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Gap analysis of control capabilities on CMM2020/01 art. 10 compliance

SIOFA Secretariat

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Abstract	<p>The verification of the implementation of and compliance with measures is a duty assigned to the SIOFA Compliance Committee (CC, Art. 7 para 2 of the SIOFA Agreement). However, some compliance duties are also assigned to the SIOFA Secretariat, with the compilation of the Draft SIOFA Compliance Report (dSCR).</p> <p>This paper provides reference for the Compliance Committee to evaluate and discuss the capabilities of the Secretariat to perform compliance checks regarding Paragraph 10 of CMM2020/01 (Conservation and Management Measure for the Interim Management of Bottom Fishing in the Agreement Area). In particular it checks whether the Secretariat has a clear set of criteria defined by each CCP and whether the Secretariat holds the necessary information received from the CCPs to draft a SIOFA dSCR.</p>

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Background

Some compliance duties are assigned to the SIOFA Secretariat and intersessional discussions have highlighted the desire of some CCPs to consider the Secretariat capabilities in the compliance space, with a view of evaluating possible developments of these capabilities.

SIOFA CMM01 (Interim Management of Bottom Fishing) entered into force in 2016 ([CMM2016/01](#)), and was revised in 2017 ([CMM2017/01](#)), 2018 ([CMM2018/01](#)), and 2019 ([CMM2019/01](#)).

[CMM2020/01](#) superseded other previous versions and, in its paragraph 13, requires the Secretariat prepare a Draft SIOFA Compliance Report (dSCR) on the basis of information received from CCPs.

Paragraph 2 of [CMM2020/01](#) states that the CMM “*applies to all fishing vessels flying the flag of a Contracting Party, cooperating non-Contracting Party, participating fishing entity or cooperating non-participating fishing entity (collectively CCPs) to the Agreement engaging or intending to engage in bottom fishing in the Agreement Area. A reference in this CMM to fishing and related activities of a CCP (such as its fishing, its catch or its effort) is taken to refer to fishing and related activities undertaken by vessels flying its flag.*”

Paragraph 10 of [CMM2020/01](#) states that:

“10.(1) Until such time as the Meeting of the Parties has acted in accordance with paragraph 9 on the advice of the Scientific Committee provided in accordance with paragraph 7, each CCP shall, unless otherwise approved by the Meeting of the Parties, establish and apply specific measures to limit the level and spatial extent of the bottom fishing effort of vessels flying their flag. In particular, such measures shall include:

- a. for CCPs that have fished more than 40 days in a single year, in the Agreement Area, at the time this CMM was adopted:
 - i. limits on its bottom fishing effort and/or catch, over a 12 month period to its average annual level in active years over a representative period for which reliable data exists;*
 - ii. constraints on the spatial distribution of its bottom fishing effort, excluding line and trap methods, to recently fished areas to prevent any expansion of such fishing activities;*
 - iii. provisions to ensure its bottom fishing will not have significant adverse impacts on VMEs and, where applicable, shall take into account its BFIA prepared and submitted pursuant to paragraph 21 or 22, and any areas identified under paragraph 18 where VMEs are known to occur, or are likely to occur; and*
 - iv. provisions ensuring that any vessel flying its flag is not authorised to fish in any areas that the Meeting of the Parties has decided to close to fishing.**
- b. for CCPs that have not fished more than 40 days in a single year, in the Agreement Area, at the time this CMM was adopted:
 - i. limits on its bottom fishing effort and/or catch, and spatial distribution, as disclosed to the Meeting of the Parties in accordance with paragraph 10(2); and*
 - ii. provisions as referred to in subparagraphs 10(1) a. iii. and iv.”**

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(2) The measures established by CCPs pursuant to this paragraph shall be disclosed to the next ordinary Meeting of the Parties following the entry into force of this CMM, and shall be made publicly available on the SIOFA website, by the Secretariat, once the website has been developed.

