



**The Commission for the Conservation and Management of  
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**REVIEW OF THE COMMISSION'S  
COMPLIANCE MONITORING SCHEME (Rev.1\*)**

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March 2018

\* 19 March 2018. Revised to include an Executive Summary which was inadvertently omitted from the first version.

## EXECUTIVE SUMMARY

1. Compliance monitoring systems to ensure that States implement their international obligations are found across a range of International Conventions. The WCPFC Compliance and Monitoring Scheme (CMS) is not unique, nor are the CMS's of other RFMOS.
2. Common to the RFMO CMS's is a three-stage process, under which CCMs initially provide compliance information to the Secretariat, the Secretariat then reviews the information and responds, and the information is subsequently reviewed and assessed in a meeting of Parties (in the case of the WCPFC, it is the Technical and Compliance Committee (or TCC)).
3. What is particularly striking about WCPFC, though, is the particularly large number of obligations (or "audit points") that CCMs are assessed against often annually, which are generated by 47 Conservation Measures, for 37 CCMs in relation to potentially 4,500 vessels.
4. The large number of obligations being assessed against, and the huge volume of material both required and supplied, places considerable burdens on CCMs, many of which have quite small administrations. Often, effective participation by States is dependent upon a few key personnel who have other demanding responsibilities as well. The system itself is dependent upon the dedication and commitment of key Secretariat personnel to make it work. This raises many concerns and issues, not least that of "key person risk".
5. The Review Panel has therefore seen one of its important objectives as making the CMS more manageable, as well as more effective and efficient, for CCM personnel participating in it.
6. In the view of the Panel, the current system is fundamentally sound, and achieves its overall objectives, as well as stacking up well against other compliance monitoring systems, including those of other RFMOs. It is robust and comprehensive. It appears to be having positive effects upon overall compliance. However due to its comprehensive nature and its (still increasing) size and scope, as well as the demands it places on participants, it is at risk of collapsing under its own weight unless those demands can be reduced.
7. The Panel has therefore identified several recommendations to make the system less onerous for CCMs and the Secretariat.
8. These include making it easier for CCMs at the initial information-providing stage, including inputting information into the online CMS Information Management System (IMS) which itself sets an international standard in this area. These recommendations include removing the need to provide duplicative and unnecessary information, and ways to make information requirements more manageable overall.
9. The Panel also considers it essential to reduce the volume of material that is considered by the TCC, a meeting of all of the Parties that spans seven days and also deals with other matters additional to the CMS. It seems to the Panel that participants in the TCC are often overwhelmed by the volume of minutiae it deals with, particularly at the level of individual

vessel infractions, and the TCC then lacks the time to get to grips with the bigger picture, including systemic non-compliance issues.

10. The Panel is recommending that a small Friends of the Chair Group (FOC) meet before the TCC to identify priorities, resolve those less important issues that can readily be disposed of, and thereby reduce the volume of material that has to go to the full TCC (while retaining the right of any CCM to raise concerns in the TCC). This recommendation is supplemented by additional suggestions to make the TCC more efficient.

11. Going hand in hand with this, is the need to ensure that CMMs are clearly drafted and understandable, and that their requirements and implications are identified before they are adopted. At the moment there are too many difficulties with the interpretation and application of obligations in CMMs, due to a lack of clarity, inconsistencies and ambiguity. This makes implementation harder for CCMs, and places further pressures on the CMS. The Panel offers several recommendations to improve this situation.

12. Effective implementation also requires that CCMs actually have the capacity to be implemented effectively. Capacity varies considerably amongst members of the WCPFC. Some mechanisms have already been put in place to assist smaller administrations, particularly SIDS, in this respect and the Panel is recommending others.

13. For CCMs to “buy into” CMS processes and outcomes, and indeed to preserve the reputation of the WCPFC, it is important that both the processes and the outcomes are perceived as fair. Clearly this has not always been the perception, and the Panel is making several recommendations to strengthen procedural fairness, including the possible resort to an informal “appeal” or “review” process should a CCM feel aggrieved.

14. The Panel was also mindful of a “higher level” issue of fairness and equivalence, and that is CMS’s focus on the purse seine fishery, much of which is already well monitored within EEZs, as compared with the lesser scrutiny accorded longline and long-distance pole and line fleets operating solely on the high seas in the Convention Area. This is partly a situation where the scrutiny reflects the availability of data. Although there have been improvements in the data provided, in the Panel’s view it needs to be further rectified by ensuring that appropriate CMMs are adopted to ensure that compliance monitoring can be effectively undertaken for all fleets operating in the Convention Area.

15. Having an effective MCS is a worthwhile achievement in its own right, but some CCMs have said they would like the WCPFC system to have more “teeth”. The WCPFC has already committed to establish a process to achieve this end, but meanwhile as an interim measure the Panel recommends the establishment of a targeted Quality Assurance Review (QAR) system to assist a CCM where there is repeated non-compliance, apparently due to a systemic reason. Such a QAR would be for the purpose of assisting the CCM, and making recommendations, not for any punitive purpose. It would be based upon the system already being operated effectively by CCSBT, although in that case it is done as a matter of regular routine auditing rather than targeted auditing where difficulties seem apparent, as is proposed here.

16. The Report contains a large number of recommendations by the Panel, ranging considerably in magnitude and implications. If we were asked to identify any “silver bullets”, they would be the following:
- a. Reducing the burden placed on CCMs, particularly small administrations, with respect to data provision, duplication and repetition;
  - b. Reducing the volume of material going to TCC, by introducing pre-screening in a “Friends of the Chair” Group;
  - c. Include ‘audit points’ that reflect critical obligations in each CMM prior to adoption
  - d. Improving the process for development and refinement of CMMs;
  - e. Improving capacity building;
  - f. Improving the Review Process to better reflect the requirements of procedural fairness;
  - g. As an interim measure, introducing a Quality Assurance Review (QAR) system to assist CCMs where there is a pattern of serious non-compliance and possibly systemic issues.
17. A summary of all recommendations is presented in the accompanying table appended to this Executive Summary.
18. The Panel would like to thank all of those who have offered views and suggestions, and who have assisted in its work. We are particularly appreciative of Secretariat colleagues for their ready provision of information. They will always know much more about the CMS than we can, but as outside observers we hope that we have been able to come up with some worthwhile suggestions that will further improve an already robust and comprehensive system - and that will make it easier for those on the ground.

**Table 1. Summary of recommendations**

<b>Number</b>	<b>Chapter reference</b>	<b>Recommendation</b>	<b>Responsibility</b>
1	2, paragraph 20	Continue to research options for improving the presentation of CMS summaries that describe trends in compliance.	Secretariat
2	2, paragraph 28 7, paragraph 12	Additional consolidated summaries for historical FSI information be included in FSI reporting	Secretariat
3	2, paragraph 34	Additional consolidated summaries of historical capacity development information be included in capacity assistance reporting [Secretariat]	Secretariat
4	3, paragraph 15 10, paragraph 17	Commit to a new process to develop and implement a response to non-compliance procedure	Commission
5	4, paragraph 13 7, paragraph 3	Key audit points associated with in each CMM are identified and described during drafting and prior to adoption of a CMM and that, in relation to individual SIDS, it is determined that capacity building is required to assist in achieving compliance	CCMs TCC Commission
6	4, paragraph 8	The review period prior to adoption of CMMs should include a “legal scrub” of the proposed new CMMs in a Legal Screening Group, chaired by the WCPFC Legal Adviser during TCC, to ensure clarity and identify potential conflicts and inconsistencies. The Group would report to the full TCC.	CCMs TCC
7	4, paragraph 9	The review period prior to adoption of CMMs should also include a scientific review to reconcile objectives with forecast outcomes. This will require re-structuring of the Scientific Committee agenda and the establishment of a Scientific Committee Working Group on CMM appraisal.	Scientific Committee, TCC and Commission
8	4, paragraph 15	Maintaining a consolidated list of all CMM audit points for assessment, to be updated and annotated each year for each fishery, and the SIDS checklist (CMM 2013-06) should be more assiduously applied throughout the CMM drafting process and prior to CMM adoption.	Secretariat CCMs and TCC
9	4, paragraph 17	Each CMM should be formally reviewed after a fixed period of 3 years, to ensure its continuing relevance and adequacy, and whether it needs to be maintained or revised. This should happen even if has been subject to	Commission TCC

		annual review in the TCC. This review could be done initially in the Friends of the Chair Group.	
	4, paragraph 18	Handbooks should be developed (and then updated) listing, by subject, the various CMM requirements for each fishery	Secretariat
	4, paragraph 21 and 22	The verbal presentation of supplementary information to address reporting gaps discussed in TCC should be discontinued	TCC
	4, paragraph 23	Finalize the pCMR at TCC. Permit CCMs to advise TCC additional information relating to their assessment will be provided in advance of the Commission meeting where a supplementary CMR would be adopted for those cases only	TCC Commission
	4, paragraph 28	Consult with SPC to develop procedures remove the requirement for duplicate data submissions	Secretariat
	4, paragraph 24	Develop, and implement, off-line data entry and batch submission systems for the IMS	Secretariat
	4, paragraph 26	Implement improved IMS data submission systems utilizing iterative text, pre-population of data and auto-fill capabilities	Secretariat
	5, paragraph 3	Continue to develop, and expand the scope and nature of, training resources and learning aids for the IMS particularly when new elements are introduced to it.	Commission
	5, paragraph 7	WCPFC should collaborate with regional agencies, such as FFA and PNA, to explore options for increasing advice and assistance with respect to flag State obligations and responsibilities	Commission
	5, paragraph 15	Facilitate increased use of small groups to negotiate and deal with discrete issues	TCC
	5, paragraph 17	Fund two representatives from SIDs to TCC	Commission
	5, paragraph 29	Produce information, and facilitate knowledge transfer, for all CCMs, relating to the different nature of responsibilities associated with compliance	Secretariat
	5, paragraph 34 and 35	Establish balance in the CMS by ensuring CMMs and CMS requirements are balanced across all fleets operating in the Convention Area	TCC Commission
	6, paragraph 12	Draft model responses and preparation guidelines for FSI Reports	Secretariat
	6, paragraph 16	Consider the appointment of an independent chair for the TCC or CMR negotiations. See also recommendation 17	Commission

	6, paragraph 17	Consider the appointment of co-chairs for the TCC or CMR negotiations. See also recommendation 16	Commission
	6, paragraph 23	Establish an informal review process of TCC decisions for CCMs which are dissatisfied with the process or outcomes	Commission
	6, paragraph 33	Adopt a phased process for Observers to participate in all CMS discussions	TCC 25Commission
	7, paragraph 3 4, paragraph 9	Identify and describe requirements associated with key audit points in each CMM during drafting	CCMs TCC Commission
	7, paragraph 12 2, paragraph 28	Additional consolidated summaries for historical FSI information be included in FSI reporting	Secretariat
	7, paragraph 16 9, paragraph 12 11, paragraph 12	Establish a Friends-of-the-Chair arrangement to consider and address matters of an administrative and low-priority nature while identifying high priority issues/cases for consideration by the TCC	TCC Commission
	8, paragraph 22 11, paragraph 12	Establish a post titled Capacity Development Plan Officer at the Secretariat	Commission
	9, paragraph 12 7, paragraph 16 11, paragraph 12	Establish a Friends-of-the-Chair arrangement to reduce the demands on TCC to consider matters of an administrative and low-priority nature	TCC Commission
	9, paragraph 14 10, paragraph 18	Pilot a Quality Assurance Review procedure	Commission
	10, paragraph 7	Develop a capacity building and training support programme to strengthen the effectiveness of ROP information in the CMS	Commission
	10, paragraph 10	Continue the practice of restricting pre-notified cases for TCC consideration to those involving observer interference and obstruction	TCC
	10, paragraph 17 3, paragraph 15	Commit to a new process to develop and implement a response to non-compliance procedure	Commission
	10, paragraph 18 9, paragraph 14	Pilot a Quality Assurance Review procedure	Commission
	11, paragraph 6	Examine options for redundancy arrangements in the Secretariat to service the CMS in the event of unplanned staff turn-over	Secretariat Commission
	11, paragraph 9	Undertake a strategic review of TCC priorities to prepare a new multi-year work plan	Commission TCC

			Secretariat
	11, paragraph 12 8, paragraph 22	Establish a post titled Capacity Development Plan Officer at the Secretariat	Commission
	11, paragraph 14	Establish a post titled Flag State Investigation Officer at the Secretariat	Commission
	12, paragraph 2	Review the potential to adopt an extended negotiating time frame for CMM development, drafting and adoption	Commission
	12, paragraph 7	Adopt a CMS CMM for a 5-year period	Commission
	12, paragraph 8	The Secretariat be tasked with preparing a mid-term Implementation Report (to the Year 3 Commission meeting), reporting on trends, issues and challenges associated with the CMS	Secretariat



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## 1. Background to the Review of the Compliance Monitoring Scheme

### 1.1 Introduction

1. The WCPFC Compliance Monitoring Scheme (CMS) was established 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) that have been adopted by the WCPF Commission.
2. As the relevant CMM sets out, the purpose of the CMS is to:
  - a. assess CCM's compliance with their obligations;
  - b. identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance;
  - c. identify aspects of CMMs which may require refinement or amendment for effective implementation;
  - d. respond to non-compliance through remedial options that include a range of possible responses that take account of the reason for and degree of noncompliance, 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
  - e. monitor and resolve outstanding instances of non-compliance.
3. Since 2011 the Commission has been implementing the CMS through a series of CMMs that have applied it on an annual basis (except that in 2015 it was given a two-year duration for 2016 and 2017; in 2017 it was given a further year), with various incremental changes to the assessment procedure and its breadth of coverage. Following suggestions made at the Commission meeting in December 2014 that the CMS should be reviewed or audited, the Commission in December 2016 adopted Terms of Reference for an Independent Review of the Compliance Monitoring Scheme.

### 1.2 Terms of Reference and Criteria for the Review

4. A copy of the approved Terms for a Review of the Compliance Monitoring Scheme is attached as **Annex A**. This contains further background on the Review, as well as the scope of the Review, and a number of specific questions that are to be addressed in the course of the Review. It also sets out the methodology to be followed. By the Terms of Reference, the Report was scheduled to be submitted for consideration by Members by March 2018.

### 1.3 The Review Panel

5. The Terms required that the Review Panel (the Panel) comprise three independent experts who together would provide a balance of experiences which would be relevant to the membership of the Commission, and at least one of whom should have a sound knowledge and understanding of the strength and weaknesses of Small Island Developing States (SIDS). CCMs

were invited to provide nominations for the Review Panel, and the following members were subsequently appointed, as notified by the Executive Director on 5 April 2017:

- a. Professor Don MacKay (Chair);
- b. Andrew Wright; and
- c. Dr Christopher Rogers.

#### 1.4 Methodology of the Review Panel

6. Following their appointment, the members of the Review Panel began working electronically with support from the Secretariat. On 12 June and 12 July 2017, the Panel wrote to provide an update to CCMs and observers on their work to date, and prepared a questionnaire on key issues which was distributed to CCMs and observers and was placed on the WCPFC website (**Annex B**). From 6 to 9 August the three members of the Panel met together in Sydney, Australia, with support from the WCPFC's Compliance Manager and Assistant Compliance Manager. There was discussion of the way in which the CMS was operating, including the online reporting systems, and the background to the Review. Some phone/Skype interviews were also conducted to supplement those questionnaire responses that had been received by that stage.

7. Two members of the Panel, Professor MacKay and Dr Rogers, subsequently attended TCC13 in Pohnpei in September 2017, to observe proceedings and engage with delegates to obtain their views on the way in which the CMS was working. An in-country consultation also took place, with Federated States of Micronesia, as well as meetings between the two Panel members and the Secretariat, and the TCC was briefed on the Panel's work up to that time.

8. The Panel also attended the annual Commission meeting in Manila in early December. At that meeting they provided a substantive progress report, as required by the Terms of Reference. This included a detailed written report in tabular form which reflected the Panel's thinking on a large number of issues that had been identified during their discussions with delegates, as well as their own impressions. This was circulated as document WCPFC14-2017-25B on 14 November 2017. The Panel emphasized that this was very much a work in progress, but was intended to give delegates some indication of their current lines of thinking. Several delegations gave oral feedback to Panel members on this document, and FFA members submitted written comments in document WCPFC14-2017-DP06\_rev.1; DP28 and DP29). The Panel continued their informal deliberations in the margins of the Commission meeting. For ease of reference, the detailed tabular report referred to above is included at the end of this Report as Annex N.

9. Following the Commission meeting, the members of the Panel exchanged views in detail electronically, and completed the drafting of this Report by electronic means. In consultation with the third member of the Panel by Skype, two members of the Panel met in Brisbane for 4 days to finalize the Report in late-February.

#### 1.5 The structure of the report

10. The Report draws on the recommended structure for RFMO performance review model

reports (WCPFC8-2011/12 Appendix IV) appropriately modified to reflect the Terms of Reference for the Review (Annex A).

## 2. Background and role of the CMS in WCPFC

### 2.1 Introduction

1. A summary of the evolution of compliance monitoring in the WCPFC, commencing with initial considerations in the Preparatory Conference, based on available report text from the Technical and Compliance Committee and Commission, is presented at **Annex C**. To date, the current CMS has been implemented over seven annual cycles from 2011 to 2017 inclusive. A matrix recording revisions to the initial CMS, adopted in 2010 as CMM 2010-03, through to the more recent version, CMM 2017-07 adopted in 2017<sup>1</sup>, is at **Annex D**.

### 2.2 The purpose of the CMS

2. The purpose of the Scheme is clearly described in Section I of CMM 2017-07. Apart from a relatively minor revision in 2012 (see Annex D), the purpose of the CMS has remained unchanged since its adoption in 2010.

### 2.3 The role of the CMS in WCPFC

3. The probable evolutionary nature of compliance monitoring in the Commission was recognised as early as TCC1. It was accepted that the monitoring and reporting requirements of the Commission would be demanding until regular procedures were established. The challenges for small administrations, particularly those from developing States and territories, was acknowledged at an early stage such that it was anticipated that assistance and some latitude may initially be required. To assist in addressing implementation challenges, TCC1 confirmed the need to avoid duplication and maintain transparency in any reporting procedures adopted, whilst ensuring such reporting did not become excessively onerous for Members (TCC1 Summary Report, paragraph 11). Since that time the complexity of the annual assessment, partially reflected by the number of obligations that have been incorporated into compliance monitoring, has increased significantly.

4. The role of a CMS in the WCPFC was effectively described in a proposal tabled by Australia in 2010 (WCPFC-TCC6-2010/21). That document described how a CMS should be an effective process for assisting CCMs to review and monitor compliance and to institute procedures to address non-compliance by assisting with:

- a. verifying if CCMs are taking all necessary steps to comply with obligations associated with the WCPFC Convention, CMMs and other decisions, rules, procedures and guidelines adopted by the Commission
- b. identifying areas where further work is needed to address non-compliance, and
- c. providing a basis for identifying areas in which technical assistance and capacity building are needed to assist CCMs to address compliance gaps.

5. The proposal considered that a CMS should include:

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<sup>1</sup> There was no substantive change between CMM 2015-07 and CMM 2017-07 with the result throughout this Report they may be considered as CMM 2015-07/17-07.

- a. procedures to address serious or persistent non-compliant behaviour, including options for the Commission to impose appropriate sanctions, and a follow-up mechanism for assessing and resolving outstanding instances of non-compliance
- b. timely access to sufficient information to assess compliance
- c. a fair and transparent process for reviewing and assessing information and compliance; and
- d. consistent and objective procedures for identifying and addressing instances of non-compliance.

6. The proposal noted that the CMS could provide the Commission with the means to prioritise compliance issues for Commission attention perhaps through the application of a risk-based assessment of types of non-compliance. The proposal also advocated that the CMS should be a positive process to encourage compliance.

7. The Panel believes that this description of the role of a CMS remains as relevant in 2018 as it did in 2010.

#### 2.4 The views of CCMs and observers

8. CCMs agree that a compliance scheme is fundamentally important for the Commission. They generally acknowledged to the panel that the WCPFC CMS has improved in recent years because of incremental enhancements to the system. There have been six versions of the CMS in the seven years since its adoption. The responsiveness and professional service provided by the Secretariat, including the roll out of the Information Management System (IMS), are broadly acknowledged as having made a significant contribution to these improvements.

9. Many CCMs advised the Panel that they considered that the CMS has made a positive contribution to increased awareness and understanding of the many obligations associated with their participation in WCPFC. They consider that there have generally been increased responses from CCMs in addressing compliance issues in advance, including through remedial action.

10. In addition, challenges associated with monitoring and reporting on obligations associated with interpretative issues associated with CMMs have been identified, and many addressed, through the process associated with finalising a CMR. These achievements are not inconsequential given the diversity and complexity of the fisheries under the responsibility of WCPFC. There is a broadly shared view that the CMS is now core business of the WCPFC (for example see the Executive Director's annual reports to TCC including TCC13 Summary Report, paragraphs 22-24).

11. However, frustrations with the complexity of the CMS process, mostly arising because of the scope and associated fine detail that is the subject of the annual CMS review and assessment, remain. The resource demands on CCMs, the Commission and the TCC to effectively service the requirements of the CMS over the last three years has grown to the extent that there are increasing calls for reform.



12. A view shared with the Panel by some CCMs and observers is that the CMS has become so large and unwieldy that it has lost its relevance – ‘lost in the weeds’ as one seasoned participant offered. That this sentiment has been evident for some time is reflected in the efforts to prioritize obligations for assessment annually (for example, WCPFC11 Summary Report, paragraph 637-638 and 642 and Attachment U).

13. As a result of the decision at WCPFC11, the Secretariat noted at the following TCC that the reduced size of the dCMR made it more manageable particularly in comparison to the previous year’s dCMR (WCPFC-TCC11-2015-09, Annex 3, page 15). It was noted that, in 2015, there were fewer CCMs (largely because there were fewer CNMs) and fewer rows in the assessment matrix (from 5,000 down to about 3,800) which the Secretariat noted provided it with the opportunity to focus on priority obligations for the Commission (TCC11 Summary Report, paragraph 120). Subsequently, WCPFC12 again revised the list of priority obligations for assessment in the 2016 CMR to be considered at TCC12 (WCPFC12 Summary Report, paragraphs 469 and 471 and Attachment O).

14. At TCC12, the Secretariat advised that the CMS matters paper prepared in 2015 had proved cumbersome owing to its length. To facilitate the TCC’s review, the Secretariat presented CMS matters in four parts (WCPFC-TCC12-2016-10A to 10D: an overview of CMS matters for TCC12; the list of obligations to be assessed; a summary of capacity assistance and development plans; and a summary of investigation status) with additional information provided in WCPFC-TCC12-2016-IP04 (scientific data gaps and the tier scoring system) and WCPFC-TCC12-2016- IP05 (on ROP longline coverage) (TCC12 Summary Report, paragraph 64).

15. These sustained efforts to improve the efficiency of the CMS by both the Commission and the Secretariat did not lead to the change expected by most CCMs. Two years later, at WCPFC14, calls to streamline the process, including a reduction in the list of obligations to be assessed, continued (WCPFC14-2017-DP06\_rev.1 Attachment I and WCPFC14 Draft Summary Report, Attachment V).

16. Despite these frustrations, no CCM suggested to the Panel that the Commission does not need a compliance monitoring scheme to support its work. Even those most critical of the current process accepted that the experience since the adoption of CMM 2010-03 has been valuable and that it should be used to put in place a more effective and efficient CMS process going forward.

## 2.5 Patterns since the CMS was established

17. There are several potential sources of information that could assist with an assessment of trends emerging from the seven years of data generated through the CMS. These relate to:

- a. the submission record for reporting by CCMs
- b. the resolution (or lack of resolution) of matters of interpretation and application that arise during the CMR development process
- c. capacity assistance needs identified and Capacity Development Plan implementation reporting

- d. CCM investigation reporting and case resolution
- e. the number of compliant, or non-compliant, CCMs identified during the CMS process, and
- f. the proportion of obligations assessed as compliant.

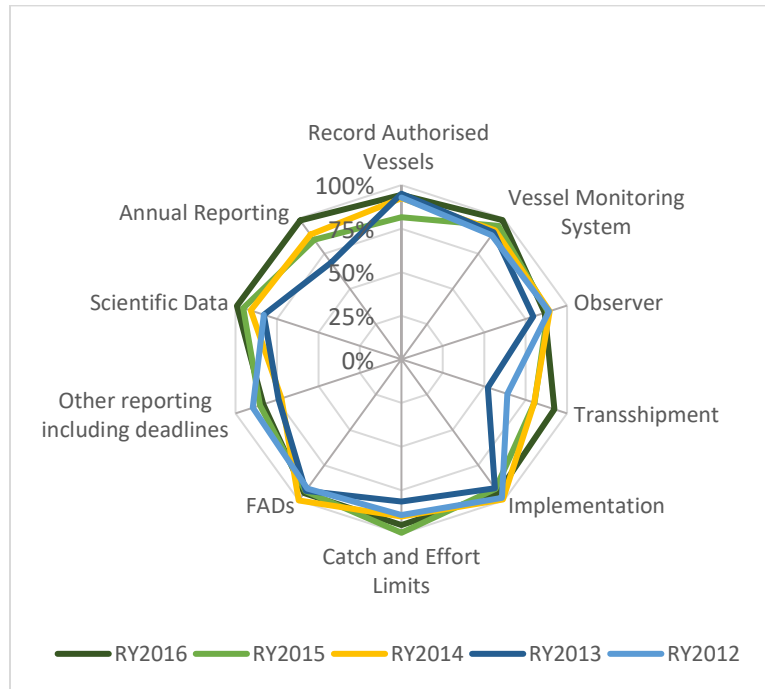
### *Influence on compliance*

18. Assessing trends relating to both the number of compliant CCMs identified during the CMS and the proportion of obligations assessed as compliant is difficult. This is because of the changes that have been introduced to the CMS since its adoption in 2010. The changes include:
- a. individual CMMs subject to the CMS have been subject to modification and review
  - b. new CMMs have been included in the CMS
  - c. obligations have been revised often as a result of the identification of interpretation and application differences among CCMs during the CMS process, and
  - d. the Commission has adopted a multi-year approach to CMM assessment. For example, during some CMS review periods, such as for 2015, some CMMs, such as non-target-related measures and mitigation measure requirements, were not assessed in the dCMR.
19. The CMR currently uses a traffic light approach to provide a measure of compliance. While this is a useful means to convey information, the Secretariat has been giving some consideration to alternative means to provide the Commission with an indication of trends associated with achieving compliance with key elements of the Commission's regulatory framework.
20. The 'spider chart' presented in Figure 1 below, which is based on a similar graphic used in IOTC, is one such initiative being explored by the Secretariat<sup>2</sup>. The chart is a representation of the outcomes of the final CMR since 2012. As such, it is potentially another tool that may assist the Commission comprehend trends in compliance and assist with the identification of different elements of the Commission's regulatory framework which may have improved or where gaps or deficiencies remain.

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<sup>2</sup> *Pers. Comm.* Dr Lara Manarangi-Trott, WCPFC Secretariat. February 2018.

Figure. 1 Summary of WCPFC Compliance Monitoring Report Outcomes for specific obligations (2013 – 2017).



**Notes:** This spider chart represents the proportion of applicable CCMs which were scored as compliant in the final CMR for each of the relevant obligations included in the category. "Compliant" means the score for a CCM for the obligation that was not Flag State Investigation, Capacity Assistance Needed, Non-Compliant nor Priority Non-compliant. The value shown is an average of the proportion of applicable CCMs which received compliant scores for the group of obligations within that category across the final CMR scores e.g. 100% = in that reporting year, all CCMs to whom the relevant group of obligations within that category were applicable, received scores of "compliant". The proportion of these scores amongst the applicable CCMs may differ amongst the various obligations within that category e.g. some obligations could have 100% compliant scores for applicable CCMs and others could include 30%). The obligations were for: Record of Authorized Vessels: CMM 2009-01, CMM 2014-03, CMM 2013-10 and CMM 2013-03; Vessel Monitoring System: CMM 2007-02 and CMM 2014-02; Observers: includes coverage requirements in CMM 2007-01 and other CMMs; Transshipment: 2009-06; Catch and effort limits: includes most CMR section (i) requirements where there is a clear catch, effort and/or capacity limit; FAD: FAD provisions - generally from the tropical tuna CMM and includes both reporting and FAD use restrictions; Annual Reporting: Submission of Annual Report Part 1 and Annual Report Part 2 (not included in RY 2012); Scientific data: Decision on scientific data submission obligations; Other: All reporting (CMR section vii) and other reporting requirements in various CMMs.

*Report submission*

21. In 2013, and again in 2014, compliance with report submission deadlines were identified as a priority compliance obligation for the CMS (Final CMR Executive Summary 2013 and 2014).

22. Trends in CCM Part 1 and Part II report submission are presented in Figures 2 and 3 below. All metrics suggest an increasingly positive response to the reporting obligations monitored through the CMS.

Figure 2.

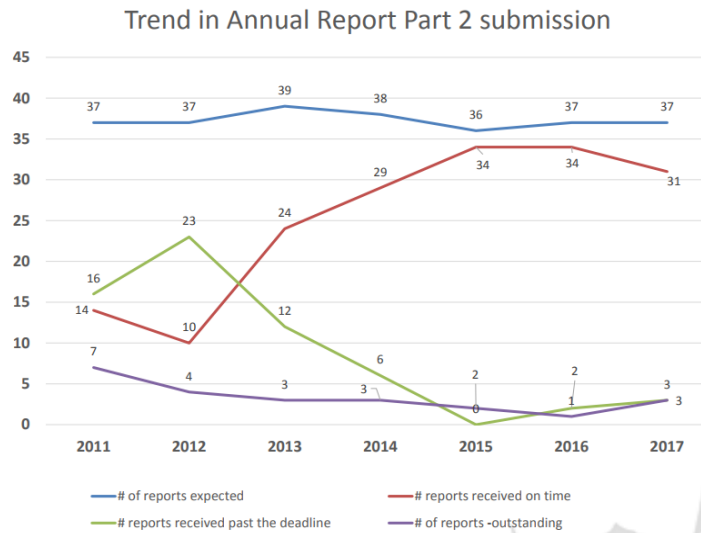
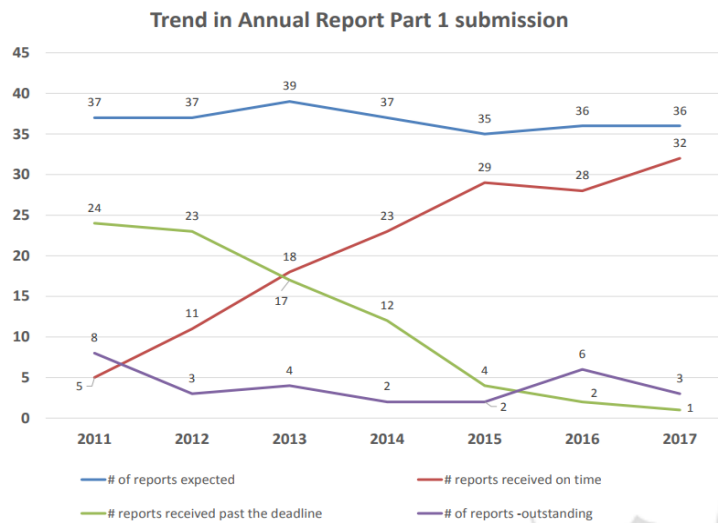


Figure 3.



*The CMS's contribution to resolving interpretation and application differences*

23. The CMS has evolved significantly in the last seven years. Initially it was a system mostly supported in MSEXcel for the review of a relatively undemanding number of CMMs. It is now a complex system, administered by a competent Secretariat, utilising a standalone information management system, that supports, in its most recent versions, the consideration of more than 130 individual audit points that are drawn from up to 47 CMMs and five Resolutions annually.

24. The timely availability of information submitted to the Commission, through the Secretariat or the Science Service Provider, and assimilated to inform an annual assessment on an obligation-by-obligation basis has created the environment that is supportive of CCMs seeking clarification and resolving differences in interpretation and application. The Final CMR includes a section that identifies issues with individual CMMs that require discussion and resolution in the Commission. This feature, which continues to evolve as CCMs gain more knowledge and experience with the process, is one of the major benefits that accrues to the Commission from the current system. And this is one of the anticipated outcomes of the CMM as described in its Purpose (CMM 2015-07, Section I, paragraph (iii)).

#### *CCM case monitoring and reporting*

25. The CCM investigation provisions for the CMS are a relatively new addition to the Scheme having been introduced to 2015-07 (paragraphs 8-11). As a result, it is too early to attempt a comprehensive assessment of its utility and value. However, based on the information available on the Secretariat's intranet for FSI cases currently recorded, and Commission and TCC report text, the Panel is of the view that there are some significant potential benefits that will accrue from this facility. These include that it provides:

- a. a facility for other CCMs to learn from the process used by a CCM to investigate and report on the status of a case
- b. a basis for other CCMs to assess the adequacy of an investigation and its outcomes
- c. an additional source of information for understanding practical or logistical difficulties associated with achieving compliance with a particular obligation substantiating the possible need for review.

26. Domestic processes that dictate procedures for an investigation may result in a range of the types of information that are presented in the case file system. In addition, the timeliness of information that can be made available varies among CCMs and does not always coincide with key dates in the annual CMS process. Contributing to this is the difficulty investigating CCMs have in obtaining fishery observer reports which form an important source of information to assist with their investigations of observer-related allegations of non-compliance (Final CMR 2014, paragraph 23).

27. In March 2017, drawing on CMM 2015-07 (paragraph 8), the Secretariat drafted guidelines for information that might be included in an Investigation Status Report with their dCMR (see FSI Status Report Template on the website, footnote 1). At TCC13, the template was reviewed and further elaborated (Final CMR 2017, paragraph 9-10).

28. It is possible that the FSI Reports could be of added value to the Commission with the inclusion of additional summary information that may indicate systemic issues associated with either the implementation of a specific CMM or difficulties being experienced by a particular CCM. Such summary information may include:

*CCM:*

*Total number of cases submitted for FSI since 201x:*

*Total number of cases concluded: xx*

*Cases outstanding: xx*  
*Cases currently under active investigation: xx*

*CMM:*  
*Total number of cases submitted for FSI since 201x:*  
*CMM paragraph reference(s):*  
*Total number of cases concluded: xx*  
*Cases outstanding: xx*  
*Cases currently under active investigation: xx*

### *Capacity assistance needs*

29. As discussed in Chapter 8, available information offers little to assist in discerning trends, or commonalities, to assess if the CMS is achieving one of its stated objectives of identifying areas in which technical assistance or capacity building may be needed to assist CCMs achieve compliance (CMM 2015-07, paragraph 1(ii)).

30. Indicative trends, such as a reduction in the number of CCMs identified in the annual Final CMR as requiring capacity building or technical assistance in the period 2012-2017, from 9 to 4, are suggested. This may be a reflection of improved CCM capacity to comply although there may be other explanations for the reduction.

31. As noted above, individual CMMs have been subject to, sometimes annual, review and refinement. A comparison of CCM compliance, and the associated identification of capacity building and technical assistance needs between years, for a CMM that has been subject to refinement, is problematic.

32. In 2016, for example, a relatively large number of obligations were identified as requiring capacity building assistance for one particular CCM. However, there was a significant reduction in items identified for technical assistance for that CCM in 2017. It is possible that the capacity to comply with obligations by the CCM concerned improved dramatically during 2016, as suggested in its 2017 assessment. Alternatively, the CMS simply did not identify obligations for which that CCM was experiencing difficulties in achieving compliance in 2017. Similar observations apply to CCMs that identified needs in the early years of operation of the CMS but for which there was no subsequent request for further assistance. It is unclear if the issue was rectified, or that the issue remained and it was not identified as an on-going capacity building need (See Chapter 8).

33. When combined with other elements of the CMS process, the available information for capacity development assistance offers little guidance on whether or not the CMS is achieving the objective of identifying aspects of CMMs which may require refinement or amendment for effective implementation (CMM 20015-07, paragraph 1(ii)). Some CMMs, such as CMM-2007-01 and CMM 2009-06, appear regularly in tables presented by TCC to the Commission identifying challenges for implementation that may be addressed through capacity building and technical assistance. The annexes associated with CMM 2007-01, particularly the dates stipulated in Annex C, would benefit from review. Although not identified during the 2017 CMS

as a capacity development need this obligation has commonly been identified for capacity development assistance during the period 2012-2016.

34. In addition, for some CMS review periods, such as for 2015, individual CMMs, such as the non-target-related and mitigation measures, were not assessed in the dCMR. Requests for capacity building assistance from previous years related to these measures and so the opportunity to confirm that the capacity building need identified had occurred, and that outcomes were assessed, was not presented. It is recommended that additional consolidated summaries of historical capacity development information be included in capacity assistance reporting by the Secretariat, a task that could be taken up by the proposed new position for a Capacity Development Plan Officer (see Chapter 8).

## 2.6 Challenges and lessons learned with the CMS

35. Although not all revisions involved substantive changes, the review of the CMM annually has created implementation, monitoring and reporting challenges particularly for smaller administrations. Recurring issues with implementation of the Scheme, and key lessons learned, during the period since 2011 that have been recorded in TCC and Commission report text, and reiterated in responses received to the questionnaire distributed to all CCMs as part of the information assimilation exercise for this Review, include:

- a. the need for procedural fairness, efficiency and effectiveness (See Chapter 6)
- b. the complexity of the Scheme, including the duplication of some reporting requirements, and associated demands placed on CCM agencies particularly those from small administrations
- c. the fact that the complexity is associated with the scope of the CMS in relation to the number and nature of obligations assessed each year
- d. that the CMS is evolving with the expectation that it will gradually become easier for both the Secretariat and CCMs to service and engage with
- e. that incremental improvements have been achieved since 2011, due to increased awareness and understanding of obligations, increased responses from CCMs in addressing compliance issues in advance, and improved remedial action by CCMs after compliance issues had been identified
- f. the value of an obligation-by-obligation approach
- g. recurring questions regarding whether the CMS is achieving its objectives particularly whether the outputs of the Scheme are supporting/informing critical decision-making in the Commission
- h. different interpretation of some obligations among CCMs and the need for all new CMMs to be drafted with clear criteria describing the obligation and how compliance with that obligation will be assessed (See Chapters 4 and 7)
- i. the time and resource demands of the CMS in both the TCC and Commission meetings and conflicts that arise when several small working groups are convened simultaneously (See Chapter 5)
- j. the practice of accepting supplementary information provided at TCC, between TCC and the Commission meeting and at the Commission CMS session (See Chapter 4)
- k. data gaps that impact on the information available to support the CMS

- l. the need for the development of policies and procedures associated with responses to non-compliance, including incentives for compliance (See Chapter 3)
- m. removing the burden on CCMs associated with the provision of Part I Reports which are duplicative of information already provided to SPC (See Chapter 4)
- n. the need to reduce the current requirements for repetitive entry of information already in the system including through the implementation of pre-population and autofill facilities (See Chapter 4)
- o. transparency and the participation of Observers, and
- p. the high level of capability of the Secretariat in servicing the CMS and the value of the IMS.

