



COMMISSION
Twentieth Regular Session
4-8 December 2023
Rarotonga, Cook Islands (Hybrid)

Draft Terms of Reference for the Development of Corrective Actions

WCPFC20-2023-24
24 November 2023

CMS-IWG Chair

Dear All,

I write to provide you with the current version of draft Terms of Reference for the Development of Corrective actions (Attachment 1) which reflects the comments received since TCC19 (Attachment 2 and 3).

Depending on the availability of time and guidance from the Commission Chair, there will be an opportunity for us to have a small group discussion in person in the margins of WCPFC20 but those who wish to provide any additional comments between now and WCPFC20 are more than welcome to do so and they should be submitted to the work lead elizabeth.osullivan@noaa.gov and the CMS IWG Chair ikna@korea.kr (cc : Compliance Manager Lara.Manarangi-Trott@wcpfc.int) as usual.

Thank you very much and I look forward to seeing you all in Rarotonga.

Sincerely,

A handwritten signature in black ink, reading "나 일강" (Ilkang Na).

Ilkang Na
TCC Vice Chair & Chair of the CMS IWG

Attachments

1. Draft TOR as of November 2023
2. PEW's comments – 6 November 2023
3. FFA Members' comments – 7 November 2023

Attachment 1

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 cooperative and supportive corrective actions-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 to inform the work in 7(b)for potential corrective actions for WCPFC;

b. Develop

i) a list of corrective actions for breach of Quantitative Limit type obligations [relating to catch and effort]. 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;

[PEW : a list of corrective actions designed to provide cooperation and support that will be used to correct and prevent future noncompliance, including in assisting SIDS in accordance with Article 30.]

ii) a list of cooperative and supportive corrective actions for non-compliance with obligations not covered in (i), taking into account the reason for, degree, severity, consequences, and frequency of non-compliance. 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;

Commented [e1]: In response to comments from the FFA received September 19th, I have tried to drafted a version that incorporates those good ideas and approaches. The point the FFA made was the need to ensure that any actions comply with Article 30 of the Convention, and recognize the unique challenges faced by SIDS. This draft tries to address this concern while also furthering the task to ensure that there is a process in place to prioritize compliance among members.

c. Propose recommended corrective actions for the Commission, with the advice and recommendation of TCC.

d. Consider other forms of corrective actions not covered in 7(b) once the issue of imbalance is addressed by the Commission.

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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.

ADDITIONAL 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 FFA Members support CTP's view.

6th November 2023

Ilkang Na
CMS IWG Chair

Dear Mr Ilkang Na,

In response to WCPFC Circular No. 2023/78 relating to the Corrective Actions CMS – IWG TOR, The Pew Charitable Trusts wishes to provide the following suggestion to amend paragraph 7bi to broaden the scope to all members whilst maintaining support for SIDs.

Suggested text:

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

We hope you find this useful. We look forward to seeing how this work progresses and we are happy to provide further support and information on this topic.

Kindest Regards,



Glen Holmes, Senior Officer
The Pew Charitable Trusts



Gerald Leape, Principal Officer
The Pew Charitable Trusts



Laura Eeles, Senior Associate
The Pew Charitable Trusts

CC Elizabeth O'Sullivan
Lara Manarangi-Trott



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

Circular No.: 2023/78
Date: 26 September 2023
No of pages: 19

**Compliance Monitoring Scheme Intersessional Working Group – Revised Draft
Terms of Reference for the Development of Corrective Actions**

Dear All,

I would like to take this opportunity to provide you with a revised version of draft Terms of Reference for the Development of Corrective actions (Attachment 1) which takes into account of the comments received to date (Attachment 2, 3, 4 and 5) as well as some informal consultations that took place in the margins of TCC19.

As you will see in the attached revised draft TOR, among others, the nature or scope of the “*corrective actions to encourage and incentivize CCM’s compliance*” needs to be agreed before we can proceed further and most of the changes from the previous version have been made in an attempt to address that point.

I would like to invite you again to submit views, comments or thoughts you may have on the revised draft TOR **by close of business on Wednesday 8 November 2023 (Pohnpei time)** to the CMS IWG Chair at ikna@korea.kr (cc : work lead elizabeth.osullivan@noaa.gov, Compliance Manager Lara.Manarangi-Trott@wcpfc.int).

Thank you very much and I hope that an agreement on the TOR for the development of Corrective Actions can be reached as soon as possible.

