



TECHNICAL AND COMPLIANCE COMMITTEE
Fourteenth Regular Session
26 September – 2 October 2018
Majuro, Republic of Marshall Islands

REVIEW OF THE WCPFC COMPLIANCE MONITORING SCHEME

Draft Conservation and Management Measure for Compliance Monitoring Scheme

WCPFC-TCC14-2018-10A_rev1¹

2 October 2018

CMS-IWG Working Draft Text – revision 2

A face to face meeting of the Compliance Monitoring Scheme Intersessional Working Group was held on 25 September in Majuro, Republic of the Marshall Island. The Background Note on the Compliance Monitoring Scheme (WCPFC-2018-CMSIWG-02) reviewed the background to the Review of the Compliance Monitoring Scheme, and the process that the Compliance Monitoring Scheme Intersessional Working Group (CMS IWG) had undertaken in response to its mandate given by WCPFC14. While good progress had been made in the CMS IWG, the Chair of the CMS IWG viewed a face to face meeting as imperative to progress the development of a draft measure for the CMS to a stage that it could be presented to WCPFC15. A face-to-face meeting of the CMS IWG was approved through an intersessional decision and funded through a voluntary contribution from New Zealand. The New Zealand assistance towards the holding of the face to face meeting is greatly appreciated.

In establishing the CMS IWG at WCPFC14 (2017), the Commission tasked the CMS IWG to facilitate consideration of the report from the Independent Panel on the Review of the Compliance Monitoring Scheme and to develop a proposed conservation and management measure for the Compliance Monitoring Scheme (CMS) for consideration at WCPFC15 (2018). A summary of the views of the CMS IWG on the report from the Independent Panel on the Review of the Compliance Monitoring Scheme is contained in WCPFC-TCC14-2018-10B. At its face to face meeting the CMS IWG therefore concentrated on its other task of the development of a proposed CMM on the CMS.

The FFA presented its proposal on a CMM for the CMS (WCPFC-2018-CMSIWG-03). The face to face meeting agreed to use the FFA proposal as a starting point for the development of a CMS-IWG draft text for presentation and consideration by the Commission at WCPFC15.

The CMS IWG used a working document (WCPFC-2018-CMSIWG-04_rev1) to facilitate discussion on the draft CMM on the CMS. Following discussion at the face to face meeting, further discussions took place between relevant CMS IWG participants in the spirit of

¹ This version replaces the CMS-IWG draft text that was issued on 29 September 2018 and considers the discussions that took place on 1 October 2018. An updated list of taskings for CMS-IWG participants is posted as **WCPFC-2018-CMSIWG-Homework_rev1**

flexibility to develop draft revised text based on a task list (WCPFC-2018-CMSIWG-Homework).

A further discussion of the CMS IWG took place on 1 October 2018 in the margins of TCC14 and in light of a Working Draft Text of a CMM on the CMS contained in WCPFC-TCC14-2018-10A. The Working Draft contained in WCPFC-TCC14-2018-10A took into account the discussions in the margins of TCC14 between some CMS IWG participants.

Provisions where there were divergent views or alternative proposals were in square brackets and the right column of the table contained notes which briefly indicated the status of the relevant paragraphs. To encourage the document's use as a working document, individual positions of CMS IWG participants were not identified in the document.

In light of discussion in the CMS IWG on 1 October 2018, a revised task list has been prepared and is contained in WCPFC-2018-CMSIWG-Homework_rev1.

The Working Draft (WCPFC-TCC14-2018-10A) has also been amended to take into account discussions in the CMS IWG in the margins of TCC14. It follows the same format as WCPFC-TCC14-2018-10A. It contains draft revisions to the FFA proposal and alternative proposals submitted as a result of the tasking group process (**changes in red, with additions shown in underlining and deletions in strikethrough**). This Working Draft is a tool to assist in the development of a CMM on the CMS. It is without prejudice to the individual positions of participants of the CMS IWG or CCMs.

The Working Draft should be read in conjunction with the written submissions by CMS IWG participants on the FFA proposal and contained on the WCPFC website at <https://www.wcpfc.int/cms-iwg>. In particular the Working Draft should be considered in light of WCPFC-2018-CMSIWG-04_rev1 and the EU comments on the Working Draft posted on 25 September 2018.

