



## **TECHNICAL AND COMPLIANCE COMMITTEE**

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### **ADDRESSING VESSEL MASTER AND OBSERVER COMPLAINTS TO ENHANCE THE EFFICIENCY OF THE ROP**

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**WCPFC-TCC7-2011/15 Rev 1**

**16 September 2011**

#### **Paper prepared by Secretariat**

#### **ISSUES:**

1. Complaints from observers about treatment onboard fishing vessels and from Masters regarding observer behaviour need to be addressed.

#### **Decision/Endorsement**

2. The Commission is invited to consider the following paper and proposals to address this concern.

#### **DISCUSSION:**

##### **Overview**

3. Observer programmes cannot operate successfully unless they have good practical administrative support, sufficient staff and properly financed programmes. Unfortunately, a few observer programmes that have been developed in some countries have inadequate systems in place to handle the number of observers that they now place on vessels. There is an urgent need for some of the observer provider countries to review their programmes and develop comprehensive practical administration and financial provisions to ensure their nationals employed as observers are able to get the required support they need to carry out their duties. With good financial and administrative systems in place to deal with observer movements and placements in a quick and efficient manner, many of the problems highlighted in this paper would have less chance of occurring.

4. There are a number of complaints from observers about treatment when on vessels and from vessel captains about the observers behaviour, complaints range from extremely serious to frivolous, however when you take into account the number of vessels involved (Approx 250) the number of observers involved (approx 600) and the amount of trips (approximately 2200 observer trips in 2010) the amount of complaints are relatively low. This does not mean in any way that these complaints should not be investigated and appropriate actions taken. For this report the names of observers, observer programmes, vessels, captains or flag of vessels have been removed. All incidents reported to the ROP when compiling this report have been verified by observer providers or by flag States.

5. It is believed that the efficiency of the ROP can improve if there is in place a system to deal with all those persons who do not follow the rules and obligations that is expected of them by the Commission members. To assist in achieving better efficiency for the ROP there will need to be a set of penalties in

place to deter both observers and vessel captains<sup>1</sup> from acting in a way that is contrary to the general standards of acceptable behaviour, and to the rules as set out by the Commission.

6. The ROP observer programmes offer a broad range of expertise to the member countries and organisations in the WCPFC convention area. There seems to be some problems with a few vessel captains understanding the wide roles of observers when on board fishing vessels. Observers are witnesses to all aspects of compliance, environment, fisheries management, monitoring science and other areas when on board and require cooperation from captains and crew with their data collections. Unfortunately there are cases of unwarranted treatment and hindrance of observers when on board.

7. Observing in the WCPO is considered a professional position, and persons selected and trained to be observers have always been expected to behave in a manner that befits their roles as representatives of their programme and their country. A few observers have acted in an irresponsible and incorrect manner causing a number of problems for their providers as well as vessels they are either to board or are on board. The observer providers in the Pacific Islands are well aware of these problems, and have taken a responsible attitude by dealing with troublemakers from their programmes either by suspension or termination of contract.

## **Conduct**

8. Some of the observers and providers involved were asked to see why some of the troubles eventuated, it was noted that some said they had problems with controlling their intake of alcohol, others admitted they just wanted to have a good time after lengthy trips at sea, but they had gone to far in the excitement of being ashore or at a trips end. It was also mentioned numerous times that they were not alone when they created disturbance or when their lack of judgement got them into trouble. Often they were with crew from the vessel, and or other observers or persons they met in port.

9. Observer programmes have in place a ‘Code of Conduct’ that contains penalties for observers for indiscretions. Many observers have been reported to the ROP as having had loss of pay, suspension of work, and in the majority of cases termination as an observer, when they are found to be involved in actions not contributing to being a responsible ROP observer.

10. Unfortunately there is no known action taken by a flag State against a captain or crew who has denied a ROP observer their rights and privileges when on board a vessel. There is a need for the Commission to look at having some minimum standards for procedures and penalties that can be applied to vessel captains or crew if they contravene the Commission rules and rights of the observers.

11. It is vital that observers, captains and crew operate in a manner to which they are expected by the Commission members and after reading the following complaints from observers and vessel captains, structures to deal with these problems should be put in place by the Commission.

## **Part 1**

### **Issues reported by Vessel Captains/Owners or Agents**

#### **Vessels reporting incidents with observers**

12. Tables 1- 3 are some of the reports provided by flag States on problems vessels/captains/owners/agents have had with observers either in their home ports, foreign ports or on vessels at sea.

13. The Pacific Islands (PI) ROP programme that supply most of the observers for the 100% coverage of purse seiners has a “Code of Conduct” in place for observers and any indiscretions are generally dealt with through these codes. Depending on the severity of the problems caused, observers are usually suspended for periods up to a year or have their contracts terminated and are removed from the programme.

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<sup>1</sup> This assumes that the Captain of the vessel is responsible for the actions of his officers and crew.

