



**COMMISSION**  
**NINTH REGULAR SESSION**  
Manila, Philippines  
2-6 December 2012

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**United States – Proposed amendments to CMM 2007-01**

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**WCPFC9-2012-DP19**  
**5 November 2012**



~~Fourth Regular Session~~  
~~Tumon, Guam, USA~~  
~~2-7 December 2007~~

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**~~CONSERVATION AND MANAGEMENT MEASURE FOR THE REGIONAL  
OBSERVER PROGRAMME~~**

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**Conservation and Management Measure ~~20122007--XX01~~**

*The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;*

*Recalling* Article 28(1) of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention), which requires the Commission to develop a Regional Observer Programme to, among other things, collect verified catch data, and to monitor the implementation of the conservation and management measures adopted by the Commission;

*Further recalling* Article 28(7) of the WCPFC Convention, which requires the Commission to develop procedures and guidelines for the operation of the Regional Observer Programme;

*Cognizant* of Conservation and Management Measure 2006-07, which established the procedures to develop the WCPFC Regional Observer Programme;

Adopts, in accordance with Article 10 of the WCPFC Convention the following Conservation and Management Measure for the establishment of the WCPFC Regional Observer Programme (Commission ROP).

**Establishment of the Commission ROP**

1. There is hereby established the Commission ROP, which shall be coordinated by the Secretariat of the Commission.
2. The ROP shall be implemented on a phased basis. The implementation schedule is attached as Annex C.

3. The Secretariat of the Commission shall provide an annual report to the Commission with regard to the Commission ROP and on other matters relevant to the efficient operation of the programme.

### **Objectives of the Commission ROP**

4. The objectives of the Commission ROP shall be to collect verified catch data, other scientific data, and additional information related to the fishery from the Convention Area and to monitor the implementation of the conservation and management measures adopted by the Commission.

### **Scope of the Commission ROP**

5. The Commission ROP shall apply to the following categories of fishing vessels authorized to fish in the Convention Area in accordance with the Commission's Conservation and Management Measures 2004-01:

- i) vessels fishing exclusively on the high seas in the Convention Area, and
- ii) vessels fishing on the high seas and in waters under the jurisdiction of one or more coastal States and vessels fishing in the waters under the national jurisdiction of two or more coastal States.

### **Functions of observers**

6. The functions of observers operating under the Commission ROP shall include collecting catch data and other scientific data, monitoring the implementation of the conservation and management measures adopted by the Commission and any additional information related to the fishery that may be approved by the Commission. When a vessel is operating on the same fishing trip both in waters under the national jurisdiction of its flag State and in the adjacent high seas, an observer placed under the Commission ROP shall not undertake any of these functions in waters under national jurisdiction of the flag State without the consent of the flag State.

### **Obligations of CCMs of the Commission**

7. Each CCM of the Commission shall ensure that fishing vessels fishing in the Convention Area, except for vessels that operate exclusively within waters under the national jurisdiction of the flag State, are prepared to accept an observer from the Commission ROP if required by the Commission.

8. Each CCM of the Commission shall be responsible for meeting the level of observer coverage as set by the Commission.

9. CCMs shall source observers for their vessels as determined by the Commission.

10. CCMs shall explain to the vessel captain, observer duties relevant to appropriate measures adopted by the Commission.

### **Role of the Commission and its subsidiary bodies**

11. The Commission shall, through its subsidiary bodies within their respective mandates, monitor and supervise the implementation of the ROP, develop the priorities and objectives of the ROP, and assess the results of the ROP. The Commission may provide further direction concerning the operation of the ROP, as necessary. The Commission shall ensure the administration and coordination of the ROP is adequately resourced. The Commission may enter into contracts for the provision of the ROP.

### **Role of the Secretariat**

12. Consistent with Article 15(4), the role of the Secretariat will be to:

- a) coordinate ROP activities, including, inter alia:
  - i) maintaining the ROP Manual and the ROP Observer Workbook;
  - ii) so that existing national programmes and sub-regional programmes participating in the ROP maintain standards as adopted by the Commission;
  - iii) receiving communications and providing reports on the ROP's operation to the Commission (and its subsidiary bodies); including target and achieved coverage levels;
  - iv) coordinating ROP activities with other RFMOs as directed and appropriate;
  - v) facilitating the use of authorized observers in the ROP;
  - vi) monitoring observer trainers and observer training courses for ROP observers to promote the maintenance of standards adopted by the Commission;
  - vii) that the ROP addresses the data and monitoring requirements of the Commission's CMMs;
  - viii) that appropriate information and data for the monitoring of the implementation of CMMs as adopted by the Commission are collected, compiled, stored and disseminated by the ROP in accordance with procedures adopted by the Commission;

- ix) managing and administering observers for special situations as directed by the Commission; and
- x) support staff necessary to effectively administer the ROP.

b) authorize observer providers to the ROP.