(3) CCPs may revise the measures they establish pursuant to this paragraph provided that any amendments made are consistent with the requirements of paragraph 10(1). Revised measures shall be notified to the Secretariat within 30 days of the amendment, and shall be disclosed at the next ordinary Meeting of the Parties.

(4) The provisions of this paragraph are not necessarily to be considered a precedent for future decisions taken by the Meeting of the Parties pursuant to paragraph 9.”

Paragraph 10 gives leeway to SIOFA CCPs to define their own limits, and also allows them to revise these limits at any time as per paragraph 10(3) provided that the revised limits are compliant with 10(1).

This requires the Secretariat and the CC to navigate through multiple different criteria when assessing compliance with the CMM. To aid this, [Interim Bottom Fishing Measures](#) are compiled in a single, publicly available document as provided for in paragraph 10(2), which was last updated on 23 February 2022. Thus, when drafting the SIOFA Compliance Report (dSCR), the Secretariat can use this set of criteria and check compliance using “*information received from CCPs, including CCRs, reports of transshipments and transfers, port inspection reports, high seas boarding and inspection reports, data collection programs (such as catch/effort data, observer data, VMS data) and any other suitably documented information or reports regarding implementation and compliance during the relevant Compliance Assessment Period*”.

This paper proceeds to check whether the Secretariat has a clear set of criteria defined by each CCP for the purpose of Paragraph 10 of [CMM2020/01](#) and whether the Secretariat holds the necessary information received from the CCPs to draft a SIOFA dSCR. We note that ongoing discussions on elements related to the Scientific Committee advice to the Meeting of the Parties in accordance with paragraph 7 of [CMM2020/01](#) (fisheries footprint), might create opportunities to act in accordance with paragraph 9 and supersede some of these discussions.

Aims

This paper aims to provide a reference for the Compliance Committee to evaluate and discuss the capabilities of the Secretariat to perform compliance checks regarding paragraph 10 of CMM2020/01 (Conservation and Management Measure for the Interim Management of Bottom Fishing in the Agreement Area).

This paper does not aim to provide an evaluation of the criteria set out by CCPs, but merely to report on whether the Secretariat holds a clear set of criteria and whether the information provided by CCPs is sufficient to perform checks against those criteria.

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This paper sets out to check whether the information available allows the SIOFA Secretariat to draft a SIOFA dSCR relative to Paragraph 10 of [CMM2020/01](#).

In particular, it aims to answer the questions:

1. Have the CCPs clearly defined their limits for the different elements listed in Paragraph 10 of [CMM2020/01](#)?
2. Is the information transmitted to the Secretariat sufficient to enable a compliance check when drafting the SIOFA dSCR?

The information presented here has been derived from the SIOFA Interim Bottom Fishing Measures (SIOFA Secretariat 2022), the CCPs National Reports presented to the SIOFA Scientific Committee, and national legislation where available and appropriate.

Areas in the scope of this gap analysis

This paper is solely meant to consider the ability of the Secretariat to perform its duties around the preparation of the Draft SIOFA Compliance Report (dSCR), based on having a defined set of criteria against which to check the data. Any gaps in this capability are merely highlighted, but not addressed, in this paper.

Areas out of scope of this gap analysis

It is not within the Secretariat duties or scope to consider whether the limits set out by CCPs are coherent with the requirements set out in Paragraph 10 of [CMM2020/01](#), and any considerations are left for the Compliance Committee and the MoP. Similarly, it is not for the Secretariat to evaluate whether the CMM applies to any given CCP (e.g., depending on the definitions of gear used), or whether the CCPs' interpretations around the time of the CMM adoption are correct or not.

The Secretariat does not currently have staff specifically assigned to compliance, which might significantly limit the capabilities of the Secretariat to address compliance checks (especially those involving data checks), but that limitation is also not covered in this paper.