Sincerely,

Ilkang Na
TCC Vice Chair & Chair of the CMS IWG

Attachments

1. Revised Draft TOR
2. Chinese Taipei's Comments – 3 May 2023
3. PEW's Comments – 4 May 2023
4. FFA Members' comments – 18 September 2023
5. FFA Members' proposed amendments – 18 September 2023

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 CCMs' 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, cooperative, supportive, and if necessary, corrective actions to address non-compliance by CCMs that will 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.

7.6. 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 non-compliance; including in assisting SIDS in accordance with Article 30.

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, determined recommended by the CMS IWG to promote future compliance with WCPFC CCMs;

cd. 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.

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Commented [A1]: Suggested text:

i) a list of corrective actions designed to provide cooperation and support that will be used to correct and prevent future non-compliance, including in assisting SIDS in accordance with Article 30.

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.

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

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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.

9/23/23, 1:19 PM

National Oceanic and Atmospheric Administration Mail - RE: WCPFC Circular 2023/31 Commencing the CMS-IWG work on Corre...



Elizabeth Osullivan - NOAA Federal <elizabeth.osullivan@noaa.gov>

RE: WCPFC Circular 2023/31 Commencing the CMS-IWG work on Corrective Actions

1 message

姜宜均 <yeechun@ms1.f.gov.tw>

Wed, May 3, 2023 at 9:23 PM

To: elizabeth.osullivan@noaa.gov

Cc: ikna@korea.kr, Lara Manarangi-Trott <Lara.Manarangi-Trott@wcpfc.int>, 林副署長國平 <kuoping@ms1.f.gov.tw>, 林頂榮組長 <Dingrong@ms1.f.gov.tw>, 劉啟超簡任技正 <chichao@ms1.f.gov.tw>, 溫祖康 <tsukang1008@ms1.f.gov.tw>, 漁協-傅家驥組長 <joseph@ofdc.org.tw>, 溫帶鑿 <wty@ofdc.org.tw>

Dear Madam Lead,

I hope this email finds you well. We would like to express our gratitude for your efforts in drafting the Terms of Reference for the Development of Corrective Actions, which are vital to the progress of the issue. We share the same views as other colleagues that a clear TOR lays the necessary groundwork for developing corrective actions. We support this direction and will actively participate in the discussions.

Considering the WCPFC19 agreed to develop corrective actions to encourage and incentivize CCM's compliance with the Commission's obligations, we have recommendations on paragraphs 6 and 13 as follows (additions and deletions will be shown in underlines and ~~strikethroughs~~).

6. Recommend to TCC and the Commission the ~~adoption~~ consideration of such corrective actions.

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

In addition, we would like to seek your advice whether the materials we use for discussion to develop corrective actions contain detailed violations and infringements, which belong to non-public domain data and it might be not appropriate to be open to all participants.

Thank you for your hard work and dedication. We look forward to having progress in future communications.

Kind regards,

Yee-Chun

Chiang, Yee-Chun 姜宜均

Assistant Trainer 助理訓練師

International Fisheries Affairs Section, Deep Sea Fisheries Division 遠洋漁業組 國際漁事科

Fisheries Agency, Council of Agriculture, Executive Yuan, TAIWAN 行政院農業委員會漁業署

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EMAIL: yeechun@ms1.f.gov.tw

<https://mail.google.com/mail/u/0/?ik=4efd2aff69&view=pt&search=all&permthid=thread-f:1764947400618502906%7Cmsg-f:1764947400618502906&...>

1/2

9/23/23, 1:19 PM

National Oceanic and Atmospheric Administration Mail - RE: WCPFC Circular 2023/31 Commencing the CMS-IWG work on Corre...

-----Original Message-----

From: WCPFC <wcpfc@wcpfc.int>

Sent: Thursday, April 6, 2023 1:01 PM

To: Yee-Chun Chiang <yeechun@ms1.fa.gov.tw>

Subject: WCPFC Circular 2023/31 Commencing the CMS-IWG work on Corrective Actions

To all Commission Members, Cooperating Non-Members, Participating Territories and Observers

Please find enclosed WCPFC Circular on the above subject for your attention..

Respectfully,

Arlene Takesy

Executive Assistant

Western and Central Pacific Fisheries Commission Kaselehlie Street, PO Box 2356 Kolonia

Pohnpei, FM 96941

Tel: +691 320 1992 or 1993

Fax: +691 320 1108

Open circular in a browser:

<https://circs.wcpfc.int/circ/2023/31>



4th May 2023

Elizabeth O'Sullivan
WCPFC Lead on Corrective Actions

Dear Ms. O'Sullivan,

In response to WCPFC Circular No. 2023/ 31 relating to the Corrective Actions CMS – IWG TOR, The Pew Charitable Trusts wishes to provide the following comments.

