

The Southern Indian Ocean Fisheries Agreement (SIOFA) 5<sup>th</sup> Meeting of the Parties  
25-29 June 2018

Cape Panwa Hotel, Phuket, Thailand

MoP5-Prop04

Proposal to establish a SIOFA Compliance Monitoring Scheme

*Relates to agenda item: CC 4.2 / MoP 9 Proposal* ☒ Other Document ☐ Info Paper ☐

Delegations of Australia and the EU

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**Abstract**

Australia and the EU welcome the opportunity to propose a Compliance Monitoring Scheme.

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**Recommendations** (*proposals only*)

**1. That the Meeting of the Parties adopt the proposal by Australia and the EU**

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## **Proposal from Australia and the EU to establish a SIOFA Compliance Monitoring Scheme**

In 2017, Australia submitted a discussion paper to the Meeting of the Parties proposing the development of a SIOFA Compliance Monitoring Scheme (see *MoP-04-10*). Following discussion at MoP4, and taking into account feedback provided by Contracting Parties during that meeting, Australia and the EU have developed a CMM to establish a Compliance Monitoring Scheme.

Australia and the EU consider that Compliance Monitoring Schemes are fundamental to the success of an RFMO. These schemes play a critical role in establishing a positive compliance culture aimed at improving CCP<sup>1</sup> performance, resolving technical impediments to compliance with CMMs and identifying capacity issues and other barriers to compliance. Additionally, a CMS provides a framework to assist the Meeting of the Parties in considering and addressing compliance issues. This improves consistency and certainty in the way we operate.

A number of RFMOs have a compliance monitoring scheme in place, including WCPFC, SPRFMO and ICCAT. In developing this proposal, Australia and the EU have undertaken a benchmark review of comparable processes that have been implemented in other organisations and considered how the strengths of these processes may be adapted to the SIOFA context and how the SIOFA CMS can be designed to benefit from comparable processes that have proved effective.

This proposed compliance monitoring scheme for SIOFA:

- Aims to ensure procedural fairness and transparency
- Contains consistent and objective procedures for identifying and addressing instances of non-compliance –including cause, severity and frequency of non-compliance, which includes taking a graduated response to compliance.
- Proposes the use of a web-based platform for implementation reporting, which is expected to reduce the time it takes to complete these reports. It is proposed that the compliance questionnaire be similar in form to the IOTC compliance questionnaire, with a focus on how CMMs have been implemented.
- Provides the opportunity to ‘self-assign’ a proposed compliance status and, where this is not done, for the Secretariat to include a proposed compliance status in the Draft Compliance Report
- Provides guidance on what may constitute compliance ratings of ‘non-compliant,’ and ‘critically non-compliant’.
- Provides clear, specific direction for the Meeting of the Parties to take, and report on, action in respect of any recommendations described in the Provisional Compliance Report within the Final Compliance Report.
- Contains clear direction on how to respond to capacity issues that have contributed to non-compliance

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<sup>1</sup> A new proposed term to encompass the full breadth of statuses provided for in SIOFA (as contained in the Rules of Procedure): Contracting Parties, cooperating non-Contracting Parties, participating fishing entities and cooperating non-participating fishing entities.

## **CMM 2018/XX**

### **Conservation and Management Measure for the Establishment of a Southern Indian Ocean Fisheries Agreement (SIOFA) Compliance Monitoring Scheme**

#### **The Meeting of the Parties to the Southern Indian Ocean Fisheries Agreement;**

**Recalling** the relevant provisions of the Southern Indian Ocean Fisheries Agreement (the Agreement), in particular Article 10;

**Noting** their responsibilities under international law to effectively exercise jurisdiction and control over vessels flying their flag and their nationals;

**Recognising** the importance of introducing a robust compliance review mechanism by which the compliance of each Contracting Party, cooperating non-Contracting Party, participating fishing entity and cooperating non-participating fishing entity is examined in depth annually;

**Committed** to introducing fair and transparent procedures which promote and support improved implementation of and compliance with the Agreement and CMMs;

#### **Adopts the following CMM in accordance with Article 6 of the Agreement:**

##### **Purpose**

1. This CMM establishes the SIOFA Compliance Monitoring Scheme (CMS).
2. The purpose of the SIOFA CMS is to ensure that Contracting Parties, cooperating and participating Parties and fishing entities (collectively CCPs) implement and comply with obligations arising under the Agreement and all CMMs adopted by the Meeting of the Parties, and to provide a mechanism to monitor and improve implementation of and compliance with these obligations. Specifically, the CMS is designed to:
  - a. Monitor and assess implementation and compliance by CCPs with their obligations under the Agreement and CMMs;
  - b. Improve compliance of CCPs with SIOFA obligations and ensure the Meeting of the Parties fulfils its functions and supports the objectives of the Agreement.
  - c. Identify areas in which technical assistance or capacity building may be needed to assist CCPs to achieve compliance with their obligations;
  - d. Identify and resolve aspects of CMMs which may require improvement or amendment to facilitate or advance their implementation and compliance;
  - e. Respond to non-compliance through preventative and/or remedial options, taking account of the cause of the non-compliance, the severity of non-compliance, the frequency of non-compliance and any consequences of non-compliance; and in cases of persistent non-compliance, take other actions as may be necessary or appropriate to promote and achieve compliance with the Agreement and SIOFA CMMs;
  - f. Ensure the adequate implementation of recommendations on compliance matters made by the Meeting of the Parties including in relation to follow-up actions.

