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OBSERVERS & CORRUPTION

WCPFC-TCC10-2014-14
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At TCC9 it was agreed that responses from members, about how to best deal with corruption issues, such as those involving blackmail, bribery and extortion, should be tabled for discussion at TCC10.

Comment - This paper was written following the above direction, however there is no evidence that this is a widespread problem, and it is known that the majority of observers from the many different ROP programmes carry out their roles as observers to the best of their ability and show pride in the role they play as an observer. When reading this paper it should be understood that corruption involves a small number of observers. Simile it also involves small numbers of vessel captains crew and owners.

Introduction

1. A ROP observer is a trained specialist who plays a critically important role in proper fisheries management by collecting the information that forms the foundation of fundamental analyses that determine the health of the various fish stocks in the WCPO region. Fisheries managers must have confidence in the ability of fisheries observers to provide information that is of the highest quality, integrity, objectivity, and utility to ensure that fisheries scientists and managers are able to produce the best available information, which is then used to make management decisions. The information collected by observers is crucially important to the WCPFC. Accusations of corruption of observers working with vessel captains/owners or companies are a constant threat to the reputation of the WCPFC ROP programme and the national and sub-regional observer programmes, and has at times called into question the reliability of ROP data and information.

2. All collected information collected as part of the ROP is ultimately entered into a regional databases; this database is used by WCPFC, SPC, FFA, National Government Organisations and others to monitor many aspects of the various fisheries and fleets. Information collected and submitted by the ROP observers into the data base is generally considered the best available information for relevant areas of science, management and conservation including:

- composition of most bycatch species;
- the use of different types of gear configurations on board the vessel;
- important information on commercial species;
- bycatch and discard information;

- FAD fishing; and
- many other metrics involved with fishing for tuna.

For many years, observer collected information has been used in national investigations and legal proceedings against vessels/captains or their owners, and in recent years its potential for use in WCPFC compliance monitoring processes has also been recognised

Observer Related Corruption

3. Corruption involving observers may include various illicit activities such as blackmail, bribery, extortion, and fraud. However, when considering how to deal with observer-related corruption; it must be recognised and acknowledged that all observer-related corruption generally requires complicity or collusion with the vessel owner, vessel operator, or crew and, in some cases, may include them all. There may also be instances where an observer is an unwilling participant because of threats against their personal safety or general intimidation.

4. In very few cases countries have brought an action against an observer for corruption, which usually results in termination as the only punishment. Less frequently, corruption charges resulted in fines held against a vessel. The fraud made possible through collusion between the vessel and observer involving FAD sets in the FAD closure period represents only one example of observer related corruption. While not all encompassing, other instances where observers may collude with the vessel captain to not report certain vessel activity resulting in corruption may include:

- Unauthorized fishing in closed areas;
- Non-reporting/misreporting of catches (target and bycatch species);
- Activity involving endangered, threatened, or protected species (Retention of prohibited species, shark finning, deliberate setting on whales and whale sharks, *etc.*) (*Refer Attachment 2*);
- Using prohibited gear and methods for which a vessel is unlicensed, (*i.e.* long lines set to catch sharks by purse seiners when drifting overnight, *etc.*)
- Illegal transshipment or discarding at sea; and
- General failure in following National Laws and Regulations or WCPFC Conservation and Management Measure (CMM) requirements.

5. While corruption will never be eliminated, there are some steps that can be taken that can remove incentives and which should substantially prevent or deter observer's involvement in corruption. The WCPFC Secretariat has identified essentially four fundamental ways to reduce or eliminate observer related corruption:

- a) Improve observer standards for technical training, Codes of Conduct, and professionalism as well as standards to ensure the health, safety, and welfare of observers stationed on board vessels;
- b) Eliminate the incentives for corruption by making the risks greater than the rewards and providing positive incentives for good behaviour; and
- c) Eliminate the source of corruption through regulations or other measures that are more easily enforced independently of an observer.
- d) Creating carefully and well thought out CMMs, so that they do not open the ROP to potential fraud.

Improving Observer Standards

6. The most efficient and effective long term solution to observer corruption consists of improving observer standards such that observers maintain a sense of pride and professionalism that reduces their drive to accept bribes or otherwise misreport at the request of a vessel's captain, master, or crew.