## 2.7 Recommendations

The Panel recommends:

- a. Continue to research options for improving the presentation of CMS summaries that describe trends in compliance [Secretariat]
- b. Additional consolidated summaries for historical FSI information be included in FSI reporting [Secretariat]
- c. Additional consolidated summaries of historical capacity development information be included in capacity assistance reporting [Secretariat]



### 3. The CMS as a compliance tool

#### 3.1 The root cause of non-compliance

1. There is a large amount of academic literature on the theory of compliance as it applies to international obligations (see Additional Reading). Social theory suggests that two broad principles determine a States' engagement in international arrangements: an 'instrumental' approach and a 'normative' approach (Tyler, 2006).

2. The instrumental approach is characterised by maximising benefits for States. Compliance is determined by consequences for violation of agreed obligations. As a result, behaviour is determined by external factors and an assessment of the difference between the social and/or economic costs of non-compliance and the potential benefits resulting from compliant behaviour. In these circumstances, penalties or sanctions are frequently the most effective means to optimise compliance.

3. In fisheries, States (and individuals) often determine, as a result of an assessment of the relative costs and benefits, that there is more to be gained from fishing outside obligations than in compliance with them. Experience demonstrates that generally, in multilateral fisheries arrangements, with the expectation that the detection of a violation is low, and the consequences, if detected, are relatively modest, self-interest (of States or individuals) inhibits the achievement of universal compliance.

4. The normative approach prescribes that States (and their nationals) will more likely comply with obligations that are assessed to be fair and reasonable. The emphasis is on internal incentives to achieve compliant behaviour. Personal morals and perceptions of legitimacy determine compliance by a State or individual.

5. The normative approach does contribute to efforts to achieve compliance by the majority of States with their international obligations. They participate in good faith in the negotiation process that leads to the obligation and, as a result, generally anticipate being able to comply with that obligation once it enters into effect. However, in international fisheries, this has proven largely insufficient because, for political, logistical, administrative or economic reasons, operationalising those commitments has proven difficult.

6. As a consequence, the instrumental approach, where there are clearly elaborated sanctions and penalties, is an important consideration in designing systems and procedures seeking to minimise non-compliance with obligations in RFMOs. Without the political will to institutionalise such procedures, and the commitment of necessary resources, compliance with the obligations will remain challenging for RFMOs generally.

#### 3.2 Appropriate means to achieve compliance

7. Obligations, expressed in the form of conventions, regulations and rules, invariably generate challenges for achieving compliance. It is particularly challenging in a multilateral context. The fisheries sector, whether it be domestic or international, has significant experience

establishing obligations and implementing procedures to monitor and assess compliance and respond to non-compliance.

8. The tuna regional fisheries management organisations (t-RFMOs) have a reasonably long history in this regard. A profile of compliance monitoring procedures in the five t-RFMOs has recently been completed (Koehler, 2016 and *In prep.*). These reviews present an overview of compliance structures and processes in the five t-RFMOs. Where possible, they include an assessment of those obligations for contracting and cooperating parties that are assessed during each RFMO's compliance review process, transparency of RFMO compliance processes and the current range of t-RFMO responses to non-compliance. The reviews provide a basis for proposing best practice for monitoring, assessing and addressing non-compliance (Koehler, *In prep.*). Rather than undertake a similar review for this Report, CCMs are referred to these two publications for comprehensive overview of existing procedures and processes in other t-RFMOs (See 'Bibliography' appended).

9. In relation to best practices for t-RFMOs to respond to non-compliance, Koehler (2016, page 33) identified the following key components: "(1) a requirement for reporting on actions taken to address identified non-compliance with obligations, and (2) the availability and use of tools to respond to identified types of non-compliance:

- a. Responses by States to areas of previously identified non-compliance should be individually reviewed annually by the compliance committee or working group
- b. Failure to report on actions taken should be considered as a serious type of noncompliance
- c. As should successive and repeated non-compliance on the same obligation
- d. The committee or working group should apply a fair, consistent and transparent scheme of responses to noncompliance to frame its recommendations for addressing the issues identified. Such a scheme should contain both positive (such as financial or technical assistance and capacity-building to developing States) and negative (such as automatic quota reductions, loss of fishing opportunities, enhanced monitoring, non-discriminatory trade measures) responses, and takes into account the history, circumstances, extent, and gravity of the non-compliant act or omission.
- e. The RFMO Commission considers recommendations by the committee or working group and decisions on any penalties may be taken by a vote, if necessary".

10. Koehler (2016) noted that all t-RFMOs have undergone one or more performance reviews which have commented on a general lack of sanction or penalty regimes for non-compliance. She noted that ICCAT has adopted a measure (15-09) prescribing penalties in respect to non-fulfillment of reporting obligations specified in Recommendation 11-15, a trade measure (Recommendation 06-13), quota compliance rules (for example Recommendations 96-14, 97-08, 00-14, and 01-13), compliance with statistical reporting obligations (Recommendation 15-09), and specific penalty provisions on species recommendations. In addition, ICCAT has adopted a Resolution establishing a schedule of actions to improve compliance and cooperation with ICCAT measures (16-17) and IOTC has adopted a Resolution concerning market-related measures (10/10), which is similar to ICCAT's Recommendation on Trade Measures (06-13).

11. CCSBT has also implemented procedures to monitoring performance in meeting obligations, for both members and cooperating non-members. Policy Guidelines facilitate implementation of a Compliance Plan that consists of i) minimum performance requirements to meet CCSBT obligations, ii) a corrective actions policy, and iii) MCS information collection and sharing overseen by a Compliance Committee. The role of the Committee is to investigate alleged serious non-compliance, recommend corrective actions or remedies; recommend revisions to CCSBT obligations to rectify compliance risks, and conduct an annual compliance risk assessment. In 2012, this was supplemented with provision for an independent Quality Assurance Review (QAR) of member and CNM systems and processes that support implementation of CCBST measures (See Chapter 9).

12. While CMM 2015-07 does provide for capacity building and technical assistance to SIDS, Participating Territories, Philippines and Indonesia to assist with remedial efforts to address challenges associated with complying with WCPFC obligations there is limited application of penalties or sanctions as a disincentive for non-compliance (See Chapter 10, paragraph 8). One example where a penalty can be applied is CMM 2009-03 (Conservation and Management for Swordfish). Without prejudice to future decisions of the Commission in relation to responses to non-compliance, this measure specifies that CCMs will be subject to a reduction in their catch equal to any amount by which they exceed their catch limit (paragraph 9).

### 3.3 Considerations of response mechanisms for non-compliance in WCPFC

13. The Commission, drawing on discussions in TCC, has been contemplating the possible adoption of a framework to develop responses to non-compliance since 2010. Summary reports from TCC and the Commission relating to this potential enhancement to the WCPFC compliance monitoring scheme demonstrates that several CCMs have undertaken a considerable amount of work to support the Commission's consideration of options.

14. However, a sufficient degree of reticence from many CCMs has resulted in little progress in this regard since the adoption of CMM 2010-03 seven years ago. Currently, in early 2018, the matter appears to be stalled with no apparent substantive consideration of this potential enhancement to the CMS for the last two years. A review of the TCC and Commission's consideration of this topic is at Annex E.

### 3.4 Next steps

15. The Panel recommends that the Commission commit to a new deadline for the development and implementation of a response mechanism for non-compliance with WCPFC obligations.

16. This year (2018) will require significant resources, primarily meeting time, for considering responses to the recommendations of this Review. If an outcome of those discussions is agreement by the Commission to develop a procedure for responding to non-compliance, it is proposed that the substantive work to support this commence in 2019.

17. Fortunately, the Commission already has a framework for further consideration of such a procedure. This is in the form of the proposal presented by Australia in 2010, 2011 and 2012 (WCPFC-TCC6-2010/21, WCPFC-TCC7-2011-DP/08, WCPFC8-2011-DP34 and WCPFC-TCC8-2012/IP10). Although there has been no consideration of this proposal for two years, many CCMs have obviously given this some consideration and provided comments, through inter-sessional processes or during TCC and Commission meetings, on the components of these proposals (see Annex E).

18. Principal elements of a procedure for the Commission to respond to non-compliance are presented in WCPFC-TCC8-2012/IP10 and include:

- a. *Relationship to the current Measure:* Described at paragraph 3: The process and structure adopted for the Commission to respond to non-compliance should complement and build on the procedures and operation of the existing Compliance Monitoring Scheme. It should be integrated into, or attached to, the current CMS CMM.
- b. *Categories of obligations:* (from CMM 2017-07, paragraph 3),
  - i. catch and effort limits
  - ii. catch and effort reporting
  - iii. spatial and temporal closures and gear restrictions
  - iv. observer and VMS requirements, and
  - v. scientific data provision, reporting and handling.
- c. *Principles:* Outlined at paragraphs 4-6 of WCPFC-TCC8-2012/IP10:
  - i. adequate, verifiable, information
  - ii. transparent
  - iii. objective
  - iv. consistent application for all CCMs
  - v. graduated response mechanism to remedy non-compliance
  - vi. straightforward and easy to apply
  - vii. address root causes for non-compliance
  - viii. provide a disincentive to non-compliance and promote compliance
- d. *Response Schedule:* A preliminary outline was provided at Attachment A of WCPFC-TCC8-2012/IP10.
  - i. *Objective:* to provide a simple, objective and transparent process while also being sufficiently flexible to respond appropriately to the full range of WCPFC compliance issues.
  - ii. *A Compliance Review:* to address the first instance of non-compliance by a CCM. It should aim to resolve the compliance issue or allow the underlying causes of non-compliance to be identified, providing a basis for the development of a *Compliance Action Plan*.
  - iii. *A Compliance Action Plan:* required if a CCM does not comply with a Compliance Review. The aim is to assist CCMs address the cause and effects of non-compliance. It should result in the successful resolution of compliance issues by providing targeted responses to help CCMs overcome difficulties in complying with their obligations and fully implement the Commission's CMMs. A timeframe for implementation (within one year or phased implementation over the course of two or more

years) was proposed.

- iv. *A Compliance Remedy*: adopted if a CCM fails to comply with a *Compliance Action Plan*. A last resort to address cases of serious and persistent non-compliance. Reflecting the persistence and severity of the non-compliance being addressed, *Compliance Remedies* could be supported by implications for the CCM's participatory rights in the fisheries managed by the Commission, and provide for non-discriminatory trade measures consistent with Article 25(12) of the Convention and the international obligations of CCMs, for example.

19. Elements requiring additional consideration include:

- a. a work plan for drafting and negotiating the procedure
- b. the work flow associated with implementation of the procedure once adopted
- c. an implementation schedule with timelines and deadlines
- d. the possibility for developing and applying decision rules that would support an objective decision-making process for responding to non-compliance
- e. the scope and nature of any intersessional processes supporting the procedure
- f. the means to accommodate the procedure within the TCC, including the CMR development process, and Commission agenda
- g. the scope (information requirements) and format for different reporting obligations associated with the procedure, such as the Compliance Action Plan, the Compliance Remedy, etc.
- h. the relative roles and responsibilities of CCMs, the Secretariat, TCC and the Commission,
- i. the relationship to existing provisions such as capacity building, technical assistance and flag State investigations, and
- j. whether any independent audit facility would be beneficial to provide support to CCMs including the possibility of trialling such a facility as an interim measure to respond to non-compliance (See Chapter 10).

20. For the purpose of this Review, the terminology used in the Australian submissions are maintained. During the development process it is likely that these terms will be re-defined, some replaced and new terms introduced.

21. It is anticipated that a minimum of two years will be required to develop a response to non-compliance procedure to a form that could be considered by the Commission for adoption. This would only materialise if it is led by one or two competent and committed CCM representatives familiar with the CMS and who have sufficient authority from the Commission to actively facilitate the process.

22. The first task associated with developing the procedure would be to agree to a work plan. The work plan will serve as a record for when consideration of different elements of the procedure will be commenced and completed, what stakeholders will be expected to contribute and the inter-relationships between elements of the procedure.

23. The potential for making positive progress in this endeavour would be improved if the

Commission established a dedicated inter-sessional working group for this purpose. To facilitate this, it is proposed that a standing agenda item be included on the TCC agenda to support discussion relating to the work of the IWG and for the TCC to report annually to the Commission on progress with the IWG's work and issues arising.

24. A work plan could involve:

***Year 1:***

- a. Confirm objective(s)
- b. Confirm guiding principles
- c. Review a structure for the procedure: critical components
  - i. Relationship to current CMM: integrated/attachment/separate CMM
  - ii. Workflow to support a response to non-compliance procedure
  - iii. Institutional roles and responsibilities
- d. The structure and key elements of a Response Schedule

***Year 2.***

- a. Response Schedule – elaboration of key elements:
  - i. Review and refinement of Annex 1 of 2017-07
  - ii. Information requirements and information management, work flow, formats and templates, CCM and institutional responsibilities, decision rules and decision-making, remedial options including capacity building, independent review process, if required, in relation to the:
    - i. Compliance Review
    - ii. Action Plan, and
    - iii. Compliance Remedy
- b. Review Schedule
- c. Implementation plan

### 3.5 Recommendations

25. The Panel recommends:

- a. The Commission commit to a new process to develop and implement a response to non-compliance procedure [Commission]

## 4. The effectiveness and efficiency of existing CMS review procedures

### 4.1 The views of members and observers

#### *Are obligations within CMMs clear?*

1. Generally, it could be expected that the obligations of CCMs to implement new CMMs are understood at the time of adoption. However, responses to the Panel’s questionnaire and comments received from CCMs and others during interviews clearly indicated that not all CCMs understood the full implications of implementation at the time of CMM adoption. For the most part, this was attributed to the limited time available at WCPFC annual meetings to review and discuss new CMMs or revisions thereto.
2. The Secretariat does an excellent job of communicating obligations through the design of the online reporting system, the templates for Part 1 and Part II of the annual report, checklists for reporting obligations and CMM requirements, specifying content and formats, etc. Nonetheless, once the TCC begins to review and assess compliance with particular audit points, CCMs may express concerns that the articulation of individual requirements is ambiguous. Additionally, at the TCC, CCMs may present different views on what responses to implementation are indicative of compliance with individual obligations. This can result in a lack of consensus at TCC on whether a particular obligation for a CCM is applicable and/or whether an assessment should be compliant or non-compliant.
3. As an example, there were discussions at TCC13 about whether certain obligations under CMM 2010-07 could be implemented administratively or required explicit legislative or regulatory implementation. There were discussions about whether paragraph 6 of CMM 2010-07 should be assessed independently or its assessment required an interpretation in the context of paragraph 7. Additionally, at TCC13, CCMs differed in views about the adequacy of content within reports on flag State investigations.
4. TCC has instituted a mechanism to address situations where CMMs are not clear. Rather than force an assessment where consensus cannot be reached due to ambiguity, TCC can note that clarification by WCPFC is needed – a compliance status of “CMM Review” is possible. At TCC13, there was an intersection between assessing the status of “Flag State Investigation” and the need for clarifying the expectations for enforcement action and outcome. To assist in this matter, TCC13 recommended that WCPFC14 request the Secretariat to revise the reporting Template for Flag State Investigations. This recommendation was subsequently adopted by the Commission (WCPFC14, Final CMR 2017, paragraph 10).
5. It should be noted that TCC13 did not recommend any assessments as “CMM Review” in its Provisional CMR and no obligations were so assessed in the Final CMR adopted by WCPFC14.
6. Recommendations made elsewhere in this report in relation to the schedule or development period for the conception and drafting of CMMs should make more time available at the TCC for the consideration of CMMs before adoption. This will assist in respect of their drafting, as they are often drafted within tight timeframes and competing priorities in the TCC

and the Commission, which results in ambiguity and interpretative challenges, including for those CCMs for whom English is not their first language.

7. A proposed 18-month ‘development period’ for the review of draft CMMs before being tabled in the Commission for adoption, should assist further (see Chapter 12 and Annex M). The objective is of course to produce better quality CMMs, which subsequently don’t lead to interpretation and implementation issues and which are better tailored for compliance monitoring. This will ultimately lead to significantly increased efficiencies, and quality of decision-making in both the TCC and Commission.

8. It is recommended that the review of CMMs should also include a “legal scrub” of the proposed new CMMs in a Legal Screening Group, chaired by the WCPFC Legal Adviser, to ensure clarity and identify potential conflicts and inconsistencies. The Group would report to the full TCC.

9. It is recommended that the review of CMMs should also include a scientific review to reconcile objectives with forecast outcomes. This will require re-structuring of the Scientific Committee agenda and the establishment of a Scientific Committee Working Group on CMM appraisal.

#### *Are they able to be implemented?*

10. Given the numerous CMMs currently in force, and the number of obligations for CCMs contained in each, a significant amount of resources must be dedicated by CCMs for implementation and reporting. SIDS in particular are concerned that they do not have adequate resources needed to implement CMMs. In the course of interviews with the Panel, some CCMs retrospectively concluded that they were agreeing to CMMs that they could not immediately and effectively implement.

11. The number and volume of obligations to review during the CMS presents a resource issue. For the Secretariat, online reporting templates and database development are part of developing and managing the Information Management System. CCMs must populate the reports and submit data via online reporting systems. Then CCMs must review and respond to the draft CMR. TCC must review the draft CMR and assess each obligation for those CCMs to which they are applicable. The number of required assessments at TCC has grown despite a work plan to prioritize and schedule individual requirements for assessment on an annual, biennial or triennial schedule (See Chapter 2).

12. In reviewing the efficiency of the CMS, it is obvious that the adoption of CMMs with numerous implementation and reporting obligations affects the ability of all CCMs to comply, especially in cases of limited resources. Adoption of new CMMs with additional obligations also affects the workload of TCC.

13. One way to address the workload issue for CCMs is to explicitly consider compliance assessment obligations at the time new CMMs are proposed. CCMs should evaluate the costs



(resources needed for implementation and reporting) and benefits (contribution to meeting currently unmet scientific assessment or conservation objectives) before adopting new requirements (See Chapter 7).

14. The Panel recommends that a checklist for agreed audit points for the CMS process should be embedded in each CMM to help ensure broad appreciation of the elements of the CMM that will be assessed by the CMS including, in relation to individual SIDS, if capacity building is required prior to assist in achieving compliance.

15. In addition to the Secretariat maintaining its service of producing a consolidated list of all CMM audit points for assessment, which should be updated and annotated each year for each fishery, the SIDS checklist (CMM 2013-06) should be more assiduously applied throughout the CMM drafting process and prior to CMM adoption (See Chapter 7).

16. Another means of managing resource needs for implementation is to consider the implications of new obligations for the work of TCC. Duplication should be avoided in comparing new requirements against the existing inventory of obligations. In addition, if new requirements are deemed necessary and beneficial, a Friends of the Chair-type arrangement could determine the priority and frequency of review (See Chapters 7, 9 and Annex K).

17. Each CMM should also be formally reviewed after a fixed period of 3 years, to ensure its continuing relevance and adequacy, and whether it needs to be maintained or revised. This should happen even if it has been subject to annual review in the TCC. This review could be done initially in the Friends of the Chair Group.

18. To assist CCMs and vessels in ensuring compliance with the various CMMs, it is suggested that handbooks should be developed (and then updated) listing, by subject, the various CMM requirements for each fishery. Some CCMs have already done this for their fleets, but it would be useful to develop them for use by all vessels. This would be in addition to the Secretariat's useful current compilation of CMMs.

#### 4.2 [The timeframes for submission and review of information](#)

19. The timeframes for submitting information are contained in the respective CMMs. It could be assumed that adopting CMMs by consensus ensures that all CCMs have considered the deadlines and have committed to respecting the timeframes. Deadlines are clearly identified by the Secretariat and are posted in the Compliance Monitoring page of the WCPFC website.

20. Nonetheless, resource limitations may preclude CCMs meeting all obligations with respect to timeliness and completeness. CCMs with smaller administrations noted these limitations in response to the survey and in interviews. Even CCMs with larger administrations may miss deadlines for specific obligations.

21. The Secretariat notes deficiencies in the draft CMR issued in early August, and many CCMs are able to respond in the 30-day time period to address the deficiencies. Alternatively, capacity development plans and/or reports about ongoing flag State investigations can be

submitted. The prescribed timelines are intended to facilitate the work of TCC in reviewing the draft CMR.

22. An additional opportunity exists for oral reports at TCC, but it was noted at TCC13 that such an approach is time consuming, it is not an effective means of exchanging information and constrains the preparation of the Final CMR. TCC13 recommended that the verbal presentation of supplementary information to address reporting gaps discussed in TCC is *minimized* (pCMR, paragraph 15). This is however very difficult to manage unless ceased entirely. Information is currently formally tabled in Annual Reports Parts I and II, and in responses to dCMR no later than 28 days prior to TCC. The entitlement to give a verbal presentation of supplementary information to address reporting gaps at TCC provides a disincentive to provide all of the information when required earlier, and in the Panel's view it should be discontinued entirely.

23. After TCC, CCMs have yet another opportunity to provide information in response to the Provisional CMR to be referred to WCPFC. This additional opportunity imposes extra work on the Secretariat at a busy time in preparation for the annual meeting. Also, consideration of this new information by TTC in concurrent sessions at WCPFC requires extra work with limited time and can further disadvantage smaller delegations. Some CCMs however wish to retain these opportunities to supplement the information that is considered at TCC.

24. Although discontinuing the practice of considering new information after the conclusion of TCC, and preparation of the Provisional CMR, would appeal to some CCMs, there are other possibilities that the Commission may consider. This includes finalizing a pCMR at TCC with the exception of those matters where a CCM indicates that it may wish to provide additional information for consideration at the next Commission meeting. In these instances, a supplementary CMR dealing only with those matters identified, would be adopted at the Commission meeting.

#### 4.3 The extent of information required

25. The information required under CMMs and the Convention is extensive. Reports range from vessel authorizations, regulatory programmes, monitoring and control mechanisms, operational catch and effort data, bycatch data, observer reports, alleged infractions, investigative reports, and, as appropriate, capacity development plans. The necessity for each type of information should be evaluated relative to meeting the objectives of the particular CMM or the Convention with regard to stock monitoring and management. As explained in Chapter 7, this evaluation should be undertaken by WCPFC at the time of adopting new CMMs and on a periodic basis by TCC in consideration of the cumulative reporting burden.

#### 4.4 The burden of providing information

26. As noted elsewhere (see for example Chapters 2 and 7), the burden of providing information is a result of the numerous obligations contained in the CMMs that are adopted. Smaller administrations are particularly affected by this burden. The burden can be reduced through more careful consideration of the need for reporting requirements, potential duplication, and the contribution of the information toward meeting particular stock assessment, conservation

and management objectives and decision-making in the Commission.

27. The prioritization and staggering of the schedule for CMM assessment in the CMS, as agreed at WCPFC12 (Attachment O) assists with reducing the burden on CCMs, the Secretariat and TCC.

#### 4.5 Is all of the required information necessary/cost effective?

28. Fishery data, particularly operational level data, is submitted by CCMs directly to the Science Provider. Several respondents to the survey and others who were interviewed noted that this requirement is duplicative of the reporting obligations of Part 1 of the Annual Report. In fact, a number of CCMs noted that they extract data previously submitted to the Science Provider in order to resubmit the data to WCPFC via the Part 1 Report. It was noted that such a process is time consuming and an inefficient use of limited resources.

29. The Commission could consider accepting that a CCM is compliant with a reporting requirement where it is confirmed by SPC that a CCM has submitted complete data (VMS and operational level catch and effort data), and that the data submitted are sufficient for scientific analyses for the stocks/species concerned.

30. It was suggested that the Secretariat consult with the Science Provider to explore opportunities to reduce the reporting burden on CCMs that are associated with duplicating data previously submitted for the purpose of meeting the obligations associated with completing the Part 1 Annual Report. An example where this would generate immediate benefit is in relation to CMM 2015-02 (paragraph 4) where a CCM may be assessed as non-compliant if it doesn't send a specific report relating to this each year to the Commission.

31. During the course of interviews, it was suggested that not all data elements of the Part II Report are not necessary. WCPFC had previously considered evaluating the individual report elements for relevance and such an evaluation should be taken up again by TCC or a small working group thereof.

#### 4.6 The contribution of the CMS online reporting systems to the efficiency of the CMS procedures

##### *Are all elements of the CMS online reporting systems user friendly?*

32. The CMS online reporting system facilitates the reporting by CCMs and the work of the TCC. However, the large number audit points arising from the CMMs make the reporting task resource intensive. Training workshops conducted by the Secretariat and/or facilitated by sub-regional agencies (e.g., FFA, PNA) have assisted several CCMs in gaining proficiency with the CMS online reporting system. Nonetheless, some issues with resource requirements for data entry were identified by CCMs with small administrations and those personnel operating from locations with limited internet service.

33. It is apparent that, for several years, CCMs have been using the online reporting facilities

for their Annual Report Part II submissions and for responding to CMR issues. As noted elsewhere by this Review, the experience for some CCMs during this period have been adversely impacted by local challenges, such as those associated with internet connectivity and bandwidth. CCMs facing such challenges may be assisted in their engagement with the CMS by the implementation of a facility which supports the compilation of reports offline which could then be submitted to the IMS in batches. In fact, most CCMs may be able to take advantage of an off-line compilation and batch submission capability. It is recommended this be explored.

34. In discussions with the Secretariat it was suggested that, subject to the availability of funding and the required technical expertise, there may be some scope for researching this suggestion as an extension of work planned for 2018 which is associated with e-reporting of transshipment declarations and notices. In association with other recommendations presented by the Panel, such as streamlining reporting requirements (see above), this could make a significant contribution to addressing present concerns relating to the burden associated with engaging in the CMS.

#### 4.7 Could the CMS online reporting systems be refined to better support the CMS procedures/ relieve burdens on CCMs/ the Secretariat?

35. The on-line systems generally attracted positive comment during discussions with CCMs, and in questionnaire responses. However, several suggestions were put forward for improving the ease of use and functionality of the system. The key suggestions related to making the system more efficient by removing the need for requirement for duplicate submissions of information previously submitted or inapplicable. Additional enhancements proposed included wide-spread use of pre-population and auto-fill facilities where fields are unchanged, the use of iterative text and exploring ways to customize Annual Report templates so that, for example, CCMs which are not flag States don't have to fill in so many questions in Annual Report Part II (as many such entries are n/a). The Panel puts these suggestions forward as recommendations.

36. CCMs should work with the Secretariat to identify specific additional functionality that would facilitate on-time and/or complete reporting where deficiencies persist. If the limitations can be addressed by additional training, CCMs should suggest web-based training tools, technical workshops, and video training materials that would assist in their particular circumstances.

37. Finally, the Panel encourages the on-going outreach, information sharing and engagement by Secretariat CMS personnel with other multilateral fishery bodies which are also engaged in their own processes to develop information management systems to service their own compliance monitoring procedures. An example of such initiatives that may generate experience that the WCPFC can benefit from is the IOTC's e-MARIS Project (see: <http://www.iotc.org/documents/emaris-technical-specifications>)

#### 4.8 Recommendations

38. The Panel recommends:

- a. key audit points associated with in each CMM are identified and described during drafting and prior to adoption of a CMM and that, in relation to individual SIDS, it is determined that capacity building is required to assist in achieving compliance [CCMs, TCC and the Commission]
- b. maintaining a consolidated list of all CMM audit points for assessment, which should be updated and annotated each year for each fishery, and the SIDS checklist (CMM 2013-06) should be more assiduously applied throughout the CMM drafting process and prior to CMM adoption [Secretariat]
- c. Handbooks should be developed (and then updated) listing, by subject, the various CMM requirements for each fishery [Secretariat]
- d. Finalise the pCMR at TCC. Permit CCMs to advise TCC additional information relating to their assessment will be provided in advance of the Commission meeting where a supplementary CMR would be adopted for those cases only [TCC and Commission]
- e. Consult with SPC to develop procedures to remove the requirement for duplicate data submissions [Secretariat]
- f. Develop, and implement, off-line data entry and batch submission systems for the IMS [Secretariat]
- g. Implement improved IMS data submission systems utilizing iterative text, pre-population of data and auto-fill capabilities [Secretariat]
- h. The review period prior to adoption of CMMs should include a “legal scrub” of the proposed new CMMs in a Legal Screening Group, chaired by the WCPFC Legal Adviser during TCC, to ensure clarity and identify potential conflicts and inconsistencies. The Group would report to the full TCC [CCMs, TCC]
- i. The review period prior to adoption of CMMs should also include a scientific review to reconcile objectives with forecast outcomes. This will require re-structuring of the Scientific Committee agenda and the establishment of a Scientific Committee Working Group on CMM appraisal. [Scientific Committee, TCC and the Commission]
- j. Each CMM should be formally reviewed after a fixed period of 3 years, to ensure its continuing relevance and adequacy, and whether it needs to be maintained or revised. This should happen even if has been subject to annual review in the TCC. This review could be done initially in the Friends of the Chair Group.
- k. The verbal presentation of supplementary information to address reporting gaps discussed in TCC should be discontinued [TCC].

## 5. Effective participation of CCMs in the review process

### 5.1 In what ways have the CMS procedures ensured the effective participation of all CCMs throughout all stages of the CMS process

1. From TCC1 in 2005, CCMs recognised that the monitoring and reporting requirements for CCMs would be demanding at least until regular processes are established and that it was likely to be particularly challenging for developing States and territories. TCC1 confirmed the need to avoid duplication and maintain transparency in any reporting procedures adopted, whilst ensuring such reporting did not become excessively onerous for Members (TCC1 Summary Report, paragraph 11).

2. Although there are genuine concerns among CCMs that the CMS has become too complicated and all encompassing, rather than strategic, the Panel was impressed by the way in which the CMS process has been continuously improved and enhanced over time. CCMs and the Secretariat have made substantial efforts to make the process as effective as possible in meeting the objectives of the Scheme (See Chapter 2). The Secretariat has put considerable effort into assisting CCMs in understanding and implementing the Scheme and making it user-friendly.

3. The Information Management System (IMS) was a significant development in this respect, and the Panel recommends that this should be built upon and enhanced further to improve ease of use and efficiencies (see also Chapter 11). To facilitate CCM engagement with the IMS, the Panel recommends that the Secretariat continue to develop, and expand the scope and nature of, training resources and learning aids for the IMS particularly when new elements are introduced to it.

4. All CCMs have access to the various stages of the process, and with one major exception referred to below (see 5.3), the Panel has not identified any inbuilt or systemic bias or imbalance in favour of, or against, participation by any particular CCM, or groups of CCMs, through the various stages of the CMS process.

5. The absence of any inbuilt or systemic bias is one thing. But the system is subject to the fundamental imbalance of all compliance systems, and that is the different levels of resources of CCMs which inevitably affects their ability to participate effectively. The reality is that SIDS have much smaller administrations and capacities for participation in the CMS process than larger flag States. Moreover, the burden faced by SIDS is increasing, as they move from participation in the fishery purely as coastal States, to undertaking activities as flag States as well. In fact, they face a double burden, from their increasing flag State role, and also from the increasing demands of the expanded and enhanced CMS process. Accordingly, although all CCMs are certainly impacted by the burden of the process, SIDS tend to be impacted more than others. This highlights the need to keep the process manageable and focused on key issues, particularly in the TCC, rather than trying to cover everything in the same amount of detail and depth. The Panel has the impression that the process has tended to grow in an *ad hoc* manner, with elements continuously added, but without an overall strategic assessment of what is particularly important and what is not. A maxim which

may be relevant here, is that “the perfect is the enemy of the good”.

6. It was pointed out to the Panel, that even systems such as online reporting, whilst inherently even handed, can be uneven in their demands. This is not only due to the substantive demands which are placed upon CCMs with limited resources and capacities, but may also be affected by the vagaries of technology such as the reliability and bandwidth of the internet for some SIDS.

7. There are ways of enhancing the effective participation and ease of participation by all CCMs in the process, and the provision of technical assistance and capacity building are covered in Chapter 8. In this specific context, however, the Panel noted the positive comments it received regarding workshops and assistance provided by FFA (as well as by WCPFC) with regard to flag State obligations. As SIDS CCMs are increasingly operating as flag States as well as coastal States, the Panel recommends that WCPFC should collaborate with regional agencies, such as FFA and PNA, to explore options for increasing advice and assistance with respect to flag State obligations and responsibilities.

8. It is obviously important that all CCMs are able to participate effectively in the TCC process. The Commission assists this by providing funding for one participant from each SID to attend the TCC. This is a common approach internationally, as it is accepted that organisations and their meetings benefit from a broad range of participation, and funding is often provided to assist with representation from developing countries. It can have a capacity building dimension as well, as it may enable attendance by staff other than key delegation members who can thereby familiarize themselves with the processes involved.

9. Another way of taking into account the burdens faced by smaller administrations, and the fact that they may have smaller delegations at meetings, is to try to limit the number of parallel meetings that take place at the same time. This approach is most evident at the TCC, where most of the business is conducted in the plenary, with just a few smaller working group meetings taking place during lunchtimes for example, and not normally contemporaneously with the plenary itself. At the Commission there tend to be more parallel meetings of working groups and informal working groups.

10. The advantage for smaller delegations of not having parallel meetings is that they do not have to split their coverage, and do not find themselves unable to attend all relevant meetings because of insufficient numbers of delegates. The downside is that it places an overload of work on the TCC plenary, which ends up dealing with just about everything, and with very little being referred out for discussion and negotiation in smaller groups.

11. The TCC plenary is a very large meeting, and is not at all suited to work as a negotiating forum. As is well known, negotiating is done much more effectively in smaller groups than larger groups, and that is why chairs generally try to delegate difficult negotiating issues to smaller groups. The TCC plenary is an expensive meeting to run, and it is not efficient to use it as a negotiating forum. There should therefore be much more use of smaller groups for the purposes

of negotiations.

12. Perversely, too, doing nearly all the work in the TCC plenary, can actually put more pressure on smaller delegations than larger ones. Delegations spoken to by the Panel expressed a huge level of frustration at being forced to sit through days of detailed discussion in plenary, working through a vast amount of complex material at a highly pressured pace, leading to the purpose of the exercise being increasingly questioned.

13. In such situations larger delegations are much better placed than smaller ones in keeping on top of everything, but even they appeared to be under considerable pressure at times.

14. While the TCC meeting observed by two of the Panel members was fortunate to be served by a Chair and Secretariat who were extremely familiar with all the issues, this may not always be the case, and it suggests that there need to be changes to the way that the TCC does business. This also raises the issue of 'key person risk' given that such a complex system is heavily dependent on a relatively small number of key personnel in the Secretariat and the Chair. This is covered in detail elsewhere in this report (See Chapter 12).

15. It would be much more efficient, and would accord with international practice, if the TCC was to make greater use of small groups to iron out discrete issues, and also for the purpose of negotiating many issues. It would relieve some of the pressure on the TCC plenary, and more work could be done in a more considered manner. TCC should take note of which issues result in protracted discussions where a clear consensus does not quickly emerge, thus suggesting that delegation of the issue to a small group could facilitate a conclusion.

16. The Panel noted that, with the rare exception, every delegation at the TCC had more than one member, so it should on the face of things be possible for two parallel meetings to take place if required. Moreover, coverage of parallel meetings is not a problem that is unique to the WCPFC, but is faced by delegations at most international conferences. Experience shows that even if a particular delegation is unable to be present at a meeting on an issue that is important to it, it is generally possible for them to ensure that another likeminded delegation will represent their interests there. Given the large commonality of views amongst many of the delegations to the TCC, and the entitlement of organisations such as the FFA and PNA to attend meetings, parallel meetings should be even less of a problem in the TCC context than elsewhere.

17. To assist smaller delegations however, we would recommend that no more than two parallel meetings take place (e.g. TCC plenary and one Working Group meeting at the same time, or two working groups), when required. Such a more flexible approach could be trialed initially, to ensure that delegations find it manageable in practice. We would also recommend that, to assist smaller delegations with such a change, 2 representatives from each SIDS should be funded by WCPFC to attend the TCC, rather than the current one.



## 5.2 Ensuring consistent standards are applied amongst obligations and amongst CCMs

18. There is clearly a desire on the part of CCMs, and the Secretariat, to ensure that standards are applied consistently, and that CMMs are treated uniformly. The main challenge here is one that has itself been identified consistently throughout this report, and that is the sheer volume of work being processed by the TCC under pressure in a short space of time. The WCPFC also has a large number of members and is responsible for a very large fishery with a diverse and complex mix of geographic, social, industry, economic and political interests. All of this combines to make it hard for the TCC itself to ensure consistency, and for delegations – especially smaller delegations – to keep on top of things and to ensure that they are being treated consistently.

19. The TCC now assesses compliance on an obligation-by-obligation basis, having at an earlier stage proceeded on a CCM-by-CCM basis. With such a large membership, going CCM-by-CCM through such a huge volume of material and hundreds of obligations or audit points, there was inevitably some inconsistency between those CCMs dealt with earlier in the process and those dealt with later. This was at times attributable to evolving interpretations of the actual requirement and/or opinions on what constitutes an adequate CCM response to a particular infraction or deficiency.

20. There was a general view amongst those spoken to by the Panel that greater consistency is achieved by going obligation-by-obligation. Even when going obligation-by-obligation however, some inconsistency can be expected when dealing with such a huge volume of material. The Panel was impressed by the chair's efforts to keep things on an even keel, and to refer back to what had happened earlier in the meeting, so as to try and maintain consistency, with able assistance from the Secretariat in this respect. Reducing the number of audit points assessed at each meeting should considerably assist in this process. There are also other steps that can be taken, such as identifying cases by vessel name in the CMR report to assist CCMs with identifying and linking cases (Final 2017 CMR, paragraph 13).

21. There is however a downside with proceeding obligation-by-obligation in that it is easy to lose an overview of each CCM's overall performance, and where they may be experiencing difficulties in implementing their obligations. National patterns can be slow to emerge and harder to identify, and this is addressed elsewhere in this report (See Chapter 2).

22. An important element of ensuring that consistent standards are applied both vis-a-vis obligations and amongst CCMs, is clearly identifying what is needed to satisfy the requirements of implementation of a CMM and in other related components of the CMS such as FSI. It was apparent to Panel members that this was sometimes a problem at the TCC, and it is something that the TCC Chair has moved to address. CCMs need clearly to understand what information needs to be provided, for example to conduct a FSI, and the details that are required when they are reporting to the TCC on concluding such an investigation (See Chapter 2). This needs to be clearly identified in advance.