Firstly, thank you for the opportunity to contribute towards this important piece of work. Including observers in this process will give a well-rounded perspective and complement the input received from CCMs and other contributors.

We are pleased to see the Terms of Reference (TOR) focus on incentivizing and encouraging CCMs' compliance with WCPFC obligations. Considering other RFMO approaches to this work, we recommend looking at both supportive and corrective actions as options for countries to take to improve compliance by their fleets fishing in the WCPFC area.

Regarding other RFMOs, we also support the review of their compliance processes. However, in many instances, the agreed responses to non-compliance in those RFMOs are still in their infancy and have not been fully embedded within the RFMO. In particular, ICCAT RES 2016-17 which was recently modified by ICCAT REF 2022-18, and the recently adopted IATTC RES C-22-02. Therefore we suggest that the IWG also look at compliance processes and principles outside of RFMOs such as at [CITES](#), the Extractive Industry Transparency Initiative ([EITI](#)), and the [United Nations Environment Programme](#).

Finally, we would fully support a request to meet during TCC to ensure that any unresolved issues related to the terms of reference can be addressed quickly and efficiently, or to progress the identified tasks. We hope that such a meeting would occur during a session that includes participation by accredited observer organizations.

Annexed below are a few suggested changes to the TOR we hope you find useful.

Pew

We look forward to seeing how this work progresses and we are happy to provide further support and information on this topic.

Kindest Regards,

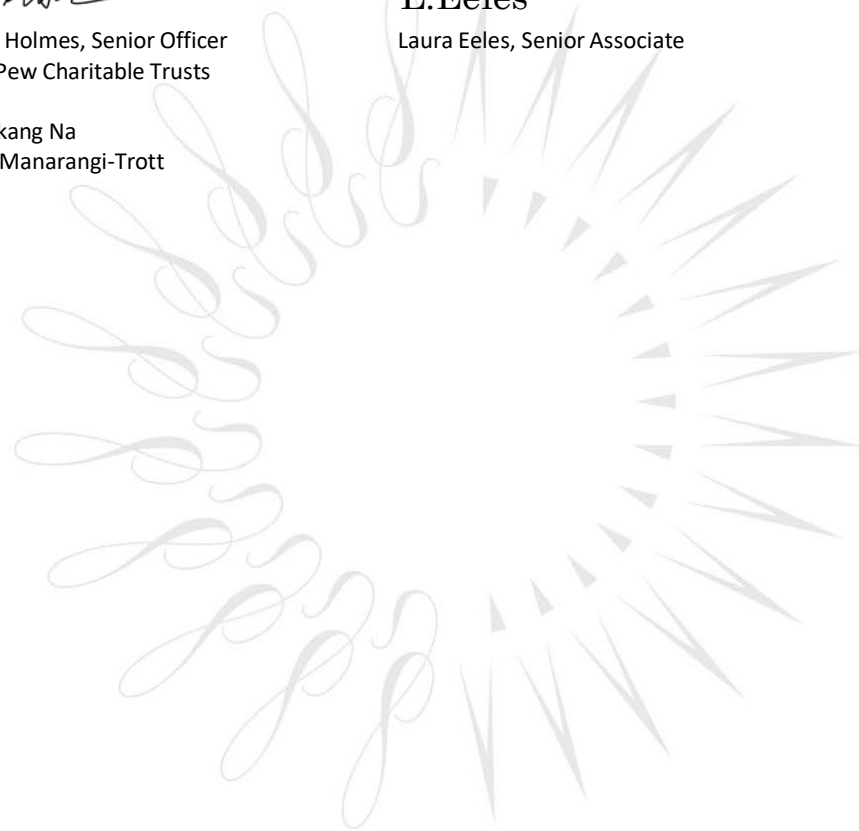


Glen Holmes, Senior Officer
The Pew Charitable Trusts

L. Eeles

Laura Eeles, Senior Associate

CC Ilkang Na
Lara Manarangi-Trott





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

**Circular No.: 2023/31
Date: 6 April 2023 No
of pages: 04**

Commencing the CMS-IWG work on Corrective Actions

Dear All,

Please find attached a communication from the CMS-IWG WCPFC Lead on the Development of Corrective Actions circulating a draft terms of reference for your review and comments.

