

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

CMS IWG participants 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)** | **Australia’s Comments** |
| --- | --- | --- |
| 1. **PREAMBLE** | *preamble* | *Eg To be refined once draft CMM is further developed* |
| 1. **CMS PURPOSE** | *para 1* | We suggest that the scope articulated in paragraph 1 is largely appropriate and in line with Convention requirements. |
| 1. **CMS SCOPE AND APPLICATION** | *para 2 – 4, 8 – 11, 12 -14, 15 – 21 Annex I* | Retain paragraph 2.  Retain paragraphs 3i-3vii. Suggest that these paragraphs could form a basis for developing a hierarchy of importance, which could be linked to severity of responses to non-compliance. Noting that any responses to non-compliance may take place over a three year period (non-compliance occurs in year 1, CMR action in year 2, action implemented in year 3), non- compliance with the most important category should be addressed using more severe responses to non-compliance in the first instance.  Suggested categories from most important to lesser:  Category 1: 3i, 3ii, 3iv  Category 2: 3iii, 3v  Category 3: 3vi, 3vii  Australia considers this is broadly in line with the previous FFA positions articulated in WCPFC11-2014-DP10, which identified exceeding catch and effort limits, provision of operational level data, FAD management measures as priority issues to be addressed by the CMS. This does not preclude a graduated response to persistent non-compliance.  Retain paragraphs 8–11, with modification to instruct CCMs to use the WCPFC *investigation status report* template.  Retain paragraphs 12–14.  Suggest paragraphs 15–21 can be retained, noting amendments of paragraph 17 could be made in order to facilitate Observer participation during CMR discussions at TCC. |
| * 1. **BALANCE ACROSS FLEETS AND FISHERIES** |  | Support changes that ensure that the CMS process is balanced and fair in its treatment of all fleets and fisheries. We note the findings of the review that the CMS places disproportionate focus on the purse seine fishery, due to the higher level of transparency and control on this fishery.  In response to this inequality, we suggest that until transparency and control in longline fisheries improves, CCMs reporting on their longline fleets should be asked to provide a higher burden of proof that they are compliant with their obligations. |
| * 1. **CCM IMPLEMENTATION AS A FOCUS** |  | Australia is generally supportive of the CMS focus on CCM implementation as noted in (II CMS SCOPE) above.  However, Australia notes that many of the Commission’s agreed measures create obligations at the vessel level. Further, we note that vessel level infringements–and flag State response to these–provide an important indicator of implementation of CCM obligations. We suggest that this is a key issue for the IWG to work through in developing a new CMS.  Hence, Australia reserves its position on inclusion or exclusion of consideration of vessel level infringements, pending IWG discussions.  Suggest that reporting on CCM-level implementation should include up to three key indicators:   1. Statement of implementation (e.g. captured in national law, license condition, etc.) with evidence available on request (copy of relevant provision); and 2. *If necessary:* Qualitative statement of whether any infringements with the above were noted; and 3. *If necessary:* Summary of actions taken (e.g. sanctions applied/capacity development actions taken/investigation ongoing.   A CMS should not punish those that are implementing but highlight those that need to do more. And also should consider what is needed to ensure consistent and sufficient implementation – definition of problem, clear obligations (range of options that take into account capabilities and cost benefit), education and capacity building, (delayed) implementation via national legislation and policy.  We also suggest further work is needed to facilitate availability of previously submitted information. A statement of implementation should only need to be submitted once, with subsequent (years) CMS reporting referring to this implementation report and providing for CCMs to update if necessary. Further work on the Commission IMS to support a revised CMS should seek to facilitate reductions in duplicative/repetitive provision of information, both within and between CMS years. |