23. As noted in Chapter 6, in the TCC observed by the Panel there appeared to be a problem with CCMs not always knowing what was required, both those reporting and those who were asking questions of them. This works particularly to the disadvantage of smaller delegations which are trying to respond on the spot to questions they did not know they would face. Larger delegations, with a greater range of specialist expertise amongst their number, and with greater resources to draw on back in head office, are often much better placed to respond extemporaneously. Panel members also felt that sometimes the questioners were not entirely consistent in their willingness to accept information from different delegations, with sometimes a greater readiness to accept information and assurances from better-resourced delegations than from others. The proposal at TCC13 to better elaborate templates, such as the Investigation Status Report (ISR), together with associated guidelines, should help in this respect (Final 2017 CMR, paragraph 10).

24. It might also assist the TCC in its work if there was a clearer understanding of the nature of States' obligations under the Convention. For example, at the TCC some delegations seemed to take the view that obligations needed to be enshrined in legislation, and that simply taking administrative action was insufficient. Others seemed to be of the view that it would be sufficient to implement obligations administratively. In its Article 23(1) the Convention says:

“Each member of the Commission shall promptly implement the provisions of this Convention and any conservation, management and other measures or matters which may be agreed pursuant to this Convention from time to time...”

25. Again, in its Article 24(1) setting out the duties of the flag State, the Convention says “Each member of the Commission shall take such measures as may be necessary to ensure that (a) fishing vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant hereto and that such vessels do not engage in any activity which undermine the effectiveness of such measures;”

26. The Convention does not require a CCM, when implementing the Convention, to necessarily put everything into legislation. Other mechanisms may also be acceptable, provided they are effective and implemented in good faith.

27. In addition, there may sometimes be some misconceptions in the TCC about the relationship between the obligations of CCMs and the activities (and possible transgressions) of individual vessels. The functions of the TCC are set out in Article 14 of the Convention, and are *inter alia* to:

...  
(b) monitor and review compliance with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary;

.....  
2. In carrying out its functions, the Committee shall: (a) provide a forum for exchange of information concerning the means by which they are applying the conservation and

management measures adopted by the Commission on the high seas and complementary measures in waters under national jurisdiction; (b) receive reports from each member of the Commission relating to measures taken to monitor, investigate and penalize violations of provisions of this Convention and measures adopted pursuant thereto;”

28. The fact that an individual vessel has violated the requirements of a CMM does not necessarily mean that its flag State is in non-compliance with those requirements. The flag State’s obligation is one “of conduct” (i.e. by the flag State) not one “of result” (i.e. by its vessels). The flag State is under a “due diligence obligation” to take all necessary measures to ensure compliance by its vessels. It has to implement this obligation in good faith, which entails not only the adoption of appropriate rules and measures, but also vigilance in their enforcement and the exercise of administrative control. It is the failure to do this which makes the flag State non-compliant, not the actions of its vessels as such. A pattern of violations committed by its vessels may however indicate the need for closer scrutiny of the flag State and the possibility of systemic issues associated with it. In such cases of continued inaction or ineffective action by a flag state with respect to its vessels, TCC should consider and articulate how the inadequate flag state response is undermining the objectives of the CMM.

29. It might be useful for the Legal Adviser to clarify the above matters for CCMs, perhaps in a workshop format, or in the form of an information paper circulated to CCMs to consider and discuss at a Commission session.

30. A rule of the CMS process that does help ensure the application of consistent standards amongst CCMs, is the prohibition on a CCM blocking its own compliance assessment if all other CCMs present have concurred with the assessment (paragraph 19 of CMM 2015-07). Experience in some other multilateral bodies has shown that where a CCM is allowed to block its own compliance assessment the compliance and monitoring system can be significantly weakened and undermined. The willingness of some CCMs to exercise self-serving votes in this situation, while some others do not, can result in quite inconsistent treatment of both obligations and CCMs. It can also significantly undermine the integrity of the compliance and monitoring system. Accordingly, although one delegation expressed concern to the Panel about the blocking prohibition in CMM 2017-07 (paragraph 19), the Panel is strongly of the view that it should be retained.

31. That said, it is also essential that CCMs refrain from “gaming the system”, to get around this rule. While a CCM cannot block its own assessment, it should also not be regarded as acceptable (even if technically within the rules) to then collude with friendly delegations to do the job for it and opposing the assessment based on bilateral relationship considerations rather than the substantive merits of the issue. In that situation it is evident to everyone else what is going on, and it does undermine the integrity of the system, as well as being unfair and leading to inconsistency. Ultimately any CMS is dependent upon CCMs implementing it in good faith, on the merits, and uninfluenced by extraneous considerations. Otherwise it will break down.

### 5.3 Ensuring a consistent level of scrutiny of CCMs

32. This aspect has been covered at some length above. However, there is one significant area where there is not a consistent level of scrutiny applied to CCMs, and this relates to the differential treatment of different fisheries. The CMS spends much of its time considering the implementation of purse seine management, and much less time on longline and pole and line fleets that are operating solely on the high seas in the Convention Area. This is partly information and data driven, as there is 100% observer coverage of the purse seine fishery, compared with less than 5% of the longline fleets. There has also traditionally been difficulty with the submission of data from some fleets.

33. In 2017, in response to repeated concerns over data gaps adversely impacting the Commission's decision-making, it was reported that the Commission was finally receiving operational level catch and effort data from almost all CCMs (2017 Final CMR, paragraph 35). In addition, initiatives such as the West Pacific East Asia Oceanic Fisheries Management Project, are making a useful contribution to data assimilation and availability, particularly from Indonesia, Philippines and Vietnam.

34. Perversely the imbalanced focus on the purse seine fishery is arguably where it is needed least, given the comprehensive management and MCS regime for the purse seine fishery, and the fact that much of it takes place within EEZs where there is considerable coastal State scrutiny. This is also an important issue of fairness and equivalence.

35. However, increased scrutiny needs to be applied through the CMMs before this current perception can be substantiated as a genuine compliance issue. To address this, the CMS needs to have adequate capacity to monitor and audit non-purse seine fleets so there is balance across all fisheries prosecuted in the Convention Area.

36. In the Panel's view reporting and other requirements should therefore be extended as far as possible to all vessels fishing on the high seas, so as to ensure as far as possible equivalence of treatment under the CMS between vessels fishing on the high seas and those fishing in EEZs. Although adding an additional level of complexity to the current CMS reporting, and subsequent demands on the Secretariat, one way to address this may be to ask the Secretariat to produce separate focused summary reports, effectively a synthesis of information already presented in the draft CMR, for different fisheries – longline, purse seine and pole and line. With the introduction of a streamlined CMS, with a reduced suite of audit points, this may be practical to consider.

### 5.4 Recommendations

37. The Panel recommends that:

- a. Continue to develop, and expand the scope and nature of, training resources and learning aids for the IMS particularly when new elements are introduced

- [Secretariat].
- b. As SIDS CCMs are increasingly operating as flag States as well as coastal States, WCPFC should collaborate with regional agencies, such as FFA and PNA, to explore options for increasing advice and assistance with respect to flag State obligations and responsibilities. [Commission]
  - c. Facilitate increased use of small groups to negotiate and deal with discrete issues [TCC]
  - d. Fund two representatives from SIDS to TCC [Commission]
  - e. Produce information, and facilitate knowledge transfer, for all CCMs, relating to the different nature of responsibilities associated with compliance [Secretariat]
  - f. Establish balance in the CMS by ensuring CMMs and CMS requirements are balanced across all fleets operating in the Convention Area [TCC and Commission].

## 6. Fairness of CMS review procedures

### 6.1 The nature of CMS procedures

1. While the CMS procedures are not part of a judicial process, and neither the TCC or the Commission are a court of law, their proceedings and decision-making can have considerable consequences for CCMs and individual vessels. Many CCMs have therefore emphasized the need for their procedures and the way they are applied, as well as their outcomes, to be fair. The interest in this topic is reflected in the ToR. It has been reflected in comments made by delegates in meetings with Panel members, and also in some responses to the questionnaire. Written comments submitted by FFA members (e.g. WCPFC14-2017-DP28) have also given considerable emphasis to this point. This is often characterised as the need for “procedural fairness” or “natural justice.”

### 6.2 What is meant by “procedural fairness” or “natural justice”?

2. Many countries’ domestic legal systems, particularly those with common law systems, have certain procedural requirements that must be adhered to by decision-makers in their official capacity, including courts and administrators, when they are taking decisions, so as to ensure that individuals or organisations affected by their decisions are treated fairly. These requirements are often referred to as principles of “procedural fairness” or “natural justice”, and sometimes as rights of “due process”. In many jurisdictions, the decisions of official decision-makers can be “judicially reviewed” (i.e. reviewed by a court) to determine whether they have followed these principles of procedural fairness in any particular case, and if not, their decision may be ruled invalid.

3. Although fairness, as a concept, underpins most legal systems around the world, procedural fairness or due process rights, as such, are not universal and they do not take the same shape in every legal system. In some systems there may be a right to be heard orally, or in writing, and to cross-examine witnesses, but not in others. In some jurisdictions there is a general duty to give the reasons for a decision, but not in others. Similarly, there may be a right of appeal or review in some jurisdictions, but not in others. The rights are also contextual, so that different legal contexts legitimately require different procedural standards and operate according to different principles and values. This may depend on the character of the decision-making body, the kinds of decision it has to make, and the framework (statutory or otherwise) within which it operates.

4. The principles of natural justice or procedural fairness are not therefore “one size fits all”, and international political or deliberative bodies (unlike international legal bodies) tend not to operate within such a strict framework. There are also some significant differences between the TCC and a court or a domestic decision-maker.

5. In the case of the TCC, the decision is taken by the body as a whole which all CCMs (including the CCM under scrutiny) are part of (although the CCM under scrutiny cannot block its own compliance assessment if all other CCMs present have concurred with the assessment: CMM2015-07, paragraph 19, refers). There is thus no individual decision-maker. And although

the chair may be able to have an influence on both the proceedings and the outcome in individual cases, it is not the chair who actually takes the decision, but the group as a whole.

6. All CCMs have voluntarily subjected themselves to this process (and created it) though their actions in becoming party to the Convention, and subsequently participating in decision-making including adopting additional obligations in the form of CMMs. This is unlike a domestic situation where individuals and organisations are subject to the domestic legal system and administrative decision-making under it, and have no choice.

7. There are many other analogous situations internationally, including in bodies dealing with matters such as human rights, or even the UN Security Council, where States may be subjected to adverse outcomes without the strict application of “procedural fairness” or “natural justice”.

8. That said, there are many good reasons for ensuring that the CMS and TCC procedures and processes are as “fair” as possible. For CCMs to “buy into” the processes, and to wholeheartedly accept and implement their outcomes, it is important that they are viewed as “fair”. Indeed, the overall integrity of the system, and the reputation of the WCPFC itself, depends on its compliance processes being viewed as fair and non-discriminatory, and as producing fair outcomes. And the principles of “procedural fairness” or “natural justice” provide a good yardstick against which to assess the present system, and to identify possible areas for improvement.

### 6.3 What are the requirements of procedural fairness?

9. Procedural fairness requires that, at the very least, a CCM under scrutiny (and potentially subject to an adverse outcome), should (1) be fully informed about any allegations against them, (2) be given the opportunity to respond and present their side of the matter under discussion, and (3) be given a fair “hearing” without unfairness or bias, including the requirement that no-one should take a decision in which they have a direct interest (Annex F).

#### *Being fully informed about allegations*

10. As regards the first of these requirements, the Panel is not aware of particular concerns that the process does not properly inform CCMs about allegations of non-compliance involving them. The process set out in Section III of CMM 2015-07 is a comprehensive one. The individual Draft Compliance Monitoring Reports (dCMRs) contain this information, and there are subsequently opportunities for exchanges with the Secretariat that can provide additional information, clarifications, amendments and corrections. Then all CCMs see the full Draft Report in advance of the TCC, and this includes any potential compliance issues and requirements for further information.

11. CCMs should not therefore find themselves at the TCC unaware of the allegations of non-compliance involving them. That said, there is a large amount of material associated with the process, and quite tight deadlines, and all CCMs will not be equally equipped in terms of number and capacity of staff to deal with the process. This is another reason to try and reduce the overall

burden of the process, which is dealt with elsewhere in this report.

### *Being given the opportunity to respond*

12. The Panel has also identified some issues regarding the opportunity for a CCM to adequately represent its case in response to the allegations. This primarily relates to a lack of clarity about what specific information the CCM will need to provide when its performance is under review. During TCC13 there were many occasions when other CCMs sought additional information from the CCM under review, but there was not always consistency in terms of what additional information was being sought, and the CCM under review did not always appear to know in advance what type of information would be sought. This led to a recommendation from TCC13 that the FSI Investigation Status Report (ISR) template be revised to more clearly identify what information should be provided when reporting (See Chapter 2 and 5). The Panel concurs with this recommendation, and there may also be additional more detailed guidance (e.g. with model answers and preparation guidelines) that can usefully be provided by the Secretariat.

13. Essentially what is required, in the Panel's view, is to identify what the minimum information requirements are, so CCMs are properly informed as to what information they are expected to cover off when reporting. Once CCMs provide this information, they should not then be subjected to pressure at the TCC to provide additional information on the spot, which they will probably not have at hand or have prepared for. Clarifying the rules of the game may be particularly useful for SIDS, which have smaller delegations than many others at the TCC, often don't have the same ready access to additional information from headquarters during the meeting, and may need to have prepared their material in advance of the meeting.

### *Being given a fair hearing*

14. The Panel also considered the process whereby the TCC "hears" and determines allegations of non-compliance by CCMs. The Panel was impressed by the professionalism and competence of the Chair who was actively assisted by the Secretariat. The TCC process is a pressured and often complex one, and it deals with a huge amount of material as it currently operates. The Chair obviously has the central role in managing and choreographing the process. At no stage has it ever been suggested that any of the TCC chairs, current or previous, has acted other than in a thoroughly professional, impartial and accomplished way, and this was certainly the observation of the Panel.

15. On the other hand, the current practice is for the TCC chair to be a member of a national delegation to the Commission. Clearly the national delegation of which they are a member may have a direct interest in the matters being discussed, both when alleged violations by their own country are being considered and sometimes when alleged violations by other countries are being considered, and this could create perceptions that the process is not procedurally "fair". This perception might be accentuated when the Chair comes from a particularly large, powerful and well-resourced national delegation; a not infrequent outcome given that smaller, less resourced delegations often cannot manage to provide a Chair.

16. In some other RFMOs (CCSBT is an example) this has been addressed by having an



“independent chair” for the Compliance Committee, who is not a member of a national delegation. At some point in the future, consideration might therefore be given to moving to an “independent chair” arrangement noting of course that this would have budgetary implications.

17. An alternative would be to follow what is increasing international practice in some other (non-RFMO) bodies, and move to a co-chair arrangement. In this situation there are two “co-chairs” sitting together on the podium, and they share chairing responsibilities. While they may still be members of national delegations, an individual co-chair would be expected to pass the chair to their counterpart when a matter directly relating to their own country is being considered by the TCC. In other bodies, such as the United Nations, the co-chairs normally come from different “groups” (in the case of the United Nations normally one co-chair comes from a developed country and one from a developing country). In the case of the TCC, one co-chair might come from FFA member countries and one from other CCMs. While there might perhaps be concerns that this would foment polarization, that is not generally the experience elsewhere - rather the reverse. It is also to be noted that the former TCC Chair has already followed a co-chairs approach for the CMR.

18. An advantage of a co-chairing arrangement is also that it helps with succession and continuity in the chair. Normally the two co-chairs would be appointed for staggered terms, so that one would continue when the other retires. The current situation, which relies on one highly experienced Chair to operate it effectively, and indeed on a couple of highly experienced and dedicated members of the Secretariat, inevitably presents potential risks to both the CMS and the Organisation (See Chapter 5 in relation to ‘key person risk’).

#### *An appeal or review process*

19. FFA members, in their written comments in WCPFC14-2017-DP28, mention the need to have a proper appeal process.

20. Article 20(6) of the WCPFC Convention provides a formal review process whereby a member which has voted against a decision, or which was absent during the meeting at which the decision was made may, within 30 days of the adoption of the decision by the Commission, seek a review of the decision by a review panel set up under Annex II to the Convention. The grounds for such a review are (a) that the decision was inconsistent with the provisions of the WCPFC Convention, the Fish Stocks Agreement or the Law of the Sea Convention; or (b) the decision unjustifiably discriminated in form or in fact against the member concerned.

21. Under Article 31, the WCPFC Convention makes further provision for the settlement of disputes. This provides that the dispute settlement provisions of the Fish Stocks Agreement apply, *mutatis mutandis*, to any dispute between members of the Commission, concerning the interpretation or application of the Convention, including any dispute concerning the conservation and management of the stocks it covers.

22. These are of course very formal and potentially lengthy and expensive review processes to use, and having established them through the Convention itself CCMs will not wish to replicate them as part of the CMS process. Their formality and potential expense inevitably acts as a

deterrent to using them in all but very serious cases (that said, a similar provision under SPRFMO has been invoked – successfully - by an aggrieved member State relatively recently<sup>3</sup>).

23. Any review process for the CMS would, by contrast, need to be readily accessible and reasonably informal, if it is to be useful. It is therefore suggested that, where a CCM feels that the CMS process (including the TCC) has been procedurally unfair for it, or has produced an unfair outcome, it should be able to seek an informal review by the Chair of the Commission, assisted by two CCMs, one drawn from FFA members and the other drawn from other CCMs. Suggested Terms of Reference for such a review are attached as Annex G. This would not preclude an aggrieved CCM from subsequently invoking the more formal review or dispute settlement procedures under the Convention if they wished.

#### *The use of information derived from the CMS*

24. Several CCMs expressed concern about the potential use of prejudicial information derived from the CMS for outside purposes, which accentuated their concerns that the CMS should be fair. This situation arose from a particular instance which was seen as working to the disadvantage of a CCM which had been through the CMS process.

25. In 2012 the Commission took a decision that the compliance status of any member or CNM, or information regarding compliance developed through the CMS, shall only be used consistent with the purposes of the CMS and cannot be used for any outside purpose. The Panel was not made aware of recent events creating concerns in this respect.

#### 6.4 Transparency of the review process

26. The Convention requires, in Article 21, that the Commission shall promote transparency in its decision-making processes and other activities. It goes on to say that representatives from intergovernmental organizations and non-governmental organizations are to be afforded the opportunity to participate in the meetings of the Commission and its subsidiary bodies as observers or otherwise as appropriate.

27. The Commission's rules of procedure are required to provide for such participation, and the procedures are not to be unduly restrictive in this respect. Accordingly, Rule 36(5) of the Commission's Rules of Procedure also provides for non-governmental organisations (NGOs) to sit at meetings of the Commission and its subsidiary bodies

28. Article 21 of the Convention is in similar terms to Article 12 of the United Nations Fish Stocks Agreement, which requires States to provide for transparency in the decision-making process and other activities of sub-regional and regional fisheries management organizations and arrangements. Article 7.1.9 of the FAO Code of Conduct also says that "States and RFMOs should ensure transparency in fisheries management and decision-making."

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<sup>3</sup> In proceedings conducted by the Review Panel established under Article 17 and Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean with regard to the objection by the Russian Federation to a decision of the Commission of the South Pacific Regional Fisheries Management Organisation. Findings and Recommendations of the Review Panel, 5 July 2013, The Hague, the Netherlands.

29. The international requirements are therefore reasonably clear, and in general NGOs are given access to the Commission processes. There is however a major exception, which is that NGOs are not permitted to access the CMS process, including meetings of the TCC that are dealing with CMS matters. In this respect the WCPFC falls short of the practice in other RFMOs.

30. NGO representatives who met with the Panel felt strongly about their exclusion, and that the process was diminished as a result. They made the point that they already work in a highly collaborative way with many CCMs on an individual CCM basis, and that the process (and CCMs) were losing out by not having their input in the room. Other non-State actors are already in the room (including industry), and if they were also in the room they could add to the incentive for compliance, and for a process that operated fairly and effectively.

31. They argued, amongst other things, that if they had access to the process it would lead to increased transparency, increased accountability, would meet global social responsibilities, would provide information to NGOs to help them identify opportunities to assist, and would bring some relatively independent views to the process, whereas the current situation sends the wrong message, i.e. that WCPFC has things to hide.

32. On the other hand, some CCMs who spoke with the Panel were cautious about NGO involvement in the CMS. This seemed to derive from their sense that the CMS was not yet sufficiently fair, efficient or effective, as to be opened up to outside observers. These CCMs are of the view that, once these concerns about the process had been met, and the overall process strengthened, it would be better positioned for outside observers.

33. It seemed to the Panel that, as well as the necessary improvements to the process itself, confidence building would also be helpful. The Panel therefore suggests that a staged approach be taken to gradually increasing the exposure of NGO observers to the CMS process. This could be done, for example, by allowing access for a small representative group of NGOs initially, on clearly defined terms and conditions<sup>4</sup>, which would evolve ultimately to include all NGOs after a certain period if no problems arise.

## 6.5 Recommendations

34. The Panel recommends:

- a. Draft model responses and preparation guidelines for FSI Reports [Secretariat]
- b. Consider the appointment of an independent chair for the TCC or CMR negotiations [Commission]
- c. Alternatively, consider the appointment of co-chairs for the TCC or CMR negotiations [Commission]

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<sup>4</sup> See also Circular No.: 2017/136; 22 May 2017 *Draft Guidelines to Govern the Participation of Observers in Closed Commission Meetings to Consider the Compliance Monitoring Report*.

- d. Establish an informal review process of TCC decisions for CCMs which are dissatisfied with the process or outcomes [Commission]
- e. Adopt a phased process for Observers to participate in all CMS discussions [TCC and Commission]

## 7. Determining Compliance Status

### 7.1 The most appropriate method for determining compliance status

1. Chapter 9 provides a selective summary of compliance processes in use in other RFMOs and non-fisheries multilateral bodies. The assessment of the Panel is that the WCPFC CMS process is robust and that the structure and methodology applied stands up well against the practices in other bodies.
2. CMM 2017-07, Annex A, provides a manageable categorization of compliance status that is currently applied on an obligation-by-obligation basis as the outcome of the CMS process. As noted elsewhere in this Report, the Panel received significant adverse commentary on the number of obligations that are assessed each year in this process (See Chapter 2).
3. The Panel recommends that, during CMM drafting, a selection of substantive or key provisions (“audit points”) be identified for specific assessment in the CMS. The number of audit points may vary among CMMs but restricting the number to those that are essential to the effective functioning of the Commission will improve the efficiency and acceptability of the CMS process. It is essential that the application of audit points is clearly articulated and understood by all CCMs at the time of CMM formulation and prior to adoption at the Commission.
4. In addition, as part of the CMM adoption process, CCMs should determine the acceptable means of implementation (e.g. incorporation of the CMM requirement into legislation or regulation) or, if there are alternative approaches that can be considered equally acceptable for the purposes of implementation (e.g. administrative processes that establish an enforceable obligation on flag State vessels and nationals). This matter was discussed in Chapter 5.
5. With respect to data reporting obligations associated with audit points, time frames, data elements, data formats and data quality should be clearly specified. The criterion for selecting an audit point should be based on the centrality of this information to assess stocks, to perform necessary scientific evaluations, to assess the effectiveness of the implementation of CMMs (e.g., gear restrictions, size limits, area closures, effort limits, fishing seasons) and the essential nature of the information to support decision-making in the Commission.
6. Audit points selected should be clearly identified in the body of the Measure itself (a summary box format may be appropriate). The Secretariat could then consolidate all audit points identified for all CMMs and publish an annual checklist, similar to the current practice but in a reduced form, to improve the effectiveness of CCM CMS-related work planning.
7. The revised list of obligations, both in terms of the CMMs subject to the CMS, and the obligations within those CMMs identified for 2018, proposed by FFA members at WCPFC14 (Attachment V), would have significantly progressed this recommendation<sup>5</sup>. The eventual list of obligations adopted by WCPFC14 nonetheless was progress towards this recommendation.

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<sup>5</sup> 98 for 2017 CMR; 126 for 2016 CMR compared to 122 for the 2015 CMR.

8. TCC, or the working group charged with negotiating a CMM should draft a checklist for compliance assessment that would be required for each new CMM that is proposed for consideration at TCC then the Commission. This checklist could be similar to the developing States/SIDS checklist adopted with CMM 2013-06.

9. The compliance assessment checklist developed for new CMMs should note the specific requirements to be assessed by TCC (paragraphs/subparagraphs similar to those identified in WCPFC14, Attachment V), the criteria for an assessment as compliant, the priority for assessment at TCC, the time frame for assessment and, once a response to Non-Compliance procedure is in place, consideration of potential actions that the Commission could take in the event of an assessment as priority non-compliant.

10. In completing the compliance checklist, which should be embedded in the new CMM, CCMs would have a better sense of the timeframe for implementation of the CMM, the resources it will require to achieve implementation compliance, the potential impact on CCMs, the Secretariat and TCC workload, and whether duplicate audit points exist elsewhere (in other CMMs or Convention obligations).

#### 7.2 The effectiveness of the CMS procedures in identifying CMMs that require modification to improve implementation of their objectives, or that require clarification

11. A number of compliance assessments at TCC13 presented issues of interpretation (See also Chapter 2 and 5). In particular, interpretive issues initiating some of the lengthiest discussions focused on variation in individual CCM methods of implementation and reports on the status of FSIs. For the former, the proposed CMM should clearly articulate the expected means of implementation (see above). CCMs that have administrative processes or restrictions that could preclude implementation as articulated, should introduce language to the CMM at the time of its adoption that would allow alternative procedures that are comparable in effectiveness (See Chapter 6).

12. Regarding FSI, the TCC should continue to develop the reporting formats and guidelines that could improve both the quality and consistency of information submitted in a ISR (as requested at TCC13 (Final 2017 CMR, paragraphs 9-10). However, TCC should take into account sensitivities associated with the premature release of details that could compromise investigations. In addition, the TCC should evaluate the extent to which an individual case, or set of similar cases, and the enforcement outcomes, or lack of progress thereof, undermine the effectiveness of the CMM or Convention obligation under review.

13. Deference should be afforded the enforcement decision(s) of the investigating CCM for its vessels, nationals, or other entities over which the CCM exercises jurisdiction. Another CCM with concerns over the outcomes of enforcement (e.g., low level of fines or leniency of sanction) should articulate how the final action or pattern of action in similar cases undermines the CMM. If there is consensus at TCC regarding the ineffectiveness of enforcement action on the part of a CCM, TCC should recommend a review and request a capacity assistance plan from the CCM concerned.

### 7.3 Ways of improving these CMS procedures

14. The Panel supports the decision taken at WCPFC14 that the number of audit points assessed at an individual TCC meeting be confined to those that address the current highest priority conservation and management issues (WCPFC14 Summary Report, Attachment V).
15. The TCC could also consider the use of a ‘Friends of the Chair-type’ arrangement that is used by the Compliance Committee in ICCAT (See Chapter 9, paragraph 12). The composition of such a group would need to fairly and equally represent all CCMs and demand impartiality in the conduct of its responsibilities. The main purpose of the Group would be to sift CMS material that would be subsequently subject to review in the TCC. The Group could also consider prioritization of the agenda of the TCC for its next meeting.
16. Consideration of the establishment of such a Group would require an appraisal of the possible timing of its meeting, the implications for TCC business and also for the Secretariat particularly if the outcomes of the Group’s discussions resulted in a need to revise Secretariat documentation and information available to the CMS. Greater flexibility in relation to this would be realized if the extended CMM-development schedule was adopted (see Chapter 12).
17. TCC should make use of the Case Management File System to facilitate the cooperation of CCMs with regard to a particular investigation in advance of TCC. Currently, the System provides that the relevant flag State, the notifying CCM for inspections or observer providers for cases based on observer data, are granted access to each case. Where appropriate, the coastal CCM and the chartering CCM are also provided access to view relevant cases.
18. The system should be open as read-only to non-involved CCMs. To facilitate the effective resolution of a case, any CCM with an interest in that case should notify the involved CCMs 60 days in advance of the TCC Meeting of an intention to raise the case for discussion at the forthcoming TCC. At this time, the CCM intending to raise the case should provide advance notice of the specific questions or concerns it intends to raise for clarification and discussion.
19. The involved CCMs could provide responses in advance via the Case Management File System or prepare verbal/written responses for delivery at TCC. If a satisfactory response is recorded in the Case Management File System in advance of TCC, the requesting CCM can notify the TCC Chair/Secretariat that the specific case no longer requires a hearing at the upcoming TCC Meeting.
20. While the foregoing process would expedite the resolution of individual cases, and free up the TCC to consider other matters, this would not preclude the possibility of additional matters associated with the case, or other cases, being raised without notice at the TCC.
21. Observer prenotifications should not be discussed at TCC if investigations are noted as underway and the Friends of the Chair Group agree that it is reasonable to provide more time. Much time at TCC13 was given to discussion of observer prenotifications when it was clear that information was not yet available to the concerned CCMs for cases to proceed. If the case is

noted as closed with no action taken, any CCM could notify the involved CCMs of the request to raise the case at TCC.

22. Observer notifications of potential violations could be ranked and prioritized by the Friends of the Chair as procedural guidance for the TCC. For example, potential violations of effort controls, seasonal or area restrictions or FAD requirements could be prioritized for review over observer accommodation issues such as food choices. This matter will receive the attention of the IWG established at TCC13 to examine the need for flag State CCMs to obtain copies of observer reports for their vessels in a timely manner so they may fulfill their responsibility to undertake an investigation of a possible violation (TCC13 Summary Report, paragraph 161 and Chapter 10).

23. In some instances, CMMs specify CCM obligations that are also articulated in the Convention. In the effort to undertake a thorough review of all obligations, there is some duplication in the TCC review process when the same CCM deficiency (e.g., implementation or reporting) is assessed both under the CMM and the Convention. This has been addressed to a significant degree through the adoption of the reduced list of obligations at WCPFC14 (Attachment V).

#### 7.4 Recommendations

24. The Panel recommends:

- a. Identify and describe requirements associated with key audit points in each CMM during drafting [CCMs, TCC and the Commission]
- b. Additional consolidated summaries for historical FSI information be included in FSI reporting [Secretariat]
- c. Establish a Friends-of-the-Chair arrangement to reduce the demands on TCC to consider and address matters of an administrative and low-priority nature while identifying high priority issues/cases for consideration by the TCC as provided for in Chapter 9 [TCC and the Commission]



## 8. Technical Assistance and Capacity Building

### 8.1 Introduction

1. TCC has responded to Rule 2 (h) of the WCPFC Rules of Procedure and Part VIII of the WCPFC Convention by establishing the Special Requirements of Developing States as a standing agenda item for the annual TCC meeting.
2. A summary of the discussion around this broad subject in the period since 2012, drawing on TCC and Commission Report text, is at **Annex I**.
3. In relation to the CMS, during WCPFC9, FFA members presented 11 priority areas for assistance and capacity building in relation to the CMS including:
  - a. ensuring effective participation so they were not marginalised; and
  - b. ensuring they were assisted in the implementation of Commission obligations as required by the CMS, including through capacity-building, rather than using the scheme primarily to penalise them (WCPFC9 Summary Report, paragraph 83).
4. More substantive consideration of capacity building and technical assistance needs commenced with the identification of issues with implementation for each CMM, and each CCM, in 2013 with a summary of capacity building issues identified in the previous two years presented by the Secretariat to TCC9. Subsequently, WCPFC10 approved two CMMs: CMM 2013-06 on the criteria for the consideration of conservation and management proposals, and CMM 2013-07 on the special requirements of SIDS and participating territories.
5. Attention to these requirements is reflected in the annual TCC work plan and, in 2014, the Commission adopted a checklist, WCPFC11-2014- DP20\_rev2, presented by FFA members that profiled SIDS special requirements and which would subsequently be considered in the drafting of CMMs (WCPFC11 Summary Report, paragraph 197 and Attachment D). Updated lists have since been submitted by FFA members (WCPFC12-2015-DP01 to WCPFC12 and TCC13 Summary Report, paragraph 109). In 2015, the CMS was refined to incorporate a specific section related to capacity building (CMM 2015-07, paragraphs 5-7).

### 8.2 2012-2017 (TCC9 to 13 and WCPFC11 to 14)

6. A summary of issues identified by CCM and CMM generating requests for assistance and capacity building 2012-2017, as reported in the Final CMR, is presented at Table 1.

Table 1. Summary of issues identified by CCM and CMM generating requests for assistance and capacity building 2012-2017<sup>6</sup>.

	Obligation with paragraph reference	Number of CCMs				
		TCC9 (2012 and 2013)	WCPFC11	WCPFC12	WCPFC13	WCPFC14
NP Albacore reporting	2005-03 03				2	
Observers	2007-01	3		1		
	2007-01 Attachment K Annex C 06		4	3	2	
Seabird mitigation measure reporting	2007-04	2				
	2007-04 04		1			
	2007-04 09		1			
	2012-07 04				1	
Sea Turtle mitigation measure reporting	2008-03	3				
	2008-03 02		2		2	
	2008-03 07c		1			
Catch retention reporting	2009-02 12		1			
Data Buoy protection	2009-05	1				
Transshipment reporting	2009-06			2		
	2009-06 11		4		1	1
	2009-06 34		2		1	
	2009-06 35 a (ii)		2			
	2009-06 35 a (iii)		2		1	1
	2009-06 35 a (iv)		1			1
NP Striped marlin	2010-01	1				
	2010-02 02				1	
IUU list implementation	2010-06 22					1
Sharks	2010-07	4				
	2010-07 06					1
	2010-07 07		1			

<sup>6</sup> TCC9, prepared by the Secretariat (WCPFC-TCC9-2013-07, Table 1); WCPFC11 Summary Report, Attachment H: Final CMR, paragraph 25 and 26), (WCPFC12 Summary Report, Attachment W: Final CMR, paragraph 28), (WCPFC13 Summary Report, Attachment U: Final CMR, paragraph 27) and (WCPFC14 Summary Report, Attachment U: Final CMR, paragraph 36).

	Obligation with paragraph reference	Number of CCMs				
		TCC9 (2012 and 2013)	WCPFC11	WCPFC12	WCPFC13	WCPFC14
	2010-07 09		1		2	
	2010-07 12		1			
Commission VMS	2011-02	5				
	2011-02/14-02 9a			1	2	
	2011-02/14-02 9a VMS SSPs 7.2.2		1	1	2	1
	2011-02 9a VMS SSPs 7.2.4		1			
	2014-02 9a VMS SSPs 2.8				2	
Purse seine cetacean and whale shark mitigation	2011-03 05		1			
	2011-04 03		2		2	
	2012-04 01					1
Tropical Tuna CMM reporting and implementation	2012-01 10		1			
	2012-01 30		1			
	2013-01 24, 44, 47, 48, 49			1		
	2013-01 01				1	
	2013-01 03				2	
	2013-05 02					1
	2014-01 16, 23, 24, 33, 34, 40, 44, 47 and 48				2	
Record of Fishing Vessels reporting	2014-03 02				1	
Scientific data reporting	Scientific Data 01		1		1	
	Scientific Data 03		1			
	Scientific Data 04		1		1	
Request for investigations	Convention Article 24(3)					1
	Convention Article 25(2)					1

	Obligation with paragraph reference	Number of CCMs				
		TCC9 (2012 and 2013)	WCPFC11	WCPFC12	WCPFC13	WCPFC14
<b>CCM requests to address specific obligations</b>						
	Fiji	2				
	FSM	2	5	1	4	3
	Kiribati	1	9	2		
	Indonesia		4	3	19	1
	Nauru	4				
	Niue	3				
	Palau				6	
	Papua New Guinea		2			
	Philippines	1	3		4	
	RMI	2				
	Samoa	1				
	Solomon Islands		1			
	Chinese-Taipei		1			
	Tuvalu		4	1	2	1
	Vanuatu	2	7	2	2	6

7. A consistent theme, through both TCC and Commission reports since 2012, has been the challenge experienced by many CCMs servicing their CMM and Convention obligations. They have repeatedly advised that obligations are burdensome and that small administrations, particularly, face difficulties complying with the requirements of the CMS.

8. Available information offers little to assist in discerning trends or commonalities to assess if the CMS is achieving one of its stated objectives of identifying areas in which technical assistance or capacity building may be needed to assist CCMs achieve compliance (CMM 2015-07, paragraph 1(i)). Indicative trends, such as a reduction in the number of CCMs identified in the annual Final CMR as requiring capacity building or technical assistance in the period 2012-2017, from 9 to 4, however are suggested.

9. It is difficult to ascertain if such data is a genuine indication of an actual improvement in CCM capacity to comply. During some CMS review periods, such as for 2015, some CMMs, such as non-target-related measures and mitigation measure requirements, were not assessed in the dCMR whereas requests for assistance from previous years had related to these measures. In addition, individual CMMs have been subject to, sometimes annual, review and refinement. A comparison of CCM compliance and the associated identification of capacity building and technical assistance needs between years for a CMM that has been subject to refinement, may be

somewhat superficial (see also Chapter 2).

10. Apart from indicative figures such as these there is currently no means to assess capacity building needs in a strategic manner nor to assess the outcomes of initiatives that have been implemented to address them. While self-assessments genuinely reflect areas of need as they relate to individual CCMs it is possible the need is indicative of broader capacity building matters that would benefit from being addressed in a more strategic manner.

11. Since 2012, four CCMs have consistently been identified as requiring technical assistance and capacity building, for different CMMs, through the CMS process. In 2016, a relatively large number of obligations were identified for one CCM as requiring capacity building assistance but there was a significant reduction in items identified for that CCM in 2017. Whether that CCM's capacity to comply with obligations improved dramatically during 2016, as suggested in its 2017 assessment, or that the CMS process simply did not identify obligations for which that CCM was experiencing difficulties in achieving compliance, is uncertain. Similar observations apply to CCMs that identified needs in the early years of operation of the CMS but for which no further need was subsequently identified. It is unclear whether the issues were rectified, or whether the issues remained and were not identified as an on-going capacity building need.

12. The CMS is increasingly utilised to determine whether or not an obligation, in itself, is practically and logistically difficult to achieve for all CCMs, whether there are interpretative issues that impact effective implementation, or whether capacity development and technical assistance is required to achieve implementation compliance. These types of outcomes, anticipated by CMM 2015-07, are still maturing. Significant sections of more recent CMR Reports are dedicated to identifying issues with measures that are subsequently taken up in the Commission and during CMM drafting in an effort to ensure that compliance is, theoretically, achievable by all CCMs consistent with CMM 2015-07, paragraph 1(ii).

13. It is important that FFA Members, Participating Territories, Indonesia and Philippines have the capacity to engage in the process of the review of obligations to ensure that an obligation can either i) be complied with using existing resources and capacity, or ii) that a response is in place to assist a CCM achieve its capacity to comply.