##### **Scope and Application**

3. This CMS shall apply to all obligations arising under the Agreement and all CMMs adopted. The Meeting of the Parties may decide to adapt the application of the CMS, including to extend it to any other rules, procedures or decisions adopted by the Meeting of the Parties.
4. At each ordinary meeting, with the assistance of the Compliance Committee, the Meeting of the Parties shall evaluate CCPs' implementation of and compliance with their obligations arising under the Agreement, SIOFA CMMs and any other instrument as may be decided by the Meeting of the Parties pursuant to paragraph 3.
5. The Meeting of the Parties and the Compliance Committee shall also review any other recommendations made by the Meeting of the Parties in previous years' Final Compliance Reports in order to assess how those recommendations have been implemented by the concerned CCPs, the Compliance Committee or the Meeting of the Parties, as applicable, including in relation to follow-up actions.

### **Assessment and Response to potential non-compliance**

6. The Meeting of the Parties shall take a graduated response to non-compliance, taking into account the type, severity, degree and cause of the non-compliance in question.
7. The Meeting of the Parties shall apply Annex I to assign a compliance status and determine any follow-up actions to non-compliance, including any remedial or corrective actions needed.
8. Notwithstanding the above, the CMS will not prejudice the rights, jurisdiction and duties of any CCP to enforce its national laws or to take more stringent measures in accordance with its national laws, consistent with its international obligations.

### **Compliance Assessment Period**

9. The Compliance Assessment Period shall be the period from 1 January – 31 December of the preceding year, both dates inclusive.

### **Compliance Assessment Procedure**

#### *CCP's Compliance Report (CCR)*

10. The Secretariat shall develop and maintain a CCR template which shall be reviewed annually, taking into account new and amended CMMs or obligations and the requirements of Articles 10(2) and 11(3)(c) of the Agreement.
11. At least 120 days before the commencement of each ordinary Meeting of the Parties, the Secretariat shall circulate the CCR template.
12. Each CCP shall prepare a CCP Compliance Report on the basis of the template referred to in paragraph 10 which shall include a preliminary self-assessment of its compliance status for each assessed obligation, using Annex I as a reference, and return it to the Secretariat no later than 60 days before the commencement of the next ordinary Meeting of the Parties. Each CCP shall ensure their CCR includes information relevant to the implementation of each obligation assessed for compliance.

#### *Draft SIOFA Compliance Report (dSCR)*

13. Prior to each annual meeting of the Meeting of the Parties, the Secretariat shall prepare a Draft SIOFA Compliance Report (dSCR) on the basis of 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.
14. The dSCR shall be prepared in a way that facilitates monitoring and evaluation of compliance, and shall identify possible compliance issues.
15. The Secretariat shall provide to each CCP its respective section of the dSCR no later than 45 days before the commencement of the next ordinary Meeting of the Parties.
16. Each CCP shall have the opportunity to comment on its respective section of the dSCR no later than 30 days before the ordinary Meeting of the Parties. This information may, as appropriate:
  - a. incorporate any additional information the CCP considers necessary (which may include, but is not limited to, any relevant documentary or photographic evidence);
  - b. provide clarifications and advise of any amendments or corrections that the CCP considers should be made to the information initially provided by that CCP;
  - c. identify causes of the identified compliance issues, including any technical impediments to compliance;
  - d. identify any action that has been taken to address the non-compliance and any further action the CCP intends to take ;
  - e. revise the preliminary self-assessment of its compliance status using Annex I as a reference; and
  - f. identify any technical assistance or capacity building the CCP considers is needed to assist the CCP in complying with the relevant obligations.
17. The Secretariat shall complete the dSCR, which shall: include all information, clarification and comments provide by CCPs received in accordance with paragraph 16, identify any potential compliance issues and requirements for further information necessary to undertake an assessment of compliance, and propose a provisional compliance status.
18. The Secretariat shall circulate the dSCR to all CCPs no later than 20 days prior to the ordinary Meeting of the Parties and make it available on the secure section of the SIOFA website. Where no preliminary compliance status is provided by the CCP in accordance with paragraph 16(e), the Secretariat shall populate the dSCR in respect of that CCP using Annex I as a reference.