7. The WCPFC Secretariat notes that, similar to dealing with other forms of observer misconduct, many solutions to observer corruption start with the training provided to the observer. Thus, observer training providers, consistent with the Code of Conduct for their respective programme, must make the rules and regulations for observer behaviour explicitly clear during all training sessions and emphasise them throughout the training. Observer providers should continually emphasise the Codes of Conduct or other guiding documents, ensuring that observers not only fully understand their rights and obligations as well as the consequences if they do not adhere to the provisions of the code.

The following sections address additional specific components of improving observer standards.

Code of Conduct

8. During the audit of the ROP programmes the WCPFC Secretariat recognized that all programmes have a Code of Conduct. However, the WCPFC Secretariat also determined that many programmes place relatively little emphasis on the purpose, utility, and value of their respective Codes of Conduct. Moreover, many observers are only made aware of the Code of Conduct after they first sign a contract, following which the Code of Conduct is rarely, if ever, mentioned again.

9. The Code of Conduct is not a benign document and represents an important requirement that observer programmes and providers must report on as well as enforce when necessary and appropriate. The Code of Conduct in each programme is a requirement that ensures observer programmes achieve and maintain a zero tolerance of misbehaviour, including corrupt activities. Furthermore, the Code of Conduct that the observer programme uses should be readily available prior to each trip, with the Code of Conduct included as part of a standard hand out when observer commence that trip.

Observer Training

10. Observer training courses generally cover the Code of Conduct, however in many cases, this training is usually a brief review of the Code of Conduct and a cursory explanation on what each provision means. Observer training should be carried out by a person who has a clear understanding of the rules and Codes by giving clear and explicit explanations of any rules, regulations, and the Code of Conduct for observers, including its relationship to corruption. Observer training must clearly and explicitly explain the rules and procedures for documenting corruption as they apply to the observer and the vessel as well as any standardised penalties schedule for violations.

Debriefing

11. Observer debriefers are often the first to hear about threats to the health, safety, or welfare of the observer as well as any corruption that has occurred on a vessel. Observer programmes must prescribe very clear and explicit procedures to ensure that any incident reported or suspected violation by an observer to a debriefer is quickly and properly reported directly by the debriefer to the debriefers' superior, who should inform a designated law enforcement authority through a very direct line of communication and chain of command.

Risk Greater Than Reward

Legal System

12. If member countries wish to address corruption effectively, they must have strong legislation to deal with fisheries observer and vessel captain corruption. The laws and associated regulations must be clear and transparently applied to be effective. Observers, if found to be corrupted, should be charged with appropriate criminal charges, put through the court system, and subject to the consequences handed down by a recognised judicial forum. Simply suspending observers from a programme for corrupt activities is not a sufficient deterrent to others.

13. Furthermore, vessel captains/owners/crew found to be corrupting or otherwise coercing observers should also be clearly subject to the same judicial review subject to substantial penalties, such as heavy fines, incarceration, or a lifetime ban from fishing in the WCPO area. Continual corrupt activities by the vessel captain/owners should including listing of the subject vessel on the IUU blacklist subject to prohibition of fishing rights and potential seizure of the vessel and associated assets.

14. Similarly, observers found to be engaged in extortion or blackmail of a vessel by threatening the captain that they will report something negatively, unless the observer is paid in money or expensive goods should be criminally charged and dealt with through the court system.

Penalties and Penalty Levels

15. Penalties for corruption activities are linked with the laws and regulations of each country, many countries have adequate procedures in place that can handle these matters and can issue substantial punishment through fines, vessel and/or catch confiscation and jail terms if warranted. However a number of countries do not have adequate laws or rules, that can handle this type of corrupt activity, some do have laws, but the penalties and fines are mediocre and given the possible overall monetary value of the gain to be made by being corrupt compared to paying a mediocre fine, it would not deter a vessel captain from committing the same offence over and over in that country. A penalty schedule that could be used as a guideline for countries wishing to update their laws is attached as “Attachment 1”

Positive Incentives

16. A Pacific Island Observer Coordinator recently made a suggestion that there should be an incentive scheme to encourage observers to report attempts of corruption. By asking observers to report attempted bribes subject to a transparent process for reviewing the allegations, an observer programme could effectively create effective incentives against corruption. The rationale is if observers knew they were to be given an incentive to not take bribes, and knowing they would get an incentive payment if the captain or person responsible were found guilty, they would tend to take the legal incentive route rather than the illegal bribe. Several details remain in fleshing out this concept, but the premise is sound and could provide a substantial incentive for an observer to report corruption rather than become a part of it.