The requested date for comments and feedback is **Friday May 5, 2023** to the WCPFC Lead on Corrective Actions elizabeth.osullivan@noaa.gov (cc: TCC Vice Chair ikna@korea.kr and the Compliance Manager Lara.Manarangi-Trott@wcpfc.int).

Yours sincerely,

Rhea Moss-Christian
EXECUTIVE DIRECTOR

P. O. Box 2356, Kolonia, Pohnpei 96941, Federated States of Micronesia. Phone: +691 320 1992/1993 Facsimile: +691 320 1108 Email: wcpfc@wcpfc.int

Compliance Monitoring Scheme Intersessional Working Group – Draft Terms of Reference for the Development of Corrective Actions

Dear Colleagues,

As you will recall, at WCPFC19 the Commission identified a lead to work through the CMS IWG on the development of corrective actions. As indicated in the WCPFC19 Summary report (paragraph 386):

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.

Additionally, some members requested the development of terms of reference (TOR) to guide the scope of this work.

To assist us in preparing for the work ahead of us in the development of corrective actions, I am circulating a draft Terms of Reference for review and comment by the CMS IWG. In order to begin this work well in advance of TCC19, please send all comments and feedback regarding these proposed TOR to the lead on corrective action at elizabeth.osullivan@noaa.gov (cc: TCC Vice Chair Mr Ilkang Na ikna@korea.kr the Compliance Manager Lara.Manarangi-Trott@wcpfc.int) before May 5, 2023.

Once the TOR are finalized, I will work with the Secretariat to review information from other RFMOs on this topic. I hope to have some proposals for WCPFC corrective actions based on this review circulated to the CMS-IWG in the following months. Then I will set up a time to meet electronically and discuss a path forward for the development of WCPFC corrective actions.

As a reminder, the Secretariat has developed a dedicated webpage to support the organization and work of the CMS-IWG on the WCPFC website, available at https://www.wcpfc.int/cms-iwg_2020. All papers related to the work of the CMS-IWG, including this draft TOR will be made available on the CMS-IWG webpage.

Kindest Regards,

Elizabeth O'Sullivan
WCPFC Lead on the Development of Corrective Actions

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:

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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:

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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. Identify supportive actions and corrective actions to non-compliance that will incentivize and encourage CCMS compliance with the obligations of the Commission thus making the WCPFC CMS more effective and achieve the mandate of the Commission.
6. Recommend to TCC and the Commission the 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;

~~a-b.~~ Compile, review and analyze information about how other international bodies that manage natural resources have addressed non-compliance by their members.

b-c. Develop a list of potential supportive and corrective actions that are designed to incentivize compliance and deter non-compliance by CCMS with WCPFC obligations; and

e-d. Propose recommended supportive and corrective actions for the Commission, with the advice and recommendation of TCC.

8. The work to develop supportive and 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 supportive and corrective actions electronically, though it may request time to meet during TCC.

Tasks

9. Information referenced 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 supportive and corrective actions will be circulated to the CMS IWG for discussion.

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

Commented [A1]: This can include such bodies as CITES, Extractive Industry Transparency Initiative (EITI) and United Nations Environment Programme

Timeframe

14. Progress towards the development of [supportive and](#) corrective actions will be reviewed at WCPFC20.

9/23/23, 1:31 PM

National Oceanic and Atmospheric Administration Mail - FFA Members response to Circular No.: 2023/74



Elizabeth Osullivan - NOAA Federal <elizabeth.osullivan@noaa.gov>

FFA Members response to Circular No.: 2023/74

1 message

'Ana Taholo <ana.taholo@ffa.int>

Mon, Sep 18, 2023 at 2:06 AM

To: ILKANG NA <ikna@korea.kr>

Cc: Elizabeth Osullivan - NOAA Federal <elizabeth.osullivan@noaa.gov>, Lara Manarangi-Trott <Lara.Manarangi-Trott@wcpfc.int>, Allan Rahari <allan.rahari@ffa.int>, Beau Bigler <bbigler@mimra.com>

Dear Chair of CMS-IWG

I am submitting the comments below, on behalf of FFA Members, in response to the WCPFC Circular 2023/74.

