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ON OPERATIONAL LEVEL DATA**

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## REQUIREMENTS FOR OPERATIONAL DATA ANALYSIS

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### I. INTRODUCTION

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western Pacific Ocean (the “WCPFC Convention”)<sup>1</sup> establishes the Western and Central Pacific Fisheries Commission (the “WCPFC”) to manage and conserve tuna and other fish stocks of significant value across a huge swath of the Pacific Ocean—an area covering about twenty percent of Earth’s surface.<sup>2</sup> Despite the enormous value of the fisheries resources managed by the WCPFC—estimated at roughly \$3.8 billion per year<sup>3</sup>—the efforts of the WCPFC to manage the fishery sustainably has been undermined by the competing interests of distant water fishing nations and Pacific island states where

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<sup>1</sup> Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Sept. 5, 2000, 2275 U.N.T.S. 40532 [hereinafter WCPFC Convention] (entered into force June 19, 2004). available at: <https://www.wcpfc.int/system/files/text.pdf>.

<sup>2</sup> *Frequently Asked Questions and Brochures*, W. & CENT. PAC. FISHERIES COMM’N, <https://www.wcpfc.int/frequently-asked-questions-and-brochures> (last updated Mar. 3, 2010).

<sup>3</sup> Quentin Hanich et al., *Oceans of Opportunity? The Limits of Maritime Claims in the Western and Central Pacific Region*, in NAVIGATING PACIFIC FISHERIES: LEGAL AND POLICY TRENDS IN THE IMPLEMENTATION OF INTERNATIONAL FISHERIES INSTRUMENTS IN THE WESTERN AND CENTRAL PACIFIC OCEAN 25–26 (Quentin Hanich & Martin Tsamenyi, ed. 2009). “[I]n 2007, the tuna catch in the WCPO was estimated at 2,396,915 tons and worth approximately US\$3,895 million. These tuna fisheries represent the primary economic opportunity for many of the region’s small island developing States.” *Id.*. A separate estimate valued the fishery at \$2.2 billion per year. Pepe Clarke, *Management of Tuna Fisheries in the Western and Central Pacific*, in SHARED RESOURCES: ISSUES OF GOVERNANCE 199, 203 (ed. Sharelle Hart, 2008). Another estimate places the value of the landed catch at \$5 to 7 billion per year. Oceanic Fisheries Programme of the Secretariat of the Pacific Community, Sustainability of Pacific Tuna Fisheries 1 (Policy Brief 25/2014, 2014). The “landed value” of fish is the value of the fish as they first leave the boat. Pew Environment Group, *Marine Fisheries and the World Economy* 1 (2010).

the majority of tuna are caught<sup>4</sup> and institutional rivalries that hamper the scientific decisionmaking process.<sup>5</sup> In addition, several members have not provided “operational level catch and effort data”—that is, vessel-specific data relating to the number and type of fish caught per set<sup>6</sup>—that would help fisheries scientists better estimate the status of populations and determine sustainable catch limits.<sup>7</sup> Instead, these WCPFC members provide “aggregate data”—data that group catches from a number of vessels over a larger geographic area and longer period of time.<sup>8</sup> The lack of complete operational level catch and effort data, frequently referred to simply as operational data, adversely affects fisheries management. The inability to manage fisheries resources most effectively in turn adversely affects the economies and food security of many countries in the region.<sup>9</sup>

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<sup>4</sup> See, e.g., Pepe Clarke, *Management of Tuna Fisheries in the Western and Central Pacific*, in SHARED RESOURCES: ISSUES OF GOVERNANCE 199, 203–04 (Sharelle Hart ed., 2008) (describing how Japan, Taiwan, South Korea, and the United States—all distant water fishing nations—caught approximately ninety percent of the total tuna catch in the Western and Central Pacific Ocean, and that, whereas the Pacific island developing states wanted greater economic benefits from their tuna fisheries, the distant water fishing nations wanted the fish for commercial sale at large profit margins).

<sup>5</sup> SCIENTIFIC COMM., WCPFC, SUMMARY REPORT: SCIENTIFIC COMMITTEE NINTH REGULAR SESSION, ¶ 194–98 (2013) (describing the different views of the members concerning which scientific body had the authority to provide advice to the WCPFC) [hereinafter SCIENTIFIC COMMITTEE NINTH REGULAR SESSION], available at <https://www.wcpfc.int/meetings/9th-regular-session-scientific-committee>. See also Chris Wold, Emi Kondo, & Erika Hamilton, *A Review of the Provision of Scientific Advice in the Western and Central Pacific Fisheries Commission*, WCPFC-SC10-2014/ MI-IP-03 (2014).

<sup>6</sup> WCPFC, Scientific Data to be Provided to the Commission (revised at WCPFC4, 6, 7, 9, and 10) [hereinafter *Scientific Data Document*] at <https://www.wcpfc.int/doc/data-01/scientific-data-be-provided-commission-revised-wcpfc4-6-7-and-9>. As described in more detail in Section III *infra*, the precise definition of “operational level catch and effort data” remains unclear, as does the legal status of certain documents that provide content to the phrase.

<sup>7</sup> See, e.g., FAO TECHNICAL GUIDELINES FOR RESPONSIBLE FISHERIES 4: FISHERIES MANAGEMENT (1997); PETER WILLIAMS, SCIENTIFIC DATA AVAILABLE TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION, WCPFC-SC10-2014/ST WP-1, ¶ 34 (2014) [hereinafter DATA GAPS 2014].

<sup>8</sup> When operational catch and effort data cannot be provided to the WCPFC, then members may submit

catch and effort data aggregated by time period and geographic area that have been raised to represent the total catch and effort shall be provided. Longline catch and effort data shall be aggregated by periods of month and areas of 5° longitude and 5° latitude. Purse-seine and ringnet catch and effort data shall be aggregated by periods of month, areas of 1° longitude and 1° latitude, and type of school association. Catch and effort data for other surface fisheries targeting tuna shall be aggregated by periods of month and areas of 1° longitude and 1° latitude.

WCPFC, Scientific Data to be Provided to the Commission, *supra* note 6, at § 4.

<sup>9</sup> According to Tuvalu’s Minister for Natural Resources, “[f]isheries, and particularly tuna, have been identified as Tuvalu’s most important natural resource for many years.” DEVELOPMENT OF TUNA FISHERIES IN THE PACIFIC, A FAIRER SLICE FOR PACIFIC PEOPLES, 8 (2009). In Kiribati, “fishing, aquaculture, processing and trade activities provide a range of employment, income, revenue and educational benefits for I-Kiribati, as well as food security benefits through the consumption of Kiribati fisheries resources. Its oceanic fisheries provide most of the government revenue and economic livelihood benefits and its coastal fisheries provide valuable social and food security resource benefits.” Brooke Campbell & Quentin Hanich, *Fish for the Future: Fisheries Development and Food Security for Kiribati in an Era of Global Climate Change*, 4 (2014), available at [http://pubs.iclarm.net/resource\\_centre/2014-47.pdf](http://pubs.iclarm.net/resource_centre/2014-47.pdf). See also HENRIKE SEIDEL & PADMA N. LAL, ECONOMIC VALUE OF THE PACIFIC OCEAN TO THE PACIFIC ISLAND COUNTRIES

Those WCPFC members that have not submitted operational data claim that domestic legal constraints prevent them from providing operational data.<sup>10</sup> Japan, for example, alleges that its Act on the Protection of Personal Information<sup>11</sup> prevents it from providing information that could be used to identify a particular person.<sup>12</sup> Although Japan asserts that the APPI prevents it from disclosing such data, that law does not apply to government agencies, such as Japan’s Ministry of Agriculture, Forestry and Fisheries (MAFF), the agency that implements the WCPF Convention for Japan; the law applies to business operators handling personal information and governmental agencies are expressly excluded from the APPI.<sup>13</sup> A different law, the Act on the Protection of Personal Information held by Administrative Organs (APPIHAO),<sup>14</sup> does apply. However, this paper explains that Japan either already has the authority to submit operational data to the WCPFC or has readily available options for submitting such information despite the APPIHAO’s general prohibition against the disclosure of personal information.<sup>15</sup>

Korea has not provided the WCPFC with information about the domestic legal constraints that prevent it from providing operational data. Since Korea has remained silent, we have assumed that Korea faces obstacles similar to Japan—that is, Korea’s privacy law prevents it from submitting operational data. Korea’s privacy law reveals that Korea does not have a persuasive legal basis to avoid its obligation to provide operational data. First, the submission of operational data likely does not constitute “personal

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AND TERRITORIES § 4.2.2.2 (2010) (stating that “[c]oastal or inshore fishing for home consumption plays a vital role in Pacific islanders’ lifestyles and provides food security throughout the [Pacific island countries and territories.]”).

<sup>10</sup>The document describing what constitutes “operational level catch and effort data” provides the following:

It is recognized that certain members and cooperating non-members of the Commission may be subject to domestic legal constraints, such that they may not be able to provide operational data to the Commission until such constraints are overcome. Until such constraints are overcome, aggregated catch and effort data and size composition data, as described in (4) and (5) below, shall be provided.

WCPFC, Scientific Data to be Provided to the Commission, *supra* note 6, at § 3.

<sup>11</sup> Act on the Protection of Personal Information (Japan), Act No. 57 of May 2003, as amended through Act No. 49 of 2009 [hereinafter APPI], at

<http://www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=02&dn=1&yo=act+on+the+protection+of+personal+information&x=50&y=3&ia=03&ky=&page=2>.

<sup>12</sup> Japan has not provided this specific legal analysis. It must be inferred from its statement that the APPI prevents it from submitting operational level catch and effort data.

<sup>13</sup> APPI, *supra* note 13, at art. 2(3).

<sup>14</sup> Act on the Protection of Personal Information Held by Administrative Organs (Japan), Act No. 58 of May 30, 2003, as amended through Act No. 69 of 2014 [hereinafter APPIHAO], at

<http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&ia=03&x=39&y=14&ky=%E8%A1%8C%E6%94%BF%E6%A9%9F%E9%96%A2+%E5%80%8B%E4%BA%BA%E6%83%85%E5%A0%B1&page=4>.

<sup>15</sup> See *infra* Section VII.A.

information” within the meaning of the Personal Information Protection Act (PIPA).<sup>16</sup> Second, Korea can submit operational data collected from Korean vessels to the WCPFC with the consent of ocean fishery operators, such as vessel owners and captains. Third, even without consent, Korea can submit operational data to an international organization such as WCPFC, as long as the submission would not unduly infringe the interest of vessel owners and captains. The government even explains that when there is a conflict between the domestic privacy law and the international treaty, the treaty prevails.<sup>17</sup> Because Korea submitted operational data in 2015,<sup>18</sup> perhaps Korea agrees that it does not have a legal basis for not disclosing operational data to the WCPFC.

This paper reviews the requirements for submission of operational data to the WCPFC with the goal of providing guidance to members that have not submitted operational data. This paper reviews the specific claims and legislation of Japan and Korea, not to target them for shame or sanctions, but rather due to the size of the total catches of these two countries<sup>19</sup> and convenience.<sup>20</sup> The goal is to assist all members and, consequently, assist the WCPFC obtain the data it needs to ensure the sustainability of tuna and other stocks. To achieve those goals, the paper is structured as follows:

- Part II describes the importance to fisheries management of submitting operational data.
- Part III introduces the requirements for submission of data found in the WCPFC Convention and other documents.
- Part IV discusses the WCPFC’s attempts to obtain operational data from WCPFC members, including Japan and Korea.
- Part V briefly discusses the data actually submitted by Japan and Korea.
- Part VI assesses whether the failure to provide operational data constitutes a violation of the WCPFC Convention and other documents, concluding that it does if the member does not have a justifiable legal constraint preventing it from submitting operational data.
- Part VII analyzes the privacy claims of Japan and Korea for not submitting operational data, concluding that they are not justifiable. It also describes ways in

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<sup>16</sup> Personal Information Protection Act (Korea), Act No. 10465, Mar. 29, 2011 as amended through Act No. 13423, July 24, 2015 [hereinafter PIPA], at

<http://www.law.go.kr/lsSc.do?menuId=0&p1=&subMenu=1&nwYn=1&section=&tabNo=&query=%EA%B0%9C%EC%9D%B8%EC%A0%95%EB%B3%B4%20%EB%B3%B4%ED%98%B8%EB%B2%95#liBgcolor0>. English translation is available at

<http://www.law.go.kr/lsInfoP.do?lsiSeq=142563&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>. English translation is based on PIPA, Act No. 11990, amended Aug. 6, 2013.

<sup>17</sup> See *infra* Section VII.B.

<sup>18</sup> PETER WILLIAMS, SCIENTIFIC DATA AVAILABLE TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION, WCPFC-SC11-2015/ST WP-1 rev. 1, ¶ 24 (2015) (stating that Korea providing operational data for its longline and purse seine fleets for 2014) [hereinafter DATA GAPS 2015]

<sup>19</sup> Japan and Korea frequently are in the top three for total catches among those WCPFC members not reporting operational level data, with Indonesia also making the top three. WCPFC, TUNA FISHERY YEARBOOK 2013, at 124–128, Tbl. 84 (2013).

<sup>20</sup> The authors know each other and could agree quickly on a time frame for performing the work. In addition, the relevant laws of Japan and Korea have been translated into English.

- which Japan and Korea could bring their legislation into conformity with the requirements for submission of operational data to the WCPF and explains how the United States revised its legislation to overcome its domestic legal constraints.
- Part VIII concludes that the culture of shielding operational data from review by scientists must change if the WCPFC is to ensure the sustainability of total allowable catches.

## II. THE IMPORTANCE OF PROVIDING OPERATIONAL DATA

Sustainable fisheries are critical not only to maintain the long-term survival of the target species,<sup>21</sup> but also to ensure a long-term food supply and economic resource, particularly in developing countries where fish may be the major source of animal protein and fisheries generate significant economic benefits for both local and national economies.<sup>22</sup> To achieve these goals, fisheries managers need timely, complete, and reliable statistics on catch and fishing effort.<sup>23</sup> As the Food and Agriculture Organization of the United Nations (FAO) has written, “[t]he collection of data is not an end in itself, but is essential for informed decisionmaking.”<sup>24</sup>

The type of data needed to achieve these goals is broad because the sustainability or unsustainability of the catch can be identified in different ways, as the FAO explains:

Increasing overexploitation of resources may often be detected by a combination of falling catch per unit effort, falling total landings, decreasing mean weight of fish or changes in the fish population age structure or species composition. By maintaining a time series of catch per unit effort and total landings by fleets (e.g. gear or boat category), by commercial species group, fishing area and fishing season, overfishing should be detectable. . . .<sup>25</sup>

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<sup>21</sup> The FAO has written that “[t]he aim of many data collection programmes is to monitor and assess the status of the stocks that are being exploited.” FAO, GUIDELINES FOR THE ROUTINE COLLECTION OF CAPTURE FISHERY DATA 7 (1998). The Code of Conduct for Responsible Fisheries provides that “[t]he right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of living aquatic resources.” FAO, CODE OF CONDUCT FOR RESPONSIBLE FISHERIES, art. 6.1 (1995), *available at* <http://www.fao.org/docrep/005/v9878e/v9878e00.htm>.

