



Australian Government
**Department of Agriculture
and Water Resources**

Ref: 2015/220846E

Mr Glen Joseph
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Dear Glen

Thank you for providing the opportunity to comment on the recently released report of the Independent Review of the WCPFC Compliance Monitoring Scheme, and for taking on the mantle of leading the intersessional working group to develop a new CMS measure.

The report of the Independent Review is a comprehensive and robust piece of work that reflects both the broad remit given to the review panel by the WCPFC membership, and the broad range of views of the membership of the Commission and interested stakeholders.

At the outset, Australia would like to make a couple of **overarching comments**:

The first overarching comment is that, with the limited time since the report was released, **Australia has not had the time to analyse in detail every recommendation** of the very comprehensive review report. Further, and more importantly, some of the recommendations relate to issues that the Commission will need to address outside the scope of developing a new CMS measure, and will require careful consideration by all Commission members and in the context of broader actions at the Commission level. As such, in providing these comments, Australia has **focused on key priorities** and has taken a largely **thematic approach**. Australia reserves the right to provide additional views on the recommendations of the report throughout the process to develop a new measure.

Our second overarching comment is that Australia concurs with the panel's finding that the scheme is fundamentally sound. As such, Australia strongly advocates that the **development of a new CMS measure should start from the principle of amending the existing measure, and should not be a "blank page"**.

- Australia notes that the Commission has invested heavily in establishing the Compliance Monitoring Scheme over a number of years. This includes significant investment in building the expertise of key WCPFC Secretariat staff and officers from member countries, as well as major financial investment in developing the Commission's Information Management System (IMS) to support the implementation of the CMS.
- Developing a new CMS measure from scratch would necessitate further major financial investment to redevelop and redesign the IMS, and would involve significant investment for staff (at both the Secretariat and member country administrations) to develop the expertise to implement a new system.

- Further we note that many of the efficiencies and improvements sought by members (particularly by FFA members) and identified in the Review are contingent on maintaining the existing structures of the IMS and the measure.
- Finally we note that the CMS over the course of its life to date has driven major improvements in the functioning of the Commission. Australia commends the Commission membership for the overall significant improvements in compliance with measures adopted by the Commission. We note the significant improvements in provision of operational catch and effort data, driven largely through the CMS process. We also note the very strong compliance record of Small Island Developing States. We would like to acknowledge the role of the members of FFA in driving many of the improvements noted above.

None of this reasoning is to dismiss the importance of the Review, and the significant issues that many members have identified with the Scheme in its current form. However, Australia sees this as an opportunity for the Commission to build on the major gains we have made over the last seven years, utilising the expert advice of the Review panel to ensure the CMS is an effective, efficient and fair process into the future.

The final overarching comment that Australia would like to make is that we see the **fundamental role of the CMS is to assess each CCM's implementation of the rules of the Commission**, and hence to **provide the mechanism for addressing** instances where these agreed rules are not being implemented. As such:

- Australia suggests that the primary focus of the CMS should be assessing CCMs implementation of Conservation and Management Measures (CMMs), and not interrogating individual instances of non-compliance by vessels.
- However, Australia notes that individual instances of non-compliance and (more importantly) the flag State's response do provide an important insight into the discharge of flag State responsibility, in line with the primary focus. Hence, Australia would like to see that discussions on individual infringements are focused on providing insight into CCM-level implementation of WCPFC rules in the future CMS.
- Finally, Australia suggests that a new CMS must further develop mechanisms to respond to non-compliance. We note that some CMMs already have built-in responses to non-compliance, and some work on this has already been done. In addition, Australia views that responses to non-compliance can encompass a range of activities, including but not limited to capacity development, remediation activities and sanctions.

Australia's views on the Review Recommendations

CMS measure issues

- Australia **supports** the development of responses to non-compliance. Australia has previously advocated for this and we suggest this should be a priority for the Commission.
 - Australia suggests that some form of responses to non-compliance should be included in a measure for adoption this year, noting that this can be further developed over time.
 - Australia considers that developing responses to non-compliance should include both incentives and penalties, and should take account of separate processes to identify and address capacity assistance needs.
- Australia **supports** developing a process to prioritise TCC assessment of obligations to ensure efficiency of the CMS, however we need to **consider further** the "Friends of the Chair" arrangement proposed.