14. The process of building capacity and providing technical assistance in the CMS is one that is evolving. While a capacity building or technical assistance need may be identified in the CMS<sup>7</sup>, there is a need to develop a strategically coordinated means to deliver, and monitor, the capacity development and technical assistance needs identified. At present, the means to assess the strategic impact of any capacity building or technical assistance initiative is generally superficial and confined to an annual report provided through the dCMR and subsequent review in TCC.

### 8.3 Resources available to support capacity development assistance needs.

15. SIDS benefit from a variety of capacity development assistance sources. These include

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<sup>7</sup> Which includes a template for the preparation of a Capacity Development Plan (CMM 2015-07, paragraph 5-7).

the Japanese and Chinese-Taipei trust funds, through the FFA Secretariat and bilaterally through development assistance programmes (for example, the EU, Japan, Korea, Australia and New Zealand). To a lesser extent, Indonesia and Philippines (through programmes such as the WPEA OFM Project), also benefit from programmes that have explicit objectives of building national capacity to engage in collaborative arrangements for the conservation and management of WCPO tuna stocks. Participating Territories generally rely on their metropolitan counterparts to resource development assistance needs.

16. Apart from with regard to the Regional Observer Programme, the WCPFC Secretariat currently has limited capacity to actively support capacity building and deliver technical assistance related to the CMS. The Secretariat's current services are constrained to maintaining records of capacity needs identified in the CMS and collating annual reports associated with Capacity Development Plans submitted through the dCMR for TCC. A strategic programme of support to capacity development has not yet been incorporated into the WCPFC Secretariat's corporate services and the Secretariat currently has limited resources to provide sustained in-country support for capacity development and technical assistance to assist with CCMs CMS capacity-building needs.

17. At WCPFC11, FFA members proposed an approach that, in their view, would build a fairer way of dealing with SIDS in the CMS process. It proposed starting with the Annual Reports where SIDS could flag a specific assistance need early. It was then proposed that the Secretariat and the SIDS develop an implementation plan broadly based on a common template which could elaborate the assistance need and describe a plan and timeframes associated with it. It was proposed that the plan include a budget and potential funding sources for any financial assistance. It could be attached as part of the dCMR for each CCM, and would be part of the documentation reviewed by the TCC (WCPFC11 Summary Report, paragraph 676). This was the precursor of the CDP.

18. While there is clearly a need for additional, long term, support for these and related efforts there is also a critical need for improved coordination and strategic support among the different sources of capacity development assistance that already exist.

19. At TCC13, FFA members noted that while several needs had been clearly articulated by SIDS, and several sources of assistance made available, there remained a need for stronger coordination between sources of assistance and for that assistance to be systematically tracked to ensure delivery of assistance to SIDS. It was proposed that this matter be taken up at WCPFC14 (TCC9 Summary Report, Paragraph 114).

20. At WCPFC14, partially in response to the discussion that had occurred at TCC13, the Commission agreed to forward Section V of the CMR Executive Summary to FAC11 so that it could be considered in discussions regarding the Special Requirements Fund and the use of the SRF to respond to the assistance needs arising from the CMS (WCPFC14 Final CMR Executive Summary, paragraph 36).

21. This Review has highlighted that capacity building and technical assistance in relation to the CMS requires a structured and systematic response. At present, the Commission's response

to capacity building is not strategic and lacks genuine support for operationalising responses to the needs identified.

22. To address this, it is recommended that the Commission establish a Secretariat post tentatively titled Capacity Development Assistance Officer (Draft ToR is at **Annex J**). Periodically assessed for its effectiveness, the position would have responsibilities for providing strategic, logistical and administrative support to eligible CCMs in relation to CMS-related capacity development and supporting technical assistance initiatives. The position would support the Secretariat's engagement with bilateral, multilateral and other initiatives, such as those implemented through regional and sub-regional agencies, facilitating coordination of different sources of assistance for capacity development among eligible CCMs. The focus would be on capacity assistance needs identified through the CMS. It would also support initiatives by TCC and the Commission to target strategic needs and monitor impacts. The estimated annual cost to the General Fund budget for this position is US\$200,000 plus travel.

#### 8.4 Recommendations

23. The Panel recommends:

- a. establish a post of Capacity Development Assistance Officer to coordinate the WCPFC Secretariat's support to CCMs-related capacity building and technical assistance.

## 9. The procedures and experience of other RFMOs and other multilateral bodies

### 9.1 Aspects of other RFMOs that could strengthen the WCPFC CMS

1. As in Chapter 3 the material in this section relating to compliance monitoring procedures and best practice in other RFMOs draws on the reviews done by Koehler (*In prep.*).
2. In general, RFMO compliance mechanisms share similar components, comprising three stages. These are:
  - a. information gathering;
  - b. review and assessment;
  - c. feedback and/or application of corrective remedies by the RFMO, with flag State action and follow up.
3. As regards the first stage of the process, information gathering, the information is generally provided by Members<sup>8</sup> and Cooperating Non-Members via an annual report, an action plan or questionnaire, or is drawn from data gleaned from external sources. Some Secretariats or Compliance Committee Chairs also prepare summary compliance reports or tables.
4. The best practice identified by Koehler suggests that there should be a diversity of sources of information, with verification of national self-reporting, so that self-reporting by states is coupled with other independent sources of information to verify compliance. For example, national reports may be combined and cross-checked with a compliance report prepared by the Secretariat or Compliance Committee Working Group or body using other sources of verifiable information, such as observer reports, transshipment declarations or catch documentation scheme certificates, VMS data, landing and trade information, unloading data etc.
5. Koehler suggests that the items assessed in a compliance process should also include whether or not required statistical data and national implementation reports have been provided, and whether assessed contributions have been paid.
6. In the second stage of the process, review and assessment, the Compliance Committee or a Working Group reviews and assesses the information. Members and CNMs provide new information and answer questions. Their compliance status record is identified and recommendations are made to the Commission.
7. This assessment process will normally be by way of a focused entity-by-entity, or obligation by obligation (or measure by measure) review, with clarity and fairness in due process, and transparency. This includes the Committee or Working Group having an open process whereby other CCMs may ask questions of the CCM concerned, and the CCM concerned has an opportunity to provide information, explanations, and reports on any actions being taken to address the identified infractions or deficiencies. The compliance reports should

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<sup>8</sup> Members is used interchangeably with Contracting Parties (CPCs) subject to the provisions of WCPFC to accommodate Participating Territories. In some multilateral fisheries arrangements, such as CCAMLR, some Contracting Parties, referred to as Acceding States, are not full Members. Cooperating Non-Members (CNMs) and Cooperating Non-Contracting Parties (NCPs) are generally the same. In WCPFC, the term 'CCM' refers to Members, Cooperating Non-Members and Participating Territories.



also include responses by CCMs to previously identified areas of non-compliance and compliance assessments that identify the areas of non-compliance and recommended actions.

8. In the final stage, the Commission takes decisions and, where the tools exist, corrective actions can be applied. CCMs are requested to respond to the Commission the next year regarding their non-compliance or vessels' infractions and action they have taken.

9. Koehler's identification of international best practice suggests that follow up and outcomes from a compliance assessment process should include required reporting by CPCs on actions taken, and the availability and use of tools to respond to identified types of non-compliance. Responses by CCMs to areas of previously identified non-compliance should be required and individually reviewed annually, and failure to report on actions taken should be considered as a serious type of non-compliance as is successive and repeated non-compliance on the same obligation.

10. The WCPFC CMS therefore stands up well overall against the CMS procedures of other RFMOs, and international best practice as identified by Koehler, with the exception of transparency which is dealt with elsewhere in this report (see Chapter 6).

11. There are however several aspects of other RFMO's procedures which, in the view of the Panel, could be drawn on to strengthen the WCPFC CMS. The first is the two-stage process followed in the ICCAT Compliance Committee, which winnows down and reduces the volume of compliance issues that have to go before the Committee itself. As identified elsewhere in this report by the Panel (see Chapters 2 and 5), one of the challenges – and frustrations – experienced by those in the TCC is the excessive volume of material and detail that is considered by the TCC itself, which then leads to the TCC being bogged down in minutiae rather than focusing on significant compliance issues. This also needs to be considered in light of the point also made elsewhere in this report (see Chapter 5), that individual vessel infractions do not necessarily amount to non-compliance by their flag State – that is a considered assessment that the TCC needs to make, but it needs to have sufficient time to do so.

12. In the first stage of the ICCAT process, the Chair of the Compliance Committee, with the assistance of a Group of Friends of the Chair (comprising representatives of each of the geographic regions amongst the ICCAT membership) reviews the Secretariat's report on compliance related information for Contracting Parties (CPCs). The group also reviews input by CPCs, and fishery related information of non-parties without cooperating status, and identifies serious issues.

13. In the second stage, the Compliance Committee Chair presents to the full Compliance Committee the compliance issues that have been identified by the earlier group. The Compliance Committee then discusses apparent issues of non-compliance with a focus on more serious matters, with individual CPCs being able to raise matters of concern and seek explanations from others present. If the Compliance Committee determines that there has been non-compliance, and that action is warranted in accordance with guidelines for response action, the Chair of the Committee (again in consultation with the Friends of the Chair Group) then develops recommendations for specific actions to be taken to address non-compliance and

encourage cooperation, which are considered by the Committee. The Committee's recommendations then go to the Commission for a final decision.

14. A second aspect of other RFMOs' practice that could usefully be drawn on by WCPFC, is the Quality Assurance Review (QAR) system used by CCSBT. CCSBT uses the QAR system to regularly review its members on a recurring schedule, so as to provide independent reviews to help its members identify how well their management systems function with respect to their CCSBT obligations and to provide recommendations on areas where improvement is necessary.

15. The QAR is implemented through a phased process commencing with a desk top appraisal and progressing to in-country reviews. The costs of the QAR system implemented by CCSBT depends on the number of members reviewed each year (at least one member each year since 2013; some for multiple stages), and what stage in the QAR is being implemented for the member reviewed. The CCSBT budget provides approximately US\$50 000 to support QAR-related activities annually.

16. CCSBT is of course a much smaller organization, with far fewer members, than WCPFC, and instituting a routine QAR system for WCPFC could be both cumbersome and expensive. Such a system could however be used where there appear to be serious compliance issues for a WCPFC CCM, as identified by the TCC and Commission. The Panel is not proposing that it be used punitively, just as the CCSBT system is not used punitively, but rather to help identify for a CCM those areas where improvement is needed, and to provide recommendations (including recommendations for assistance) to the CCM.

17. To round off the picture on international fisheries organisations, it may be worth mentioning the approach taken under the Agreement on the International Dolphin Conservation Program (AIDCP), as it was raised with the Panel as an example of a process which works well. It will be noted, however, that AIDCP unlike WCPFC has quite a narrow mandate, and fewer CCPs.

18. AIDCP comes under the umbrella of IATTC, although the States Parties are not all the same. It has established an International Review Panel (IRP) which monitors compliance by vessels with measures to minimize the mortalities of dolphins during fishing operations. The IRP reviews data collected by on-board observers relating to compliance with the AIDCP, and identifies possible infractions of that Agreement. Lists of these possible infractions are submitted by the Secretariat to flag States for investigation and possible action, and those States report back to the Secretariat on actions taken regarding these possible infractions. The IRP publishes an annual report that summarizes the activities, actions, and decisions of the IRP, and lists the possible infractions identified for the various national fleets.

19. The International Review Panel established under the AIDCP has an unusual composition in that, as well as representatives of CCPs ("governmental members"), it includes three representatives of non-governmental environmental organisations with recognized experience in matters pertaining to the agreement, and three representatives from the tuna industry that operates under the jurisdiction of any of the Parties in the Agreement Area. Decisions are however taken by consensus amongst the governmental members.

## 9.2 Other adjudication-type processes in international arrangements outside of fisheries

20. Compliance monitoring systems are not of course unique to RFMOs. The international system takes a variety of approaches to try to ensure compliance by States with international obligations. At the very highest levels States can be brought before international tribunals by other States which allege that they have breached their international obligations, although this can only normally be done with the consent of the allegedly offending State (whether given in advance or at the time).

21. Monitoring systems for compliance are comparatively rarer, although not uncommon. Many rely on complaints by other States, but some conduct routine monitoring of States' compliance although not normally on an annual basis as in RFMOs.

22. The following is a round-up of some of the compliance monitoring systems in international arrangements outside of fisheries. It is not an exhaustive list.

23. It will be noted however that many of them have similar characteristics. In particular, many of them use smaller limited-membership bodies (with their members elected by States Parties) to deal with compliance issues at least at the initial stage. This is not dissimilar to the approach being proposed by the Panel that a smaller group led by the TCC chair or co-chairs go through the compliance reports and identify significant compliance issues before they go to the full TCC itself (see paragraphs 11-13).

24. In fact, it will be noted that in some of the systems described below, it is the smaller group which takes the actual decisions on compliance, without those decisions then going to the full Parties or there even being a right of appeal to the full parties.

25. Another example of monitoring of States' compliance can be found with regard to **international human rights obligations**. Most international Human Rights Conventions contain compliance monitoring systems, under which States have to provide written reports (generally every five years) on their compliance with the obligations in the Convention. These written reports are normally structured on an article-by-article basis, with the State reporting on what it has done with respect to its obligations under each article.

26. Each State then has to appear (through its representatives) to orally answer questions put by a limited membership Committee of experts which has been elected by the States parties to the Convention (generally on a geographic basis). This process normally runs over several days for each State.

27. A feature of this system is that there is generally what is referred to as a "parallel process" whereby the Committee also receives reports from civil society from the State in question, which then often form the basis for the (critical) questions put by the Committee's members to that State's representatives. The Committee then issues a report. The system is however heavily bogged down by backlogs, partly due to inadequate time and funding.

28. Many **international Environment Conventions** also contain compliance monitoring systems. For example, the Kyoto Protocol's Compliance Committee considers questions of implementation by its Parties, which can be raised by expert review teams established under the Protocol (these teams review the greenhouse gas inventories and reporting by Parties), by another Party or by the Party itself.
29. The Compliance Committee is a limited membership committee, comprising 20 members elected by Parties on a geographical basis. Advice and assistance may be provided to a Party in breach, but if emissions are exceeded they need to be made up subsequently with a penalty. As a general rule, decisions of the Committee cannot be appealed, and even then only for denial of due process.
30. The Montreal Protocol has an Implementation Committee, comprising members from 10 Parties. It takes up concerns ("reservations") about one Party's compliance that have been raised by another Party, compliance issues raised by the Party itself, or in some instances concerns raised by the Secretariat.
31. The Committee's functions consist of gathering and requesting information in such cases, and identifying causes of non-compliance, with a view to securing an amicable solution to bring about compliance. It then reports to the Meeting of the Parties. A "plan and review" approach is taken rather than sanctions, even though the latter are provided for under the Convention.
32. The Compliance Committee under the Cartagena Protocol on Biosafety is again a limited membership body of 15 members elected by Parties on a geographical basis.
33. The Committee may consider submissions made by a Party with respect to itself or another Party, or information received from other sources. Parties that are the subject of a submission have to respond, and can participate in the Committee's discussion. It can provide advice or assistance to the Party concerned, request the Party to develop a compliance action plan or to continue to provide progress reports, or can make recommendations to the Meeting of the Parties (COP-MOP) regarding the provision of assistance. The COP-MOP may also issue a caution, or publish information on non-compliance, or in the case of repeated non-compliance take such measures as it decides.
34. Under the Basel Convention a Compliance Committee of 15 members is established (on a geographical basis), which can consider submissions from a Party regarding non-compliance by itself or another party or from the Secretariat. The Committee may dismiss submissions that it considers *de minimis* or manifestly ill founded. It pursues a facilitating procedure, and if that is insufficient may make recommendations to the COP.
35. Under CITES its Standing Committee, which is a limited membership body elected by Parties on a geographical basis, examines general and specific compliance matters, based on information received. It reports to the Conference of the Parties.
36. There are no compliance mechanisms under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention). However, with the

entry into force of the London Protocol in 2006, a set of Compliance Procedures and Mechanisms, pursuant to Article 11 of the London Convention, were adopted in November 2007. It included the establishment of a subsidiary body - the Compliance Group.

37. The Compliance Group meets in parallel to the Meeting of Contracting Parties and provides advice to the Parties on compliance matters. It consists of 15 representatives of the Contracting Parties selected on the basis of their scientific, technical or legal expertise and elects a Chair and Vice-Chair.

38. Following consideration and assessment of possible non-compliance, and taking into account the capacity of the Party concerned, including factors such as the cause, type, degree and frequency of any non-compliance, the Compliance Group may recommend to the Meeting of Contracting Parties that one or more of the following measures be taken: provide advice and recommendations, with a view to assisting the Party concerned to implement the Protocol; facilitate co-operation and assistance; elaborate, with the co-operation of the Party or Parties concerned, compliance action plans, including targets and timelines; and issue a formal statement of concern regarding a Party's compliance situation.

39. The Meeting of Contracting Parties makes the final decision regarding any measures proposed by the Compliance Group to be taken in response to a Party's possible non-compliance. The Meeting of Contracting Parties may also consider additional measures to facilitate compliance by the Party concerned.

40. A number of **Arms Control Treaties** also contain compliance monitoring systems, which generally involve some form of inspection or audit.

41. The International Atomic Energy Agency (IAEA) is charged with ensuring that a State is living up to its international commitments not to use nuclear programmes for nuclear-weapon purposes, and that nuclear material is not diverted to non-peaceful purposes. Basically two sets of verification measures are used. One is based on assessments of the correctness and completeness of a State's declared nuclear material and nuclear-related activities. Verification measures include on-site inspections, visits, and ongoing monitoring and evaluation including tamper-proof seals and cameras.

42. This is supplemented by different types of on-site inspections and visits. This includes *Ad hoc* inspections, Routine inspections, and Special inspections which may be carried out if the IAEA considers that information made available by the State concerned, including explanations from the State and information obtained from routine inspections, is not adequate.

43. The inspections are carried out by the IAEA's Secretariat, which is viewed as impartial, and it reports to the 35-member Board of Governors which are elected by the General Conference of the Parties on a partly geographical basis (and partly based on their level of nuclear capability).

44. The Organisation for the Prohibition of Chemical Weapons (OPCW) monitors the chemical industry by means of compulsory annual national declarations by States Parties, and

has a system of routine visits and challenge inspections by OPCW Technical Secretariat inspectors.

45. The 41-member Executive Council, to which the Secretariat reports, is elected by States Parties on a geographical basis. Its role includes bringing non-compliance cases to the attention of the Conference of the Parties as appropriate.

### 9.3 Recommendations

46. The Panel recommends that the Commission consider:

- a. Establish a Friends-of-the-Chair arrangement to reduce the demands on TCC to consider and address matters of an administrative and low-priority nature and to prioritize issues cases for TCC review [TCC and the Commission]
- b. Pilot a Quality Assurance Review procedure where there appear to be serious or systemic compliance issues for a CCM [Commission]

## **10. Follow-through on compliance outcomes**

### **10.1 Reporting back by flag States on compliance issues that have been identified**

1. Reporting back by flag States on issues relating to vessel level infractions that have been identified seems to be generally satisfactory, and in general no systemic problems are apparent. The exception is the need – referred to elsewhere – to spell out clearly the detail and quality of information to be provided by flag States when reporting back, as discrepancies in FSI-related information were apparent at the TCC. This has been identified as an area requiring attention.
2. Another area requiring attention concerns the Regional Observer Programme in relation to its interaction with the CMS. A particular issue is flag State difficulty in obtaining observer reports and other relevant information required to support an investigation into an alleged infraction.
3. Ultimately, flag States investigatory and prosecutorial branches need to be able to use the information provided, and to have it in sufficient detail and in a format, that can be used as evidence in investigations and, if necessary, prosecutions. There appear to be significant issues in connection with the observer and de-briefing reports in this respect.
4. A pattern emerged at the TCC13 of flag States reporting that they had requested additional information from observer providers, which had not been received, and they were not able to proceed further in the absence of this. This generated a sense of dissatisfaction and mistrust on the part of flag States and observer providers respectively, each of which felt that the other was not cooperating to the extent required.
5. Some coastal State CCMs also face difficulties in providing observer and investigative information to flag States while their own investigations (as an ROP Observer Provider and possibly as a coastal State) are under way. This can slow down, and potentially obstruct, investigations and requires further discussion. The reality is that the older and more historical the information from Observers is, the greater the difficulty flag State investigators will have in using it successfully.
6. As noted in Chapter 7, TCC13 usefully took a decision to form an intersessional working group to address the need for CCMs to obtain copies of observer reports for their vessels in a timely manner so that they may fulfill their responsibility to undertake investigations of possible violations (TCC13 Summary Report, paragraph 161).
7. The Panel recommends that more capacity building and training support be provided for fishery managers, prosecution and legal personnel, and observers and de-briefers to strengthen the utility and effectiveness of ROP information in the CMS. There may well be a problem with the different disciplines not understanding clearly what the requirements are of other disciplines, as well as the impediments and difficulties they face. As noted, observer data that might be used in the CMS is only useful if it is available, in a timely manner, to those further up the chain, such

as investigators and prosecutors.

8. The Panel also recommends that those who train and debrief fisheries observers, and who review the observers' manual, look further at the nature of the instructions given to observers. For example, where there is any doubt on the observer's part as to whether there has been an infraction, the question arises whether the benefit of the doubt should be given to the vessel (and it not be treated as a potential infraction), rather than it being reported as a possible infraction with all of the consequences that follow, including potentially overloading investigative and prosecutorial systems. In reality, if it is a situation where there is doubt, then a prosecution is unlikely to be successful. It is a matter of finding the right balance, and this is the sort of issue that could be usefully discussed amongst the various disciplines.

9. At TCC13, pre-notification information (544 possible cases) was not used to assess obligations, except for those cases involving observer interference or obstruction. This pre-notification was intended to provide flag States with more timely information regarding alleged violations.

10. It was recommended by the TCC13 that this practice be followed in future as well (pCMR 2017, paragraph 19). Continuing this would appear not to pose a risk because significant cases are generally identified in the online case management file system. On this basis, and the fact that it does free time for consideration of more substantive matters in TCC, the Panel supports the TCC13 recommendation.

## 10.2 Follow up in the Review Process on previous outcomes

11. Where the outcome of the TCC process involves further work or action by the flag State, there is follow up in the TCC the following year. The Secretariat is assiduous and highly efficient in recording that further work needs to be done, and in bringing this to the attention of the next TCC. The process seems to work well, with things not slipping under the radar. Once a FSI process is underway as regards an alleged vessel-level infringement, the flag State is appropriately held to its reporting obligations until the investigation and possible violation has been finalized one way or another.

12. There are however several areas of concern, as noted elsewhere in this Report. The first is that the review process does not effectively address issues of repeated or potentially systemic infringements, such as might suggest that the flag State is experiencing difficulties in implementing particular obligations. The CMS itself does not specifically identify this sort of recurring or systemic issue, and the huge volume of information processed under pressure at the TCC rather militates against such issues becoming apparent. The problem is that when everything is important, nothing is important. Recommendations made elsewhere in this Report should assist with this generic problem faced by the TCC and participants in it.

13. The other area of disquiet expressed to the Panel by many participants is the lack of follow up action or concrete outcomes where there do appear to be major systemic or recurring



problems. For the TCC at present, “the product (i.e. the meeting conclusions as reflected in the TCC Report) is the outcome”. Whereas some other RFMOs do implement concrete outcomes, such as market measures, enhanced reporting requirements or quota reductions, in the case of major or recurring transgressions, this has not occurred in the WCPFC.

14. There was a clear desire on the part of many participants who spoke with the Panel, that the CMS should “have teeth”, as is recognized in CMM 2015-07 (paragraph 38), which states that an intersessional Working Group is to be established to “ (i) develop a process to complement the CMS...to identify the range of responses to non-compliance (ii) progress its work electronically to the extent possible”. The Intersessional Working Group was to “endeavor to develop a process for consideration not later than TCC12 and adoption no later than WCPFC13.” Despite the best intentions expressed in the CMM, this has not yet happened.

15. It was clear to the Panel that some CCMs have reservations in relation to the immediate development and implementation of a response action procedure.

16. The CMS does however need to respond to the current absence of consequences for non-compliance, including building capacity to minimize and address root causes of non-compliance. Indeed, it is building CCM capacity to minimize and address root causes of non-compliance which should be the guiding principle here.

17. In anticipation that confidence associated with the implementation of a response action procedure will build, partially because of increased knowledge and familiarity with the CMS, and also as a consequence of implementing recommendations presented by the Panel, a proposed schedule for the development of a response action procedure is presented in Chapter 3. It is proposed that consideration of that matter commence in 2019 with the aspiration of concluding its drafting so that application could commence in 2022.

18. In the interim, as noted in Chapter 9, the Panel recommends that, until CCMs are able to agree on such a structured schedule of responses to non-compliance, they should adopt a Quality Assurance-type of system for targeted application where there is a pattern of serious non-compliance by a CCM, and possibly systemic failures. Draft terms of reference for a QAR process are presented for the consideration of the Commission at Annex K.

19. The Panel noted the example provided by CCSBT, which has routine QAR auditing on a regular basis. CCSBT has a much smaller membership, and so it is viable to do regular scheduled auditing, albeit subject to funding availability. It is not suggested that regular auditing should be instituted for WCPFC, but rather that an audit might be instituted in instances where the CMS process indicates that there is a pattern of serious non-compliance by a CCM, and possibly systemic failures.

20. The Panel’s attention was drawn to a not dissimilar approach that was recently taken by the IOTC, when it decided to send a compliance mission to Pakistan to assess and assist it with

apparently systemic non-compliance issues. This was done in cooperation with Pakistan, which was keen to resolve apparent difficulties, not least because of the potential impacts on its international fisheries exports (as an article in the Karachi “Daily Times” of 21 September 2017 refers).

21. It is not uncommon for audits to be used as a means to confirm that States have appropriate and effective systems in place to ensure compliance with international obligations. For example, the International Maritime Organisation has instituted an audit system of its member States<sup>9</sup>. The International Atomic Energy Agency has an inspection and auditing system, as described in Chapter 9. The International Human Rights system in effect uses a system of “audits” by “special rapporteurs”, including country visits where possible, to monitor the implementation of human rights obligations. The Convention against Torture specifically provides for in-country inspections where specific violations are suspected.

22. As noted above, there seems to be an effective system of follow up at the level of individual vessel infractions. If a FSI is in progress, and is reported as such, it will remain active in the CMS system with follow up by the Secretariat until it is FSI completed one way or another.

23. This then raises the question of follow up where a CCM has been identified as non-compliant (priority non-compliant etc) in respect of an obligation, given that there is not yet any “response action” procedure.

24. The final Compliance Monitoring Report contains various paragraphs stating that “CCMs evaluated as “non-compliant” for obligations are strongly encouraged to address their implementation issues even without a response procedure” (e.g. 2017 CMR, paragraph 20).

25. Action taken by CCMs in addressing these issues of non-compliance are then reported back on in their next years’ Part II Annual Report. This is in accordance with paragraph 36 of the CMS CMM, which requires that each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the CMR from the previous calendar year. This is reported and discussed in the TCC, in the context of the overall consideration of the CMM in question.

### 10.3 Recommendations

26. The Panel recommends:

- a. Develop a capacity building and training support programme to strengthen the effectiveness of ROP information in the CMS [Commission]
- b. Continue the practice of restricting pre-notified cases for TCC consideration to those involving observer interference and obstruction [TCC]

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<sup>9</sup> IMO, 2017. Member State Audit Scheme and Implementation Support.  
<http://www.imo.org/en/OurWork/MSAS/Pages/default.aspx>

- c. Commit to a new process to develop and implement a response to non-compliance procedure [Commission]
- d. Pilot a Quality Assurance Review procedure [Commission]

## 11. Resource implications of the CMS

2. The importance of compliance to the Commission is reflected in the resources that it has allocated to the progressive development and implementation of processes and procedures to encourage compliance principally through the CMS. This includes the time and resources reserved for consideration of compliance-related matters, with the CMS at its core, in TCC and Commission sessions.

3. It is not possible to quantitatively assess the resources that have been assigned at the national level to engage in Commission-driven compliance processes. However, each year in both the TCC and the Commission sessions CCMs, particularly those CCMs with relatively small administrations, draw attention to the burden that Commission-related compliance processes place on them.

4. The annual Commission budget provides an indication of the contribution by Members<sup>10</sup> to CMS processes. The number, qualifications and required experience of staff contributing to the CMS in the Secretariat has changed significantly since 2011. As a result, the time individual staff allocate to CMS processes has also changed. Apart from noting that there has been an increase in the number of staff and budgetary resources servicing CMS-related activities in the Secretariat since 2011, it is difficult to compare Secretariat resources assigned to the CMS between years in the period 2011-2017.

5. Ten Secretariat staff had a role in compliance monitoring during the period 2011 to 2013 inclusive. This increased in 2014 with the recruitment of four ROP data entry technicians. In 2015 an Assistant Compliance Manager was recruited and an assistant data entry officer position was retitled to be RFV Officer. The Secretariat's estimate of the proportion of full time equivalent (FTE) time allocated to the CMS by approximately 16 staff<sup>11</sup> in 2017 is presented at Table 1. The staff cost associated with this in 2017 was estimated to be US\$300 000.

Table 1. Approximate allocation of time to CMS-related process by Secretariat staff in 2017.

<b>Staff</b>	<b>FTE</b>
Executive Director	5%
IT Manager	10%
IT Officer	5%
Compliance Manager	35%
VMS manager	25%
ROP Coordinator	25%
VMS Operators (x2)	15%
Data Quality Officer	15%

<sup>10</sup> Members contribute to the budget. CNMs make 50% contribution but funds received are external to the approved budget

<sup>11</sup> Excluding the support provided by finance and administration staff and the SPC-OFP in scientific data and observer data management services.

Compliance Officer	15%
Data Control technician (x4) - ROP data entry	15%
Assistant Manager Compliance	45%
RFV Officer	15%

6. In addition, Part 2 of the Commission’s annual budget supports projects and activities directly associated with the CMS.

Part 2 budget	US\$ ‘000						
	2011	2012	2013	2014	2015	2016	2017 <sup>1</sup>
ROP data entry support			257	804	924	924	924
IMS including RFV	35	50	100	100	100	100	100
AR Pt 2 CMS On-line hosting			18	18	18	18	18
Capacity building (ARPt2 and CMR assistance)			30	80	13	50	50
Review							125
<b>Total 2.3</b>	<b>35</b>	<b>50</b>	<b>300</b>	<b>1 000</b>	<b>1 000</b>	<b>1 000</b>	<b>1 200</b>

1. The Secretariat advised that, in 2016, budget allocations were stabilised on a fixed amount to reduce the variation in the TCC budget from year to year. This explains the lack of variation in the Part 2 budget for 2015, 2016 and 2017. In addition, occasional voluntary contributions have periodically been provided by CCMs often to support a specific exercise or task for a fixed period.

7. While the staff complement in the Secretariat has increased since 2011, as with most small organisations the service currently provided by the Secretariat would be exposed if there was an unscheduled departure of one or two key staff (‘key person risk’). Although it is extremely difficult to plan for, the CMS is particularly vulnerable in this regard. It would be prudent for the Commission, through TCC, to examine options to service the CMS in the event of a disruption to Secretariat services arising from unplanned staff turn-over. This could include i) as a short-term remedy, CCMs making available appropriately experienced staff to serve on short-term secondments to the Secretariat, and/or, ii) as part of a longer-term strategy, providing a modest budget to support appropriate capacity building and training for MSC-staff in the Secretariat with the aim of providing some redundancy.

8. Since the 2011-2013 Strategic Plan, the Commission has not agreed to either a Corporate Plan or a Strategic Plan. Information available to assess the relative priority the Commission places on the CMS is confined to i) the annual TCC priority work plan appended to the TCC Summary Report, ii) the proportion of the annual TCC and Commission Meeting dedicated to CMS-related discussions, and ii) the budgetary and associated personnel support allocated to the Secretariat to service the CMS.

9. In relation to CMS-related priorities, at TCC10, the Secretariat advised that its CMS-

related priorities, included;

- a. improve the collection of accurate and timely data, including through electronic reporting (ER) and electronic monitoring (EM);
- b. expand the analytical capability and business intelligence of the WCPFC IMS, including adding a GIS/map for displaying and integrating various WCPFC data;
- c. improving the access and capability of the Secretariat to review ROP observer data including to ensure that the Secretariat's internal MCS operating procedures and IMS systems adequately cater for record-keeping, handling of evidence and notices to CCMs of possible violations;
- d. reviewing procedures and developing tools, including through the website, so that the Secretariat is better equipped to provide timely access to MCS-relevant information in support of member MCS activities and to share MCS data with CCMs, in accordance with the WCPFC data rules and procedure (TCC10 Summary Report, paragraph 401).

10. While these activities remain priority areas for CMS development work and support, the annual review of the work plan at TCC is undertaken in time-constrained circumstances towards the end of a full TCC agenda. It is recommended that a strategic review of TCC priorities be undertaken by a small working group of CCMs and the Secretariat with the view to presenting a new multi-year work programme, with budget estimates, to the Commission for approval. Further, it is recommended that an annual implementation report for the plan be prepared by the Secretariat for TCC review and refinement as considered appropriate.

11. The annual Commission-approved budget demonstrates that CMS-related services currently receive approximately US\$1.5 million annually across the Part 1 and Part II components of the budget<sup>12</sup>. Not unexpectedly, this is a significant, but not unreasonable, increase compared with the early years of operation of the CMS. From discussions with the Secretariat, provided there is no substantial increase in expectations of the Secretariat in respect of CMS-related support, this total annual allocation is anticipated to meet requirements for the next three (3) years.

12. During the next three years there is potential for additional efficiency to be realized. This potential can be realized if the IMS is further developed, the rationalization of the scope of the CMS commenced at WCPFC14 is maintained and CCMs capacity to engage in the Scheme improves.

13. The Panel makes recommendations relating to improving CCMs capacity to engage that will have budgetary implications, if adopted. One is a recommendation to establish a position of Capacity Development Plan Officer (See Chapter 8 and Annex J), and the second is to establish a post of Flag State Investigation Officer, both in the Secretariat<sup>13</sup>. Draft terms of reference for the FSIO are at **Annex L**. The budgetary implication for each position is US\$200 000 annually.

14. It is recommended that both posts report to the Compliance Manager. The CDPO will be

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<sup>12</sup> Approximately 20% of the Commission budget in 2018.

<sup>13</sup> It is recommended that both new posts be subject to periodic assessment to determine if they are having a material impact on CCMs engagement in the CMS and their compliance with obligations

responsible for providing technical assistance, training, project management and administrative support to developing State Members and Cooperating Non-Members, particularly Small Island Developing States (SIDS) Members, Participating Territories, Indonesia and Philippines in relation to Capacity Development Plans provided for in CMM 2015-07. The CDPO may also provide support to cooperative capacity building initiatives that respond to non-compliance through remedial options and include cooperative capacity-building initiatives such as those coordinated through sub-regional agencies.

15. The FSIO will be responsible for providing administrative and technical assistance and training to all CCMs, as appropriate, in respect of flag State investigation cases or incidents provided for in CMM 2017-07. The tasks and responsibilities of the FSIO will include, but would not be limited to, assisting CCMs with the development of guidelines supporting the CCM-specific Status Reports (ISRs), to accompany the dCMR and developing and facilitating the delivery of training and capacity development initiatives to CCMs to strengthen their investigative capacity.

### 11.1 Recommendations

16. The Review recommends:

- a. The Commission instruct TCC to prepare a multi-year strategic plan for the on-going development of the CMS [Commission and TCC]
- b. That once adopted, the Commission commit to a 3-year funding cycle to support implementation of the CMS strategic plan [Commission]
- c. The Commission request that the Secretariat present an annual report on the implementation of the CMS strategic plan [Commission and Secretariat]
- d. The Commission instruct the TCC to consider options to mitigate the impacts of an unscheduled disruption to Secretariat services to the CMS [Commission]
- e. The Commission establish a post of CDP Officer and FSI Officer in the Secretariat [Commission]

## 12. Regular Review Process of the CMS

### 12.1 Commission's CMM drafting schedule

1. In considering the current functioning of the CMS the Panel was advised that some of the issues that have arisen with its implementation, particularly in relation to matters of interpretation and achieving a shared understanding of obligations, arise as a result of insufficient time for CCMs to fully evaluate the implications for the decisions that they take in adopting CMMs. It was noted that although a substantial amount of time is devoted to consideration of CMM-related matters at both TCC and the Commission, the volume of work required precludes the possibility of detailed analysis and review prior to the adoption of a CMM.

2. An option, for the consideration of the Commission, is to schedule CMM development across two years. Such a schedule, that might commence in June of one year would culminate in the adoption of draft CMMs presented at that time, at the Commission meeting in the following year (Annex L).

### 12.2 Should there be a regular review process of the CMS?

3. The history of the CMS at WCPFC has been the adoption of a process that has had effect only for the subsequent year or two with the inclusion of a sunset provision. This provision for testing the measure/process without commitment to its persistence in the long term has enabled consensus in renewal of the measure. However, this approach has required that time be set aside at TCC and the Commission to renegotiate the measure. Arguably, any previously adopted CMM is subject to review, amendment or revocation at the WCPFC annual meeting, but a sunset provision has afforded some CCMs the assurance that a CMS process that is not functioning in their interest, or the interests of WCPFC, can be automatically eliminated through expiration.

4. In 2015, the measure was revised and adopted for a two-year period, with the intent of reviewing its application after TCC13 in 2017 from the standpoint of effectiveness, efficiency and fairness. This intent was reflected in the ToR for this Review adopted at WCPFC13 (WCPFC13 Summary Report, Attachment H). A rollover, with some changes to reflect priorities for assessment at TCC14 was agreed at WCPFC14 (WCPFC14 Draft Summary Report, paragraph 477). The current CMS CMM is effective for 2018 only, in order to consider necessary or desirable changes after the conclusion of the Review.

5. Given the nature/scope of the changes made over the history of the CMS, it is clear that there is an interest on the part of CCMs in monitoring the application of the process and revising it as necessary to achieve its intended outcomes. Therefore, it is appropriate to continue monitoring CMS operations and revising it to suit the needs/objectives of the CCMs and of the Convention, provided that the monitoring does not become overly burdensome.

### 12.3 What aspects should be reviewed, and how frequently?

6. It is noteworthy that the measure, first adopted in 2010 for application in 2011, has undergone significant revisions when renewed in 2011, 2012, 2013, 2014, 2015 and most



recently in 2017. The nature of revisions has focused on operational aspects and on outcomes, in particular the development of new assessment categories. A complete change history of the CMS implementing CMM is provided in Annex B.