<sup>22</sup> SEIDEL & LAL, *supra* note 9, at § 4.2.2.2; FAO, GUIDELINES FOR THE ROUTINE COLLECTION OF CAPTURE FISHERY DATA, *supra* note 21, at 3.

<sup>23</sup> Code of Conduct for Responsible Fisheries provides that:

States should ensure that timely, complete and reliable statistics on catch and fishing effort are collected and maintained in accordance with applicable international standards and practices and in sufficient detail to allow sound statistical analysis. Such data should be updated regularly and verified through an appropriate system.

CODE OF CONDUCT FOR RESPONSIBLE FISHERIES, *supra* note 21, at art. 7.4.4.

<sup>24</sup> TECHNICAL GUIDELINES FOR RESPONSIBLE FISHERIES, *supra* note 7, at § 2(i).

<sup>25</sup> GUIDELINES FOR THE ROUTINE COLLECTION OF CAPTURE FISHERY DATA, *supra* note 218, at 8.

Sophisticated methods, such as cohort analysis, based on more detailed biological data may also be used. Data for these methods usually comprise size, age, sex and maturity of fish sampled from the catch. These data, routinely collected over a long period, together with other scientific information on fish growth and mortality, can produce accurate estimates of the current state of the stock. Results from such stock assessments should form the scientific foundation for advice on conservation measures.

... Monitoring species, age and size composition, mean lengths of species caught, habitat, by-catches (in particular discards) allows management to assess the wider impacts of fishing on the ecosystem.

FAO concludes that without these data fisheries stakeholders often disagree about management strategies because assessments of fish stocks must be based on subjective judgement and anecdotal information.<sup>26</sup>

In particular, “catch and effort data are critical to construct the most important indicators in most fisheries.”<sup>27</sup> As FAO explains,

data should always be collected at the level of the most detailed stratum, as it is always possible to aggregate, but impossible to disaggregate data. For example, if fish length-frequency data were collected aggregated over each landing day instead of trip, it may turn out later that on different trips vessels were exploiting different stocks. As the length frequency cannot be linked to particular trips, it would no longer be possible to know from which stock they originated and stock assessment work using these data would be unreliable.<sup>28</sup>

In addition, fisheries managers have long recognized that “it is imperative to have long time series of data collected consistently and routinely in order to evaluate trends in the behaviour of a variable.”<sup>29</sup> The Oceanic Fisheries Programme of the Secretariat of the Pacific Community,<sup>30</sup> the WCPFC’s scientific service provider,<sup>31</sup> has noted that

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<sup>26</sup> *Id.* In addition, enforcement of fisheries conservation measures is more difficult without these data. *See id.* (stating that “[e]nforcement may be assisted by using data collected as an audit trail, from harvesting through processing to export or consumption.”).

<sup>27</sup> *Id.* at 12.

<sup>28</sup> *Id.* at 14.

<sup>29</sup> *Id.* at 12.

<sup>30</sup> The Pacific Community, formerly known as the South Pacific Commission, is a regional organization established in 1947 by six “participating governments” who administered territories in the Pacific. Canberra Agreement Establishing the South Pacific Commission, signed Feb. 6, 1947, entered into force July 29, 1948, available at <http://www.spc.int/en/about-spc/history.html>. The six countries are Australia, France, New Zealand, the Netherlands, the United Kingdom and the United States of America. Now including twenty-six members (twenty-two Pacific Island countries and territories and Australia, France, New Zealand, and the United States), the Pacific Community engages its members in a variety of issues, including public health, economic and social development, climate change, and fisheries, to “help Pacific Island people achieve sustainable development.” SPC Website, “Building Capacity for Resilient



operational data “are required for the development of indices of abundance used in WCPFC stock assessments” and “to determine the spatial distribution of the catch in relation to [exclusive economic zones (EEZs)], the high seas areas and other management-related areas.”<sup>32</sup> In addition, operational catch and effort data would potentially provide a better understanding of historical trends, as well as a better understanding of declines in longline bigeye tuna.<sup>33</sup> For this reason, the failure of several WCPFC members to provide operational data is problematic for managing tuna and other fish stocks in the WCPF Convention Area.

### III. REQUIREMENTS FOR THE PROVISION OF DATA

While the FAO and others have described in detail the types of information that States should provide to assess stocks adequately and to ensure total allowable catches are set at maximum sustainable yield, they have been reluctant to define “operational data” and contrast it with “aggregate data.” There is a general understanding, however, that “[o]perational level catch and effort data is detailed fishing activity data usually collected on logsheets. These data include information regarding vessel identifiers, trip information and operational information for different gear types.”<sup>34</sup> Another fisheries document describes “operational data” as derived “from logbooks and observers” and which are “the most important of all the scientific data since they provide, *inter alia*, the only data collected at the fishing operation level and have allowed scientists to identify trends (such as vessel effects, gear configuration effects, etc.) not evident in other types of data.”<sup>35</sup> In contrast, aggregate data are compiled from more than one vessel or encompass weight or catch numbers in totality rather than by species.<sup>36</sup>

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Development,” <http://www.spc.int/en/events/1740-building-capacity-for-resilient-development.html>. See generally <http://www.spc.int/>. The Pacific Community was originally established “to restore stability to a region that had experienced the turbulence of the Second World War, to assist in administering their dependent territories and to benefit the people of the Pacific.” SPC Website, “History,” <http://www.spc.int/en/about-spc/history.html>. The Pacific Community is now more commonly referred to as the Secretariat of the Pacific Community (SPC) and constitutes the region’s primary technical and scientific organization. SPC Website “Employment,” <http://www.spc.int/en/employment.html>.

<sup>31</sup> The WCPFC’s Memorandum of Understanding (“MoU”) with the SPC calls on the SPC to provide scientific services, including data management services, to the WCPFC. Revised Memorandum of Understanding between the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and the Secretariat of the Pacific Community, 3 (Dec. 7–11, 2009) [hereinafter WCPFC–SPC MoU].

<sup>32</sup> WCPFC–SPC MoU, *supra* note 31, at Annex I.

<sup>33</sup> PETER WILLIAMS, SCIENTIFIC DATA AVAILABLE TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION, WCPFC-SC9-2013/ST WP-1, ¶ 29 (2013) [hereinafter DATA GAPS 2013].

<sup>34</sup> DATA GAPS 2013, *supra* note 32, at ¶ 34.

<sup>35</sup> WCPFC, CONSULTANCY REPORT: CAUSES OF DATA GAPS, WCPFC5-2008/IP05, 7 (Nov. 8, 2008).

<sup>36</sup> Secretariat of the Pacific Community-Oceanic Fisheries Programme, A Tier Scoring System for Compliance with the Provision of Scientific Data to the Commission, WCPFC11-2014-19b, ¶ 4 (Nov. 20, 2014).

<sup>36</sup> See WCPFC, Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission, Appx. 4 (2007), available at <https://www.wcpfc.int/doc/data-02/rules-and-procedures-protection-access-and-dissemination-data-compiled-commission>.



To gain an understanding of what operational data means in the context of the WCPFC, this section explores the numerous provisions of the WCPF Convention require WCPFC members to collect and provide data to the WCPFC.<sup>37</sup> The members have also adopted many Conservation and Management Measures (CMMs) that require the provision of data.<sup>38</sup> However, neither the WCPF Convention nor the WCPFC in its CMMs has defined the phrase “operational data” or contrasted “operational data” with “aggregate data.”

Nonetheless, both the WCPF Convention and the WCPFC have established frameworks for the types of information that members must submit that are vessel specific. In particular, the WCPFC adopted the document *Scientific Data to Be Provided to the Commission*<sup>39</sup> which includes “Standards for the Provision of Operational Level Catch and Effort Data.” In these documents, the WCPFC has made clear that “operational data” is something much more specific than “aggregate data,” with operational data referencing data specific to an individual vessel and specific sets.

### **A. Data Required by the WCPF Convention**

Article 5(i) of the WCPF Convention provides that, “to conserve and manage highly migratory fish stocks in the Convention Area,” each member must

collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort ...<sup>40</sup>

While this provision does not use the phrase “operational data,” the provision is written broadly. The term “complete” suggests that Article 5(i) relates to all types of data “concerning fishing activities,” including fishing effort, and the phrase “inter alia” signals that the specified types of data to collect and share are non-exhaustive. Further, by referencing “vessel position,” Article 5(i) indicates that information should be provided for each vessel and not aggregated from multiple vessels.

Article 23(2)(a) provides a broader and more specific list of the types of data that each member must submit to the WCPFC. First, it requires members to provide annually to the WCPFC “statistical, biological and other data and information in accordance with Annex I of the [U.N. Fish Stocks] Agreement.”<sup>41</sup> Second, it grants the WCPFC broad

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<sup>37</sup> See, e.g., WCPF Convention, *supra* note 1, at arts. 5(i) and 23(2)(a). See *infra* Section III.A.1.

<sup>38</sup> See *infra* Section III.A.2.b

<sup>39</sup> *Scientific Data Document*, *supra* note 6.

<sup>40</sup> WCPF Convention, *supra* note 1, at arts. 5(i).

<sup>41</sup> The WCPF Convention defines “Agreement” as the “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,” WCPF Convention, *supra* note 1, at art. 1(b). This agreement is more commonly referred to as the “Fish Stocks Agreement.” Fish Stocks Agreement, Aug. 4, 1995, UNDOC A/Conf.164/37 (entered into force Dec. 11,

discretion to require members to submit “such data and information as the Commission may require.”<sup>42</sup>

## 1. Data Required “In Accordance with the Fish Stocks Agreement”

Annex I of the Fish Stocks Agreement describes a broad range of “statistical, biological and other data and information” that members “should” or “shall” collect, depending on the provision.<sup>43</sup> Pursuant to Annex I of the Fish Stocks Agreement, WCPFC members should, as a general principle, collect data from vessels flying their flag

on fishing activities according to the operational characteristics of each fishing method (e.g., *each* individual tow for trawl, *each* set for long-line and purse-seine, *each* school fished for pole-and-line and *each* day fished for troll) and in sufficient detail to facilitate effective stock assessment.<sup>44</sup>

The focus on “each” set establishes the basic principle that data provision should be specific to a vessel and set; it should not be aggregated over space, time, or multiple vessels.

Annex I then describes mandatory obligations for collecting data that support the vessel-specific focus of the general principles. Article 3(1) of Annex I identifies the following specific types of data that members “shall” collect and submit “in sufficient detail to facilitate effective stock assessment”:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery...;
- (c) discard statistics, including estimates where necessary, reported as number or nominal weight by species as is appropriate to each fishery;
- (d) effort statistics appropriate to each fishing method; and

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2001) [hereinafter Fish Stocks Agreement], available at [http://www.un.org/depts/los/convention\\_agreements/texts/fish\\_stocks\\_agreement/CONF164\\_37.htm](http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm) .

<sup>42</sup> WCPF Convention, *supra* note 1, at art. 23(2)(a).

<sup>43</sup> Article 23(2)(a) specifically provides that “[e]ach member of the Commission *shall* ... (a) provide annually to the Commission statistical, biological and other data and information *in accordance with* Annex I of the [Fish Stocks] Agreement.” WCPF Convention, *supra* note 1, at art. 23(2)(a) (emphasis added). One could argue that the use of “shall” in Article 23(2)(a) transforms the discretionary data provisions (“should”) of the Fish Stocks Agreement into mandatory ones. This analysis, however, focuses on the phrase “in accordance with” to conclude that the discretionary data provisions of the Fish Stocks Agreement remain discretionary.

<sup>44</sup> Fish Stocks Agreement, *supra* note 41, at Annex I, Article 2(a) (emphasis added). In a pole-and-line fishery, fishermen throw live bait overboard to attract fish, which are caught on a pole and line using lures and barbless hooks. Lara Manarangi-Trott, Fisheries Data Requirements under International Law: Achieving Long-term Conservation and Sustainable Use of Tuna Fisheries in the Western Central Pacific Ocean, 27–28 (2008) (unpublished thesis), *available at* <http://ro.uow.edu.au/cgi/viewcontent.cgi?filename=0&article=1118&context=theses&type=additional>.

- (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.<sup>45</sup>

By focusing on fishing location, date, and time fished, subparagraph (e), like Article 2, focuses on vessel-specific information, rather than information aggregated across multiple vessels.

Article 3(2) further requires States to collect, “where appropriate,” and submit to relevant RFMOs information to support stock assessment, including

- (a) composition of the catch according to length, weight and sex;
- (b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity;<sup>46</sup>

Even though qualified by the phrase “where appropriate,” Article 3(2) and Article 3 as a whole outline the type of vessel-specific and species-specific data that WCPFC members must collect and submit.

Article 4(1) further provides that States “should” collect the following non-exhaustive list of vessel-related data and information: vessel identification, flag and port registry; vessel type; vessel specifications; and fishing gear descriptions.<sup>47</sup> Although Article 4(1) does not define this type of information as operational data, it indicates a level of specificity—i.e., vessel-specific information—needed for “standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data.”<sup>48</sup>

Article 5 also expressly provides that WCPFC members “shall” collect from vessels flying their flag “logbook data on catch and effort, including data on fishing operations on the high seas.”<sup>49</sup> The requirement to collect “logbook data” also evinces an intent to gather information concerning individual vessels.

Together, these provisions of the WCPF Convention and the Fish Stocks Agreement describe data and information that members must record and report that are vessel- and set-specific rather than aggregated from multiple vessels. While neither the WCPF Convention nor the Fish Stocks Agreement defines operational data as vessel- or

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<sup>45</sup> Fish Stocks Agreement, *supra* note 41, at Annex I, Article 3(1). This provision is supported by Article 5 of Annex III, which states: “[t]he operator [of a vessel] shall record and report vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards for collection of such data set out in Annex I of the Agreement.” WCPF Convention, *supra* note 1, at Annex III, art. 5. While this provision applies to operators of vessels, it underscores the importance of collecting and submitting vessel-specific data.

<sup>46</sup> Fish Stocks Agreement, *supra* note 41, at Annex I, Article 3(2).

<sup>47</sup> *Id.* at Annex I, Article 4(1).

<sup>48</sup> *Id.* at Annex I, Article 3(2).

<sup>49</sup> *Id.* at Annex I, art. 5.

set-specific data, the WCPFC Rules and Procedures relating to data state that operational level catch effort data is “[c]ollected on fishing vessel logbooks and by observers.”<sup>50</sup> In other words, not only are WCPFC members directed to report vessel-specific data, but the meaning of operational catch and effort data is intended to mean vessel- and set-specific data, that is, logbook data.

## 2. Data Required by the WCPFC

Article 23(2) requires members to submit specified information to the WCPFC annually and submit other information relating to fishing activities “at such intervals” as may be required. The WCPFC has used this authority to adopt requirements for the submission of data in annual reports and pursuant to binding CMMs, the latter which the WCPFC adopts by consensus.<sup>51</sup>

### a. Annual Reports

The WCPF Convention requires its members to submit, on an annual basis, statistical, biological, and other data and information provided in Annex I of the Fish Stocks Agreement as well as other data and information that the WCPFC mandates.<sup>52</sup> This requirement provides the foundation for the WCPFC’s rules for submission of annual reports.

