



COMMISSION
FIFTEENTH REGULAR SESSION
Honolulu, Hawaii, USA
10 – 14 December 2018

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

Conservation and Management Measure 2018-07*

The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Commission)

In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention):

Recalling that the Commission has adopted a wide range of conservation and management measures to give effect to the objective of the Convention,

Noting that, in accordance with Article 25 of the Convention, Members of the Commission have undertaken to enforce the provisions of the Convention and any conservation and management measures adopted by the Commission,

Noting also that, in accordance with international law, Members, Cooperating Non-Members of the Commission and Participating Territories have responsibilities to effectively exercise jurisdiction and control over their flagged vessels and with respect to their nationals,

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,

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,

Committed 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, which may include the provision of financial, technical and capacity development assistance,

Committed 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,

Further committed 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

** Version issued 2 May 2019*

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,

Recalling 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,

Recognising 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,

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 Member is examined in depth on a yearly basis,

Cognisant of the MCS and enforcement framework developed by the Commission, *inter alia* 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 the compliance by individual vessels,

Adopts the following conservation and management measure in accordance with Article 10 of the Convention, establishing the WCPFC Compliance Monitoring Scheme:

Section I – Purpose

1. The purpose of the WCPFC Compliance Monitoring Scheme (CMS) is to ensure that Members, Cooperating Non-Members and Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission. The purpose of the CMS is also to assess flag CCM action in relation to alleged violations by its vessels, not to assess compliance by individual vessels.

2. The CMS is designed to:

- (i) assess CCMs' compliance with their WCPFC 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 and/or preventative options that include a range of possible responses that take account of the reason for and degree, the severity, consequences and frequency of non-compliance, as may be necessary and appropriate to promote compliance with CMMs and other Commission obligations;¹ and
- (v) monitor and resolve outstanding instances of non-compliance by CCMs with their WCPFC obligations.

¹ In accordance with the process for identifying corrective action, as provided for in paragraph 45(vi).

Section II – Principles

3. The implementation of the CMS and its associated processes shall be conducted in accordance with the following principles for the purpose of the application of this measure:
- (i) Effectiveness: Effectively serve the purpose of this CMM to assess compliance by CCMs and assist the TCC in fulfilling the provisions of Article 14(1)(b) of the Convention;
 - (ii) Efficiency: Avoid unnecessary administrative burden or costs on CCMs, the Commission or the Secretariat and assist TCC in identifying and recommending removal of duplicative reporting obligations; and
 - (iii) Fairness: Promote fairness, including by: ensuring that obligations and performance expectations are clearly specified, that assessments are undertaken consistently and based on a factual assessment of available information and that CCMs are given the opportunity to participate in the process.
 - (iv) Cooperation towards Compliance: 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 quality improvement and corrective action.

Section III – Scope and application

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.
5. The CMS shall not prejudice the rights, jurisdiction and duties of any CCM to enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with that CCM's international obligations.
6. Each year, the Commission shall update what obligations shall be assessed in the following year using a risk-based approach, once developed and agreed. Until this risk-based approach is developed, the Commission shall take into account the following factors in considering the obligations to be assessed in the following year:
- (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) additional areas identified through the risk-based approach to be developed; 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.

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 the following criteria:

- (i) 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.
- (ii) For other obligations:
 - a. Implementation – where an obligation applies, the CCM is required to provide information showing that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation; and
 - b. Monitor and ensure compliance – the CCM is required to provide information showing that it has a system or procedures to monitor compliance of vessels and persons with these binding measures, a system or procedures to respond to instances of non-compliance and has taken action in relation to potential infringements.

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.

Section IV – WCPFC Online Compliance Case file system

9. The Secretariat shall maintain the WCPFC online compliance case file system as a secure, searchable system to store, manage and make available information to assist CCMs with tracking alleged violations by their flagged vessels.

10. For each case in the online system, the following information shall be provided by the flag CCM:

- (a) Has an investigation been started? (Yes/No)
- (b) If yes, what is the current status of the investigation? (Ongoing, Completed)
- (c) If the alleged violations stem from an observer report, have you obtained the observer report? (Yes/No)
- (d) If no, what steps have you taken to obtain the observer report?
- (e) What was the outcome of the investigation? (Closed – no violation; Infraction – not charged; Infraction – charged)
- (f) If no violation, provide brief explanation
- (g) If infraction, but not charged, provide brief explanation
- (h) If infraction charged, how was it charged (e.g., penalty/fine, permit sanction, verbal or written warning, etc.) and level of charged (e.g., penalty amount, length of sanction, etc.)

