**5.5 Consider and provide recommendations on terms of an independent audit or review of the CMS (WCPFC 12 para 696; CMM 2015-07 para 40)**

114. The Executive Director noted that CMM 2015-07 para. 40 on the CMS provided that the measure shall be reviewed in 2017, with the terms of reference for the review to be determined by TCC12. WCPFC12 had provided guidance about how the review would be undertaken — by an independent panel chosen by Executive Director in consultation with members — but offered no guidance on the scope of the review. WCPFC-TCC12-2016-11 was prepared to assist TCC12 in developing the terms of reference. The Executive Director noted that a review of the scheme should consider whether the scheme has achieved its purpose; it might also include efficiency and effectiveness. The paper contained, in Annex 1, a possible template for the terms of reference, and included some questions to assist facilitate discussions among CCMs. The paper also suggested a possible process for appointing a panel, and possible costs, which would depend on how many members were on the panel and the scope of their work. The Executive Director noted that TCC needed to finalise terms of reference at TCC12, and invited a general discussion and work in the margins to develop it.

115. The TCC Chair observed that the first questions for the group related to when the review should take place and what its scope should be.

116. EU argued that the review should not relate to the measure, which is rather transient, but the CMS scheme and opined that the question should be whether it meets the purposes of compliance and enforcement as per Article 25 of the Convention. It could look at the CMM, but the CMM is only in place to put the Convention into effect. It should also look at its impact: whether compliance has improved. This CCM opined that this was not captured well in the draft terms of reference.

117. FFA members recommended that the audit consider the implementation and operation of CMM 2015-07 and CMS measures since 2010, the most appropriate duration for any new CMS measure, the efficacy of the current CMS, taking into account high IUU risk areas including high seas monitoring and control, and the effectiveness of responses to implementation capacity constraints in developing country CCMs.

118. USA supported the EU and FFA position to focus on the CMS and how it served the objectives of the Convention, and strongly saw value in looking across the six years. The TCC Chair agreed that it would be appropriate to look further back than the current measure.

119. China was hesitant to support an independent panel at this stage. If TCC recommended an independent panel, China sought clarification on what the relationship between the work of the panel and TCC would be, including for the Secretariat. This CCM sought clarification about the cost of establishing the independent panel and observed that TCC reviews obligations CCM by CCM, during which there are opportunities for learning and improvement, an opportunity an independent panel would lack.

120. The Executive Director observed that the Commission had already decided that the review should be undertaken by an independent panel, and confirmed that there would be cost implications. These would be better understood once the terms of reference were defined. The task would need to be approved by FAC and the Commission. The terms of reference would define the role of the TCC in the review including whether the review would be considered by TCC before being presented to the Commission.

121. FFA members supported the paper’s suggestion that the panel be determined by nomination and ranking by CCMs, followed by a final selection by the Executive Director. In choosing the panel, FFA members urged CCMs and the Secretariat to ensure the panel members have a detailed understanding of SIDS, particularly with respect to issues with compliance.

122. New Zealand expressed a preference to retain a sense of the CMM’s specific purpose in the general question, observing that the purpose in Section I of the measure in recent years captures it well.

123. Australia suggested there was a question of broad scope to be considered – whether it was a review of compliance with the Commission’s various measures or, more narrowly, the mechanism of the scheme itself. If it was going to conduct a broader review of compliance, it should look at the effectiveness of the CMM as distinct from individual members’ compliance.

124. FSM agreed with Australia’s view, observing that there is another process regarding CMMs the Commission has issues with. Consideration of those issues could go in tandem with the audit.

125. The TCC Chair turned to the specific questions suggested in the draft terms of reference that the panel might be asked to explore, observing that the Secretariat would take comments and provide a revised terms of reference to the Commission.

126. Regarding b) (“How effective are the CMS procedures, and in particular how user-friendly are the CMS online reporting systems?”) and e) (“What refinements should be made to the CMS to improve its efficiency and effectiveness?”) in the draft terms of reference, Korea considered it would be useful to include some best practices and improvements of other RFMOs, noting it would be beneficial if the independent experts had experience with compliance regimes in other RFMOs.

