

The Southern Indian Ocean Fisheries Agreement (SIOFA) 4th Meeting of the Parties
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Chair: Mr Kristofer Du Rietz

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Development of a SIOFA Compliance Monitoring Scheme -Discussion
paper

Relates to agenda item: 13

Proposal Other Document Info Paper

Delegation of Australia

Abstract

This paper provides the basis for a discussion by the Meeting of the Parties to inform the development of a new CMM to establish the SIOFA Compliance Monitoring Scheme for consideration at the 2018 ordinary MoP.

This discussion paper is organised into 9 sections: (1) Introduction, (2) Purpose and Objectives, (3) Scope, (4) Proposed Compliance Assessment Procedure, (5) Compliance Assessment Period, (6) Compliance Categories, (7) Responding to Non-Compliance, (8) Mechanisms to Implement Reporting Obligations Described in the Agreement and (9) Review.

Australia welcomes feedback from all Contracting Parties on this discussion paper.

Recommendations *(proposals only)*

1. Australia recommends that the Meeting of the Parties consider the proposal for the development of a SIOFA Compliance Monitoring Scheme and provide feedback to inform its development.

Development of a SIOFA Compliance Monitoring Scheme (Delegation of Australia)

1. Introduction

Australia is pleased to present a discussion paper on the Development of a SIOFA Compliance Monitoring Scheme (CMS).

It is common practice for RFMOs to review compliance. A number of RFMOs¹ have established a formal process to facilitate and guide compliance monitoring, assessment, rating and sanctioning. For example, SPRFMO (CMM 10-2017), IATTC (CMM C-11-07) and WCPFC (CMM 2015-07) have implemented a CMS. CCAMLR, a conservation organisation with the attributes of a RFMO, has also established a Compliance Evaluation Procedure through Conservation Measure 10-10. The IOTC established a basic procedure for evaluating compliance which includes mandatory annual reporting (paragraph 4.1 of the IOTC Rules of Procedure). The Secretariat compiles a compliance report for each member, including ratings (*Compliant, Partially Compliant, Non-Compliant*) against a number of obligations, with a particular focus on obligations relating to reporting. Members and cooperating no-members consider and discuss these reports at the annual Compliance Committee meetings, including seeking feedback and making recommendations on possible improvements, but there is no system for formal (i.e. Commission-endorsed) ratings nor sanctions. This paper provides the basis for discussion by the Meeting of the Parties (MoP) to inform the development of a new CMM to establish the SIOFA CMS for consideration at the 2018 ordinary MoP.

Contracting Parties are invited to consider this discussion paper and provide comments to Australia, and are also encouraged to cooperate with Australia intersessionally on the development of the CMS.

Both WCPFC and SPRFMO have committed to reviewing their respective CMSs at their next annual Commission meetings. As both RFMOs have had a CMS in operation for several years, these reviews may further inform the development of a best-practice CMS for SIOFA.

2. Purpose and objectives of the CMS

A CMS is a key mechanism that can be used to assist the MoP to achieve its objectives by monitoring the implementation of, and compliance with, the Agreement and SIOFA's CMMs. It should also play a critical role in establishing a positive compliance culture aimed at improving flag State

¹ While the CCSBT undertakes regular compliance monitoring of a number of CCSBT decisions and activities, it does not have a formalised CMS process. To supplement regular compliance monitoring, the CCSBT also uses a Quality Assurance Review (QAR) process which is run as a series of independent audits of a Member's Compliance with selected CCSBT Commission decisions and management measures.

performance, resolving technical impediments to compliance with SIOFA's CMMs, identifying capacity issues and introducing compliance remedies for persistent and/or serious infringements.

In this respect, an effective CMS regime will depend on three underlying principles:

- i. Timely access to sufficient information from relevant sources to assess compliance;
- ii. A fair and transparent process for reviewing and assessing information and compliance; and
- iii. Consistent and objective procedures for identifying and addressing instances of non-compliance –including reasons for, and severity of, non-compliance.

In addition to the reporting obligations in SIOFA's CMMs, Australia notes that there are a number of reporting obligations included in the Agreement and considers that the CMS can provide a practical mechanism under which such reporting obligations can be fulfilled. Implementation reporting is an integral part of assessing compliance with obligations. Accordingly, this discussion paper explores different options for reporting on implementation to ensure that SIOFA's reporting model is comprehensive but practical for its purpose.

- Australia has only considered the reporting models used in RFMOs and other regional organisations of which it is a Member, but invites Contracting Parties to share their experience in these organisations and other RFMOs.

3. Scope of the CMS

In Australia's view, the CMS should enable the MoP to monitor compliance with all of the obligations with which Contracting Parties, cooperating non-Contracting Parties (CNCs) and any Participating Fishing Entities (PFEs) and Cooperating Non-Participating Fishing Entities (CNPFEs) are required to comply. In SIOFA's case, this includes the provisions of the Agreement, all CMMs in force and other decisions, rules, procedures and guidelines adopted by the MoP.

