



South Pacific Regional Fisheries Management Organisation

**1st Meeting of the Compliance and Technical Committee,
Manta, Ecuador: 27 - 31 January 2014**

CTC-01-INF-01

Development of a Compliance Monitoring Scheme (CMS)

Oswaldo Urrutia – CTC Chair

Working Paper on the development of a Compliance Monitoring Scheme (CMS)

CTC Chair's proposal

I. Background

The Report of the First Meeting of the SPRFMO Commission, Annex Q, approved the Roadmap for the Compliance and Technical Committee (CTC) and its priorities. The Roadmap covers the years 2013-2014 and aims for planning the work of the CTC so as to ensure a sound programming of activities corresponding to the priorities identified by the Commission.

The Roadmap assigned five priorities for the CTC work. One of them was the development of a **Compliance Monitoring Scheme (CMS)**: the CTC should prepare the establishment of appropriate procedures for the effective monitoring, control and surveillance of fishing and ensuring compliance with the Convention and Conservation and Management Measures (CMMs). This is consistent with the functions of the Commission as stated, *inter alia*, in Articles 8 g) and 27 e) of the Convention.

The development of a CMS is the only priority that was not taken up to be developed in advance of the Second Meeting of the Commission by any particular CTC Member. In this context, and to maintain our objective of making progress in all the CTC priorities, this document is presented as the CTC Chair's proposal in order to facilitate the discussions on this matter during the First CTC Meeting to be held in Manta.

However, bearing in mind our very tight CTC Provisional Agenda, the text is submitted as a working paper and not as a formal draft proposal. It is expected that this format may help facilitate the discussion. In case there is agreement on its content, the CTC may discuss it further and eventually make progress on this issue.

II. Objective of the CMS

The main objectives and therefore the points the CMS should address are the following:

- 1.- Assess compliance by Members and Cooperating Non-Contracting Parties (CNCs) with their obligations under the Convention.
- 2.- Identify areas in which technical assistance or capacity building may be needed to assist Members and CNCs to achieve compliance.
- 3.- Identify aspects of CMMs which may require improvement or amendment to facilitate or advance their implementation. These findings and subsequent actions will not replace any future review procedure as set out in Article 30 of the Convention.

4.- Take action against non-compliance through preventive and remedial options that should include a range of possible responses, taking into account the reasons for and degree of non-compliance and including, when applicable, cooperative capacity-building initiatives. In case of serious non-compliance, such option should include penalties and other actions as may be necessary and appropriate to promote compliance with CMMs. In all cases, responses should include monitoring and deciding unresolved instances of non-compliance.

III. Scope of the CMS

At each annual meeting, the Commission will evaluate Members and CNCs' compliance with their obligations arising from the Convention and CMMs adopted by the Commission. The assessment should cover the previous year (e.g., calendar year or 1 February to 31 January).

The Commission will give priority to assessing compliance by Members and CNCs with respect to the following:

- Arts 24, 25 and 26 of the Convention.
- CMM 1.01 (2013) and 1.03 (2013), and its subsequent amendments or updated texts.
- Other obligations and CMMs the Commission considers appropriate to include under this CMS, bearing in mind criteria recommended by the CTC.
- Recommendations on compliance adopted by the Commission in accordance with this CMS, made for previous years.

IV. Development of the procedure

The procedure may include four recognizable steps:

1.- Draft Compliance Report

Prior to the annual meeting of the CTC, the Executive Secretariat shall compile information received from Members and CNCs including reports, data collection programs of the Commission and, where appropriate, any suitably documented information provided by non-government organizations or other relevant sources, and shall prepare a Draft Compliance Report containing sections with respect to each Members and CNCs.

The Secretariat shall compile the Draft SPRFMO Compliance Report using the template in Annex II for each Member of the Commission and CNCs. The Draft Compliance Report will cover the period [from 1 February to 31 January or as agreed].

The Secretariat shall circulate to each Member of the Commission and CNCs its respective Draft Compliance Report no later than 45 days before the annual Commission meeting.

Each Member of the Commission and CNCPs shall return its Draft Compliance Report incorporating any additional information it deems suitable to the Secretariat no later than 30 days before the annual Commission meeting. This information shall, as appropriate: (i) provide additional information, clarifications, amendments or corrections necessary to resolve the potential compliance issues identified in the Draft Compliance Report, or respond to any other request for additional information; (ii) identify any particular causes of the potential compliance issues or difficulties with respect to implementation of the obligation in question, or circumstances which may mitigate the potential compliance issues; (iii) identify technical assistance or capacity building needed to assist Members and CNCPs to address potential compliance issues.

