

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

**Circular No.: 2013/62**

**Date: 24 July 2013**

**No. pages: 9**

**US Proposal re: WCPFC CMS**

Dear all

Please find enclosed changes to the WCPFC Compliance Monitoring Scheme proposed by the US and the covering email from Alexa for your information. Could you please provide any thoughts or comments direct to Alexa Cole **by Thursday 15th of August 2013**.

Thanks



Professor Glenn Hurry  
Executive Director

**From:** Alexa Cole - NOAA Federal [<mailto:alexa.cole@noaa.gov>]

**Sent:** Wednesday, July 24, 2013 4:29 AM

**To:** Glenn Hurry; Lara Manarangi-Trott

**Cc:** Mr. Raymond Clarke; Russell Smith; Mike Tosatto; Mr. William (Bill) Gibbons-Fly; Oriana Villar; Tom Graham

**Subject:** US Proposal re: WCPFC CMS

Hi Glenn and Lara,

Please find attached a US proposal to make the WCPFC Compliance Monitoring Scheme a permanent measure. We would appreciate it if you would circulate to all CCMs and request any comments to be sent to me by August 15, 2013. We anticipate preparing a revised proposal based on any comments received for circulation in advance of TCC for consideration at TCC9.

I note that we would also welcome comments from the Secretariat regarding implementation issues based on its experience preparing the Draft Compliance Monitoring Report and providing support to the Commission's work in this area. In addition, I want to highlight that many of the changes that the United States is proposing are cosmetic changes. For example, correcting typos in the existing measure, changing the use of the term 'Scheme' to 'CMS' which has become the practice, and addressing the inconsistent use of "will" and "shall" throughout. However, we have also made some substantive modifications primarily to either modify the existing measure to more accurately reflect our practices or clarify areas where there might be ambiguity.

If you have any questions or concerns, please do not hesitate to let me know.

Thanks very much,

Alexa

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**COMMISSION  
NINTH REGULAR SESSION  
Manila, Philippines  
2-6 December 2012**

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**CONSERVATION AND MANAGEMENT MEASURE FOR  
COMPLIANCE MONITORING SCHEME**

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**Conservation and Management Measure 2012-02<sup>1</sup>**

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

*In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):*

*Recalling* that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention,

*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 also* that, in accordance with international law, Members and Co-operating Non-Members of the Commission and Participating Territories have responsibilities to exercise effective control over their flagged vessels and with respect to their nationals,

*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,

*Noting* that, in a responsible, open, transparent and non-discriminatory manner, the Commission should be made aware of any and all available information that may be relevant to the work of the Commission in identifying and holding accountable instances of non-compliance with management measures,

*Recalling* the recommendation of the second joint meeting of the tuna Regional Fisheries Management Organizations (RFMOs) that all RFMOs should introduce a robust compliance review mechanism by which the compliance record of each Party is examined in depth on a yearly basis,

*Recognizing* the need to provide such technical assistance and capacity building to developing State Members and Co-operating Non-Members, particularly small island developing State Members and Participating Territories, as may be needed to assist them to meet their obligations and responsibilities, and

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<sup>1</sup> By adoption of this CMM (CMM-2012-02) the Commission rescinds CMM-2011-06 which has been revised and replaced.

Recognizing further the responsibility of Members, Co-operating Non-Members and Participating Territories to fully and effectively implement the provisions of the Convention and the conservation and management measures adopted by the Commission, and the need to improve such implementation and ensure compliance with these commitments,

Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:

#### **Section I - Purpose**

1. The purpose of the WCPFC Compliance Monitoring Scheme (~~the Scheme~~CMS) is to ensure that Members, Cooperating Non-Members and, where appropriate, Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission. The ~~CMS~~Scheme is designed to:

- (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;<sup>2</sup> and
- (v) monitor and resolve outstanding instances of non-compliance.

#### **Section II - Scope and application**

2. The Commission, ~~with the assistance of the Technical and Compliance Committee (TCC)~~, shall~~will~~ evaluate CCMs' compliance with the obligations arising under the Convention and the CMMs adopted by the Commission and identify instances of non-compliance.

3. Each year the Commission shall~~will~~ evaluate compliance by CCMs during the previous calendar year with the obligations in the Convention and CMMs adopted by the Commission with respect to:

- (i) catch and effort limits for target species;
- (ii) catch and effort reporting for target species;
- (iii) spatial and temporal closures, and restrictions on the use of fish aggregating devices;
- (iv) observer and VMS coverage; ~~and~~
- (v) provision of scientific data through the Part 1 Annual Report and the Scientific Data to be provided to the Commission; ~~and~~

<sup>2</sup> In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 23 of this measure.