7. In response to the questionnaire distributed to the CCMs by the Panel, recommendations ranged from 1 to 5 years for an external review of the CMS. An independent external review should be conducted whenever a majority of CCMs believe the CMS is not meeting its objectives, but not more frequently than every 5 years. A 5-year period between external reviews will allow for sufficient information and experience to accumulate to provide for an effective evaluation of the compliance process.

8. A 5-year time period could be well served by a mid-term Implementation Report (for presentation to the Year 3 TCC and Commission meetings, reporting on trends, issues and challenges associated with the CMS. CCMs should be prepared to provide views and observations in association with that Implementation Report. If major issues were identified during the mid-term review, the 5-year Review could be bought forward at that time if considered necessary.

#### 12.4 What is a suitable duration for a CMS measure?

9. It is helpful to have a durable measure which does not require renegotiation each year, thus affording more time for TCC to apply the process and conduct other business and for the Commission to also deal with other matters. Additionally, stability in application of the process will allow CCMs and the Secretariat to build the necessary information systems and reporting structures to better serve the process. Further, familiarity with the process and stability in its application will enable CCMs to be better prepared to address identified compliance deficiencies in the long term. Finally, with a durable CMS, the focus will be on revisions to address the most important concerns rather than renewal of the measure in its entirety.

#### 12.5 Recommendations

10. The Panel recommends:

- a. Consider adopting an extended (18-month) negotiating time frame for CMM development, drafting and adoption The CMS should be established for a period of five years [Commission]
- b. A comprehensive, all-inclusive review, be undertaken during Year 5. The Review should be commenced well in advance of TCC of that year, so that an interim report is presented to the Commission and then a CMM, if required, is adopted for implementation in the following year [Commission]
- c. The Secretariat be tasked with preparing a mid-term Implementation Report (to the Year 3 Commission meeting), reporting on trends, issues and challenges associated with the CMS. CCMs should be prepared to provide views and observations in association with that Implementation Report. The 5-year Review could be bought forward at that time if considered necessary [Commission, TCC and Secretariat].

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## Annex A – Terms of Reference



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### APPROVED TERMS FOR A REVIEW OF THE COMPLIANCE MONITORING SCHEME IN 2017

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#### Background

The Compliance Monitoring Scheme (the CMS Scheme) was established by Conservation and Management Measure for Compliance Monitoring Scheme (CMM 2010-03). Implementation of the CMS Scheme in 2011 – 2015 was through CMMs that had a duration of one-year and were intended to operate the CMS Scheme as an “initial trial”. Over the initial trial periods, refinements were made to the CMS Scheme through adjustments to the applicable CMM, the obligations to be assessed were rationalized and TCC and CCMs developed experience that improved the efficiency and consistency of the processes to review the draft Compliance Monitoring Report (CMR) and to develop the recommended provisional CMR report. In addition commencing in 2012, the Secretariat was provided resources to develop the online reporting and associated Information Management system to support the CMS: including CCMs submission of Annual Report Part 2, the development of the draft CMR by the Secretariat, the assessment by TCC of the provisional CMR, collation of CCM responses to the draft and provisional CMR and recording of the decision by the Commission of the final CMR. In 2016, a further revised Conservation and Management Measure for Compliance Monitoring Scheme CMM 2015-07 was agreed which among other things added new compliance categories. This CMM is to be implemented during 2016 and 2017.

The overall purpose of the CMS Scheme has been unchanged since the adoption of CMM 2010-03 and has been described in the five subparagraphs of paragraph 1 of the applicable CMM:

- (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.<sup>14</sup>

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<sup>14</sup> 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.

In addition, references reflecting the basis of the CMS Scheme in the Convention, particularly Article 23, 24 and 25, have been included in the preamble of the applicable CMM since CMM 2010-03.<sup>15</sup>

In 2015 (WCPFC11), the Commission discussed a proposal that a review or audit of the CMS Scheme should be conducted (WCPFC11-2014-DP10). In adopting CMM 2015-07 the Commission agreed to a two-year duration for the CMS Scheme, i.e. it is to be effective for 2016 and 2017.<sup>16</sup> The Commission has also agreed that the Scheme will be reviewed at the end of 2017 by an independent panel selected by the Executive Director in consultation with Members.<sup>17</sup>

### **Scope of the Review**

The Review will assess the processes and procedures used in the CMS process to evaluate the effectiveness of the CMS in meeting the purpose of the CMS and the Convention. The objective of the review is to assist CCMs to improve compliance with the Convention and CMMs and to this end the review will be forward looking and provide clear recommendations on how best to implement the CMS. The review will consider the entire period of the CMS Scheme development and implementation (since 2011), and ideally include the complete 2017 year (final year of implementation) of CMM 2015-07. This period is expected to ensure due consideration is given by the Review to the background of operation of the CMS Scheme, including the refinements that have been made to the CMS Scheme over time.

The Review will consider the framework and annual timelines within which the CMS Scheme operates, that commences with submission by CCMs of the Annual Report Part 1 and Part 2, referred to by the Secretariat in its development of the draft CMR for an individual CCMs review. Within the current CMS procedures, the draft CMR is the basis for TCCs development of the provisional CMR and the adoption of final CMR by the Commission. The review of the complete CMS Scheme structure, processes and procedures is expected to provide findings around the continued efficacy of such a structure and where improvements could be made. The findings of the Review shall be considered in the Commission's next performance review noting the importance of compliance to the wider operation of the Commission.

#### **Specific questions to be addressed in the Review of the CMS**

In line with the purpose and scope of the Review, there are a number of specific questions that the Review should address as follows:

##### *Substantive question*

- a. In what ways has the CMS contributed to the work of the TCC and WCPFC?

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<sup>15</sup> The preamble to CMM 2015-07 includes: 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 issued by the Commission. Noting further that Article 23 of the Convention obliges Members of the Commission, to the greatest extent possible, to take measures to ensure that their nationals, and fishing vessels owned or controlled by their nationals, comply with the provisions of this Convention, and 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,

<sup>16</sup> Paragraphs 40 and 41 of CMM 2015-07 provide: "40. This measure shall be reviewed in 2017, and the terms of that review will be determined by TCC12 in 2016. 41. This measure will be effective for 2016 and 2017 only."

<sup>17</sup> The specific WCPFC12 decision was "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." (WCPFC12 Summary Report paragraph 696)

b. What impact has the CMS had on levels of compliance by CCMs with their obligations under the Convention and CCMs? In what ways, and to what extent, have CCMs improved in meeting their obligations over time and since this CMS has been in place? What are the obstacles to effective implementation of CMMs, for example, to what extent are the obligations within CMMs clear and able to be implemented?

c. What refinements should be made to the CMS to improve its efficiency, effectiveness and fairness? How can the CMS take into account the root causes that lead to non-compliance? How can the CMS assist members to achieve compliance? What are the most appropriate methods for ensuring compliance including potential use of sanctions as a deterrent? What are the recommended ways to manage frequent or serious non-compliance in a manner that aims to improve overall compliance? What is the most effective process for encouraging and recognizing improvements in compliance by CCMs?

*Procedural questions*

d. Are the CMS procedures fair, effective, and efficient? Can elements of the CMS procedures be improved to be more fair, effective and efficient, and if so, which ones and how?

e. Which elements of the TCC and Commission review procedures including the timeframes for submission and review of information, and the transparency of the CMR consideration, are effective, and why? How can they be improved? f. In what ways have the CMS online reporting systems contributed to the efficiency of the CMS Scheme procedures? Are there elements of the CMS online reporting systems that are not user-friendly? How could the CMS online reporting systems be refined to better support the CMS procedures?

g. In what ways have the CMS procedures ensured the effective participation of all CCMs throughout all stages of the CMS process, and ensured that consistent standards are applied amongst obligations and amongst CCMs and a consistent level of scrutiny applied to CCMs? Are there elements of the CMS procedures where this has not been achieved, why and how can they be improved?

h. What is the most appropriate method for determining compliance status? How effective have the CMS procedures been in identifying CMMs that require modification to improve implementation with their objectives, or require clarification? How could these CMS procedures be improved?

i. How effective have the CMS procedures been in identifying areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance? How could they be improved?

j. What aspects of other RFMOs CMS procedures or experiences could strengthen the WCPFC CMS and why<sup>18</sup>?

*Administrative*

k. What are the budgetary and resource implications of the CMS procedures, both within the Secretariat and across the Commission?

l. Should a regular review process of the CMS be considered, and if so what aspects of the CMS should be reviewed and how frequently? What do you recommend as a suitable duration for this type of measure?

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<sup>18</sup> To be conducted by way of desktop study.

## Methodology

The Review Panel will evaluate the CMS in light of the questions set out in the Terms of Reference and prepare a report which makes recommendations to the Commission for consideration by Members. In conducting the Review, the Panel will seek the views of the Secretariat and CCMs and in particular will:

- engage with the Secretariat on its processes and procedures for the CMS;
- undertake a documentary review of the CMS process since its inception;
- consider the compliance processes and procedures of other tuna RFMOs, as appropriate;
- consider examples of other adjudication-type processes in international arrangements outside of fisheries, as may be appropriate;
- consult with CCMs and other stakeholders in the CMS process;
- observe the TCC processes; and
- conduct an in-country consultation to obtain the views of a CCM.

## Scheduling

The commencement date for the Review will depend on the approval by the Commission of a suitable budgetary allocation and the successful completion of the Review Panel selection and appointment process.

If the Review takes place in 2017, it will take place during the second year of implementation of CMM 2015-07. A one-year extension of CMM 2015-07 should be considered to cover the implementation of the CMS Scheme in 2018, while Members consider the report of the Review in 2018. The process to select and appoint the Review Panel will need to be expedited.

If the Review takes place in 2018, it will have the benefit of two complete years of implementation of the CMM 2015-07 and there will be more time for the successful completion of the Review Panel selection and appointment process. A two-year extension of CMM 2015-07 should be considered to cover the implementation of the CMS Scheme in 2018 and 2019, while Members consider the report of the Review in 2019.

The Review Panel is expected:

1. Before April-May: to be selected and appointed.
2. In June-July: at least one member of the panel will travel to Pohnpei first to meet with the Secretariat and the Federated States of Micronesia as a CCM representative.  
*The timing of this visit as part of the Review must 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.*
3. In September: the Panel will travel to Pohnpei to observe the TCC process CMS procedures. During TCC the Panel should also meet with as many CCMs as is practicable.  
*This will require suitable confidentiality arrangements to be finalised to address the WCPFC data confidentiality rules and any concern of Members over access to meetings.*
4. In December: to ideally, be provided an opportunity observe and consider the Annual Commission meeting CMS process in December. A substantive progress report should be submitted by the Panel to that WCPFC session.
5. By March of the following year: to submit the final report of Review for consideration by Members.

### **Composition of Review Panel**

The Review Panel should comprise three (3) independent experts with no recognized affiliation with TCC that have significant experience in Compliance Monitoring Schemes in RFMOs, one of whom will be assigned the role of Chair. The Review Panel should be comprised of individuals that together would provide a balance of experiences which would be relevant to the membership of the Commission. At least one (1) expert should have a sound knowledge and understanding of the strengths and weaknesses of SIDs. The Review Panel should be determined by nomination and ranking by Members. The Executive Director would finalize the list of participants on the Independent Panel for the Review, taking into account the rankings, the availability of the candidates, a balance of experiences which would be relevant to the membership of the Commission and include, in so far as possible, experts from a reasonable geographical selection.

In the event that it is not possible for a suitable arrangements to be made to form a Review Panel that can complete the Review based on the proposed schedule, the Executive Director should inform Members and seek their views on alternative running of the Review Process, for example through a consultancy arrangement.

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## Annex B – Review of the Compliance Monitoring Scheme: Questionnaire



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**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS,  
PARTICIPATING TERRITORIES AND OBSERVERS**

**Circular No.: 2017/41**

**Date: 12 June 2017**

**No. pages: 14**

### **Review of Compliance Monitoring Scheme: Questionnaire**

Dear All,

As advised earlier per Circular 2017/25, the following people were appointed members of the Independent Panel for the Review:

- a) Mr Andrew Wright;
- b) Mr Christopher Rogers; and
- c) Mr Don MacKay (Chair)

Enclosed is a letter from the Panel providing an update on their work to date, and that includes a questionnaire to request input from CCMs and other representatives. The Panel has requested that completed questionnaires are submitted by **Tuesday 1 August 2017**. The dedicated email address to receive the completed questionnaires is: **cmsreview2017@wcpfc.int**

Any questions about the CMS Review Panel process can be sent to me by email to [feleti.teo@wcpfc.int](mailto:feleti.teo@wcpfc.int)

Yours sincerely,

Feleti Penitala Teo, OBE  
EXECUTIVE DIRECTOR

## **To CCMs and Observers**

You will recall the correspondence from the Executive Director regarding the Review of the Compliance Monitoring Scheme which was approved by the Commission at WCPFC13. The Executive Director also advised, in his circular of 5 April, that he had appointed us as the members of the Review Panel, in accordance with the procedures that had been agreed.

We very much look forward to working with you on this important Review.

The key to a successful review process and outcome will be the Panel's ability to engage comprehensively with CCMs, so as to ensure that the Panel is fully apprised of the views of CCMs, any concerns they may have regarding the CMS, and their suggestions for improvement. The Panel is of course specifically tasked under the Methodology Section of the Terms of Reference to seek the views of CCMs, and as noted we are fully aware that this will be key to a successful outcome.

At this stage we are undertaking preparatory work regarding the Review, and we are planning to have an initial preparatory meeting of the Panel for internal planning purposes beginning on 6 August.

To assist us with this, we have developed a questionnaire for CCMs, with the objective of obtaining an initial understanding of the views of CCMs, and to assist our initial discussions at our meeting in August. This information will of course be enhanced by discussions which we will have subsequently with CCMs, including in the margins of the TCC, and in the course of the in-country consultation prescribed in the Methodology Section.

It would therefore assist us greatly if colleagues would kindly take the time to complete the attached questionnaire, and return it by the due date of 1 August, so as to facilitate our discussions when we initially meet as a Panel in early August. Please do not hesitate to provide any comments or information additional to the specific issues raised in the questionnaire, as all feedback will be appreciated.

Your response would be much appreciated.

Kind regards

Don MacKay, Andrew Wright, Christopher Rogers

## **Introduction**

### **WCPFC CMS Review Questionnaire**

The Independent Panel appointed to undertake the review of the Compliance Monitoring Scheme (CMS) (refer to CIRC 2017/25) has prepared the accompanying questionnaire to assist with its assignment (in accordance with the decision of the Commission at WCPFC13).

The questionnaire has seven (7) sections:

1. Major changes affecting CMS implementation since 2011;
2. Benefits delivered to WCPFC from CMS;
3. CMS Implementation considerations;
4. CMS Procedures;
5. Technical assistance and capacity building;
6. Online reporting systems;
7. Future Enhancements to CMS.

Many questions request that respondents reply with a choice of one (1) of five (5) categories:

<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
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CCMs and other representatives are invited to return their responses to the questionnaire to email: cmsreview2017@wcpfc.int by **Tuesday 1 August 2017**.

**WCPFC CMS Review Questionnaire**

Name of Respondent : \_\_\_\_\_

Contact email : \_\_\_\_\_

Name of Member/Participating Territory/Cooperating Non-Member or Other organisation to whom the respondent is affiliated: \_\_\_\_\_ {Insert name of Delegation} \_\_\_\_\_

**SECTION 1. DESCRIBE THE THREE [3] MAJOR CHANGES THAT HAVE IMPACTED IMPLEMENTATION OF THE CMS SINCE ITS IMPLEMENTATION IN 2011.**

<b>1. First major change</b> Briefly describe the revision/adaptation	<i>{Describe in one sentence}</i>	<b>Year implemented</b>	<i>{Select applicable 2011 2012 2013 2014 2015 2016 2017}</i>
<b>What was the impact/effect on the CMS?</b>	<i>{Describe the change and its effect}</i>		

<b>2. Second major change</b> Briefly describe the revision/adaptation	<i>{Describe in one sentence}</i>	<b>Year implemented</b>	<i>{Select applicable 2011 2012 2013 2014 2015 2016 2017}</i>
<b>What was the impact/effect on the CMS?</b>	<i>{Describe the change and its effect}</i>		

<b>3. Third major change</b> Briefly describe the revision/adaptation	<i>{Describe in one sentence}</i>	<b>Year implemented</b>	<i>{Select applicable 2011 2012 2013 2014 2015 2016 2017}</i>
<b>What was the impact/effect on the CMS?</b>	<i>{Describe the change and its effect}</i>		

**WCPFC CMS Review Questionnaire**

**SECTION 2. BENEFITS DELIVERED TO WCPFC THROUGH THE CMS.**

<b>a. The CMS operationalises the provisions of the Convention, particularly Articles 23, 24 and 25</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>b. The CMS provides a comprehensive procedure for assessing the practicalities of CMM implementation</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>c. The CMS assists to monitor and report on our national fleet’s compliance performance</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>d. The CMS generates information that is subsequently used to strengthen our national fleet’s compliance</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>e. The CMS identifies general CMM implementation issues for all CCMs</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>f. The CMS is a cost-effective procedure to strengthen compliance</b>	<i>{Select one (1) of the five (5) categories}</i>

**g. What do you view as the primary purposes of the CMS? <sup>1</sup>**

<b>(i) assess CCMs’ compliance with their obligations;</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>(ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance;</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>(iii) identify aspects of conservation and management measures which may require refinement or amendment for effective implementation;</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>(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</b>	<i>{Select one (1) of the five (5) categories}</i> <i>- most important, important, neutral, not important, least important}</i>
<b>(v) monitor and resolve outstanding instances of non-compliance.</b>	<i>{Select one (1) of the five (5) categories}</i>

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<sup>1</sup> These five subparagraphs are from paragraph 1 of CMM 2015-07, and the subparagraphs are unchanged from the original measure (CMM 2010-03) 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.

**h. What are the three (3) major implications/considerations for effective participation in the CMS as:**

*{Please answer both i) and ii) if you are representative of a CCM that is both a Flag CCM and a Coastal CCM}*

**i. A flag CCM?**

**1.** *{describe first major implication/consideration for effective participation in the CMS as a flag CCM}:*

**2.** *{describe second major implication/consideration for effective participation in the CMS as a flag CCM}:*

**3.** *{describe third major implication/consideration for effective participation in the CMS as a flag CCM}*

**ii. A coastal CCM?**

**1.** *{describe first major implication/consideration for effective participation in the CMS as a coastal CCM}*

**2.** *{describe second major implication/consideration for effective participation in the CMS as a coastal CCM}*

**3.** *{describe third major implication/consideration for effective participation in the CMS as a coastal CCM}*

**i. Any supplementary comments related to benefits delivered through the CMS?**

*{Any supplementary comments on benefits delivered through the CMS}*

**WCPFC CMS Review Questionnaire**

**SECTION 3. CMS IMPLEMENTATION CONSIDERATIONS.**

<b>a. The CMS has the necessary resources but demands too much CCM time and resources for the benefits generated</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>b. The CMS does not have the required financial and personnel resources at the national level to meet current CMS reporting obligations</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>c. The CMS demands too much WCPFC Secretariat time and resources for the benefits generated</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>d. The CMS impacts adversely on time available to discuss other priority matters in the TCC and Commission</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>e. The CMS currently provides an inadequate deterrent to non-compliance</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>f. The CMS obligations and requirements are unclear leading to confusion or lack of consistency among CCMs regarding obligations and requirements</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>g. The CMS CMM should be formally reviewed by TCC:</b>	<i>{Select one (1) of the three (3) categories}</i> <i>(i) annually; (ii) biennially; (iii) every 5 years</i>
<b>h. The CMS procedures and supporting systems should be independently reviewed</b>	<i>{Select one (1)} : (i) annually; (ii) biennially; (iii) every 5 years; (iv) every ten years.}</i>

**i. Any supplementary comments related to CMS implementation?**

<i>{Any supplementary comments on CMS Implementation}</i>
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**WCPFC CMS Review Questionnaire**

**SECTION 4. CMS PROCEDURES, INCLUDING TO DEVELOP, CONSIDER AND FINALISE THE COMPLIANCE MONITORING REPORT**

<b>a. The CMS procedures are perceived as procedurally fair</b>	<i>{Select one (1) of the five (5) categories}</i>
<i>{Any supporting comments}</i>	
<b>b. The CMS procedures are fair for all CCMS in the way they operate and are applied</b>	<i>{Select one (1) of the five (5) categories}</i>
<i>{Any supporting comments}</i>	
<b>c. The CMS procedures produce fair outcomes for all CCMS</b>	<i>{Select one (1) of the five (5) categories}</i>
<i>{Any supporting comments}</i>	
<b>d. The outcomes of the CMS procedures are used in a fair way and are not used inappropriately by other CCMS</b>  If you strongly disagree with this statement, in respect of your CCM, please elaborate on your concerns	<i>{Select one (1) of the five (5) categories}</i>
<i>{Any supporting comments}</i>	
<b>e. The CMS procedures currently ensure the effective participation of all CCMS through the CMS process</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>f. The CMS procedures currently ensure that consistent standards are applied amongst obligations</b>	<i>{Select one (1) of the five (5) categories}</i>
<b>g. The CMS procedures currently ensure that a consistent level of scrutiny is applied to CCMS</b>	<i>{Select one (1) of the five (5) categories}</i>



**WCPFC CMS Review Questionnaire**

**h. Which elements of the TCC and Commission processes to develop, consider and finalise the Compliance Monitoring Report should be refined? How should they be refined?**

<b>1. First element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

<b>2. Second element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

<b>3. Third element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

<b>4. Fourth element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

**i. Any other supplementary comments related to CMS procedures?**

<i>{Any supplementary comments on CMS Procedures}</i>
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**WCPFC CMS Review Questionnaire**

**SECTION 5. TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

**a. In relation to the technical assistance and capacity building objective of the CMM ...**

<p><b>i. The CMS is effective in identifying priority areas for technical assistance and capacity building assistance</b></p>	<p><i>{Select one (1) of the five (5) categories}</i></p>
<p><b>ii. The CMS has resulted in Capacity Development Plans for some CCMs that are being implemented</b></p>	<p><i>{Select one (1) of the five (5) categories}</i></p>
<p><b>iii. The CMS receives inadequate financial and technical resources to address identified technical assistance and capacity building needs</b></p>	<p><i>{Select one (1) of the five (5) categories}</i></p>
<p><b>iv. The CMS has inadequate associated systems for monitoring and reporting on technical assistance and capacity building responses to needs identified by the CMS</b></p>	<p><i>{Select one (1) of the five (5) categories}</i></p>
<p><b>v. The technical assistance and capacity building intent of the CMS requires more strategic consideration by TCC and the Commission</b></p> <p>If you strongly agree with this statement, from the perspective of your CCM, please describe the purpose or objectives of such a strategic review by TCC and the Commission</p>	<p><i>{Select one (1) of the five (5) categories}</i></p>
<p><i>{Any supporting comments}</i></p>	

**b. Any other supplementary comments related to Technical Assistance and Capacity Building through the CMS?**

*{Any supplementary comments on Technical Assistance and Capacity Building through the CMS}*

## WCPFC CMS Review Questionnaire

**SECTION 6. ON-LINE REPORTING SYSTEM**

**a. The online reporting system has made the CMS easier to implement and report against** *{Select one (1) of the five (5) categories}*

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If, in respect of your CCMs perspective, you either agree or strongly agree with this statement, please identify the three key features that support the efficient operation of the system

<b>1. First key feature that supports efficient operation of the system</b>	<i>{Briefly describe the feature}</i>
<b>2. Second key feature that supports efficient operation of the system</b>	<i>{Briefly describe the feature}</i>
<b>3. Third key feature that supports efficient operation of the system</b>	<i>{Briefly describe the feature}</i>

b. Identify and describe elements of the CMS online reporting systems that are impractical and require revision. Provide advice on what improvements are required? Can the concern be addressed by i) revision, or ii) does it require removal?

<b>1. First element that is impractical and requires revision</b>	<i>{Briefly describe in one sentence}</i>	
<b>What improvements are required?</b>	<i>{Describe the change and its intended effect}</i>	
<b>Can the concern be addressed by revision?</b>	<b>Or does it require removal?</b>	

<b>2. Second element that is impractical and requires revision</b>	<i>{Briefly describe in one sentence}</i>	
<b>What improvements are required?</b>	<i>{Describe the change and its intended effect}</i>	
<b>Can the concern be addressed by revision?</b>	<b>Or does it require removal?</b>	

**WCPFC CMS Review  
Questionnaire**

<b>3. Third element that is impractical and requires revision</b>	<i>{Briefly describe in one sentence}</i>
<b>What improvements are required?</b>	<i>{Describe the change and its intended effect}</i>
<b>Can the concern be addressed by revision?</b>	<b>Or does it require removal?</b>

<b>4. Fourth element that is impractical and requires revision</b>	<i>{Briefly describe in one sentence}</i>
<b>What improvements are required?</b>	<i>{Describe the change and its intended effect}</i>
<b>Can the concern be addressed by revision?</b>	<b>Or does it require removal?</b>

<b>5. Fifth element that is impractical and requires revision</b>	<i>{Briefly describe in one sentence}</i>
<b>What improvements are required?</b>	<i>{Describe the change and its intended effect}</i>
<b>Can the concern be addressed by revision?</b>	<b>Or does it require removal?</b>

**WCPFC CMS Review Questionnaire**

**c. How could the CMS online reporting systems be refined to better support the CMS procedures?**

<b>1. First element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

<b>2. Second element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

<b>3. Third element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

<b>4. Fourth element to be refined</b>	<i>{Briefly describe in one sentence}</i>
<b>How should they be refined?</b>	<i>{Describe the change and its intended effect}</i>

**d. Any other supplementary comments related to online reporting systems for the CMS?**

<i>{Any supplementary comments on online reporting systems}</i>
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**WCPFC CMS Review Questionnaire**

**SECTION 7. FUTURE ENHANCEMENTS TO CMS.**

**a. What refinements or enhancements to the CMS do you, in respect of your CCM, consider require priority consideration:**

1. <i>{describe refinements that require priority consideration }</i>
2. <i>{describe refinements that require priority consideration }</i>
3. <i>{describe refinements that require priority consideration }</i>
4. <i>{describe refinements that require priority consideration }</i>

**b. Any supplementary comments related to future enhancements?**

*{Any supplementary comments on future enhancements}*

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## **Annex C - The history of compliance monitoring in WCPFC**

### **2002-2004 (Preparatory Conference)**

36. Working Group III established by the Preparatory Conference reported in 2002 that its programme of work included to “Develop procedures for reviewing and assessing implementation of, and compliance with, conservation and management measures adopted by the Commission” (WCPFC/PrepCon/21).

37. With priority assigned to the Commission’s record of fishing vessels, authorisations to fish, vessel and gear marking, boarding and inspection, a regional observer programme and VMS, no progress was reported on this element of WG III’s programme of work at the fourth session of the Preparatory Conference in May 2003 (WCPFC/PrepCon/26) nor at the fifth session in October 2003 (WCPFC/PrepCon/33). The report of the working group to the final PrepCon in 2004 notes that matters not addressed by the WG III would need to be passed to the Commission for further work (WCPFC/PrepCon/39).

### **2005**

38. At the first WCPFC Technical and Compliance Meeting in 2005 (TCC1), the Secretariat presented WCPFC/TCC1/11 which described the obligations and commitments associated with the implementation of, and compliance with, CMMs and the functions of the TCC. This was drawn from Article 14 and Parts IV (Obligations of Members of the Commission), V (Duties of the Flag State), VI (Compliance and Enforcement) and VII (Regional Observer Programme and Regulation of Transshipment) of the WCPF Convention, together with Annex 1 of the Agreement, as provided for in Art 23(2)(a) of the WCPF Convention.

39. TCC1 agreed to provisional reporting templates (Part 1: Information on Fisheries, Research and Statistics and Part 2: Management and Compliance) and schedule. Part 1 was scheduled for submission by 30<sup>th</sup> June or one month in advance of the Scientific Committee annual session and Part 2 30 days in advance of the annual session of the TCC (TCC1 Summary Report, paragraph 12).

40. TCC1 noted that the monitoring and reporting requirements are likely to be demanding until regular procedures become established. It was also noted that this was likely to be particularly challenging for developing States and territories, for whom it was suggested that assistance and some latitude may be required. TCC1 confirmed the need to avoid duplication and maintain transparency in any reporting procedures adopted, whilst ensuring such reporting did not become excessively onerous for Members (TCC1 Summary Report, paragraph 11).

41. Apart from tasking the TCC with monitoring the implementation of CMMs that had been adopted by the Commission the Commission provided no other advice in relation to monitoring compliance.

## 2006

42. At TCC2, the Secretariat presented WCPFC/TCC2-2006/9 which, *inter alia*, proposed that the structure and processes to monitor and review compliance with CMMs, other Commission decisions and the provisions of the Convention, consider the following principles:

- a. that the structure and procedures promote the objective of the Convention and compliance with the Commission's CMMs and decisions;
- b. that the structure and procedures are transparent, fair and ensure due process;
- c. that the structure and procedures ensure appropriate levels of confidentiality and information security;
- d. the scope of application of the procedures, particularly whether the structure and procedures will apply to both CCMs and Non-Members (NMs), and how;
- e. that the procedures allow for a range of remedial actions to be recommended to the Commission; and
- f. that the procedures provide a means to monitor the effect of any remedial actions agreed by the Commission.

43. TCC2 refined Figure 1 from WCPFC-TCC2-2006/09 as an appropriate representation for initial consideration of the procedures for reviewing the activities of CCM and non-CCM fishing vessels in relation to their conformity with the provisions of the Convention, CMMs and other relevant decisions of the Commission (TCC2 Summary Report, paragraph 30). This was subsequently endorsed by the Commission (WCPFC3 Summary Report, paragraph 137 and Attachment L). The Commission also noted that future work for the TCC would include consideration of rules and procedures for developing sanctions and mechanisms for applying such sanctions (WCPFC3 Summary Report, paragraph 141).

## 2007

44. TCC3's consideration of compliance monitoring and reporting was based on a Secretariat paper that reconciled report submissions (including data) received by the Secretariat from CCMs in response to obligations associated with 14 CMMs, the Convention or other decisions of the Commission (WCPFC-TCC3-2007-10 (Rev.3) and WCPFC-TCC3-2007-26).

45. TCC3 noted that reporting obligations presented challenges for many CCMs. TCC3 did not expect this to improve in the short to medium-term but anticipated that systems and procedures to assist CCMs in complying with monitoring and reporting obligations would gradually be refined to improve efficiency and effectiveness (TCC3 Summary Report, paragraph 38). At that time, the Secretariat advised that improvements could be anticipated through the establishment of a web-based reporting interface to be developed by the Secretariat (TCC3 Summary Report, paragraph 167).

46. WCPFC4 noted that, TCC3 had recommended that the Secretariat include in its Annual Report for 2008 a summary of compliance with all data reporting obligations for CCMs. In addition, the Secretariat had been requested to prepare a paper on reporting compliance with CMMs noting that some CCMs were of the view that the responsibility for evaluating

compliance should lie with the TCC rather than the Secretariat. The Commission also noted that that reporting can be ‘troublesome’ for some CCMs (WCPFC4 Summary Report, paragraph 181-183).

## **2008**

47. TCC4 reviewed the Secretariat’s report on the implementation of the 20 CMMs in force (WCPFC-TCC4-2008/10 (Rev.3)) noting outstanding reporting obligations for both 2007 and 2008 (TCC4 Summary Report, paragraphs 183, 184, 205 and 207).

48. TCC4’s review of compliance reporting had identified a number of substantial data gaps noting that reporting requirements were likely to expand as the number of WCPFC CMMs and associated obligations increased. TCC4 requested the Secretariat prepare a summary paper, for WCPFC5, that identified CCMs and the status of compliance with their reporting obligations (WCPFC5-2008/18 and WCPFC5- 2008/IP06 [Rev.1]).

49. TCC4 also considered the further development of compliance monitoring procedures, stressing that any associated sanctions should be proportionate and suited to the varying degrees of non-compliance which are likely to arise. The means to progress this was deferred to WCPFC5 where the Commission was invited to consider the establishment of a Compliance with Conservation and Management Measures (CCMM) working group (TCC4 Summary Report, paragraph 217).

50. At WCPFC5, CCMs considered a proposal by Australia for a scheme for monitoring compliance with CMMs (WCPFC5-2008/DP-09). The paper, which was prepared in response to a recommendation to the Commission from TCC4 (TCC4 Summary Report, paragraph 123), included proposed objectives and a structure for the scheme; information requirements, process and response components; a comparison with current practices in other RFMOs; and draft terms of reference for a CCMM Working Group (WCPFC5 Summary Report, paragraph 108 (k) and 202).

51. There was some support for a compliance process that not only provides for punitive measures for non-compliance but includes incentives for compliance. It was noted that the latter will be particularly important to acknowledge incremental improvements in reporting and compliance (WCPFC5 Summary Report, paragraph 206).

52. New Zealand undertook to complete a legal analysis of issues associated with compliance with measures. WCPFC5 did not reach consensus on Terms of Reference for the proposed CCMM working group (WCPFC2008/DP38) and WCPFC5 agreed that further discussions on Terms of Reference would occur inter-sessionally (WCPFC5 Summary Report, paragraph 208).

## **2009**

53. TCC5 reviewed compliance with CMMs and decisions of the Commission, including in respect of the submission of data prepared by the Secretariat (WCPFC-TCC5-2009/31, Rev. 1) noting some elements related to measures to be implemented in 2009 and reported on at TCC6 in

2010. Reporting gaps for the majority of CMMs were noted. TCC5 recommended that future reports attribute reporting gaps to the CCM concerned (TCC5 Summary Report, paragraph 326). A revised paper, reporting on gaps, was subsequently presented by the Secretariat to WCPFC6 (WCPFC6-2009/IP06 (Rev.1)).

54. TCC5 deferred consideration of proposed Terms of Reference for a CCMM WG, prepared by Australia (WCPFC-TCC5-2009/IP-06), to WCPFC6 (TCC5 Summary Report, paragraph 329).

55. At WCPFC6, Canada proposed procedures for the submission and actioning of reports from non-governmental organizations on non-compliance with the Commissions' CMMs (WCPFC6-2009/DP33). WCPFC6 was unable to discuss this issue and it was referred to TCC6 for further consideration (WCPFC6 Summary Report, paragraph 357 and 358).

56. WCPFC6 approved a revised template for Part 2 reports and the deadline for their submission was changed from 31 July to one month prior to the meeting of the annual TCC (WCPFC6 Summary Report, paragraph 53 and 132).

57. Australia presented WCPFC6-2009/DP17 which proposed Terms of Reference for a CCMM WG that would be tasked with developing compliance monitoring structures and processes for consideration by the Commission (WCPFC6 Summary Report, paragraph 345). Subsequently, WCPFC6 approved that Australia convene discussions on the formation of a CCMM Working Group, in accordance with the Terms of Reference in WCPFC6-2009/DP17 (WCPFC6 Summary Report, paragraph 349).

58. In addition, compliance monitoring was identified by the Commission for priority consideration during 2010 (WCPFC6 Summary Report, paragraph 391 (iii)).

## **2010**

59. The Secretariat's annual report on compliance and implementation of obligations associated with CMMs presented to TCC6 noted that the "annual reports are a complex mechanism to monitor reporting requirements and are not providing a full measure of compliance with all fishing related operations in the Convention Area" (WCPFC-TCC6-2010-22 Rev.1). The Secretariat reported that it was in the process of implementing an Information Management System (IMS) to assist in tracking CCM correspondence with the Secretariat on CMM requirements, including reporting and the preparation of compliance monitoring reports.

60. As endorsed at WCPFC6, Australia tabled a proposal for a Compliance Monitoring Scheme (WCPFC-TCC6-2010/21). To provide an effective regime for reviewing and monitoring compliance and instituting procedures to address non-compliance, the proposal was based on three underlying principles:

- a. timely access to sufficient information to assess compliance;
- b. a fair and transparent process for reviewing and assessing information and compliance; and

- c. consistent and objective procedures for identifying and addressing instances of noncompliance.

61. The objectives of the proposal were to establish a positive process to encourage compliance with procedures, to verify whether CCMs are taking necessary steps to comply with CMMs and other obligations, to identify areas for which further work is needed, and to serve as a basis for recommending actions to be taken to address noncompliance. In addition, the proposal intended to provide a basis for identifying areas in which technical assistance and capacity building were required to assist CCMs to address compliance gaps. The proposal included procedures to address serious or persistent non-compliant behaviour, including options for the Commission to impose appropriate sanctions, and a follow-up mechanism for assessing and resolving outstanding instances of non-compliance. The proposal described the scope of the proposed Scheme, proposed compliance monitoring report (CMR) development, categories of non-compliance, options for responding to non-compliance, costs associated with implementing the Scheme and implications for the Secretariat. The proposal annexed an overview of types of obligations arising under CMMs, the WCPFC Convention and other Rules and Guidelines adopted by the Commission that required monitoring and reporting.

62. In addition, Canada again proposed that the compliance assessment utilise information submitted by observers (WCPFC-TCC6-2010-DP-07).

63. TCC6 recommended that the Commission continue to progress the CMS concept through the CCMM Working Group to develop a draft CMM, with Australia to lead the process, and recommended that the draft CMM be forwarded to WCPFC7 for consideration (TCC6 Summary Report, paragraph 201).

64. In response to concerns about the complexity of reporting and to avoid duplication of reporting requirements, TCC6 convened a small working group (SWG) to consider ways of streamlining Part 2 reports (WCPFC-TCC6-2010-36 – the report of the SWG). The SWG noted there could be opportunities for the Secretariat to extend its current work on developing its IMS to include information from Part 2 reports. The SWG noted the potential opportunities provided by web-based electronic provision of Part 2 information could lead to the streamlining of information reporting in some areas, noting that the reporting requirements can be particularly burdensome for small administrations including SIDS. It also noted some information fields could be reported once (and updated only as necessary), rather than the same information being reported every year. In addition, it was noted that some CMMs were not relevant to all CCMs (TCC6 Summary Report, paragraph 187 and 188).

65. TCC6 also discussed WCPFC-SC6-2010/WP-01, a summary of *Data Gaps in the WCPFC Tuna Fisheries* (TCC6 Summary Report, paragraph 190). It subsequently requested an annual report on data gaps, so that compliance by CCMs with agreed data reporting rules could be evaluated and advice provided to the Commission on compliance by CCMs with reporting obligations (Summary Report TCC6, paragraph 194 and 195).

