

US Comments on the Draft Terms of Reference for the Independent Review of the WCPFC Compliance Monitoring Scheme

The United States wants first to thank the Secretariat for taking on the task of preparing a draft of the Terms of Reference for the WCPFC Compliance Monitoring Scheme (CMS), as well as continuing to lead this effort in advance of WCPFC13. We provide the following comments in an effort to help progress this task in a productive manner.

Scope of the Review

- The United States believes that the review should look back at the full history of the WCPFC CMS, rather than at only a single year snapshot. In evaluating the overall effectiveness of the CMS, it is important to see what progress has, and has not, been made in CCMs' implementation, monitoring and enforcement of our obligations.
- We also believe that the review should look to how effectively the CMS and the Commission are achieving the overall purposes of the CMS as described in the five subparagraphs included in paragraph 1 of the measure:
 - (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 conservation and management measures which may require refinement or amendment for effective implementation;
 - (iv) respond to non-compliance through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, and include cooperative capacity-building initiatives and, in case of serious non-compliance, such penalties and other actions as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations; and
 - (v) monitor and resolve outstanding instances of non-compliance.¹

This would make the review more consistent with what was expressed by the FFA in the delegation paper that originally called for the review (Noting that the review was needed to “take stock of where we stand in terms of its effectiveness and where efficiency gains can be made in meeting the CMS’ objectives.”)

Specific Questions to be answered

- We note that once the scope of the review is decided, the specific questions to be asked will need to be adapted to reflect that scope. However, we are generally supportive of the questions suggested. We may have specific edits/comments/additions once the question of scope has been resolved.

¹ These five subparagraphs are unchanged from the original measure with the sole exception of the insertion of the words “and other Commission obligations” added to the end of subparagraph (iv) to capture obligations that stem from the Convention or scientific data provision obligations.

- We note that the questions are framed with a slight negative bent and as a result may not capture some of the benefits and positive aspects of the WCPFC CMS. Furthermore, we have some concern that the questions as currently framed will result in a report that focuses almost entirely on the costs, resources and burden of the WCPFC CMS without a clear recognition of the importance of the goals it seeks to achieve. The United States believes that a comprehensive, effective, meaningful and transparent CMS is an essential element of an effective Commission, although it brings with it some burdens, including demands on resources. In our view, the goal of this review is to improve how we undertake this work, not to decide whether to undertake this work.

Scheduling

- We strongly prefer that the review be timed so as to minimize interference with or burden to the work of the Secretariat, recognizing that the preparation of the dCMR is already a very large burden on the Secretariat.
- We also note that there are potentially significant financial implications of such a review that must be considered by the FAC. This may also impact the timing of the review.

Composition of the Independent Panel

- We support the selection, by the Executive Director, of an independent panel composed of three independent experts on compliance monitoring schemes. We would envision that CCMs would have an opportunity to provide suggestions for the panel of experts and that the panel would be comprised of a balanced membership to reflect the different perspectives of CCMs.