The instructions for completing annual reports provide further insight into the specificity with which members are to report fisheries data.<sup>53</sup> Those instructions direct the members to submit data by gear type, species, vessel, and transshipment.<sup>54</sup> As

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<sup>50</sup> WCPFC, Rules and Procedures for the Protection, Access to, and Dissemination of Data, *supra* note 36, at 7.

<sup>51</sup> Although the WCPFC may adopt certain types of CMMs by a vote, others require consensus. Regardless of the WCPFC’s authority to vote, it has never done so.

<sup>52</sup> WCPF Convention, *supra* note 1, at art. 23(2)(a).

<sup>53</sup> At the Second Regular Session of the Commission in 2005, the Commission established that members must provide a two-part Annual Report to the Commission to satisfy their reporting obligations regarding Article 23(2). Part 1 of the Annual Report should contain a summary of each member’s information on fisheries, research, and statistics during the preceding calendar year. Members are also required to include some information required by CMMs in Part 1. Part 2 of the Annual Report must include information on Members’ management and compliance in the preceding calendar year. *See* TECH. & COMPLIANCE COMM., WCPFC, SUMMARY OF SUBMISSIONS OF ANNUAL REPORT PART 1 AND ANNUAL REPORT PART 2, WCPFC-TCC9-2013-IP01\_rev3, ¶ 2 (2013), at [http://www.wcpfc.int/system/files/WCPFC-TCC9-2013-IP01\\_rev3%20Summary%20AR%20Pt%201%20and%20AR%20Pt%202%20submissions.pdf](http://www.wcpfc.int/system/files/WCPFC-TCC9-2013-IP01_rev3%20Summary%20AR%20Pt%201%20and%20AR%20Pt%202%20submissions.pdf).

<sup>54</sup> WCPFC, *Annual Report to the Commission: Part I: Information on Fisheries Research and Statistics*, in SCIENTIFIC COMM., WCPFC, SUMMARY REPORT: SCIENTIFIC COMMITTEE FOURTH REGULAR SESSION, 231, Attachment N (2008). The WCPFC adopted this document at its Fifth Regular Session. WCPFC, SUMMARY REPORT, FIFTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN, ¶ 131 (2009).

compliance with this document is mandatory,<sup>55</sup> members must separate data into those categories. Consistent with the Convention’s provisions for submission of data, the annual report is designed to provide vessel-specific information.

## b. CMMs

The WCPF Convention requires members to submit information on fishing activities “in a manner and at such intervals as may be required by the Commission.”<sup>56</sup> Members have used this authority to adopt legally-binding CMMs.<sup>57</sup>

Although the WCPFC has adopted a large number of specific reporting requirements relating to an array of subjects in CMMs, these CMMs do not necessarily provide guidance on the specificity of data and information that members must submit and, consequently, on the meaning of “operational data.” For example, at least fifteen CMMs<sup>58</sup> require each member to submit specified information in either Part 1 and/or Part 2 of its Annual Report, suggesting that members must submit vessel-specific information as described above. However, some CMMs, such as the CMM for striped marlin, direct members to report annually to the Commission “the catch levels of *their fishing vessels*”

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<sup>55</sup> WCPFC Secretariat, *Summary of Annual Reports (Part 1 and 2) to the Commission*, WCPFC5-2008-IP02 (Rev.1) (2008) (stating that “[a]ll CCMs are required to use the newly adopted Part 1 Report template in 2009.”).

<sup>56</sup> WCPF Convention, *supra* note 1, at art. 23(2)(b).

<sup>57</sup> Under the Convention, a decision adopted by the Commission shall become binding 60 days after the date of its adoption. WCPF Convention, *supra* note 1, at art. 20(5). The Commission has previously adopted accepted nomenclature for Commission decisions, which provides that CMMs are binding decisions. WCPFC Secretariat, *Nomenclature for Commission Decisions*, WCPFC, SUMMARY REPORT: SECOND REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN, 63, Attachment M (2005), available at [https://www.wcpfc.int/system/files/WCPFC2\\_Records\\_Summary.pdf](https://www.wcpfc.int/system/files/WCPFC2_Records_Summary.pdf).

<sup>58</sup> WCPFC, CMM 2006-08, WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION BOARDING AND INSPECTION PROCEDURES (2006); WCPFC, CMM 2008-03, CONSERVATION AND MANAGEMENT OF SEA TURTLES (2008); WCPFC, CMM 2008-04, CONSERVATION AND MANAGEMENT MEASURE TO PROHIBIT THE USE OF LARGE SCALE DRIFTNETS ON THE HIGH SEAS IN CONVENTION AREA (2008); WCPFC, CMM 2009-03, CONSERVATION AND MANAGEMENT MEASURE FOR SWORDFISH (2009); WCPFC, CMM 2009-06, CONSERVATION AND MANAGEMENT MEASURE ON REGULATION OF TRANSSHIPMENT (2009); WCPFC, CMM 2010-01, CONSERVATION AND MANAGEMENT MEASURE FOR NORTH PACIFIC STRIPED MARLIN, ¶ 8 (2010); WCPFC, CMM 2010-07, CONSERVATION AND MANAGEMENT MEASURE FOR SHARKS (2010); WCPFC, CMM 2011-03, CONSERVATION AND MANAGEMENT MEASURE TO ADDRESS THE IMPACT OF PURSE SEINE ACTIVITY ON CETACEANS (2011); WCPFC, CMM 2011-04, CONSERVATION AND MANAGEMENT MEASURE FOR OCEANIC WHITETIP SHARKS (2011); WCPFC, CMM 2012-04, CONSERVATION AND MANAGEMENT MEASURE ON THE PROTECTION OF WHALE SHARKS FROM PURSE SEINE OPERATIONS (2011); WCPFC, CMM 2012-07, CONSERVATION AND MANAGEMENT MEASURE FOR MITIGATING IMPACTS OF FISHING ON SEABIRDS (2012); WCPFC, CMM 2013-07, CONSERVATION AND MANAGEMENT MEASURE ON THE SPECIAL REQUIREMENTS OF SMALL ISLAND DEVELOPING STATES AND TERRITORIES (2012); WCPFC, CMM 2013-08, CONSERVATION AND MANAGEMENT MEASURE FOR SILKY SHARKS (2013); WCPFC, CMM 2014-01, CONSERVATION AND MANAGEMENT MEASURE FOR BIGEYE, YELLOWFIN AND SKIPJACK TUNA IN THE WESTERN AND CENTRAL PACIFIC OCEAN (2014); and WCPFC, CMM 2014-07, CONSERVATION AND MANAGEMENT MEASURE ON COMPLIANCE MONITORING SCHEME (2014).

that have taken striped marlin as bycatch as well as the number and catch levels of vessels fishing for striped marlin in the Convention Area south of 15°S.<sup>59</sup> Similarly, the CMM for swordfish requires members to report the total catch of swordfish from vessels fishing south of 20°S latitude and flying their flag; operating under charter, lease, or other similar mechanism as part of the domestic fishery of another CMM; and any other vessels fishing within their waters south of 20°S.<sup>60</sup> The CMM for albacore requires members to report “all catches” of North Pacific albacore to the WCPFC every six months, except for small coastal fisheries which shall be reported on an annual basis.<sup>61</sup> While these CMMs require members to report on “their fishing vessels” or “catch levels,” they do not require them to report on “each” fishing vessel or “each fishing vessel’s catch.”

At other times, the WCPFC specifically identifies when members may submit data different from operational data. For example, members are directed to report their fishing effort for bluefin tuna “by fishery.”<sup>62</sup> The CMM for North Pacific albacore requires catches to be reported in terms of weight and fishing effort “in terms of the most relevant measures for a given gear type, including at a minimum for all gear types, the number of vessel-days fished.”<sup>63</sup> In addition, while each transshipment must be recorded, members must report to the WCPFC the “total quantities, by weight,” of highly migratory fish stocks transhipped by fishing vessels for which it is responsible.<sup>64</sup> At other times, the WCPFC makes clear that members must report only summary information.<sup>65</sup> These reporting requirements seem at odds with the generally accepted meaning of “operational data.”

At other times, however, CMMs require members to report information outside of their annual reports that is consistent with the member’s understanding of the meaning of operational data.<sup>66</sup> Every month, members must provide information submitted by captains of purse seine vessels regarding the number of sets in which fish aggregation devices are used, the total number of sets, and the estimated bigeye catch in the previous

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<sup>59</sup> WCPFC, CMM 2006–04, CONSERVATION AND MANAGEMENT MEASURE FOR STRIPED MARLIN IN THE SOUTHWEST PACIFIC, ¶ 4 (2006). Similarly, CCMs must report annually to the Commission the catch levels of their fishing vessels that have taken South Pacific Albacore as a bycatch. WCPFC, CMM 2010–05, CONSERVATION AND MANAGEMENT MEASURE FOR SOUTH PACIFIC ALBACORE, ¶ 4 (2010).

<sup>60</sup> CMM 2009–03, CONSERVATION AND MANAGEMENT MEASURE FOR SWORDFISH, *supra* note 58, at ¶ 8.

<sup>61</sup> WCPFC, CMM 2005–03, CONSERVATION AND MANAGEMENT MEASURE FOR NORTH PACIFIC ALBACORE, ¶ 3 (2005).

<sup>62</sup> WCPFC, CMM 2014–04, CONSERVATION AND MANAGEMENT MEASURE TO ESTABLISH A MULTI-ANNUAL REBUILDING PLAN FOR PACIFIC BLUEFIN TUNA, ¶ 5 (2014)

<sup>63</sup> CMM 2005–03, CONSERVATION AND MANAGEMENT MEASURE FOR NORTH PACIFIC ALBACORE, *supra* note 61, at ¶ 4.

<sup>64</sup> CCM 2009–06, CONSERVATION AND MANAGEMENT ON THE REGULATION OF TRANSHIPMENT, *supra* note 58, at Annex II, ¶ (1).

<sup>65</sup> *See, e.g.*, CMM 2008–04, CONSERVATION AND MANAGEMENT MEASURE TO PROHIBIT THE USE OF LARGE SCALE DRIFTNETS, *supra* note 58, at ¶ 5 (stating that “CCMs shall include in Part 2 of their Annual Reports a summary of monitoring, control, and surveillance actions related to large-scale driftnet fishing on the high seas in the Convention Area.”).

<sup>66</sup> Article 23(2)(b) allows the WCPFC to requirement information to be submitted “at such intervals as may be required by the Commission.” WCPF Convention, *supra* note 1, at art. 23(2)(b).

week.<sup>67</sup> Members with bigeye tuna catch limits must report monthly on the amount of bigeye caught by their vessels.<sup>68</sup> They must also report any sea turtle incident, such as entanglement in a net, recorded by the operator of a purse seine vessel.<sup>69</sup> The focus on specific incidents and submission of data provided by the captain of a specific purse seine vessel strongly signals that the members want vessel-specific data.

Similarly, the CMM designed to reduce seabird mortality in fisheries requires members to report on the total number of hooks, number of hooks observed, percentage of hooks observed, number of captures, rates of captures, and number species in geographic locations by each type of vessel.<sup>70</sup> This information is very precise and more aligned with the vessel-specific information considered to be “operational data.”

### **B. Data Required by the Document *Scientific Data to Be Provided to the Commission***

The WCPFC also requires members to provide data in accordance with the Scientific Committee’s document *Scientific Data to Be Provided to the Commission (Scientific Data Document)*.<sup>71</sup> The *Scientific Data Document* details, among other things, the requirements for data submission and specifically refers to “operational level catch and effort data” that “shall” be provided to the Commission.<sup>72</sup> As discussed in Parts IV and VI of this paper, the *Scientific Data Document* includes an exception to the submission of operational data for those CCMs that have “domestic legal constraints” that prevent them from submitting operational data.<sup>73</sup> For now, this section describes how the *Scientific Data Document* uses the term operational data.

Consistent with the type of vessel-specific information indicated in the WCPF Convention itself, the *Scientific Data Document* defines “operational level catch and effort data” by way of the following parenthetical: (e.g., individual sets by longliners and

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<sup>67</sup> CMM 2014-01, BIGEYE, YELLOWFIN AND SKIPJACK TUNA IN THE WESTERN AND CENTRAL PACIFIC OCEAN, *supra* note 58, at ¶ 19(a)–(b).

<sup>68</sup> *Id.* at ¶ 44. China, Indonesia, Japan, Korea, Chinese Taipei, and the United States are the CCMs with bigeye longline catches. *Id.* at Attachment F.

<sup>69</sup> CMM 2008–03, CONSERVATION AND MANAGEMENT OF SEA TURTLES, *supra* note 58, at ¶ 5(b), (c).

<sup>70</sup> WCPFC, CMM 2012-07, CONSERVATION AND MANAGEMENT MEASURE FOR MITIGATING IMPACTS OF FISHING ON SEABIRDS, ¶ 9, Annex 2 (2012).

<sup>71</sup> *Scientific Data Document*, *supra* note 6.

<sup>72</sup> *Id.* at § 3.

<sup>73</sup> The provision reads in full:

It is recognized that certain members and cooperating non-members of the Commission may be subject to domestic legal constraints, such that they may not be able to provide operational data to the Commission until such constraints are overcome. Until such constraints are overcome, aggregated catch and effort data and size composition data, as described in (4) and (5) below, shall be provided.

*Id.*



purse seiners, and individual days fished by pole-and-line vessels and trollers).”<sup>74</sup> It further requires members to submit their data in accordance with the “Standards for the Provision of Operational Level Catch and Effort Data” adopted by the WCPFC in Annex 1 of the *Scientific Data Document*.<sup>75</sup>

The “Standards for the Provision of Operational Level Catch and Effort Data” (Standards) clearly identify the specificity with which Parties “shall” report to the WCPFC.<sup>76</sup> For example, members must report “trip information” that includes the time vessels left port to transit to a fishing area or recommences fishing after transshipping part or all of the catch at sea.<sup>77</sup> Members must also report the port and date of departure.<sup>78</sup>

With respect to longliners, members must report information for each set, including the date and time the set started, and days on which no sets were made.<sup>79</sup> They must also report the number of hooks used per set and the number of fish caught per set for a variety of species,<sup>80</sup> as well as the total weight of the catch by set or by species.<sup>81</sup>

For pole-and-line vessels, members must report operational level catch and effort data that similarly focuses on specific vessels and specific stocks. For example, members must report information for each vessel each day, “from the start of the trip to the end of the trip,” the weight of fish caught each day for a variety of species, and even the vessel’s

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<sup>74</sup> *Id.* at § 3.

<sup>75</sup> *Id.* at Annex 1.

<sup>76</sup> *Id.* at Annex 1, § 1.

<sup>77</sup> *Id.* at Annex 1, § 1.2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at Annex 1, § 1.3.

