FORUM FISHERIES COMMITTEE

ONE HUNDRED AND EIGHTEENTH MEETING

Virtual

25 - 28 May 2021

Agenda Item:	***10***
Paper Number:	***FFC118-WP23***
Title:	CMS: Audit Points and Risk-based assessment framework (RBAF)

Summary

The Conservation and Management Measure (CMM) for the Compliance Monitoring Scheme (CMS) committed to a multi-year workplan to enhance the CMS. Part of this multi-year workplan is the development of audit points to clarify the Commission obligations assessed under the CMS and a risk-based assessment framework to inform compliance assessments and ensure obligations are meeting the objectives of the Commission.

Consultants were engaged to undertake these two areas of work with a workshop conducted on 13-14 April 2021 to seek members' views on these issues. The result of the work of the consultants are forwarded here as annexes to this paper, for the Committee's consideration:

- Annex 1: Draft Audit Points for the WCPFC Compliance Monitoring Scheme
- Annex 2: The development of a risk-based assessment framework for the WCPFC CMS.

Recommendations

The Committee is invited to:

(i) **Discuss** the Draft Audit Points for the WCPFC CMS in Annex 1;
(ii) **Discuss** the Risk based assessment framework in Annex 2; and
(iii) **Consider** forwarding the draft audit points and RBAF, after incorporating FFC discussions, to the Commission as either a FFA proposal or as a discussion paper so that FFA members lead and drive these works at the Commission level.

Introduction

1. FFA Members at MOC(2020) and WCPFC17(2020) stated the intention of putting dedicated effort in 2021 towards the development of the audit points and the risk-based assessment framework (WCPFC17 Summary Report para 375), to drive the work in these areas at the Commission.

2. In early 2021, MRAG Asia-Pacific was contracted to undertake the work related to risk-based assessment framework whilst Rhea Moss-Christian undertook the work on development of audit points. These works are complementary and the reports from the consultants, initially discussed at the CMS dedicated workshop on 13-14 April 2021 and incorporating feedback received, are provided here as annexes to this paper for the Committee's discussion and consideration:

   - Annex 1: Draft Audit Points for the WCPFC Compliance Monitoring Scheme
   - Annex 2: The development of a risk-based assessment framework for the WCPFC Compliance Monitoring Scheme

Background

3. The Conservation and Management Measure (CMM) for the Compliance Monitoring Scheme (CMS) has gone through many iterations with the current CMM being 2019-06 (see Figure 1). The purpose of the CMS is to ensure that CCMs implement and comply with obligations arising under the Convention and CMMs. CMM 2018-07 and now CMM 2019-06 added that "the CMS is also to assess flag CCM action in relation to alleged violations by its vessels, not to assess compliance by individual vessels". This was a result of the FFA Members' push to undertake assessments at CCM level, but not at individual vessels level. Though the CMS purpose has remained largely unchanged, the measure has evolved over the years.