66. At the following Commission meeting in Hawaii, the Commission considered compliance by CCMs with Part 1 and Part 2 reporting and discussed the complexity and

demands associated with their preparation (WCPFC7 Summary Report, paragraph 165 and 166). The Secretariat presented WCPFC7-2010/25, containing general criteria provided by a TCC6 small working group for streamlining the Annual Report – Part 2. The main criteria were:

- a. Cost effectiveness for CCMs and the Commission;
- b. A clear role for the Secretariat;
- c. Basing the reporting on fisheries management needs and priorities;
- d. A reporting format that is flexible and relevant to individual CCMs, while retaining consistency;
- e. Efficiency – avoiding duplication and repetition;
- f. Transparency (noting relevant data confidentiality rules);
- g. Allows for effective monitoring of compliance with measures (WCPFC7 Summary Report, paragraph 224 to 230).

67. WCPFC7 approved the template for Part 2 Reporting, as revised in WCPFC7-2010- 19 (Rev 1) (WCPFC7 Summary Report, paragraph 167), noting a streamlined Part 2 Report was scheduled for implementation in 2011.

68. Australia introduced WCPFC7-2010-DP-12, proposing a new CMM to implement a compliance monitoring scheme (CMS) (WCPFC7 Summary Report, paragraphs 371 and 372). Following revision during the session (WCPFC7-2010-DP-28 (rev 2), the WCPFC Compliance Monitoring Scheme (CMS) as adopted as CMM 2010-03 (WCPFC6 Summary Report, paragraph 377).

### **2011 Compliance assessment (TCC7 September 2011 (for 2010) and WCPFC8 in March 2012)**

69. The Secretariat reported to TCC7 that of a total of 37 expected Part 2 reports, 19 were received prior to the deadline (WCPFC-TCC7-2011/18 Rev 5). Subsequently, TCC7 recommended that the deadline for submission of Part 2 Annual Reports be revised from 30 days prior to TCC to 1 July each year (TCC7 Summary Report, paragraph 96-99). This was adopted by WCPFC8 (WCPFC8 Summary Report, paragraph 197).

70. On the basis of a request from TCC6 and WCPFC7 to streamline the Part 2 Annual Reports to make them more user-friendly, less complex and more applicable to individual CCMs, TCC7 recommended the adoption of a streamlined Part 2 Annual Report template, noting that there was strong support for the implementation of a streamlined template in a web-based format subject to provision of funds for its development (TCC7 Summary Report, paragraph 100-104). Work to streamline the Part 2 Annual Report was subsequently approved for inclusion in the 2012-23 programme of work as part of the Information Management System development (WCPFC8 Summary Report, paragraph 209).

71. The Secretariat advised TCC7 that a 268 page dCMR had been prepared based on 22 individual CCM Compliance Monitoring Reports prepared from 19 Part 2 Annual Reports submitted by the deadline and three Part 2 Annual Report received after the deadline (TCC7-2011-17-CMR-00).

72. The Secretariat informed TCC7 that the reports had required 9.9 work weeks to compile during which there was insufficient opportunity to dialogue with CCMs on issues arising. Noting these issues, there was consensus among CCMs that evaluation of compliance was one of the highest priority work items for the Commission (TCC7 Summary Report, paragraph 105 and 106).

73. TCC7 recommended that, consistent with CMM 2010-03 (paragraph 16) the Provisional Compliance Monitoring Report (pCMR) be forwarded to WCPFC8 for consideration. TCC7 agreed that CCMs could supplement information associated with the pCMR prior to WCPFC8. In addition, where Part 1 or Part 2 reports had not been provided to TCC7, the Secretariat and relevant CCMs were requested to produce a pCMR for those CCMs for consideration at WCPFC8 (TCC7 Summary Report, paragraph 105 and 106).

74. The Commission did not meet in December 2011 so consideration of the TCC7 outcomes relating to the CMS were not taken up in the Commission until it met in March 2012. Subsequently, at WCPFC8, nine draft CMRs were updated based on supplemental information provided by the CCM, or the Scientific Services Provider, and 12 new draft CCM CMRs, developed by the Secretariat following TCC7 were considered (see WCPFC8-2011/20 and WCPFC8-2011-IP/09).

75. TCC7 considered a proposal from Australia to develop a phased response to non-compliance (WCPFC-TCC7-2011-DP/08). The proposal included a compliance review, a compliance action plan and a compliance remedy for each of the five categories noted in the Compliance Monitoring Scheme (CMS) (i.e. catch and effort limits, catch and effort reporting; spatial and temporal closures and gear restrictions; observer and VMS requirements; and scientific data provision, reporting and handling). The proposal was referred to WCPFC8 for further deliberation (TCC7 Summary Report, paragraph 119 and 123).

76. TCC7 identified several issues arising as a result of the first year of implementation of the CMS. This included that the CMS process was both complex and onerous and places significant demands on Small Island Developing States (SIDS) and Participating Territories with limited resources. It was noted that further consideration of the constraints of the capacities of SIDS and Participating Territories to fully participate in the process, and their special requirements, including their requirements for assistance and technical advice, was required. It was also noted that CCM comments on their Draft CMRs provided useful explanations of how various requirements. This included the provision of domestic regulations that had been, or were in the process of development, to implement an obligation. It was acknowledged that the development of the CMRs was a process that was expected to evolve over time (TCC7 Summary Report, paragraph 127).

77. CMM 2010-03 provided that the Commission adopt a Compliance Monitoring Report (CMR) that included:

- a. a Compliance Status for each CCM (in accordance with Annex I to CMM 2010-03); and
- b. recommendations for any corrective action needed, based on non-compliance identified with respect to that CCM.

## *Compliance Status*

78. Logistical and administrative challenges during the initial trial period meant a Provisional Compliance Monitoring Report (pCMR) was only completed for 27 CCMs. In order to make a recommendation about the corrective action needed, the pCMR used four broad categories to describe the level of compliance with, and implementation of, obligations by CCMs. The criteria used to assign the categories, and the corrective actions recommended for each category, were:

a. Implemented:

Based on the information provided or available, the CCM has fully implemented the obligation. No corrective action needed

b. Potential implementation issue and explanation provided:

Based on the information provided or available, there has not been full implementation, but the CCM has provided information or an explanation about the obstacles to implementation or the steps being taken for implementation (such as capacity issues, passing domestic regulations, a data provision plan or providing training)

Recommendation: the CCM is to identify assistance needed to overcome obstacles to implementation and/or progress the steps being taken for implementation

c. Potential implementation issue and more information needed:

Based on the information provided or available, it is not clear whether there has been full or partial implementation. Further information was required (for example, a data provision requirement has been only partially fulfilled)

Recommendation: the CCM is to provide any further information needed, or implement outstanding requirements

d. Implementation needed:

Based on the information provided or available, there is no information showing that there had been any implementation (for example, no reporting at all against a data provision requirement) and no additional information had been provided to explain or rectify the non-implementation, so implementation is needed.

Recommendation: the CCM is to provide the information required or fully implement requirements.

79. CCMs assigned a status of 'Compliance Review' were required to provide a report on progress with addressing the issues identified in 2010 in their Part 2 Report for 2011. Where an action could not be undertaken, an explanation of obstacles to implementation and a plan or expected timeframe for undertaking the necessary action, was required.

80. Particular challenges noted during the initial trial period included:

- a. information from all possible sources was not utilised in the first year of implementation



- b. the evaluation of some CMMs was difficult because of the lack of clarity about the implementation of elements of a CMM (e.g. whether requirements apply to CCMs as flag States, coastal States or port States) or what level of reporting or verification is required (for example, some aspects of CMM 2007-01 Regional Observer Programme and CMM 2009-02 FAD Closures and catch retention), and
- c. The need for guidelines or procedures to guide the Secretariat, CCMs, the TCC and the Commission in implementing the Scheme.

81. The 2010 CMR noted:

- d. some CMMs are generating implementation issues or are not fully implemented by many CCMs
- e. for some CMMs there were reporting issues or the reporting requirement was not clearly specified
- f. it is difficult to assess compliance for some CMMs.

82. CMMs that fall within one or more of these categories were identified in the Final CMR for 2010 and included:

- g. CMM 2007-01
- h. CMM 2007-04
- i. CMM 2008-03
- j. CMM 2008-04
- k. CMM 2009-02
- l. CMM 2009-04
- m. The VMS SSPs: in particular, the MTU audits and conduct and reporting of MTU/ALC inspections
- n. Scientific data to be provided to the Commission: particularly with respect to estimates of annual catches for sharks, estimates of discards, and size composition data.

83. At WCPFC8, CCMs expressed broad support for the CMS. FFA members stressed the need for the CMS evaluation process to be efficient so that SIDS could participate without undue burden. They also requested that sub-regional bodies be allowed to participate in the evaluation to assist SIDS noting that the CMS offered an important means for identifying capacity building needs (WCPFC8-2011-DP/06). Other CCMs confirmed their support for the CMS to continue but that attention should be paid to improving efficiency (WCPFC8 Summary Report, paragraph 199-200).

84. WCPFC8 also considered proposed revisions to CMM 2010-03 (WCPFC8-2011-DP/32 and WCPFC8-2011-DP/33 (Rev 1), noting that proposals for responses to non-compliance (WCPFC8-2011-DP/34) had been deferred to TCC8. WCPFC8 adopted a revised CMM (2011-06) based on WCPFC8-2011-DP/33 (Rev 1) (WCPFC8 Summary Report, paragraph 408- 411)

### **2012 Compliance assessment (TCC8 in September 2012 for 2011) and WCPFC9 in December 2012)**

85. At TCC8, CCMs highlighted the importance of the provision of accurate and timely

scientific data to the Commission, and considered that failures and shortfalls in doing so, including failing to submit a data improvement plan as called for in the WCPFC7 Summary Report (para 173), should be considered in the compliance monitoring report (CMR) process (TCC8 Summary Report, paragraph 13).

86. The Secretariat presented a summary of Annual Report Part 1 and Part 2 and other reports received (TCC8-2012-IP-03 [rev 7]). CCMs were referred to the 2010 Final CMR (TCC8-2012-IP-19). It was noted that the deadline of 1 July for the Annual Reports Part 2 greatly facilitated the Secretariat's preparation of the draft CMRs but perhaps made it more difficult for some CCMs to achieve timely submission. Summaries of the draft CMRs were prepared for 16 CCMs. Some CCMs attributed missing the submission deadlines to the heavy reporting burden and requested that the trend toward ever-increasing WCPFC reporting requirements be halted (TCC8 Summary Report, paragraph 197-198).

87. The TCC Chair introduced a proposal for completing the Provisional Compliance Monitoring Reports (pCMRs) as called in CMM 2011-06 (TCC8-2012-07). It involved a working group reviewing dCMR summaries (1-4 pages) for each CCM circulated by the Secretariat. Compliance scores were assigned by the working group to each dCMR for five categories (catch and effort limits, catch and effort reporting, spatial and temporal closures and restrictions on the use of fish aggregation devices (FADs); observer and VMS coverage; and provision of scientific data through Annual Report Part 1 and the scientific data to be provided to the Commission). CCMs were then provided with an opportunity to seek clarification and provide further information on any issues identified. An overall provisional compliance score (implemented, not applicable, potential implementation issues) was assigned to each CCM. It was emphasized that the CMS process continues to evolve as the TCC seeks an efficient, effective and transparent method for preparing the pCMR (TCC8 Summary Report, paragraph 201 and 202).

88. TCC8 also discussed whether observers could participate in the working group. It was decided that, in accordance with CMM 2011-06, participation by observers was limited to subregional agencies supporting CCMs that are small island developing States (SIDS) (TCC8 Summary Report, paragraph 203).

89. At WCPFC9, Pacific Island small developing states presented WCPFC9-2012/DP-32 identified 11 specific needs and priorities including, *inter alia*, ensuring:

- a. effective participation of SIDS in the CMS so that SIDS are not marginalised including through improvements such as streamlining of the reporting obligations, and
- b. SIDS are assisted in the implementation of Commission obligations as required by the CMS, including through capacity-building, rather than using the scheme primarily to penalise SIDS (WCPFC9 Summary Report, paragraph 83).

90. At WCPFC9, the TCC Chair presented the pCMR and Executive Summary (WCPFC9-2012-07) prepared by TCC8 (WCPFC9 Summary Report, paragraph 287). FFA members requested additional information be added to the Final CMR to address i) more serious instances of non-compliance; ii) non-compliance of data gaps by a mechanism external to the CMS; and

iii) broadening the scope of the CMS to include compliance with the eastern high seas pocket and transshipment measures (CMMs 2009-06 and 2010-02) (WCPFC2012-DP/06). In addition, they stated that, in serious instances of non-compliance, a compliance status of “Compliance Review” was not appropriate. Rather “Compliance Action Plan” or “Compliance Remedy” was warranted to correct continuing non-compliances (WCPFC9 Summary Report, paragraph 288 and 289).

91. FFA members also required that all sensitive information should be removed from the CMR before it is released to the public, i.e. that all CCM-specific references should be removed and that all CCMs must adhere to the Commission’s data rules on non-public data related to the CMRs. In addition, FFA members requested that a footnote be added to make clear that the CMS is an interim process and that the results from this process should not be considered as an assessed compliance level until that process is finalized. The outcome was that all summaries of draft CMR reports for individual CCMs were deleted from the 2011 CMR and a sentence was added to the 2011 CMR’s Executive Summary to define the appropriate use of CMR information. WCPFC9 adopted the Final CMR for 2011 (WCPFC9 Summary Report, paragraph 290-293 and Attachment L).

92. With regard to extension of the CMS for 2012 (see proposal by Japan: WCPFC-2012-DP/34), some CCMs indicated that they were struggling to meet their AR Part 2 reporting requirements. As a result, they requested further streamlining of reporting requirements as a matter of priority. WCPFC9 agreed to extend the CMS as specified in CMM 2011-06 for an additional year (2013) and to hold further discussions on potential refinements to the scheme inter sessionally and at TCC9 with a view to adopting a revised CMS at WCPFC10 (WCPFC9 Summary Report, paragraph 294-296, Attachment M and CMM 2012-02)

93. WCPFC9 considered TCC8’s recommendations relating to the CMS process including CCM reporting requirements, templates and deadlines, the establishment of an Assistant Compliance Manager position and the development of information management systems (TCC8 Summary Report, paragraphs 212-224 and WCPFC9-2012-29).

94. It was decided that these issues would be further discussed at TCC9. WCPFC9 adopted TCC recommendations concerning compliance monitoring reporting and processing of reported information (TCC8 Summary Report, paragraphs 212-214 and 222-224 and Attachment N and WCPFC9, Summary Report, paragraphs 298-303).

### **2013 Compliance assessment (TCC9 and WCPFC10 in 2013)**

95. TCC9 had adopted a CMM-by-CMM review process as opposed to previous assessments which had been undertaken CCM-by-CCM (TCC9 Summary Report, paragraph 81). This was maintained for future years.

96. TCC9 also recommended that, during the development of new CMMs, the Commission account of the outcomes of the CMR process with respect to clarifying obligations (TCC9 Summary Report, paragraph 84 and CMR 2013 Final Report, paragraph 15). This particular matter is taken up in the recommendations generated by this Review.

97. TCC9 reiterated the confidentiality of the Draft and Provisional Compliance Monitoring Report and also noted that the same level of confidentiality applies to the discussions and outcomes of the working group (TCC9 Summary Report, paragraph 86).

98. The need for the CMS process and outcomes to take account of the special requirements of SIDS, particularly Article 30 and Resolution 2008-01, including the conduct of assessments and the actions agreed to assist SIDS to resolve any implementation issues identified was noted by TCC9 and reported to WCPFC10 (TCC9 Summary Report, paragraph 88).

99. TCC9 also noted that self-assessments posed challenges for verification and compliance assessment due to lack of sufficient information to verify implementation (TCC9 CMR, paragraph 22). It was anticipated that this situation would change over time with the improvements to reporting and data available for verification.

100. In 2012, supplementary information provided in the period between TCC and the Commission meeting was reviewed and evaluated in the margins of the Commission meeting by a small working group (SWG). This practice has been maintained each year since with encouragement to CCMs to provide supplementary information 30 days in advance of the Commission session (TCC9 Summary Report, paragraph 85, WCPFC10 Summary Report, paragraph 225-227 and CMR Final Report, paragraph 16).

101. WCPFC10 was advised that an Assistance Compliance Manager was recruited during 2013 supplementing Secretariat resources to service the CMS (WCPFC10 Summary Report, paragraph 83).

102. WCPFC10 adopted TCC9's recommendation that the CMS CMM be amended to ensure that reporting deadlines are assessed as part of the compliance review, including deadlines for submission of Annual Reports Part 1 and 2, Scientific Data, and "Fished/Did Not Fish" reports, among others (TCC9 Summary Report, paragraph 89 and CMR Final Report, paragraph 18).

103. The SWG had recommended that the table of CCMs by obligation and the compliance matrix from the pCMR be included in the Final CMR, noting that these tables would then become public information. The SWG also recommended a template, developed by the Secretariat, be used in preparing the 2014 dCMR (WCPFC10-2013/20, Annex II). WCPFC10 adopted the Final CMR for 2012 (WCPFC10 Summary Report, paragraphs 229-232 and Attachment G).

104. WCPFC10 adopted CMM 2013-02 (Compliance Monitoring Scheme), which was to apply to 2014 only (WCPFC10 Summary Report, paragraph 269 and Attachment J).

#### **2014 Compliance assessment (TCC10 and WCPFC11 in 2014)**

105. 2014 was the fourth year of implementation the CMS. Following discussion in TCC10, the CMS session was undertaken utilising the CMM-by-CMM approach for 38 CCMs in closed

session. The compliance review prioritised its review on the highest percentage of non-compliance obligations identified in the 2013 Final CMR, collective obligations (para 4 of CMM2013-02), and remaining obligations (beginning with the earliest CMM) (Final 2014 CMR, paragraph 10 and WCPFC11 Summary Report, Attachment H).

106. Additional information provided verbally during the CMS working group convened to consider the dCMR was accepted for the assessment. TCC10 agreed that a CCM could not block their own compliance assessment if other CCMs had reached consensus and that CCMs would be assessed as “priority non-compliant” when the noncompliance had occurred for two or more consecutive years. If a CCM was not present for the dCMR review any potential issue highlighted by the Secretariat would receive a minimum score of “non-compliant” (TCC10 Summary Report, paragraphs 49-64).

107. TCC10 recommended that WCPFC11 discuss the differences in interpretation that had arisen during the CMS noting several (such as paragraph 3 of Scientific Data to be Provided to the Commission and WCPFC-TCC10-2014-10 Table 3), were a priority concern. In addition, due to difficulties experienced in the interpretation of some CMMs, TCC10 recommended to WCPFC11 that all new CMMs need to be drafted with clear criteria as to the nature of the obligation and how compliance with that obligation will be assessed. In addition, TCC10 recommended that WCPFC prioritize obligations to be assessed in the CMS (x-ref recommendation from this Review). While maintaining the practice of a CCM being able to submit information between the TCC and Commission meeting, to assist the Secretariat assimilate any such information, TCC10 encouraged this to be done as early as possible before the deadline of 30 days prior to the Commission meeting (TCC10 Summary Report, paragraph 55-65 and 69).

108. At TCC10, a SWG reviewed CMM 2013-02, considering, among other aspects, the need to more clearly define the meaning of each compliance status, possible refinement of the categories of non-compliance, clarification as to the application of the “next steps” from Annex I, providing flexibility for the Commission to specify which measures should be assessed the following year, in order to streamline and prioritize TCC’s review, and whether the CMS working group should operate in open or closed session (TCC10 Summary Report , paragraph 74). This work was continued, led by the USA, inter sessionally in advance of WCPFC11.

109. Also at TCC10, discussions on responses to non-compliance commenced. An intersessional working group had been established by the Commission for this purpose through paragraph 24 of CMM 2013-02 and this had been identified as a TCC Workplan priority task. There was general support for the development of responses to noncompliance noting it was important that responses adequately reflect the magnitude of the breach and whether it was of a recurring nature. It was noted that the elaboration of precise requirements to ensure that noncompliance is addressed is necessary and that responses must be graduated, providing opportunities for assistance and capacity building which consider the special requirements of SIDS, before moving towards more severe penalties. TCC10 requested further work be undertaken in the lead up to WCPFC11 (TCC10 Summary Report, paragraph 77-81).

110. Presenting the TCC10 report to WCPFC11, the TCC Chair stressed the need to make changes to the CMS to reduce frustration and improve the potential for realizing the objectives of the Scheme. WCPFC11 was advised that TCC couldn't repeat the volume of this year's work next year. And that even though the Secretariat had successfully implemented an efficient system to assist the Committee, the process took too long (WCPFC11 Summary Report, paragraph 434 and 640). FFA members agreed noting that the number of obligations assessed each year will continue to increase as the Commission adopts more CMMs and more categories are added. They noted that the Commission has gone from reviewing 14 CMMs and scientific data rules in 2011 to 25 CMMs, Convention provisions and scientific data rules in 2014 (WCPFC11-2014-DP10). The CMS small working group took the majority of the TCC's time at TCC10. The added facility of allowing CCMs to provide additional information up to 30 days prior to the Commission meeting added to this work. Between TCC10 and WCPFC11, 15 CCMs indicated that they had additional information meaning 79 potential compliance issues required re-visiting in the margins of an already heavily scheduled Commission meeting (WCPFC11 Summary Report, paragraph 635). The FFA paper provided suggestions to the Commission on what should be prioritized.

111. FFA members also provided a second paper (WCPFC11-2014-DP23) specifically related to the CMS assessments of SIDS (WCPFC11 Summary Report, paragraph 636).

112. WCPFC11 undertook its fourth annual review of compliance by CCMs with Commission obligations described in 38 CCMs. TCC10 had developed a pCMR covering all CCMs against obligations in seven categories as per paragraph 3 of CMM 2013-02. Several CCMs provided additional information between TCC10 and WCPFC11. Therefore, a working group convened to review and evaluate the additional information. The working group only considered additional information that was provided by the deadline of 30 days prior to WCPFC11.

113. WCPFC11 agreed to adopt the Final Compliance Monitoring Report for 2013 comprised of an Executive Summary, a matrix and a table of compliance statuses (WCPFC11 Summary Report, paragraph 467 and Attachment H).

114. WCPFC11 subsequently considered the prioritization of obligations to be assessed by the CMS (TCC10 Summary Report, paragraph 63 and WCPFC11-2014-DP10). These included: operational data and aggregated data reporting and Annual Reports, catch and effort limits for key target species, and MCS tools. During WCPFC11, the SWG Chair reported that a list of priority obligations was included in WCPFC11-2014-29 (WCPFC11 Summary report, paragraph 637-638 and 642). In addition, WCPFC adopted a tier based system for the provision of scientific data based on WCPFC11-2014-19b: *A tier scoring scheme for the provision of scientific data to the Commission*, for consideration by the Scientific Committee (WCPFC11 Summary Report, paragraph 478 and Attachment J).

115. WCPFC11 subsequently also agreed to:

- a list of obligations to replace those in paragraph 3 of CMM 2014-07 by TCC11 for the CMS (WCPFC11 Summary Report, Attachment U).

- to convene CMS SWG for 1 day prior to TCC11 to complete the review of each CCM and develop the draft Provisional Report, before convening TCC proper for three days (WCPFC11 Summary Report, paragraph 657)
- that there should be an audit of the CMS at some point. The Secretariat was tasked with preparing a paper in relation to this for TCC11's consideration (WCPFC11 Summary Report, paragraph 674).
- to adopt CMM 2014-07, effective for 2015 only, (WCPFC11 Summary Report, paragraph 677-682 and Attachment V)

116. WCPFC11 agreed that the completion of the revision and updating of the CMS CMM, including addressing the proposals of FFA in relation to capacity building needs of SIDS, is a priority for adoption at WCPFC12 (WCPFC11 Summary Report, paragraph 683). Also agreed was the template, adopted at WCPFC10, be used for the dCMR in 2015 (WCPFC11 Summary report, paragraph 684 and Attachment W).

### **2014 Compliance assessment (TCC11 and WCPFC12 in 2015)**

117. TCC11 was provided with an extra day to conduct its work and develop technical recommendations to assist the Commission achieve its objectives (TCC11 Summary Report, paragraph 3).

118. TCC11 was presented with a summary of the Secretariat's support to the CMS in the last intersessional period (WCPFC-TCC11-2015-09). It was noted that there were fewer CCMs (largely because there were fewer CNMs), fewer rows (from 5,000 down to about 3,800) which provided the opportunity to focus on priority obligations for the Commission. Some discussion on SIDS capacity building requests were included, noting fewer requests than in previous years as a result of the decision that non-target related measures and mitigation measure requirements were not assessed in the dCMR this year and that a lot of the requests had related to those issues. It was noted that last year was the first that observer reports could be drawn on in the preparation of the dCMR including issues associated with flag State access to those reports. The Secretariat noted that there are interpretation differences among CCMs which complicates the Secretariat's initial assessment. The value of the information management system (IMS) was noted with a request support for that be continued (TCC11 Summary Report, paragraph 120 and 121).

119. Some CCMs expressed concern about the general lack of review of by-catch related measures suggestion that this was obviating responsibilities. It was also noted that while the Secretariat experienced significant demands to prepare the dCMR, CCMs were equally under pressure to monitor and respond to obligations (TCC11 Summary Report, paragraph 124).

120. TCC11 agreed to conduct the dCMR review process using the principles, including scoring and decision-making, articulated in WCPFC-TCC11-2015-23\_rev1 and introduced by the Chair. In relation to observer participation, it was noted that CCM views on the possibility of open CMS sessions at TCC11 had been invited via Commission Circular 2015-43. After considerable discussion, the session was closed to observers with the result several observers made statements critical of the decision (TCC11 Summary Report, paragraphs 129-134).

121. TCC11 met in closed session (2.5 days) to review the dCMR based on the list of obligations agreed by WCPFC11 (WCPFC11 Summary Report, Attachment U). The pCMR, including a provisional assessment of each CCM's Compliance Status and recommendations for corrective action, based on identified potential compliance issues and Annex I of CMM 2014-07 was also undertaken in closed session. The pCMR included an executive summary with recommendations and observations from TCC related to the development of the pCMR; issues arising during the Compliance Review Process; Requests for Assistance and Capacity Building and two Appendices. The pCMR was classified as non-public domain although recommendations for modification of CMMs or other obligations were included in the TCC11 Summary Report (TCC11 Summary Report, paragraph 135-136).

122. Following discussion relating to concerns with the CMS process used in 2015, TCC11 recommended that an intersessional working group develop a list of obligations to be assessed by CMS in 2016 prior to WCPFC12. It included a need to review bycatch issues and to develop a rolling schedule of obligations to be assessed on a regular basis (TCC11 Summary Report, paragraph 144).

123. The Secretariat presented a proposed timeline, including deadlines for the 2016 CMR and Annual Reports Part 1 and 2 (WCPFC-TCC11-2015-27). Subsequently, TCC11 recommended the WCPFC12 consider a revised timeframe for annual reporting for the CMS process for 2016 and beyond (TCC11 Summary Report, paragraph 152).

124. A closed special session of TCC was convened in advance of WCPFC12 in Bali, to review additional information provided on the pCMR, pursuant to paragraph 19, and make revisions to the pCMR, with explanatory notes for consideration by WCPFC12 (TCC Special Session Summary Report, 29 November, paragraph 3-6). The Reports of TCC11 and the TCC Special Session were presented to WCPFC12 (WCPFC12-2015-19, 19b and 19e).

125. At WCPFC12, the TCC Vice-Chair tabled a proposal to revise the CMS CMM (WCPFC12-2015-20\_rev1). The objectives of the proposed revision were to improve the CMS in terms of assessing compliance with obligations and to work towards improving the ability of all CCMs to implement measures. The proposal also sought to address the special capacity development needs of SIDS, Philippines and Indonesia and the assessment of flag State obligations where there are ongoing investigations with timeframes not compatible with TCC reporting dates (WCPFC12 Summary Report, paragraph 176 and 177).

126. The Commission agreed that the tier scoring system adopted at WCPFC11 would be used to assist in assessing compliance of CCMs for the provision of scientific data in 2016 and following years. The Commission agreed to explore the usefulness of using the tier scoring system to assist in the evaluation of compliance with other CMMs, including the possible development of an indicator of overall compliance of each CCM (WCPFC12 Summary Report, paragraph 507-509 and 624).

127. Following presentation of the dCMR (WCPFC12-2015-19e), several CCMs noted concerns in relation to reporting deadlines, and the compliance status assigned, for example, late



reporting was in the same category as more severe compliance problems and the lengthy list of CCMs in the non-compliant category with a wide range of non-compliance matters. The Commission adopted the 2015 Final CMR (WCPFC12 Summary Report, paragraphs 620-627 and Attachment W).

128. Revision of 2014-07 was undertaken in the margins of WCPFC12 in a SWG (WCPFC12-2015-20\_rev5). In reporting to plenary, the TCC Vice-Chair noted that the majority of the SWG participants were comfortable with the two-year timeframe, noting that there were major changes to the measure aimed at, among other matters, addressing issues of fairness and capacity building to comply with the measures. Some CCMs wanted the measure to be reviewed in 2018 and revised in 2019. It was noted that TCC11 had identified substantial process issues – for example, the introduction of observer reports to the process – which, although useful, had introduced new issues for the CMS. Some CCMs expressed reservations in adopting the new CMM due to uncertainty associated with how a CCM could explain reasons that they cannot be assessed against an obligation because of capacity constraints, and how implementation plans that run for a certain number of years, would be applied in practice (WCPFC12 Summary Report, paragraphs 680-692).

129. The Commission subsequently adopted CMM 2015-07 CMM for the Compliance Monitoring Scheme (WCPFC12 Summary Report, Attachment aa). It was also agreed, that subject to the recommendations from TCC12 (CMM 2015-07, paragraph 40) a review of the CMS will be conducted by an independent panel (WCPFC12 Summary Report, paragraphs 695-696).

### **2015 Compliance assessment (TCC12 and WCPFC13 in 2016)**

130. The sixth year of the CMS's operation was again conducted in closed session with observers expressing frustration with this decision taken in Heads of Delegation (TCC12 Summary Report, paragraph 56). Possibilities for resolving this on-going matter included revising the definition of non-public domain data or developing a confidentiality agreement that would allow observers to be present (TCC12 Summary Report, paragraph 57).

131. The Secretariat noted that the CMS matters paper prepared last year had proved cumbersome with the result CMS matters for TCC12 was presented in four parts (WCPFC-TCC12-2016-10A to 10D: an overview of CMS matters for TCC12; the list of obligations to be assessed; a summary of capacity assistance and development plans; and a summary of investigation status), along with WCPFC-TCC12-2016-IP04 (scientific data gaps and the tier scoring system) and WCPFC-TCC12-2016- IP05 (Table 4 on ROP longline coverage) (TCC12 Summary Report, paragraph 64).

132. The SPC Secretariat introduced a review of the tiered scoring system which was an update of the annual Scientific Data Gaps paper prepared by SPC for SC12 (WCPFC-TCC12-2016-IP04). As recommended by WCPFC11, the 2014 and 2015 review of data gaps included assigning a tier-scoring evaluation level and that this process was used in developing the 2015 CMS assessments (TCC12 Summary Report, paragraph 74).

133. Over three days, TCC12 reviewed the draft CMR based on the list of obligations agreed by WCPFC12 (WCPFC12 Summary Report, Attachment O). CCMs' Compliance Status was assessed using the criteria and considerations for assessing compliance status set out in CMM 2015-07 (Annex I). A pCMR and Executive Summary was developed. In consideration of the CMS process, the TCC Chair noted that concerns had been raised during the assessment process relating to the difficulty implementing measures and possible changes to measures (TCC12 Summary Report, paragraph 83). TCC12 recommended to WCPFC13 the pCMR for its consideration and final assessment (TCC12 Summary Report, paragraph 87).

134. The TCC Chair noted that WCPFC12 had agreed the list of obligations to be assessed through the CMS process for 2016–2018; it set out a schedule where some obligations would be assessed each year, some every second, and some every third. TCC12 revisited the suggested updates and revisions outlined in WCPFC-TCC12-2016-10B. It was noted that the proposal needed careful consideration. For example, if a new measure was adopted or amended, for example regarding seabird mitigation, it could be two years before TCC assessed compliance with it. It was suggested that the Commission consider modifying the table such that an amended measure is automatically put on the list to be assessed. TCC12 agreed that CCMs provide views to the USA delegation in advance of further consideration at WCPFC13 (TCC12 Summary Report, paragraph 88-99).

135. The Secretariat noted that CMM 2015-07 (paragraph 40) provided that the measure shall be reviewed in 2017. WCPFC12 agreed that the review would be undertaken by an independent panel chosen by Executive Director in consultation with Members. WCPFC-TCC12-2016-11 was prepared by the Secretariat to assist TCC12 in developing the terms of reference and in deciding on scope and timing for the review. Following substantive discussion, the Secretariat was invited to engage with CCMs to refine the draft Terms of Reference for consideration at WCPFC13 (TCC12 Summary Report, paragraphs 114-139). Following further discussion in plenary at WCPFC13, the Terms of Reference for the Review were adopted (WCPFC13 Summary Report, paragraph 129-142 and Attachment H).

136. The Commission also considered a revised list of obligations, including an assessment against the provisions of CMM 2013-06 (paragraph 3), to be assessed by the CMS tabled by the USA (WCPFC13-2016-DP20 and subsequently Rev.1). TCC12 had considered that all CMMs that are amended be automatically scheduled for review during the first TCC session that occurs after the amendment. TCC12 subsequently prepared a set of instructions for the Secretariat to revise the document after the meeting (WCPFC13-2016-DP20\_rev1). The Commission also agreed that, at its annual session in 2017, it would review CMM 2013-06 (paragraph 3) and consider possible amendments to facilitate assessment of its implementation in the CMS. The Commission adopted the updated list of obligations to be assessed by the Compliance Monitoring Scheme (WCPFC13 Summary Report, paragraph 143-158 and Attachment I).

137. A summary of additional information submitted by CCMs following the preparation of the TCC12 pCMR was provided to the Commission (WCPFC13-2016-30). At WCPFC13, an informal small working group (SWG) had finalised the CMR with close to complete assessment on almost all obligations. The SWG expressed significant concerns regarding the preparation of the final CMR, noting the disjointed nature of its work and the competition created among the

large number of working groups which were progressing Commission work in the margins, often concurrently. The SWG recommended that the CMR work be done in a standalone session chaired by the TCC Chair.

138. A lengthy discussion ensued as to how to constitute the working group ahead of the Commission meeting, given the Rules of Procedure. Under one option, the first day of the Commission meeting would be dedicated to analysis of the CMR; it would formally be a Commission meeting to be in compliance with the measure but in practice it would be run by the TCC Chair. Dealing with the additional compliance information early and finalising the CMR would free delegations up to focus on the rest of the Commission agenda. The Commission accepted the Final CMR (WCPFC13 Summary Report, paragraphs 604-616 and Attachment U).

139. WCPFC13 discussed and agreed to maintain the due dates for Annual Report Part 1 and Annual Report Part 2 in 2017 (WCPFC13 Summary Report, paragraph 617-624).

140. The Secretariat presented a discussion paper on the participation of observers in meetings and activities of the Commission (WCPFC13-2016-33), as requested by WCPFC12. Following considerable discussion, including with contributions from Observers, the Commission agreed to develop, and adopt inter sessionally, for application at TCC13, guidelines to enable the participation of NGO observers at closed meetings of the Commission and its subsidiary bodies. Participation would be under conditions which would ensure the confidentiality and non-disclosure of any information learned as a result of that participation, and sanctions for failure to comply with the rules and procedures relating to participation (WCPFC13 Summary Report, paragraph 641-658).

### **2016 Compliance assessment (TCC13 and WCPFC14 in 2017)**

141. At TCC13, the Executive Director reported that the CMS was now at the core of the TCC work, providing the platform for the TCC to undertake its key task of assessing the level of compliance of CCMs to their obligations under the WCPFC Convention and CMMs, and to identify capacity needs so that all members had sufficient capacity to appropriately comply with their obligations. He noted that CMM 2015-07 lapsed at end 2017 and TCC13 would need to provide advice to the Commission on a replacement or extension to ensure continuity in application of the CMS. The Secretariat reported on significant improvements in the timeliness of the CMR submissions from CCMs, the quality of analysis by the Secretariat and the promptness of responses from Members. He noted that the continued improvements to the Secretariat's IMS was essential to the servicing of the CMS. He reported on the work undertaken to develop the WCPFC online-reporting systems and the online WCPFC Compliance Case File System which included significant data-related support from SPC-OFP. The support provided by FFA to its Members in relation to supporting engagement in the CMS particularly report submission was also acknowledged (TCC13 Summary Report, paragraphs 22-24).

142. TCC13 also received an update on the Independent Review of the CMS commissioned by WCPFC13 (WCPFC13 Summary Report, paragraph 129-142 and Attachment H). CCMs noted that the CMS process had improved through incremental improvements in the system, particularly the IMS, increased awareness and understanding of obligations, increased responses

from CCMs in addressing compliance issues in advance, and improved remedial action after compliance issues had been identified. CCMs considered that the review must facilitate the Commission to more fully assess the effectiveness, efficiency and fairness of the Scheme, and provide clear recommendations on how best to implement the Scheme. TCC13 noted progress on the Independent Review of the CMS (TCC13 Summary Report, paragraphs 70-75).

143. The seventh year of the CMS was again supported by a significant amount of material prepared by the Secretariat which informed the dCMR. This included:

- a. WCPFC-TCC-2017-11a a summary of CMS matters, covering key dates for CCM annual reporting, draft CMRs and the associated WCPFC online systems in 2017, a summary table of the key statistics related to each year's draft CMR report, the list of the CMM paragraphs and Convention provisions included in the full draft CMR grouped by section and by CMM, and a report on the WCPFC Online Reporting Systems used to support the Compliance Monitoring Scheme.
- b. WCPFC-TCC13-2017-11b a summary of capacity assistance needs identified by CCMs in the year's Annual Report Part 2 reporting or in responses to the draft CMR, as of 11 September 2017, including additional information reporting on the progress of the Capacity Development Plan for each obligation that was assessed Capacity Assistance Needed in 2016,
- c. WCPFC-TCC13-2017-11c an overview of the status of investigations by responsible flag CCMs of alleged violations relevant to the 2017 draft CMR, as contained in the Compliance Case File online system as at 6 September 2017, including new information provided in the annual report on the progress of investigations for each obligation that was assessed as Flag State Investigation (FSI) in 2015 and 2016. With regard to ROP Pre-Notification Issues, the Chair observed that the ROP Pre-Notification Issues list had generated 544 cases and fewer than 100 of these cases had a completed investigation/review by a CCM. Based on experience with those reviews, most cases either did not involve significant violations which, in any case, were captured through other compliance case file system lists. Given the low likelihood of significant cases being identified through this list, the TCC Chair recommended that the CMS working group only assess those cases from the ROP Pre-Notification Issues list related to observer obstruction, and
- d. WCPFC-TCC13-2017-11d listed some obligations under various CMMs where TCC advice and direction in relation to their implementation by CCMs might be useful to improve interpretation or clarity.