*Provisional SIOFA Compliance Report (pSCR)*

19. The Compliance Committee shall consider the dSCR at its ordinary meeting and any additional information received prior to the Compliance Committee meeting from CCPs. The Compliance Committee may take into account information received from observers, including non-governmental organisations and other organisations concerned with matters relevant to the implementation of the Agreement.
20. On the basis of the information available to it, the Compliance Committee shall adopt a Provisional Compliance Report (pSCR). The pSCR shall be based on the template at Annex II and include:

- a. An agreed provisional compliance status for each CCP in respect of each obligation assessed;
- b. Any follow-up action taken, or proposed to be taken, by the relevant CCP;
- c. Technical impediments to compliance;
- d. Any ambiguities identified in a CMM that result in compliance assessment difficulties and, if possible, proposals to address them;
- e. Other barriers to implementation or compliance, including capacity issues and how these may be addressed;
- f. Where appropriate, proposals to amend or improve existing CMMs to address implementation and compliance difficulties encountered by CCPs;
- g. Any priority obligations to be monitored and reviewed, or additional obligations to be included within the scope of the CMS; and
- h. Recommendations for any other follow-up action by the Meeting of the Parties, as appropriate taking into account the guidance set out in Annex I.

21. The pSCR shall be forwarded to the Meeting of the Parties for consideration at its ordinary meeting.

*Final SIOFA Compliance Report (fSCR)*

22. The Meeting of the Parties shall consider the pSCR and adopt a Final Compliance Report (fSCR) at its ordinary meeting. The fSCR shall be based on the template at Annex III and shall include:

- a. A final compliance status in respect of each compliance issue identified in the pSCR and any response/follow-up action needed, based on the criteria set out in Annex I;
- b. Any follow-up action taken, or proposed to be taken, by the CCP;
- c. Any technical impediments to compliance, including any ambiguities in the measure
- d. Any specific proposal for addressing any capacity issue identified in the Final Compliance Report;
- e. Where amendments to existing CMMs have been recommended in the pSCR, the outcome of the Meeting of Parties' consideration of such recommendations;
- f. Where any additional obligations to be included within the scope of the CMS to be monitored and reviewed, have been recommended in the Provisional Compliance Report, the outcome of the Meeting of Parties' consideration of such recommendations; and
- g. The fSCR shall also document the Meeting of the Parties' response to any recommendation for further consideration made in the pSCR.

**General Provisions**

23. The preparation, distribution and discussion of compliance information arising from the CMS shall be subject to the relevant applicable SIOFA rules and procedures regarding the use of information and transparency. Therefore:

- a. The Implementation Report, Draft Compliance Report and Provisional Compliance Report shall not be considered to be "public domain data."
- b. Notwithstanding subparagraph (a), the Draft Compliance Report and Provisional Compliance Reports shall be discussed in open sessions of the Compliance Committee and the Meeting of the Parties respectively unless a decision is taken in accordance with Rules 20(1) of the Rules of Procedure to hold that discussion, or

part thereof, in closed session.

- c. The Final Compliance Report shall be annexed to the report of the relevant ordinary Meeting of the Parties.
24. In accordance with Article 8 of the Agreement, the compliance assessment of each CCP shall be decided by consensus. The pSCR and/or fSCR as appropriate shall reflect the decision of the Compliance Committee and/or the Meeting of the Parties, as applicable, and the different views.
25. Each CCP undertakes to not block its own compliance assessment if all other Contracting Parties have concurred with the assessment. If the assessed CCP disagrees with the assessment, its view shall be reflected in the Provisional and/or Final Compliance Report as appropriate.
26. The Secretariat shall, prior to the 2019 ordinary Meeting of the Parties:
- a. prepare a table outlining all of the obligations contained in the Agreement and SIOFA CMMs with which CCPs must comply. This table shall outline the information available to the Secretariat through CMMs and any other reporting requirements that can be used to assess compliance, and identify any areas where additional information would be required to adequately assess compliance for the purposes of this CMS; and
  - b. Prepare a web-based form which is capable of being populated with relevant information submitted by the CCP in the previous Compliance Assessment Period for review and amendment, as necessary, in subsequent years.