1. FFA Members thank you and the Lead for this work and offer the following comments.
2. FFA Members reiterate our position made at WCPFC19 that this work should focus on cooperative and supportive actions, 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 action"
3. The CMS IWG-Chair noted that the TCC work plan for 2022-2024 is silent on "cooperative and supportive actions" and therefore not appropriate for the CMS-IWG to work on these aspects first without guidance from the TCC and the Commission. As noted, FFA Members' view is that cooperative and supportive actions are enshrined within corrective actions, as reflected in CMM 2021-03.
4. Corrective action in simple terms, in our view, means action taken to eliminate the causes of non-compliance so as to prevent recurrence. It is our strong view that this work needs to focus on cooperative and supportive corrective actions, and that cooperative and supportive actions are part and parcel of the work on corrective actions - but is not a separate or new piece of work that needs guidance from TCC and the Commission.

In line with our views above, FFA Members submit the propose amendments to the draft TORs on this work, in the attached file.

Kind regards,

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FFA member countries: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu

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 CCMs' 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. Identify ~~cooperative, supportive, and if necessary,~~ corrective actions to address non-compliance by CCMs that will incentivize and encourage CCMs compliance with the obligations of the Commission thus making the WCPFC CMS more effective ~~and achieve the mandate of the Commission.~~

FFA Members - on para 5: Replace the phrase “cooperative, supportive, and if necessary,” with “cooperative and supportive”

FFA Members - add new para: Take into account the principles of effectiveness, efficiency, fairness, and cooperation towards compliance in undertaking this work.

6. Recommend to TCC and the Commission ~~the adoption-consideration~~ 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;

b. ~~Develop~~ a list of potential supportive and corrective actions that are designed to incentivize compliance ~~and deter non-compliance~~ by CCMs with WCPFC obligations; and

FFA Members propose para to replace 7(b): Develop a list of potential cooperative and supportive corrective actions designed to encourage and incentivise CCMs’ compliance with the Commission’s obligations. In doing so, the CMS IWG will take into account the reason for and degree, the severity, consequences, and frequency of non-compliance

c. Propose recommended supportive and corrective actions for the Commission, with the advice and recommendation of TCC.

FFA Members propose amendments to para 7(c): replace the phrase “supportive and corrective actions” with the phrase “cooperative and supportive corrective actions”

Commented [1]: FFA first look at use of cooperative and supportive actions as opposed to disciplinary corrective actions.

Commented [2]: FFA

Commented [3]: pew

Commented [4]: CTP

Commented [5]: pew

8. The work to develop supportive and 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, though it may request time to meet during TCC.

FFA Members propose amendments to para 8: replace the phrase "supportive and corrective actions" with "cooperative and supportive corrective actions"

Tasks

9. Information referenced 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.

FFA Members propose amendments to para 11: replace the term "corrective actions" with "cooperative and supportive corrective actions"

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.

FFA Members propose amendments to para 11: replace the term "corrective actions" with "cooperative and supportive 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 supportive corrective action in WCPFC to the Commission for ~~adoption-consideration and possible adoption-~~

Commented [6]: CTP

FFA Members propose amendments to para 13: replace the phrase "supportive corrective actions" with "cooperative and supportive corrective actions"

Timeframe

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

FFA Members propose amendments to para 13: replace the phrase “supportive corrective actions” with “cooperative and supportive corrective actions”

ADDITIONAL 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 FFA Members support CTP’s view.

Attachment 3

Comments on the Corrective Actions draft TOR

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.

FORUM FISHERIES COMMITTEE EYES ONLY

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 cooperative and supportive corrective actions 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 to inform the work in 7(b): for potential corrective actions for WCPFC;

b. Develop

i) a list of corrective actions for breach of Quantitative Limit type obligations [relating to catch and effort].

ii) a list of cooperative and supportive corrective actions for non-compliance with obligations not covered in (i), taking into account the reason for, degree, severity, consequences, and frequency of non-compliance, designed to provide cooperation and support to SIDS in accordance with Article 30 that will be used to assist SIDS correct and prevent future non-compliance;

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.

d. Consider other forms of corrective actions not covered in 7(b) once the issue of imbalance is addressed by the Commission.

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

Commented [1]: In response to comments from the FFA received September 19th, I have tried to drafted a version that incorporates those good ideas and approaches. The point the FFA made was the need to ensure that any actions comply with Article 30 of the Convention, and recognize the unique challenges faced by SIDS. This draft tries to address this concern while also furthering the task to ensure that there is a process in place to prioritize compliance among members.

FORUM FISHERIES COMMITTEE EYES ONLY

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.

ADDITIONAL 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.

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