1. Have the CCPs clearly defined their limits for the different elements listed in Paragraph 10 of [CMM2020/01](#)?

China considers that interim bottom fishing measures set out in Paragraph 10 of [CMM2020/01](#) do not apply to China, as they have not been fishing in the SIOFA Agreement area since 2014 (SIOFA Secretariat 2022). Korea considers that, since it has not carried out any fishing activities in the Agreement Area since 2014, [CMM2016/01](#) does not apply to Korea (SIOFA Secretariat 2022). Seychelles declared that they did not fish in the SIOFA area for SIOFA relevant species, and therefore implementation of [CMM2019/01](#) does not apply to Seychelles in the relevant period (SIOFA Secretariat 2022). Chinese Taipei declared that they target pelagic species such as oilfish using similar techniques for tuna species, and therefore bottom fishing measures do not apply to date to Chinese Taipei (SIOFA Secretariat 2022). Mauritius and Comoros have not yet provided information related to this CMM.

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a. Limits to effort and/or catch set out by CCPs as per Paragraph 10(1)a.i or b.i

CCP	Effort limit	Clear	Catch limit	Clear	Based on past fishing activities (10(1)a)	Based on other considerations (10(1)b)
Australia	✓	✓	✓	✓	✓	
China	Not applicable (Art.2 of CMM2020/01), see Section 1					
Cook Islands	✓	✓			✓	
EU	✓	✓	✓	✓	✓	
France OT	✓	✓	✓	✓		✓
Japan	✓	✓			✓	
Korea	Not applicable (Art.2 of CMM2020/01), see Section 1					
Mauritius	No information provided yet, see Section 1					
Seychelles	Not applicable (Art.2 of CMM2020/01), see Section 1					
Chinese Taipei	Not applicable (Art.2 of CMM2020/01), see Section 1					
Thailand	✓	✓			✓	
Comoros	No information provided yet, see Section 1					

~~The Secretariat understands that the EU has not set a limit for effort or catch outside the William's Ridge and Del Cano rise management areas or for other species than toothfish.~~

The Secretariat notes that the France OT has not set a limit for catch outside the Del Cano Rise management area or for other species than toothfish.

The Secretariat understands the limit to effort by “days at sea” to be defined as the total duration of all vessels presence in SIOFA area (based on date of entry and exit of each vessel from the SIOFA area). The Secretariat understands limitations on effort by “fishing days” to be the sum of all days where fishing was reported by each vessel flagged to a CCP in the SIOFA area.

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- b. Limits to spatial distribution of fishing effort set out by CCPs as per Paragraph 10(1)a.ii or b.ii

CCP	Spatial constraint	Clear	Based on past fishing activities (10(1)a)	Based on other considerations (10(1)b)	Not applicable (only line and trap methods)
Australia	✓	✓	✓		
China	Not applicable (Art.2 of CMM2020/01), see Section 1				
Cook Islands	✓	✓	✓		
EU	✓		✓		✓
France OT	✓	✓	✓		
Japan	✓	✓	✓		
Korea	Not applicable (Art.2 of CMM2020/01), see Section 1				
Mauritius	No information provided yet, see Section 1				
Seychelles	Not applicable (Art.2 of CMM2020/01), see Section 1				
Chinese Taipei	Not applicable (Art.2 of CMM2020/01), see Section 1				
Thailand	✓	✓	✓		
Comoros	No information provided yet, see Section 1				

The Secretariat notes that the definitions of spatial limits indicated by one CCP was not clear. The EU Council Regulation (EU) 2022/109 of 27 January 2022 provides to not “expand the spatial distribution of bottom fishing effort, excluding long-line and trap methods, beyond areas fished in recent years”, but it is unclear to the Secretariat if and how this limit applies to EU fisheries. EU vessels fish with line methods (which are specifically excluded) and the time period of “recent years” is not specified.

