CCMs shall comprise the CCM that notified the case to the flag CCM, and where applicable, the coastal CCM, the ROP observer provider and the chartering CCM.] | Alternative proposal to add reference to online compliance case file system.  Some conforming edits to paragraph 8 may also be needed to reflect that the online compliance case file system contains non-public domain data.  Include para’s on data, tables etc. for TCC. |

**Section IV – Special Requirements of Developing States**

| **Working Draft** | **Notes** |
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| 1. 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 capacity[[2]](#footnote-2), that CCM shall provide a Capacity Development Plan to the Secretariat with their draft Compliance Monitoring Report (dCMR), that:   (i) clearly identifies and explains what is preventing that CCM from meeting that obligation;  (ii)  identifies the capacity assistance needed to allow that CCM to meet that obligation;  (iii)  estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary;  (iv) sets out an anticipated timeframe in which, if the identified assistance needs are provided, that CCM will be able to meet that obligation. | No comment. |
| 1. 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. | No comment.  Issue resolved following tasking group discussion. |
| 1. Where a capacity assistance need has been identified, through the preparation of a Capacity Development Plan, in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, and TCC has confirmed that all of the elements of the Capacity Development Plan as stated in paragraph 9 are included, 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. | Largely agreed.  Revised following tasking group discussion. |
| 1. 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. | No comment. |
| 1. Where the Commission is identified in the Capacity Development Plan to assist that CCM, the Secretariat shall provide an annual report of such assistance to TCC. | No comment.  Issue resolved following tasking group discussion. |
| 1. 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. | No comment. |
| 1. Unless the SIDS, Participating Territory, Indonesia or Philippines amends the Capacity Development Plan that it submitted under paragraph 11 in its dCMR and TCC has confirmed that all the elements of that Plan as stated in paragraph 9 are included, once the timeframe in that original Plan has passed, that CCM’s compliance with that obligation shall be assessed in accordance with Annex I. | Largely agreed.  Revised following tasking group discussions. |
| 1. 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:   (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. | No comment. |

**ALT**

| **Working Draft** | **Notes** |
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|  | No agreement.  Alternative and additional proposal to reintroduce flag state investigation.  Tasking group is also considering a somewhat different, compromise approach whereby CCMs would be assessed separately based on implementation of obligations and their response as flag CCMs to alleged violations by their vessels of those obligations. Alternative text can be provided for this suggestion.  US - Delete ALT 1 US proposal |
| **ALT 2:** [*Investigation Status Report*  16 bis. Where there are alleged violations identified in a CCM’s dCMR, that CCM shall provide an Investigation Status Report (ISR) for each alleged violation to the Secretariat with the dCMR that provides the following information:  (a) Has an investigation been started? (Yes/No)  (b) If yes, what is the current status of the investigation? (Ongoing, Completed)  (c) If the alleged violations stem from an observer report, have you obtained the observer report? (Yes/No)  (d) If no, what steps have you taken to obtain the observer report?  (e) What was the outcome of the investigation? (Closed – no violation; Infraction – not charged; Infraction – charged)  (f) If no violation, provide brief explanation  (g) If infraction, but not charged, provide brief explanation  (h) If infraction charged, how was it charged (e.g., penalty/fine, permit sanction, verbal or written warning, etc.) and level of charged (e.g., penalty amount, length of sanction, etc.)  16 ter. The CCM may work together with the Secretariat to draft the ISR. This report shall be attached to that CCM’s comments to the dCMR.  16 quater. Where an investigation has been notified as ongoing, through the preparation of an ISR, and all of the elements of the ISR as stated in paragraph 16bis are included, TCC shall assess that CCM as “Flag State Investigation” for that investigation.  16 quinquies. Where an investigation has been notified as completed, through the preparation of an ISR, and all the elements of the ISR as stated in paragraph 16bis are included, TCC shall assess that CCM as “Compliant”[or “Completed”?] for that investigation.  16 sexies. When an investigation has not been started or all elements of the ISR as stated in paragraph 16bis have not been included, TCC shall assess that CCM as “Non-Compliant” for that investigation.  16 septies. The assessments in paragraphs 16quater – 16sexies will be taken without discussion unless a CCM has a specific concern or if there are updates from the Secretariat based on new information received.  16 octies. Where an investigation has been ongoing for two years, that CCM shall report to TCC annually on the status of the investigation and steps it has taken to progress the investigation, and based on that report, the TCC may reconsider the CCM’s assessment status.] | Alternative version of proposal to reintroduce flag state investigation.  {Some conforming edits and introductory language may also be needed.} |