(vi) submission of the Part 2 Annual Report.

3bis. The Commission shall also evaluate compliance by CCMs during the previous calendar year with obligations related to the catch of stocks managed under the WCPF Convention that also are managed under a multilateral framework other than the WCPF Convention.

4. Each year, the Commission ~~shall~~will consider and identify whether additional obligations should be ~~evaluated~~considered annually or in another specified time period, taking into account:

- (i) the needs and priorities of the Commission, including those of its subsidiary bodies;
- (ii) the need to assess and address ~~per~~onsistent non-compliance; and
- (iii) the potential risks posed by non-compliance with particular obligations with respect to achieving the goals of the Convention or specific measures adopted there under.

5. Through the ~~CMSScheme~~, the Commission shall also consider and address:

- (i) compliance by CCMs with recommendations adopted pursuant to the Scheme the previous year, and
- (ii) responses by CCMs to alleged violations reported under Article 23(5) or 25(2) of the Convention.

6. The preparation, distribution and discussion of compliance information pursuant to the ~~CMSScheme~~ shall be in accordance with all relevant rules and procedures relating to the protection and dissemination of, and access to, public and non-public domain data and information compiled by the Commission. In this regard, Draft and Provisional Compliance Monitoring Reports shall constitute non-public domain data, and ~~the #~~Final Compliance Monitoring Reports shall constitute public domain data.

7. The ~~CMSScheme~~ shall not prejudice the rights, jurisdiction and duties of any CCM to enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with that CCM's international obligations.

8. The Commission recognises the special requirements of developing State CCMs, particularly small island developing State Members and Participating Territories, and ~~shall~~will seek to actively engage and cooperate with these CCMs and facilitate their effective participation in the implementation of ~~theis~~ CMScheme including by:

- (i) ensuring that inter-governmental sub-regional agencies which provide advice and assistance to these CCMs are able to participate in the processes established under the CMScheme, including by attending any working groups as observers and participating in accordance with Rule 36 of the Commission's Rules of Procedure, and have access to all relevant documents, and
- (ii) providing appropriately targeted assistance to improve implementation of, and compliance with, obligations arising under the Convention and CMMs adopted by the Commission, including through consideration of the options for capacity building and technical assistance.

### **Section III - Draft Compliance Monitoring Report**

9. Prior to the annual meeting of the ~~Technical and Compliance Committee (TCC)~~, the Executive Director shall prepare a Draft Compliance Monitoring Report (the Draft Report)

**Comment [Alexa1]:** Inclusion of Part 2 Annual Reports has been discussed in previous years. We are interested in CCMs thoughts on whether there are additional items that should be included on the list for review every year.

containing sections with respect to each CCM and a section concerning obligations related to the catch of stocks managed under the WCPF Convention that also are managed under a multilateral framework other than the WCPF Convention. The Draft Report shall contain compiled information received through Parts 1 and 2 of the Annual Reports; other reporting obligations, including but not limited to, the transshipment reports program, the regional observer reports program, the Vessel Monitoring System information, High Seas Boarding and Inspection Scheme reports, charter notifications, and any other data collection programs of the Commission; and, where appropriate, any additional suitably documented information regarding compliance during the previous calendar year provided by non-government organisations and shall prepare a Draft Compliance Monitoring Report (the Draft Report) containing sections with respect to each CCM.

10. The Executive Director shall transmit the relevant section of the Draft Report to each CCM by 28 July each year.

11. Upon receipt of the relevant section of the Draft Report, each CCM may reply to the Executive Director by 28 August each year in order to (where appropriate):

- (i) provide additional information, clarifications, amendments or corrections necessary to resolve the potential compliance issues identified in the Draft Report or respond to any other information;
- (ii) identify any particular causes of the potential compliance issues or difficulties with respect to implementation of the obligation in question, or circumstances which may mitigate the potential compliance issues; or
- (iii) identify technical assistance or capacity building needed to assist the CCM to address potential compliance issues.

12. At least three weeks in advance of the TCC meeting, the Executive Director ~~shall will~~ compile and circulate to all CCMs the full Draft Report, including all information provided under paragraph 11 of this measure.

13. The TCC shall review the Draft Report, focusing on any potential compliance issues identified with respect to any CMMs and each CCM, ~~including and in particular will consider~~ any information provided by CCMs in accordance with paragraph 11 of this measure. CCMs may provide additional information to TCC with respect to the issues identified.

