**DRAFT: Terms of Reference for the Development of Corrective Actions**

**Background**

1. Acting on the advice of TCC18, WCPFC19 identified a lead to work through the Compliance Monitoring Scheme Intersessional Working Group (CMS IWG) to develop corrective actions to encourage and incentivize CCMs’ compliance with the Commission’s obligations. The WCPFC19 Summary Report states:

*386. WCPFC19 welcomed the nomination by the United States for Ms. Elizabeth O'Sullivan to lead work through the CMS IWG to develop corrective actions to encourage and incentivize CCM's compliance with the Commission's obligations, where non-compliance is identified, and encourages CCMs to participate in this work.*

2. The development of corrective actions is a part of the future work identified in the CMS CMM 2021-03, which states:

*2. The CMS is designed to:*

*(iv) respond to non-compliance by CCMs through remedial and/or preventative options that include a range of possible responses that take account of the reason for and degree, the severity, consequences and frequency of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations; and*

*46. The Commission hereby commits to a multi-year workplan of tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining processes. This workplan should include the development of guidelines and operating procedures to support the implementation of the Compliance Monitoring Scheme, and shall include inter alia:*

*(iv) the development of corrective actions to encourage and incentivize CCMs’* *compliance with the Commission’s obligations, where non-compliance is identified;*

3. At WCPFC19, some CCMs requested the development of terms of reference (TOR) to ensure the scope of the work undertaken on corrective actions was clear.

*385. Samoa on behalf of FFA Members stated that they wanted to ensure that the scope of work on the issue was clear, and recommended that the first task for CCMs was to develop a clear TOR to guide the work. FFA members advocated looking first at the use of cooperative and supportive actions as opposed to corrective actions, and stated they would be prepared to consider corrective actions once the current imbalance and bias in the CMS was addressed. They stated that this was in line with the principle of cooperation towards compliance, as stated in paragraph 3 of the CMS measure, to promote a supportive, collaborative, and non-adversarial approach where possible, with the aim of ensuring long-term compliance, including considering capacity assistance needs or other quality improvement and corrective actions.*

4. These TOR define the objectives, process, tasks and timeframe for the development of corrective actions through the CMS IWG.

 **Objective**

The CMS IWG and the corrective actions lead will:

5. Develop a system of corrective actions that prioritize compliance among CCMs, recognizing the special requirements of developing State parties including SIDS in accordance with Article 30 of the Convention, to incentivize and encourage CCMs compliance with the obligations of the Commission,where non-compliance is identified, thus making the WCPFC CMS more effective and to achieve the mandate of the Commission.

6. The corrective actions that are developed will take into account the principles of effectiveness, efficiency, fairness, and cooperation towards compliance in undertaking this work.

7. Recommend to TCC and the Commission the consideration and potential adoption of such corrective actions.

**Process**

7. The CMS IWG and the corrective actions lead will:

a. Compile, review and analyze information about how other RFMOs have addressed non-compliance with RFMO obligations by their members as guidelines for potential corrective actions for WCPFC;

b. Develop

i) a list of corrective actions designed to provide cooperation and support to SIDS in accordance with Article 30 that will be used to assist SIDS correct and prevent future noncompliance;

ii) a list of corrective actions that include a mix of actions that can be applied depending on the reason for, degree, severity, consequences, and frequency of non-compliance. These corrective actions will include appropriate tools other than cooperation and support, recommended by the CMS IWG to promote future compliance with WCPFC CCMs;c. Propose recommended corrective actions for the Commission, with the advice and recommendation of TCC.8. The work to develop corrective actions is open to all participants of the CMS-IWG, including any interested WCPFC observers. The CMS IWG will conduct its work to develop corrective actions electronically, to the extent possible.

**Tasks**

9. Information and the lists of corrective actions developed pursuant to the process described in paragraph 7 will be compiled by the corrective actions lead with the assistance of the Secretariat.

10. A summary of this information and some potential paths forward on the deployment of WCPFC corrective actions will be circulated to the CMS IWG for discussion.

11. A virtual meeting will be held to discuss the options for corrective actions that are most appropriate to incentive compliance with CMMs. The CMS IWG will consider any relevant information to the development of effective corrective actions.

12. The CMS IWG and the corrective actions lead shall report to TCC as appropriate and seek advice and recommendations.

13. The CMS IWG and the corrective actions lead shall develop recommendations for corrective action in WCPFC to the Commission for consideration and possible adoption.

**Timeframe**

Progress towards the development of corrective actions will be reviewed at WCPFC20.

ADDITONAL COMMENTS FOR DISCUSSION

CTP additional comment: seek advice whether the materials we use for discussion to develop CA contain detailed violations and infringements which are non-public domain and should not be open to all participants.

PEW: Should consider CITIES the Extractive Industry Transparency Initiative and the UN Environmental Programme.

**FFA Members comment on CTP additional comment:**

On non-public domain data: The Data Rules are clear on rules to access non-public domain data and this must be respected. If this work will access and use non-public domain data, then back FFA Members support CTP’s view.