<sup>80</sup> The provision reads:

Number of fish caught per set, for the following species: albacore (*Thunnus alalunga*), bigeye (*Thunnus obesus*), skipjack (*Katsuwonus pelamis*), yellowfin (*Thunnus albacares*), striped marlin (*Tetrapturus audax*), blue marlin (*Makaira mazara*), black marlin (*Makaira indica*) and swordfish (*Xiphias gladius*), blue shark, silky shark, oceanic whitetip shark, mako sharks, thresher sharks, porbeagle shark (south of 20°S, until biological data shows this or another geographic limit to be appropriate), hammerhead sharks (winghead, scalloped, great, and smooth), whale shark, and other species as determined by the Commission.

*Id.* at Annex 1, § 1.3.

<sup>81</sup> The provision reads:

If the total weight or average weight of fish caught per set has been recorded, then the total weight or average weight of fish caught per set, by species, should also be reported. If the total weight or average weight of fish caught per set has not been recorded, then the total weight or average weight of fish caught per set, by species, should be estimated and the estimates reported. The total weight or average weight shall refer to whole weights, rather than processed weights.

*Id.*

noon position.<sup>82</sup> Members must report similar information for trollers and purse seiners,<sup>83</sup> with the additional requirement to report any association between purse seine catches and baitfish, whale sharks, debris, or other things.<sup>84</sup>

In other words, the *Scientific Data Document* and accompanying Standards associate operational level catch and effort data with vessel-specific information for individual sets and specific stocks. Indeed, members must even report whether a vessel did not fish due to bad weather or a gear breakdown.<sup>85</sup> Thus, *Scientific Data Document* strongly indicates that operational data must be specific enough to provide details like the catches' weight; the location, time, and date of the catch; and the fishing gear used.<sup>86</sup> All of this information, incidentally, should be included in a vessel's logbook, which vessels are typically required to submit to their national authorities.<sup>87</sup>

The WCPFC's *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission*<sup>88</sup> support this definition of operational data. These Rules distinguish operational data from aggregate data by presenting examples of each. According to these *Rules and Procedures*, operational data "include catch and effort (including by-catch ...), observer, unloading, transshipment and port inspection data."<sup>89</sup> In contrast, aggregate data are characterized as observer data aggregated from a minimum of three vessels or data aggregated across a geographic area for different gear types.<sup>90</sup>

#### IV. ATTEMPTS TO CLOSE THE DATA GAPS

The WCPFC has long recognized the problems associated with its failure to obtain operational data from all members. As early as 2007, just three years after the WCPF Convention entered into force, the Scientific Committee recommended that the WCPFC undertake a study to identify the causes of data gaps.<sup>91</sup> The "Data Gaps" paper

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<sup>82</sup> *Id.* at Annex 1, § 1.4. Members must report the weight of fish caught each day for the following species: for the following species: albacore, bigeye, skipjack, yellowfin, blue shark, silky shark, oceanic whitetip shark, mako sharks, thresher sharks, porbeagle shark (south of 20°S, until biological data shows this or another geographic limit to be appropriate), hammerhead sharks (winghead, scalloped, great, and smooth), whale shark, and other species as determined by the Commission. *Id.*

<sup>83</sup> *Id.* at Annex 1, §§ 1.5, 1.6.

<sup>84</sup> *Id.* at Annex 1, § 1.5.

<sup>85</sup> *Id.* at §1.3–1.6.

<sup>86</sup> *Id.* at §1.3–1.6.

<sup>87</sup> *See, e.g.*, FAO Coordinating Working Party on Fishery Statistics, Handbook of Fishery Statistical Standards (undated) (stating that "[l]ogbooks are widely used as a method of collecting statistical information on commercial activities."), available at <http://www.fao.org/figis/pdf/fishery/cwp/handbook/O/en?title=FAO%20Fisheries%20%26%20Aquaculture%20-%20CWP%20Handbook%20of%20Fishery%20Statistical%20Standards%20-%20Section%200%3A%20LOGBOOKS>.

<sup>88</sup> WCPFC, Rules and Procedures for the Protection, Access to, and Dissemination of Data, *supra* note 36.

<sup>89</sup> *Id.* at Appx. 4, ¶ 1.

<sup>90</sup> *Id.* at Appx. 4, ¶ 2.

<sup>91</sup> WCPFC, SUMMARY REPORT: FOURTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS OF THE WESTERN AND CENTRAL PACIFIC OCEAN,

has since become an annual feature of meetings of the Scientific Committee, the Technical and Compliance Committee, and the WCPFC itself.<sup>92</sup> In addition, the WCPFC commissioned a separate report to investigate the causes of the data gaps.<sup>93</sup>

Because of the problems associated with assessing stocks without complete operational data,<sup>94</sup> in 2011 the WCPFC became more aggressive in its efforts to obtain such data. At that time, six members and cooperating non-members (collectively called CCMs)—Belize,<sup>95</sup> China, Indonesia, Japan, Korea, and Chinese Taipei—still had not provided the WCPFC with operational level catch and effort data.<sup>96</sup> Consequently, at its 2011 meeting the WCPFC requested each of these CCMs to submit a draft plan to the Technical and Compliance Committee describing how they would resolve the failure to submit such data.<sup>97</sup> Despite this request, the six CCMs did not generate any plans or provide operational catch and effort data.<sup>98</sup>

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¶ 103 (2007). *See also* SCIENTIFIC COMM., WCPFC, FOURTH REGULAR SESSION SUMMARY REPORT, *supra* note 54, at ¶¶ 249–57 (discussing the development of a data gaps website and a review of data gaps entitled “A Study to Identify Causes of Data Gaps in the Work of the WCPFC.”).

<sup>92</sup> A Data Gaps paper has been produced each year since 2006. *See* OCEANIC FISHERIES PROGRAMME SECRETARIAT OF THE SOUTH PACIFIC COMMISSION, SCIENTIFIC DATA AVAILABLE TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION, WCPFC-SC2-2006/ST IP-2 (2006).

<sup>93</sup> CONSULTANCY REPORT: CAUSES OF DATA GAPS, *supra* note 34.

<sup>94</sup> *See e.g.*, PETER WILLIAMS, SCIENTIFIC DATA AVAILABLE TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION, WCPFC-SC7-2011/ST WP-1, § 3.1.4 (2011) (stating that “Operational catch and effort data are not available outside the EEZs of FFA member countries for Japanese fleets, the Korean distant-water longline fleet, and the Chinese and Chinese Taipei distant-water longline fleets that target bigeye and yellowfin.”).

<sup>95</sup> In 2014, Belize had advised the WCPFC that it did not wish to be considered for Cooperating non-Member for 2015. WCPFC, SUMMARY REPORT: ELEVENTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS OF THE WESTERN AND CENTRAL PACIFIC OCEAN, ¶ 22 (2015).

<sup>96</sup> *See* DATA GAPS 2014, *supra* note 7, at ¶ 38. *See also* PETER WILLIAMS, SCIENTIFIC DATA AVAILABLE TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION, WCPFC-SC8-2012/ST WP-1 Rev. 1., §§ 2.1.4, 2.4 (2012).

<sup>97</sup> At its Seventh Annual meeting in 2011, the WCPFC

acknowledged the importance of providing complete and accurate data in a timely way and urged CCMs to improve the provision of data to the Commission. WCPFC7 requested that CCMs that have issues in providing accurate and complete data in a timely manner should identify those issues clearly to the Commission. At TCC7 CCMs should provide a draft plan of how impairments to the provision of data will be dealt with as rapidly as possible. CCMs are encouraged to assist others as they are able to do so and the Commission should continue to evaluate methods to assist in this matter.

WCPFC, SUMMARY REPORT: SEVENTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS OF THE WESTERN AND CENTRAL PACIFIC OCEAN, ¶ 173 (2011).

<sup>98</sup> By December 2014, the six CCMs that have failed to provide operational catch and effort data had still failed to submit these plans. DATA GAPS 2014, *supra* note 7, at ¶ 32.

In 2013, the WCPFC adopted the recommendation of the Scientific Committee<sup>99</sup> to seek information from the six CCMs that explains why they are unable to submit operational catch and effort data.<sup>100</sup> Only three of these CCMs (Belize, Japan, and Chinese Taipei) acknowledged receipt of the Secretariat's letter and only Japan and Chinese Taipei sent a formal response to the Secretariat. Chinese Taipei simply stated that it could not provide such data "due to the constraint of our domestic legislation."<sup>101</sup> Japan was more forthcoming, stating that Japanese privacy law did not allow it to disclose personal information that would be included in operational data.<sup>102</sup>

In 2014, CCMs tried alternative strategies to obtain operational data and close the data gaps. American Samoa<sup>103</sup> and the 17 members of the Forum Fisheries Agency<sup>104</sup> stated that eliminating loopholes for the non-provision of operational data was a key priority for the WCPFC.<sup>105</sup> The members of the Forum Fisheries Agency also proposed<sup>106</sup> a CMM that required all CCMs to submit operational catch and effort data to the WCPFC and eliminated the "exception" to the requirement to submit operational data for those

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<sup>99</sup> The Scientific Committee recommended the following:

The WCPFC Secretariat formally contact each of the CCMs identified as either 1) not providing operational data, and/or ii) not providing the number of vessels for each spatial unit in their aggregate data, and request the following:

- (i) That they provide these data to the Commission in order to meet their obligations of Scientific Data to be Provided to the Commission.
- (ii) That information is provided on what constraints hinder their ability to provide operational data to the Commission, and actions being taken to address this issue.
- (iii) That CCMs confirm whether their aggregate data, as provided, can be included into the WCPFC public domain data".

SCIENTIFIC COMM., WCPFC, SUMMARY REPORT: SCIENTIFIC COMMITTEE NINTH REGULAR SESSION, ¶ 77(d) (2013) [hereinafter SCIENTIFIC COMM., NINTH REGULAR SESSION SUMMARY REPORT], available at <https://www.wcpfc.int/meetings/9th-regular-session-scientific-committee..>

<sup>100</sup> WCPFC, SUMMARY REPORT: TENTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN, at ¶ 183 (2013) [hereinafter WCPFC TENTH REGULAR SESSION SUMMARY REPORT], available at [https://www.wcpfc.int/system/files/WCPFC%2010%20FINAL%20RECORD\\_1.pdf](https://www.wcpfc.int/system/files/WCPFC%2010%20FINAL%20RECORD_1.pdf).

<sup>101</sup> Letter from Ding-Rong Lin, Director, Deep Sea Fisheries Division, Fishery Agency, to Professor Glenn Hurry, Executive Director, WCPFC, May 30, 2014, in, DATA GAPS 2014, *supra* note 7, at 38.

<sup>102</sup> Letter from Hisashi Endo, Japanese Commissioner to the WCPFC, to Professor Glenn Hurry, Executive Director, WCPFC, May 26, 2014, in, DATA GAPS 2014, *supra* note 7, at 37. See *infra* Section VIII for a more complete discussion of this issue.

<sup>103</sup> WCPFC ELEVENTH REGULAR SESSION SUMMARY REPORT, *supra* note 95, at 162.

<sup>104</sup> *Id.* at ¶ 229. The members the FFA are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, and Vanuatu. Pacific Island Forum Fisheries Agency, FFA Members, at <https://www.ffa.int/members>.

<sup>105</sup> WCPFC ELEVENTH REGULAR SESSION SUMMARY REPORT, *supra* note 95, at ¶ 162.

<sup>106</sup> FFA Members, Proposal on a Conservation and Management Measure on Provision of Operational Data, WCPFC11-2014-DP06, 7 (Nov. 3, 2014).

CCMs with “domestic legal constraints.”<sup>107</sup> The Parties<sup>108</sup> to the Nauru Agreement<sup>109</sup> proposed a prohibition on fishing for bigeye, yellowfin, and skipjack tuna by vessels flagged in countries that have not provided operational catch and effort data.<sup>110</sup> The WCPFC did not adopt either proposal.<sup>111</sup>

The WCPFC did, however, adopt a modified version of the proposal submitted by the Parties to the Nauru Agreement as part of CMM 2014–1 for bigeye, yellowfin, and skipjack tuna.<sup>112</sup> In that compromise, China, Indonesia, Japan, Korea, Philippines, and Chinese Taipei agreed to submit operational catch and effort data for bigeye, yellowfin, and skipjack tuna in accordance with the *Standards for the Provision of Operational Level Catch and Effort Data* for catches in EEZs and high seas.<sup>113</sup>

However, the compromise includes significant limitations. For example, it applies only to fishing in EEZs and high seas south of 20 degrees north latitude<sup>114</sup> and to the future provision of operational level catch and effort data, not to historical data.<sup>115</sup> Two footnotes further limit application of the measure. The first grants these members a grace period of three years if they have “a practical difficulty in providing operational data from 2015.”<sup>116</sup> In addition, Indonesia was granted an exception to the provision for ten years.<sup>117</sup>

The WCPFC is also implementing other strategies to encourage the submission of operational level catch and effort data. In 2014, the WCPFC adopted a tiered scoring system for evaluating compliance with the provision of scientific data to the Commission.<sup>118</sup> Under this system, CCMs will be placed into one of the following three categories: (i) data have not been provided at all; (ii) data have been provided but are incomplete either because not all data fields have been provided or minimum coverage

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<sup>107</sup> The *Scientific Data Document* allows those CCMs with “domestic legal constraints” to submit aggregate data in lieu of operational data. *Scientific Data Document*, *supra* note 6, at § 3.

<sup>108</sup> The Parties to the Nauru Agreement are Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu. FFA, Nauru Agreement, at [https://www.ffa.int/nauru\\_agreement](https://www.ffa.int/nauru_agreement).

<sup>109</sup> The Nauru Agreement is a subregional agreement on terms and conditions for tuna purse seine fishing licenses in the region with a goal to manage tuna sustainably and increase economic benefits for their peoples. *Id.*

<sup>110</sup> PNA Members & Tokelau, Proposal for a Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean, and Explanatory Note, WCPFC11-2014-DP11, ¶¶ 42bis, (Nov. 1, 2014).

<sup>111</sup> WCPFC ELEVENTH REGULAR SESSION SUMMARY REPORT, *supra* note 95, at ¶¶ 292–311, 602–608.

<sup>112</sup> CMM 2014-01, CONSERVATION AND MANAGEMENT MEASURE FOR BIGEYE, YELLOWFIN AND SKIPJACK TUNA IN THE WESTERN AND CENTRAL PACIFIC OCEAN, *supra* note 58, at ¶¶ 56–60 (2014). North of 20 degrees north latitude, these CCMs shall provide aggregated data. *Id.* ¶ 59.

<sup>113</sup> *Id.* ¶¶ 56–57.

<sup>114</sup> *Id.* ¶ 57.

<sup>115</sup> WCPFC ELEVENTH REGULAR SESSION SUMMARY REPORT, *supra* note 95, at ¶ 294 (2015).

<sup>116</sup> CMM 2014-01, *supra* note 58, at ¶ 57, fn. 12.

<sup>117</sup> Indonesia is exempted from these provisions “until it changes its national laws so that it can provide such data” but in any event no later than December 31, 2025. *Id.* at ¶ 57, fn. 13.