11. A flag CCM shall provide updates into the online system on the progress of an investigation until its conclusion.
12. CCMs that are relevant to a case shall be allowed to view those cases for vessels flying other flags. Relevant CCMs shall comprise the CCM that notified the case to the flag CCM, and where applicable, the coastal CCM, the ROP observer provider and the chartering CCM.
13. The Secretariat shall notify relevant CCMs when a case is entered into the online system.

Section V – Special Requirements of Developing States

14. 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 capacity², 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.
15. 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.
16. Where a capacity assistance need has been identified, through the preparation of a Capacity Development Plan, in a dCMR by a SIDS, Participating Territory, Indonesia or the Philippines, which has prevented that CCM from fulfilling a particular obligation, and TCC has confirmed that all of the elements of the Capacity Development Plan as stated in paragraph 14 are included, 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.
17. 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.
18. 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.
19. 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.

² Any CCM may identify a capacity assistance need through the CMS process; however, the application of paragraphs 14-16 is limited to those CCMs identified in the paragraph.

20. Unless the SIDS, Participating Territory, Indonesia or Philippines amends the Capacity Development Plan that it submitted under paragraph 16 in its dCMR and TCC has confirmed that all the elements of that Plan as stated in paragraph 14 are included, once the timeframe in that original Plan has passed, that CCM's compliance with that obligation shall be assessed in accordance with Annex I.

21. 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.

Section VI – Prior to TCC

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.

23. 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:

i information available to the Commission through 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;

ii information contained in an Annual Report which is not available through other means; and

iii where appropriate, any additional suitably documented information regarding compliance during the previous calendar year.

24. The Draft Report shall present all available information relating to each CCM's implementation of obligations for compliance review by TCC.

25. At least 55 days prior to TCC each year, the Executive Director shall transmit to each CCM its dCMR.

26. At the same time, the Executive Director shall draw from the online case file system and transmit to:
- (i) each flag CCM, the infringement identification relating to alleged violations by its flagged vessels on the online system for that CCM's own use to commence or progress an investigation. Relevant CCMs shall also be provided this same information; and
 - (ii) all CCMs, aggregated vessel level information across all fleets. This will be used to provide an indicator of potential anomalies in the implementation of obligations by a CCM, with a view towards identifying challenges for that CCM and providing targeted assistance. This information shall be considered by TCC alongside the Draft Compliance Monitoring Report.
27. While the Commission continues to develop the CMS including activities in the future workplan, the following shall apply:
- (i) Where a CCM cannot complete an investigation prior to TCC, that CCM shall provide the information as outlined in paragraph 10.
 - (ii). The CCM may work together with the Secretariat to draft the information required by paragraph 10.
 - (iii) The Secretariat shall provide a report of the information provided in accordance with paragraph 10 to TCC.
 - (iv) TCC will consider the report of paragraph 10 information compiled by the Secretariat.
 - (v) Where TCC recognizes that an investigation of an alleged violation has commenced and is ongoing, as identified in a dCMR by a CCM, TCC shall assess that CCM as "Flag State Investigation" for that obligation.
28. 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.
29. 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 26.
30. To facilitate meeting obligations under paragraphs 28 and 29, active cooperation and communication between a flag CCM and other relevant CCMs is encouraged.
31. 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 29.

32. 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 28 of this measure. CCMs may also provide additional information to TCC with respect to implementation of its obligations.

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

33. Taking into account any Capacity Development Plans developed pursuant to paragraphs 14-16, 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.

34. 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.

35. Notwithstanding paragraph 34 above, 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.

36. Where a CCM has missed a reporting deadline,³ 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.

37. 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 (once the risk-based assessment is developed).

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

³ 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.

39. CCMs may provide additional information up to 21 days after TCC. Additional information is restricted to that which only requires administrative consideration by the Secretariat to fill an information gap. This paragraph shall not apply to substantive issues. TCC shall consider whether a particular obligation may be met with the provision of additional information.

40. The Secretariat shall update the compliance status of CCMs, 21 days after the deadline to submit additional information, based on the additional information provided by CCMs as outlined in paragraph 39. A summary of these updates shall be submitted to the Commission for their consideration, along with the pCMR.

Section VIII – Process at the Commission

41. At each annual Commission meeting, the Commission shall consider the Provisional Report recommended by the TCC, as well as any submission from a CCM indicating that its compliance assessment for a specific obligation at TCC was undertaken in a manner that the CCM deems to be procedurally unfair.

42. Taking into account any reviews undertaken after TCC under paragraph 41, the Commission shall adopt a final Compliance Monitoring Report.

43. 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 37 of this measure.

44. 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.