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- c. Provisions to ensure that their bottom fishing will not have significant adverse impacts on VMEs set out by CCPs as per Paragraph 10(1)a.iii or b.ii

CCP	Provisions to ensure that their bottom fishing will not have significant adverse impacts on VMEs	Clear
Australia	✓	✓
China	Not applicable (Art.2 of CMM2020/01), see Section 1	
Cook Islands	✓	✓
EU	✓	✓
France OT	✓	✓
Japan	✓	✓
Korea	Not applicable (Art.2 of CMM2020/01), see Section 1	
Mauritius	No information provided yet, see Section 1	
Seychelles	Not applicable (Art.2 of CMM2020/01), see Section 1	
Chinese Taipei	Not applicable (Art.2 of CMM2020/01), see Section 1	
Thailand	✓	✓
Comoros	No information provided yet, see Section 1	

No definition gaps were identified

- d. Provisions ensuring that vessels are not authorised to fish in any areas that the Meeting of the Parties has decided to close to fishing set out by CCPs as per Paragraph 10(1)a.iv or b.ii

CCP	Prohibit fishing in closed areas	Clear
Australia	✓	✓
China	Not applicable (Art.2 of CMM2020/01), see Section 1	
Cook Islands	✓	✓
EU	✓	✓
France OT	✓	✓
Japan	✓	✓
Korea	Not applicable (Art.2 of CMM2020/01), see Section 1	
Mauritius	No information provided yet, see Section 1	
Seychelles	Not applicable (Art.2 of CMM2020/01), see Section 1	
Chinese Taipei	Not applicable (Art.2 of CMM2020/01), see Section 1	
Thailand	✓	✓
Comoros	No information provided yet, see Section 1	

No definition gaps were identified.

2. Is the information transmitted to the Secretariat sufficient to enable a compliance check when drafting the SIOFA dSCR?

CCP	Limits to effort and/or catch		Spatial distribution of fishing effort		Avoid SAIs on VMEs		Closed areas	
	Data available	Data sufficient	Data available	Data sufficient	Data available	Data sufficient	Data available	Data sufficient
Australia	✓	✓	✓	✓	✓	✓	✓	✓
China	Not applicable (Art.2 of CMM2020/01), see Section 1							
Cook Islands	✓	✓	✓	✓	✓	✓	✓	✓
EU	✓	✓	✓	✓	✓	✓	✓	✓
France OT	✓	✓	✓	✓	✓	✓	✓	✓
Japan	✓	✓	✓	✓	✓	✓	✓	✓
Korea	Not applicable (Art.2 of CMM2020/01), see Section 1							
Mauritius	No information provided yet, see Section 1							
Seychelles	Not applicable (Art.2 of CMM2020/01), see Section 1							
Chinese Taipei	Not applicable (Art.2 of CMM2020/01), see Section 1							
Thailand	✓	✓	✓	✓	✓	✓	✓	✓
Comoros	No information provided yet, see Section 1							

On the basis of the 2020 data, submitted in 2021, the Secretariat could not identify any gaps in the availability or resolution of data transmitted by CCPs for the purpose of compiling the dSCR.

3. Final considerations

Definitions of limits

No gaps in definition were identified regarding efforts and/or catch limits (Section 1.a), ~~but the Secretariat noted that limits set by two CCPs are referred to a single species in a limited area. The Secretariat did not identify definition gaps~~ in provisions limiting to the spatial distribution of fishing effort (Section 1.b), ensuring that bottom fishing will not have significant adverse impacts on VMEs (Section 1.c) and in provisions ensuring that vessels are not authorised to fish in any areas that the Meeting of the Parties has decided to close to fishing (Section 1.d).

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~~As to the limits to the spatial distribution of fishing effort (Section 1.b), the Secretariat noted that some CCPs did not provide sufficiently clear definitions to enable a compliance check.~~

The Secretariat encourages these CCPs to update their [Interim Bottom Fishing Measures](#), as this document is the main public reference that guides the Secretariat work on this aspect.

Data availability to enable a compliance check

No data gaps were identified by the Secretariat, based on the data available in 2020 (submitted in 2021), so that compliance checks against Paragraph 10 of [CMM2020/01](#) and the drafting of a related dSCR could be feasible in the future, when limit definition gaps are clarified by the CCPs.

4. References

SIOFA Secretariat. 2022. SIOFA Interim Bottom Fishing Measures -A Compilation by Contracting

Party, Participating Fishing Entities and Cooperating Non Contracting Parties (CCPs). Page 22.