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

WCPFC11-2014-19a
13 November 2014

Paper from Chair of Small Working Group on CMS (from TCC10)

Explanatory Note:

At TCC10, some CCMs provided comments and suggestions on proposed revisions to the existing Compliance Monitoring Scheme measure (CMM 2013-02). The TCC Chair asked me to convene a small working group at TCC to discuss these comments and suggestions and identify any other proposed changes. Post-TCC, I received three sets of written comments - from Australia, FFA and Japan. The attached draft revised CMS CMM reflects the discussions from TCC and the written comments received.

Where there was discussion and general agreement about the concept (but not the wording) of a proposed change at TCC10, the proposed changes are shown in redline, without brackets. Where one of the three sets of written comments suggested additional changes that had not been discussed at TCC10, the proposed changes are shown in redline, with brackets, with a comment indicating who had made the suggested change.

Annex I shows significant proposed changes. The proposed changes are primarily my attempt to capture the discussions from TCC10 that indicated a need to better define the criteria for each compliance status, to clarify the next steps to be taken to become Compliant in a future year, and to identify more clearly some options for corrective action. Both Australia and FFA's comments provided some guidance and suggestions that helped me formulate the proposed changes to Annex I, so I tried to synthesize what they provided with our discussions at TCC10.

Alexa

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

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 Cooperating 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 Cooperating 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

Recognizing further the responsibility of Members, Cooperating 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 (CMS) is 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) adopted by the Commission. The CMS 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 and other Commission obligations;¹ 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 evaluate CCMs' compliance with the obligations arising under the Convention and the CMMs adopted by the Commission and identify instances of non-compliance.

3. Subject to modification by paragraph 5. Each year the Commission shall 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) reporting for seabird and other 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, and the High Seas Boarding and Inspection Scheme;
- (vi) provision of scientific data through the Part 1 Annual Report and the Scientific Data to be provided to the Commission; and
- (vi) submission of the Part 2 Annual Report, including compliance with the obligations in paragraph 2~~4~~2, and compliance with other Commission reporting deadlines.

4. The Commission shall also evaluate compliance by CCMs during the previous calendar year with collective obligations arising from the Convention or CMMs related to fishing activities managed under the Convention.

5. Each year, the Commission shall consider whether all of the obligations identified in paragraph 3 shall be evaluated in the following year and identify whether any additional obligations should be evaluated as well~~evaluated annually or in another specified time period.~~ In making this determination, the Commission shall, ~~take~~ing into account:

¹ In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 2~~3~~5 of this measure.

- (i) the needs and priorities of the Commission, including those of its subsidiary bodies;
 - (ii) evidence of high percentages of compliance or the need to assess and address persistent non-compliance with specific obligations for multiple years; and
 - (iii) the potential risks posed by non-compliance with particular obligations to achieving the goals of the Convention or specific measures adopted thereunder.
6. Through the CMS, 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.

7. The preparation, distribution and discussion of compliance information pursuant to the CMS 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 Report shall constitute public domain data.

8. The CMS 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.

8bis. Throughout the compliance review process, a CCM cannot bloc an assessment of Non-Compliant, Priority Non-Compliant or High Priority Non-Compliant for itself if all other CCMs have reached consensus on that assessment.

[8ter. During the TCC compliance review process, where the Secretariat has identified that a CCM has missed a reporting deadline, but has submitted the required information, the CCM will accept a compliance status of Non-Compliant with respect to that obligation and the matter will not be considered further unless the relevant CCM can demonstrate compliance or the Secretariat has a relevant update.]

Comment [Alexa1]: AUS proposal, slightly modified.

