



TECHNICAL AND COMPLIANCE COMMITTEE

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MINIMUM STANDARD IN RELATION TO MECHANISMS ON HOW TO PREVENT AND STOP MISCONDUCT OF OBSERVERS.

WCPFC-TCC10-2014/14A

17 September 2014

INTRODUCTION:

1. TCC9 recommended that the WCPFC10 task the WCPFC Secretariat with developing and circulating prior to TCC10 a paper on a Minimum Standard in relation to mechanisms on how to prevent and stop misconduct of observers. Comments should be provided and the paper adjusted and then presented for discussion and endorsement at TCC10. (TCC9 Summary report paragraph 184)

Issue:

2. Complaints from observer providers, vessel agents, captains, crew, vessel masters, regarding observer behaviour and misconduct.

Comment

3. The problems of observer misconduct has diminished since the inception of the ROP, It is recognised that a smaller number of problems still exist, however it has been noticed that problems in this area are less reported today compared to the early beginnings of the ROP 8 years ago. The WCPFCs ROP teams continue to assist observer programmes where they need assistance and advice; and acknowledge the efforts that have been made to date by the trainers/ national and subregional programmes and collaborative efforts of FFA/SPC/PNA to strengthen observer programmes and to resolve these problems. However the problem still does exist and in response to the tasking by TCC9, this paper tries to come up with some solutions that could be applied.

DISCUSSION:

Overview

4. Observing in the WCPO is considered a professional position, and persons selected and trained to be observers are expected to behave in a manner that befits their roles as representatives of their programme and their country. However, a few observers have acted in an irresponsible and improper manner, causing a number of problems for their providers as well as vessels they are either to board or are on board. The observer providers are well aware of these problems, and some have taken some form of disciplinary action against observers that have engaged in misconduct. In some cases, observer providers have dealt strongly and directly with troublemakers from their programmes either by suspension or termination of the observer's contract. Observer coordinators, vessel captains and agents note that observer misconduct problems tend to occur on shore under two circumstances: (1) when observers are onshore in the different ports while waiting to board a vessel assignment; or (2) when observers have

concluded an assignment and are awaiting transport to their home of record.. Observer misconduct also sometimes occurs on board vessels at sea.

5. This paper attempts to try and define minimum standards for mechanisms that will limit or otherwise mitigate the opportunities for misconduct to occur.

The Misconduct Problem

6. All observer programmes have in place a ‘Code of Conduct’ in which most contain penalties for observer indiscretions. In the past, penalties for observer misconduct have included loss of pay, suspension of work, and, in the majority of cases, termination as an observer.

7. Excessive alcohol consumption among a few observers was identified as the cause of many of the problems, among other issues resulting in:

- Civil disturbance;
- Destruction of property;
- Physical harm;
- Police action

8. Other types of misconduct that may or may not be related to overconsumption of alcohol have also been reported. This additional misconduct includes:

- Failure to pay bills for accommodation or other bills while on duty;
- Deliberately missing flights to or from a duty station;
- Deliberately losing equipment and data; and
- Failing to show up for a prearranged boarding of a vessel assignment.

9. During the ROP audit process (2010-2012) the WCPFC Secretariat noted that a number of national observer programmes encountered problems supporting observers that have landed in and faced problems in foreign countries. These national observer programmes have mechanism in place for advancing their observers funds to pay for accommodation, but have no efficient mechanisms to organise travel back to their home ports if the observers find themselves in a foreign port. Usually, these observer programmes request that the vessel agent repatriate the observer as well as provide Daily Subsistence Allowance (DSA) funds; relying on the vessel agent to take these measures, whilst not ideal, works if the observer accepts the level of remuneration offered, and then leaves the port without incident.

10. Unfortunately, vessel agents as recent as 2013 have reported to the WCPFC Secretariat that some observers continually ask for more money. Allegedly, when these problematic observers come in to request additional funds from the vessel agent they are drunk and cause a disturbance in their office. The WCPFC Secretariat notes that the shifting of responsibility from the observer provider to the vessel or vessel agent to facilitate observer repatriation is not ideal for several reasons. The shift of this responsibility has, in part, driven some of the problems with observer misconduct due to the dependency of the observer on the vessel or vessel agent for payment and repatriation. Furthermore, a direct financial relationship between the observer and the vessel agent or vessel creates an inherent conflict of interest that does not contribute to the overall independence of the observer programmes.