The type and severity of compliance issues that may arise, and the corresponding compliance follow-up actions or remedies, will depend on the type of obligation and implementation required (for example, implementation may be administrative (reporting deadlines) or operational).

4. Proposed compliance assessment procedure

It is proposed that, at each ordinary meeting, the Compliance Committee will undertake an initial assessment of compliance by Contracting Parties, CNCs, PFEs and CNPFEs against their commitments and obligations arising from the Agreement, CMMs and all other obligations considered to be within the scope of the CMS, and provide advice to the Meeting of the Parties for its consideration for a final compliance assessment. In the event the Compliance Committee does not meet, the assessment would be undertaken by the Meeting of the Parties².

² Or, alternatively, if the Compliance Committee does not meet annually, such an assessment could be undertaken by the Compliance Committee biennially (for example), although this would significantly delay opportunities to address areas of non-compliance or address technical impediments to compliance.

There are 5 key steps proposed in this process which are summarised at Annex A:

Step 1: Preparation of the Implementation Report – Submitted 60 days prior to the Meeting of the Parties

Each Contracting Party, CNCP, PFE and CNPFE prepares a report on their implementation of the Agreement, CMMs and any other obligations within the scope of the CMS. This would satisfy the first element of Article 10(2) of the Agreement which obliges each Contracting Party to *make available to the Meeting of the Parties a statement of implementing and compliance measures*.

Development of a reporting template could assist in this process. WCPFC, IOTC and SPRFMO each use a reporting template:

- The bulk of WCPFC reporting obligations are captured in the Annual Report Part 2 (AR2). A template (excel spreadsheet) for the AR2 is generated each year by the WCPFC Secretariat based on the current suite of obligations. However, each CCM is then responsible for inputting information from this template into the online portal. The Secretariat also inputs other information into the online portal (e.g. confirmation of data submission), and then compiles a compliance monitoring report based on the information in the online portal.
- IOTC and SPRFMO's reporting templates are word documents. In SPRFMO's case, the reporting template forms an Annex to CMM 10-2017. Paragraph 5(b) of that measure provides authority for the Secretariat to amend the template as soon as practicable after the Commission meeting to incorporate obligations from new or amended CMMs adopted by the Commission.

CCAMLR does not require Members to provide a report on implementation of conservation measures, but relies instead on the Secretariat gathering information from the sources available to it. This reduces the amount of flag/port State reporting, but can also make it more difficult for the Secretariat to identify compliance issues. Given the existing obligation to provide a statement of implementing and compliance measures, in Australia's view the CCAMLR approach would not adequately fulfil the obligation in Article 10(2). A reporting template will ensure that all reporting obligations are included in one place. This simplifies the reporting process for Contracting Parties, CNCPs, PFEs and CNPFEs, ensures that a consistent approach is taken and may assist in identifying compliance issues.

Australia is open to suggestions on the best reporting model, but at this stage prefers the approach taken in IOTC. This approach is simple, easily adaptable and promotes harmonisation throughout the region. However, Australia is open to suggestions on the most workable approach.

Step 2: Development of the Preliminary Draft Compliance Report (for each Contracting Party, CNCP, PFE and CNPFE)

The Secretariat could be tasked to develop an annual Draft Compliance Report based on information received from Contracting Parties, CNCPs, PFEs and CNPFEs, including through their Implementation Report. The Secretariat would also consider relevant information from SIOFA's data collection

programs (for example, catch/effort data, observer data, VMS data) and, where appropriate, any suitably documented information or reports provided by relevant sources.

The Draft Compliance Report would initially be prepared for each individual Contracting Party, CNCP, PFE and CNPFE. It should be provided by the Secretariat to the relevant Contracting Party, CNCP, PFE or CNPFE no later than 40 days prior to the next ordinary Meeting of Parties.

Each Contracting Party, CNCP, PFE and CNPFE will be given an opportunity to review its Draft Compliance Report to:

- Incorporate any additional information it considers necessary
 - This may include, but is not limited to, any relevant documentary or photographic evidence³
- Provide clarifications, and advise of any amendments or corrections the Contracting Party, CNCP, PFE or CNPFE considers should be made Identify causes of the potential compliance issues, including any technical impediments to compliance
- Identify any action that has been taken to address the non-compliance; and any further action it intends to take
- Suggest a preliminary compliance status
- Identify technical assistance or capacity building needed to assist that Contracting Party, CNCP, PFE or CNPFE in complying with the relevant obligations.

This report should be prepared in such a way that it enables MoP to monitor and evaluate compliance.

Contracting Parties, CNCPs and PFEs should have 10 days to review its Draft Compliance Report before returning it to the Secretariat with any comments/responses to potential issues of non-compliance.

Step 3: (Full) Draft Compliance Report

On the basis of the information received in Steps 1 and 2, the Secretariat compiles a Full Draft Compliance Report which will include all information, clarifications and comments provided by Contracting Parties, CNCPs, PFE and CNPFEs in response to the Draft.