<sup>118</sup> WCPFC ELEVENTH REGULAR SESSION SUMMARY REPORT, *supra* note 95, at ¶ 478.

levels have not been met; and (iii) complete data have been provided at or above the minimum level of coverage.<sup>119</sup> Whether this system will improve submission of operational catch and effort data is too early to tell. However, this new regime may be inadequate. As Japan has reminded the WCPFC, the requirement to submit operational data is qualified; if a member has domestic legal constraints, then it may submit aggregated data “until such constraints are overcome.”<sup>120</sup> According to Japan, if aggregate data is submitted, then that member “should be regarded as being in full compliance.”<sup>121</sup> As discussed in Section VI, Japan’s view is only partially correct; a member may avail itself of the exception only if it actually has a domestic legal constraint and it is attempting to remove it.

## V. DATA PROVIDED BY JAPAN & KOREA

The *2014 Data Gaps* paper identifies Japan and Korea, along with four other CCMs, as not providing operational level catch and effort data to the WCPFC. In fact, Japan has not provided operational level catch and effort data between 2007 and 2013.<sup>122</sup> Korea, likewise, has not submitted operational level catch and effort data,<sup>123</sup> although it did so for its longline and purse seine fleets for the 2014 season.<sup>124</sup> That does not mean that Japan and Korea submit no data. As the *2014 Data Gaps* paper describes, in varying degrees Japan and Korea supply aggregate and other forms of data.

### A. Japan

Based on an analysis of summary data reports for 2007 through 2014 and the 2014 and 2015 *Data Gaps* papers, as of August 2015 Japan has the following significant data gaps and has provided the following information:<sup>125</sup>

- Japan has not provided historical operational catch and effort data for its longline and pole-and-line fleets; it has provided this information for its purse seine fleet

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<sup>119</sup> *Id.* ¶ 472. For category (ii), a compliance score will be “computed based on a multiplication of the percentage of the data fields provided and the percentage of the minimum coverage level achieved.” No data filed will be given greater importance than others because “they are all required and important.” *Id.*

<sup>120</sup> *Id.* ¶ 474 (referring to Section 3 of the *Scientific Data Document*).

<sup>121</sup> *Id.*

<sup>122</sup> DATA GAPS 2014, *supra* note 7, at ¶ 59 & p. 25, Tbl. 2 (showing that Japan has failed to provide operational level catch and effort data for its purse seine, longline, and pole and line fleets in 2013); WCPFC, Status of Data Provision, at <http://www.wcpfc.int/status-data-provision>. The summary reports summarize the status of each CCM’s annual data provision to the WCPFC.

<sup>123</sup> *Id.* at ¶ 29, 57, Tbl. 4.

<sup>124</sup> DATA GAPS 2015, *supra* note 18, at ¶ 24.

<sup>125</sup> These data gaps conclusions are taken from summary information extracted from *Data Gaps 2014*. A review of available data summary reports available on the WCPFC website verifies these conclusions. Japan’s obligations to provide the stated data is derived from Japan’s obligations under Articles 5(i) and 23(2)(a) of the Convention which, among other things, requires Members to provide data in relation to different fishing gear type by all vessels flying their flag. Further, the *Scientific Data Document* outlines specific data requirements (for example, by fleet, gear type, and geographical area) which, at present, Japan is not in full compliance with.

for 2002 through 2004 only.<sup>126</sup>

- Japan has never provided any operational catch and effort data, nor size composition data, for its coastal fleet;<sup>127</sup> it submitted aggregate catch data for its coastal longline fleet for the years 1994 through 2013 for the first time in 2013.<sup>128</sup>
- Japan has not provided any operational or aggregated catch and effort data, nor size composition data, prior to 1972 for its pole-and-line fleet;<sup>129</sup>
- Japan has not provided any annual catch estimates by EEZs and high seas areas prior to 2008 (Japan has only provided this type of data for the period between 2008 and 2014).<sup>130</sup>
- Japan has not provided operational catch and effort data for its fleets operating outside the EEZs of Pacific Islands Forum Fisheries Agency members.<sup>131</sup>

Japan has provided some types of data to the Commission, although complete historical data is lacking,<sup>132</sup> as with its pole-and-line and coastal longline fleets, as noted above. In 2013, Japan also submitted aggregate data for its longline, pole-and-line, and purse seine fleets for the period 2008 through 2013,<sup>133</sup> and it also provided aggregated data for 2014.<sup>134</sup> Thus, not only has Japan failed to submit operational catch and effort data, but its submission of aggregate data remains incomplete because it does not cover the period prior to 2008.

## B. Korea

As of August 2014, Korea has the following significant data gaps and has provided the following information:

- Korea has not provided operational catch and effort data for its distant-water longline fleet operating outside the EEZs of Forum Fisheries Agency members.<sup>135</sup>
- Korea has not provided historical operational catch and effort data through

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<sup>126</sup> DATA GAPS 2014, *supra* note 7, at Tbl. 6; DATA GAPS 2015, *supra* note 18, at Tbl. 5.

<sup>127</sup> DATA GAPS 2014, *supra* note 7, at ¶ 18; DATA GAPS 2015, *supra* note 18, at ¶ 11.

<sup>128</sup> DATA GAPS 2014, *supra* note 7, at ¶ 19; DATA GAPS 2015, *supra* note 18, at ¶ 11.

<sup>129</sup> DATA GAPS 2014, *supra* note 7, at ¶ 18; DATA GAPS 2015, *supra* note 18, at ¶ 11.

<sup>130</sup> DATA GAPS 2014, *supra* note 7, at ¶ 27; DATA GAPS 2015, *supra* note 18, at Tbl. 2.

<sup>131</sup> DATA GAPS 2014, *supra* note 7, at ¶ 29; DATA GAPS 2015, *supra* note 18, at ¶ 21.

<sup>132</sup> In relation to required data time periods, section 7 of the Scientific Data Document provides that Members should provide the Commission annual or seasonal catch estimates from 1950 onwards (or from the year the fleet began operating if after 1950). Section 7 also specifies that Members should provide operational catch and effort data, and size composition data, “for all years, starting with the first year for which the data are available”. *Scientific Data Document*, *supra* note 6.

<sup>133</sup> DATA GAPS 2014, *supra* note 7, at ¶ 45.

<sup>134</sup> DATA GAPS 2015, *supra* note 18, at ¶ Tbl. 4.

<sup>135</sup> DATA GAPS 2014, *supra* note 7, at ¶ 29; DATA GAPS 2015, *supra* note 18, at ¶ 21.



2013.<sup>136</sup>

- Korea has provided some aggregated catch and effort data but it has omitted significant amounts of data for 2012 and 2013, such as annual catch and effort estimates (1) by EEZ and high seas areas and (2) for albacore, swordfish, and striped marlin in some parts of the Pacific Ocean.<sup>137</sup>
- Korea has not provided information on the number of vessels per stratum with their aggregate longline data.<sup>138</sup>

Korea has taken some initial steps to provide operational data. For example, Korea has provided operational data for its longline and purse seine fleet for 2014.<sup>139</sup> Nonetheless, Korea has not provided the WCPFC with historical operational catch and effort data, and it has not submitted all relevant aggregate data.

## VI. FAILURE TO PROVIDE OPERATIONAL DATA AS A COMPLIANCE ISSUE

The WCPFC has adopted the *Scientific Data Document* on several occasions, most recently in 2012,<sup>140</sup> and considers the document to be legally binding. Some CCMs have questioned the legal status of the document at meetings of the Technical and Compliance Committee (TCC). At the TCC’s Ninth Regular Session, for example, the WCPFC’s legal advisor, Martin Tsamenyi, stated that the rules for the provision of data found in the *Scientific Data Document* “derive from the Convention and are clearly binding.”<sup>141</sup> Similarly, the FFA, during a TCC meeting, stated that the “Rules for Scientific Data to be Provided to the Commission are binding, and specify that operational-level catch and effort data should be provided to the Commission by all CCMs for their flagged vessels or by chartering CCMs for their chartered vessels.”<sup>142</sup> No member objected to that view.<sup>143</sup>

On at least one occasion, however, Japan noted that “not providing operational

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<sup>136</sup> DATA GAPS 2014, *supra* note 7, at ¶ 59.

<sup>137</sup> *Id.* at ¶ 57 & Tbl. 4.

<sup>138</sup> DATA GAPS 2014, *supra* note 7, at ¶ 45; *see also* DATA GAPS 2015, *supra* note 18, at ¶ 32.

<sup>139</sup> DATA GAPS 2015, *supra* note 18, at ¶ 24.

<sup>140</sup> WCPFC, SUMMARY REPORT: NINTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN ¶¶ 270–71 (2012) (adopting the recommendations of the Scientific Committee, which included revisions to the *Scientific Data Document*).

<sup>141</sup> TECHNICAL & COMPLIANCE COMM., WCPFC, SUMMARY REPORT: TECHNICAL & COMPLIANCE COMMITTEE NINTH REGULAR SESSION, ¶ 288 (2013) [hereinafter TECHNICAL & COMPLIANCE COMM., NINTH REGULAR SESSION SUMMARY REPORT]. The Legal Advisor also noted that “[t]he rules provide a mechanism for restricting access to non-public domain data if compliance with the rules is not achieved.” *Id.*

<sup>142</sup> TECHNICAL & COMPLIANCE COMM., WCPFC, SUMMARY REPORT: TECHNICAL & COMPLIANCE COMMITTEE SIXTH REGULAR SESSION, ¶ 191 (2011) [hereinafter TECHNICAL & COMPLIANCE COMM., SIXTH REGULAR SESSION SUMMARY REPORT].

<sup>143</sup> *See id.*

catch and effort data itself does not constitute non-compliance as long as aggregated catch and effort data had been provided.”<sup>144</sup> Japan is only partially correct. The *Scientific Data Document* provides an alternative method for reporting if a CCM has domestic legal constraints:

It is recognized that certain [CCMs] may be subject to domestic legal constraints, such that they may not be able to provide operational data to the Commission until such constraints are overcome. Until such constraints are overcome, aggregated catch and effort data and size composition data, as described in (4) and (5) [of the *Scientific Data Document*] shall be provided.<sup>145</sup>

Consequently, CCMs may provide aggregate data in lieu of operational data, but only if they have domestic legal constraints. By using the phrase “[u]ntil such constraints are overcome,” the paragraph also suggests that CCMs have an ongoing duty to remove the domestic legal constraints. Thus, if the CCM does not actually have a domestic legal constraint, it must provide operational data. In addition, if the CCM is not actively seeking to overcome the legal constraint, it should be considered in violation of the rules for the submission of data.

## VII. DOMESTIC LEGAL CONSTRAINTS PREVENTING THE SUBMISSION OF OPERATIONAL DATA

The exemptions in the *Scientific Data Document* and in CCM 2014–1 that allow CCMs to provide aggregate data in lieu of operational data make it likely that some CCMs will continue to submit aggregate data instead of operational data. The CCMs failing to provide operational data will continue to claim that “practical difficulties,” which presumably include the domestic legal constraints identified in the *Scientific Data Document*, prevent them from submitting such data to the WCPFC. As a consequence, the question to answer is whether these CCMs actually have domestic legal constraints or practical difficulties preventing them from providing operational data.

To determine the nature of the legal constraints that some CCMs claim, the WCPFC adopted<sup>146</sup> a recommendation of the Scientific Committee directing the WCPFC Secretariat to seek information from CCMs concerning “what constraints hinder their ability to provide operational data to the Commission, and actions being taken to address this issue.”<sup>147</sup> China, Korea, and Indonesia did not respond at all to the Secretariat’s letter.<sup>148</sup> Belize simply acknowledged receipt<sup>149</sup> and Chinese Taipei formally responded

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<sup>144</sup> TECHNICAL & COMPLIANCE COMM., NINTH REGULAR SESSION SUMMARY REPORT, *supra* note 141, at ¶ 285.

<sup>145</sup> *Scientific Data Document*, *supra* note 6, at § 3.

<sup>146</sup> WCPFC TENTH REGULAR SESSION SUMMARY REPORT, *supra* note 100, at ¶¶ 182–83.

<sup>147</sup> SCIENTIFIC COMM., NINTH REGULAR SESSION SUMMARY REPORT, *supra* note at 99, at ¶ 77(d).

<sup>148</sup> DATA GAPS 2014, *supra* note 7, at 36.

<sup>149</sup> *Id.*

with a letter without identifying its domestic legal constraints or describing actions to address the issue.<sup>150</sup> Japan provided a reason for its inability to submit operational data, but it did not describe actions to remove this constraint. As described below, however, Japan’s explanation is inadequate and cannot be considered a domestic legal constraint.<sup>151</sup>

### A. Japan’s Domestic Legal Constraints

In a letter to the Secretariat, Japan reported that its Act on the Protection of Personal Information (APPI)<sup>152</sup> prohibits government administrations from disclosing personal information which can identify “personal activities” and that operational data is categorized as personal information prohibited from disclosure.<sup>153</sup> Analysis of the APPI shows that it does not apply to the handling of personal information by administrative organs. For administrative organs (or government agencies), only the APPI’s general principles of protection of personal information, not the binding obligations, apply; however, a different law, the Act on the Protection of Personal Information held by Administrative Organs (APPIHAO),<sup>154</sup> directly applies to the handling of personal information by administrative organs, but any obstacles posed by this law can be easily overcome. In addition, Japan has already submitted personal information of each vessel and vessel captain when it was required to register vessels pursuant to the WCPF Convention.<sup>155</sup> Thus, the personal information that Japan seeks to protect has already been revealed.

#### 1. The Act of Protection of Personal Information

The APPI was created to protect the personal information of Japanese citizens and to prescribe rules for entities handling “personal information,”<sup>156</sup> which the APPI defines as “information about a living individual which can identify the specific individual by name, date of birth, or other description contained in such information (including such

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<sup>150</sup> Letter from Ding-Rong Lin, *supra* note 101.

<sup>151</sup> It may be worth to note that the Japanese government has been criticized for using personal information protection laws as a shield to deliberately conceal unfavorable information. *See e.g.*, Nihon Shinbun Kyokai (The Japan Newspaper Publishers & Editors Association), NSK News Bulletin Online, April 2009, at <http://www.pressnet.or.jp/newsb/0904b.html>.

<sup>152</sup> APPI, *supra* note 11.

<sup>153</sup> Japan’s letter reads, in relevant part, as follows, with the grammatical errors in the original letter:

Japan’s domestic law, “Act of the Protection of Personal Information,” prohibits government administrations to release personal information which can be identified personal activities. Operational data is categorized as such personal information prohibited to release.

Letter from Hisashi Endo, *supra* note 102.

<sup>154</sup> APPIHAO, *supra* note 14.

<sup>155</sup> WCPF Convention, *supra* note 1, at art. 24(4)–(7), Annex IV. *See also* WCPFC, CMM 2013–10, CONSERVATION AND MANAGEMENT MEASURE ON WCPFC RECORD OF FISHING VESSELS AND AUTHORIZATION TO FISH (2013) (establishing the WCPFC Record of Fishing Vessels).