### **Role of coastal States**

13. Each CCM shall nominate a WCPFC National Observer Coordinator, who shall be the contact point on matters related to the ROP.

### **Guiding principles for operation of the Commission ROP**

14. The Commission ROP shall operate in accordance with the following principles:

- i) The Commission ROP shall consist of independent and impartial observers qualified in accordance with criteria approved by the Commission;
- ii) Vessels that operate principally in coastal waters, but occasionally venture on to the adjacent high seas or into the waters under the jurisdiction of a neighboring State, if they so agree, may carry observers of their own nationality provided those observers have been authorized by the Secretariat;<sup>1</sup>
- iii) The Commission ROP shall be organized in a flexible manner that takes into account the nature of the fishery from the Convention Area and any other relevant factors the Commission may consider appropriate;
- iv) To ensure cost effectiveness and to avoid duplication, the Commission's ROP shall be coordinated, to the maximum extent possible, with other regional, subregional and national observer programmes; and to this extent the Commission may enter into contracts or appropriate arrangements for the provision of the ROP;
- v) The Commission ROP shall provide a sufficient level of coverage as approved by the Commission to ensure that the Commission receives appropriate data and information on catch levels and any additional information related to the fisheries within the Convention Area, taking into account the characteristics of the fisheries;

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<sup>1</sup> See TCC2 Summary Report, para 54ii: "the need to integrate existing national and regional observer programmes into the Commission programme and "to allow CCMs to continue to deploy national observers on vessels that principally operate in coastal waters and that occasionally extend their fishing operations on to the high seas."

vi) Observers shall not unduly interfere with the lawful operations of the vessel and in carrying out their duties shall give due consideration to the operational requirements of the vessel and to the extent practicable minimize disruption to the operation of vessels fishing in the Convention Area; Observers shall comply with the Guidelines in Annex A — Guidelines for the Rights and Responsibilities of Observers;

vii) The Commission ROP shall be operated to ensure that observers shall not be unduly obstructed in the discharge of their duties. To this extent, CCMs of the Commission shall ensure that vessel operators comply with the Guidelines in **Annex B** — Guidelines for the Rights and Responsibilities of Vessel Operators, Captains and Crew;

viii) The Commission ROP shall ensure the security and confidentiality of non-aggregated data and other information which the Commission deems to be of a confidential nature; the release of data and other information collected by the Commission ROP shall be in accordance with guidelines set out in the Commission's Rules and Procedures for Access to, and Dissemination of, Data Compiled by the Commission.

**Guidelines on the Rights and Responsibilities of Observers**

In accordance with Annex III Article 3, and article 28 of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific. The following guidelines for the Rights and Responsibilities of Observers shall apply to observers placed on a vessel under the Commission ROP.

**1. The rights of observers shall include:**

- a) Full access to and use of all facilities and equipment of the vessel which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board, and areas which may be used to hold, process, weigh, and store fish.
- b) Full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying, reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing.
- c) Access to and use of communications equipment and personnel, upon request, for entry, transmission, and receipt of work related data or information.
- d) Access to additional equipment, if present, to facilitate the work of the observer while on board the vessel, such as high powered binoculars, electronic means of communication, etc.
- e) Access to the working deck during net or line retrieval and to specimens (alive or dead) in order to collect and remove samples.
- f) Notice by the vessel captain of at least fifteen (15) minutes before hauling or setting procedures, unless the observer specifically requests not to be notified.
- g) Access to food, accommodations, medical facilities, and sanitary facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel.
- h) The provision of adequate space on the bridge or other designated area for clerical work and adequate space on the deck for observer duties.
- i) Freedom to carry out their duties without being assaulted, obstructed, resisted, delayed, intimidated or interfered with in the performance of their duties.

