**DRAFT PRINCIPLES DOCUMENT REQUESTING CMS-IWG PARTICIPANTS PROVIDE COMMENTS AND INPUT**

CMS IWG participant are asked to provide comments on the list of principles provided and add any others if they are missing. The comments should be in view of the working groups task to develop a CMM proposal for consideration at WCPFC15 this December.

| **DRAFT list of principles for the proposed CMM on CMS** | **Possible ref to current CMS (CMM 2017-07)** | **Comments** |
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| 1. **PREAMBLE** | *preamble* | Should be the last component of any measure as it should reflect the issues that the content is based on and the key principles used. |
| 1. **CMS PURPOSE** | *para 1* | The description of “purpose” of the CMS in the existing measure is largely fit for purpose. The way the CMM has evolved and, more importantly the way that some CCMs have approached the process have not lived up to that description, especially in terms of 1(ii) and (iv). |
| 1. **CMS SCOPE AND APPLICATION** | *para 2 – 4, 8 – 11, 12 -14, 15 – 21 Annex I* | The list of obligations to be assessed requires additional consideration in any future CMS. The list must be prioritised on a risk basis, with the risk of the Commission not meeting its objectives as the primary basis.  Refer to comments under XIII about workload. |
| * 1. **BALANCE ACROSS FLEETS AND FISHERIES** |  | As per the letter from PNA Chair, this is the critical issue for many PNA members. PNA members have worked hard to drive the adoption of many WCPFC CMMs, including by taking bold leading action (VDS and 3IA). The outcome of that seems to have been that it has provided authority for the Commission and other CCMs to delve into national laws and legal processes in fine detail.  Any future CMS must find better balance by focusing not only on the measures that are in place, but also on the patterns of reporting, compliance and enforcement. The current CMS is excessively focused on the purse seine fishery simply because of the higher standard of monitoring and reporting that results from 100% observer coverage. As a related outcome the current CMS is also excessively focused on compliance in PNA waters where coastal state compliance and enforcement processes already apply rather than on the high seas.  This issue is as much about the Commission’s overall approach to longline fisheries as it is about the CMS. The Commission simply must do better at introducing management and monitoring measures for the longline fishery, especially on the high seas.  Some flag States already do this, and others have commenced. |
| * 1. **CCM IMPLEMENTATION AS A FOCUS** |  | This is another of the critical issues for many PNA members. The purpose of the CMS (current) makes it clear that this is about CCM level implementation and not about vessel level compliance. The Review Report provides a useful analysis of this and supports the concept that the CMS should not focus on individual infringements as it does now. Unfortunately, the recommendation to appoint an “FSI Officer” seems to contradict that concept and PNAO does not support it.  Any future CMS must have a more clearly articulated starting and ending point when it comes to the information used and level of detail to demonstrate compliance or non-compliance.  Information held by the Secretariat and/or CCMs about vessel level activity is a useful indicator and can be presented in some aggregate form that would allow the Commission to identify any anomalous cases that might deserve attention (if, for example a large proportion of a given fleet were found to be non-compliant with a rule then it would be legitimate for the Commission to question whether the CCM is truly meeting its due diligence obligations).  But this cannot, under any circumstance, be allowed to grow into the current process which is far too detailed and time consuming and more importantly, places power in the hands of individuals to question national legal, law enforcement and judicial processes.  Refer to comment below in (d) about PNA Compliance Committee |
| * 1. **HANDLING INVESTIGATIONS OF VESSEL LEVEL INFRINGEMENTS** |  |
| * 1. **ZONE-BASED MANAGEMENT ARRANGEMENTS** |  | Any future CMS must enhance and not undermine zone based management.  In any list of “obligations to be assessed” there should be a distinction between those that are flag State-based (especially on the high seas) and those that are zone-based. Each category needs to be approached differently in recognition of the vastly different rights, opportunities and responsibilities that apply to coastal States and flag States in each respective area.  PNA has recently (March) established a Compliance Committee as an inwards-looking process to support and enhance the integrity of the VDS and to address other areas of compliance, such as PNA flag State interactions, which are currently borne out in the CMS. PNA members see this as a responsible response to the need to ensure that zone based measures are fully implemented. It is also an important step towards resolving incidents of vessel-level compliance though a bilateral process rather than through the current unwieldly whole-of Commission process. Other CCMs should be encouraged to form or renew bilateral arrangements around cooperation in investigation and resolution of vessel-level incidents. |
| * 1. **ACCEPTANCE OF NATIONAL LAWS AND JUDICIAL PROCESSES** |  | This should be (but is not now) a given. The authority, sovereignty and sovereign rights of Commission members, as reflected in their accession to the Convention, should not be called into question by any CMS.  This issue should largely be resolved/avoided by removing the current focus on vessel-level interactions and through considerations such as Principle (g) below. |