## **Review**

27. The Meeting of the Parties shall review this CMM and its effectiveness at latest at its ordinary meeting in 2021.

**Compliance Categories**

1. For the purposes of this CMM, “Compliance Status” refers to a CCP’s compliance with an obligation contained in the Agreement or a SIOFA CMM. ‘Criteria’ provides guidance to CCPs, the Compliance Committee and the Meeting of the Parties on how to determine which Compliance Status should be assigned in respect of a given compliance issue. ‘Follow up action/Response’ sets out possible actions or responses that may be proposed or recommended to be taken in respect of a compliance issue. Such actions and responses shall take account of the relevant CCP’s responses and corrective actions to address any compliance issues identified.
2. Remedial or corrective actions that may be considered as part of follow up actions could include:
  - a. 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.
  - b. Requesting that the relevant CCP cease the non-compliant conduct, in general or specific terms, and providing a clear deadline by which time compliance is to be achieved and information demonstrating compliance provided to the Meeting of the Parties.
  - c. Cooperation and capacity building to address non-compliance where a State may not have the capacity to ensure compliance with SIOFA measures.
  - d. Institutional responses to provide an effective deterrent for non-compliance, including, for example, limiting access to fisheries resources until the issue is addressed and resolved to the satisfaction of the Meeting of the Parties, or notifying other RFMOs of cases of serious/persistent non-compliance; Such recommendations shall take account of the relevant CCP’s responses

Compliance Status	Criteria	Follow up action / Response
<b>Compliant</b>	This compliance rating may be used where, following review, it is determined that there is no compliance issue with respect to the relevant obligation, including meeting-related deadlines, all requested information has been submitted in the appropriate formats and/or having investigated and appropriately addressed any alleged violations.	No further action required.
<b>Non-compliant</b>	<p>This compliance rating may be used for cases such as:</p> <ul style="list-style-type: none"> <li>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 the CCR which compromise the effectiveness of the CMS;</li> <li>b) Failure to meet reporting or submission deadlines;</li> <li>c) Failure to meet a SIOFA obligation, including implementation deadlines, which does not fall into the category of 'critically non-compliant'.</li> <li>d) Other actions or omissions that constitute an infringement of relevant obligations;</li> </ul>	<p>Determine if the relevant CCP has already taken appropriate action and/or if action is required.</p> <p>If necessary, the Meeting of the Parties may make a recommendation on any action that may be required to respond to and rectify non-compliance, and/or improve implementation of relevant obligations. The Meeting of the Parties may also consider technical assistance or capacity building may be required. The CCP shall report on follow-up actions taken in advance of the next ordinary Meeting of the Parties. The relevant CCP shall commit to addressing the identified issue for the next compliance assessment period</p>
<b>Critically non-compliant</b>	<p>This compliance rating may be used for cases such as:</p> <ul style="list-style-type: none"> <li>a) Engaging in fishing in any areas closed to fishing by the Meeting of the Parties;</li> <li>b) Repeated rating of non-compliant with the same obligation for the second consecutive year;</li> <li>c) Failure to comply with previous CMS recommendations adopted by the Meeting of the Parties for two or more consecutively assessed years; or</li> <li>d) Repeated non-compliance with an obligation for two or more consecutively assessed years.</li> <li>a) Exceeding the catch or effort limits established pursuant to paragraph 9(1) of CMM 2017/01, or any other catch or effort limits established by the Meeting of the Parties;</li> <li>b) Failure to provide its annual CCR required by Article 10(2) or the National Report required by paragraph 8 of CMM 2017/02;</li> </ul>	The Meeting of the Parties identifies remedial or follow-up actions to address instances of seriously non-compliance taking into account paragraph 2 of this Annex. The CCP shall report on follow-up actions taken to in advance of the next ordinary meeting of the Compliance Committee or Meeting of the Parties as appropriate.

<b>Not assessed</b>	This compliance rating may be used for cases where there is ambiguity in the relevant obligation, or that there is a technical impediment to compliance.	Meeting of the Parties to review relevant obligation, clarify the obligation and, if necessary, amend relevant provisions.
<b>No compliance status assigned</b>	This compliance rating may be used for cases of emergency relating to the safety of a ship and those on board, or safety of life at sea, which resulted in the a compliance issue.	No further action required.

### Template for the Provisional Compliance Report

*[Note to CPs: Annex III to be developed on the basis of any comments on Annex II.]*

1. Compliance Assessment Period: *[year]*
2. CMMs assessed in accordance with this CMM: *[All CMMs currently in force]*
3. Proposals to amend or improve existing CMMs
  - a. (example) CMM 20XX/XX
4. Priority obligations to be monitored and reviewed
  - a. (List, if applicable)
5. Additional obligations to be included within the scope of the CMS:
  - a. (List, if applicable)

### Compliance Committee Assessment

*[CMM 20XX/XX name of conservation and management measure]*

CCP	Obligation (include paragraph number, CMM, summary description)	20XX-20YY [previous year] compliance status	Current 20YY-20ZZ assessment <sup>2</sup> and Supporting info	Current 20YY- 20ZZ status [rating] [category]	Follow up responsive or corrective action proposed to be undertaken

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<sup>2</sup> Including nature of the infringement, any action taken by the CCP, identified barriers to implementation, such as capacity issues, technical impediments to compliance

MoP5-Prop04

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