## Events reported involving observer drunkenness (Table 1)

14. This topic was discussed at the last FFA/SPC Regional Observer Coordinators Workshop (ROCW) in Honiara June 2011. Besides vessel captains and agents complaining, there were numerous complaints by the ROP observer programme coordinators themselves on the behaviour of a small number of observers in their ports when waiting to board vessels or waiting for flights to travel back home. The ROCW solidly reaffirmed what was already in place, that observers causing problems because of drunkenness would not be tolerated. They also reaffirmed that following verification of the problems the observer has caused; suspension or in most cases termination of contract would apply. There was a no tolerance policy by most programmes and observers were terminated from their position after only one proven offence.

**Table 1. Events reported involving observer drunkenness**

Location	Incident	Result
a. Occurred in home port of vessel	Four observers gathered in a room on one of the vessels for drinking. Observers got heavily drunk.	Rooms vandalized by observers, scattered trash and garbage around vessel
b. Occurred in home port of vessel	Observer got heavily drunk before he boarded vessel. He was later found on the dock bleeding from his head. Apparently, he had fallen head-first, cracking his head.	Injury to observer
c. At sea	Observer became drunk and destroyed communications devices. (VHF radio)	The vessel had loss of VHF communications and had to pay for repairs to radio system.
d. Occurred in home port of vessel	Observer was drunk and fought with a trainee crew man.	Crewman was hit and injured.
e. Occurred in home port of vessel	3 observers got heavily drunk on a vessel. One observer removed and threw away the hatch of a fish hold of the vessel into the sea. He also destroyed other equipment on the vessel.	The vessel paid for the replacement of fish hold cover and other damaged equipment.
f. Foreign port	The observer had been drinking and barricaded himself in a hotel room, shipping agent staff tried to persuade the observer to come out.	Delayed departure of vessel
g. Occurred in home port of vessel	Observer got drunk and fought with a crew member.	Not wanting any further problems with observer, The vessel paid to return the observer to his home country, and was delayed waiting for another observer.
h. Foreign Port	The observer got heavily drunk and harassed and threatened shipping agent personnel	Harassed personal
i. Foreign port	Observer got extremely drunk and a fight ensued with some of crew of the vessel.	End result was 5 injured crewmen admitted to hospital, 3 crewmen had injuries so serious that they were hospitalized and were unable to continue on the trip, and had to be flown back to their home country. Observer was jailed temporarily and faced a number of serious charges including assault which if found guilty could have entailed a long period of jail in a foreign country. Observer was released from Jail and told to leave the country. The observer provider then

		<p>asked vessel and or the vessel company to repatriate the observer. Considering the cost and problems of replacing crew they declined to assist.</p> <p>The provider of the Observer then spent a couple of weeks trying to work out how to get funds for observer back to his home country. Observer was left with no money for long period during this waiting period.</p>
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### Events reported involving observer requesting disembarkation from vessel (Table 2)

15. There were a number of complaints about demands by observers to disembark vessels for personal reasons. This is an inconvenience to the vessel as they lose valuable fishing time and incur a number of costs of bringing the observer to a port. Often these observers will also request the vessel to purchase tickets for their return trip to their home town.

16. The reasons an observer wants to return to port would rarely be justified, however before doing so the vessel should correspond with the provider to ensure there is a genuine reason. Observers, during training are explained that when going to sea on vessels they must realize that part of being at sea is the inability to be able to return home when they want to. During their training observers are explained about the costs of running a vessel on a daily basis, and to demand the vessel return to port for frivolous reasons is not acceptable. Observers should realise that they are on a vessel which cannot just run in and out of port to please the observer; however the vessels also must realize that there may be real and urgent need to remove the observer from the vessel; it could be for his or her own personal safety or for critical health reasons, in these cases the provider and the vessel master should make a quick determinations on what should happen to the observer. In all cases it is the vessel master decision, on what occurs, but he should consult closely with the observer provider on any problems encountered.

**Table 2. Events reported involving observer requesting disembarkation from vessel**

Location	Incident	Result
a. Event occurred at Sea	Observer demanded his disembarkation from vessel, saying he wouldn't work until the payment of his salary from the observer provider was sorted out.	The vessel had to make a port call for observer disembarkation. The vessel lost fishing days and paid expenses for the unscheduled port call.
b. Event occurred at Sea	The observer demanded to return to his home, saying there was trouble with his family.	The vessel lost fishing days, and paid expenses for the unscheduled port call and then also had to pay for the travel costs for observer to get to his home and had to find another observer to board the vessel
c. Occurred in home port of vessel	The observer suddenly canceled his scheduled deployment (no reason given) after arriving to board the vessel.	The vessel paid for one observer to travel to and from the vessel, and then had to pay for extra travel for a second observer. Vessel departure delayed waiting for second observer.
d. Occurred in home port of vessel	The observer suddenly canceled his scheduled deployment, saying his mother became sick.	The vessel paid for one observer return travel to the vessel, the vessel then had to pay for extra travel to get second observer.
e. Event occurred at Sea	The observer was notified that his mother was sick and demanded that he be taken to a port and sent home.	The vessel had to make an unscheduled port call for observer disembarkation. The vessel lost fishing days and paid expenses for the unscheduled port call and had to organise and pay for observers travel home.