Potential causes of problems

11. It is a seafarer's tradition to indulge oneself in a drink upon reaching port after an extended period at sea. Like the captains and crewmembers of vessels, there are observers who, following a trip that can be between 1-3 months at sea, just want to let their hair down and have a few drinks upon reaching port. Unfortunately, these observers sometimes drink too much. Most of the observers who overindulge are not a problem and return to their accommodation to sleep it off without incident, with the only consequences being a bad hangover that may or may not affect behaviour and job performance for a couple of days following.

12. However, it is the observers who are unable to control their drinking, or their resultant behaviour, that typically end up causing problems. These undisciplined observers typically leave a vessel that has reached port with the intention of drinking to excess and are often accompanied by crew, other observers, or friends they may have in the port. While uncommon, these binge drinking sessions may last 12-48 hrs, resulting in the observer becoming a danger to themselves and others. Once a person reaches the point of inebriation that they are no longer capable of looking out for themselves, they become unaware of their actions and engage in behaviours such as destruction of public and private property, civil disorder, physical assault, and general public disturbance that, ultimately, results in forcible arrest by the local police.

13. Other issues may appear to be related to misconduct, but may not necessarily be the fault of the observer. For instance, in some cases observer programmes determined that observers were not sufficiently funded for their trip by the observer provider and, therefore, were unable to pay their bills with the money given to them. In other cases, cancelled flights resulted in observers being forced to stay in a country that, in turn, resulted in an increased accommodation bill which the observer lacked sufficient funds to pay. Theft or robbery can also result in observers not having enough funds to cover their accommodation and repatriation.

14. However, in many cases, insufficiency of funds in a foreign port resulted from poor money management by the observer. The reason for insufficiency of funds can vary, but typically results from a lack of personal financial responsibility. Observer programmes have recorded reasons for insufficiency of funds including:

- Exhaustion of funds on drinking and night clubbing;
- Exploitation of an observer by "friends" seeking to profit or benefit from the observer's pay;
- Purchasing electronic equipment or mobile phones that use money designated for accommodation and other needs when in a foreign port; and
- Purchasing other goods and services not necessary to perform the observer's official duties.

15. Observer providers often provide pre-trip cash advances to observers in case their assigned vessel lands in a foreign port. Unfortunately, in a common practice not approved by providers, the observer leaves this cash advance in their home country for their family or spends it on non-essential items before departing for their assignment. The observer provider is typically unaware of this unauthorised use of funds and, when the observer then lands in a foreign port with little or no funds to support their stay or repatriation, many providers experience unwarranted difficulty in getting funds to these observers to support them.

Solutions

16. The purpose of this paper is to explore and recommend some solutions to the misconduct issues in ways that will both prevent and deter these issues from occurring.

17. The TCC has discussed the topic of alcohol-related problems with observers and the issue is frequently addressed at the annual Regional Observer Coordinators Workshop (ROCW). The ROCW reaffirmed that it would not tolerate observers causing problems because of drunkenness. Proposed solutions range from a prohibition of alcohol consumption for all observers at all times suggested by some observer programmes, while others suggest a more tolerant approach that allows alcohol consumption, but imposes severe penalties in the event of an alcohol related incident. Both suggestions have merit, but will not likely eliminate the problem of observers drinking, regardless of whether it is to excess, when they return from trips. Suspension or termination of observers engaged in alcohol-related misconduct has successfully removed some of the troublemakers from the system. However, because new observers are continually trained, the problem of alcohol-related misconduct will continue to arise.

18. The WCPFC Secretariat notes that all solutions to this issue start with the training provided to the observer. Thus, observer training providers must make the rules and regulations for observer behaviour explicitly clear during all training sessions and emphasise them throughout the training. It is noted that roles of observers, and the observer Code of Conduct is currently discussed at each training session, however due to time constraints in some training sessions, the training can often be modest. It is preferred that the Code of Conduct and other legislative matters involving observers should be allocated more time during a training schedule and where practical be delivered by a person with a legal background or comprehensive understanding of the Code of Conduct and other legislative matters.