127. EU thought the specific questions listed captured the main elements of what good MCS should look like. However, there were no details about the selection process, nor was there a methodology in the terms of reference. This CCM asked whether the intention was to go out for tender or pick three people. Questions around how long it would take, how much it would cost, whether they would come to Pohnpei, interview CCMs, travel to meetings or CCMs, whether the experts would all be based in the same place, and cost per day were not included. The terms of reference needed to include this methodology so applicants would know what they would be expected to do. EU opined that consultants would expect to bring a team with them, and it would be a burdensome to scrutinise each member. TCC should decide whether it wanted the ‘Full Monty’ or to focus on the practical process. With that decision made, the questions would be easier to determine.

128. The TCC Chair acknowledged it would be difficult to nail down the scope during discussions in plenary. She noted the input, which the Secretariat would use to craft a way forward, and observed that changes may be made to the questions as they would follow the scope, once determined. The TCC Chair asked for comments about the timing of the review, noting it made sense to look at the history of the CMS process, so the specific timing of the review may not be as critical as if the review looked at one particular measure.

129. FFA members stated a preference for the selection of the panel in early 2017, with the review commencing shortly afterwards, so it could consider the full implementation period of CMM 2015-07 and observe the 2017 CMS process, with the final report delivered around March 2018. This would give CCMs much of 2018 to review it. These CCMs noted that the review would valuable when considering a new CMS measure. This schedule would also allow the panel to determine the scheme’s current effectiveness in identifying CCMs’ capacity needs. FFA members recommended that the panel observe the TCC process, including engaging with the Secretariat prior to the TCC meeting, and suggested that it conduct at least one SIDS in-country consultation, to observe the CMS process from a SIDS perspective. FSM volunteered for that.

130. USA was flexible around timing but agreed it was important that the panel be able to review a full year of implementation. It was noted that the task would require FAC review when the Commission meets in December and the size of the request would depend on the scope. This CCM noted that proposals that include an indicative budget assisted FAC. Depending when the review is done, USA noted it might be considering a future CMM as a new one will be needed once the current measure expires. A report in 2018 would have value but it may focus on a process that is obsolete or at least changed.

131. China asked about the basis for appointing an independent panel for the review, noting that the Secretariat was independent. This CCM stated that if the Commission had decided it had to be an independent panel, it could go along with that decision, but the language in the report was not specific.

132. The Compliance Manager clarified that the basis for considering an independent panel was para. 696 of the WCPFC12 Summary Report: “Subject to the recommendations from TCC12 (CMM 2015-07, para 40) a review of the CMS will be conducted by an independent panel selected by the Executive Director in consultation with Members at the end of 2017.”

133. China expressed the view that para. 696 of the WCPFC12 Summary Report was not a Commission decision. This CCM opined that the Commission adopted CMM 2014-07 but para. 696 was an intention rather than a decision, and China reserved the right to come back to WCPFC13 on this issue.

134. The Executive Director recalled the Commission decision to have an independent panel appointed to review the scheme, noting that the text of the decision allows TCC to recommend how the panel is constituted. In the absence of a direction from TCC, the independent panel would be appointed by the Executive Director in consultation with members. The Executive Director noted the discussions.

135. Australia was interested in the panel looking at whether the CMR mechanism was the most effective way to measure compliance.

136. Several CCMs offered some guidance on activities in other RFMOs: SPRFMO had not yet conducted a review as it was a new RFMO, though its compliance process was similar to WCPFC’s and had been modelled off WCPFC; no review has been conducted in IATTC beyond performance reviews; the IATTC compliance process was not as complex and thorough as that undertaken by WCPFC; CCSBT conducts quality assurance reviews around the compliance systems in member countries; IOTC has a less rigorous process. It was noted that: schemes are fit for different purposes; CCSBT and WCPFC were different fisheries; and the IOTC and IATTC compliance process is open to observers.

137. The TCC Chair noted the valuable feedback on the scope and the terms of reference, which gave a good sense of CCMs’ preferences, and welcomed further comments to the Secretariat.

138. Japan asked for a later deadline, due to October being busy with international meetings. The TCC Chair set a deadline of 21 October, on the understanding that if Japan gets its comments in a little late the Secretariat will still try to consider them.

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| 139. TCC12 agreed that interested CCMs should provide the Secretariat with any additional comments on the draft terms of reference (WCPFC-TCC12-2016-11) by 21 October 2016, and the Secretariat will prepare a revised terms of reference for consideration at WCPFC13. |