Further work of the CMS-IWG will take place in the intersessional period prior to WCPFC15. A working paper from the USA on its proposal regarding paragraphs 7 and 16 is to be submitted to the CMS IWG by 15 October 2018. The USA, EU and Japan are encouraged to discuss their various proposals for the Preamble by 22 October 2018. CMS IWG participants are also encouraged to work intersessionally to narrow the difference in positions on the Working Draft.

A final draft CMM on the CMS which takes into account this intersessional work will be presented to WCPFC15.

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

WORKING DRAFT TEXT – revision 2 (2 October 2018)

Working Draft	Notes
<i>The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Commission)</i>	
<i>In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):</i>	
<i>Recalling that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention,</i>	Preamble not discussed Proposed text from the USA, EU and Japan included in this Working Draft
<i>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 adopted by the Commission,</i>	
<i>Noting also that, in accordance with international law, Members, 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,</i>	
<i>Acknowledging 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,</i>	
<i>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 by Members, Cooperating Non-Members and Participating Territories with management measures,</i>	
ALT 1 [Recognising the sovereign rights of coastal States, in particular SIDS and territories in the Convention Area, to implement zone-based measures to ensure the sustainable management of fisheries within their Exclusive Economic Zones, and to determine including determining how to implement their	

Working Draft	Notes
<p>WCPCFC the obligations of the Commission in their national laws and enforcement of those laws,]</p>	
<p>ALT 2 [Recognising the sovereign rights of coastal States, in particular SIDS and territories in the Convention Area, to implement <u>proper conservation and management zone-based</u> measures <u>within their Exclusive Economic Zones in accordance with international law including UNCLOS</u> to ensure the sustainable management of fisheries within their Exclusive Economic Zones, including determining how to implement the obligations of the Commission in their national laws and enforcement of those laws,]</p>	
<p><i>Committed</i> to Article 30 of the Convention which requires the Commission to give full recognition to the special requirements of developing States, in particular SIDS and territories, [including which may include] the provision of financial, technical and capacity development assistance,</p>	
<p>[Recognising that smaller island developing States have unique needs which require special attention and consideration in the provision of financial, scientific and technological assistance,]</p>	
<p><i>Committed</i> to the implementation of Conservation and Management Measure 2013-07 to give operational effect to the full recognition of the special requirements of SIDS and territories in the Convention Area, in particular such assistance as may be needed to implement their obligations,</p>	
<p><i>Further committed</i> to the implementation of Conservation and Management Measure 2013-06 by applying the criteria to determine the nature and extent of the impact of a proposal on SIDS and territories in the Convention Area, in order to ensure that they can meet their obligations, and to ensure that any measure does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories,</p>	
<p><i>Recalling</i> the specific function of TCC under Article 14(1)(b) [of the Convention] to monitor and review compliance by CCMs with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary,</p>	
<p><i>Recognising</i> 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,</p>	

Working Draft	Notes
<p><u>[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.]</u></p>	
<p>Cognisant of the MCS and enforcement framework developed by the Commission, <i>inter alia</i> the 2010-06 Conservation and Management Measure to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing activities in the WCPO, the online Compliance case file system, Article 25 of the Convention, which considers <u>[among others]</u> the compliance by individual vessels,</p>	
<p><i>Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:</i></p>	

Section I – Purpose

Working Draft	Notes
<p>1. <u>[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.]</u></p>	<p>No agreement. Further discussion required on issue of compliance by individual vessels. {linked to paras 7 and 16}</p>
<p>2. <u>[The CMS is designed to:</u></p> <ul style="list-style-type: none"> (i) assess CCMs’ compliance with their <u>WCPFC</u> 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 <u>and/or preventative</u> options that include a range of possible responses that take account of the reason for and degree, <u>the severity, consequences and frequency</u> of non-compliance, as may be necessary and appropriate to promote compliance 	<p>Partial agreement. Revised following tasking group discussions. No agreement on whether to include reference to penalties.</p>

Working Draft	Notes
<p>with CMMs and other Commission obligations;² and</p> <p>(v) monitor and resolve outstanding instances of non-compliance by CCMs with their <u>WCPFC</u> obligations.]</p>	

ALT 1

[Section II – Principles]

Working Draft	Notes
<p>3. [The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles:</p> <p>(i) Effectiveness: focus on meeting the purpose of this CMM and these Principles to assess compliance by CCMs;</p> <p>(ii) Efficiency: including avoiding unnecessary administrative burden or costs on CCMs or the Secretariat and removing duplicative reporting obligations; and</p> <p>(iii) Fairness: ensuring that CCMs are:</p> <ul style="list-style-type: none"> • 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 non-compliance; • 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. <p>(iv) Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.]</p>	<p>No agreement. Further discussion required.</p>

² In accordance with the process for identifying responses to non-compliance adopted by the Commission to complement the Scheme, as provided for in paragraph 37(iv).