The Secretariat⁴ could be asked to undertake a preliminary review and analysis of the information in the Full Draft Compliance Report to identify potential compliance issues and offer a preliminary compliance rating on the basis of agreed compliance categories (as proposed in Section 6 and Annex B). Based on experience elsewhere, this initial analysis will save time negotiating compliance categories in the meeting.

The Secretariat should be required to provide the Full Draft Compliance Report, including its review and analysis (if agreed to), to all Official Contacts no later than 14 days prior to the next ordinary Compliance Committee meeting or, if the Compliance Committee is not convened that year, 14 days

³ CCAMLR Conservation Measure 10-10 included this provision in 2015. This has been a useful tool in assisting to resolve or further understand a compliance dispute.

⁴ It is envisaged that this could be resourced from within the Secretariat operating at its budgeted 1.5-2 staff members or, in the event that recruitment action is not taken for the second position, this could be resourced inexpensively through an outsourced contract if required. The resource impost is not expected to be significant, but it is an extension of existing activities.

prior to the next Meeting of the Parties. This would conclude the Secretariat's formal role in the CMS.

It may be useful to create a template to assist the Secretariat in preparing the Full Draft Compliance Report.

Step 4: Provisional Compliance Report

The Compliance Committee should consider the Full Draft Compliance Report at its ordinary meeting, as well as any additional information received during the Compliance Committee meeting from Contracting Parties, CNCPs, PFEs or other observers, non-governmental organisations and other organisations concerned with matters relevant to the implementation of the Agreement.

The Compliance Committee should then develop a Provisional Compliance Report which should include:

- A recommended compliance rating (see section 6 and Annex B]) for each compliance issue raised in the Draft Compliance Report, including recommendations for any corrective action needed;
- Any preventative or remedial action taken, or proposed to be taken, by the relevant Contracting Party, CNCP or PFE;
- Technical impediments to compliance, including any ambiguities in the measure
- Other barriers to implementation, including as capacity issues;
- Where appropriate, proposals to amend or improve existing CMMs that the Compliance Committee considers should be made;
- Any priority obligations to be monitored and reviewed, or additional obligations to be included within the scope of the CMS; and
- Any other responsive or corrective action which may be considered by the Meeting of the Parties, as appropriate.

This will assist the Compliance Committee to deliver its functions as set out in Article 7(2) of the Agreement⁵ and paragraph 7 of its Terms of Reference (set out at Annex C).

The Compliance Committee should be required to adopt a Provisional Compliance Report which is forwarded to the Meeting of the Parties for consideration. It may also be useful to develop a template for this purpose.

Step 5: Final Compliance Report

At its ordinary meeting, the Meeting of the Parties would consider the Provisional Compliance Report taking into account any additional information received in advance of, or during, the Compliance Committee meeting by Contracting Parties, CNCPs, PFEs, CNPFEs or other observers,

⁵ Article 7(2) provides that 'Once the measures referred to in Article 6 are taken, the Meeting of the Parties shall establish a Compliance Committee to verify the implementation of and compliance with such measures. The Compliance Committee shall meet, in conjunction with the Meeting of the Parties, as provided for in the Rules of Procedure and shall report, advise and make recommendations to the Meeting of the Parties.'

non-governmental organisations and other organisations concerned with matters relevant to the implementation of the Agreement, and adopt a Final Compliance Report.

Similar to the Provisional Report, the Final Compliance Report could include

- A final compliance rating (see section 6 and Annex B) for each compliance issue raised in the Provisional Compliance Report, including for any corrective action needed;
- Any preventative or remedial action taken, or proposed to be taken, by the relevant Contracting Party, CNCP, PFE or CNPFE;
- Technical impediments to compliance, including any ambiguities in the measure
- Other barriers to implementation, including as capacity issues;
- Recommended amendments to existing CMMs;
- Advice relating to any priority obligations to be monitored and reviewed, or additional obligations to be included within the scope of the CMS; and
- Recommendations for other remedial or corrective action to be considered by the Meeting of the Parties for the purposes of promoting compliance with the Agreement and SIOFA's CMMs.

As with the above, it may be useful to develop a template for this purpose.

Other proposed rules and recommendations

The procedures established to give effect to the CMS should recognise, and be consistent with, the principles of transparency as set out in Article 14 and the confidentiality rules described in CMM 2016/03.

In this respect, it is proposed that neither the Implementation Reports, the Draft Compliance Report, the Full Draft Compliance Report nor the Provisional Compliance Report be considered 'public domain data'. Instead, it is proposed that these reports be made available to Official Contacts on the secure section of the SIOFA website.

However, the Final Compliance Report adopted by the Meeting of the Parties should be made publicly available⁶ and considered to be 'public domain data' – ie **only** the Final Compliance Report would be publicly posted on the SIOFA website, not the Implementation Report, Draft Compliance Report or Provisional Report⁷. Notwithstanding this, the Full Draft Compliance Report and Provisional Compliance Reports will be discussed in open sessions of the Compliance Committee and the Meeting of the Parties, as applicable, unless a decision is taken in accordance with Rule 20(1) to hold that discussion, or part thereof, in closed session.