f. Event occurred at Sea	Observer witnessed a crew member being injured in an accident during the fishing operation. Out of fear of what he saw, observer demanded that the vessel take him to port and drop him off.	The vessel paid for unscheduled travel cost.
g. Foreign port	The observers strained his back and demanded that the vessel take him to port.	The vessel had to transit to port and pay travel costs for observer to return home.
h. Event occurred at Sea	The observer slipped and sprained one of his knees. The vessel had to make a port call for his medical treatment.	The vessel lost fishing days and had to pay all cost for his medical treatment.

### Other events reported involving observers (Table 3)

17. A few other types of problems reported by flag States or vessels: Observers who fail to pay bills for accommodation, or any other bills while on duty, should be the responsibility of the observer provider to ensure their observers are sufficiently funded and are responsible for observers not paying their bills. The providers have the means of deducting the amounts owed and paid by them from the observer salary.

18. Observers who fail to show up for a boarding in time can cause a vessel to lose valuable fishing time plus impose extra expenses for the vessel. Failure to show up with no genuine reason is not acceptable, and should be dealt with through the observer Code of Conduct. There may be genuine reasons an observer does not arrive in time for the boarding. Cancelled or late flights, visa problems as well as short notification time given to the provider for an observer is often the reason an observer does not make it in time. It should be noted that coming into port unannounced one day and wanting to leave a couple of days later with an observer will cause problems, especially if there are no observers readily available in that port. During training observers are advised to always, where possible, board the vessel as early as they can and at least 8-24 hrs before the given departure time and date.

19. It is also important that vessels only make arrangements for observers with authorised observer providers. A couple of vessels have experienced problems and delays when they have tried to make arrangements direct with observers and without getting any approvals from the observer provider. Individual observers are not authorised to make arrangements with the vessel on who shall board their vessel.

20. Observers or crew accused of stealing or any other criminal activity, should be dealt with by proper investigations carried out by the police when vessels come to port.

21. Psychological problems that may develop while the observer is at sea is something that cannot be foreseen, and should be handled extremely carefully between the vessel captain, observer provider and anyone else deemed to be helpful such as a family member and/or an expert in the area of the problems the observer may have.

**Table 3 Other events reported involving observers**

Location	Incident	Result
a. Occurred in foreign port	The observer left town without paying his hotel and restaurant bill.	The vessel through the agents paid for the unpaid expenses, after hotel complained of observer leaving without paying..
b. Occurred in home port of vessel	Observer did not show up as originally scheduled, because he was sent to an observer training course at the time he was to board the vessel.	The vessel paid cancellation fees for travel and lost time while waiting to find another observer.
c. Foreign port	The observer allegedly stole cash of about	The crew member lost US\$2000. Observer

	US\$2000 from a crew member.	claims he knew nothing about this incident.
d. Event occurred at Sea	Observer jumped into the sea with the intention of committing suicide. Fortunately, the vessel found him and rescued him. The vessel had to make an unscheduled port call for disembarkation.	The vessel a lot of time for search and rescue operation and had a loss of fishing days as well as paying all expenses for the unscheduled port call.
e. Event occurred on vessel	Observer demanding that cash be given to him by vessel captain.	Captain reported incident. (This type of incident was reported by a few vessels.)

### **Possible reasons for some of the problems**

22. During the audit process it was noted that a number of national programmes have no means of supporting observers if they land or get into problems in foreign countries. These national observer programmes have no local mechanism in place for advancing their observers funds to pay for accommodation and no quick mechanisms to organise travel back to their home ports if they are dropped off in a foreign port. In some cases these national programmes are not making any attempt to rectify these problems, and instead rely entirely on vessels, vessel companies or agents to pay directly for observer to be repatriated and in some cases give an advance on their salary.

23. Observers often have to wait for airline tickets to be processed after they disembark in foreign ports, and because of these waits observers get bored and in some cases drink and cause trouble. Observers say they are often not given sufficient money to travel home and this contributes to observers not being able to pay for their accommodation, etc.

24. The shifting of responsibility for the observer repatriation is not ideal; it is not contributing to the independence of their observer programmes. Having vessels or their agents pay direct to the observer is not considered an ideal situation by many observer programmes, as it blurs the line between possible corruption and what is actually required. The practise of having vessels giving money direct to observers for travel, salary advances and organising and paying for the observers travel is something that most observer programmes around the world do not allow.