- Australia agrees that the CMS working group in TCC should focus on high priority issues, and supports developing processes to streamline the consideration of low priority issues (for example, formalizing the “rules of the road” agreement whereby the Secretariat assessment is taken for reporting deadlines; this arrangement may be considered for extending to other obligations).
- Australia **supports** the concept of instituting an informal review process.
- Australia will need to **further consider** the recommendation to establish a Quality Assurance Review process for addressing serious and/or persistent non-compliance.
 - Australia notes that this may have significant benefits for addressing persistent non-compliance, however it is not clear how such a process would be targeted or what the goal would be.
 - Australia further notes that this is directly linked to the need to develop responses to non-compliance.
 - Australia notes that this proposal is likely to have significant budget implications.
- Australia will need to **further consider** the recommendation to create two new positions in the WCPFC Secretariat (a *Flag State Investigation (FSI) Officer* and a *Capacity Development Plan (CDP) Officer*).
 - The CDP Officer proposal should be considered in the context of the work to address SIDS capacity needs including the development and implementation of a Strategic Investment Plan.
 - Australia suggests that having a dedicated staff member addressing individual vessel issues (flag State investigations) is not in line with the overarching purpose of the Scheme being to focus on CCM-level compliance with obligations.
- Australia **does not support** the recommendation for an independent chair for TCC/the CMS working group. The Review notes that no member has identified issues of bias with the current or any former Chair, and WCPFC has a strong precedent of managing potential bias in chairing arrangements, including through conventions around balancing chambers between chair and vice chair roles.
 - An independent chair arrangement would include additional cost to Commission members. In the absence of any identified issues, Australia does not consider this to be an effective use of funds.
 - Australia considers the co-chair arrangement proposed to be counterproductive – this would add significant risk of unbalanced treatment between CCMs for the same obligation.
 - In recognition of the “key person risk” identified by the Review, Australia would support formalizing the informal “succession” arrangement whereby a TCC vice-chair is elected on the basis that they would succeed the chair at the end of their term.
- Australia **supports** agreement of a permanent CMS measure, however noting the review recommendations, could accept adoption of a 5 year CMS measure, including mid-term and end-term review.

Broader issues

- Australia **supports** further development of the WCPFC Information Management System (IMS) to better support members’ needs, in particular addressing duplicate reporting.
- Australia **notes** the recommendation to develop a strategic plan for the CMS however we are cautious of creating duplication or conflict with existing frameworks.

- Australia supports clear articulation of a work program to develop the CMS through time (including further development of both the IMS and responses to non-compliance) and that this must be accompanied by commitment from the Commission to provide funding to support this.
- We note that the TCC Workplan requires updating and that this may be an appropriate vehicle for articulating a work program for developing the CMS over time.
- Australia needs to **further consider** the recommendations related to the process for developing measures, including the two-year timeframe and mandatory legal and scientific review.
- Australia **notes** that the recommendation to develop key audit points is in line with our view that all measures adopted by the Commission should be clear, unambiguous and measurable and enforceable.
 - Australia further notes the potential benefits of this for a proactive approach to building capacity to meet obligations, but emphasizes the need for this to be linked with the development of the SIDS strategic investment plan.

Next steps

Australia is looking forward to actively participating in the intersessional working group through the course of this year. Australia **strongly supports** the development of a new CMS CMM as the IWG's key priority.

Australia would also welcome the IWG's consideration of how to address the broader issues identified in the Review, including potentially developing a workplan to address these issues in the longer term.

Australia's nominated representatives to participate in the IWG will be Ms Jenny Baldwin (A/g Director, Fisheries – Multilateral and Migratory Stocks, jenny.baldwin@agriculture.gov.au) and Mr Mat Kertesz (A/g Assistant Director, Fisheries – Multilateral and Migratory Stocks, mat.kertesz@agriculture.gov.au). If you have any questions regarding the content of this submission, or Australia's views on the CMS in general, please contact myself or Mat.

Kind regards



Jenny Baldwin

29 March 2018