**Section V – Prior to TCC**

| **Working Draft** | **Notes** |
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| 1. 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. | No comment. |
| 1. 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:   i information available to the Commission through 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;  ii information contained in an Annual Report which is not available through other means; and  iii where appropriate, any additional suitably documented information regarding compliance during the previous calendar year. | Agreement.  Revised following tasking group discussions. |
| 1. The Draft Report shall present all available information relating to each CCM’s implementation of obligations for compliance review by TCC. | No comment. |
| 1. At least 55 days prior to TCC each year, the Executive Director shall transmit to each CCM its dCMR. | No comment. |
| 1. [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.] | No agreement.  Further discussion required in light of alternative para 7 and 16 language.  US – two tables for TCC one as NPD and one for fCMR. |
| **ALT 1:**  21. [At the same time, the Executive Director shall draw from the online case file system and transmit to:  (i) each flag CCM, the infringement identification relating to alleged violations by its flagged vessels for that CCM’s own use to commence or progress an investigation on the online system. Relevant CCMs shall also be provided this same information; and  (ii) all CCMs, aggregated vessel level information across all fleets. This will be used to provide an indicator of potential anomalies in the implementation of obligations by a CCM, with a view towards identifying challenges for that CCM and providing targeted assistance. This information shall be considered by TCC alongside the Draft Compliance Monitoring Report.] | Alternative proposal that refers to online compliance case file system and trial summary tables of flag CCM responses to alleged infringements that were prepared by the Secretariat in 2018 (ii).  {For (i) the Secretariat confirms each CCM can export the relevant cases from online system, using a new “print view”} |
| 1. 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:   (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. | No comment. |
| 1. Relevant CCMs may continue to provide additional information or clarification into the online compliance case 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. | No comment. |
| 1. To facilitate meeting obligations under paragraphs 22 and 23, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged. | No comment. |
| 1. 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 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 23. | Agreement.  Revised following tasking group discussions.  Cross-reference corrected. |
| 1. 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. | No comment. |

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

| **Working Draft** | **Notes** |
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| 1. 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. | No comment.  {Note cross reference.} |
| 1. 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. | Agreement.  Revised following tasking group discussions to place previous para 28 before other paragraphs and make consequential changes. |
| 1. Notwithstanding paragraph 28 above, 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. [.] | Partial agreement.  Further discussion required on final sentence and Section VII.  FFA – deleted last sentence refer to para.33. |
| 1. Where a CCM has missed a reporting deadline,[[3]](#footnote-3) 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. | No comment. |
| 1. [The Provisional Report shall also comprise an executive summary including recommendations or observations from TCC regarding:   (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.] | No agreement.  Further discussion required including on risk based assessment. |
| 1. [The Provisional Report shall be finalised at TCC and forwarded to the Commission for consideration at the annual meeting.] | No agreement.  Further discussion required regarding whether information is to be provided between TCC and Commission.  {Note link to paras 33 and 34.} |

**[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.*

| **Working Draft** | **Notes** |
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| 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.  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.    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.  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.  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.  The outcome of the review will be decided by a majority of those conducting the 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.] | No agreement.  Further discussion required on any appeal mechanism and its details.  EU – proposal to retain additional info post-TCC  FFA-US proposal to remove ‘process after TCC’ |

**[ALT: Section VII – Process after TCC**

| **Working Draft** | **Notes** |
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| 32 bis. Where a CCM is of the view that its compliance assessment for a specific obligation at TCC was undertaken in a manner that has been procedurally unfair, that CCM may request a review of the process.  32 ter. The request for a review shall be communicated to the Executive Director as a written submission not later than 7 days after the conclusion of the relevant TCC meeting. The Executive Director shall promptly forward the request to the reviewers.  32 quater. The reviewers shall comprise the Chair of the Commission, the Vice-Chair and the Legal Advisor. The review shall be completed within 14 days after the reviewers’ receipt of the requests (“review period”). The Commission Chair shall also seek a report on the matter from the TCC Chair.  32 quinquies. If the CCM requests, the CCM shall also be given the opportunity to make oral submissions. Such oral submissions shall be made not later than 7 days after the commencement of the review period. Any related costs shall be borne by that CCM.  32 sexies. The outcome of the review shall be decided by a majority of the reviewers. If the reviewers find that TCC followed the process, a recommendation shall be made to the Commission to maintain TCC’s recommendation. If the reviewers find that the process was not followed, the matter shall be suspended and returned to TCC for further consideration. The outcome of the review shall be communicated to the next annual session of the Commission. The Commission shall take the outcome into account in adopting the final Compliance Monitoring Report.] | Alternative proposal for review process post-TCC |