9. The Commission recognises the special requirements of developing State CCMs, particularly small island developing State Members and Participating Territories, and shall seek to actively engage and cooperate with these CCMs and facilitate their effective participation in the implementation of the CMS 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 CMS, including by attending any working groups as observers and participating in accordance with Rule 36 of the Commission's Rules of Procedure, and having 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

10. Prior to the annual meeting of the TCC, the Executive Director shall prepare a Draft Compliance Monitoring Report (the Draft Report) that consists of individual draft

Compliance Monitoring Reports (dCMRs) concerning each CCM and a section concerning collective obligations arising from the Convention or CMMs related to fishing activities managed under the Convention. Each dCMR shall reflect information relating to the relevant CCM's implementation of obligations in the Convention and CMMs adopted by the Commission, [including self-assessment.] as well as any potential compliance issues, where appropriate. Such information shall be sourced from reports submitted by CCMs as required in CMMs and other Commission obligations, such as Parts 1 and 2 of the Annual Reports as well as information available to the Commission through other data collection programs, including but not limited to, high seas transshipment reports, regional observer program reports, Vessel Monitoring System information, High Seas Boarding and Inspection Scheme reports, and charter notifications; and where appropriate, any additional suitably documented information regarding compliance during the previous calendar year. The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.

Comment [Alexa2]: JP proposal

[10bis. In case information available to the Commission show some uncertified issues regarding self-assessment of the relevant CCM's implementation of obligations in the Convention and CMMs adopted by the Commission, the Executive Director may require the CCMs to provide further information.]

Comment [Alexa3]: JP proposal

11. The Executive Director shall transmit ~~the relevant dCMR~~ to each CCM its dCMR by 28 July each year.

12. Upon receipt of ~~its~~ dCMR, each CCM may, where appropriate, reply to the Executive Director by 28 August each year ~~in order to (where appropriate)~~:

- (i) provide additional information, clarifications, amendments or corrections to information contained in its dCMR;
- (ii) identify any particular difficulties with respect to implementation of any obligations; or
- (iii) identify technical assistance or capacity building needed to assist the CCM with implementation of any obligations.

13. At least three weeks in advance of the TCC meeting, the Executive Director shall compile and circulate to all CCMs the full Draft Report that will include any potential compliance issues [and requirement of further information], in a form to be agreed to by the Commission, including all information that may be provided under paragraph ~~14~~2 of this measure.

Comment [Alexa4]: JP proposal

14. TCC shall review the Draft Report and identify any potential compliance issues for each CCM, based on information contained in the dCMRS, as well as any information provided by CCMs in accordance with paragraph ~~14~~2 of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.

Section IV – Provisional Compliance Monitoring Report

15. Taking into account any additional information provided by CCMs, and, where appropriate, any additional information provided by non-government organisations or other organisations concerned with matters relevant to the implementation of this Convention, TCC shall develop a Provisional Compliance Monitoring Report (the Provisional Report) that ~~will~~ includes a provisional assessment of each CCM's overall Compliance Status and compliance status with respect to all applicable individual obligations ~~and~~ as well as recommendations for any corrective action(s) needed, based on potential compliance issues it has identified in

respect of that CCM and using the criteria and considerations for assessing Compliance Status set out in paragraph 20 and Annex I of this measure.

~~[15bis. Subject to paragraph 8bis, In accordance with Article 20, paragraph 1 of the Convention, a provisional assessment of each CCM's Compliance Status shall be decided by consensus. For the purposes of the CMM, "consensus means the absence of any formal objection made at the time the decision was taken. If every effort to achieve consensus has failed, the provisional assessment shall indicate the majority and minority views and may include the differing views of the representatives of the members after Article 11, paragraph 4 of the Convention.]~~

Comment [Alexa5]: JP proposal, with my suggested modifications in strikethrough.

16. 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 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 CMS the following year pursuant to paragraph 45 of this measure.

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

Section V - Compliance Monitoring Report

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

19. Up to 30 days prior to 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.

Comment [Alexa6]: FFA proposes to delete the paragraph. Conforming amendments would need to be made to para 20 as well.

20. Taking into account any additional information provided by CCMs, ~~[if appropriate,]~~ the Commission shall adopt, subject to paragraph 8bis, a final Compliance Monitoring Report that includes a Compliance Status for each CCM and recommendations for any corrective action needed, based on compliance issues identified with respect to that CCM. Each CCM's overall Compliance Status will be assigned as follows:

Comment [Alexa7]: JP proposal.