ALT 2

[Section II – Principles Guidelines]

Working Draft	Notes
<p>3. [The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles to:</p> <p>(i) Effectiveness: focus on <u>Effectively serve meeting</u> the purpose of this CMM and these Principles to assess compliance by CCMs and assist in fulfilling the provisions of Article 25 of the Convention;</p> <p>(ii) Efficiency: including avoiding <u>Avoid</u> unnecessary administrative burden or costs on CCMs or the Secretariat and removing assist in identifying duplicative reporting obligations; and</p> <p>(iii) Promote F<u>fairness, including by:</u> ensuring that CCMs are:</p> <ul style="list-style-type: none">• informed and understand <u>of</u> 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 non-compliance;• adequately represented <u>able to participate adequately in the process and state their views;</u>• given a fair and unbiased hearing and that any findings are based on evidence <u>engaged in decision-making based on a factual assessment of available information;</u>• given the right to review any findings assessments <u>made against them.</u> <p>(iv) Promote a supportive, collaborative, and non-adversarial approach where possible, with the aim of ensuring long-term compliance, including considering capacity assistance needs or other responses to non-compliance. Collaborative, Quality Improvement and Corrective action for CCMs requiring assistance to work towards compliance.]</p>	<p>Alternative proposal. Further discussion required.</p>

Section III - Scope and application

Working Draft	Notes
<p>4. 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.</p>	<p>No comment</p>
<p>5. [The CMS shall recognise and shall not prejudice the rights, jurisdiction and duties of coastal States 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.]</p>	<p>No agreement. Tasking group made progress but no agreement reached.</p>
<p>6. [Each year, the Commission shall consider what obligations shall be assessed in the following year using a risk-based approach. In making this determination, the Commission shall take into account:</p> <ul style="list-style-type: none"> (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; (iii) the risks associated with fisheries managed by the Commission that are not monitored independently and for which there is limited data; and (iv) 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.] 	<p>No agreement. Further discussion required including on inclusion of risk based approach to prioritisation.</p>
<p><u>ALT 1:</u></p> <p>7. [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:</p> <ul style="list-style-type: none"> (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 	<p>No agreement. Further discussion required on the criteria on which to base assessments.</p>

Working Draft	Notes
<p>vessels with these binding measures and to respond to non-compliance.]</p>	
<p><u>ALT 2:</u></p> <p>7. [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 <u>the following</u> criteria:</p> <ul style="list-style-type: none"> (i) <u>For a CCM-level quantitative limit or collective CCM quantitative limit, such as a limit on fishing capacity, fishing effort, or catch, verifiable data indicating that the limit has not been exceeded.</u> (ii) <u>For other obligations:</u> <ul style="list-style-type: none"> a. Implementation – where an obligation applies, the CCM is required to provide [evidence] <u>[information showing]</u> that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation; and b. Follow through on Compliance Outcomes Monitor and ensure compliance – the CCM is required to provide evidence <u>information showing</u> that it has a system or procedures to monitor compliance of vessels <u>and persons</u> with these binding measures, <u>a system or procedures and</u> to respond to <u>instances of non-compliance and has taken action in the event of potential non-compliance to investigate and respond to any non-compliance.</u>] 	<p>Alternative proposal. Further discussion required on the criteria on which to base assessments.</p>
<p>8. 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.</p>	<p>No comment.</p>

Section IV – Special Requirements of Developing States

Working Draft	Notes
<p>9. 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 capacity³, that CCM shall provide a Capacity Development Plan to the Secretariat with their draft Compliance Monitoring Report (dCMR), that:</p> <ul style="list-style-type: none"> (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. 	<p>No comment.</p>
<p>10. 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.</p>	<p>No comment. Issue resolved following tasking group discussion.</p>
<p>11. [Where a capacity assistance need has been identified, <u>through the preparation of a Capacity Development Plan</u>, in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, <u>and TCC has confirmed that all of the elements of the Capacity Development Plan as stated in paragraph 9 are included</u>, 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.]</p>	<p>Likely agreement. Revised following tasking group discussion.</p>
<p>12. 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.</p>	<p>No comment.</p>
<p>13. [Where the Commission is identified in the Capacity Development Plan to assist that CCM, the Secretariat shall provide an annual report of such assistance to TCC.]</p>	<p>No comment. Issue resolved following tasking group discussion.</p>

³ Any CCM may identify a capacity assistance need through the CMS process; however, the application of paragraphs 9 – 11 is limited to those CCMs identified in the paragraph.