25. The reasons some national programmes have difficulty in supporting their observers when they land in ports in countries other than their own, is because some national programme just do not have the capability, infrastructure or staff to deal with an observer requiring money or flight tickets in a foreign country to get them back to their home port. Therefore it is considered an easy option to ask the vessel or the vessels company to make all the arrangements. The accusations made by a few, of alleged bribery of observers by vessels occurring in some of the national programmes is most likely a consequence of vessels or agents paying observers direct for travel, salary advances and tickets.

26. A number of ROP observer programmes in the Pacific region have well thought out administration, infrastructure, funding and extra personnel where required. However a few CCM's who have national observer programmes need to rethink their commitments by improving their administration, infrastructure and funding. It is extremely important that there is support for their observers and there should be a commitment both financially and structurally to support the programmes. Without putting in place adequate internal structures to deal with observers who land in foreign ports, the reputation of their countries and their observer programmes will continue to be in question. It is the responsibility of each national programme to set up proper accounts, facilities and whatever is required to make sure an observer landing in a foreign port can be facilitated quickly by their national provider. Some providers are constrained heavily in doing something quickly by their government's administration requirements when dealing with travel and money, and this process can take days or weeks to apply in some cases while awaiting approvals, etc.

27. If a country wishes to run observer programmes, they must restructure their finances and travel to enable heads of observer programmes to be able to act quickly for the observer landed in a foreign port,

and not have to rely on cumbersome government administration procedures, vessel agents, owners or the vessel captain.

### **Possible Solutions**

28. The Commission has no standards on how payment of observers should occur, as this is left to the individual providers, however providers need to take responsibility of the placement, movements and financial assistance of their observers to ensure the observer is well looked after, noting that payment by vessels direct to observers is not considered a good practise. To assist a set of guidelines has been compiled that CCMs with observer programmes should consider when developing administration & finance systems to deal with unique situations that is common to all observer programmes.

For all ports in PNG, Solomon Islands, Vanuatu, Fiji, Kiribati, Marshall islands, FSM, Guam, Pago.

- All ROP observers would be paid direct by their respective national, sub regional or regional observer programmes for salary, allowances, travel, DSA and other moneys required to carry out their roles as observers.
- No payments of cash or other money instrument should be paid direct to an observer for salary, allowances, travel, DSA by a vessel agent, vessel company or vessel master.

For all other ports not listed above when an observer disembarks away from his home port;

- All attempts should be made to apply the same administration of payments as for the listed ports
- If not possible arrangements between vessels, agents and the provider to repatriate the observer should be done through a system of invoicing.

### **Code of Conduct & Commission Standards for Observers**

29. The current Commission ROP Standard says *“The agreed standard for “Code of Conduct” is that each CCM should have a Code of Conduct in place, available to each observer, available for review and if not in place, to be developed.”*

30. The programmes audited so far in 2011 all had in place a ‘Code of Conduct’ which in all cases was given and explained to observers at their initial training, and then in most cases were given to observers when signing contracts. The ‘Code of Conduct’ in the many PI countries were slightly different because of local laws and rules, however the basics structure of the Code were similar.

31. There are no Commission standards or penalties created on observer behaviour and it relies on the different Code of Conduct clauses in place in member countries. It is suggested that some broad minimum standards could be adopted as guidelines by the Commission. Whilst it could be argued these requirements are nearly all covered sufficiently by most members ‘Code of Conduct’, it is believed that the Commission ROP could also have these minimum standards in place so as reinforce the importance of the Codes of Conduct of the member countries.

32. The Commission may wish to create a minimum standard as a set of guidelines for observer behaviour;

**TCC is invited to consider the following as guidelines for observer placement and when on board a vessel and to recommend these to WCPFC8.**

1. Observers shall always ensure that they arrive to board the vessel in timely manner and in a healthy condition, and are not in any way under the influence of any illegal substances or alcohol.
2. Observers shall not bring on board alcohol, betel nut (unless approved by the master) or any illegal substances onto a vessel.
3. Unless approved by vessel captain or master observers shall not drink alcohol or chew betel nut on board the vessel, if permitted to smoke on board, observers may only smoke in designated areas.

4. Observers reported to be allegedly, drunk, under the influence of drugs, failing to pay hotel costs or other charges, responsible for damaging accommodation, reported for any deliberate and malicious damages when on the vessels, responsible for any other matter that brings disruption or disrepute either on shore or on board a vessel to the sub-regional, national programme or the ROP, may if found accountable have their contract suspended or terminated by their providers, and may be asked to reimburse all costs for damages, and may also be asked to return all costs of advances and airfares involved in their travel
5. Observers found responsible of starting a fight with crew or officers onshore, or at sea, are subject to disciplinary action by the observer provider which will include suspension or dismissal from the observer programme, said actions to be reported to the ROP Secretariat and the flag State of the vessel/s concerned. If such proceedings result in court action and the observer is found at fault, the ROP national programme shall immediately dismiss the observer after his/her repatriation to their home port. Cost of repatriation will be the responsibility of the observer's national programme.
6. Observers when on board a vessel at sea cannot order the vessel in to port; any request for a vessel to come to port by an observer must be approved by the Vessel Captain and the Observer Provider and must only be for extreme emergencies or serious health reasons.