- (i) Compliant – the CCM is compliant with all applicable obligations assessed;
- (ii) Non-Compliant – the CCM is non-compliant with one or more of the applicable obligations assessed;
- (iii) Priority Non-Compliant – the CCM is priority non-compliant with three or more applicable obligations assessed;
- (iv) High Priority Non-Compliant – the CCM is high priority non-compliant with three or more applicable obligations assessed.

~~[20bis. In accordance with Article 20, paragraph 1 of the Convention, each CCM's Compliance Status shall be decided by consensus. For the purposes of this CMM, "consensus" means the absence of any formal objection made at the time the decision was taken. If every effort to achieve consensus has failed, the CCM's Compliance Status shall~~

indicate the majority and minority views and may include the differing views of the representatives of the members after Article 11, paragraph 4 of the Convention.]

21. 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 156 of this measure.

[21bis. After the adoption of the final Compliance Monitoring Report, the Secretariat shall prepare a letter to each CCM of its final Compliance Status and enclosing a copy of the Final Compliance Monitoring Report.]

22. Each CCM shall include, in its Part 2 Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years, including any required Implementation Plan or Compliance Action Plan, as appropriate.

Section VI – Responses to Non Compliance

23. The Commission shall take a graduated response to CCMs identified as having compliance issues, taking into account the type, severity, degree and cause of the non-compliance in question.

24. The Commission hereby establishes an intersessional working group to develop a process to complement the CMS that shall identify a range of responses to non-compliance that can be applied by the Commission through the implementation of the CMS, 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 and will seek to ensure that all CCMs, particularly small island developing State Members and Participating Territories, have an opportunity to participate. The intersessional working group shall endeavour to develop a process for consideration no later than TCC11 and adoption no later than WCPFC12.

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

Application and review

~~26. — This measure will be effective for 2014 only.~~

~~27. — At its Eleventh meeting, the Commission will review the operation of the measure, and based on this review, consider and decide on a measure that will apply after 2014.~~

~~286.~~ This measure shall be reviewed and revised, as needed, by the Commission to ensure its effectiveness.

Comment [Alexa8]: JP proposal. I would not however, that the last sentence is not consistent with the Convention, as Article 11 only applies to decisions of subcommittees and not the Commission.

Comment [Alexa9]: FFA proposed concept.

Comment [Alexa10]: Note – There are different views on the length of this measure. AUS suggests making it permanent; JP suggests continuing it as one year measure; FFA notes that they are still considering this issue.

Annex I

Compliance Status Table

Compliance Status ²	<u>Criteria</u>	Next Steps ³
<i>Compliant</i>	<p><u>A CCM will be deemed Compliant with an obligation if the following criteria have all been met, as applicable:</u></p> <ul style="list-style-type: none"> <u>a. reporting or submission deadlines;</u> <u>b. implementation of obligation through national laws or regulations;</u> <u>c. any alleged violations have been fully investigated and resolved by charging or other appropriate resolution; and</u> <u>d. submission of all required information or data.</u> 	None
<i>Non-Compliant</i>	<p><u>A CCM will be deemed Non-Compliant with an obligation if any of the following have occurred, as applicable:</u></p> <ul style="list-style-type: none"> <u>a. actions or omissions which constitute minor or technical non-compliance with the obligation;</u> <u>b. submission or reporting of incomplete, unclear or incorrect information or data;</u> <u>c. non-compliance with an obligation due to ambiguity or misunderstanding of obligation;</u> <u>d. non-compliance with an obligation due to a specific</u> 	<p>One or more of the following:</p> <ul style="list-style-type: none"> <u>a. Commission must Further clarification of the obligation; Further clarify the obligation;</u> <u>b. Commission must modify the measure;</u> <u>c. Capacity building or technical assistance required <u>to come into compliance. The CCM requesting the capacity building or technical assistance must clearly articulate what assistance is needed to come into compliance;</u></u> <u>ed. Additional information required by XX date;</u> <u>ed. CCM must complete an <u>Implementation Plan</u>, to be submitted</u>

Comment [Alexa11]: AUS proposal – the Commission should adopt an approved template for the implementation plan and make it available electronically, to ease the burden on CCMs of completing the plan.