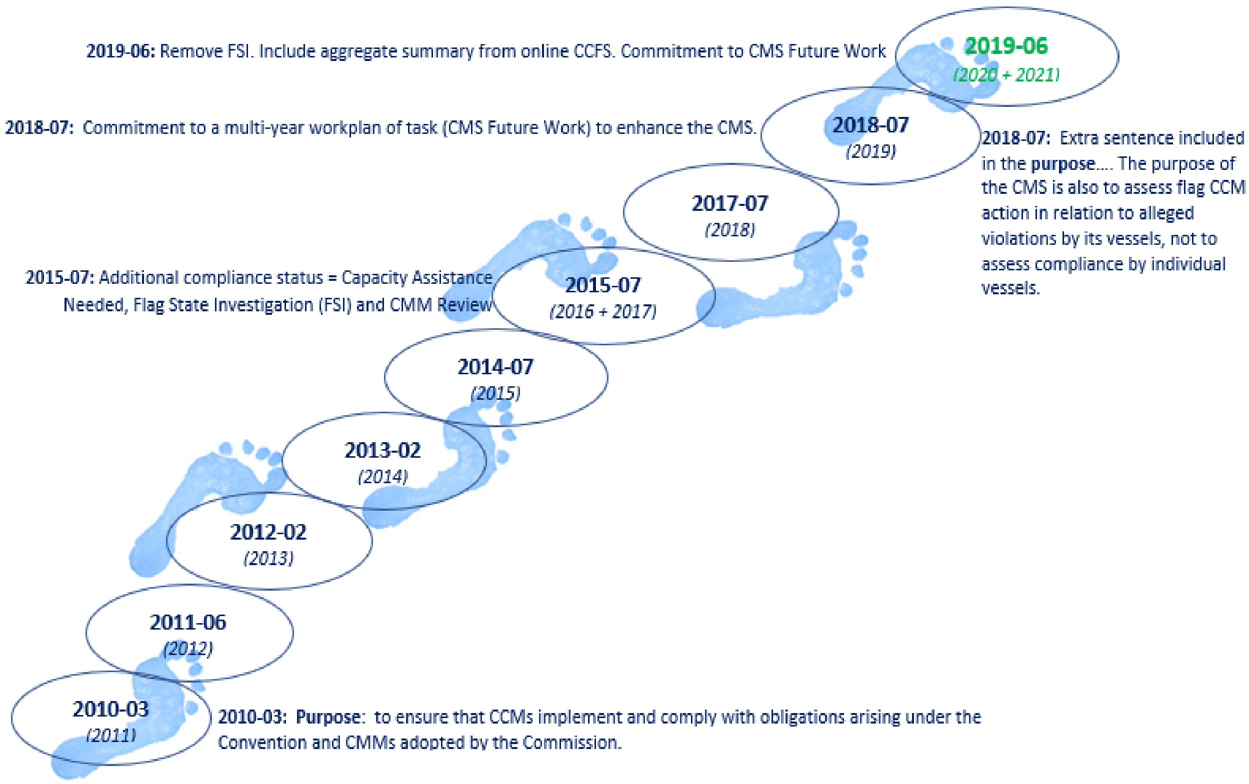

Figure 1: CMM for CMS, showing some of the changes over the years.

4. CMM 2019-06 came into force in February 2020 and with it, four key amendments were made to its predecessor. These were:

   i. Removal of the Flag State Investigation (FSI) score in the Compliance Status Table in Annex 1.
   ii. Requirement for the Secretariat to produce aggregated summary tables from the online Compliance Case File System (CCFS) as required by paragraph 26 of the measure. This information is to be considered alongside the draft CMR.
   iii. Expiry of the measure on 31 December 2021.
   iv. Continuation of the CMS Future Work under Section IX of the measure.

5. The CMS Future work was initially included in CMM 2018-07 and carried forward with minor modifications to CMM 2019-06:

Section IX – Future Work

46. 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 2020

(i) 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;

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

During –2020-2021

(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;

(v) 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.

Linkages between the different components of the CMS

6. To put both papers (on audit points and RBAF) into context, the FFA Secretariat and the respective project teams have jointly prepared this section to show how each work stream fits into the overall scheme of CMS reforms. These relationships are set up in Figure 2.