**2. The responsibilities of observers shall include:**

- a) Being capable of performing the duties set out by the Commission.
- b) Acceptance and compliance with agreed upon confidentiality rules and procedures with respect to the fishing operations of the vessels and of the vessel owners.
- c) Maintenance of independence and impartiality at all times while on duty in the ROP.
- d) Compliance with the ROP protocols for observers carrying out ROP duties on board a vessel.
- e) Compliance with the laws and regulations of the CCM that exercises jurisdiction over the vessel.
- f) Respecting the hierarchy and general rules of behavior that apply to all vessel personnel.
- g) Performance of duties in a manner that does not unduly interfere with the lawful operations of the vessel and in carrying out their functions they shall give due consideration to the operational requirements of the vessel and shall communicate regularly with the captain or master of the vessel.
- h) Familiarity with the emergency procedures aboard the vessel, including the locations of life rafts, fire extinguishers, and first aid kits.
- i) Communicating regularly with the vessel captain on relevant observer issues and duties.
- j) Observance of ethnic traditions of the crew and customs of the flag State of the vessel.
- k) Adherence to the ROP Code of Conduct for observers.
- l) Promptly writing and submitting reports to the Commission or national programme in accordance with procedures adopted by the Commission.



**Guidelines on the Rights and Responsibilities of Vessel Operators, Captain and Crew**

In accordance with Annex III, Article 3, and Article 28 of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific. The following Guidelines on the Rights and Responsibilities of Vessel Operators, Captain and Crew shall apply when an observer is placed under the Commission ROP.

**Rights and responsibilities of vessel operators and captains**

**1. The rights of vessel operators and captains shall include:**

- a) Expectation that a reasonable period of prior notice of the placement of an ROP observer shall be given.
- b) Expectation that the observer will comply with the general rules of behavior, hierarchy, and laws and regulations of the CCM of the Commission that exercises jurisdiction over the vessel.
- c) Timely notification from the observer provider on completion of the observer's trip of any comments regarding the vessel operations. The captain shall have the opportunity to review and comment on the observer's report, and shall have the right to include additional information deemed relevant or a personal statement.
- d) Ability to conduct lawful operations of the vessel without undue interference due to the observer's presence and performance of necessary duties.
- e) Ability to assign, at his or her discretion, a vessel crew member to accompany the observer when the observer is carrying out duties in hazardous areas.

**2. The responsibilities of vessel operators and captains shall include:**

- a) Accepting onboard the vessel any person identified as an observer under the ROP when required by the Commission.
- b) Informing the crew of the timing of the ROP observer boarding as well as their rights and responsibilities when an ROP observer boards the vessel.
- c) Assisting the ROP observer to safely embark and disembark the vessel at an agreed upon place and time.

- d) Giving notice to the ROP observer at least fifteen (15) minutes before the start of a set or haul onboard, unless the observer specifically requests not to be notified.
- e) Allow and assist the ROP observer to carry out all duties safely.
- f) Allowing ROP observer full access to the vessel's records including vessel logs and documentation for the purpose of records inspection and copying.
- g) Allowing reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing.
- h) Permitting access to additional equipment, if present, to facilitate the work of the ROP observer while onboard the vessel, such as high powered binoculars, electronic means of communication, etc.
- i) Allow and assist the ROP observer to remove and store samples from the catch.
- j) The provision to the ROP observer, while onboard the vessel, at no expense to the observer or the ROP observer's provider or government, with food, accommodation, adequate sanitary amenities, and medical facilities of a reasonable standard equivalent to those normally available to an officer onboard the vessel.
- k) The provision to the ROP observer, while onboard the vessel, insurance coverage for the duration of the observer's time onboard the vessel.
- l) Allow and assist full access to and use of all facilities and equipment of the vessel that the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish onboard, and areas which may be used to hold, process, weigh, and store fish.
- m) Ensuring the ROP observer is not assaulted, obstructed, resisted, delayed, intimidated, interfered with, influenced, bribed or is attempted to be bribed in the performance of their duties.

### **Rights and responsibilities of vessel crew**

#### **3. The rights of vessel crew shall include:**

- a) Expectation that the ROP observer will comply with the general rules of behavior, hierarchy, and laws and regulations of the CCM that exercises jurisdiction over the vessel.
- b) Expectation that a reasonable period of prior notice of the placement of a ROP observer shall be given by the Captain.

- c) Reasonable expectation of privacy in crew personal areas.
- d) Ability to carry out duties associated with normal fishing operations without undue interference due to the ROP observer's presence and performance of their necessary duties.

**4. The responsibilities of the vessel crew shall include:**

- a) Not assaulting, obstructing, resisting, intimidating, influencing, or interfering with the ROP observer or impeding or delaying observer duties.
- b) Compliance with regulations and procedures established under the Convention and other guidelines, regulations, or conditions established by the CCM that exercises jurisdiction over the vessel.
- c) Allowing and assisting full access to and use of all facilities and equipment of the vessel which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish onboard, and areas that may be used to hold, process, weigh, and store fish.
- d) Allow and assist the ROP observer to carry out all duties safely.
- e) Allow and assist the ROP observer to remove and store samples from the catch.
- f) Compliance with directions given by the vessel captain with respect to the ROP observers duties.