## **Part 2 Issues reported by Observers**

### **Incidents reported by observers or providers about observer treatment on vessels.**

33. There were quite a few reports of vessels not adhering to “Annex III Article 3” and “Annex A of CMM 2007-01” on the rights of observers. (*Attachment A*) Access to equipment seemed to be a problem encountered and reported by several observers. The right for an observer to be treated in a respectable manner for accommodation and food was also reported by different observers. The rights and roles of observers are well documented in a number of places and should not be a problem for a vessel captain to understand and follow to the best of their ability. Observers are trained to understand that sometimes there are limiting factors on some vessels and that tolerance of the conditions on board is required. However there are no justifications for most of the incidents recorded.

### **Hindrance of observer reported by observers and/or by providers. (Table 4)**

34. There were complaints by observers indicating that on some vessels the captain would not allow observers to carry out their required duties. Hindrance by the vessel captain or crew occurred in a number of ways; with equipment access, bridge access and access to parts of the vessel to record information being denied to the observers.

35. A few vessel masters asked and pressured observers to not report certain incidents, occasionally observers were asked to not report when the vessels did a set on a FAD during the FAD closure period, other incidents asked not to be reported were sets involving whales, whale sharks, catching and treatment of marine mammals caught in the net, catching and treatment of turtles, discarding of small tunas, discards of poor quality tuna, fining of sharks, etc. In most cases it is believed that observers continued to report what they observed and also reported the hindrance by the vessels.

36. Observers were sometimes intimidated and threats were made directly by crew or captains if the observers did not adhere to their demands, usually the intimidation was to ensure the observer wouldn't report certain things and/or to show the Captain their data and comments as they were collected.

37. There were a couple of attempts at bribing observers reported by observers and these were being dealt with by the CCM's involved. This is an area of concern by all, and needs to be further investigated and methods of detection developed.

### **Table 4 Hindrance of observer reported by observers and/or by providers.**



Incidents	Examples reported
<p>a. Observers prevented from carrying out their role as an observer because vessel denied full or partial access to the bridge, fish on board, and areas which held and stored fish. Access was also denied to vessel's records including its logs, documentation required for the purpose of records inspection and verification</p> <p>b. There were numerous reports from different observers on different vessels on how they were hindered in their duties to collect correct and accurate data and information,</p>	<ol style="list-style-type: none"> <li>1. Whenever the observers went to the wheel house to collect the GPS positions for fishing, captains confronts them by telling him their presence on the Bridge is not permitted. In one case to avoid further confrontation and to continue with his work, the observer had to look at the instrumentation from outside the wheel house.</li> <li>2. Observer was prevented from using vessel equipment (Radar and Binoculars) to check nearby vessels.</li> <li>3. Observers denied access to record information from bridge equipment;</li> <li>4. Observer denied access to vessel logs</li> <li>5. Chief Engineer not allowing the observer on the wet deck. Therefore making it difficult for observer to determine which well is filled and to what capacity.</li> <li>6. Well Plans provided by the Captain &amp; Engineer were bogus and inconsistent with the actual well format of the vessel.</li> <li>7. Brail capacity information is misinformed to observer.</li> <li>8. Crew not allowing proper sampling of fish from brail</li> <li>9. Harassment and threats by crew members when observers are trying to do their jobs on deck</li> </ol>
<p>c. The captain and sometimes crew were trying to influence the ROP observer to not report alleged vessel compliance failure with regulations and procedures established under the Convention and other guidelines, regulations, or conditions established by the CCM. The attempted influencing of observers were in breach of a number of CMM's</p> <p>2007-01 (Observers)</p> <p>2008-01 (Bet &amp; YFT)</p> <p>2009-02 (FAD Closure/Catch retention)</p> <p>2010-07 (Sharks)</p>	<ol style="list-style-type: none"> <li>1. Captain or Crew asking observers to not report things such as deploying FADS, sets, on FAD's during FAD closure period, sets on whales, whale sharks, the catching and treatment of whales and dolphins in the nets, discarding of small tunas, catch of turtles, discards of tuna, fining of sharks.</li> </ol>
<p>d. A few observers reported that they did not have the freedom to carry out their duties without being obstructed, intimidated or interfered with in the performance of their duties.</p>	<ol style="list-style-type: none"> <li>1. Crew kept hiding equipment observer needed to do his work.</li> <li>2. Observer continually wasting time trying to locate his deck work equipment.</li> <li>3. Crew threatened the observer not to report anything bad on the vessel.</li> <li>4. Observer was hindered by the captain's blatant hostility and obstruction when possible. He said he didn't like observers on board.</li> <li>5. Captain threatened observer if he didn't show the Captain all the information he had collected. Observer was scared for his well being.</li> </ol>
<p>e. Observers were denied access to and use of communications equipment for</p>	<ol style="list-style-type: none"> <li>1. Captain refused to allow the observer to use the Communication</li> </ol>

weekly transmission of work related data or information.	equipment so he could send his weekly report to his provider. 2. Observer was refused access to Email to send his weekly report.
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**Treatment of observer reported by observers and/or by providers. (Table 5)**