Consistent with WCPFC CMS, Australia also suggests that a Contracting Party, CNCP, PFE or CNPFE should not be permitted to block its own compliance assessment if all other Contracting Parties have concurred with the assessment, except in specific cases where it is necessary to discuss interpretation of a CMM and/or it is necessary to review and consider the relevant obligation to address an ambiguity. However, the views of the Contracting Party, CNCP, PFE or CNPFE should be sought and taken into account by the Meeting of the Parties through the consultation procedures

⁶ Or at least a subset of the Final Report, depending on whether any non-public domain data is included in the Final Report

⁷ Consistent with the practice used in SPRFMO, CCAMLR and WCPFC.

outlined above, as well as during the discussion of the issue as appropriate. If the assessed Contracting Party, CNCP, PFE or CNPFE disagrees with the assessment, its view should be adequately reflected in the Provisional and/or Final Compliance Report⁸.

If the Compliance Committee is not convened in a particular year, the Meeting of the Parties should omit the step relating to the Provisional Compliance Report, but would continue to adopt a Final Compliance Report⁹.

To assist in this process, Australia suggests the Meeting of the Parties task the Secretariat to develop a table outlining all of the obligations contained in the Agreement, SIOFA's CMMs and other decisions, rules, and procedures with which Contracting parties, CNCPs, PFEs and CNPFEs must comply. This table could set out the information available to the Secretariat through CMMs and any other reporting requirements to determine if it is sufficient or possible to assess compliance. This would provide a 'gap' analysis showing whether and what additional information would be needed for the purposes of the CMS.

5. Compliance Assessment Period

The CMS should clearly reflect the period under assessment. Based on the above proposed timeframes, and assuming SIOFA continues to meet in June/July annually, it would be possible for SIOFA's compliance assessment period to span **15 April - 14 April** of the following year. This would provide an opportunity to ensure that the compliance assessment period concludes on or before the timeframe for the Implementation Report commences (ie 60 days before the Meeting of the Parties).

This also ensures that the Meeting of the Parties does not delay consideration of serious compliance issues and any corresponding corrective actions, and can also deal quickly with any technical impediments or obstacles within CMMs as issues arise.

If the CMS is successfully adopted in 2018, Australia suggests the Meeting of the Parties may also consider including retroactive provisions to ensure that the assessment undertaken in 2019 spans 15 April 2018 – 14 April 2019 –ie it includes the 2.5 months prior to the meeting at which the CMS was adopted.

6. Compliance categories

Consistent with the practice adopted in WCPFC, SPRFMO and CCAMLR, the Meeting of the Parties should take a graduated response to non-compliance, taking into account the type, severity, degree

⁸ See paragraph 19 of WCPFC CMM 2015-07

⁹ Further to this, Australia proposes that, in developing the CMS, references to the Compliance Committee should be read as applying to the Meeting of the Parties in situations where the Compliance Committee is not convened in a given year.

and cause of non-compliance in question. Importantly, the emphasis must be on compliance by Contracting Parties, cooperating non-contracting Parties, Participating Fishing Entities and Cooperating non-Participating Fishing Entities, as the CMS regulates the actions of States / fishing entities; not vessels.

A compliance status should be assigned to each individual compliance infringement using the compliance categories proposed at Annex B.

7. Responding to non-compliance

The CMS should also include a range of responses to non-compliance that may be applied by the Meeting of the Parties through the implementation of the CMS, taking into account the type, severity and cause of non-compliance, and assisting Contracting Parties, CNCPs, PFEs and CNPFEs to effectively address any obstacles to compliance. As discussed above, remedial or corrective actions should be designed with the objective of promoting compliance with the Agreement and SIOFA's CMMs.

Annex B provides some specific examples of options to respond to non-compliance but, more generally, options which may be available to the Meeting of the Parties include:

- **Reviewing or clarifying issues**, which could include requesting additional information to resolve an information gap, clarifying existing information, specifying a question where further information is needed or seeking an explanation of the compliance issue within a given timeframe.
- **Requesting or directing** that the relevant Contracting Party, CNCP, PFE or CNPFE **cease the non-compliant conduct**, in general or specific terms, and providing a clear deadline by which time compliance is to be achieved and evidence provided to the Meeting of the Parties. An example of this may include recalling an IUU vessel to port or taking action to investigate a reported incident of IUU fishing.
- **Cooperation and capacity building**¹⁰ to address non-compliance where a State may not have the capacity to ensure compliance with SIOFA measures.
- **Institutional responses** to provide an effective deterrent for non-compliance, which could include limiting decision-making rights or access to resources within SIOFA's jurisdiction until the issue is addressed and resolved to the satisfaction of the Meeting of the Parties. The Meeting of the Parties may also decide to notify other RFMOs of cases of serious/persistent non-compliance.