| * 1. **EFFECTIVE AND EFFICIENT CMS** |  | A given. Assessing compliance is one of the major functions of TCC, so there should not be difficulty spending time on it. However, the time currently dedicated to the CMS (in TCC and intersessionally) is disproportionate to the value of the outcomes. Any future CMS must find a better balance between cost (resource time and political) of inputs and value of outputs. |
| * 1. **GUIDANCE TO CCMs AND CLEAR AUDIT POINTS** |  | Again, the Review Report provides very useful coverage of this issue and PNAO supports the general outcomes of that analysis. The Commission should do a better job of considering “how will this be assessed” when agreeing to CMMs, and having an agreed set of audit points for each CCM that not only determine how CCMs will be assessed against each obligation, but also why it is important to assess that obligation.  Having said that, the simple reality is that CMMs are a product of negotiation and (so far) consensus. Much of the uncertainty in them is a result of these negotiations, including “crafted ambiguity” in some cases to resolve or avoid substantial disagreements. This is important for two reasons:   * Any future CMS must respect that background. If the Commission can’t reach full agreement on an issue in the negotiation then a CMS process should not simply be the opportunity for CCMs of one view to impose that view on others. * Recommendations like a legal scrub amongst a group of lawyers from different delegations are unlikely to add much value as they will all be bound by the national positions that went into the negotiation.   This is a very useful topic for discussion amongst the IWG. Having as clear an understanding of what obligations apply to whom, and guidance as to the level of detail required to demonstrate implementation, will be essential to any future CMS. |
| * 1. **EFFECTIVE CCM PARTICIPATION AND PROCEDURAL FAIRNESS** |  | Once again, the Review Report examines this in detail and provides some useful guidance, but PNAO, and PNA members, do not accept the conclusion that the current CMS achieves these requirements.  Procedural fairness requires that every CCM have adequate and equal opportunity to participate, including knowing exactly what is required of them, what they will need to demonstrate and what parameters other CCMs will operate within to question them.  If other fundamental principles here are adequately addressed then procedural fairness will follow as a result.  Once critical aspect of procedural fairness (and outcome fairness) is a review process. In this regard the Review recommendation for a simple process of Chair review at the request of a CCM seems useful. |
| * 1. **COLLABORATIVE, QUALITY IMPROVEMENT AND CORRECTIVE ACTION** |  | Throughout its design and subsequent evolution, the intention for the current CMS was that it would encourage such collaboration and cooperative action to improve compliance. PNA and FFA members were at pains to ensure that it should be a process that supports and assists CCMs (especially SIDS) to comply, rather than a simple punitive measure. That has not eventuated to an extent that most PNA members expect. It is rather a combative process where CCMs sit in judgement of each other.  The “capacity assistance needed” process was a good faith attempt on the part of the Commission to find a mechanism to deliver against this principle, but it has been largely ineffective. Some CCMs approach the capacity assistance debate with a degree of skepticism and distrust, making the process, and more importantly, the way it is implemented one that actually threatens SIDS rather than supporting them as they are then held to account for achievement against their capacity development plan even though the Commission is not held to account against things like the provision of resources to do so.  Any future CMS must incorporate SIDS special requirements, capacity requirements, available resources for capacity building and specific mechanisms for how SIDS will be assessed and how those findings will be conveyed. These must be starting points in the design process rather than an “add-on”.  This is closely related to implementation of CMM 2013-06. If that process is embraced by the Commission and by CMMs, there will be fewer incidents of “capacity-needed” because these considerations will be built into the CMMs themselves. |
| 1. **SPECIAL REQUIREMENTS OF DEVELOPING STATES, PARTICULARLY SIDS AND TERRITORIES** | *para 21* |
| 1. **TECHNICAL ASSISTANCE & CAPACITY DEVELOPMENT** | *para 5 – 7, 12 -14, Annex I* |
| 1. **PROCESS PRIOR TO TCC** | *para 22 - 26* | The letter from the PNA Chair included the following:  *Having said that, PNA do not agree with the overarching premise of the recommendations, which is that the current CMS is “fundamentally sound” and “achieves its objectives” and therefore do**agree that the current CMM is an adequate starting point for the future of the CMS.*  There is unfortunately a serious omission in the conclusion to this sentence, which should read:  … *and therefore do* ***NOT*** *agree that the current CMM is an adequate starting point for the future of the CMS.*  As such, PNAO views that it is too early to discuss matters of process as this assumes that the overall nature of a future CMS will be the same as the current CMM. The discussion on the fundamental principles should inform the development of a process well. |
| 1. **PROCESS DURING TCC** | *para 27 – 31, Annex I* |
| 1. **PROCESS FOR DETERMINING COMPLIANCE STATUS AND ENSURING FAIRNESS IN OUTCOME** | *para 19 – 20, Annex I* | The same comment as above applies to process.  Outcome fairness requires that all CCMs have been assessed to the same degree. It also requires that that the findings are presented in a way that responds to the Purpose of the CMS. At present, despite the potentially positive development of the “capacity-assistance needed” process, PNA members do not feel that there is adequate context given as to the reasons for any non-compliance. Any future CMS must adequately distinguish between different reasons for non-compliance to provide the basis for what actions are needed to address it. |