<sup>156</sup> APPI, *supra* note 11, at art. 1.

information as will allow easy reference to other information and will thereby enable the identification of the specific individual).”<sup>157</sup> Chapters I, II, and III of the APPI establish the basic law for personal protection. Basic law (*kihō ho*) in Japan sets forth principles, administrative structures, general methods of implementation, responsibility of various parties (central government, local governments, businesses, and citizens), and a framework for future legislation; however, basic law does not contain specific legally binding provisions.<sup>158</sup> Specific legally binding provisions and regulations are prescribed in other parts of the law, which are defined as *kobetsu ho* (specific law) or *ippan ho* (ordinary law). Basic law and *kobetsu ho* are usually promulgated by a different Act of the Diet; however, in the case of the APPI, they can be found in the same act.

The basic law part of the APPI provides the basic principles for the protection of personal information and is applied to government and private institutions alike.<sup>159</sup> As a basic principle, the APPI proclaims that “[i]n view of the fact that personal information should be handled cautiously under the philosophy of respecting the personalities of individuals, proper handling of personal information shall be promoted.”<sup>160</sup> The APPI also requires the government to “establish a basic policy on the protection of personal information.”<sup>161</sup>

To implement the basic principles established by the APPI’s basic law provisions, Chapters IV, V, and VI of the APPI establish specific legally binding provisions and regulations for handling personal information that are applicable to private institutions. The private institutions regulated by these provisions are defined as “business operator[s] handling personal information.”<sup>162</sup> A “business operator handling personal information” must, among other things, specify the purpose of using personal information (“purpose of utilization”).<sup>163</sup> If the disclosure of personal information is consistent with the purpose of utilization, then the business operator may disclose the information.<sup>164</sup> The APPI also prohibits such a business operator from providing personal data to a third party without

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<sup>157</sup> *Id.* art. 2(1).

<sup>158</sup> For a summary of Japanese basic law, see KENNETH E. WILKENING, *ACID RAIN SCIENCE AND POLITICS IN JAPAN: A HISTORY OF KNOWLEDGE AND ACTION TOWARD SUSTAINABILITY*, 127 (2004).

<sup>159</sup> APPI *supra* note 11, at art. 1. See also OKAMURA HISAMICHI, *KOJIN JOHO HOGO HO NO CHISHIKI* 40 (2d ed. 2010) (providing information on the APPI).

<sup>160</sup> APPI *supra* note 11, at art. 3.

<sup>161</sup> *Id.* at art.6.

<sup>162</sup> *Id.* at art. 2(3).

<sup>163</sup> *Id.* at arts. 15, 16.

<sup>164</sup> The APPI provides:

A business operator handling personal information shall not handle personal information about a person, without obtaining the prior consent of the person, beyond the scope necessary for the achievement of the Purpose of Utilization specified pursuant to the provision of the preceding article.

*Id.* at art. 16(1).

obtaining prior consent in some circumstances.<sup>165</sup> However, a business operator may disclose information without consent if it is allowed based on laws and regulations or necessary to cooperate with governmental agencies, improve public health, or protect life or property, among other reasons.<sup>166</sup>

Importantly for this analysis, the APPI does not apply to the handling of personal information by state organs and agencies, including the Ministry for Agriculture, Forestry and Fisheries (MAFF) and the Fisheries Agency, which implement fisheries laws in Japan.<sup>167</sup> The APPI expressly excludes from its definition of “business operator handling personal information” the following entities: state organs, local governments, incorporated administrative agencies,<sup>168</sup> and local incorporated agencies.<sup>169</sup> As a consequence, MAFF and the Fishery Agency, as state organs, are not covered by the APPI, but they are covered by the APPIHAO, as discussed below. Hence, the APPIHAO works as *kobetsu ho* on the handling of personal information by administrative agencies.

## 2. The Act of Protection of Personal Information held by Administration Organs

Although Japan has stated that the APPI prevents it from providing operational data to the WCPFC, the APPIHAO is the law which directly regulates the handling of personal information by MAFF and the Fisheries Agency.<sup>170</sup> The APPIHAO establishes rules for the retention, use, and disclosure of personal information held by administrative organs,<sup>171</sup> including rules for disclosing personal information requested by third parties.<sup>172</sup>

The APPIHAO defines “personal information” the same as the APPI: “information about a living individual, which can identify the specific individual by name, date of birth or other description contained in such information (including

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<sup>165</sup> *Id.* at art. 23. “personal data” is defined “as personal information constituting a personal information database.” *Id.* art. 2(4).

<sup>166</sup> *Id.* at art. 16(3).

<sup>167</sup> The Ministry of Agriculture, Forestry and Fisheries (MAFF) ensures stable food supplies for the nation, land and environment preservation, regional redevelopment, consumer protection, and technological advance. Cabinet Secretariat (Government of Japan), Government Offices’ Functions U Website Contents, at <http://japan.kantei.go.jp/link/link4.html>. The Fisheries Agency is a subsidiary agency within MAFF. MITSUTAKU MAKINO, FISHERIES MANAGEMENT IN JAPAN: ITS INSTITUTIONAL FEATURES AND CASE STUDIES 10 (2011).

<sup>168</sup> An incorporated administrative agency “acts independently of the state and manages business operations such as research, inspection and trade insurance that were formerly performed by the state. A particular feature of such agencies is that they can independently consider how to perform their operations, and run these operations in a better, more efficient manner on their own responsibility.” Ministry of Economy, Trade and Industry, Introduction to Incorporated Administrative Agencies, at: <http://www.meti.go.jp/english/aboutmeti/data/aOrganization/keizai/dokuritugyousei/01.htm>.

<sup>169</sup> APPI, *supra* note 11, at art. 2(3).

<sup>170</sup> APPIHAO, *supra* note 14, at arts. 1, 2 (1)(iii).

<sup>171</sup> *Id.* at arts. 1, and 3 through 9.

<sup>172</sup> *Id.* at arts. 8.

information that can be compared with other information and thereby identify the specific individual).”<sup>173</sup> When an administrative organ directly acquires personal information, the acquired personal information becomes known as “retained personal information.”<sup>174</sup> When obtaining personal information, the administrative organ must clearly indicate the purpose of utilization to the individual concerned.<sup>175</sup> The head of an administrative organ “shall not, except as otherwise provided by laws and regulations, use by himself or herself or provide another person with Retained Personal Information for purposes other than the Purpose of Use.”<sup>176</sup> Similarly, no current or former employee of an administrative organ may disclose such personal information.<sup>177</sup>

Operational data with the vessel’s name is not likely to be “personal information” because such data does not include information about a living individual or names of a living individual. Since Japan has provided the personal names of the ship’s captain to the WCPFC with the vessel’s information and those names have been disclosed to the public on the WCPFC’s website,<sup>178</sup> Japan may claim that the operational data with the vessel’s name may become “personal information” because one can identify the captain of the ship, a specific individual, by referencing vessel registration information and know his or her whereabouts and activities. Even if that argument is persuasive, MAFF likely already has authority to submit operational data from Japanese vessels to the WCPFC just as it has authority to submit detailed vessel information, which includes the names of the owner of the vessel and the captain, to the WCPFC. The head of an administrative organ, such as the Minister of MAFF, may provide retained personal information to another person if consistent with the purpose of utilization.<sup>179</sup> Presumably, the purpose of collecting operational data from vessels fishing in the WCPF Convention Area is to fulfil Japan’s obligations under the WCPF Convention, to which Japan is a party, and to manage the fisheries resources of the Convention Area effectively and sustainably. Therefore, the submission of operational data collected from Japanese vessels is arguably within the purpose of utilization. Japan may claim that it collects this data for purposes unrelated to the WCPF Convention, but that claim is obviously unpersuasive on its face. Moreover, in a public comment process administered by the Fisheries Agency<sup>180</sup> to

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<sup>173</sup> *Id.* at art. 2(2).

<sup>174</sup> *Id.* at art. 2(3).

<sup>175</sup> *Id.* at art. 4.

<sup>176</sup> *Id.* at art. 8.

<sup>177</sup> *Id.* at art. 7.

<sup>178</sup> See *infra* Section VIII.A.3.

<sup>179</sup> The APPIHAO provides that

[t]he head of an Administrative Organ shall not, except as otherwise provided by laws and regulations, use by himself or herself or provide another person with Retained Personal Information for purposes *other than the Purpose of Use.*”

APPIHAO, *supra* note 14, at art. 8(1) (emphasis added).

<sup>180</sup> The public comment period took place before promulgating the Ministerial Ordinance on the Permission, Regulation, Etc. of Designated Fisheries Ordinance of the Ministry of Agriculture and Forestry No. 5 of January 22, 1963. Translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&la=01&ia=03&x=63&y=>

designate the area in which a fishing vessel is required to report its position by satellite,<sup>181</sup> the Fishery Agency explained that the data collection was imposed as an obligation by the WCPFC'S Technical and Compliance Committee.<sup>182</sup>

Japan may also be able to submit operational data to the WCPFC pursuant to the APPIHAO's provision that allows the disclosure of retained personal information "for executing the affairs under its jurisdiction provided by laws and regulations."<sup>183</sup> Under Japanese law, the WCPF Convention constitutes "laws and regulations" because the phrase "laws and regulations" (法令) is generally construed to mean international treaties to which Japan is a party.<sup>184</sup>

If one insists that Japan may not presently submit operational data to the WCPFC consistently with the APPIHAO, MAFF could include in a regulation (or the Japanese Diet could include in legislation) a notice that MAFF will submit information provided by fishing vessels to the WCPFC when requested under its authority provided by the WCPF Convention and the Fish Stock Agreement. Such a notice would make submission of operational data consistent with the APPIHAO's provision allowing disclosure of personal information that is "provided by laws and regulations" or otherwise consistent with the purpose of utilization.<sup>185</sup>

MAFF could also seek the consent of vessel owners and captains. Under the APPIHAO, an administrative organ may disclose personal information for purposes other than the purpose of utilization with the consent of the individual concerned.<sup>186</sup> To the extent that the provision of operational data to the WCPFC may be challenged as not consistent with the purpose of utilization, Japan could obtain this consent as a condition of licensing or flagging a vessel authorized to fish in the WCPF Convention Area.

In addition, an administrative organ may disclose personal information for purposes other than the purpose of utilization when the retained personal information is provided "exclusively for statistical purposes or academic research purposes [and] provision of the information to other persons is obviously beneficial to the Individual Concerned, or there are other special grounds for providing the Retained Personal

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[7&ky=%E6%8C%87%E5%AE%9A%E6%BC%81%E6%A5%AD%E3%81%AE%E8%A8%B1%E5%8F%AF%E5%8F%8A%E3%81%B3%E5%8F%96%E7%B7%A0%E3%82%8A%E7%AD%89%E3%81%AB%E9%96%A2%E3%81%99%E3%82%8B%E7%9C%81%E4%BB%A4&page=2](http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=550001836).

<sup>181</sup> *Id.* at art. 24-2.

<sup>182</sup> Fishery Agency Public Comment Announcement No. 550001836 (Designating sea area and method for Obligation, Etc. to Report the Position by a Satellite-based Ship Positioning Transmitter), 21 November, 2013, available at < <http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=550001836>>. No comments, including objections, were submitted. <http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=550001836&Mode=2>>

<sup>183</sup> APPIHAO, *supra* note 14, at art. 8(2)(ii).

<sup>184</sup> The Constitution of Japan, art. 98 para. 2 ("The treaties concluded by Japan and established laws of nations shall be faithfully observed.")

<sup>185</sup> APPIHAO, *supra* note 14, at art. 8(2)(ii).

<sup>186</sup> *Id.* at art. 8(2)(i).



Information.”<sup>187</sup> Possibly, the submission of operational data to the WCPFC could be considered exclusively for statistical purposes because scientists will use the information to determine stock biomass and other measures of abundance. Whether the use of stock biomass for establishing catch limits expands the scope of the purpose beyond “statistical purposes” is not clear. In any event, the submission of operational data should be considered “obviously beneficial” to the individual concerned as a more accurate assessment of stock biomass will help ensure the sustainability of the fishery.

Moreover, MAFF may be able to provide operational data to the WCPFC consistent with the APPIHAO’s provision for disclosure of personal information when “there other special grounds for providing the Retained Personal Information.”<sup>188</sup> In a commentary edited under the supervision of the Administrative Management Bureau of the Ministry of Internal Affairs and Communications, “other special purposes” to enable administrative organs to provide information to an outside institution includes the following circumstances: (1) the business of the outside institution serves high public benefit, (2) it is very difficult for the outside institution to collect the information by itself, and (3) it will be difficult for the outside institution to fulfill the aim of its business without the information.<sup>189</sup> The commentary explicitly lists “to provide personal information to foreign governments and/or international organizations for the purpose of international cooperation” as one “other special purpose.”<sup>190</sup>

### 3. Japan’s Claim Is Moot

Although Japan claims that the APPI prevents it from submitting operational data—apparently because it could reveal personal information of vessel owners, captains, or individuals who work on the vessel—Japan has already submitted its vessels’ names along with their flag, registration number, authorization period, vessel type and more to the WCPFC.<sup>191</sup> By clicking on a vessel on the list, the website takes the public to a webpage detailing the owner’s name and address, master name, port, country the vessel was built in, year it was built, size and capacity information, previous names and flags, and the authorization information from the MAFF which includes a picture of the vessel.<sup>192</sup> Since this information has already been submitted to the WCPFC, Japan’s use of privacy laws to shield it from providing operational data is not compelling.

#### B. Korea’s Domestic Legal Constraints

Korea has not provided the WCPFC with information describing its specific domestic legal constraints that prevent it from submitting operational data to the WCPFC.

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<sup>187</sup> *Id.* at art. 8(2)(iv).

<sup>188</sup> *Id.* at art. 8(2)(iv).

<sup>189</sup> Gyoseikikantokojinnyohogoho no kaisetsu, 41 (ed. Gyosei Jyohou System Kenkyujyo 2005), (providing commentary on the APPIHAO).

<sup>190</sup> *Id.*

<sup>191</sup> WCPFC, WCPFC Record of Fishing Vessels, at <https://www.wcpfc.int/record-fishing-vessel-database>.

<sup>192</sup> *See, e.g.*, WCPFC, Aichi Maru, at <https://www.wcpfc.int/node/17355>.

Since Korea has remained silent, we have assumed that Korea alleges obstacles similar to Japan's—that is, that Korean privacy law prevents Korea from submitting operational data to the WCPFC.

A review of Korea's privacy laws, however, reveals that Korea does not have a strong argument to avoid its obligation to submit operational data to the WCPFC. Operational data likely does not constitute “personal information” as that term is defined by the Personal Information Protection Act (PIPA).<sup>193</sup> Even if it does, PIPA specifically requires the government to provide personal information to the relevant international institution when needed to implement Korea's international obligations. As described below, the government even explains that a treaty prevails when there is a conflict between domestic privacy law and an international treaty. At best, Korea could argue that the government cannot reveal personal information to a third party, but this argument can be overcome by obtaining consent from the ocean fishery operators to transfer the information to the WCPFC or ensuring protection of confidentiality by the WCPFC.