38. Accommodation problems were noted by a few observers, and in the cases reported the observers were given inferior accommodation to what is indicated in the rights of the observer. According to the WCPFC Convention Annex III article 3 paragraphs 3 and also the CMM 2007-01” observer should be given accommodation to a “*reasonable standard equivalent to those normally available to an officer on board the vessel.*” However observers realize this is difficult on many vessels, and they don’t expect officers to give up their accommodation, however they do need to have reasonable accommodation, and in some of the situations that were reported it was clearly not adequate.

39. Observers understand they may not be served the same cuisine they are used to at home and most observers accept the different styles of food that they eat when on board different types of foreign vessels, generally the observer is well looked after and the amount is adequate and food is prepared reasonably. However a small number of vessels have been reported to not supply the observers adequate quality or amounts for meals, and in some cases observers reported that crews from the PI are also treated in the same way.

40. A few observers complained about sanitary conditions offered to them when on board; observers understand that sometimes facilities are heavily used and that they have to fit into a routine observed by the crew. However the incidents reported in the tables are not acceptable and are contrary to the rights of the observer and the responsibility of the captain.

**Table 5. Treatment of observer reported by observers and/or by providers.**

a. Several Observers reported access to accommodations of a reasonable standard was not given to them when on board the vessel.	<ol style="list-style-type: none"> <li>1. Observer was provided with a bare room (looked like it had been a storage room) with the bed being a mattress on the floor There was no other furnishings anywhere in the room. The room temperature was so cold that observer could not sleep properly, the control of the temperature was elsewhere and he was not permitted to adjust it.</li> <li>2. Observer was forced to sleep on the galley benches, but could only sleep after the crew watching DVD’s at night left to go to bed.</li> <li>3. Observer was made to sleep on the floor of a full crew room on a thin mat where crew kept him awake all the time by their coming and going.</li> </ol>
b. Several Observers reported access to food of a reasonable standard was not given to them when on board vessels	<ol style="list-style-type: none"> <li>1. Observer was not given adequate food and was told to eat after all the crew which only left the remnants of the meals and scraps for him to eat.</li> <li>2. Observer was hungry all the time as vessel only gave him minimum food while others were well fed.</li> <li>3. Observer and Pacific Island crew were treated poorly and were not permitted to eat with other Crew; often they were given an inadequate amount and poor quality food when permitted to eat.</li> <li>4. Observer was not given food at all, and had to ask crew for noodles, etc. Observer was hungry all the time and did not eat well,</li> </ol>
c. Several observers reported access to reasonable medical facilities, and sanitary facilities was not given to him when on board the vessel.	<ol style="list-style-type: none"> <li>1. Observer had severe illness (diarrhoea) due to the water he was told he had to drink being contaminated. When he disembarked vessel he was severely ill.</li> <li>2. Captain refused observer access to use proper shower facilities on board and made observer wash with sea water or water collected from the air conditioning, same vessel captain refused to allow observer on the bridge to collect information required and also refused the observer access to any vessel logs. It was noted by the</li> </ol>

	<p>observer that licence details displayed by the vessel on the notice board were all out of date.</p> <p>3. Observer unable to get access to showers or bath properly on a daily basis.</p>
<p>d. Travel - this was reported many times- Observers placed on the vessel in their home port and the vessel drops them in a foreign port. Arrangements for travel and accommodation are often slow and are often made by the provider with vessel agents or vessel captains to assist in returning the observer to the home port.</p> <p>e. Airline tickets are purchased however in many cases no monies or inadequate monies are advanced for sufficient travel money to pay for hotel and food stopovers back to home port.</p>	<p>1. Observers were often stuck with no money, and had to wait for tickets and often had no money to pay bills.</p>

### **Commission Standard for vessel operators**

41. Observer penalty for bad behaviour and drunkenness is covered by the ‘Codes of Conduct’ that observers have to sign and are bound by in their roles as observers. Observers who are answerable and found in the wrong to the charges made against them of drunkenness or misbehaviour are usually suspended if the case is minor, but in most cases they are terminated from their contracts and lose their livelihood in their position as an observer. Therefore it is not unreasonable to expect captains or crew to be subject to a similar measure of sanctions for cases of wrongdoing or disregard of the roles and rights of observers as listed in the annexes to CMM 2007-01 and other Commission documentation.