| 1. **ANNUAL COMMISSION MEETING** | *para 32 – 35, Annex I* | The same comment as above applies to process. |
| 1. **FOLLOW THROUGH ON COMPLIANCE OUTCOMES** | *para 32 – 36, Annex I* | Again, it is a little early to comment on this given the PNAO view that the principles should inform the assessment process, which will then inform the follow-through process. As identified in the Review Report, the lack of “responses to non-compliance” is a serious weakness in the current CMS. The fact that no such framework exists does not reflect the lack of effort that has gone into the matter over a period of years.  Ideally, guidance on responses to non-implementation should be built into any future CMS rather than being an “add-on” after the fact as is the current case. This would help to ensure that the measure itself is built to suit the potential outcomes and ramifications. |
| 1. **APPLICATION AND REVIEW PROCESS FOR CMS** | *para 40 - 41* | As mentioned above, such a process is important to ensuring fairness, and the Review recommendations seem useful. |
| 1. **TRANSPARENCY** | *para 17* | Transparency needs to be a consideration in two ways:   * Transparency between CCMs to achieve mutual assurance and confidence about the true state of implementation. This best advanced by some of the suggestions in the Review Report and covered above about having a single consistent understanding of who needs to implement a given obligation, how it will be assessed and what information a CCM would need to provide to demonstrate implementation. Any such understanding will need to embrace and recognise the legitimacy of the different approaches that CCMs take to implement measures (legislation, subordinate legislation, license conditions, access agreements etc). * External transparency. To be useful, the outcomes of the CMS need to be robust and transparent, but it is important to note the vast difference between using transparency as a tool to achieve an objective, and the application of transparency as an objective in and of itself. Any future CMS must pursue the former. The potential benefits of a transparent system need to be identified so that they can be weighed against risks. There are two dimensions that need to be considered on external transparency:   + Output/outcome transparency – to be achieved by ensuring that any future CMS produces outputs that CCMs are comfortable with being made public (as they are at present), but also that will actually be useful to external stakeholders. This highlights the importance of getting the procedural fairness, and scope principles correct as well as developing agreed responses to non-compliance. That will allow the Commission to produce a final output that cannot be misconstrued and that gives a casual reader an accurate picture of where the problems lie.   + Process/input transparency – much has been made about the current provisions that preclude registered observers from participating in the TCC and Commission sessions on the CMS report. These are a matter for CCMs to comment on rather than PNAO, however at the level of Principles, we note that none of the submissions or public commentary that we have seen actually presents a case as to what value observation would add to the process or the outcome. That is a matter worth exploring as it relates to the question above about transparency for transparency sake compared to transparency to improve the process and/or outcomes. |
| 1. **ADDRESSING ADMINISTRATIVE BURDEN AND RESOURCE IMPLICATIONS FROM CMS** |  | The need to reduce the burden across the board appears to be one for the few areas of unanimous agreement in the submissions to date.  As a general observation, supported by the findings of the Review Report, all participants (CCMs, Secretariat and subsequent TCC Chairs) have made enormous effort to make the current CMS work. The increase in workload that this has required on each of these, as well as the regional/sub-regional organisations that support WCPFC SIDS has been substantial.  The Review Report acknowledges this well, but PNAO does not necessarily agree with the recommendations in the report, many of which actually increase the workload (admittedly by sharing it around through additional staff members and processes like Friends of the Chair, small working groups etc).  Many of the principles above should deliver reduced burden across the board, especially removing the current cumbersome fixation on vessel incidents and flag State investigations. Having clear and common understanding of what is to be assessed (and a smaller list than the current one – even for 2018) and what burden of proof is required will also help significantly, as will removing duplication between Part 1 and 2 Annual Reports, Scientific Data provision, CMM level reports and any future CMS. |
| * 1. **FOR CCMs** |  |
| * 1. **FOR THE SECRETARIAT** |  |
| 1. **OTHERS** |  | **CMM 2013-06** – This is referenced above in the sense that if the Disproportionate Burden CMM was applied more rigorously before the Commission adopts CMMs, then SIDS implementation issues will not continue to be an issue.  Additionally, the IWG should use the elements of the checklist in CMM 2013-06 as principles when designing any future CMS as this will ensure that issues such as capacity to implement, accurate characterisation of capacity needs and identification of support mechanisms will be considered throughout the design process.  There will be a need for the IWG to formally complete the checklist and the PNAO recommends that this happen regularly as our experience has been that this is what it takes to reformulate proposals in ways that will not result in disproportionate burden or other implementation issues. |