144. In addition, the TCC Chair provided guidance on the CMR Review Process for 2017, including:

- a. the review was to be undertaken on obligation-by-obligation basis, not by CCM
- b. CCMs could not block their own compliance assessment if other CCMs had reached consensus
- c. additional information provided verbally during the CMS working group would be accepted for the assessment, unless the Secretariat needed additional time to review and confirm the information received
- d. in cases where CCMs were late with a reporting deadline, TCC13 would accept the assessment of the Secretariat unless there was additional relevant information provided by the CCM, and
- e. confirmation that the results of the assessment would then be included in the pCMR that would be sent to the Commission (WCPFC-TCC13-2017-12 and TCC13 Summary Report, paragraphs 76-90).

145. In relation to the impending expiry of CMM 2015-07 at the end of 2017, and that Review report was not due before March 2018, most CCMs supported an extension of the Scheme for one year. However, CCMs noted some issues would benefit from immediate attention. This included a proposal from FFA and PNA members to streamline some of the reporting obligations such as not assessing CCMs against the Part 1 report deadline if they had met all the obligations under sections 1–3 of the Scientific Data provision requirements, and have provided the data required in the Part I Addendum. In addition, several CCMs commented on the need for a system accommodating responses to non-compliance (TCC13 Summary Report, paragraphs 91-102).

146. Also TCC13 agreed to form an intersessional working group, to report back to TCC14, that would *inter alia* address the need for CCMs to obtain copies of observer reports for their vessels to facilitate their investigations of possible violations. This will include examining options for facilitating access to observer reports from both ROP Providers and the Secretariat. It was tasked with recommending possible improvements to the CMM for the Regional Observer Programme, the Agreed Minimum Standards and Guidelines of the Regional Observer Programme, and/or other Commission decisions (TCC13 Summary Report, paragraph 161).

147. The Commission, undertaking its seventh CMS process, considered a pCMR which had been prepared in accordance with CMM 2015-07 utilising a small working group in closed session, noting:

- a. an updated priority list of Commission obligations agreed to at WCPFC13 for 2016 – 2018 (WCPFC13 Summary Report, Attachment I).
- b. the current CMS did not require an overall assessment of each CCM, but only required WCPFC to identify a compliance assessment for each specific obligation
- c. the operation of the small working group in the margins of WCPFC14 which considered all additional information including for CCMs not present at the working group meetings
- d. that, in accordance with Annex I of the CMS CMM, the following statuses were considered in making the assessments: Compliant, Non-Compliant, Priority Non-Compliant, Capacity Assistance Needed, Flag State Investigation and CMM Review (WCPFC14 Draft Summary Report, paragraph 431-432).

148. The Commission accepted the Final CMR (WCPFC14 Draft Summary Report, paragraphs 431-439, WCPFC14-2017- Final CMR, Attachment U).

149. The Commission also discussed an *Update on the Independent Review of the Compliance Monitoring Scheme* (WCPFC14-2017-25A) and a companion document *Substantive Progress Report by the Review Panel* (WCPFC14-2017-25B).

150. Many CCMs provided preliminary views. Two documents tabled by FFA set out their detailed response to some of the issues raised by the Panel (WCPFC14-2017-DP06 and WCPFC14-2017-DP28). They included:

- a. The need to explicitly cover audit points in the design of each CMM, resource considerations, clear reporting requirements and how compliance will be assessed;

- b. It was essential for the Scheme to recognise and address two key fundamental areas (i) the need to build capacity, and to do so in a manner that complements existing national processes, and (ii) the need to ensure that the Scheme was procedurally fair and produced fair outcomes;
- c. There was a clear need to improve the CMS in order to ensure that it was robust, fair, transparent and efficient, and produced meaningful assessments in a timely manner to inform management decisions;
- d. The current CMS is burdensome and it is critical to revisit the timing of CMS review processes and the current list of obligations assessed;
- e. to clarify the scope of the Scheme such that it properly and fairly assesses implementation of CCM obligations, including meeting flag State responsibilities; and
- f. That a process needs to be set up to commence the development of remedial responses which help countries work towards compliance.

151. Transparency, and particularly the admission of observers into the process, was also highlighted for substantive consideration in the Review.

152. The Commission agreed to establish an Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG). The tasks of the Intersessional Working Group are to facilitate consideration of the Report from the Independent Review of the Compliance Monitoring Scheme (due by March 2018) and develop a proposed CMM for the CMS for consideration at WCPFC15. Republic of Marshall Islands agreed to lead the IWG (WCPFC14 Draft Summary Report, paragraphs 440-461).

153. The Chair opened discussions on the expiration of CMM 2015-07 noting that TCC13 did reach a consensus recommendation on extending the existing measure.

154. The Commission considered CCM views on priorities for the CMS post WCPFC14. FFA Members proposed a 1-day CMR process at TCC14 to assess a much-reduced and high-priority set of CMMs including: the Record of Fishing Vessels; Vessel Monitoring System; Regional Observer Programme; transshipment; tropical tuna; south Pacific albacore; Pacific bluefin tuna; Scientific Data rules (WCPFC14-2017-DP06 Rev 1 and 28). The revised list was adopted following further discussions in the meeting margins (WCPFC14 Draft Summary Report, paragraph 475).

155. In addition, the RMI introduced discussion on duplicative reporting and the rollover of CMM 2015-07 (WCPFC14-2017-DP29). The recommendation relating to duplicative reporting and the rollover of CMM 2015-07 was adopted (WCPFC14 Draft Summary Report, paragraph 475).

156. The Commission agreed to adopt CMM 2017-07 Conservation and Management Measure for the Compliance Monitoring Scheme (Attachment W), which will be effective for 2018 only (WCPFC14 Draft Summary Report, paragraph 476).

157. The Commission adopted a revised list of obligations to be assessed by the Compliance Monitoring Scheme in 2018 (Attachment V), which will replace the multi-year list of obligations that was adopted at WCPFC13 (WCPFC14 Draft Summary Report, paragraph 477). The Commission noted that FFA member CCMs had provided an initial analysis and reiterated their view expressed during TCC13 that the essential scientific information already provided as operational level catch and effort data submissions earlier in the year must be recognised as meeting obligations to provide a number of required reporting obligations specified to be included in Annual Report Part 1 (WCPFC14-2017-DP29). It was advocated that improvements must be made to facilitate access to data that is already made available to the Commission. The Commission agreed to task the Secretariat, in consultation with SPC, to review the Commission's reporting requirements to minimise duplicate reporting by CCMs, with a particular focus on streamlining the provision and accessibility of scientific data to the Commission, as well as to prioritise the enhancement of the Commission's information management system in response to that review, and report back to WCPFC15 (WCPFC14 Draft Summary Report, paragraph 478).

158. The Commission encouraged CCMs to submit their Annual Report Part 1 in a timely manner, and note this is linked to TCC's efforts to minimise verbal reports to the CMR process.

**Annex D - Change history for CMM 2010-03 through to CMM 2017-07**

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
Para						
Title	Footnote 1. Replaces 2010-03	Footnote: replaces 2011-06	No footnote to rescind 2012-02	No footnote to rescind previous CMMs	No footnote to rescind previous CMMs	
Preamble	Note: "...open, transparent..."					
Section I						
1	No change	No change	'where appropriate" deleted in front of Participating Territories	No change	No change	
iv			...and other Commission obligations added	No change	No change	
Section II						
2	No change	No change	'...with the assistance of TCC...." added	No change	No change	
3	Added 'during the previous calendar year'	No change			Added "Subject to modification by para 15.....	
i	....for target species	No change	No change	No change	No change	
ii	....for target species	No change	No change	No change	No change	
iii			New: seabirds and other non-target species		Revised "....measures for non-target species"	
iii	.....deleted "gear" and added	No change	New iv. No change	No change	No change	



2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
	“...restrictions on the use of FADs”					
iv	No change	No change	New v. Revised: authorisations to fish, RFV and HSBI added....	No change	No change	
v	Specified scientific data provided through Part 1 AR.....	No change	New vi.	No change	Edit Part 1 AR (and its addendum) Footnote 2 from 2014-07 deleted	
vi			New: submission of Part 2 AR.....			
vii				New footnote regarding WCPFC11 list of obligations to replace the obligations in para 3 of this CMM		
New 4			Evaluate for the previous calendar year with collective obligations.....	No change	No change	
4	Added “Each year” and “.....will consider and identify whether additional.....”	No change	Becomes 5	No change		
i, ii and iii	No change	No change	ii “persistent” changed to “consistent”			
			iii .....added “..to achieve goals of the Convention or			

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
			specific Measures adopted”			
5	No change	No change	New 6. No change	No change	Moved to para 15	
					New para 5-7. <i>Capacity Assistance Need</i> . SIDS, Participating Territory, Indonesia or Philippines Capacity Development Plan Capacity Assistance Needed	
					New para 8-11 <i>Investigation Status Report</i> In case of incomplete investigation, CCM to submit a Status Report prior to TCC	
					New para 12-14 <i>Conclusion of CDP or SR</i> Timeframes and action prescribed	
					New para 15. Commission to consider recommendations from TCC and whether all obligations from para 3 shall be evaluated in the following year.....	
					ii. evidence of high (?) percentages of non-	

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
					compliance.....across multiple years...	
					iii. 'goals' changed to 'objectives' of the Convention	
6	Added "In this regard dCMR and pCMRs shall constitute non PD data, final CMR shall constitute PD data".	No change	New 7. No change	No change	New 16. Previous 6. No change	
7	No change	No change	New 8. No change	No change	New 17. Previous 7. No change	
8	Re-written to broaden the scope of engage with SIDS and participating territories to include sub-regional agencies entitlement to participate in the process.	No change	New 9. No change	No change	New 18. Previous 8. No change	
					New 19. A CCM shall not block its own compliance assessment .....	
					New 20. Missed reporting deadline.....	
					New 21. Previous 9. No change	
Section III						

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
9	No change. Note provision for NGOs to provide “any suitably documented information.....”	No change	New 10. Executive Director to “compile” as opposed to “prepare” dCMRs concerning each CCM with collective obligations. Scope of information used in preparing the dCMR described....AR1 and 2....other data collection programs.....	No change	New 22. Previous 10. No change.	
10	Deadline for distribution of ‘the relevant section’ of the dCMR by Secretariat changed to 28 July. Footnote 2 deleted.	No change	New 11. No change	No change	New 23. Previous 11. 28 July changed to 55 days prior to TCC	
11	Deadline for CCM response changed to 28 August (not 12 days in advance of TCC)	No change	New 12. Relevant “section” of the dCMR changed to relevant dCMR	No change	New 24. Previous 12. Non-substantive edit to intro section of para and 28 days prior to TCC changed to 28 August.	
i and ii	No change	No change	i, ii and iii all non-substantive edits		No changes to i, ii and iii.	
iii	Refined to specifically provide for all CCMs not just	No change	Edited			

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
	SIDS and Territories					
					New 25. Cooperation encouraged between CCMs	
12	7 days changed to 3 weeks in advance of TCC	No change	New 13. Information to be circulated includes potential compliance issues	No change	New 26. 3 weeks changed to at least 15 days. Added “and requirements for further information to assess the relevant CCMs compliance status.....”	
13	No change	No change	New 14. TCC review to be based on information provided in dCMR and any additional information. The review to take into account confidentiality.	No change	New 27. Deleted “The review to take into account confidentiality.”	
Section IV						
14	No change	No change	New 15. NGOs or other organisations concerned with matters relevant.....added	No change	New 28. Old 15. Added: “Taking into account any CDPs of SRs and.....” Also “provisional compliance status’ changed to a ‘compliance status with respect to all applicable individual obligations.....as well as	

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
					recommendations for corrective action needed by the CCM.....	
					New 29. Compliance status decided by consensus (subject to para 19). No consensus – majority and minority views.	
15	Added the inclusion of an executive summary	No change	New 16	No change	New 30. Previous 16.	
i			Edited – non-substantive		Added; “.....particularly where TCC has identified ambiguity in the interpretation, or difficulty in monitoring and implementing that CMM or obligation.....”	
ii	New to accommodate capacity building requirements and obstacles – in particular for SIDS and territories	No change			ii and iii No change	
16	No change	No change	New 17. No change	No change	New 31. Previous 17 No change.	
Section V						
17	No change	No change	New 18. No change	No change	New 32. Previous 18. No change	
18	No change	No change	New 19. New information revised	No change	New 33. Previous 19. New advice or	

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
			from “prior” to 30 days before the Commission”		information to clearly identify implementation issues identified in the pCMR	
19	No change	No change	New 20. No change	No change	New 34. Previous 20. Edited to delete inclusion of Compliance Status for each CCM and recommendation for corrective action – moved to new para 35.	
20	The addition of the executive summary to the final CMR....setting out recommendations and observations.....	No change	New 21. No change	No change	New 35. Old 21 and 20. Final CMR shall include Compliance Status for each CCM against each obligation and corrective action needed. To include executive summary.	
21	No change	No change	New 22. Edit – issues identified in its CMR from the previous	No change	New 36. No change	
Section VI						
22 “type, severity, degree and cause..” defined?	No change	No change	New 23. Revised. “response to non-compliance” changed to “CCMs identified as having compliance issues...”	No change	New 37. Previous 23. No change	
23	Changed to review the range of	No change	New 24. IWG to develop a range of responses to non-	No change	New 38. Pervious 24. IWG continued – to develop a process for	

2010-03	2011-06	2012-02	2013-02	2014-07	2015-07	2017-07
	responses to non-compliance		compliance – to work electronically....to report to TCC11 and WCPFC12.		TCC12 and adoption at WCPFC13.	
24	No change	No change	New 25. No change	No change	New 39. Previous 25. No change.	
Final clauses						
25	Applies to 2012 only	Applies to 2013 only	Effective for 2014 only	Effective for 2015 only.	New 41. Effective for 2016 and 2017 only	New 41. Effective for 2018 only.
26	No change	No change (9 <sup>th</sup> to 10 <sup>th</sup> annual meeting)	To be reviewed at 11 <sup>th</sup> meeting	To be reviewed at 12 <sup>th</sup> meeting	New 40. To be reviewed in 2017 according to ToR determined by TCC12 in 2016.	New 40. The Measure shall be reviewed in 2018.
27	No change	No change	No change	No change	New 40.	
Annex	No change	No change	Revised. Compliant, Non-compliant and Priority Non-compliant. Next Steps as opposed to Criteria for assessing Compliance Status.	No change	Revised substantially. Six categories of Compliance Status.	New List of obligations to be reviewed: WCPFC14 Draft Summary Report, paragraph xx and Attachment V.



## **Annex E - Considerations relating to developing responses to non-compliance in the Commission and TCC (2010-2017).**

1. In adopting CMM 2010-03 at WCPFC7, the Commission agreed that its next annual meeting would develop, and consider adopting, a process to complement a Scheme that will identify a range of responses to non-compliance, including co-operative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs. Australia was requested to assist with continuing this initiative, through the Compliance with Conservation and Management Measures Working Group, and report to TCC7 (WCPFC7 Summary Report, paragraph 376).

2. At TCC7, Australia presented a proposal for a phased response to non-compliance (WCPFC-TCC7-2011-DP/08). It comprised of a compliance review, a compliance action plan and a compliance remedy for each of the five categories noted in the Compliance Monitoring Scheme (CMS) (i.e. catch and effort limits, catch and effort reporting; spatial and temporal closures and gear restrictions; observer and VMS requirements; and scientific data provision, reporting and handling).

3. CCMs commented that the proposal provided a good starting point for the development of the Commission's response to non-compliance. However, there were reservations associated with the limited experience to that point with the Scheme and that elements of the proposed tiered approach, such as implications for participatory rights, required additional consideration. TCC7 proposed further inter-session refinement prior to consideration at WCPFC8 (TCC7 Summary Report, paragraphs 119-123).

4. Due to time constraints, WCPFC8 deferred consideration of a paper provided by Australia (WCPFC8-2011-DP34), updating the Commission on consideration of a means to address non-compliance (WCPFC8 Summary Report, paragraph 203). However, in adopting CMM 2011-06, WCPFC8 anticipated that, at its 2012 meeting, the Commission would develop and consider adopting a process to complement the Scheme that would identify a range of responses to non-compliance, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs, consistent with CMM 2013-06 (paragraph 22-24).

5. At TCC8 in 2012, the TCC Chair noted that it was not TCC's role to develop responses to non-compliance as CMM 2013-06 designates the Commission as having this mandate (paragraph 23). Continuing its carriage of this discussion started at WCPFC7, Australia presented a paper on responses to non-compliance (TCC8-2012-IP-10).

6. CCMs subsequently aired a range of views regarding a formal non-compliance response framework with some advocating a framework was essential and should be developed as a high priority. Others were concerned that any process should apply a graduated response framework to distinguish between unintentional, occasional or rare incidents and those that may be considered wilful and recurring with significant consequences for the Commission's efforts to manage WCPFC tuna fisheries. It was suggested that a scheme of graduated measures, beginning with a compliance action plan aimed at correcting, rather than penalizing, the non-compliant party, should provide reasonable reassurance particularly if the specific requirements of SIDS was recognized. TCC8 recommended the Commission consider a graduated process aimed at addressing non-compliance (TCC8 Summary Report, paragraphs 229-233).

7. The subject did not get any additional consideration at WCPFC9 in 2012 in Manila.

8. At TCC9, the United States proposed continuing the CMS as a permanent measure. For the period 2011 to 2013, the three years it had operated to that time, it was implemented on an annual

basis (WCPFC-TCC9-2013/DP- 27 04). The proposal included the establishment of an intersessional working group to identify responses to non-compliance. Following discussion, including requests for additional details on the types of responses to non-compliance that might be considered, the USA was invited to further develop the proposal for further consideration at WCPFC10 (TCC9 Summary Report, paragraphs 95-105).

9. The USA did present a proposal for the extension of the CMS to WCPFC10 (WCPFC10-2013/DP-06 and DP-06/Rev.1). Among other provisions, it included the establishment of an Intersessional Working Group (IWG-CMS) to consider responses to non-compliance. WCPFC10 subsequently adopted CMM 2013-03 and established an IWG, chaired by the USA, to develop responses to non-compliance (WCPFC10 Summary Report, paragraph 261-270 and Attachment J).

10. In 2014, the TCC was reminded of the IWGs task of developing a systematic analysis, prioritization and response mechanism for non-compliance (CMM 2013-02, paragraph 24), and that this was scheduled as a priority task in the TCC work plan for the period 2013-15 (TCC10 Summary Report, paragraph 76).

11. TCC10 was advised by the IWG Chair, the USA, that a range of possibilities for responses to non-compliance were under consideration. They included amending CMM 2013-02 or developing a companion measure. It was noted that the nature and intent of non-compliance, such as the severity or implications for non-compliance and any breaches that were serial in nature, were important considerations. FFA Members underscored the need for the clear definition of the requirements to ensure noncompliance is addressed and that responses be graduated, providing opportunities for assistance and capacity building considering the special requirements of SIDS, before moving towards more severe penalties. Following discussion, the USA was invited to continue consultations to support further consideration at WCPFC11 (TCC10 Summary Report, paragraphs 74-78).

12. Based on additional consultations in the lead up to WCPFC11, and formal submissions from the FFA, Australia and Japan, the USA did present a revised measure to the Commission for consideration (WCPFC11-2014-19a). WCPFC11 subsequently adopted a revised CMS, CMM 2014-07 (WCPFC11 Summary Report, paragraph 682 and Attachment V). The provisions relating to responses to non-compliance included in CMM 2013-03, paragraphs 23-25, were unchanged.

13. At TCC11, the Committee reviewed a proposed revision to CMM 2014-07 prepared by the Chair (WCPFC-TCC11-2015-11). It was proposed that, based on TCC11 discussions, a revised CMM, including in respect of Section VI, Responses to non-compliance, be prepared for WCPFC12 (TCC11 Summary Report, paragraph 163 and 164).

14. WCPFC12 considered proposed revisions to CMM 2014-01(WCPFC12-2015-20\_rev1 to \_rev5). In introducing the proposal, the TCC Vice-Chair explained that the proposed revisions sought to improve the CMS both in assessing compliance with obligations and to improve the ability of all CCMs to implement measures. Proposed revisions included better accommodating the special capacity development needs of SIDS, Philippines and Indonesia when assessing compliance and the assessment of flag State obligations when there are ongoing investigations with timeframes that are not compatible with TCC reporting dates. It included proposed amendments to reporting dates, review of the decision-making process, and the review schedule and term of the measure (WCPFC12 Summary Report, paragraphs 176-177 and 695). The Commission subsequently adopted CMM 2015-07 for the CMS (WCPFC12 Summary Report, Attachment aa). The provisions relating to responses to non-compliance of CMM 2014-07 (paragraphs 23-25) were retained unaltered (new paragraphs 37-39). The timeframes relating to the development of a mechanism to respond to non-compliance included in 2015-07 (TCC11 and WCPFC12) were obsolete at adoption.

15. In relation to compliance monitoring, WCPFC12 agreed that the tier scoring system adopted at WCPFC11 would be used to assist in assessing compliance of CCMs for the provision of scientific

data in 2016 and following years. In addition, the Commission agreed to explore the potential application of the tier scoring system to assist in the evaluation of compliance with other CMMs, including as a possible indicator of overall compliance of each CCM with respect to all agreed WCPFC obligations (WCPFC12 Summary Report, paragraphs 507-509).

16. There was no specific discussion on CMM 2015-07, paragraphs 37-39, at either TCC or in the Commission in 2016 or 2017.

## Annex F - The requirements of Procedural Fairness

Essentially the principles require a decision-maker to:

- inform any person:
  - a. whose interests are or are likely to be adversely affected by a decision, about the decision that is to be made and any case they need to make, answer or address
  - b. who is the subject of an investigation (at an appropriate time) of the substance of any allegations against them or the grounds for any proposed adverse comment in respect of them
- provide such persons with a reasonable opportunity to put their case, or to show cause, whether in writing, at a hearing or otherwise, why contemplated action should not be taken or a particular decision should or should not be made
- consider those submissions
- make reasonable inquiries or investigations and ensure that a decision is based upon findings of fact that are in turn based upon sound reasoning and relevant evidence
- act fairly and without bias in making decisions, including ensuring that no person decides a case in which they have direct interest
- conduct an investigation or address an issue without undue delay

## **Annex G - Possible Terms of Reference for informal review regarding TCC processes or outcomes**

- f. 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.
- g. 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.
- h. The review will normally be conducted by way of 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.
- i. 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.
- j. 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.
- k. 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.

## **Annex H - Draft Terms of Reference for TCC Friends of the Chair Group (FOC)**

### **Composition:**

The Chair (or co-chairs, if applicable) of the TCC, a representative of FFA Member States, a representative of other CCMs.

To meet in advance of the TCC.

### **Purpose:**

To reduce, streamline and prioritize the volume of material going to the TCC for consideration.

### **Functions:**

1. Review the draft CMR in advance of the TCC, and identify those matters which can be dealt with by the FOC without reference to the full TCC (which might include for example FSI in progress, less serious matter relating to the ROP, other matters of a more administrative nature, and other matters identified by the TCC), and institute follow up action as necessary on such matters including by the Secretariat;
2. Identify more serious matters that require the attention of the TCC, including systemic issues of non-compliance;
3. Identify issues arising from ambiguity and lack of clarity in CMMs, for the consideration of the TCC;
4. Recommend to the TCC the priority and frequency of review of new obligations (see Chapter 4, paragraph 10);
5. To undertake such other tasks directed by the TCC to facilitate and expedite the conduct of its business.

### **Outcomes:**

The FOC will present a Report to the TCC on the actions it has taken. The fact that a matter has been dealt with by the FOC and has not been identified by it as requiring the attention of the TCC shall not preclude any CCM from raising that matter for discussion in the TCC.

## **Annex I - Chronological summary of consideration of capacity building and technical assistance (2011-2017)**

*2011 (TCC7 in September 2011 and WCPFC8 in March 2012)*

1. During the development of the CMR for 2010, at the 2011 TCC and Commission meetings, SIDS identified instances where capacity building could improve their implementation of CMMs. TCC recommended that the Commission note that the special requirements and circumstances of SIDS need to be borne in mind in the implementation of the Scheme consistent with paragraph 8 of CMM 2011-06 (the adopted DP33, Rev.1).

*2012 (TCC8 and WCPFC9)*

2. Although no CCM-specific needs were identified, many CCMs expressed difficulty keeping up with the CMS process and the reporting requirements of CMMs (WCPFC9 Final CMR Executive Summary for 2011). In particular, SIDS CCMs expressed concern with the increasing reporting obligations which were considered to place an undue burden on their small administrations. They were concerned that the CMS process did not further marginalize them given their struggle to meet the Commission's obligations. CCMs were urged to integrate consideration of assistance to SIDS, as required under the Convention, particularly Article 30, into the everyday work of the Commission. This included when drafting and implementing CMMs and deciding priority activities for work plans and budgets, to ensure that SIDS both have the capacity to comply and the capacity to monitor compliance (TCC8 Summary Report, paragraph 451). The Final CMR Executive Summary recognized that reporting obligations need to be revisited to ensure that they are streamlined to ease this burden, particularly for SIDS CCMs.

3. Common areas for capacity building assistance identified included in relation to the VMS MTU/ALC audit and inspection; shark species identification and reporting; estimates of discards; and data collection (particularly for Philippines and Indonesia).

4. During WCPFC9, Pacific SIDS presented 11 priority areas for assistance and capacity building including:

- ensuring effective participation of SIDS in the Compliance Monitoring Scheme (CMS) process so that SIDS are not marginalised including through improvements such as streamlining of the reporting obligations; and
- ensuring SIDS are being assisted in the implementation of Commission obligations as required by the CMS, including through capacity-building, rather than using the scheme primarily to penalise SIDS (WCPFC9 Summary Report, paragraph 83).

*2013 (TCC9 and WCPFC10)*

5. TCC9 was invited to comment on a table prepared by the Secretariat (WCPFC-TCC9-2013-07, Table 1 – reproduced below as Table 1) which listed requests for assistance from CCMs relating to the 2012 and 2013 CMR process. SIDS identified two areas they considered required increased support, i) observer and debriefer training on ROP data collection, quality control and management, and ii) capacity building for policy development including national plans of action, license conditions, VMS obligations and identification and implementation of mitigation measures. The TCC Chair suggested that CCMs with assistance needs consider raising these points for inclusion in the Executive Summary of the CMS ((TCC9 Summary Report, paragraph 91 and 92).

Table 1. Requests for assistance noted in 2012 and 2013 Compliance Monitoring Report Processes

<b>CMM</b>	<b>CCM</b>	<b>Assistance needed</b>
CMM 2007-01 ROP	Fiji	2012: Kindly request the assistance from the WCPFC Secretariat to broker MOUs with other interested CCMs [for provision of observers]
	Nauru	2013: Nauru require more training for observers, debriefers, funding for data processing positions, equipment, scanners, electronic reporting devices such as tablets
	Vanuatu	2013: Request assistance related to observer coverage in longline fisheries Seabirds
CMM 2007-04	FSM	2013: Require assistance to develop its NPOA-Seabirds
	Philippines	2013: PH does not have much information on seabird interaction. PH does not have the capability to differentiate various species of seabirds. PH may need assistance on this aspect to educate fishers and would help improve recording/s of seabirds interaction.
CMM 2008-03 Sea Turtles	Niue	2013: Requires assistance with implementation
	Marshall Islands	2013: Stated: “Dip net requirement deemed burdensome by industry and might entail further request for assistance
	French Polynesia	2013: With respect to circle hook trials: “We are ok with these kind of studies but no fund to do this”
CMM 2009-05 Data Buoys	Nauru	2013: Stated against para. 5: Require assistance to include MTC licensing condition prohibits fishing on data buoys in Nauru EEZ
CMM 2010-01 NP Striped Marlin	Marshall Islands	2013: Need clarification on applicability of the measure in instances where species is not targeted but caught as incidental bycatch
CMM 2010-07 Sharks	Nauru	2013: Request assistance from FFA to assess need for NPOA-Sharks
	Samoa	2013: Request funding assistance from WCPFC to promote voluntary compliance by introducing incentive base strategy for fishermen to foster compliance with national measures and WCPFC CMMs
	FSM	2013: Require assistance to develop its NPOA-Sharks
	Niue	2013: Requires assistance with implementation
CMM 2011-02 VMS	Nauru	2013: Require ongoing training for upgrade and new staff, capital for hardware purchases and integrating data systems
	Fiji	2012: “ Awaiting FFA for notification on the training in this area”
	Kiribati	2012: Seeking advice and assistance from the Secretariat on undertaking the audit.
	Niue	2013: Requires assistance with national measures for VMS
	Vanuatu	2012: Awaiting VMS MTU Training of national fisheries inspectors to be able to undertake required auditing of MTUs.

6. Subsequently, at WCPFC10, FFA members identified assistance needs in six key areas including: i) revise CMM 2012-01 to avoid any disproportionate burden; ii) protect and increase SIDS participation in the South Pacific albacore fishery; iii) increase SIDS capacity in the areas of compliance, data analysis/science and bioeconomic analysis, and implementation of the Information Management System (IMS); iv) increase budgets for SIDS participation in meetings, particularly



Chairs and Vice-Chairs of subsidiary bodies; v) develop E-reporting, national observer programmes and port sampling for transshipment operations; and vi) rationalise Commission workloads, prioritisation of issues and streamlining agendas (WCPFC10-2013/DP-02). FFA members also noted two specific priorities for the development of the CMR process. These included i) observer debriefing and data management, and ii) capacity building for national plans of action, license conditions, VMS obligations and mitigation measures (WCPFC10 Summary Report, paragraphs 97-99).

7. WCPFC10 also noted that the ninth session of the Scientific Committee (SC9) had recognized a request from SIDS to cooperate in four specific areas: research and technology transfer, human resources capacity building, best practice initiatives, and data collection and monitoring and evaluation (SC9 Summary Report, paragraph 509).

8. In addition, WCPFC10 discussed a FFA proposal for a new CMM that instituted a process requiring the Commission to give full consideration to the special requirements of SIDS in decision-making (WCPFC10-2013/DP-36 and subsequent revisions). The objective of the proposal was to operationalize Article 30 of the WCPF Convention. The Commission subsequently adopted CMM 2013-07 on the Special Requirements of Small Island Developing States and Territories.

9. The Final CMR Executive Summary adopted at WCPFC10 noted that most CCMs recognised that the CMS must take account of the special requirements of SIDS, particularly Article 30 and Resolution 2008-01 (WCPFC10, Final CMR, paragraph 19).

#### *2014 (TCC10 and WCPFC11)*

10. TCC10 reviewed a paper prepared by the WCPFC Secretariat relating to capacity needs identified in previous CMRs (WCPFC10-2014-10, Table 2). Recurring needs included determining and planning for achieving 5% longline coverage under the ROP (CMM 2007-01 Attachment K, Annex C), development of seabird NPOA and reporting (CMM 2007-04), sea turtles reporting and implementation of CMM (CMM 2008-03), development of a shark NPOA (CMM 2010-07), VMS audits (CMM 2011-02), and reporting under CMM on oceanic whitetip sharks (CMM 2011-04). FFA members considered that identified assistance should be included in the CMR so it was clear what assistance was needed. The TCC Chair confirmed that areas identified by CCMs as requiring technical or capacity assistance would be captured in the 2013 CMR, including the specific types of assistance required (TCC10 Summary Report, paragraph 66-68).

11. At WCPFC11, referring to WCPFC11-2014-DP23 and WCPFC11-2014-DP20\_rev2, the TCC Vice Chair reported that a revised CMM, that was intended to address capacity building for SIDS and prioritize obligations, was under preparation. As the Commission was unable to adopt a revised CMM at WCPFC11, CMM 2013-02 was extended for 2015 only. The Commission agreed that the work of revising and updating the CMS CMM, including addressing FFA proposals relating to the capacity building needs of SIDS, was a priority (WCPFC11 Summary Report, paragraphs 679-683).

12. Several areas where targeted assistance was required was identified by SIDS with Chinese-Taipei, Indonesia and Philippines also advising of needs for assistance arising from experiences during 2013 (WCPFC11 Final CMR Executive Summary, paragraph 25 and 26 and Table 2 below). In addition, WCPFC11 noted a checklist of SIDS special requirements and the respective status of assistance. This was presented as a guide to assist developed CCMs assess the status of assistance to SIDS (WCPFC11-2014-DP20\_rev2 and WCPFC Summary Report, paragraph 197 and Attachment D).

Table 2. 2014 Final compliance monitoring report (covering 2013 activities)

CMM paragraph	List of SIDS CCMs	Notes on assistance delivered in 2015
CMM 2007-01 Att K Ann C 06	FSM, Kiribati, Tuvalu, Vanuatu	<p>CCMs that requested assistance (as listed in previous columns are):</p> <ul style="list-style-type: none"> <li>• FSM</li> <li>• Kiribati</li> <li>• PNG</li> <li>• Solomon Islands</li> <li>• Tuvalu</li> <li>• Vanuatu</li> </ul> <p>WCPFC Secretariat attend FFA MCSWG and SPC Tuna Data Workshop to assist members with WCPFC related issues, particularly fulfilling their reporting requirements and meeting reporting deadlines.</p> <p>In addition, WCPFC provided assistance in-country visit in 2015 to:</p> <ul style="list-style-type: none"> <li>• Solomon Islands (March 2015)</li> <li>• Kiribati (May 2015)</li> <li>• Vanuatu (Oct 2015)</li> </ul>
CMM 2007-04 04	Vanuatu	
CMM 2007-04 09	Vanuatu	
CMM 2008-03 02	Tuvalu, Vanuatu	
CMM 2008-03 07c	Kiribati	
CMM 2009-02 12	Kiribati	
CMM 2009-06 11	FSM, Kiribati, Solomon Islands	
CMM 2009-06 34	Kiribati, Vanuatu	
CMM 2009-06 35 a (ii)	Kiribati, Vanuatu	
CMM 2009-06 35 a (iii)	Kiribati, Vanuatu	
CMM 2009-06 35 a (iv)	Kiribati	
CMM 2010-07 07	FSM	
CMM 2010-07 09	FSM	
CMM 2010-07 12	FSM	
CMM 2011-02 9a VMS SSPs 7.2.2	Kiribati	
CMM 2011-02 9a VMS SSPs 7.2.4	Tuvalu	
CMM 2011-03 05	PNG	
CMM 2011-04 03	FSM, Tuvalu	
CMM 2012-01 10	PNG	

*2015 (TCC11 and WCPFC12)*

13. At TCC11, the WCPFC Secretariat's Compliance Manager noted that there were fewer requests for SIDS capacity building relative to previous years. It was suggested this reflected that non-target-related measures and mitigation measure requirements were not assessed in the dCMR in 2015 and that many requests from previous years had related to those issues. The Chair reminded CCMs the goal of the CMS is to get to a point where all CCMs are implementing the measures and obligations required noting requests for capacity building would be progressed through TCC, including building them into the TCC Workplan, the FAC process and Commission meeting (TCC11 Summary Report, paragraph 120-122). Target capacity assistance to areas of need identified by CMR process were included in the Provisional CMR report. TCC10 reported that, otherwise, there was no discussion under this agenda item (TCC11 Summary Report, paragraph 153).

14. At TCC11, FFA members advised that they were considering the inclusion of the Special Requirements Fund as a standing budget line in the Commission budget (TCC11 Summary Report, paragraph 511) and that they were scheduling this for consideration at WCPFC12 based on the FFA checklist (WCPFC11-DP20\_rev2).

15. At WCPFC12, proposed revisions to CMM 2014-07 that aimed to improve the compliance monitoring process to better suit the needs of the Commission, both in assessing compliance with obligations and to work towards improving the ability of all CCMs to implement measures, were

considered (WCPFC12-2015-20\_rev1). The revisions intended to, among other objectives, reflect the special capacity development needs of SIDS, Philippines and Indonesia (TCC11 Summary Report, paragraph 176).

16. Several areas were identified for targeted assistance to assist SIDS and other CCMs in implementing specific obligations (Final WCPFC12 Final CMR Executive Summary, paragraph 28 and Table 3 below). There was no apparent discussion regarding initiatives during the preceding 12 months to address capacity building needs that had been identified in the WCPFC11 Final CMR Executive Summary.

Table 3. 2015 Final compliance monitoring report (covering 2014 activities)

CMM	CMM paragraph	CCM	Notes on assistance delivered in 2016
2007-01		Indonesia	ROP audit conducted in May 2016
2007-01	Att. K Annex C para 06	Kiribati, FSM, Vanuatu	Requirement explained at SPC TDW and/or FFA MCSWG. ROP Coordinator was involved in IATTC/WCPFC Cross Endorsement Training (August 2016) in Vanuatu in Aug 2016
2009-06		Kiribati, Vanuatu	
2011-02 (2014-02)	9a	Indonesia	<i>see table for 2016 and 2017 CMR</i>
	9a VMS SSPs 7.2.2	Tuvalu	
2013-01 (2014-01)	24, 44, 47, 48, 49	Indonesia	WPEA project may have assisted with some of these issues. The Secretariat also closely liaise with CCMs electronically on these

*2016 (TCC12 and WCPFC13, Attachment U)*

17. 2016 was the first year for the implementation of CMM 2015-07 which included specific requirements in relation to capacity building. TCC12 was reminded of the requirements for specific information that is required for a Capacity Development Plan (2015-07, paragraph 5) and Investigation Status Report (2015-05, paragraph 8) 28 days prior to TCC in draft CMR (dCMR) responses (TCC12 Summary Report, paragraph 5).

18. As a consequence of the challenges associated with managing the information that was required to be reviewed at TCC11, the Secretariat presented the TCC12 CMS-related reports in four parts, including a summary of capacity assistance and development plans (WCPFC-TCC12-2016-10A to 10D). Capacity assistance needs identified by CCMs in the 2016 Annual Report Part 2 reporting, or in responses to the draft CMR, was presented in WCPFC-TCC12-2016-10C, Table 1 (TCC12 Summary Report, paragraph 64), noting that plans contained varying degrees of detail (TCC12 Summary Report, paragraph 68 and 69). TCC12 noted the Secretariat's paper (TCC Summary Report, paragraph 85).

19. TCC12 noted that the new provisions of Investigation Status and Capacity Assistance Needed were helpful in progressing the assessment of CCMs' compliance related relevant obligations (WCPFC13 Final CMR Executive Summary, paragraph 7).