42. There have been numerous complaints from observers and observer providers every year for many years on the treatment of observers when carrying out duties on some vessels. Nothing comprehensive has been established by the Commission to address the problems on the behaviour of captains and crews in their reluctance to provide for, and accommodate observers, and allow them the rights to operate as required under the Convention and CMM 2007-01. A method to deal with these problems is to develop a regime of penalties for substantiated infringements by vessel captains or crew who deny observers their rights when on board a vessel.

### **Suggested Solutions**

43. After there has been an accusation made by an observer and the provider of the observer has carried out an initial debriefing with the observer on the matter that is alleged to have occurred, and the provider considers there should be further investigations into the matter raised by the observer, the provider should inform the vessel’s flag State of the alleged accusations and also copy this concern to the ROP secretariat. Investigations on the alleged matter should be carried out by appropriate persons as agreed by the provider; the flag State of the vessel should be informed of the investigation so input can be made by the captain or crew of the vessel.

44. If a captain or any crew member is found to have disregarded the rights and roles of the observer, member countries have the option to process the observer complaint through the courts if they so wish or they can deal with the problems out of court. Whatever the system, there needs to be a process of ensuring observers are given the rights to board vessels without intimidation or hindrance and can operate in accordance with the agreed Convention and CMM’s.

### **Level of wrong doing by vessel captains & crew**

45. As a guide to assist member countries that are developing procedures to ensure that observer issues are considered, a schedule of wrong doing by the vessel has been compiled and divided into 4 levels. (Table 6) Some wrong doings could be elevated to a higher level depending on the severity of the misconduct or abuse of the captain or crew. Any wrong doing not listed could be added by the provider into whatever level they consider it should apply.

46. When a wrong doing has been established, member countries could use as a guide the penalty levels in Table 7 that were developed to compliment the level of wrong doings in table 6. These are given as an option for member countries to consider, but whatever system or set of rules is used in a member country, there should be a means to address the ongoing complaints by observers and providers about treatment and hindrance of observers by vessel crew and captains.

**Table 6 Levels of wrong doing**

<ul style="list-style-type: none"> <li>a) Failing to allow access to and use of all facilities and equipment of the vessel which the observer has determined is necessary to carry out his or her duties,</li> <li>b) Failing to allow access to the bridge and equipment on the bridge which the observer has determined is required to carry out his or her duties,,</li> <li>c) Failing to allow access to fish on board, and areas which may be used to hold, process, weigh, and store fish.</li> <li>d) Failing to allow access to the vessel's records including its logs and documentation for the purpose of records inspection and copying</li> <li>e) Failing to allow reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing.</li> <li>f) Failing to allow the observer access to and use of communications equipment and personnel, upon the observers request, for entry, transmission, and receipt of work related data or information.</li> <li>g) Failing to allow access to additional equipment, if present, to facilitate the work of the observer while on board the vessel, such as high powered binoculars, electronic means of communication, etc.</li> <li>h) Failing to allow access to adequate space on the deck for observer duties during net or line retrieval and to specimens (alive or dead) in order to collect and remove samples.</li> <li>i) Discarding, releasing, or transferring fish before making it available to an observer for sampling</li> <li>j) Failing to assist with the provision of adequate space on the bridge or other designated area for clerical work.</li> <li>k) Failing to give reasonable assistance to a ROP approved observer conducting his or her duties aboard a vessel</li> </ul>	<p><b>Level 1</b></p>
<ul style="list-style-type: none"> <li>a) Failing to supply accommodation to a reasonable standard equivalent where possible to those normally available to an officer on board the vessel. If this is not possible then accommodation of the highest possible standard must be supplied to the observer.</li> <li>b) Failing to supply access to food, medical facilities, and sanitary facilities of a reasonable standard, equivalent to those normally available to an officer on board the vessel.</li> <li>c) Submitting inaccurate or false data, statements, or reports to the observer;</li> <li>d) Failing to report discards of tunas, and reason for discards to observer as required under CMM 2009-02 para 13</li> <li>e) Failing to allow the observer freedom to carry out their duties without being obstructed, delayed, in the performance of their duties</li> <li>f) Leaving port without an observer when required to carry an observer.</li> <li>g) Refusing to carry an observer when required.</li> </ul>	<p><b>Level 2</b></p>

<ul style="list-style-type: none"> <li>a) Failing to allow the observer freedom to carry out their duties without being resisted, intimidated or interfered with in the performance of their duties;</li> <li>b) Failing to allow the observer freedom to carry out their duties without the threat of being assaulted or verbally threatened in the performance of their duties.</li> <li>c) Impairing, or interfering, either by threat or by unauthorized access of the recorded observations of the observer.</li> </ul>	<b>Level 3</b>
<ul style="list-style-type: none"> <li>a) Assaulting an observer,</li> <li>b) harassing or intimidating any ROP approved observer or authorized officer;</li> <li>d) threatening, or coercing, bribing any ROP approved observer or authorized officer</li> </ul>	<b>Level 4</b>