19. Observers must recognise and acknowledge their role as a professional representative of not only their vocation, but also their country, both on and off the vessel. Furthermore, observer training must make explicitly clear the Code of Conduct for their respective programmes and that if the observer violates this code they will suffer firm consequences up to and including dismissal in addition to any civil or criminal charges brought by a foreign government related to their misconduct. Subsequently, the observer must understand and acknowledge that by signing a contract they agree and submit to the rules, regulations, and associated Code of Conduct and should adhere to those standards subject to the consequences outlined within them. Moreover, as a professional position, observers must acknowledge that they are ambassadors for their profession and their countries and recognise that their role as such does not end when they disembark the vessel. An observer not only represents the observer profession, the observer provider, and their country onboard their assigned vessel, but also represent the same when they step off a vessel in any foreign port. Observers must perceive and respect that when they are on contract they are on “company time” and must exhibit the requisite level of professional decorum.

20. It is also important to acknowledge that there may be cases where an observer is unjustly accused of engaging in misconduct by a vessel or vessel agent as a way to discredit, disparage, harass, interfere with, or otherwise threaten that observer. Observers have a right to a working environment with minimal health and safety risks including the ability to conduct their duties free from assault, harassment, interference or bribery. Unjustly accusing an observer of misconduct constitutes an offense at least as bad as if not worse than the alleged misconduct itself and should be strongly guarded against by observer providers and observer programmes. There are several programmatic solutions described below that could be employed to guard against an unjust misconduct claim against an observer. Implementing these measures

21. For discussion purposes, the WCPFC Secretariat has compiled a table of possible mechanisms on how to prevent or deter alcohol-related misconduct involving observers. However if an observer wants to drink, there is no foolproof way to prevent it and we can really only minimize or mitigate the risk of alcohol related misconduct from occurring.

Table 1.1: Mechanisms to Prevent and Deter Alcohol-Related Misconduct of Observers

#	Suggested Mechanism	Possible result
Training		
1	Continually and forcefully emphasize observer professionalism and pride early and often during training, clearly indicating that an observer is “on the clock” for the entirety of their observer contract and assignment.	This sets the frame for future observer behavior and could help self-select for observers less likely to engage in misconduct.
2	Clearly and explicitly explain the rules, regulations, and Code of Conduct for observers related to misconduct, especially the consequences for violations, at several stages in training.	This should help improve the awareness of potential consequences and help deter some observers from engaging in misconduct.
3	Clearly and explicitly explain the rules and procedures for documenting potential misconduct violations. There should be a requirement of proof of misconduct which should place the burden on the vessel or vessel agent to provide an affidavit documenting the specifics of the observer misconduct, an opportunity for the observer to provide a response, and a written report summarizing the findings as well as an opportunity for both parties to comment in writing on the report.	This would ensure that the observer understands their rights and what steps they would take should they be accused of misconduct. Providing this information offers an additional incentive to behave while also informing the observer of their right to an unbiased investigation of the accusation.
4	Clearly and explicitly explain the penalties schedule for violations, e.g. Arrest for alcohol related assault results in termination. The penalties schedule should include all scenarios, such as, if an observer is found guilty of misconduct that does not rise to the level of termination, the observer provider should provide a progressive performance evaluation that allows an observer to improve, with clear expectations in writing, including, where available, options for counseling and alcohol treatment and recovery programs.	This gives observers a clear understanding of what is at stake if they engage in misconduct and provides an additional deterrent effect, while also indicating to the observer their options for seeking treatment for alcoholism.
5	3 strikes and you’re out rule - Clearly and explicitly explain the penalties schedule for violations. If an observer is found guilty of misconduct that does not rise to the level of termination, then the observer should be informed and warned that they are on a “3 strike and you are out rule”. This allows an observer to improve, knowing that if they fail to do so; they will face termination from their observer role.	This gives observers a clear understanding of what is at stake if they engage in continual misconduct and provides an additional deterrent effect.
Assignment		