Salary

17. Many Observer Coordinators believe that if the salary of observers were substantially increased to a professional level of pay in all programmes; this will make an observer reconsider engaging in corruption and potentially losing their job. In effect, a higher salary based on levels of expertise and performance undercuts the appeal of a bribe from a vessel captain, master, or crew. The level of daily payments to observers in some countries is still considered low by most observers, which creates an incentive to take bribes from unscrupulous vessel captains.

18. General salary levels in a few countries are low compared to other countries and therefore the observer salary may be lower than the salary paid for work on shore. Generally in these countries because of the low salary level the majority of persons who apply for observer work may be poorly educated and are unable to find other work. In recent examples, two countries held criteria tests for entrance to an observer course, and out of approximately 40 applicants in one country only 3 managed to pass the entrance test, and in the other country there were approximately 50 persons sit for the criteria test; no one passed the entrance criteria test. The entrance criteria test is considered a simple test in mathematics and other areas and only a 75% pass is required. It is of a concern regarding the education systems in some countries that these persons who failed the criteria test held current high school passes in mathematics and other relevant areas, a high school pass is the basic requirement for entrance to an observer course in many programmes. Other than the country reviewing its education standards, it is

believed that if a higher level of salary and at sea allowances were paid in these countries a better standard of candidate may apply for a position as an observer.

Eliminating Corruption through Regulatory or Other Means

Two observers

19. During times of activities that require close monitoring such as a FAD closure period, the placement of two observers preferably from different programmes on vessels for this closure period would diminish the potential for corruption to occur without significant efforts toward greater collusion between vessels and observer/observer programmes. It does not necessarily mean corruption won't occur, but it does make it less likely and more difficult for a captain to organise. This would also enhance employment opportunities for observers. It also could be linked to the training of new observers going out with experienced observers.

Electronic Monitoring

20. An alternative to two observers would be monitoring the vessel activities by “Electronic Monitoring” (EM). Electronic Monitoring, in the form of video surveillance or via satellite monitoring of vessels could substantially reduce the potential for corruption. Video surveillance, in addition to an observer on board, could be used as a validation and verification tool that protects both the observer as well as the vessel.

Electronic Reporting

21. One initiative being used in some programmes in the WCPO is engaging the use of electronic tablets and satellite transmitters in the observer reporting process. This system promises not only to improve the quality, integrity, objectivity, and utility of the information that the observers collect, but also helps ensure the health, safety, and welfare of observers in a way that may deter them from participating in corruption. The tablet provides a secure and direct conduit for observer information directly to the observer provider, observer programme, and scientific services provider. The tablet and the satellite transmitter have features that allow an observer to quietly flag any undue coercion from a vessel captain, master, or crew while also providing a “panic button” in the instance of physical assault or serious threats.

Regulatory Challenges

22. Another issue that leads to potential corruption involves the often complex rules and requirements given to a vessel when fishing in the WCPO. For instance if there was FAD closure period where no one was permitted to fish on FADS, there would less reason to ask an observer to look the other way while the vessel fishes on a floating object. However because the FAD closure has been further complicated to some degree by Option (a) & Option (b) in para 16 of CMM 2013-01; if Option (a) is selected by a flag State the FAD closure period extends to 4 months July – Oct. If Option (b) is chosen by a flag State, it is a three month FAD closure July – Sept and there are limits on the number of sets that can be carried out by a flag State on a yearly basis, and with requirements for monthly reporting of FAD sets to WCPFC. In addition, there is additional complexity in CMM 2013-01 from other provisions and footnotes which provide for more flexible implementation of the FAD closure to certain vessels and areas; the Secretariats advice in response to queries from ROP observers and ROP coordinators about the application of the FAD closure rules to specific vessels or fleets is that they should correctly report FAD Sets year round.¹

23. Management rules/CMMs are necessary to ensure sustainability, stability and management in the fishery; however the nature of the process for developing WCPFC CMMs means that it isn't always possible for CCMs or the Secretariat to be able to provide input to the drafting to consider aspects such as

¹ For example see Circular 2014/53 which provides among others a reminder on *FAD Closure and Reporting under CMM 2013-01*

the implications it will have on ROP observers and therefore can indirectly place pressure on the observer on board a vessel.