Section IX – Future Work

45. The Commission hereby commits to a multi-year workplan of tasks to enhance the CMS, with the aim of making it more efficient and effective by streamlining processes. This workplan should include the development of guidelines and operating procedures to support the implementation of the Compliance Monitoring Scheme, and shall include *inter alia*:

During 2019

(i) development of a process for assessing CCM actions in accordance with para 7(ii)(b) to replace para 27.

(ii) 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;

(iii) 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;

(iv) explore investment in technology solutions to facilitate improvements to the compliance case file system.

During 2019 - 2020

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

During 2020-2021

(vi) the development of corrective actions to encourage and incentivise CCMs' compliance with the Commission's obligations, where non-compliance is identified;

(vii) the development of the guidelines for participation of observers in closed meetings of the Commission and its subsidiary bodies which consider the Compliance Monitoring Report.

46. TCC shall consider any workplan and resourcing requirements to facilitate the work of the Secretariat in this regard.

Section X – Application and review

47. This measure shall be enhanced in 2019 in accordance with the future work in Section IX.

48. This measure will be effective for 2019.

Annex I - Compliance Status Table

Compliance Status ⁴	Criteria in 2019 Interim criteria	Criteria Once the audit points are developed	Response
<i>Compliant</i>	A CCM will be deemed <i>Compliant</i> with an obligation if the following criteria have all been met: a. reporting or submission deadlines; b. implementation of obligations through national laws or regulations; c. submission of all mandatory information or data required, in the agreed format, as applicable.	Compliance with the audit points	None
<i>Non-Compliant</i>	A CCM will be deemed <i>Non-Compliant</i> with an obligation if any of the following have occurred, as applicable: a. a CCM has failed to comply with an obligation or category of obligations not specifically identified as <i>Priority Non-Compliant</i> ; b. information or data for the obligation has been submitted or reported in a way that is incomplete, incorrect. c. Where TCC does not consider that progress has been made on a CDP or flag CCM investigations, or wrongly formatted; or d. a CCM has failed to meet reporting or submission deadlines.	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.

⁴ This annex applies to compliance statuses assigned for each individual obligation.

Compliance Status ⁴	Criteria in 2019 Interim criteria	Criteria Once the audit points are developed	Response
Priority Non-Compliant	<p>A CCM will be deemed Priority Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <ul style="list-style-type: none"> a. exceeded quantitative limit established by the Commission; b. failure to submit its Part 2 Annual Report; c. repeated non-compliance with an obligation for two or more consecutively assessed years; or d. any other non-compliance identified as Priority Non-Compliance by the Commission. 	<ul style="list-style-type: none"> a. non-compliance with high-risk priority obligations and associated audit points b. repeated non-compliance with an obligation for two or more consecutively assessed years; or c. any other non-compliance identified as Priority Non-Compliant by the Commission. 	<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> <ul style="list-style-type: none"> a. A CCM must address the issue to gain compliance by the next compliance assessment; b. Other response as determined by the Commission.
Capacity Assistance Needed	<p>A SIDS or Participating Territory or Indonesia or the Philippines will be deemed Capacity Assistance Needed where they cannot meet an obligation and the following have occurred:</p> <ul style="list-style-type: none"> a. that CCM has provided a Capacity Development Plan to the Secretariat with its dCMR prior to TCC; and b. TCC confirms that all the elements of paragraph 14 are included in that Plan. 	<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>	<ul style="list-style-type: none"> (i) The CCM shall complete the steps of the Capacity Development Plan for that obligation in order to become compliant with the obligation, and (ii) report progress against that plan every year in its Annual Report Part II until the end of the timeframe specified in that Plan.

Compliance Status ⁴	Criteria in 2019 Interim criteria	Criteria Once the audit points are developed	Response
<i>Flag State Investigation</i>	<p>A CCM will be deemed <i>Flag State Investigation</i> with an obligation if any of the following have occurred, as applicable:</p> <p>(i) Where TCC recognizes that an investigation of an alleged violation has commenced and is ongoing, as identified in a dCMR by a CCM; and</p> <p>(ii) that CCM has provided relevant information in paragraph 10 to the Secretariat with the dCMR</p>	Removed	<p>(i) The CCM must complete the steps in the in paragraph 10 for that obligation; and take appropriate action in accordance with the relevant articles of the Convention</p> <p>(ii) report an update against ongoing investigations every year in its Annual Report Part II until the end of the anticipated timeframe in the Status Report.</p>
<i>CMM Review</i>	There is a lack of clarity on the requirements of an obligation.	There is a lack of clarity on the requirements of an obligation.	The Commission shall review that obligation and clarify its requirements.