Working Draft	Notes
<p>14. 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.</p>	<p>No comment.</p>
<p>15. [Unless the SIDS, Participating Territory, Indonesia or Philippines amends its <u>the</u> Capacity Development Plan <u>that it submitted under paragraph 11 in its dCMR and TCC has confirmed that all the elements of that Plan as stated in paragraph 9 are included</u>, once the timeframe in that <u>original</u> Plan has passed, that CCM's compliance with that obligation shall be assessed in accordance with Annex I.]</p>	<p>Likely agreement. Revised following tasking group discussions.</p>
<p>16. 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:</p> <p>(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</p> <p>(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.</p>	<p>No comment.</p>

ALT

<p><u><i>Investigation Status Report</i></u></p> <p><u>16 bis. Where a CCM cannot complete an investigation into an alleged violation prior to TCC, that CCM shall provide an Investigation Status Report (ISR) to the Secretariat with the dCMR, that provides the following information:</u></p> <p><u>(i) whether an investigation has been commenced;</u> <u>(ii) the process that CCM will take to complete the investigation, within its relevant national processes and laws;</u> <u>(iii) an anticipated timeframe to complete the investigation.</u></p>	<p>No agreement. Alternative and additional proposal to reintroduce flag state investigation. Tasking group is also considering a somewhat different, compromise approach whereby CCMs would be assessed separately based on implementation of obligations and their</p>
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16 ter. The CCM may work together with the Secretariat to draft the ISR. This report shall be attached to that CCM's comments to the dCMR.

16 quater. Where an investigation has been notified as ongoing, through the preparation of an ISR, and TCC has confirmed that all of the elements of the ISR as stated in paragraph [X] are included, TCC shall assess that CCM as "Flag State Investigation" for that obligation.

16 quinquies. When an investigation is complete, that CCM shall provide a report of the outcome of the investigation in its Annual Report Part II that shall include the information listed below, and based on that information, the TCC shall determine whether the status should be changed to Flag State Investigation Completed:

- (i) Whether a violation was found to have occurred;
- (ii) If enforcement action was taken – what was that action, including the amount of any penalty or permit sanction, as applicable;
- (iii) If no enforcement action was taken – a brief statement providing the reason(s).

16 sexies. Where an investigation has been ongoing for two years, that CCM shall report to TCC annually on the status of the investigation and steps it has taken to progress the investigation, and based on that report, the TCC may reconsider the CCM's assessment status.]

response as flag CCMs to alleged violations by their vessels of those obligations. Alternative text can be provided for this suggestion.

Section V – Prior to TCC

Working Draft	Notes
<p>17. 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.</p>	<p>No comment.</p>
<p>18. 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</p> <p><u>i</u> 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;</p> <p><u>ii</u> information contained in an Annual Report which is not available through other means; and</p> <p><u>iii</u> where appropriate, any additional suitably documented information regarding compliance during the previous calendar year.</p>	<p>Agreement. Revised following tasking group discussions.</p>
<p>19. The Draft Report shall present all available information relating to each CCM’s implementation of obligations for compliance review by TCC.</p>	<p>No comment.</p>
<p>20. At least 55 days prior to TCC each year, the Executive Director shall transmit to each CCM its dCMR.</p>	<p>No comment.</p>
<p>21. [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.]</p>	<p>No agreement. Further discussion required in light of alternative para 7 and 16 language.</p>
<p>22. 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:</p>	<p>No comment.</p>

Working Draft	Notes
<p>(i) provide additional information, clarifications, amendments or corrections to information contained in its dCMR;</p> <p>(ii) identify any particular difficulties with respect to implementation of any obligations; or</p> <p>(iii) identify technical assistance or capacity building needed to assist the CCM with implementation of any obligations.</p>	
<p>23. 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.</p>	<p>No comment.</p>
<p>24. To facilitate meeting obligations under paragraphs 22 and 23, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.</p>	<p>No comment.</p>
<p>25. 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 {CCM} 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 23}.</p>	<p>Agreement. Revised following tasking group discussions. Cross-reference corrected.</p>
<p>26. 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.</p>	<p>No comment.</p>