Summary

24. It is unfortunate that a few fishermen see the rules imposed on them as an imposition on their ability to make good profits from the fishery, and to a few of them corruption is just doing something that is a part of everyday business. It is found easier to corrupt all sorts of people involved in fisheries including observers as a means to ensure they can make substantial profits; after all to bribe an observer reportedly \$1000 to \$6000 on a set that is illegal, may make the vessels that catches 100 tons of quality fish in that set, up to \$200,000. Fines should be feared and cannot be so small as to be considered a cost of doing business, either by the observer or by the vessel.

25. The solutions and suggestions in this paper are an attempt to list items that could be considered for implementation; however some would require fairly comprehensive input and legal frameworks to be designed and put into practice, something that would be difficult to do without commitment.

The following suggestions are made for consideration.

- a) Observer Codes of Conduct at observer training sessions need to be strongly emphasized especially in what it means to a country; it should also emphasize the responsibility and penalties to observers in the area of bribery and corruption.
- b) Observer Code of Conduct should be readily available prior to each trip, and be included as part of a standard hand out when observer commence their trips.
- c) Observer Training should heavily emphasize the effect that corruption has on small countries revenue and the integrity of their observer programme.
- d) Member countries should have strong legislation to deal with fisheries observer and vessel captain corruption. (Refer Attachment 1)
- e) Observers and vessel captains or crew involved in corruption and where necessary should be penalised through fines or charged with appropriate criminal charges and put through the court system, and suffer the consequences handed down by a court. (Refer Attachment 2)
- f) Incentive schemes to compensate observers for reporting attempted corrupt activities or corruption on vessels should be investigated.
- g) Salary of observer should be reviewed and where required the base salary should be substantially increased to a professional level of pay in all programmes;
- h) CMMs should be compiled with thought to an observer's role in collecting information and which minimises the potential incentives for misreporting.

i) **Attachment 1**

Penalties and Penalty Levels

It is recognized that many countries have in place adequate rules, laws and legislation to deal with matters concerning corruption; however some countries have inadequate laws and the following is a guide only that could be considered when dealing with corrupted observers and vessel captain or crew. Members who have no helpful rules or laws in place could use this as a guideline to take care of the issues of observer corruption.

Guidelines for Penalties and Penalty Levels for Observer Corruption

Minor¹	First Violation	2nd Violation	3rd Violation	4th Violation	5th
	15,000 to 40,000	40,000 to 150,000	150,000 to 500,000 Plus market value of catch to be confiscated	\$500,000 Plus market value of catch to be confiscated & Suspension of Captain from fishing in WCPO for six months	\$1,000,000 Plus market value of catch to be confiscated & Banned from fishing in WCPO name and picture of master published to other RFMO
Intermediate²	25,000 - 150,000	150,000 500,000 Plus market value of catch to be confiscated	\$500,000 Plus market value of catch to be confiscated & Suspension of Captain from fishing in WCPO for six months	\$1,000,000 Plus market value of catch to be confiscated & Banned from fishing in WCPO name and picture of master published to other RFMO	
Major³	40,000- \$500,000 Plus Value of catch to be confiscated & Suspension of Captain from fishing in WCPO for six months	500,000- \$2,000,000 Plus Value of catch to be confiscated Plus Suspension of Captain from fishing in WCPO for 1 year	\$2,000,000+ Plus Value of catch to be confiscated Banned from fishing in WCPO name and picture of master published to other RFMO		

¹ Minor corruption would be applied to vessels and observers where the matter detected is of an accidental nature but the vessel doesn't want it reported.

An example would be the captain gives the observer a bottle of whiskey to not report a genuine accidental setting on pilot whales not seen around a FAD, until the net is pursued.

² Intermediate Corruption is where the observer believes a whale is deliberately set on, but the captain denies setting around the whale deliberately, the result is that the whale is released alive and with little or no harm. Captain asks that it not be reported and offers the observer a small bribe/gift to not report the incident.

³ Major Corruption – where the vessel and the observer agree to an arrangement, where the vessel can do what it wishes but the observer will not report any instances that show the vessel is fishing illegally or contrary to any rules; this usually involves a large sum of money and/or goods. I.e. continual deliberate setting on live whales; setting on FADS during FAD closure periods; etc.