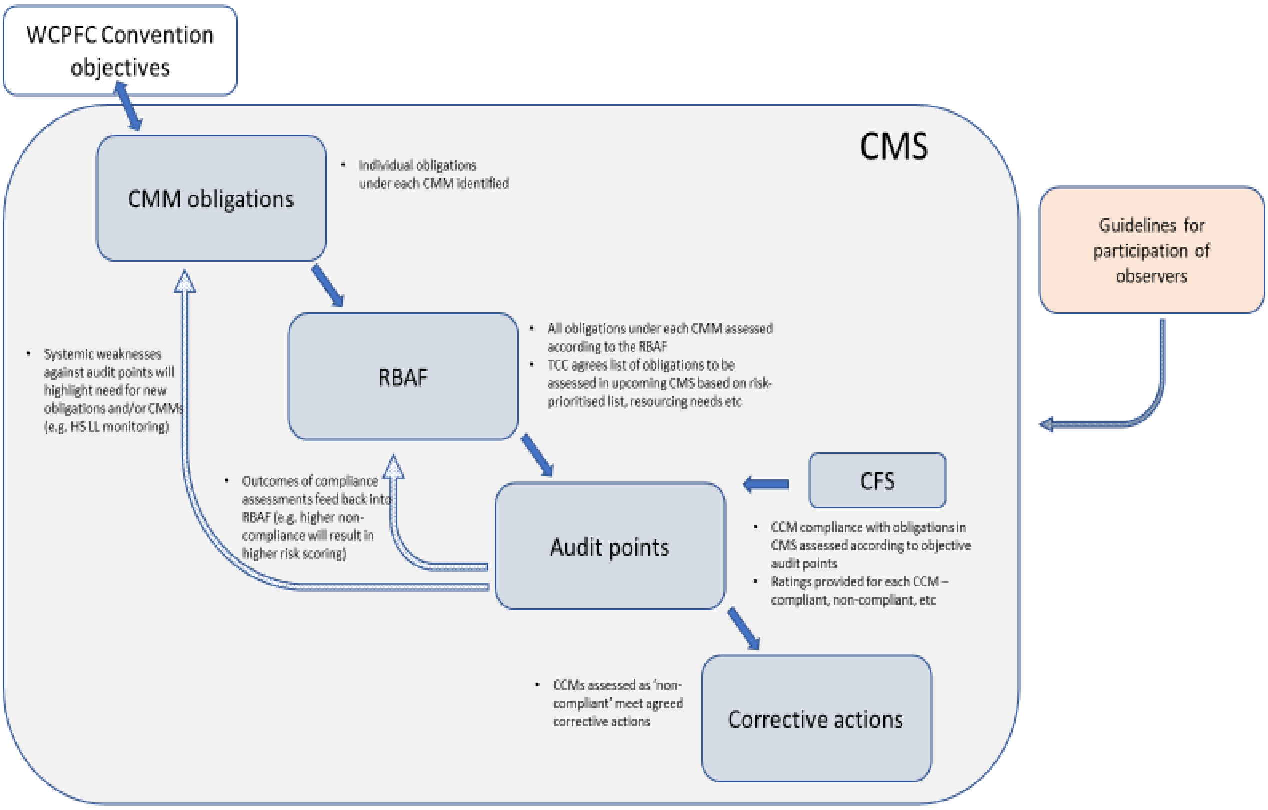

Figure 2: Conceptual diagram showing the relationships between the different components of the CMS.

7. In broad terms, each obligation within current CMMs would be assessed using the RBAF. The purpose of the RBAF is to help Commission members prioritise obligations to be assessed under each year's CMS. The outcomes of the RBAF assessment are intended to serve as a guide only, with the final make up of obligations to be assessed agreed by CCMs each year, taking into account resourcing requirements and other factors.

8. Once the final list of obligations for assessment is agreed, CCM compliance with obligations would be assessed against the audit points specifically developed for each obligation. The intent of the audit points is to make the process of compliance assessment clearer and less subjective.

9. CCMs determined to be non-compliant with obligations would then be required to comply with corrective actions to encourage compliance, noting that the corrective actions are yet to be developed.

10. While the RBAF and Audit Point work cannot immediately address all of FFA Members concerns with the CMS process, they can help 'shine a light' on areas of data/monitoring weakness and support FFA Members' push for broader WCPFC reforms (e.g. strengthening high seas longline monitoring).

11. For example, where insufficient information is available to demonstrate compliance with objective audit points (for example, because there was insufficient independent monitoring of longline catch limits), this should result in more frequent non-compliant scores at the CCM level. Higher rates of non-compliance should then feed back into higher risk scoring under the RBAF and therefore greater attention on the obligation under the CMS.

12. Where systemic weaknesses are identified across multiple CMMs/obligations through the RBAF/Audit Point process, this should help highlight areas where either (i) strengthening of WCPFC management framework is required (e.g. high seas longline monitoring) and/or (ii) capacity building assistance is needed to help encourage compliance.

Issues

Draft Audit Points for the WCPFC CMS (see paper in Annex 1)

13. The Updated Explanatory Notes in the Audit Point paper (in Annex 1) provide a summary of the outcomes from the CMS workshop in April 2021, which is now incorporated into the paper. One of the issues raised is the limited independent data to verify compliance with catch limits in the longline fishery as currently, data that are available and used, are reported by the flag CCMs.

14. In addition, the audit points largely reflect existing reporting requirements although there are eight obligations for which there has been no prior Annual Report Part 2 reporting obligations or no prior assessment in CMS. These relates to 2013-06 (criteria for consideration of CMM proposals), 2019-04 (sharks) and 2019-05 (rays).

15. Audit Points for relevant obligations from CMM 2013-06 and CMM 2013-07 is now included based on feedback from the CMS Workshop. CMM 2013-06 has not been previously assessed before although there has been attempts to include it before (WCPFC12 Summary Report para 171-172; WCPFC13 Summary Report para 143-158). CCMs that opposed the inclusion of the CMM 2013-06 in the CMS considered CMM 2013-06 put the obligations on the Commission, rather than on specific CCMs, so in their view, it would be difficult for TCC to assess it and for the Secretariat to provide information for them to do so.