² This annex applies to compliance statuses assigned for the individual obligations, not a CCM’s overall compliance status. All non-compliant statuses will be subject to review during subsequent years until the CCM attains a status of “Compliant”.

³ Identifies the activity or activities required to achieve a Compliant status in the future for any obligation(s) where a CCM has been found to be Non-Compliant, Priority Non-Compliant or Seriously Non-Compliant.

	<p>and identified capacity building need⁴; and</p> <p>e. any other non-compliance with an obligation or category of obligations not specifically identified as Priority Non-Compliant or Seriously Non-Compliant.</p>	<p>by X date/with its Annual Report Part II, detailing how the CCM intends to achieve, if it has not already done so, implementation of the obligation;</p> <p>f. CCM must Rectify or resolve the non-compliance by XX date;</p> <p>g. CCM must investigate and take appropriate action in relation to alleged violations by its vessels and report back to the Commission; and</p> <p>h.e. -Other remedial action as determined by the Commission</p>
Priority Non-Compliant	<p>A CCM will be deemed Priority Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <p>a. failure to take action identified in the previous year as a “next step” to come into compliance with the obligation⁵;</p> <p>b. repeated non-compliance with an obligation for two or more years⁶;</p> <p>c. exceeding catch and effort limits established by the Commission;</p> <p>d. failure to submit an Annual Report; and</p> <p>e. failure to submit operational level data.</p>	<p>One or more of the following:</p> <p>a. Any of the options identified under the next steps for Non-Compliant status; Undertake additional review of compliance with WCPFC obligations.</p> <p>b. CCMs must complete a Compliance Action Plan, to be submitted by _____, that details how the CCM is going to come into compliance with its obligation(s); and</p> <p>c. Other remedial action as determined by the Commission</p>
High Priority Non-	A CCM will be deemed High	One or more of the following:

Comment [Alexa12]: AUS proposal – the Commission should adopt an approved template for the implementation plan and make it available electronically, to ease the burden on CCMs of completing the plan.

⁴ CCMs identifying a capacity building or technical assistance need must provide the Commission with specific and detailed information identifying what assistance is needed to come into compliance with the obligation. This information should be provided as early as possible, but no later than 30 days prior to the Annual Meeting, so that the Commission can consider capacity building and technical assistance needs in finalizing the Commission budget.

⁵ A CCM will not be deemed Priority Non-Compliant if it has 1) taken significant steps toward or made significant progress in completing an identified Next Step; and 2) has provided information and documentation of those efforts in its in Annual Report Part II.

⁶ A CCM will not be deemed Priority Non-Compliant if 1) the original non-compliance was due to a specific and identified capacity building need; 2) that need remains unmet; and 3) the CCM provided the Commission with specific information on what assistance is needed to come into compliance by [x date]. However, that capacity building need will be identified as a priority.

<u>Compliant</u>	<p><u>Priority Non-Compliant with an obligation if any of the following have occurred, as applicable:</u></p> <p><u>a. failure, for two or more years, to take action identified in prior years as a “next step” to come into compliance with the obligation⁷;</u></p> <p><u>b. exceeding catch and effort limits established by the Commission for two or more years;</u></p> <p><u>c. failure to submit an Annual Report for two or more years; and</u></p> <p><u>d. failure to submit operational level data for two or more years.</u></p>	<p><u>a. Any of the options identified under the next steps for Non-Compliant and Priority Non-Compliant statuses; and</u></p> <p><u>b. Additional compliance remedies, including, but not limited to: loss of quota, denial of access to data; penalties, etc.</u></p>
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⁷ A CCM will not be deemed High Priority Non-Compliant if it has 1) taken significant steps toward or made significant progress in completing an identified Next Step; and 2) has provided information and documentation of those efforts in its in Annual Report Part II.