6	Intervention at the point of assignment where the observer must read aloud the Code of Conduct before the observer provider and initial or otherwise acknowledge provisions specific to alcohol related misconduct.	This will work if the observer commits themselves to not drink to much alcohol during his/her stay in the port.
7	Intervention at the point of disembarking where someone explains the rules and consequences on what will happen if an observer drinks too much.	This will work if the observer commits themselves to not drink to much alcohol during his/her stay in the port.
8	Prohibition on the consumption of alcohol by observers during the term of their trip and return to home country.	Observer will not be permitted to drink any alcohol during their trip and return home subject to sanction. Dismissal as the penalty, regardless of how much is consumed will most likely deter some observers.
9	Requirement to remain on board the assigned vessel when in port and only disembark that vessel when the first flight out of the country to the observers homeport after completion of first trip comes available.	Cost implications as there would be no second trips, unless observers were not permitted to leave the vessel after the first trip and could only leave when departure for home country is organised.
10	All accommodation etc is organised with meals (no alcohol permitted) and paid for by provider if observer lands in foreign port	Observer's accommodation and food (no alcohol permitted) is paid by provider to a set limit, - Small allowance to cover costs if observer has to travel or is going back for 2 nd trip.

Further mechanisms which may assist

22. The Commission has no standards on how payment of observers should occur, as this is left to the individual providers. However, providers must take responsibility regarding the placement, movements, and financial assistance of their observers to ensure the observer receives proper support, noting again that payment by vessels or vessel agents direct to observers is not considered a good practise. To assist, a set of guidelines has been compiled that most CCMs with observers' programmes already follow; these should be considered as basic guidelines when developing administration & finance systems to deal with unique situations that is common to all observer programmes.

- a) All ROP observers would be paid direct by their respective national, sub regional or regional observer programmes for salary, allowances, travel, DSA and other moneys required to carry out their roles as observers.
- b) No payments of cash or other money instrument should be paid direct to an observer for salary, allowances, travel, DSA by a vessel agent, vessel company or vessel master.
- c) All attempts should be made to apply the same administration of payments regardless of the where the observer is disembarked
- d) If not possible to get money to the observer by bank transfer or western Union arrangements between vessels, agents and the provider to repatriate the observer should be done through a system of properly recorded invoicing

- e) Where possible, observer programmes and providers could develop standardised billing arrangements or a voucher system with restaurants in the most common ports for disembarkation such that those businesses could bill the observer programme or provider directly, removing the responsibility of the observer to carry additional funds for food while effectively prohibiting the purchase of alcohol.

SUMMARY

22. Drunkenness and misconduct is always a problem regardless of what profession a person is in. The fact that we have hundreds of observers working at any given time in many ports shows that the majority of observers are very professional and well-behaved. Unfortunately, a few bad apples make it look bad for the rest. Unfortunately, these instances of misconduct can occur regardless of experience or rank, and preventing the observer from carrying out their official duties. Sometimes a suspension or other strong penalty may get an observer's attention and prevent future infractions, but some observers may habitually offend. The question is how you create a system to prevent and deter observer misconduct from happening.

23. The key is observer programmes cannot operate successfully unless they have good practical administrative support, sufficient staff and are properly financed programmes. Unfortunately, a few observer programmes that have been developed in some countries have inadequate systems in place to handle the number of observers that they now place on vessels. These programmes do as well as they can, but encounter government and other administrative constraints that prevent them from dealing with observers in a quick and proper manner. Good financial and administrative systems are required to be in place to deal with observer movements and placements in a quick and efficient manner. If this could happen many of the problems highlighted in this paper may have less chance of occurring.

24. As stated previously, this paper has been prepared in response to the TCC9 tasking, and is tabled at TCC10 with a view to providing some recommendations to assist national and subregional programmes, and the ROP. The WCPFCs ROP team stands ready to assist observer programmes where they need assistance and advice; and we acknowledge the efforts that have been made to date by the trainers/ national and subregional programmes and efforts of FFA/SPC/PNA to strengthen observer programmes.

Acknowledgement

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