Australia notes that some CMMs identify specific compliance remedies. For example, CMM 2016/01 (bottom fishing) includes compliance remedies for failure to disclose the measures established pursuant to paragraph 9(1), (2) and paragraph 14, failure to submit a bottom fishing impact

¹⁰ Recalling Article 13(4) of the Agreement, Australia notes that this may need to be considered in the context of the SIOFA budget.

assessment within the required timeframe, or where the bottom fishing impact assessment does not meet an appropriate standard.

Australia further notes that the CMS process will, in some cases, be linked with the IUU vessel listing process. If the relevant tests of the IUU measure are met, IUU listing may also be an appropriate and necessary response.

Notwithstanding the above, the CMS will not prejudice the rights, jurisdiction and duties of any Contracting Party, CNCP, PFE or CNPFE to enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with its international obligations.

8. Mechanisms to implement reporting obligations described in the Agreement

The Agreement contains a number of reporting obligations. Consideration of how reporting obligations can be fulfilled is relevant to the establishment of the CMS, as the compliance assessment process draws heavily on information provided through reporting mechanisms, and which is facilitated through the development of the Implementation Report.

The MoP can seek to fulfil these obligations through the implementation reporting elements of the CMS.

i. Article 11(3)(c)

Article 11(3)(c) of the Agreement provides that *each Contracting Party¹¹ shall in conformity with the rules determined by the Meeting of the Parties, make available to each annual Meeting of the Parties a report on its fishing activities in the Area.* (Footnote added)

Rather than duplicating reporting efforts, Australia suggests that this obligation could be practically met through the provision of the National Report to the Scientific Committee – ie this obligation can be fulfilled through an existing process.

Pursuant to paragraph 8 of CMM 2016/02 (data standards), all Contracting Parties, CNCPs and PFEs are obliged to provide National Reports which take into account the Guidelines for the Preparation of National Reports prepared by the Scientific Committee. In particular, the information sought in the *Description of Fisheries* section would provide information on each Contracting Party, CNCP and PFE's fishing activity in the Area (or record that no fishing activity had occurred, as appropriate). If

¹¹ For the purposes of implementing this Article through the CMS, in Australia's view references to Contracting Party should be read as applying to CNCPs PFEs and CNPFEs. Pursuant to Rule 17(4), CNCPs and CNPFEs commit to *inter alia* abide by the Agreement, SIOFA's CMMs and all other decisions and resolutions adopted by the MoP. In accordance with Rule 17(8), the CNCPs and CNPFEs are also subject to compliance assessment. Through submission of the written instrument provided at Annex I of the Rules of Procedure, PFEs declare their commitment to be bound by the terms of the Agreement and the Rules of Procedure.

this approach is adopted, it would not change the way National Reports are prepared for submission to the Scientific Committee.

To adequately fulfil this obligation, the National Reports must be *made available* to each ordinary¹² Meeting of the Parties. Australia suggests that the most practical mechanism to ensure National Reports are available is to (continue) providing a summary of each National Report in the report of the Scientific Committee's meetings¹³, and ensuring that the full National Report is able to be accessed by the Meeting of the Parties. This could be achieved, for example, by ensuring that all National Reports are publicly accessible on the SIOFA website or by providing the National Reports to Official Contacts via a circular (as is the practice in IOTC).

For visibility, Australia then suggests that the Implementation Report prepared by each Contracting Party, CNCP and PFE (see Section 4(iv)) could include the following:

Did you submit a National Report that conforms to the requirements of paragraph 8 of CMM 2016/02?

In responding to this question, each Contracting Party, CNCP and PFE can provide whichever information they deem to be useful for the purposes of a compliance assessment – for example, a report that takes account of the Guidelines may have been provided, but it may have been submitted late.

This would be verified through the Secretariat's preparation of the Draft Compliance Report through review of records of submission of the report, comparison of the report against the Guidelines and any relevant SC advice and guidance reflected in its meeting report.

Australia notes that the National Report does not cover the same period as the proposed Compliance Assessment Period. However, in our view, this is not an issue. The key elements being assessed is whether a National Report was provided and whether it conforms to the guidelines. In this respect, it is not relevant that the fishing activity is not representative of fishing activity over the Compliance Assessment Period.

Alternatively, the Implementation Report template could separately seek this information. For example, it could request information on:

- Total number of trips
- Gear used
- Total catch (aggregated)
- Main species caught

The primary disadvantage of this is that it increases flag State reporting, potentially unnecessarily.

ii. Article 10(2)

¹² Notwithstanding Article 11(3)(c) refers to 'annual' meetings, the SIOFA Rules of Procedure provide for *ordinary* and *extraordinary meetings*. Accordingly, Australia's view is that this information should be made available to each *ordinary* meeting.

¹³ Noting that reports of the meetings of subsidiary bodies are provided to the Meeting of the Parties pursuant to Rule 15(2).

