Japan’s comments on FFA proposal for Compliance Management Scheme

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 purpose of the CMS is not to assess compliance by individual vessels.
2. 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 CMMs which may require refinement or amendment for effective implementation;

(iv) respond to non-compliance by CCMs through remedial options that include a range of possible responses that take account of the reason for and degree of noncompliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations; and

(v) monitor and resolve outstanding instances of non-compliance by CCMs with their obligations.

1. The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles:

(i) Effectiveness: focus on meeting the purpose of this CMM and these Principles to assess compliance by CCMs;

(ii) Efficiency: including avoiding unnecessary administrative burden or costs on CCMs or the Secretariat and removing duplicative reporting obligations; and

(iii) Fairness: ensuring that CCMs are:

 informed and understand their obligations and associated performance expectations;

 informed of any potential non-compliance with their obligations;

 given reasonable time and opportunity to respond to such potential noncompliance;

 adequately represented;

 given a fair and unbiased hearing and that any findings are based on evidence;

 given the right to review any findings made against them.

(iv) Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.

1. 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 CCM non-compliance, in accordance with the approach set out in this section.
2. The CMS shall recognise and shall not prejudice the rights, jurisdiction and duties of any CCM to adopt and enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with that CCM’s international obligations.
3. Each year, the Commission shall consider, taking into consideration any recommendations from TCC, what obligations shall be assessed in the following year using a risk-based approach. In making this determination, the Commission shall take into account:

(i) the needs and priorities of the Commission, including those of its subsidiary bodies;

(ii) evidence of high percentages of non-compliance or persistent non-compliance by CCMs with specific obligations for multiple years; and

(iii) the potential risks posed by non-compliance by CCMs with CMMs (or collective obligations arising from CMMs) to achieve the objectives of the Convention or specific measures adopted thereunder.

1. The Commission shall undertake an annual assessment of compliance by CCMs during the previous calendar year with the priority obligations identified under paragraph 6. Such　assessment shall be determined based on two criteria:

(i) Implementation – where an obligation applies, the CCM is required to provide　evidence that it has adopted, in accordance with its own national policies and　procedures, binding measures that implement that obligation; and

(ii) Follow through on Compliance Outcomes – the CCM is required to provide　evidence that it has a system or procedures to monitor compliance of vessels　with these binding measures and to respond to non-compliance.

1. 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.
2. Notwithstanding paragraph 4, where a SIDS or Participating Territory, or Indonesia or the Philippines cannot meet a particular obligation that is being assessed, due to a lack of capacity, that CCM shall provide a Capacity Development Plan to the Secretariat with their draft Compliance Monitoring Report (dCMR), that:

(i) clearly identifies and explains what is preventing that CCM from meeting that obligation;

(ii) identifies the capacity assistance needed to allow that CCM to meet that obligation;

(iii) estimates the costs and/or technical resources associated with such assistance, including, if possible, funding and technical assistance sources where necessary;

(iv) sets out an anticipated timeframe in which, if the identified assistance needs are provided, that CCM will be able to meet that obligation.

1. The CCM may work together with the Secretariat to draft the Capacity Development Plan. This plan shall be attached to that CCM’s comments to the dCMR.
2. Where TCC recognizes that a capacity assistance need has been identified in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, TCC shall assess that CCM as “Capacity Assistance Needed” for that obligation. TCC shall recommend to the Commission that it allow the Capacity Development Plan to run until the end of the anticipated timeframe and assistance delivery set out therein.
3. That CCM shall report its progress under the Capacity Development Plan every year in its Annual Report Part II. That CCM shall remain assessed as “Capacity Assistance Needed” against that particular obligation until the end of the timeframe in the plan.
4. Where the Commission is involved in the Capacity Development Plan to assist that CCM, the Secretariat may provide an annual report of such assistance to TCC on behalf of that CCM.
5. If a CCM notifies the Commission that its capacity needs have been met, the Capacity Development Plan for that obligation shall be deemed completed and the CCM’s compliance with that obligation shall then be assessed in accordance with Annex I.
6. Unless TCC agrees that the SIDS, Participating Territory, Indonesia or Philippines amends its Capacity　Development Plan, once the timeframe in that Plan has passed, that CCM’s compliance with　that obligation shall be assessed in accordance with Annex I.
7. The Commission recognises the special requirements of developing State CCMs, particularly SIDS 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 information, 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.

1. 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.
2. Each dCMR shall reflect information relating to the relevant CCM’s implementation of obligations as identified under paragraph 6 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 the Annual Report Part II as well as information available to the Commission through other data collection programmes, including but not limited to, high seas transshipment reports, Regional Observer Programme 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.
3. The Draft Report shall present all available information relating to each CCM’s implementation of obligations for compliance review by TCC.
4. At least 55 days prior to TCC each year, the Executive Director shall transmit to each　CCM its dCMR.
5. At the same time, the Executive Director shall transmit to all CCMs a separate document containing aggregated vessel level data across all fleets, drawn from the online compliance case file system, to provide an indicator of potential anomalies in the implementation of the Convention and the CMMs by a CCM, with a view towards identifying implementation challenges. This document shall constitute Non-Public domain data. The presence of potential vessel infringements in such aggregated data shall not be used to influence the compliance assessment of the CCM.
6. Upon receipt of its dCMR, each CCM may, where appropriate, reply to the Executive Director no later than 28 days prior to TCC each year to:

(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.