**Section VIII – Process at the Commission**

| **Working Draft** | **Notes** |
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| 1. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC, as well as any submission from a CCM indicating that its compliance assessment for a specific obligation at TCC was undertaken in a manner that has been procedurally unfair. | No comment.  FFA-US streamlined approach for ‘procedural review’ process post-TCC.  This is NOT a disputes settlement process. |
| 1. [Taking into account any reviews undertaken after TCC under Section VII,] the Commission shall adopt a final Compliance Monitoring Report. | No agreement.  Further discussion required on Section VII. |
| 1. 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 31 of this measure. | No comment. |
| 1. 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. | No comment. |

**Section IX – Future Work**

| **Working Draft** | **Notes** |
| --- | --- |
| 1. [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 processes.  This workplan shall include *inter alia*:   (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.] | No agreement.  Further discussion required, including on details of the work plan and its placement. |
| **ALT 1:**  37. [The Commission hereby [~~establishes an intersessional working group~~] commits to [~~develop~~] a multi-year workplan of [~~with~~] tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining processes.  This workplan shall include *inter alia*:  *During 2019*  (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;  *During 2019 - 2020*  (iii)  the development of a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission;  *During 2020-2021*  (iv) the development of corrective actions to encourage and incentivise CCMs’ compliance with the Commission’s obligations, where non-compliance is identified.  (v) the development of the guidelines for participation of observers in closed meetings of the Commission and its subsidiary bodies which consider the Compliance Monitoring Report.  ] | Alternative draft  Further discussion required, including on details of the work plan and its placement.  {Note WCPFC15-2018-DP11\_rev1 contains in Attachment 2 proposed terms of reference for items (i), (ii) and (iii). Item (i) is tasked to the Secretariat, item (ii) and (iii) are tasked to be completed through consultancy}. |
| 1. [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.] | No agreement.  Further discussion required.  {Note link to para 3}. |

**Section X – Application and review**

| **Working Draft** | **Notes** |
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| 1. [This measure shall be reviewed in 2020.] | No agreement.  Further discussion required on term of measure and review period. |
| 1. [This measure will be effective for 2019 only.] | No agreement.  Further discussion required on term of measure and review period. |

**[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.*

| **Working Draft** | **Notes** |
| --- | --- |
| | **Compliance Status[[4]](#footnote-4)** | **[Criteria in 2019]**  **[Interim criteria]** | **Criteria [once the audit points are developed]** | **Response** | | --- | --- | --- | --- | | ***Compliant*** | A CCM will be deemed ***Compliant*** with an obligation if the following criteria have all been met:  a. reporting or submission deadlines;  b. implementation of obligations through national laws or regulations;  c. submission of all mandatory information or data required, in the agreed format, as applicable. | Compliance with the audit points | None | | ***Non-Compliant*** | A CCM will be deemed ***Non-Compliant*** with an obligation if any of the following have occurred, as applicable:  a. a CCM has failed to comply with an obligation not specifically identified as ***Priority Non-Compliant***;  b. information or data for the obligation has been submitted or reported in a way that is incomplete, incorrect, or wrongly formatted; or  c. a CCM has failed to meet reporting or submission deadlines. | 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:  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  c. Other response as determined by the Commission. | | ***Priority Non-Compliant*** | A CCM will be deemed ***Priority Non-Compliant*** with an obligation if any of the following have occurred, as applicable:  a. exceeded quantitative limit established by the Commission;  b. failure to submit its Part 2 Annual Report;  c. repeated non-compliance with an obligation for two or more consecutively assessed years; or  d. any other non-compliance identified as Priority Non-Compliance by the Commission. | 1. non-compliance with high-risk priority obligations and associated audit points   b. repeated non-compliance with an obligation for two or more consecutively assessed years; or  c. any other non-compliance identified as Priority Non-Compliant by the Commission. | 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:  a. A CCM must address the issue to gain compliance by the next compliance assessment;  b. Other response as determined by the Commission. | | ***Capacity Assistance Needed*** | A SIDS or Participating Territory or Indonesia or the Philippines will be deemed ***Capacity Assistance Needed*** where they cannot meet an obligation and the following have occurred:  a. that CCM has provided a Capcity Development Plan to the Secretariat with its dCMR prior to TCC; and  b. TCC confirms that all the elements of paragraph 9 are included in that Plan. | 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 shall provide a Capacity Development Plan to the Secretariat with the dCMR prior to TCC. | (i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to 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. | | ***CMM Review*** | There is a lack of clarity on the requirements of an obligation. | There is a lack of clarity on the requirements of an obligation. | The Commission shall review that obligation and clarify its requirements.] | | No agreement.  Further discussion required.  {Note link to draft text}  New Column “Criteria in 2019” is intended to recognise that future work is required to develop audit points, and interim criteria will be needed.  US – missing ““any alleged violations have been investigated and resolved in accordance with relevant Articles of the Convention” |

1. 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). [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)
4. This annex applies to compliance statuses assigned for each individual obligation. [↑](#footnote-ref-4)