Article 10(2) of the Agreement provides that:

Each Contracting Party¹⁴ shall make available to the Meeting of Parties a statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this Article and, in the case of coastal states that are Contracting Parties to this Agreement, as regards the conservation and management measures they have taken for straddling stocks occurring in waters under their jurisdiction adjacent to the Area.
(Footnote added).

There are three elements of this obligation:

The first relates to the *statement of implementing and compliance measures*. As noted above, in our view this could be fulfilled through provision of the annual Implementation Report (see Section 4 (iv) above).

With respect to the obligation to provide a *statement of sanctions imposed for any violations*, in the absence of any explicit guidance on the frequency of the reporting obligation, in Australia's view it would be reasonable to interpret the terms 'Meeting of the Parties' to be a reference to the annual ordinary Meeting of the Parties, rather than a general reference to the collective body.

Based on this interpretation, we suggest that Contracting Parties, CNCPs PFEs and CNPFEs would be required to provide an annual statement of any sanctions imposed to the Meeting of the Parties, and that the Implementation Report referred to in Section 4(iv) would be the most appropriate mechanism to fulfil this obligation.

In doing so, it would also be useful to provide information on the infringement and investigation which lead to the imposition of sanctions such as:

- Summary of the infringement
- Steps taken to commence the investigation
- The process taken to complete the investigation, within relevant national processes and laws; and
- Sanctions imposed and any other actions proposed to be taken in relation to the alleged violation.

Australia notes that Article 10(4) and 11(3)(e) oblige Contracting Parties to provide *a report on the outcomes of any investigation into alleged serious violations within the meaning of the 1995 Agreement* (the UN Fish Stocks Agreement¹⁵). Australia considers that such investigations should also be acknowledged in the Implementation Report where applicable, but this would be in addition to providing a report to the Meeting of the Parties following the conclusion of the investigation¹⁶.

The third element of Article 10(2) relates to a commitment or obligation on coastal State Contracting Parties, CNCPs, PFEs or and CNPFEs *to provide a summary of the conservation and management*

¹⁴ As per footnote 10

¹⁵ "serious violation" is defined in Article 21(11) of the UN Fish Stocks Agreement.

¹⁶ The basis of this position is that, in Australia's view, the intent of these provisions is to ensure that such reports are provided within a reasonable timeframe following the conclusion of the investigation (hence *when the investigation is completed*). In this respect, in Australia's view it would not be desirable for this to be unnecessarily delayed.

measures implemented for straddling stocks in the area immediately adjacent to the Agreement Area.

In practice, Australia’s view is that this obligation could be fulfilled through providing a summary of applicable measures through the preparation of the first Implementation Report (as referred to in section 4(iv)) prepared by each applicable Contracting Party, CNCP, PFE and CNPFE, and thereafter only submit information if the measures summarised in the first report are revised. This would also apply to any new Contracting Parties, CNCPs or PFEs falling within scope of the provision that had not previously been subject to these requirements.

In this respect, the Implementation Report template would pose questions along the lines of

Did you impose any sanctions on vessels flying your flag for any violations in relation to its activities in the Agreement Area during the assessed period? (Y/N)

- *If Yes, please provide details (using the sub points given above for guidance)*

Did you undertake any investigations for alleged serious violations within the meaning of the 1995 Agreement during the assessed period? (Y/N)

- *If Yes, was this information circulated to the Meeting of the Parties when the investigation was completed?*

(For the first report of a coastal State or fishing entity) Please summarise the conservation and management measures you have implemented in waters under national jurisdiction adjacent to the Agreement Area with respect to straddling stocks.

(For every report thereafter) Have the conservation and management measures you have implemented in waters under national jurisdiction adjacent to the Agreement Area with respect to straddling stocks been revised? (Y / N)

- If Yes, please provide details

9. Review mechanism

Australia suggests that the CMS should include a review mechanism – for example, two years following the entry into force of the CMS. This would provide the Meeting of the Parties with the opportunity to test the CMS within the SIOFA environment and consider lessons learned and possible improvements to strengthen the application of the CMS.