20. WCPFC11 agreed to consider the checklist provided by FFA members as a "guide to assist developed CCMs to assess the status of capacity development assistance to SIDS. An updated checklist was provided to WCPFC13 (WCPFC13-2016-DP16). At WCPFC13, FFA members noted

that the checklist will continue to set out SIDS' needs, especially as arising out of the CMS discussions. FFA members requested that these be treated as immediate areas for priority assistance from developed CCMs and noted that the checklist could track progress or delivery of assistance for these specific needs (WCPFC13 Summary Report, paragraph 229).

21. FFA members also presented a proposal to improve the sustainability of the Special Requirements Fund (SRF) noting that the fund was severely depleted (WCPFC13-2016-DP17). Among other suggestions, FFA members proposed that a compulsory amount be placed annually into the SRF (WCPFC13 Summary Report, paragraph 236).

22. The Final CMR Report for 2016 (for 2015 activities) tabulates the capacity development assistance needs for CCMs identified during the 2016 sixth annual review of compliance (WCPFC13 Summary Report, Attachment U and Table 4 below).

Table 4. 2016 Final compliance monitoring report (covering 2015 activities)

<b>CMM</b>	<b>para</b>	<b>section</b>	<b>CCM</b>	<b>Notes on assistance delivered in 2017</b>
2005-03 NP ALB	2005-03 03	ii	TV, VU	Assisted during Tuna Data Workshop (TDW)
2007-01 ROP	2007-01 Att K Ann C 06	v	FSM, ID	ROP Coordinator was involve in IATTC/WCPFC Cross endorsement training in Feb 2017 and observer training in Aug 2017 for FSM  ROP Coordinator provided observer training for ID in Mar 2017
2008-03 Turtle	2008-03 02	iii	FSM, ID	Assisted during TDW + FSM received \$68,000 in late 2017 from TW trust fund for MCS and bycatch data collection work
2009-06 Transshipment	2009-06 34	i	PA	Reporting gaps for transshipment & EHSP were posted to CCMs portal early in the year (2017) giving CCMs, including Panama, opportunity to work with the Secretariat to complete these reporting gaps
	2009-06 11	ii & vii	PA	
	2009-06 35 a (iii)	vii	PA	
2010-02 EHSP	2010-02 02	ii	PA	
2010-07 Shark	2010-07 09	i	ID, PA	SPC members + ID were assisted during Tuna Data Workshop (TDW)
2011-04 OCS	2011-04 03	iii	FSM, ID	
2012-07 Seabird	2012-07 04	ii	Vanuat u	CNMs such as PA were assisted electronically via email/skype
2013-08 FAL	2013-08 01	i	ID	
	2013-08 03	iii	FSM, ID	
2014-01 TT	2014-01 16	iv & vii	ID	Assistance through the WPEA project may have covered some of these issues for ID and PH
	2014-01 23	vii	ID	
	2014-01 24	vii	ID	
	2014-01 33	v	PH	
	2014-01 34	v	ID, PH	
	2014-01 40	i	ID	

	2014-01 44	ii & vii	ID	
	2014-01 47	i	ID	
	2014-01 48	ii	ID	
2014-02 VMS	2014-02 9a	v	ID & PH	
	2014-02 9a VMS SSPs 2.8	v	ID & PH	VMS Manager conducted in-country training in May 2016 in PH
	2014-02 9a VMS SSPs 7.2.2	v & vii	ID, TV	TV received \$21,000 in late 2017 from TW trust fund for assistance in this area
2014-03 RFV	2014-03 02	v	PA	Assisted electronically via email
SciData	SciData 01	vi & vii	ID	Assistance through the WPEA project covers some of these issue
	SciData 03	vi & vii	ID	

General note: SPC members plus Indonesia and Philippines were assisted during the Tuna Data Workshop held at SPC in April 2017.

*2017 (TCC13 and WCPFC14)*

23. In his report to TCC13, the Executive Director noted that an important element of TCC's work was to identify Capacity Assistance needs and to provide advice to the Commission relating to Small Island Developing States (SIDS) and Territories' capacity to comply. He reminded delegates about the budgetary allocation for targeted capacity workshops as well as special funds available for capacity assistance: the Special Requirements Fund; the Japan Trust Fund; the Chinese Taipei Trust Fund; and the WPEA project, which provided dedicated assistance to the Philippines, Indonesia and Vietnam (TCC13 Summary Report, paragraph 25).

24. WCPFC-TCC13-2017-11b provided a summary of capacity assistance needs identified by CCMs in the 2016 Annual Report Part 2 reporting or in responses to the draft CMR (TCC13 Summary Report, paragraph 78). Table 1 from that paper (reproduced as Table 5 below) provided a list of CMM paragraphs against which at least one CCM had identified a capacity assistance need within the dCMR, or within their Annual Report Part 2 reporting.

Table 5: List of CMM paragraphs from 2016 full draft CMR where CCMs identified a capacity assistance need and/or submitted information in the dCMR reply that was titled "Capacity Development Plan"

CMM paragraph	Topic	CMR section <sup>1</sup>	CDP response in dCMR reply?	WCPFC13 fCMR Capacity Assistance Needed score?
CMM 2009-06 11	Annual report on all transshipment activities covered by this Measure (including transshipment activities that occur in ports or EEZs) in accordance with the	ii	**	

	specified guidelines (Annex II)			
CMM 2009-06 35 a (iii)	WCPFC Transshipment Advance Notification (including fields in Annex III)	vii	**	
CMM 2009-06 35 a (iv)	WCPFC Transshipment Declaration (including information in Annex I)	vii	**	
CMM 2010-06 22	CCMs shall take all necessary non- discriminatory measures, including under their applicable legislation, to take certain actions in respect of vessels listed on the WCPFC IUU Vessel List	v	**	
CMM 2010-07 06	Full utilization of any catches of sharks retained	i	**	
CMM 2012-04 01	Prohibit purse seine setting on whale sharks, if animal is sighted prior to commencement of the set	i	**	
CMM 2012-07 04	Report on which mitigation measures are used N 23 N or S 30 S, as well as technical specifications. Subsequent years include advice on any changes.	iii	**	
CMM 2013-05 02	Requirement that information recorded by the master of each vessel each day with fishing operations shall, at a minimum include the information as specified	ii	**	
CMM 2014-02 9a VMS SSPs 7.2.2	CCMs to conduct periodic audits of ALC/MTUs of its vessels and report results to the Commission (AR Pt 2)	v		Yes <sup>2</sup>
Convention Article 24 (3)	Requirement that the vessels is operated in the high seas in accordance with Annex III of the Convention	v	**	
Convention Article 25 (2)	Report of outcome of an investigation conducted, at	vii	**	

	the request of another Member of its vessels alleged violation of the Convention or CMMs. Summary to be provided in Part 2			
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1 CMM 2015-07 paragraph 3: (i) catch and effort limits for target species; (ii) catch and effort reporting for target species; (iii) reporting including with respect to implementation of measures for non-target species; (iv) spatial and temporal closures, and restrictions on the use of fish aggregating devices; (v) authorizations to fish and the Record of Fishing Vessels, observer, VMS coverage, transshipment and the High Seas Boarding and Inspection Scheme; (vi) provision of scientific data through the Part 1 Annual Report (and its addendum) and the Scientific Data to be provided to the Commission; and (vii) submission of the Part II Annual Report, including compliance with the obligations in paragraph 36, and compliance with other Commission reporting deadlines. 2 For RY 2015 Tuvalu received a score of Capacity Assistance Needed for this obligation in the Final CMR adopted by WCPFC13.

25. With respect to obligations that were assessed as Capacity Assistance Needed in 2016 (Refer to WCPFC13-2017-dCMR01-CDP), the TCC Chair noted CCMs were required to report on the progress with implementation of the Capacity Development Plan for each obligation that was assessed Capacity Assistance Needed. The CMS working group was thus required to consider each of these Capacity Assistance Needed assessments and determine whether it should remain Capacity Assistance Needed or whether the assessment should be changed to reflect progress, or lack of progress, made over the past year. It was noted that the results of these assessments were to be included in the Provisional CMR to be sent to the Commission (TCC13 Summary Report, paragraph 83).

26. The 2017 Final Compliance Monitoring Report (covering 2016 activities) identified several areas where targeted assistance is required to assist SIDS and other CCMs in implementing specific obligations (WCPFC14 Final 2017 CMR, paragraph 36 and Table 6 below). WCPFC14 agreed that the information contained in the table be forwarded to the Finance and Administration Committee for consideration during its discussions relating to the Special Requirements Fund and the application of the SRF to address needs identified during the CMS.

Table 6. List of CMM paragraphs from 2017 CMR where CCMs identified a capacity assistance need and/or submitted information in the dCMR reply that was titled “Capacity Development Plan”.

CMM paragraph	Topic	CMR section <sup>1</sup>	CCM	Capacity Assistance Needed CMR score?
<b>CMM 2009-06 transshipment</b>	CMM 2009-06 11	ii	Vanuatu	
	CMM 2009-06 35 a(iii)	vii	Vanuatu	
	CMM 2009-06 35 a (iv)	vii	Vanuatu	
<b>CMM 2010-06 IUU</b>	CMM 2010-06 22	v	Vanuatu	
<b>CMM 2010-07 Sharks</b>	CMM 2010-07 06	i	Vanuatu	

<b>CMM 2012-04 whale Sharks</b>	CMM 2012-04 01	i	Federated States of Micronesia	
<b>CMM 2012-07 seabirds</b>	CMM 2012-07 04	iii	Vanuatu	Vanuatu - Capacity Assistance needed (CMR RY2016)
<b>CMM 2013-05 Daily catch and effort reporting</b>	CMM 2013-05 02	ii	Federated States of Micronesia	
<b>CMM 2014-02 VMS</b>	CMM 2014-02 9a VMS SSPs 7.2.2	v	Tuvalu	Tuvalu - Capacity assistance needed (CMR RY2015, CMR RY2016)
Convention Article 24 (3)		v	Vanuatu	
Convention Article 25 (2)		vii	Federated States of Micronesia	
<b>Scientific data provision</b>	Scidata 03	vi	Indonesia	Indonesia - Capacity Assistance needed (CMR RY 2016)

1. CMM 2015-07 paragraph 3 (i) catch and effort limits for target species; (ii) catch and effort reporting for target species; (iii) reporting including with respect to implementation of measures for non-target species; (iv) spatial and temporal closures, and restrictions on the use of fish aggregating devices; (v) authorizations to fish and the Record of Fishing Vessels, observer, VMS coverage, transshipment and the High Seas Boarding and Inspection Scheme; (vi) provision of scientific data through the Part 1 Annual Report (and its addendum) and the Scientific Data to be provided to the Commission; and (vii) submission of the Part II Annual Report, including compliance with the obligations in paragraph 36, and compliance with other Commission reporting deadlines.

27. WCPFC14 Final CMR reported the lowest number of CCMs being identified for capacity development assistance (4 compared with between 5 and 9 in previous years). In addition, there was a significant reduction in the number of CMM obligations that were identified as requiring specific attention among CCMs (from 29 in 2016 to 9 in 2017 (although a significant proportion of these were identified with Indonesia. See Table 7 below).

Table 7. Other CCMs requests for targeted assistance and capacity building identified through the CMR process.

<b>CMM paragraph</b>	<b>List of other CCMs</b>	<b>Notes on assistance delivered in 2015</b>
CMM 2007-01 Att K Ann C 06	Indonesia, Philippines, Chinese Taipei	ROP Coordinator provided assistance to observer and debriefer training to PH in May 2015, Nov 2015 & May 2016
CMM 2009-06 11	Indonesia	



CMM 2012-01 30	Philippines	Assistance through the WPEA project may have covered some of these issues for PH and ID
Scientific Data 01	Philippines	
Scientific Data 03	Indonesia	
Scientific Data 04	Indonesia	

WCPFC Secretariat + SPC national visit to China in Oct 2014 to discuss WCPFC data submissions, overview CMM and national CMR matters

## Annex J - Draft ToR for the CDP Officer

Reporting to the Compliance Manager, the CDPO will be responsible for providing technical assistance, training, project management and administrative support to developing State Members and Cooperating Non-Members, particularly Small Island Developing States (SIDS) Members and Participating Territories, in relation to Capacity Development Plans provided for in CMM 2015-07. The CDPO will provide support to cooperative capacity building initiatives that respond to non-compliance through remedial options and include cooperative capacity-building initiatives.

Specific tasks and responsibilities include, but are not limited to:

- Advise on the identification of technical assistance or capacity building needs to assist CCMs to attain compliance
- Support to CCMs may include assistance with:
  - CDP development and drafting
  - administrative support
  - project management support
  - advice, as requested, in relation to reporting obligations
  - budgeting advice
  - the identification of resourcing requirements to support CDP implementation
  - monitoring CDP implementation
  - CDP-related training and education support, and
  - complying with reporting obligations associated with Capacity Development Plans and supporting budgets
- Prepare and present narrative and financial reports to the Finance and Administration Committee and to the Technical and Compliance Committee, as appropriate, for approved CDPs that draw on Commission sources of funding support
- Providing advice and support, as required, to facilitate the coordination of CDP-related activities that access other sources of assistance such as available through Trust Funds, bilateral and multilateral development assistance facilities and sub-regional agencies.

## Annex K - Possible Terms of Reference for a targeted QAR

[based on the procedures used by CCSBT<sup>19</sup>]

1. When:
  - a. A CCM has been deemed Priority Non-Compliant through repeated non-compliance with an obligation for two or more consecutively assessed years; and
  - b. It appears that there may a systemic reason for the CCM's non-compliance

the TCC may recommend to the Commission, and the Commission may decide, that a Quality Assurance Review (QAR) should be undertaken to help the CCM identify how well its management systems function with respect to its WCPFC obligations, in particular the obligation in question, and to provide recommendations on areas where improvement is needed.

2. It is intended that QARs would:
  - a. Benefit the reviewed CCM by giving it confidence in the integrity and robustness of its own monitoring and reporting systems
  - b. Promote confidence amongst all CCMs as to the quality of individual CCM's performance reporting; and
  - c. Further demonstrate the credibility and international reputation of the WCPFC as a responsible RFMO.
3. The QARs will review the suitability of CCMs' systems and processes for ensuring compliance with WCPFC measures, in particular the obligation in question and any other obligations in respect of which there has been non-compliance by the CCM during the previous five years.
4. The reviews will be focused on government systems and processes, and will not involve reviews of any industry systems nor consultation with a CCM's industry, except at the discretion of the CCM. Consultation is to take place with nominated government officials, and if applicable government-authorized third party service providers involved in the management of WCPFC species.
5. In assessing the suitability of systems, QARs will take into account the particular circumstances and characteristics of each CCM being reviewed, and in particular the challenges faced by SIDs. QARs will also take into account any issues identified by the Compliance Committee.
6. It is to be noted that CCSBT implements a two-phase review system. A Phase 1 QAR is a desk top study, and a Phase 2 Review is a more intensive on-site inspection of the CCM's MCS systems and processes documented in its Phase 1 QAR.
7. It is envisaged that for the purposes of a WCPFC targeted QAR Review, only the Phase 1 process would be followed at least for an initial period. Depending on experience with the Phase 1 Review, the Commission could decide subsequently to extend the WCPFC process to include a Phase 2-type Review.

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<sup>19</sup> Note: The foregoing is drawn from the CCSBT procedures, and is an abbreviated version. The full CCSBT procedures can be found on the CCSBT website:  
[https://www.ccsbt.org/sites/default/files/userfiles/file/docs\\_english/general/QAR\\_ToR\\_for\\_2014.pdf](https://www.ccsbt.org/sites/default/files/userfiles/file/docs_english/general/QAR_ToR_for_2014.pdf)  
The ToR have been updated for 2018 but have been largely unchanged over recent years. The 2018 ToR were not available on the website at the time this Report was completed.

8. The purpose of a Phase 1 QAR would be to independently document and evaluate CCMs' systems and processes, and assess the following matters:
  - a. What systems and supporting processes are in place for ensuring compliance with the WCPFC measures in question?
  - b. Are the systems and processes fit for purpose?
  - c. Are any changes or improvements to current MCS systems underway or being planned?
  - d. Have any corrective or preventative measures been taken in response to compliance monitoring?
9. It is expected that such a Review would involve the following general steps:
  - a. Analysis of existing documentation, in particular the most recent Reports submitted to the WCPFC by the Member;
  - b. Building an initial process map of systems in place;
  - c. Consultation with the Member (via electronic means – e-mail or telephone) to verify the general accuracy of the initial process map, clarify areas of uncertainty and seek any additional information required to complete the process map;
  - d. Finalise the process map;
  - e. Conduct a SWOT (strength, weakness, opportunities, threat/risk) analysis; and
  - f. Develop recommendations and prepare a draft report.
10. The reviewer would provide a draft report to the relevant Member. The Member would then be able to seek clarification from the reviewer concerning the draft report and provide comments to the reviewer. The final report would be provided to the CCM and the Secretariat, for consideration and comment by the TCC and the Commission.
11. In the event that a Phase 2 process was adopted subsequently by the Commission, its purpose would be the independent verification of the existence and effectiveness of the CCMs' systems and processes.
12. During Phase 2, the reviewer would be expected to assess:
  - a. Whether the documentation of systems and processes in Phase 1 is correct and whether the documentation accurately reflects the systems and processes that are actually in place?
  - b. Whether these systems and processes are effective to ensure that the CCM meets its obligations?
  - c. Whether there is any possible further improvement of the CCM's compliance systems and processes, taking into account the results of the assessments listed above.
13. Phase 2 would involve the following general steps:
  - a. Development of a site visit, interview and testing plan based on the outcomes of Phase 1, including development of an audit checklist for the site visit;
  - b. A visit to the principal site(s) where the CCM's main systems and processes are located
  - c. Interviews of the key people involved in the operation of these systems and processes;
  - d. Verifying operation and effectiveness of systems and processes with objective evidence such as demonstrations of how the systems work/function in practise;
  - e. Modify the process map and SWOT analysis from Phase 1 as appropriate;
  - f. Produce a gap analysis between Phase 1 and Phase 2 QAR findings; and Annex 1
  - g. Develop recommendations for the overall review (Phase 1 & 2) and prepare a draft report.

## Annex L - Draft ToR for the FSI Officer

Reporting to the Compliance Manager, the FSIO will be responsible for providing administrative and technical assistance and training to all CCMs in respect of flag State investigation cases or incidents provided for in CMM 2015-07. The tasks and responsibilities of the FSIO include, but are not limited to, assisting CCMs with:

- the preparation of CCM-specific Status Reports, to accompany the dCMR, that describes the:
  - steps that have been taken to commence the investigation;
  - process that CCM will take to complete the investigation, within their relevant national processes and laws;
  - actions proposed to be taken in relation to the alleged violation, to the extent possible;
  - anticipated timeframe for the FSI.
- developing and facilitating the delivery of training and capacity development initiatives to CCMs to strengthen their investigative capacity. Such initiatives may include:
  - Evidentiary processes and requirements
  - Fisheries data forensics and reconciliation
  - Fisheries intelligence and information assimilation
  - Case management
  - Legislative and administrative reviews
  - Project management
- preparing FSI Status Reports to the Technical and Compliance Committee

## **Annex M - Possible timeline for an extended CMM development and review cycle**

The timeline proposed could be amended to accommodate the needs of TCC and the Commission taking account of related processes, including the outcomes of the intersessional working group established by WCPFC14 and chaired by RMI.

June 2019:

- Draft new or revised proposal by CCMs for consideration at the Commission meeting in 2020 (WCPFC17) posted to the WCPFC website.
- CMMs scheduled for expiry in 2020 highlighted on the WCPFC website (by the Secretariat).

August 2019:

- Scientific Committee: New or revised proposals agenda item: Initial scientific appraisal and scientific questions to be addressed (as appropriate) for draft or revised proposals submitted by CCMs for consideration at WCPFC17.

September 2019:

- Legal review [2 days] of current CMMs.
- Legal review of draft new or revised proposals posted by CCMs for consideration at WCPFC17.

September 2019:

- Technical and Compliance Committee: New or revised proposals agenda item: Initial TCC appraisal, preliminary review of outcome of legal review, 2013-06 checklist and 2015-07 related audit points for draft or revised proposals submitted by CCMs for consideration at WCPFC17. Proposed consultative schedule.

December 2019:

- Commission: Schedule/table of CMMs proposed for consideration at the following year's Commission session. No formal negotiation of new or revised CMMs proposed for consideration at WCPFC17

June 2020:

- Second version of draft new or revised proposals posted to the WCPFC website for draft or revised proposals submitted by CCMs for consideration at WCPFC17

June 2020:

- Draft new or revised proposal by CCMs for consideration in 2021 posted to the WCPFC website.
- CMMs scheduled for expiry in 2021 also highlighted on the WCPFC website (by the Secretariat).

August 2020:

- Scientific Committee: new or revised proposals agenda item: Second scientific appraisal and additional questions to be addressed (as appropriate) for proposals submitted by CCMs in June 2019.

- Scientific Committee: new or revised proposals agenda item: Initial scientific appraisal and questions to be addressed (as appropriate) for draft or revised proposals submitted by CCMs for consideration at WCPFC18 in 2021.

September 2020:

- Second legal review of Draft new or revised proposal by CCMs intended for adoption at WCPFC17.
- Complete legal review of current CMMs.

September 2020:

- Technical and Compliance Committee: new or revised proposals agenda item: TCC appraisal, review of 2013-06 checklist, outcomes of legal review and 2015-07 related audit points. Decision: Proposal mature enough for formal submission to the Commission at WCPFC17?
- Technical and Compliance Committee: new or revised proposals agenda item: Initial TCC appraisal, preliminary review of outcome of legal review, 2013-06 checklist and 2015-07 related audit points for draft or revised proposals submitted by CCMs for consideration at WCPFC18. Proposed consultative schedule.

December 2020:

- WCPFC17 CMM Drafting

**Annex N – Table circulated at WCPFC14 (WCPFC14-2017-25B)**

[This table reflected the Panel’s thinking as a result of discussions with delegates and other stakeholders to that time; circulated on 14 November 2017]

<b>Issues</b>	<b>Possible Solutions</b>	<b>Considerations</b>
<p><b>1. Systems support</b></p> <p>Continue to build and enhance the CMS Information Management System (IMS)</p>	<ul style="list-style-type: none"> <li>i. The Commission should continue to provide resources to support the ongoing enhancement of the information management system.</li> <li>ii. In particular, pre-populate or auto-fill forms where fields are unchanged; issue alerts, etc.</li> <li>iii. The WCPFC Secretariat should continue to develop and roll out training modules (including on-line facilitation and teaching aids) on the IMS for CCMs, especially when new elements are introduced to it.</li> <li>iv. Identify cases by vessel name in the CMR report.</li> <li>v. Permit CCMs to access the Case Management System as a whole – including historical cases.</li> </ul>	<p>The system is positively viewed by most CCMs. Opportunities to further enhance the system will yield positive benefits in terms of its service within WCPFC and CCM engagement</p> <p>Make system more efficient for CCMs to use, by removing need for repetition of information previously provided, duplication, etc. (see also 10(i) below)</p> <p>TCC13; PCMR (para. 19): to assist CCMs identify and link cases.</p> <p>Important for CCMs to be able to see how cases are being managed, with relevant information, the basis they have been resolved or closed, etc.</p>
<p><b>2. CMS utility for management decision making</b></p>		



Issues	Possible Solutions	Considerations
	i. The CMM drafting process to include provision for identification/description of individual, or suite of, audit points within each Measure that are critical to decision-making in the Commission (see also 3(i) below).	<p>The resources and effort applied to the CMS does not reflect the extent to which CMS outcomes inform management decision-making in the Commission.</p> <p>To be implemented by CMM proposers</p>
<p><b>3. Interpretation and clarity of audit points in CMMs</b>            General difficulty with interpretation/Lack of clarity/inconsistency/ambiguity</p>	<p>i. Mandatory provision (drawn from a template, checklist or guidelines) in each CMM describing resource considerations for implementation and reporting (who, when and how), and how compliance will be evaluated (e.g. attach guidelines and a check list identifying this) (see also 2(i) above).</p> <p>ii. Extend the period for consideration of proposed CMMs before adoption, by providing a 12 months “development period” for review of draft CMMs before being tabled in the Commission for adoption (with the exception of the most <i>urgent</i> (to be defined) measures).</p> <p>iii. Review to include a “legal scrub” of the proposed new CMMs in a <b>Legal Screening Group</b> (chaired by WCPFC Legal Adviser, during TCC) to ensure clarity and identify potential conflicts and inconsistencies. The Group would report to the full TCC.</p> <p>iv. Review also to include a scientific review to reconcile objectives with forecast outcomes. This will require restructuring of the Scientific Committee agenda and the establishment of a <b>SC Working Group on CMM appraisal</b>.</p>	<p>CMMs are often drafted within tight timeframes and competing priorities in TCC and the Commission, which results in ambiguity and interpretative challenges – including for those CCMs for whom English is not their first language.</p> <p>The objective is to produce better quality CMMs, which subsequently don’t lead to interpretation and implementation issues and which are better tailored for compliance monitoring.</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> <li>v. Review older CMMs utilising a similar appraisal process to assess interpretation issues that have arisen, and clarify.</li> <li>vi. Provide advice to CCMs, prepared by the WCPFC Legal Adviser, that describes the requirements of the Convention regarding the extent to which obligations are required (or not) to be explicitly enshrined in domestic legislation.</li> <li>vii. As SIDS CCMs are increasingly operating as flag States as well as coastal States, WCPFC should collaborate with regional agencies, such as FFA and PNA, to explore options for increasing advice and assistance with regard to flag State obligations and responsibilities.</li> </ul>	<p>A 2-year moratorium on new CMMs (unless urgent) would create time for this to be done</p> <p>There is an apparent difference of view amongst CCMs as to the extent to which obligations need to be enshrined in legislation, rather than implemented administratively, pursuant to the Convention. This protracts TCC discussion.</p> <p>SIDs have referred positively to workshops and assistance provided by FFA, during the Review.</p>
<p><b>4. Capacity building</b></p> <p><i>Procedurally</i> Elevate the significance of the CDP process</p>	<ul style="list-style-type: none"> <li>i. SIDs' needs for capacity assistance to implement a CMM to be identified prior to the adoption of each CMM and mechanisms to support capacity needs should be described in the Measure itself (refer CMM 2013-07).</li> <li>ii. The necessary capacity assistance should be provided before SIDs are assessed under the Measure.</li> </ul>	<p>Build CCM capacity so as to minimise, and address, root causes of non-compliance.</p> <p>Further strengthen Secretariat support services focussing on capacity building, technical support and CCM outreach, which could be a candidate for collaboration with FFA (see 3(vii) above).</p>

Issues	Possible Solutions	Considerations
<p><i>Operationally</i> Enhance the effectiveness of CDPs and the FSI</p>	<ul style="list-style-type: none"> <li>iii. Where measures are not capable of immediate implementation in full by SIDs, there should be provision for “progressive implementation” of some obligations by SIDs.</li> <li>iv. The SIDs checklist should be more assiduously applied (CMM 2013-07).</li> <li>v. While the Secretariat’s current compilation of CMMs is useful, handbooks should be developed and then updated listing, by subject, the various CMM requirements for each fishery.</li> <li>vi. Revise FSI Information status reports (ISRs) to better identify minimum information requirements for flag States to report on the status and outcomes of investigations.</li> <li>vii. Increase the financial resourcing for CDPs development, implementation and reporting.</li> <li>viii. Employ a CDP Coordinator to support the operationalisation of CDPs.</li> <li>ix. Employ a Case File Support Officer to the WCPFC Secretariat.</li> </ul>	<p>This is the approach taken regarding the implementation of some international human rights obligations where it is not possible for States to implement them immediately.</p> <p>Some CCMs have already done this for their fleets, but it would be useful to develop them for use by all vessels.</p> <p>At TCC13 there were discrepancies in FSI-related information provided by CCMs, particularly regarding the detail and quality of information provided by relevant flag States. (TCC13 Report para ref xx). Requests for additional information that are not identified in advance to the flag State may be unfair to and disadvantage smaller administrations</p> <p>Associated services available equally to all CCMs</p>

Issues	Possible Solutions	Considerations
<p><b>5. CMS implementation challenges</b></p> <p>The number of obligations and associated resources required by CCMs, and the Secretariat, to monitor and report against accountabilities</p> <p>TCC meeting processes: volume of material processed; the need for prioritisation</p>	<ul style="list-style-type: none"> <li>i. Undertake an appraisal of existing CMMs to identify (quantify) the utilisation of existing audit points to determine their continuing relevance in the CMS process (see also 2(i) and 3 (v) above).</li> <li>ii. As the 60-day period provided in the Convention before a Measure enters into force (eif) may not always allow adequate time for all CCMs to implement them, consider mechanisms which would allow more time before eif where required. This might be done, for example, through the use of language that stipulates the eif in the Measure itself.</li> <li>iii. Focus on those aspects of CMMs that are critical for the sustainable management of the stock (see 2(i) above).</li> <li>iv. Reduce the volume of minor compliance issues being dealt with in the full TCC by establishing a small, but representative, intersessional Working Group that would meet a few weeks before the TCC to pre-screen compliance issues. The Working Group would go through the compliance reports, and identify those matters that are significant that require the attention of the full TCC. The WG would be authorised to resolve minor matters including minor issues relating to observer reports, flag State investigation status and obligations relying on self-reporting and self-verification. Its report would be considered by the full TCC on the basis that</li> </ul>	<p>Almost unanimous condemnation of the plethora of obligations subject to CMS audit.</p> <p>For example, catch limits, gear restrictions etc), and prioritise particular CMMs, e.g. the Tropical Tuna CMM, to address the current preoccupation with minor detail.</p> <p>The Working Group would be representative of CCMs, and could be comprised of the TCC chair (or co-chairs – see 6(ii) below), and one or two CCM representatives, supported as necessary by experts.</p> <p>A similar process is followed by ICCAT, which enables the ICCAT meeting itself to focus its attention on serious or repetitive issues of non-compliance, including systemic issues.</p>

Issues	Possible Solutions	Considerations
	<p>any matters dealt with in it could be raised for discussion by any CCM in the TCC if they wished.</p> <p>v. The focus on key aspects of CMMs (see (iii) above) could be coupled with a case study each year of matters of lesser priority (e.g. data provision, transshipment, etc.).</p> <p>vi. Greater use should be made of informal small groups for negotiations during the TCC, including on matters of drafting, rather than doing this in the TCC itself, which would increase the efficiency of and best use of the TCC's time.</p> <p>vii. This might include at least one small group, in addition to the Legal Screening Group, meeting simultaneously with the TCC Plenary on occasion.</p> <p>viii. To assist small delegations to cover two meetings simultaneously when necessary, consideration should be given to WCPFC funding for two representatives from SIDS (rather than one as at present).</p> <p>ix. Discontinue the current practice of submission of supplementary information verbally at TCC to address reporting gaps.</p>	<p>“When everything is important, nothing is important”</p> <p>The TCC is a very large and expensive meeting to be used for negotiating matters of detail. It is also too large a body to negotiate efficiently.</p> <p>Reducing the number of minor matters would enable the TCC to focus on policy issues and outcomes, including systemic issues, and other important aspects where greater attention is warranted.</p> <p>TCC13 recommended the verbal presentation of supplementary information to address reporting gaps discussed in TCC is <i>minimised</i> (PCMR, para.15) This is very difficult to manage unless ceased entirely. Information is currently formally tabled in Annual Reports Parts 1 and 2, responses to dCMR no later than 28 days prior to TCC and also up until 30 days prior to the</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> <li>x. Whether or not it has been subject to annual review in TCC, formally review each CMM after a fixed period, of 3 years.</li> <li>xi. Consider ending the process of allowing additional information to be provided to the CMS Working Group at the beginning of the Commission <i>[the Panel currently favours cessation of this, but will review again after observing the process at the forthcoming Commission meeting]</i>.</li> <li>xii. The WCPFC Secretariat to prepare guidelines/templates for the information that should be provided to the TCC by, for example, a flag State when reporting on a FSI.</li> </ul>	<p>Commission Meeting (currently – but proposed to be discontinued see 5 (xi) below ).</p> <p>The current practice makes a significant contribution to the inability of TCC to complete its work at its own meeting, and means there is no final TCC report for the start of the Commission meeting.</p> <p>See also 4(vi) above</p>
<p><b>6. TCC processes and efficiency, including ‘natural justice’ considerations</b></p>	<ul style="list-style-type: none"> <li>i. Quarantine the handling of the CMS from any perceived national delegation influences by, for example, appointing an “independent chair” of the CMS process, without linkages to a national delegation, as is found in CCSBT.</li> <li>ii. An alternative would be two co-chairs, with staggered terms.</li> </ul>	<p>At no stage has it been suggested that any of the TCC chairs have been other than scrupulously fair and neutral. However it is necessary to have a process that is not only fair but is also seen or perceived to be fair.</p> <p>This approach is often used in United Nations forums (and was also used by the previous chair of the TCC for discussion of the CMS). It would also assist with succession risks in the event of a chair retiring.</p>

Issues	Possible Solutions	Considerations
	<p>iii. The minimum information required to adequately respond to questions about, for example, FSI, should be clearly articulated/described (see also 4 (vi) and 5(viii) above).</p>	
<p><b>7. Consequences for (persistent/serious) non-compliance</b></p>	<p>i. At least as an interim measure, until CCMs have sufficient confidence in CMS to agree to a schedule of sanctions, adopt a CCSBT Quality Assurance Review (QAR) type of system for targeted application where there is a pattern of serious non-compliance by a CCM, or possibly systemic failures. As in the case of CCSBT, the purpose would be to assist the CCM in identifying how well their management systems function with regard to their obligations, and to provide recommendations on areas where improvement is required.</p>	<p>Other RFMOs provide for sanctions, but there may not be sufficient confidence in the CMS at this stage to support such a function. On the other hand, there is a desire for the CMS to “have teeth”, as is recognised in 2015-07 (paragraph 38) which states that an intersessional working group is to be established to (i) “develop a process to complement the CMS...to identify the range of responses to non-compliance (ii) progress its work electronically to the extent possible”. The Intersessional working group was to “endeavour to develop a process for consideration no later than TCC12 and adoption no later than WCPFC13”.</p> <p>CCSBT provides for routine QAR auditing on a regular basis, subject to funding availability, but has a much smaller membership;</p> <p>A not dissimilar approach was taken by IOTTC recently, when it decided to send a compliance mission to Pakistan to assess/assist it with systemic non-compliance issues (refer to Karachi “Daily Times” of 21/9/17);</p> <p>The CMS needs to respond to the current lack of consequences for non-compliance including to build capacity to mitigate persistent non-compliance.</p>

Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> <li>ii. Subsequently develop, then implement, a work plan for to draft a Schedule of Sanctions complete with categories, criteria, and remedial expectations.</li> <li>iii. There is no reason why an IWG could not start work in 2018 on a preliminary basis developing a work plan and giving initial consideration to candidate responses that may be available to mitigate non-compliance.</li> </ul>	<p>Guiding principle could be to build CCM capacity to minimise and address root causes of non-compliance.</p> <p>Implementation of a schedule of sanctions would be facilitated with a prior agreed set of non-negotiable decision rules for different categories of non-compliance and associated sanctions.</p> <p>For TCC at present “the product is the outcome”.</p>
<p><b>8. Regional Observer Programme</b></p>	<ul style="list-style-type: none"> <li>i. Improve communication, including through direct communication and utilisation of templates, for flag States to liaise with Observer Service Providers and/or regional agencies in relation to ROP incidents.</li> </ul>	<p>The Regional Observer Programme requires some attention in relation to its interaction with the CMS. A particular issue is flag States’ difficulty in obtaining observer reports and other relevant information required to support an investigation/alleged infraction.</p> <p>Significant issues are associated with observer/de-briefer reports, particularly as to the extent they can be used as evidence in investigations and prosecutions by flag States.</p> <p>This should also address difficulties some coastal State CCMs face in providing observer and investigative information to flag States while their own investigations (as a ROP Observer Provider and possibly as a coastal State) are under way.</p> <p>TCC13 also agreed to form an IWG to address the need for CCMs to obtain copies of observer reports for their vessels in a timely manner.</p>



Issues	Possible Solutions	Considerations
	<ul style="list-style-type: none"> <li>ii. The WCPFC Secretariat, in collaboration with regional agencies, should prepare a capacity building program, including workshop(s), targeting fisheries investigation and prosecution experts from CCMs, to deepen the understanding of legal requirements in relation to the application of observer generated information in the CMS.</li> <li>iii. Discontinue the pre-notification process.</li> </ul>	<p>Capacity building and training support for fishery managers, prosecution and legal personnel, observers and de-briefers will strengthen the utility and effectiveness of ROP information in the CMS.</p> <p>At TCC13, pre-notified information [544 possible cases] was not used to assess obligations (except cases involving observer interference or obstruction). This pre-notification was intended to provide flag States with more timely information regarding alleged violations. It was recommended that this practice be followed in future (PCMR, para.19). Continuing this would appear not to pose a risk because significant cases are generally identified in the online case management file system. On this basis, and the fact that it does free time for consideration of more substantive matters in TCC, the Panel supports the TCC13 recommendation.</p>
<b>9. Fairness, equivalence</b>	<ul style="list-style-type: none"> <li>i. Reporting and other requirements should be extended as far as possible to vessels fishing on the high seas, so as to ensure as far as possible equivalence of treatment under the CMS between vessels fishing in the high seas and those fishing in EEZs.</li> </ul>	<p>Specifically targeting longline and long-distance pole and line fleets operating solely on the high seas in the Convention Area. Compliance information is currently constrained by less than 5% observer coverage.</p>
<b>10. Duplication of information/data requirements</b>	<ul style="list-style-type: none"> <li>i. Remove the burden on CCMs of providing Part I reports, which are duplicative of information already provided.</li> </ul>	<p>Part I Report – duplication of information already provided by CPCs to SPC.</p>

Issues	Possible Solutions	Considerations
	<p><i>ii.</i> Authorise SPC to pass on information to WCPFC at the same time information is provided to CCMs.</p>	<p>As well as being more efficient, and reducing duplication, some SIDS face difficulties in transferring large amounts of data due to internet limitations.</p>
<p><b>11. Transparency</b></p>	<p><i>i.</i> Consider a phased process to allow NGO and IGO Observers to participate in the CMS.</p>	<p>Confidence and faith remain significant issues for CCMs in the CMS process.</p> <p>At the same time, Observers are, rightly, requesting a participatory role.</p> <p>The Convention includes a commitment to transparency.</p> <p>Other non-State actors are already in the room, including industry.</p> <p>Independent observers can add to the incentive for compliance.</p> <p>NGOs already have a history of cooperation with CCMs.</p> <p>A staged approach to gradually increasing the exposure of Observers to the CMS has the potential to address the interests of both Observers and CCMs e.g. a representative group of NGOs (2 or 3) evolving to all NGOs after a certain period if no problems arise.</p>