| * 1. **HANDLING INVESTIGATIONS OF VESSEL LEVEL INFRINGEMENTS** |  | The following comments relating to vessel level infringements and compliance status are provided without prejudice to Australia’s final position.  Australia considers information provided as part of flag State investigations provides an indicator of whether a flag State has implemented its obligations and can exercise flag State control over its vessels. An assessment that a CCM has not implemented its obligations should not rely soley on whether a CCM has undertaken or completed a FSI. Strongly support consideration of other indicators to inform a Commission decision on whether a country has implemented its obligations (eg national laws, education, deterrence mechanisms (eg effective penalties)).  Australia considers the review of flag state investigations (FSI) on vessel level infractions during TCC to currently be a difficult and time consuming process. While we would prefer discussions at TCC focus on compliance at the flag State/CCM level, we also recognize that FSIs are necessary to assess CCM compliance on certain matters and increase procedural fairness.  Australia would support further work on determining what FSIs are actually discussed during TCC, however we need to further consider whether this should be determined by TCC, or another body (e.g. a friends of the Chair arrangement).  In line with the CMS Review Report paragraph 6.12, Australia supports minimum standards in reporting of FSIs, including further scrutiny of FSIs which do not meet minimum standards. |
| * 1. **ZONE-BASED MANAGEMENT ARRANGEMENTS** |  | Australia assumes this is about giving effect to Article 8 in the Convention (compatibility of CMMs). If this is the case, we support ensuring due consideration of high seas arrangements. |
| * 1. **ACCEPTANCE OF NATIONAL LAWS AND ~~JUDICIAL PROCESSES~~  SANCTIONS** |  | Sanctions is the word used in the Convention and extends beyond judicial processes. Suggest this wording would be more appropriate as it is consistent with the Convention.  Australia is still determining a position on this principle. |
| * 1. **EFFECTIVE AND EFFICIENT CMS** |  | Support improving efficiency and effectiveness of the CMS through:   1. continuing ongoing process of initial assessment by Secretariat (Compliance Manager); 2. prioritization of obligations considered by CMSWG as follows:    1. high priority obligations considered by CMSWG;    2. lower priority obligations considered by sub-group (maybe a virtual IWG?);    3. reporting deadlines taken on Secretariat assessment by exception. 3. Responses to non-compliance formalized (see III - SCOPE AND APPLICATION and X - FOLLOW THROUGH ON COMPLIANCE OUTCOMES).   Australia also suggests that the function of the revised CMS, including ongoing implementation of responses to non-compliance, may benefit from direct/formalised links with existing or developing national/sub-regional frameworks. Australia suggests this should be discussed by the IWG. |
| * 1. **GUIDANCE TO CCMs AND CLEAR AUDIT POINTS** |  | Support articulating audit points for each CMM for clear reporting of implementing obligations. Australia could support a checklist approach to the development of new measures.  Australia seeks IWG and Commission discussion for a longer-term process to develop this, including a process for new measures and for review of existing measures. |
| * 1. **EFFECTIVE CCM PARTICIPATION AND PROCEDURAL FAIRNESS** |  | Ensure clarity of reporting obligations to ensure fair reporting and assessment for all CCMs.  Australia supports an informal right to appeal process, noting the formal process included in Article 31 of the Convention may not be practical for disputes of the CMS. Australia would seek to ensure that any informal review process was in alignment with existing Commission rules regarding transparency.  Australia could support an informal appeals process similar to that outlined in Annex G of the review report, however notes Annex G requires modification in order to achieve this purpose.  Annex G paragraph f allows CCMs up to 30 days post-TCC to submit a request for review, while paragraph j notes the *pCMR will refer to the request for a review, and will not make any findings as regards to compliance or non-compliance to the mater in question, pending the review*.  Australia believes this creates an inconsistency where reviews requested by CCMs prior to the finalization of the pCMR during TCC would be reflected as per paragraph j, while any appeals lodged in the 30 days post-TCC would have a compliance status recorded for the matter. |
| * 1. **COLLABORATIVE, QUALITY IMPROVEMENT AND CORRECTIVE ACTION** |  | CMS can identify issues with CMMs/capacity gaps to be addressed in non-CMS processes. Non-compliance should be addressed in formalized responses to non-compliance (see Section X FOLLOWING THROUGH ON COMPLIANCE OUTCOMES). |
| 1. **SPECIAL REQUIREMENTS OF DEVELOPING STATES, PARTICULARLY SIDS AND TERRITORIES** | *para 21* | Australia supports recognition of the special requirements of Developing States, especially SIDS and Territories. It is unclear what this means in terms of the CMS and how it intersects with CMM2013-6.  We suggest this should be also be considered in broader Commission process when developing/adopting measures (implementing the 13-06 assessment) and in responding to identified capacity needs (including process to develop a Strategic Investment Plan through the SRFWG) |
| 1. **TECHNICAL ASSISTANCE & CAPACITY DEVELOPMENT** | *para 5 – 7, 12 -14, Annex I* | Strongly support the CMS process being used as a mechanism for CCMs to highlight capacity gaps and strategies to rectify. , Addressing capacity gaps is not a function of the CMS.  Australia notes that all CCMs may experience capacity gaps, and supports retention of the current process that allows CCMs to alert the Commission of the need for technical assistance and capacity development for developing States. |