Annex A

Summary of the proposed compliance assessment process

Task	Responsibility	Timeframe
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Step 1 – Implementation Report	Prepare an implementation report outlining their implementation of relevant commitment and obligations and submit this to the Secretariat.	Contracting Parties, CNCPs, CNPFs and PFEs.	60 days prior to each Ordinary Meeting of the Parties.
Step 2 –Draft Compliance Report	A Preliminary Draft Compliance Report is prepared for each individual Contracting Party, CNCP, PFE and CNPFE on the basis of its implementation report and any other suitably documented information in the Secretariat’s possession. It is provided to the relevant CP, CNCP, PFE or CNPFE for review.	<p>Secretariat prepares the Draft Compliance Report on the basis of the information available.</p> <p>Contracting Parties, CNCPs, PFEs and CNPFs review the Draft Compliance Report and provide the secretariat with any comments in relation to identified instances of non-compliance.</p>	<p>40 days prior to each Ordinary Meeting of the Parties.</p> <p>10 days for CPs, CNCPs, PFE and CNPFE to review and respond to the Secretariat.</p>
Step 3 – Full Draft Compliance Report	<p>A Full Draft Compliance Report is prepared which includes all potential compliance issues identified through Steps 1 and 2, responses to any compliance issues identified and a preliminary compliance rating for each instance of non-compliance.</p> <p>The Full Draft Compliance Report is made available on the secure section of the SIOFA website for consideration at the Compliance Committee meeting.</p>	Secretariat prepares the Full Draft Compliance Report on the basis of the information available.	40 days prior to each Ordinary Compliance Committee meeting
Step 4 – Provisional Compliance Report	The Provisional Compliance Report is adopted following consideration of the Full Draft Compliance Report and any other relevant information. This is transmitted to the Meeting of the Parties.	The Compliance Committee (with assistance from the Secretariat).	During each ordinary Compliance Committee meeting.
Step 5 – Final Compliance Report	The Final Compliance Report is adopted following consideration of the Provisional Compliance Report and any other relevant information.	The Meeting of the Parties reviews the Provisional Compliance Report and prepares the Final Compliance Report (with assistance from the Secretariat).	During each ordinary Meeting of the Parties.

Proposed Compliance Categories

Compliance Status	Criteria	Follow up action / Response	Practice used in other RFMOs and CCAMLR
Compliant	No compliance issues identified with respect to the relevant commitment/obligation	No action required.	The SPRFMO, WCPFC and CCAMLR CMS use this category.
Non-compliant	Non-compliance may be due to: <ul style="list-style-type: none"> a) Information or data has been submitted or reported in a way that is incomplete, incorrect, wrongly formatted or is otherwise insufficient. This could also refer to inadequate responses to Implementation Reports which compromises the integrity of the CMS b) Failure to meet reporting or submission deadlines c) Other actions or omissions that constitute a minor infringement of relevant obligations. 	Relevant Contracting Party, CNCP, PFE or CNPFE to undertake a compliance review to determine the cause of non-compliance, and actively take steps to address the issue and prevent further instances of non-compliance.	SPRFMO, WCPFC and CCAMLR each use a category of non-compliant (or “minor non-compliant” in CCAMLR’s case) for compliance issues of a less-serious, but still actionable, nature. Criteria is based on similar criteria used in these organisations for the ‘non-compliant’ status).
Priority non-compliant	The following actions will attract a priority non-compliant rating: <ul style="list-style-type: none"> a) Exceeding the catch or effort limits established pursuant to paragraph 9(1), or any other catch or effort limits established by the Meeting of the Parties b) Engaged in fishing in any areas closed to fishing by the Meeting of the Parties 	Relevant Contracting Party, CNCP, PFE or CNPFE to develop a Compliance Action Plan which outlines steps to respond to and rectify non-compliance, or improve implementation of relevant obligations, including through the provision of technical assistance of capacity building, where appropriate. The Compliance Action Plan should be circulated to all Official Contacts and considered as a follow up action at the next	Criteria are drawn from a combination of SPRFMO and WCPFC. CCAMLR does not have a priority non-compliant rating. Instead, this is combined into the ‘seriously/persistently non-compliant ¹⁸ ’ category).

¹⁸ In CCAMLR, this category is ‘seriously, frequently or persistently non-compliant’`

	<ul style="list-style-type: none"> c) Repeated non-compliance with an obligation for two or more consecutively assessed years d) Failure to comply with previous CMS recommendations adopted by the Meeting of the Parties after sufficient time and assistance has been provided e) Failure to provide its annual Implementation Report¹⁷ or the National Report required by paragraph 8 of CMM 2016/02 f) Any other action or omission that constitutes a serious infringement of relevant obligations, or which undermines the effectiveness of the Agreement or SIOFA's CMMs (and which does not fall into the category of 'seriously/persistently non-compliant'). 	ordinary Compliance meeting or Meeting of the Parties as appropriate.	<p>WCPFC does not have a 'serious/persistently' non-compliance rating – ie its most serious compliance category is 'priority non-compliant.'</p> <p>Follow up action drawn from SPRFMO and has proven to be an effective model in dealing with priority non-compliant issues.</p>
Seriously/persistently non-compliant	<p>This compliance rating may be used in with respect to</p> <ul style="list-style-type: none"> a) actions or omissions that constitute a repeated serious infringement of relevant obligations. b) Repeated Priority non-compliance with an obligation for two or more consecutively assessed years c) Repeated failure to develop or implement a Compliance Action Plan after sufficient time and assistance has been provided. 	The Meeting of the Parties identifies a Compliance Remedy to address instances of serious/persistent non-compliance.	CCAMLR and SPRFMO both use a 'seriously/persistently compliant' ¹⁹ category, through SPRFMO's criteria is broader. The proposed criteria are drawn from these organisations. This is the most serious category of non-compliance in these organisations, and is proposed as the most serious category of non-compliance in SIOFA.