### 1. Privacy-related laws

Before PIPA was enacted, several individual laws included provisions regarding protection and management of personal information.<sup>194</sup> Due to the rising demand for coordination of different individual laws, the need to close loopholes in those laws, and the desire for higher protection of personal information in general, the National Assembly of the Republic of Korea, Korea's legislative body, enacted PIPA.<sup>195</sup>

PIPA prescribes matters concerning the management of “personal information” to protect the rights and interests of Korean citizens.<sup>196</sup> As a general law pertaining to the protection of personal information, PIPA establishes general principles for protecting personal information,<sup>197</sup> procedures for the collection and use of personal information,<sup>198</sup> restrictions on the management of personal information,<sup>199</sup> rules for the safe management

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<sup>193</sup> PIPA, *supra* note 16.

<sup>194</sup> Ministry of Interior (Korea), *Gainjungbo Bohobupryung Mit Jichingosi Haeseol* [Commentary on Personal Information Protection Act, Enforcement Decree, Regulations] [hereinafter Commentary on PIPA] Dec. 2011, pp. 37-46. According to Commentary on PIPA, 17 central government agencies regulated 38 laws containing protection and management of personal information at the time of enactment of PIPA. Korean text of the Commentary is available at [http://www.privacy.go.kr/inf/gdl/selectBoardArticle.do?nttId=1772&bbsId=BBSMSTR\\_00000000044&pageIndex=2&bbsTyCode=BBST01&bbsAttrbCode=BBSA03&authFlag=Y&searchCnd=0&searchWrd=&nttSj=개인정보 보호법령 및 지침 고시 해설서](http://www.privacy.go.kr/inf/gdl/selectBoardArticle.do?nttId=1772&bbsId=BBSMSTR_00000000044&pageIndex=2&bbsTyCode=BBST01&bbsAttrbCode=BBSA03&authFlag=Y&searchCnd=0&searchWrd=&nttSj=개인정보 보호법령 및 지침 고시 해설서).

<sup>195</sup> Lee, Joon-Bok, *Tonghap Gainjungbobohobup Sihangeui Hameuiwa Sisajum* [Meaning and Implication of the Enforcement of Integrated Personal Information Protection Act], 15 JUNGBOBUPHAK [INFORMATIONAL LAW] 147, 149-50.

<sup>196</sup> PIPA, *supra* note 16, at art. 1.

<sup>197</sup> *Id.* at art. 3.

<sup>198</sup> *Id.* at Chapter III, Section 1 (arts. 15 through 22).

<sup>199</sup> *Id.* at Chapter III, Section 2 (arts. 23 through 28). “Management” is defined broadly to mean “collect, create, record, save, hold, process, edit, search, output, correct, recover, use, provide, disclose, destroy personal information, and other acts similar thereto.” *Id.* at art. 2(2).

of personal information,<sup>200</sup> rules to guarantee the rights of the subjects of information,<sup>201</sup> and dispute settlement procedures for the infringement of rights established by PIPA.<sup>202</sup>

PIPA defines “personal information” as “information that pertains to a living person, including the full name, resident registration number, images, etc., by which the individual in question can be identified (including information by which the individual in question cannot be identified but can be identified through simple combination with other information).”<sup>203</sup> PIPA applies to any “personal information manager,” which is defined as “a public institution, corporate body, organization, individual, etc. who manages personal information directly or via another person to administer personal information files as part of his/her duties.”<sup>204</sup> As a result of this definition of “personal information manager,” which includes a public institution, PIPA applies to the Ministry of Oceans and Fisheries (MOF), the central administrative agency that governs fisheries laws and policies in Korea.<sup>205</sup>

Under PIPA’s principle of protection of personal information, when obtaining personal information, the personal information manager (including MOF) must clearly identify the purpose of collection.<sup>206</sup> The personal information manager “shall not use the

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<sup>200</sup> *Id.* at Chapter IV (arts. 29 through 34-2).

<sup>201</sup> *Id.* Chapter V (arts. 35 through 39).

<sup>202</sup> *Id.* Chapter VI (arts. 40 through 50).

<sup>203</sup> *Id.* art. 2(1).

<sup>204</sup> *Id.* art. 2(5).

<sup>205</sup> Ministry of Oceans and Fisheries, <http://www.mof.go.kr/eng/index.do>. Before the enactment of PIPA, the protection of personal information held by government entities was regulated by the Act on the Protection of Personal Information Maintained by Public Institutions [hereinafter APPIMPI]. However, with the enactment of PIPA, APPIMPI was repealed. PIPA, *supra* note 16, Addenda art. 2. At present, PIPA applies to any entities, either public or private. Commentary on PIPA, *supra* note 195. In addition, Article 6 of PIPA declares that

Unless otherwise provided for in other Acts including the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., and the Act on Use and Protection of Credit Information, the protection of personal information shall be governed by this Act.

PIPA, *supra* note 16, at art. 6. Commentary on PIPA explains that the integral approach of private and public entities was influenced by the European Union Directive on Protection of Personal Information. Commentary on PIPA, *supra* note 194, at 71. Commentary on PIPA also states that the co-existing of integral PIPA and other specific laws may create confusion and possibly double regulation. *Id.* at 37. If Korea argues that Korea’s privacy law prevented it from providing operational data to the WCPFC, PIPA is the law which directly regulates the handling of personal information by MOF. The Official Information Disclosure Act also prevents the government from disclosing to the public such information that is likely to infringe on business and operational confidentiality of a corporation. However, OIDA only applies to information requested by a Korean citizen and some foreigners. It does not apply to the disclosure of information requested by international organization or foreign nations according to treaties. Official Information Disclosure Act, art. 9(7), Act No. 5242, Dec. 31, 1996, as amended through Act No. 12844, Nov. 19, 2014.

<sup>206</sup> PIPA, *supra* note 16, art. 3(1).

personal information for the purposes other than intended ones.”<sup>207</sup> The personal information manager must use personal information “in such a manner that the privacy infringement of a subject of information is minimized.”<sup>208</sup> Similarly, the personal information manager must ensure that “personal information is managed anonymously whenever possible.”<sup>209</sup>

Similar to the analysis of Japanese laws, operational data with the vessel’s name is not likely to be “personal information” because such data does not include information of a living person, including the full name, resident registration number, images, or other information by which an individual can be identified. However, since Korea has provided the personal names of the ship’s captain to the WCPFC with the vessel’s information and those names have been disclosed to the public,<sup>210</sup> Korea may claim that the operational data with the vessel’s name may become “personal information” because the captain’s information “can be identified through simple combination with other information.”<sup>211</sup>

Even if Korea can successfully argue that operational data can be combined with other information to be considered “personal information,” MOF likely already has authority to submit such personal information to the WCPFC just as it has authority to submit detailed vessel information, which includes the names of the owner and the captain of the vessel, to the WCPFC. Article 17 of PIPA allows a personal information manager to provide a third person with personal information.<sup>212</sup> Under Article 17(1)(2) of PIPA, a personal information manager, such as MOF, may transfer personal information to a third person for its intended purpose “where it is inevitable for a public institution to perform its affairs” under its jurisdiction provided by laws and regulations,<sup>213</sup> or “where it is inevitable to fulfill an obligation imposed by or under any Act and subordinate statute.”<sup>214</sup>

In either case, Korea’s submission of operational data to the WCPFC should fall within the scope of Article 17(1)(2). First, the transfer of personal information should be within the intended purpose of collection. Presumably, the purpose of collecting operational data from vessels fishing in the WCPF Convention Area is to fulfill Korea’s obligation under the WCPF Convention, to which Korea is a party, and to manage the fisheries resources of the Convention Area effectively and sustainably. Therefore, the submission of operational data collected from Korean vessels is arguably within the intended purpose. Second, the submission of operational data to the WCPFC is required for MOF to “perform its affairs” or to “fulfill an obligation” relating to implementation of the WCPF Convention. Under Korean law, the WCPF Convention constitutes “laws and

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<sup>207</sup> *Id.* at art. 3(2).

<sup>208</sup> *Id.* at art. 3(6).

<sup>209</sup> *Id.* at art. 3(7).

<sup>210</sup> WCPFC, WCPFC Record of Fishing Vessels, *supra* note 191. For example, Korea has submitted relevant information including the vessel owner, for the *Geum Hae*, at <https://www.wcpfc.int/node/13132>

<sup>211</sup> PIPA, *supra* note 16, art. 2(1).

<sup>212</sup> *Id.* at art. 17.

<sup>213</sup> *Id.* at art. 17(1)(2), which references Article 15(1)(3).

<sup>214</sup> *Id.* at art. 17(1)(2), which references Article 15(1)(2).

regulations” because international treaties to which Korea is a party have the same effect as domestic laws and regulations.<sup>215</sup>

Nonetheless, PIPA may require MOF to obtain the consent from fishery operators before submitting operational data to WCPFC. Article 17(3) of PIPA appears to require notice to and consent from the subject of information for cross-border transfer of personal information.<sup>216</sup> Submission of operational data to the WCPFC likely constitutes the provision of information to “a third person at [an] overseas location.”<sup>217</sup>

To meet this requirement of notice and consent, Korea could amend the Distant Water Fisheries Development Act (DWFDA),<sup>218</sup> particularly its reporting requirement. Under DWFDA, all licensed ocean industry operators must report the number of fish caught and the amount of fish unloaded or sales results.<sup>219</sup> The DWFDA defines serious non-compliance as including the failure to “maintain and report the number of fish caught and detailed record (including data from fishing vessel monitoring system) requested by international fishery organizations.”<sup>220</sup> It further demands ocean industry operators to comply with “resources conservation and management measures of international fisheries organization” and international standards related to high seas.<sup>221</sup> These reporting and

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<sup>215</sup> Constitution (Korea), art. 6.

<sup>216</sup> PIPA, *supra* note 16, at art. 17(3) states,

When a personal information manager provides a third person at any overseas location with personal information, he/she shall notify a subject of information of the matters referred to in each subparagraph of paragraph (2) and obtain the consent thereto, and shall not enter into a contract concerning the trans-border transfer of personal information stipulating any details contravening this Act.

PIPA, *supra* note 16, at art. 17(2) states,

When a personal information manager obtains consent referred to in paragraph (1) 1, he/she shall notify a subject of information of the following matters. When the personal information manager changes any of the following matters, he/she shall inform the same and obtain consent thereto:

1. A recipient of personal information;
2. Purposes for which a recipient of personal information uses such information;
3. Items of personal information to provide;
4. Period for which a recipient of personal information holds and uses such information;
5. The fact that a subject of information has a right to reject to give his/her consent and details of a disadvantage, if any, due to his/her rejection to give consent.

<sup>217</sup> PIPA, *supra* note 16, at art. 17(3).

<sup>218</sup> The Distant Water Fisheries Development Act [hereinafter DWFDA], art. 16. Act. No. 8626, Aug. 3, 2007 as amended through Act. No. 13001, Jan. 6, 2015. English translation is available at <http://www.law.go.kr/lsInfoP.do?lsiSeq=136893&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>. English translation is based on DWFDA, Act No. 11690, amended Mar. 23, 2013.

<sup>219</sup> *Id.* art. 16(1).

<sup>220</sup> *Id.* art. 13(2)(7).

<sup>221</sup> *Id.* art. 13(1).

other requirements of the DWFDA are similar to those of the WCPFC. However, the DWFDA does not require MOF to report operational data to the WCPFC.

MOF clearly has competence to promulgate a regulation that puts ocean fishery operators on notice that it will submit operational data to the WCPFC, as Article 13(5) authorizes MOF to adopt regulations necessary to implement measures taken by international fisheries organizations.<sup>222</sup> Consent to submit the data to the WCPFC would be obtained as a condition of licensing or flagging a vessel authorized to fish in the WCPF Convention Area; the DWFDA authorizes MOF to adopt restriction on the grant of permission to fish.<sup>223</sup>

## 2. Use of PIPA's Exceptions to Justify Submission of Operational Data

If operational data is found to be “personal information” and the provisions of Article 17 of PIPA are deemed not to apply, then Article 18 of PIPA provides two exceptions that may allow MOF to submit information to the WCPFC. Article 18 allows a personal information manager to provide personal information to a third person if the interests of a subject of information or a third person are not likely to be unduly infringed and one of the specific exceptions applies.<sup>224</sup>

The first exception allows a personal information manager to use personal information for any purpose other than the intended ones or provide such information to a third person if the personal information is “necessary for compiling statistics, or scientific research purposes” and “the personal information is provided in a form by which a specific individual cannot be identified.”<sup>225</sup> Possibly, the submission of operational data to the WCPFC could be considered necessary for compiling statistics or for scientific research purposes. However, WCPFC rules require operational data to be submitted with the vessel’s name.<sup>226</sup> For MOF to be able to use this exception, it would need to ensure that the vessel’s name was not included or that the information was aggregated. As such, it does not provide the best option to overcome Korea’s legal constraints because it would still not be acting consistently with the *Scientific Data Document*.

The second exception offers a far better option. It allows a personal information manager to use personal information for any purpose other than the intended ones or provide such information to a third person if “necessary for providing a foreign government or international organization with personal information in order to implement a treaty or any other international agreement.”<sup>227</sup> This exception directly applies to the submission of operational data to the WCPFC. As mentioned above, the Korean Constitution stipulates that “treaties duly concluded and promulgated under the

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<sup>222</sup> *Id.* art. 13(5), referencing Article 13(4).

<sup>223</sup> *Id.* art. 7.

<sup>224</sup> PIPA, *supra* note 16, at art. 18(2).

<sup>225</sup> *Id.* art. 18(2)(4).

<sup>226</sup> *Scientific Data Document*, *supra* note 6, at Annex 1, §1.1.

<sup>227</sup> *Id.* art. 18(2)(6).

Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws” of Korea.<sup>228</sup> The Commentary on PIPA prepared by the Ministry of Interior explains that if a domestic law and a treaty with the same effect as the domestic laws conflict each other, the treaty prevails by the principle of prevalence of special law over general law.<sup>229</sup> The Commentary further states that a treaty can be considered a special law because nations reach an agreement to apply the treaty domestically: “Therefore, if a treaty requires a use or transmission of personal information outside the purpose of collection, a public institution may use or transfer personal information outside the purpose of collection *without the consent* from the subject of information to implement the treaty.”<sup>230</sup> Based on this explanation of the Commentary on PIPA, it is clear that PIPA anticipated the case where Korea’s domestic privacy law could collide with its international treaty obligations and that the government would provide personal information to an international organization according to the treaty’s requirement.

As mentioned above, the use of these two exceptions in Article 18 requires that the provision of personal information to a third person does not “unduly infringe” on the interests of the subject of information.<sup>231</sup> In other words, as long as the submission of operational data to the WCPFC does not unduly infringe on the interests of vessel owners and/or captains, MOF may provide operational data to the WCPFC without obtaining their consent. It is not clear what constitutes undue infringement of interest of ocean fishery operators. Vessel owners and captains may argue that operational catch and effort data would reveal vessel-specific data with the number and type of fish caught per set, thereby disclosing their know-how on where, when, and how to fish, which is confidential, business beneficial information. This argument cannot prevail, however, because the right to fish is limited by international fishery agreements such as WCPFC, and the ability to fish is dependent on the sustainability of fishery resources. The submission of operational data is critical to ensuring sustainable fisheries. Moreover, the DWFDA already contemplates the submission of fisheries data to the WCPFC.<sup>232</sup> In any event, the WCPFC has a strict policy on confidentiality of information that prohibits the public disclosure of the individual activities of a specific vessel, as well as annual catch estimates and aggregated catch and effort data of a vessel.<sup>233</sup>

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<sup>228</sup> Constitution (Korea), *supra* note 214.