#### **Section IV – Provisional Compliance Monitoring Report**

14. Taking into account any additional information provided by CCMs, and, where appropriate, any additional suitably documented information regarding compliance~~non-government organisations~~, the TCC shall develop a Provisional Compliance Monitoring Report (the Provisional Report) that will include a provisional assessment of each CCM's Compliance Status and recommendations for any corrective action needed, based on potential compliance issues identified in respect of that CCM and using the criteria and considerations for assessing Compliance Status set out in Annex I of this measure.

15. The Provisional Report will also include an executive summary including recommendations or observations from TCC regarding:

- (i) identification of any CMMs that should be reviewed~~amendments or improvements to existing CMMs~~ to address implementation or compliance difficulties experienced by CCMs, including any specific amendments or improvements that have been identified,

(ii) capacity building requirements or other obstacles to implementation identified by CCMs, in particular small island developing State Members and Participating Territories, and

(iii) additional priority obligations that should be reviewed under the ~~CM Scheme~~ pursuant to paragraph 4 of this measure.

16. The Provisional Report shall be forwarded to the Commission for consideration at the annual meeting.

#### **Section V - Compliance Monitoring Report**

17. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.

18. Prior to or during the Commission meeting, CCMs may provide the Commission with additional advice or information relating to the Provisional Report, including any steps taken to address identified compliance issues.

19. Taking into account any additional information provided by CCMs, the Commission shall adopt a final Compliance Monitoring Report that includes a Compliance Status for each CCM and recommendations for any corrective action needed, based on non-compliance identified with respect to that CCM.

20. The final Compliance Monitoring Report shall also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 15 of this measure.

21. Each CCM shall include, in its Part 2 Annual Report, any actions it has taken to address ~~its non-compliance~~ identified in the Compliance Monitoring Report from in the previous years.

#### **Section VI – Responses to Non Compliance**

22. The Commission shall take a graduated response to non-compliance, taking into account the type, severity, degree and cause of the non-compliance in question.

23. The Commission ~~hereby will establish~~ an intersessional working group to develop and consider adopting a process to complement the ~~CM Scheme~~ that ~~shall will~~ identify a range of responses to non-compliance that can be applied by the Commission through the implementation of the ~~CM Scheme~~, including cooperative capacity-building initiatives and, as appropriate, such penalties and other actions as may be necessary to promote compliance with Commission CMMs. The intersessional working group shall progress its work electronically to the greatest extent possible. The intersessional working group shall endeavour to develop a process for consideration no later than TCC11 and adoption no later than WCPFC12.

24. Once the Commission adopts a ~~process identifying a~~ range of responses to non-compliance, the TCC ~~shall will~~ include a recommendation on the response to non-compliance in its Provisional Compliance Monitoring Report for consideration by the Commission. The Commission ~~shall will~~ identify a response to non-compliance in its Compliance Monitoring Report.

#### **Application and review**

~~25. This measure shall apply for 2013 only.~~

~~26. At its tenth meeting, the Commission will review the operation of the measure during this trial period and, based on this review, consider and decide on a measure that will apply after 2013.~~

~~27.~~<sup>25.</sup> This measure ~~shall~~<sup>will</sup> be reviewed and revised, as needed, by the Commission to ensure its effectiveness.

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## Annex I

### Compliance Status Table

Compliance Status	Criteria for assessing Compliance Status
<b>Compliant</b>	No compliance issues identified with respect to the relevant obligations.
<b>Compliance Review</b>  The purpose of a Compliance Review is to identify non-compliance of a technical or minor nature, or which requires the provision of further information, in order to identify implementation gaps and improve compliance.	Non-compliance may be due to: (i) insufficient, unclear or incorrect data or information (ii) actions or omissions which constitute a minor violation of relevant obligations (iii) ambiguity or misunderstanding of relevant obligations.
<b>Compliance Action Plan</b>  The purpose of a Compliance Action Plan is to assist CCMs to actively take steps to respond to and rectify non-compliance, remove obstacles to non-compliance, or improve implementation of relevant obligations, including through the provision of technical assistance or capacity building, as appropriate.	Non-compliance may be due to: (i) actions or omissions that constitute a serious violation (ii) non-compliance that has undermined the effectiveness of the Convention or conservation and management measures adopted by the Commission, or (iii) failure to comply with previous Compliance Monitoring Report recommendations after sufficient time and assistance has been provided.
<b>Compliance Remedy</b>  The purpose of a Compliance Remedy is to address instances of serious or persistent non-compliance which have not been resolved even after sufficient time and assistance have been provided through a Compliance Action Plan.	Non-compliance may be due to: (i) actions or omissions that constitute a repeated serious violation (ii) repeated non-compliance that has undermined the effectiveness of the Convention or conservation and management measures adopted by the Commission, or (iii) repeated failure to comply with previous Compliance Action Plans after sufficient time and assistance have been provided.