16. It is highly likely that these CCMs will maintain this view. It is important to recognize that CMM 2013-06 and CMM 2013-07 can also be relevant in discussions outside the CMS process, such as during the Commission standing agenda item on Special requirements of developing states.

17. In evaluating a LIMIT type obligation, members confirmed in the workshop last month (April), inclusion of an audit point that requires the CCM to provide information on a national binding measure to implement the CCM's relevant limit. This audit point is new for LIMIT type obligation though some CCMs provide this information in their reporting in the past.

18. Regarding IMPLEMENTATION obligation, Table 1 shows a comparison of the existing reporting requirements against IMPLEMENTATION obligations, articulated in Annual Report Part 2, and the proposed audit points for IMPLEMENTATION obligations in the draft audit point paper, using CMM 2004-03 (Marking and Identification of Fishing Vessels) as an example. From comparison, what is proposed as audit points may not be new but perhaps it is more explicitly stated.

CMM 2019-06 on CMS para 7	CURRENT WCPFC Secretariat Notes and suggested guidelines in AR Pt2	PROPOSED Audit Points
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	Applicable Flag CCMs are to confirm whether obligation was implemented? Yes / No / not applicable	1. CCM submitted a ***Statement of Implementation*** that confirms CCM's implementation through adoption of a national binding measure that requires CCM flagged vessel operators to mark their

assessment shall be determined based on the following criteria: 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.	Further Information box to be used to provide additional information / details that confirms the adoption by a flag CCM, in accordance with its own national policies and procedures, of binding measures that implement the fishing vessel marking and technical specification requirements CCMs should also provide information showing that it has a system to monitor and ensure compliance with this obligation and has taken action in response to any potential infringements	vessels in accordance with the requirements of the CMM, including all technical specifications required by the CMM. AND 2. CCM submitted a ***Statement of System or Procedures for Monitoring Compliance*** that describes how CCM is monitoring and ensuring that CCM flagged vessel operators are marking their vessels in accordance with the requirements of the CMM AND 3. CCM submitted a Statement of System or Procedures for Responses to Non-Compliance that describes the CCM's mechanisms and processes to respond to potential infringements or instances of non-compliance with this requirement.

Table 1: Comparison of the existing reporting requirements against IMPLEMENTATION obligations, articulated in Annual Report Part 2, and the proposed audit points for IMPLEMENTATION obligations.

19. The paper also proposed amendment to CMM 2019-06 paragraph 7(ii)(b) to avoid any misunderstanding that this is linked to the online Compliance Case File System. The proposed amendment is in Attachment C of the paper (in Annex 1). CMS 2019-06 on CMS will expire this year.

20. At the MCSWG24(March 2021), Members recommended that this measure be rolled over for one year given the limitations associated with virtual meetings as well as the heavy focus on tropical tuna negotiation this year. The proposed amendment needs to be taken into consideration if the measure is renegotiated. Regardless, Members would need to ensure that any interpretation taken while the current measure is in place, such as during TCC this year, does not link this to the online CCFS as this have the potential of taking it to vessel level scrutiny as done in the past.

Risk-based assessment framework (see paper in Annex 2)

21. Annex 2 provides the consultant's report on the proposed RBAF for FFC's consideration. As stated in the report, the proposed RBAF has been informed by discussions with members and stakeholders as well as the outcome of the CMS workshop in April 2021, where the key design questions for the RBAF was workshopped.

22. The proposed RBAF for the WCPFC CMS is in Appendix A of Annex 2 and Appendix B provide a draft risk assessment of existing obligations based on the RBAF proposed in Appendix A. As Members noted in the CMS workshop, the outcome of the RBAF is intended to serve as a guide to decision making, rather than a substitute for it.

23. The paper noted that an important recommendation from this work is that proponents of all future CMMs should be required to incorporate an explicit statement of objectives or purposes (against which the success or otherwise of the measure can be assessed, and against which the consequence of non-compliance can be examined). Members may wish to consider this when proposals are tabled at the Commission in the future.

24. The paper also noted that given the different types of obligations being assessed, consequence scoring may require discussion and agreement amongst Members. It further noted that while the preliminary risk rankings in Appendix B of Annex 2 is intended to serve as an indication of likely risk scores, there are a range of ways available to FFA members to 'tweak' both the scoring and the design to produce outcomes they feel are more reflective of the actual risk picture.

25. Members' attention is drawn to Appendix B of Annex 2, to discuss and agree on the consequence scoring noting that the result of which can be the basis for the proposed list of obligations to be assessed in 2022.