¹⁷ Noting that Australia proposes that this is the mechanism the Meeting of the Parties could use to ensure the obligation under Article 10(2) to provide an annual statement of implementing compliance measures is adequately fulfilled.

¹⁹ In CCAMLR, this category is 'seriously, **frequently** or persistently non-compliant'

Not assessed	This criterion is intended for cases where there Compliance Committee agrees that there is ambiguity in relevant obligations, or a technical impediment to compliance.	Meeting of the Parties to review relevant obligations, clarify the obligation and, if necessary, amend relevant provisions.	SPRFMO, WCPFC and CCAMLR each have similar categories designed for cases where it would not be appropriate to assign a compliance problem because there is there is ambiguity in the relevant obligations, or there is a technical issue with the measure. This is an important step because it provides a feedback loop to test whether CMM's can be effectively complied with. This is consistent with good regulatory practice -it should always be possible to comply with a rule or regulation.
No compliance status assigned	Cases of emergency relating to the safety of a ship and those on board, or saving life at sea	No action required.	Drawn from CCAMLR

Compliance Committee Terms of Reference²⁰

1. Pursuant to Article 7(2) of the Agreement, the Meeting of the Parties establishes a Compliance Committee which shall act as an advisory body to the Meeting of the Parties.

Representation

2. Each Contracting Party and participating fishing entity shall be entitled to appoint one representative to the Compliance Committee who may be accompanied by alternate representatives, experts and advisers.
3. Appointment of the Chairperson and Vice-Chairperson of the Compliance Committee shall be undertaken in accordance with Rule 5 of the Rules of Procedure and taking into account the nature and requirements of the Compliance Committee.
4. The duties of the Chairperson of the Compliance Committee are to manage the business of the Compliance Committee, present the Compliance Committee's reports to the Meeting of the Parties and to act as the primary liaison between:
 - a. the Compliance Committee and the Chairperson of the Meeting of the Parties;
 - b. the Compliance Committee and the Executive Secretary; and
 - c. the Compliance Committee and the Chairpersons of other subsidiary bodies established by the Meeting of the Parties.

Meetings

5. Regular meetings of the Compliance Committee normally shall be held once a year prior to or during the ordinary Meeting of the Parties, unless the Meeting of the Parties decides otherwise.
6. The Chairperson of the Compliance Committee may also convene working groups in support of the work of the Compliance Committee and the objectives of the Agreement.

Functions

7. The functions of the Compliance Committee are to:
 - a. monitor, review and assess the implementation of, and compliance with, the Agreement and all conservation and management measures adopted by the Meeting of the Parties, and to provide advice and recommendations to the Meeting of the Parties thereon;
 - b. give special consideration to reviewing compliance with measures adopted by the Meeting of the Parties that are paramount to the achievement of the Agreement's objectives, such as data reporting obligations, Illegal, Unreported and Unregulated fishing and Monitoring, Control and Surveillance measures;

²⁰ As adopted by the Meeting of the Parties at its first Extraordinary Meeting of the Parties in Brussels, October 2015 – see Annex 7 of the meeting report.

- c. to make recommendations to the Meeting of the Parties on new compliance and management measures, including measures to address non-compliance;
- d. to monitor, review and analyse information pertaining to fishing activity in the Area, and recommend any action to be taken by the Meeting of the Parties to discourage any activities which undermine the objectives of the Agreement; and
- e. to provide such other information, technical advice and recommendations as it considers appropriate or as may be requested by the Meeting of the Parties.

Participation and Decision Making

- 8. Recommendations and advice to be provided by the Compliance Committee to the Meeting of the Parties pursuant to article 7(2) of the Agreement shall be determined in accordance with the procedures set out in Rule 12 of the Rules of Procedure.
- 9. In accordance with article 14 of the Agreement and Rules 20 and 21 of the Rules of Procedure, the meetings of the Compliance Committee shall be open to observers unless the Compliance Committee decides that exceptional circumstances require that a meeting or part thereof be held in closed session.
- 10. All representatives to the Compliance Committee may bring forward for consideration any matters relevant to the functions of the Compliance Committee.
- 11. The Compliance Committee draft meeting report shall be prepared by the Chairperson of the Compliance Committee with assistance from the Executive Secretary. This draft report shall be considered by the Compliance Committee, amended as necessary and adopted at the end of the Compliance Committee meeting. The Chairperson of the Compliance Committee shall transmit the Compliance Committee meeting report to the Meeting of the Parties.
- 12. The Compliance Committee may make recommendations to the Meeting of the Parties that material used in its deliberations be regarded as confidential and not be published.

Other

- 13. The Compliance Committee may make recommendations to the Meeting of the Parties to amend these Terms of Reference to facilitate its work.
- 14. In accordance with Rule 21(3) of the Rules of Procedure, except as otherwise provided in the Agreement, the Rules of Procedure apply, *mutatis mutandis*, to the proceedings of the Compliance Committee.