1. Relevant CCMs may continue to provide additional information or clarification into the online compliance case file system. Where such additional information or clarification is provided, at least fifteen days in advance of the TCC meeting, the Executive Director shall circulate an updated version of the document referred to under paragraph 21.
2. To facilitate meeting obligations under paragraphs 22 and 23, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.
3. At least fifteen days 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 requirements for further information to assess the relevant CCM’s compliance status, in a form to be agreed to by the Commission, including all information that may be provided under paragraph 22.
4. 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 22 of this measure. CCMs may also provide additional　information to TCC with respect to implementation of its obligations.
5. Taking into account any Capacity Development Plans developed pursuant to paragraphs 9 – 11, 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 includes a compliance status with respect to all applicable individual obligations as well as recommendations for any corrective action(s) needed by the CCM or action(s) to be taken by the Commission, 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 Annex I of this measure.
6. A CCM shall not block its own compliance assessment if all other CCMs present have　concurred with the assessment. If the assessed CCM disagrees with the assessment, its view　shall be reflected in the Provisional or Final CMR. Such CCM may also invoke the process set out in Section VII.
7. Where a CCM has missed a reporting deadline, but has submitted the required　information, this obligation will be accepted by TCC, unless a CCM has a specific concern or if there are updates from the Secretariat based on new information received.
8. Subject to paragraph 28, a provisional assessment of each CCM’s Compliance Status shall be decided by consensus. If every effort to achieve consensus regarding a particular CCM’s compliance with an individual obligation has failed, the provisional CMR shall indicate the majority and minority views. A provisional assessment shall reflect the majority view and the minority view shall also be recorded.
9. The Provisional Report shall also comprise an executive summary including recommendations or observations from TCC regarding:

(i) identification of any CMMs or obligations that should be reviewed to address implementation or compliance difficulties experienced by CCMs, particularly when TCC has identified ambiguity in the interpretation of or difficulty in monitoring and implementing that measure or obligation, including any specific amendments or improvements that have been identified,

(ii) capacity building assistance or other obstacles to implementation identified by CCMs, in particular SIDS and Participating Territories,

(iii) risk-based assessment of priority obligations to be assessed in the subsequent year.

32. The Provisional Report shall be finalised at TCC and forwarded to the Commission for consideration at the annual meeting.

[*This is taken from the Independent Review Panel’s Final Report and whilst FFA Members agree to the concept, we will need to further consider the details.*

Where a CCM is of the view that the TCC process has operated in a manner that has been procedurally unfair for it, or that it has produced an outcome that is unfair for it, that CCM may request an informal review of the process or outcome or both. The request shall be communicated to the Executive Director in writing not later than 30 days after the conclusion of the TCC in question.

The review will be conducted by the Chair of the Commission between the TCC in which the matter arose and the next Commission annual session. The Chair of the Commission will be assisted by the Vice-Chair and, if the CCM so requests, by two other CCMs one from FFA members and one from other States, who shall be selected by the Chair after consultation with those groups.

The review will normally be conducted by way of a written submission by the CCM, or by any individual or organization acting on behalf of the CCM. The Chair will also seek a report on the matter from the Chair of the TCC.

If the CCM requests, the CCM will also be given the opportunity to make oral submissions, which may also be made by any individual or organization acting on its behalf.

The Provisional Compliance Monitoring Report will refer to the request for a review, and will not make any finding as regards compliance or non-compliance with respect to the matter in question, pending the review.

The outcome of the review will be decided by a majority of those conducting the Review, with the Chair having a deciding vote if necessary. The outcome will be communicated to the meeting of the Commission following the TCC in question. The Commission will take the outcome into account in adopting the final Compliance Monitoring Report including its decision regarding compliance or non-compliance with respect to the matter in question.]

XX. Up to 30 days prior to the Commission meeting, a CCM may provide the Commission with additional information or advice that it believes clearly addresses implementation issues identified in the Provisional Report.

1. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.
2. Taking into account any reviews undertaken after TCC under Section VII and/or any additional information or advice provided by CCMs, the Commission shall adopt a final Compliance Monitoring Report.
3. The final Compliance Monitoring Report shall include a Compliance Status for each CCM against each assessed obligation and any corrective action needed, and also contain an executive summary setting out any recommendations or observations from the Commission regarding the issues listed in paragraph 30 of this measure.
4. Each CCM shall include, in its Part II Annual Report, any actions it has taken to address non-compliance identified in the Compliance Monitoring Report from previous years.
5. The Commission hereby establishes an intersessional working group to develop a multi-year workplan with tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining processes. This workplan shall include inter alia:

(i) a comprehensive review of all the Commission’s reporting requirements, with recommendations to remove duplicative reporting as well as ensure the Commission’s data and information needs are met;

(ii) the development of audit points to clarify the Commission obligations assessed under the CMS, as well as the development of a checklist to be used by the proponents of any proposal to include a list of potential audit points for the consideration of the Commission;

(iii) the development of a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission;

(iv) the development of corrective actions to encourage and incentivise CCMs’ compliance with the Commission’s obligations, where non-compliance is identified. This may include the possible requesting each CCM to develop its Action Plan to comply with the Commission’s obligations, the revision of existing measures and building these actions into future measures;

(v) the development of the guideline for participation of observers in closed meetings of the Commission and its subsidiary bodies which consider the Compliance Monitoring Report; and

(vi) any other tasks as required by the Commission.

1. The Commission shall develop overarching guidelines for the CMS, including operating procedures and systems to guide the work of the Secretariat, consistent with the Principles in this measure. TCC shall consider any workplan and resourcing requirements to facilitate the work of the Secretariat in this regard.
2. This measure shall be reviewed in 2020.
3. This measure will be effective for 2019 and 2020 only.