### Penalties and Penalty Levels (Table 7)

47. Penalties that could be considered to compliment the 4 levels of wrong doing are defined in table 7, and include 4 levels of responsibility for their actions. Member countries could have something similar to these to address the complaints about the captains and crews of their vessels, they could be used and be made available to the Commission Secretariat so as to ensure the observer and observer provider are satisfied that their complaint or incident can be dealt with in a proper manner. Members who don't have anything in place do deal with the issues in this paper could use table 6 & 7 as a guide to develop something to address these issues.

**Table 7 Penalties and Penalty Levels**

<b>Penalty Level</b>	<b>Unintentional</b>	<b>Negligent</b>	<b>Reckless</b>	<b>Intentional</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Plus Violation</b>
<b>1</b>	Written warning-\$2,000	Written warning-\$4,000	\$2,000-\$6,000	\$6,000-\$10,000	<b>Double Maximum Penalty</b>	<b>Triple Maximum Penalty</b> Plus Suspension from fishing in WCPO for 6 months
<b>2</b>	\$2,000-\$5,000	\$4,000-\$6,000	\$6,000-\$10,000	\$10,000-\$20,000	<b>Double Maximum Penalty</b> Plus Suspension from fishing in WCPO for 6 months	<b>Triple Maximum Penalty</b> Plus Suspension from fishing in WCPO for one year
<b>3</b>	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-\$20,000	\$20,000-\$40,000 Plus Suspension from fishing in WCPO for six months	<b>Triple Maximum Penalty</b> Plus Suspension from fishing in WCPO for 1yr.	<b>Banned from fishing in WCPO name and picture of master published to other RFMOs</b>
<b>4</b>	\$15,000-\$40,000	\$25,000-\$60,000 plus Suspension from fishing in WCPO for three months	\$40,000-\$100,000 plus Suspension from fishing in WCPO for six months	\$60,000-\$150,000 plus Suspension from fishing in WCPO for one year	<b>Banned from fishing in WCPO name and picture of master published to other RFMOs</b>	

Note:1. Suspensions include not being permitted to be a crew or officer of any fishing, fish carrier/bunker vessel operating in the WCPO during the time of suspension or ban.

## **Attachment A For Reference**

### *Convention ANNEX III*

#### *Article 3*

##### *Obligations of the operator in respect of observers*

The operator and each member of the crew shall allow and assist any person identified as an observer under the regional observer programme to:

- (a) embark at a place and time agreed to;
  - (b) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying, reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing;
  - (c) remove samples;
  - (d) disembark at an agreed place and time; and
  - (e) carry out all duties safely
2. The operator or any crew member shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties.
3. The operator shall provide the observer, while on board the vessel, at no expense to the observer or the observer's government, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel.

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## **CMM 2007-01 Annex A**

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

- a) Full access to and use of all facilities and equipment of the vessel which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board, and areas which may be used to hold, process, weigh, and store fish.
- b) Full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying, reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing.
- c) Access to and use of communications equipment and personnel, upon request, for entry, transmission, and receipt of work related data or information.
- d) Access to additional equipment, if present, to facilitate the work of the observer while on board the vessel, such as high powered binoculars, electronic means of communication, etc.
- e) Access to the working deck during net or line retrieval and to specimens (alive or dead) in order to collect and remove samples.
- f) Notice by the vessel captain of at least fifteen (15) minutes before hauling or
- g) Access to food, accommodations, medical facilities, and sanitary facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel.
- h) The provision of adequate space on the bridge or other designated area for clerical work and adequate space on the deck for observer duties.

i) Freedom to carry out their duties without being assaulted, obstructed, resisted, delayed, intimidated or interfered with in the performance of their duties, setting procedures, unless the observer specifically requests not to be notified

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

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

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

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

- a) Accepting onboard the vessel any person identified as an observer under the ROP when required by the Commission.
- b) Informing the crew of the timing of the ROP observer boarding as well as their rights and responsibilities when an ROP observer boards the vessel.
- c) Assisting the ROP observer to safely embark and disembark the vessel at an agreed upon place and time.
- d) Giving notice to the ROP observer at least fifteen (15) minutes before the start of a set or haul onboard, unless the observer specifically requests not to be notified.
- e) Allow and assist the ROP observer to carry out all duties safely.
- f) Allowing ROP observer full access to the vessel's records including vessel logs and documentation for the purpose of records inspection and copying.
- g) Allowing reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing.
- h) Permitting access to additional equipment, if present, to facilitate the work of the ROP observer while onboard the vessel, such as high powered binoculars, electronic means of communication, etc.