| 1. **PROCESS PRIOR TO TCC** | *para 22 - 26* | Although CMM 2017-07 (22) provides guidance to the Secretariat on what information they should use to prepare the dCMR, it may not be necessary to provide such an extensive list of documents.  Suggest modification of paragraph 22: *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 as reflected in paragraph 3 or modified by paragraph 15, as well as any potential compliance issues, where appropriate. Such information shall be sourced from* all information available to the Secretariat, including *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 data and information, 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.*  Retain paragraphs 23–26.  Australia notes that careful consideration will need to be given to the workload of the WCPFC Secretariat in addressing this in the development of a draft CMR and seek that the IWG seek advice/input from the Secretariat in developing this. |
| 1. **PROCESS DURING TCC** | *para 27 – 31, Annex I* | Suggest modification of paragraph 27: *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 24 of this measure. CCMs may also provide additional* written *information to TCC with respect to implementation of its obligations.* |
| 1. **PROCESS FOR DETERMINING COMPLIANCE STATUS AND ENSURING FAIRNESS IN OUTCOME** | *para 19 – 20, Annex I* | Retain current process. |
| 1. **ANNUAL COMMISSION MEETING** | *para 32 – 35, Annex I* | Retain paragraph 32.  Suggest modification to paragraph 33: *Up to 30 days prior to the Commission meeting, where a CCM is able to provide additional* written *information or* written *advice that clearly addresses implementation issues identified in the Provisional Report, the CCM may provide the Commission with that additional ~~advice or i~~nformation.* |
| 1. **FOLLOW THROUGH ON COMPLIANCE OUTCOMES** | *para 37 – 39 ~~32 – 36,~~ Annex I* | It is not clear if this should differ to Section IX above?  If this relates to paragraphs 37–39 and Annex I, Australia supports development of graduated responses to non-compliance as a priority for the Commission, including preparation of some responses to be included in the current measure for adoption this year if possible. This would not preclude development of further responses in future years.  Australia has previously provided comment on responses to non-compliance, including Australia’s work identified in paragraph 3.17 of the CMS Review Report, and by the FFA in WCPFC11-2014-DP10  Australia would also support all future CMMs clearly identifying appropriate responses to non-compliance, where possible (also see III SCOPE AND APPLICATION). We note the clear link between this and clear identification of how obligations will be assessed; Australia suggests that the identification of clear audit points (refer IIIg) will facilitate this.  Suggest modification of paragraph 37: taking into account paragraph 3, 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.*  Suggest modification of paragraph 38: *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 SIDS and Participating Territories, have an opportunity to participate. The intersessional working group shall endeavour to develop a process for consideration no later than* TCC14*~~TCC12~~ and adoption no later than* WCPFC15 *~~WCPFC13~~.* |
| 1. **APPLICATION AND REVIEW PROCESS FOR CMS** | *para 40 - 41* | Australia supports the adoption of a permanent CMS measure. Australia could accept adoption of a 5 year CMS measure, including mid-term and end-term review, but its position is that the Commission needs a permanent mechanism that holds each CCM to account with respect to meeting obligations. |
| 1. **TRANSPARENCY** | *para 17* | Australia notes the importance of reviewing non-public domain data as part of the CMS process and recognises the importance of protecting this data in line with agreed WCPFC policies. Australia also encourages transparency of WCPFC processes, including the CMS.  Australia notes that although *The Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission* provide opportunity for observers to gain access to non-public domain data, these are onerous.  Australia suggests that additional provisions could be inserted between paragraphs 17 and 18 in order to facilitate observer participation. These provisions should be consistent with existing WCPFC governance procedures. |
| 1. **ADDRESSING ADMINISTRATIVE BURDEN AND RESOURCE IMPLICATIONS FROM CMS** |  |  |
| * 1. **FOR CCMs** |  | Support minimizing submission of data requests.  Where possible, reporting burdens should be minimized and where information is already available to the Secretariat, this information could be used to prepopulate other reports. |
| * 1. **FOR THE SECRETARIAT** |  | Continue to support reasonable and cost effective development of the Commission IMS to support the CMS process. |
| 1. **OTHERS** |  |  |