2.- Full Draft Compliance Report

The Executive Secretariat will compile and circulate to all Members and CNCPs a Full Draft Compliance Report which shall include all information, clarifications and comments provided by Members and CNCPs in response to the Draft Compliance Report, as stated in the previous section.

The Full Draft Report shall be available on the secure SPRFMO website for consideration no later than three weeks before the annual Commission meeting. As soon as practicable after posting it, the Secretariat shall notify of its availability.

3.- Provisional Compliance Report

At its annual meeting, the CTC shall consider the Full Draft Compliance Report, taking into account any additional information received during the meeting of the CTC by Members, CNCPs and other observers, non-governmental organisations and other organisations concerned with matters relevant to the implementation of the Convention.

The CTC shall develop a Provisional Compliance Report which shall include an assessment of each Member and CNCP compliance status and recommendations for any corrective action needed, based on potential compliance issues identified in respect of that Member or CNCP, and using the criteria and considerations for assessing compliance status set out in Annex I. Its recommendations shall also include:

- (a) Any preventive or remedial action taken, or proposed to be taken, by the Member or CNCP;
- (b) Where appropriate, proposals to amend or improve existing conservation measures;
- (c) Identified obstacles to implementation such as capacity building requirements;
- (d) Priority obligations to be monitored and reviewed; and

(e) Other responsive action which may be considered by the Commission, as appropriate.

The Provisional Compliance Report shall be forwarded to the Commission for consideration at the annual meeting.

4.- CMS Final Report

The Commission shall consider, at its annual meeting, the Provisional Compliance Report recommended by the CTC. Taking into account any additional information provided by Members and CNCs prior or during the meeting, the Commission will adopt the CMS Final Report, which shall include:

- A compliance status for each Member and CNC with respect to the implementation of the obligation in question in the respective CMM.
- Possible amendments or improvements to existing CMMs to address implementation or compliance difficulties experienced by Members and CNCs.
- Obstacles to implementation identified by Members and CNCs or other capacity building requirements.
- Additional obligations that should be reviewed under the CMS.
- Any other action the Commission shall deem appropriate against non-compliance or to promote compliance with the Convention, CMMs and other obligations included in the CMS, according to section III. of this document (*Scope of CMS*).

V. Other rules

All the relevant information arising from the CMS procedure shall be subjected to the rules and procedures regarding the use of information and transparency set out, *inter alia*, in Article 18 of the Convention. Therefore, Draft, Full Draft and Provisional Compliance Reports should not constitute public domain data, but Final Compliance Report shall be public domain data.

The Commission shall take a graduated response to non-compliance, taking into account the type, severity, degree and cause of the non-compliance in question. The Commission should develop in the near future an amendment to the CMS in order to identify a range of specific responses to non-compliance events that may be applied by the Commission through the implementation of the CMS. This shall include penalties and other actions as may be necessary to promote compliance with the Convention, CMMs and other obligations included in the CMS.

Annex I: Status of Compliance

Compliance Status	Object and purpose	Criteria
<i>Compliant</i>		No compliance issues identified with respect to the relevant obligations.
<i>Compliance Review</i>	To identify non-compliance of a minor or technical nature or which require the provision of further information, in order to identify implementation gaps and improve compliance.	Non-compliance may be due to: a) Actions or omissions which constitute a minor infringement of relevant obligations; b) Insufficient, unclear or incorrect data or information; c) Ambiguity or misunderstanding of relevant obligations.
<i>Compliance Action Plan</i>	To assist Members and CNCs to actively take steps to respond to and rectify non-compliance or improve implementations of relevant obligations, including through the provisions of technical assistance or capacity building, when appropriate.	Non-compliance may be due to: a) Action or omissions that constitute a serious infringement of relevant obligations; b) Non-compliance that undermines the effectiveness of the Convention or CMM; c) Failure to comply with previous CMS recommendations adopted by the Commission, after sufficient time and assistance has been provided.
<i>Compliance Remedy</i>	To address instances of persistent non-compliance which have not been resolved even after sufficient time and assistance have been provided through a Compliance Action Plan.	Non-compliance may be due to: a) Action or omissions that constitute a repeated serious infringement of relevant obligations; b) Repeated non-compliance that undermines the effectiveness of the Convention or CMMs; c) Repeated failure to comply with previous Compliance Action Plans after sufficient time and assistance has been provided.

Annex II: Template for information

(to be discussed and developed)