Attachment 1 cont

Guidelines for Penalties and Penalty Levels for Observer extortion

Observer Extortion	1st Violation	2nd Violation
Minor ⁴	Observer suspended 3-6 months	Observer Contract terminated
Intermediate ⁵	Observer Contract Terminated	
Major ⁶	Observer contract terminated and incident is reported to Police for further action	

⁴ Minor - Observer tells captain he/she will not report an incident that occurred if the captain gives him some small gift/s.

⁵ Intermediate – Observer tells Captain if he doesn't pay money or buy goods, he/she will report one or a number of incidences that the observer had witnessed on the vessel.

⁶ Major - Observer threatens to make up false information and report vessel activities that did not occur and asks for money and/or goods to not report these false accusations against the vessel.

Attachment 2

This is an example reported publicly that shows the importance of ROP Observer Data and the appropriate flag State reaction in the use of this data. Although not highlighted in the article it also indicates the pressure an observer may be put under to not report these type of incidences.

NOAA Press release (Office of Law Enforcement)

September 4 - 2013

Penalties for Purse Seine Fishing Violations Total More Than \$1.5 Million.

Decisions were issued the week of August 19, 2013, in two separate enforcement cases from the Pacific Islands involving U.S. purse seine vessels fishing in violation of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA).

An Administrative Law Judge handed down a decision on August 22, 2013, finding that the owner, operator and fishing master of the *American Triumph* had conducted six sets on or within one nautical mile of a fish aggregating device (FAD) and had deployed a FAD during the 2009 FAD closure, both of which are violations of the Act, resulting in a fine of \$562,068.

In the second case, which consolidated five cases against the fishing vessels *Ocean Encounter*, *Ocean Conquest*, *Sea Honor*, *Sea Quest* and *Pacific Ranger*, the owners, operators and fishing masters were charged with five counts of setting their purse seine net on whales, which is a violation of the Marine Mammal Protection Act, and ten counts of setting on or within one nautical mile of a FAD and two counts of deploying FADs during the 2009 FAD closure in violation of the WCPFCIA. In its decision issued August 23, the Court found all seventeen counts proven and assessed a civil penalty of \$953,054.

"These investigations are clear evidence of NOAA honoring its commitments to the international community regarding the preservation of tuna in the Pacific and protecting the survival of marine mammals that roam the oceans," said Bill Pickering, Special Agent in Charge of the Pacific Islands Division.

These cases stem primarily from decisions of the Western and Central Pacific Fisheries Commission of which the United States is a member. The Commission seeks to ensure the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean. In December 2008, the Commission adopted a conservation and management measure to conserve bigeye and yellowfin tuna. The measure covered a three-year period – 2009 through 2011 – and, among other things, it established a closed period in each of the three years when purse seine vessels were prohibited from fishing on fish aggregating devices. In 2009, the FAD closure period was from August 1 through September 30. Similar measures have been adopted by the Commission in subsequent years, and in 2013, the FAD closure period runs from July 1 through October 31.

The United States implemented this decision through regulations promulgated under the Western and Central Pacific Fisheries Convention Implementation Act. Under those regulations, it is unlawful for a purse seine vessel to make a fishing set on or within one nautical mile of a FAD or to deploy a FAD during the FAD closure period.

In addition to the violations of the WCPFCIA, the second case involved five counts of violating the Marine Mammal Protection Act (MMPA). The Court's decision importantly affirms the Agency's position that intentionally setting a purse seine net on or around a marine mammal violates the MMPA. Respondents had asserted that the MMPA's commercial fishing incidental take authorization allowed all "takes" of a marine mammal except for an intentional lethal take. A "take" is defined under the MMPA as harassing, hunting, capturing or killing, or attempting to do any of the same, to a marine mammal. The Court explicitly rejected the Respondents' argument.

The violations were investigated by NOAA's Office of Law Enforcement and prosecuted by the Enforcement Section of NOAA's Office of General Counsel. These cases were the result of reports from Forum Fisheries Agency fisheries observers, authorized under the Commission's Regional Observer Programme, that the vessels are required to carry on board. Observers are tasked with observing and documenting the fishing activities on board the vessel and creating reports of those activities. The reports are used for scientific, management and compliance purposes in the Western and Central Pacific