### Implementation programme for the Regional Observer Programme

1. When the measure enters into force, CCMs shall commence implementation of the ROP, in accordance with the measure adopted at WCPFC4, by using the sub-regional and national programmes already operational in the region. CCMs are encouraged to submit data from such programmes as soon as possible.
2. At the direction of the Commission, the IWG-ROP shall continue to develop the framework and important elements of the ROP (e.g. determination of minimum vessel size for observer coverage, training and accreditation of observers, roles and responsibilities of observers, data requirements, cost issues, and appropriate effort units for expressing coverage levels).
3. Arrangements in 2008 do not preclude future development of the ROP by the Commission.
4. No later than 31 December 2008:
  - Existing sub-regional programmes and national programmes shall be regarded as a part of the ROP, and shall continue unless otherwise determined by the Commission.
  - Data obtained through these observer programmes shall be submitted to the Commission and shall be considered Commission data.
5. During the period 1 January 2009–31 December 2010:
  - The Commission shall review the recommendations from the IWG-ROP, SC, and TCC and further develop, and refine as necessary, the ROP, including application of the ROP.
6. ~~No later than 30 June 2012, CCMs shall achieve 5% coverage of the effort in each fishery under the jurisdiction of the Commission (except for vessels provided for in paras 9 and 10). In order to facilitate the placement of observers the logistics may dictate that this be done on the basis of trips.~~  
No later than 30 June 2012, CCMs shall achieve 5% coverage of the effort in each fishery under the jurisdiction of the Commission, except as provided below.
  - Vessels used exclusively to fish for fresh fish in the area north of 20 degrees North latitude, for which CCMs shall achieve 5% coverage by 31 December 2014.
  - Vessels provided for in paragraph 10, for which implementation of the ROP is deferred.

- Purse seine vessels operating in the Convention Area shall carry an observer on every trip from March 1, 2012. Purse seine vessels transiting within, from, or to the Convention Area that have not and will not fish and that have all their fishing gear stowed are not required to carry an observer, provided that they have notified their national fishing authority of the estimated dates and locations of such transit.
- Administrators of observer programs authorized under the ROP shall ensure that observers deployed on purse seine ROP trips are debriefed to ensure that all data in observer reports are accurate and completed before the observer data are forwarded to the Commission. Such data shall be forwarded to the Commission within 3 weeks of the end of the trip.

7. At the 2012 annual sessions of the SC and TCC, the data generated by the ROP shall be reviewed and those subsidiary bodies shall make appropriate recommendations to the Commission. Based on the advice and recommendations of the SC and TCC, the Commission shall annually review the ROP and make adjustments as necessary. Among the elements of the ROP to be reviewed are the provisions of para 10 on vessels initially deferred from application of the ROP.
8. CCMs shall also be expected to meet any additional ROP observer obligations that may be included in any measure adopted by WCPFC, such as provisions of a catch retention measure, a FAD management measure or a transshipment measure. Such measures may include observer requirements for freezer longliners, purse seiners and/or carriers.

### **Special circumstances**

9. Fishing vessels used exclusively to fish for fresh fish<sup>2</sup> in the area north of 20 degrees north shall be accorded the following considerations:
  - i) At its 2008 annual session, the Northern Committee shall consider the implementation of the ROP adopted by the Commission by vessels fishing for fresh fish in the area north of 20 degrees north.
  - ii) At its 2010 annual session, the Northern Committee shall make recommendations to the Commission on the implementation of the ROP by fishing vessels fishing for fresh fish in the area north of 20 degrees north.
  - iii) The recommendations of the Northern Committee shall provide a date for implementation of the ROP by vessels fishing for fresh fish in the area north of 20 degrees north no later than 31 December 2014.
10. The implementation schedule for the following vessels shall be deferred:

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<sup>2</sup> For the purpose of this measure, “fresh fish” means highly migratory fish stocks that are live, whole or dressed/gutted, but not further processed or frozen.

- i) small vessels, the minimum size of which shall be considered by the IWG-ROP for recommendation to the Commission in 2008.
- ii) troll and pole-and-line vessels used for fishing for skipjack tuna or albacore (to be scheduled for review by the IWG-ROP).