Section VI – Development of the Provisional Compliance Monitoring Report at TCC

Working Draft	Notes
<p>27. 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</p>	<p>No comment. {Note cross reference.}</p>

Working Draft	Notes
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.	
28. Subject to paragraph 28, a <u>A</u> 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.	Agreement. Revised following tasking group discussions to place previous para 28 before other paragraphs and make consequential changes.
29. Notwithstanding paragraph 28 above, a <u>A</u> 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.]	Partial agreement. Further discussion required on final sentence and Section VII.
30. Where a CCM has missed a reporting deadline, ⁴ 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.	No comment.
31. [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.]	No agreement. Further discussion required including on risk based assessment.
32. [The Provisional Report shall be finalised at TCC and forwarded to the Commission for consideration at the annual meeting.]	No agreement. Further discussion required regarding whether information is

⁴ For the purposes of the Compliance Monitoring Scheme, all reporting deadlines will be based on Universal Time Code (UTC) time unless the CMM establishing the deadline specifies otherwise.

Working Draft	Notes
	to be provided between TCC and Commission. {Note link to paras 33 and 34.}

Section VII – Process after TCC

[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.]

Working Draft	Notes
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.]</p>	<p>No agreement. Further discussion required on any appeal mechanism and its details.</p>

Section VIII – Process at the Commission

Working Draft	Notes
33. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC.	No comment.
34. [Taking into account any reviews undertaken after TCC under Section VII,] the Commission shall adopt a final Compliance Monitoring Report.	No agreement. Further discussion required on Section VII.
35. 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 31] of this measure.	No comment. Cross reference corrected.
36. 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.	No comment.

Section IX – Future Work

Working Draft	Notes
<p>37. [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 <i>inter alia</i>:</p> <ul style="list-style-type: none"> (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 revision of existing 	No agreement. Further discussion required, including on details of the work plan and its placement.

Working Draft	Notes
measures and building these actions into future measures; and (v) any other tasks as required by the Commission.]	
38. [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.]	No agreement. Further discussion required. {Note link to para 3}.

Section X – Application and review

Working Draft	Notes
39. [This measure shall be reviewed in 2019.]	No agreement. Further discussion required on term of measure and review period.
40. [This measure will be effective for 2019 only.]	No agreement. Further discussion required on term of measure and review period.

[Annex I - Compliance Status Table

FFA Members recognise the future work required to develop audit points (as set out above in future work). Further consideration will be needed on the criteria for the transitional period in 2019.

Working Draft			Notes
Compliance Status ⁵	Criteria	Response	
<i>Compliant</i>	Compliance with the audit points	None	No agreement. Further discussion required. {Note link to draft text}
<i>Non-Compliant</i>	Failure to meet the audit points	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. Actions may include, one or more of the following: a. A CCM must address the issue to gain compliance by the next compliance assessment; or b. A CCM shall provide a Status Report to the Secretariat; or c. Other response as determined by the Commission.	

⁵ This annex applies to compliance statuses assigned for each individual obligation.

Working Draft			Notes
<i>Priority Non-Compliant</i>	<p>a. non-compliance with high-risk priority obligations and associated audit points</p> <p>b. repeated non-compliance with an obligation for two or more consecutively assessed years; or</p> <p>c. any other non-compliance identified as Priority Non-Compliant by the Commission.</p>	<p>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. Actions may include, one or more of the following:</p> <p>a. A CCM must address the issue to gain compliance by the next compliance assessment;</p> <p>b. Other response as determined by the Commission.</p>	
<i>Capacity Assistance Needed</i>	<p>When a SIDS or Participating Territory or Indonesia or the Philippines cannot meet an obligation that is being assessed due to a lack of capacity, that CCM shall provide a Capacity Development Plan to the Secretariat with the dCMR prior to TCC.</p>	<p>(i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to become compliant with the obligation, and</p> <p>(ii) report progress against that plan every year in its Annual Report Part II until the end of the timeframe specified in that Plan.</p>	

Working Draft			Notes
<i>CMM Review</i>	There is a lack of clarity on the requirements of an obligation.	The Commission shall review that obligation and clarify its requirements.]	