<sup>229</sup> Commentary on PIPA, *supra* note 194, at 109.

<sup>230</sup> *Id.* (emphasis added).

<sup>231</sup> PIPA, *supra* note 16, at art. 18(2).

<sup>232</sup> DWFDA, *supra* note 218, at 13(2)(7) (stating that “Where ocean fishery operators conduct fishing operations in waters under the jurisdiction of international fisheries organizations or foreign countries, or conduct fishing operations for fish species managed in accordance with international conventions and agreements, they shall comply with the following matters: ... Faithful preparation and submission of statistical documents.”)

<sup>233</sup> WCPFC, Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission, *supra* note 36, at ¶¶ 9–11. Nonetheless, Korea seems concerned with confidentiality of operational data. At the 11th regular session of WCPFC held in 2014, Korea, with Japan, successfully argued for confidentiality in providing the limited operational data for tropical tuna. Japan Proposal on SKJ TRP, WCPFC11-2014-DP-25 Rev 1, Dec. 4, 2014; CMM 2014-01, BIGEYE, YELLOWFIN AND SKIPJACK TUNA IN THE WESTERN AND CENTRAL PACIFIC OCEAN, *supra* note 58, at ¶ 58.



Alternatively, to make Korean law fully compatible with WCPFC requirement to submit operational data, Korea could amend the DWFDA to include a confidentiality clause relating to data submitted to the WCPFC. Currently, the DWFDA does not have any provision addressing confidentiality of information reported to MOF by fishery operators. It only states that all licensed ocean industry operators should report operational results to MOF.<sup>234</sup> The regulations to implement the DWFDA state that MOF should use the operational results to write an annual “comprehensive assessment report” of distant ocean vessels, which can be used “only for the purpose of assessing fisheries resources and information regarding fisheries policy, and not for any other purposes.”<sup>235</sup> This language does not clearly state whether MOF’s submission of operational data to the WCPFC could be construed as the use of information regarding “assessment of fisheries resources and information regarding fisheries policy.” Therefore, Korea should amend the DWFDA to clarify that providing operational data to WCPFC does not collide with PIPA.

### C. The Example of the United States

The United States exemplifies how a WCPFC member can ensure that it has the legal authority to provide operational data to the WCPFC. Prior to 2007, the U.S. Magnuson-Stevens Fishery Conservation and Management Act (MSA)<sup>236</sup> provided that “[a]ny information submitted to the Secretary [of Commerce], a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except” under limited circumstances, which did not include submission of data to international fisheries commissions.<sup>237</sup> The Department of Commerce, the agency responsible for fisheries management in the United States, thus applies the “Rule of Three,” wherein data disclosed to the public must be aggregated from at least three fishermen.<sup>238</sup> In this way, commercially valuable information is very difficult to trace to the individual who reported it.<sup>239</sup>

To ensure compliance with the data requirements of WCPF Convention and the WCPFC, the U.S. Congress amended the confidentiality rules of the MSA as they relate to the WCPF Convention in the Western and Central Pacific Fisheries Convention Implementation Act (Act). The Act specifically allows the Secretary of Commerce to disclose information “to the Commission, in accordance with requirements in the

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<sup>234</sup> *Id.* art. 16(1).

<sup>235</sup> Implementation Regulation of DWFDA, art. 25.2(2). MOF Regulation No. 155, last amended on Aug. 4, 2015. The Korean text of the regulation is available at <http://www.law.go.kr/lsInfoP.do?lsiSeq=173791&efYd=20150804#0000>. An official English translation is not available.

<sup>236</sup> 16 U.S.C. §§ 1801–1884.

<sup>237</sup> 16 U.S.C. § 1881a.

<sup>238</sup> Nat’l Marine Fish. Serv., “Commercial Data,” at <http://www.st.nmfs.noaa.gov/data/fis/about/commercial-data>.

<sup>239</sup> *Id.*

Convention and decisions of the Commission, and, insofar as possible, in accordance with an agreement with the Commission that prevents public disclosure of the identity or business of any person.”<sup>240</sup>

The Secretary of Commerce later promulgated regulations to implement this statutory provision. The regulations provide, in relevant part, as follows:

(3) *Commission.* (i) Confidential information will be subject to disclosure to the Commission, but only if:

(A) The information is required to be submitted to the Commission under the requirements of the WCPF Convention or the decisions of the Commission;

(B) The provision of such information is in accord with the requirements of the Act, the WCPF Convention, and the decisions of the Commission, including any procedures, policies, or practices adopted by the Commission relating to the receipt, maintenance, protection or dissemination of information by the Commission; and

(C) The provision of such information is in accord with any agreement between the United States and the Commission that includes provisions to prevent public disclosure of the identity or business of any person.<sup>241</sup>

...

Quite clearly, the United States may now submit operational data to the WCPFC.<sup>242</sup> At the same time, the regulations seek to ensure that information is not disclosed to other persons or used for other reasons. In fact, the regulations provide that “[p]ersons having access to confidential information may be subject to criminal and civil penalties for unauthorized use or disclosure of confidential information.”<sup>243</sup> A violator may be assessed a civil penalty up to \$100,000 for each violation.<sup>244</sup> As a consequence of these rules, the United States has enacted legislation that allows it to provide the WCPFC with operational data while at the same time ensuring that confidential information is not disclosed to the public.

#### **D. Appropriate and Scalable Penalties**

As noted in Section VII, the failure to provide operational data does not constitute non-compliance, provided that a member has a domestic legal constraint. Even if such a

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<sup>240</sup> 16 U.S.C. 506(d). Congress enacted the Western and Central Pacific Fisheries Convention Implementation Act, as well as other amendments pertaining to the WCPF Convention, as part of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Public Law 109-479, 121 STAT. 3575.

<sup>241</sup> 50 C.F.R. § 300.220 (c)(3).

<sup>242</sup> The regulations also allow for the disclosure of information to state employees, Marine Fisheries Commission employees, observers, and others provided certain conditions are met. 50 C.F.R. § 300.220 (c)(4)–(7).

<sup>243</sup> 50 C.F.R. § 300.220 (c)(8).

<sup>244</sup> 16 U.S.C. § 1858(a).

legal constraint exists, members have an ongoing duty to remove the legal constraint and provide aggregate data. Japan either does not have a domestic legal constraint or it is failing to overcome whatever domestic legal obstacle it may have. In addition, Japan is failing to provide aggregate data consistently with the *Scientific Data Document*, as Section V.A shows. As a consequence, Japan is in violation of the rules for submission of data as mandated by the *Scientific Data Document*.

The issue, then, is whether the WCPFC has the tools to impose adequate penalties for Japan's non-compliance. The Technical and Compliance Committee may only make recommendations to the WCPFC and, given the consensus-based model of decisionmaking in the WCPFC, Japan could object to any recommended penalty.

To improve compliance, the WCPFC is developing a Compliance Monitoring Scheme (CMS) to, *inter alia*, assess CCMs' compliance with their obligations and respond to non-compliance through remedial options.<sup>245</sup> Through the CMS, the WCPFC will specifically review compliance with the provision of scientific data through Part 1 of the Annual Report and the *Scientific Data Document*.<sup>246</sup>

Remedial options may include capacity-building initiatives, as well as "penalties and other actions as may be necessary and appropriate to promote compliance with CMMs and other Commission obligation."<sup>247</sup> One way the WCPFC intends to implement the concept of "necessary and appropriate" is through a "graduated response" that takes into account "the type, severity, degree and cause of the non-compliance in question."<sup>248</sup> This "graduated response" model, while having different names,<sup>249</sup> is also found in compliance mechanisms of multilateral environmental agreements,<sup>249</sup> the use of force in self-defense,<sup>250</sup> the conduct of war,<sup>251</sup> maritime boundary delimitation,<sup>252</sup> international

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<sup>245</sup> WCPFC, CMM 2014-07, CONSERVATION AND MANAGEMENT MEASURE FOR COMPLIANCE MONITORING SCHEME, ¶ 1 (2014).

<sup>246</sup> *Id.* at ¶ 3(vi).

<sup>247</sup> *Id.* at ¶ 1(iv).

<sup>248</sup> *Id.* at ¶ 23. These aspects of the CMS embody two common elements of compliance regimes: proportionality and a step-wise approach to non-compliance.

<sup>249</sup> The compliance regime of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), for example, directs the Standing Committee, which is responsible for recommending measures to facilitate compliance, to take into account:

- a) the capacity of the Party concerned, especially developing countries, and in particular the least developed and small island developing States and Parties with economies in transition;
- b) such factors as the cause, type, degree and frequency of the compliance matters;
- c) the appropriateness of the measures so that they are commensurate with the gravity of the compliance matter; and
- d) the possible impact on conservation and sustainable use with a view to avoiding negative results.

CITES, RESOLUTION CONF. 14.3, CITES COMPLIANCE PROCEDURES, Annex, at ¶ 32 (2007).

<sup>250</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986 I.C.J. 14, ¶ 237.

trade law,<sup>253</sup> as well as European law generally.<sup>254</sup>

In the context of the failure to submit data, it is difficult to know just where along the spectrum of proportionality specific failures would fall. For example, Japan has never provided any operational catch and effort data, nor size composition data, for its coastal fleet, although it has submitted aggregate catch data for this fleet for the years 1994 through 2014.<sup>255</sup> Japan has not provided any annual catch estimates by EEZs and high seas areas prior to 2008 (Japan has only provided this type of data for the period between 2008 and 2014).<sup>256</sup> Whether one failure is greater than the other is difficult to say in the abstract. The implications of such data failures, and thus the corresponding response measures, should be accompanied by an analysis from fisheries scientists, most likely those from the SPC who are charged with providing scientific advice to the WCPFC.

### VIII. CONCLUSION

For the past decade, the WCPFC has attempted to obtain operational data from WCPFC members so that fisheries scientists can accurately estimate the abundance of fish stocks, set total allowable catches based on an accurate assessment of the stocks, and manage fish stocks sustainably. While the vast majority of members submit operational data, a small number continue to claim that domestic legal constraints prevent them from submitting operational data.

The WCPFC's rules for the submission of data allow members to submit aggregate data instead of operational data if they have "domestic legal constraints," but only "until such constraints are overcome."<sup>257</sup> A review of the legislation of Japan and Korea indicates that they either do not have domestic legal constraints or that those constraints could be overcome easily.

Japan, for example, relies on privacy—the protection of personal information—to claim that it may not submit operational data to the WCPFC. Japan's legislation, however, suggests that operational data does not constitute "personal information"—information that can identify a person within the meaning of the Act on the Protection of Personal Information Held by Administrative Organs.<sup>258</sup> Even if it does (because

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<sup>251</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226.

<sup>252</sup> *North Sea Continental Shelf*, 1969 I.C.J. 3, at ¶ 101.

<sup>253</sup> In the context of the Agreement on Subsidies and Countervailing Measures, "appropriate" countermeasures are the remedy for the use of prohibited subsidies. Agreement on Subsidies and Countervailing Measures, arts. 4.10, 4.11. A footnote explains that the use of "appropriate" "is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited." *Brazil-Aircraft*, WT/DS46/ARB, ¶ 3.51 (August 28 2000).

<sup>254</sup> In European law, the concept of proportionality 'implies a means-ends relationship between the aims pursued by a specific action of the government and the means employed to achieve this end'. NICHOLAS EMILIOU, *THE PRINCIPLE OF PROPORTIONALITY IN EUROPEAN LAW: A COMPARATIVE STUDY* 23-24 (1996).

<sup>255</sup> See *supra* Section V.A.

<sup>256</sup> DATA GAPS 2014, *supra* note 7, at ¶ 27.

<sup>257</sup> *Scientific Data Document*, *supra* note 6, at § 3.

<sup>258</sup> APPIHAO, *supra* note 14.

operational data includes the vessel’s name, which could be used to identify the captain), Japan has already submitted vessel names and captain’s names as part of the Record of Fishing Vessels.<sup>259</sup> Moreover, Japan’s fisheries agency—the Ministry for Agriculture, Forestry and Fisheries (MAFF)—likely already has statutory authority to submit operational data just as it has authority to submit vessel names and captain’s names for the Record of Fishing Vessels, because submission of operational data to the WCPFC would be consistent with the “purpose of utilization” for obtaining operational data from Japanese vessels. MAFF also may be able to submit operational data to the WCPFC under its duty to “execut[e] the affairs under its jurisdiction provided by laws and regulations,” including international treaties such as the WCPFC Convention.<sup>260</sup>

Similarly, operational data likely does not constitute “personal information” within the meaning of Korea’s privacy law, the Personal Information Protection Act (PIPA).<sup>261</sup> Even if it does, the Ministry of Oceans and Fisheries (MOF) may provide operational data to the WCPFC with the consent of vessel operators; consent may be needed because the information is being disclosed to an entity in another State. Even without the consent, MOF would be able to submit operational data to an international organization such as WCPFC, as long as the submission would not unduly infringe the interest of ocean industry operators. The Korean government even explains that treaty law prevails when there is a conflict with domestic privacy law.<sup>262</sup>

If operational data is considered personal information, then both Japan and Korea could overcome privacy concerns by obtaining the consent of vessel owners or captains. With respect to both Japan and Korea, the relevant fisheries agencies, MAFF in Japan and MOF in Korea, have legal authority to amend their regulations. The regulations could be amended to put vessel owners and captains on notice that operational data will be submitted to the WCPFC. The consent to do could be conditioned on the receipt of a license to fish in the WCPFC Convention Area.

Because both Japan and Korea either 1) do not have domestic legal constraints or 2) have authority to promulgate regulations to provide operational to the WCPFC and are not actively trying to overcome any legal constraint, they are acting inconsistently with the *Scientific Data Document*. Nonetheless, imposing a penalty on them may be difficult given the WCPFC’s culture of taking decisions by consensus.<sup>263</sup>

Korea (and China<sup>264</sup>) has taken important, positive steps by submitting operational data for 2014. If Korea submits historical operational data and Japan takes similar steps, then the “culture of protecting catch data and disinformation [that] is

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<sup>259</sup> WCPFC, Record of Fishing Vessels, *supra* note 191.

<sup>260</sup> These arguments are discussed in more detail in Section VII.A.2, *supra*.

<sup>261</sup> PIPA, *supra* note 16.

<sup>262</sup> These arguments are discussed in more detail in Section VII.B, *supra*.

<sup>263</sup> See *supra* Section VI.

<sup>264</sup> China also submitted operational data for its longline fleet for 2014, although coverage was low. DATA GAPS 2015, *supra* note 18, at ¶ 24.

common”<sup>265</sup> in fisheries can be broken. If this culture can change, then the WCPFC can ensure that it is managing valuable fish stocks sustainably.

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<sup>265</sup> Amos Barkai & Guy Meredith, OLFISH Electronic Logbook: Bridging the Gap between Fisher, Manager and Scientist through Cohesive Data-logging, ICESCM2010/R:01, at 1 (2010).