



**COMMISSION
THIRTEENTH REGULAR SESSION**
Denarau Island, Fiji
5 – 9 December, 2016

VIEWS ON OBSERVER SAFETY

**WCPFC13-2016-DP11
4 November 2016**

From FFA Member CCMs



4 November 2016

Feleti P. Teo OBE
Executive Director
Western and Central Pacific Fisheries Commission
PO Box 2356, Kolonia
Federated States of Micronesia

Dear Feleti,

Observer Safety

I write on behalf of the 17 members of the Forum Fisheries Agency in my capacity as the Chair of the Forum Fisheries Committee.

The safety and welfare of observers is a high priority for FFA members. At their recent meeting in Port Vila, Fisheries Ministers stressed the importance of expediting work to ensure the safety of observers in the performance of their duties, noting that they perform a fundamental role in collection of data for fisheries management and compliance purposes.

There have been some key pieces of FFA work to address this issue, including:

- (i) the adoption of the FFA Harmonised Minimum Terms and Conditions for Access by Foreign Fishing Vessels (MTCs) by FFC99 in July 2016 which sets out our minimum standards for observer safety (Attachment 1);
- (ii) the inclusion of these new MTCs in the Regional Terms and Conditions that apply to US purse seine vessels from 1 January 2017; and
- (iii) the development of the FFA Emergency Action Plan, which describes procedures to respond to various emergency situations related to the health and safety of our observers as a response to its inclusion as a minimum ROP requirement.

FFA Members' approach to this work is to essentially align the standards being developed with the MTCs that have been adopted by our Governing Council, including setting out clear immediate steps to be taken in emergency situations.

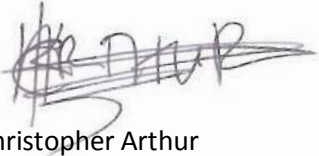
In addition, FFA Members are of the view that there is a strong need for flag States to step up their responsibility to ensure the safety of observers placed on their vessels. In this regard, we thank the US for their work on a draft conservation and management measure to assist with elaborating on these obligations.

FFA Members have reviewed the revised draft dated 26 September 2016, and make the following comments:

1. we thank the US for including some of the FFA positions, in particular that this Measure will not prejudice coastal States' laws
2. We think it would be useful to address two further points raised by FFA Members:
 - (i) the inclusion of the references to the requirements for an Emergency Action Plan, two-way device and life-saving beacon – either in this measure or the ROP CMM;
 - (ii) the minimum details for the full insurance coverage for observers, which is the responsibility of operators. The FFA MTCs provide for minimum components to be included in the insurance and we suggest those should be used at a minimum, while there are ongoing discussions about the most appropriate modality for coverage:
 - (a) in the event of injury or illness of the observer, full repatriation and medical costs, as applicable, where the observer is returned to port for medical reasons; and
 - (b) in the event of injury or death of the observer, to pay for the autopsy, funeral expenses, and adequate costs for medical, repatriation, loss of earnings, and other related expenses as applicable.
3. There are a number of actions that we think still need to be included into the draft measure. Please find attached an updated Delegation Paper that sets out the FFA Members' views ([Attachment 2](#)).

We look forward to further cooperation with other Commission members, with a view to adopting a revised measure at this upcoming WCPFC meeting. FFA members look forward to discussing this proposal in Denarau and would welcome any inquiries, which should be directed to the FFA Secretariat (manu.tupou-roosen@ffa.int, noan.pakop@ffa.int or phillip.lens@ffa.int).

Yours sincerely



Christopher Arthur

Chair

Forum Fisheries Committee

FFA MTCS RELATING TO OBSERVER SAFETY

9. Observers

- (a) The operator and each member of the crew of a vessel shall allow and assist any person identified by an FFA member as an observer to:
- (i) board the vessel for scientific, compliance, monitoring and other functions;
 - (ii) embark at a place and time agreed to;
 - (iii) 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:
 - (A) full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish;
 - (B) remove samples;
 - (C) full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying;
 - (D) reasonable access to navigation equipment, charts, and radios;
 - (E) other information relating to fishing;
 - (iv) disembark at an agreed place and time; and
 - (v) carry out all duties safely.
- (b) The operator or any crew member of the vessel shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.
- (c) The operator shall provide the observer, while on board the vessel, at no expense to the licensing member, with officer level accommodation, food and medical facilities.
- (d) The following costs of the observer shall be met by the operator:
- (i) full travel costs from the licensing member to and from the vessel as applicable;
 - (ii) salary or allowance, as applicable;
 - (iii) full insurance coverage for the observer to and from, and on, the vessel, which shall include the components set out in paragraph 9A(e)(ii-iii);
 - (iv) a two-way communication satellite device and a waterproof personal lifesaving beacon, and the operating costs of such devices, as required and specified by the observer service provider; and
 - (v) all other costs associated with observers performing their duties as an observer.

9A. Observer Safety

- (a) The operator shall be responsible for the health and safety of the Observer while he or she is on board the vessel throughout the duration of the trip.
- (b) The operator shall immediately rectify any conditions that may cause serious health and safety issues to the observer, not limited to availability of basic safety equipment and general sanitation, on board the vessel.

- (c) The operator shall immediately cease fishing, report to the observer service provider and facilitate the replacement and transfer¹ of the observer under the following circumstances:
- (i) where the observer is incapacitated from performing his or her duties due to sickness or injuries that require immediate medical attention;
 - (ii) where the health, including mental health or safety of the observer is at risk;
 - (iii) where the observer has been assaulted, harassed or intimidated; or
 - (iv) where the operator has been directed to do so by the observer service provider or the licensing authority for reasons of the safety and wellbeing of the observer.
- (d) Where the observer is missing or presumed fallen overboard, or as applicable where the observer has passed away, the operator shall:
- (i) immediately cease all fishing activities, activate search and rescue protocols then conduct a search immediately for at least 72 hours or as otherwise directed by authorities;
 - (ii) report the incident immediately to the observer service provider including the vessel's position where the incident happened;
 - (iii) alert other vessels in the vicinity by using all available means of communication;
 - (iv) whether or not the search is successful, return the vessel for further investigation to the nearest port as designated by the observer service provider; and
 - (v) provide a full report to the observer service provider and appropriate authorities on the incident and fully cooperate with the investigation, while remaining in port until further notice.
- (e) The operator shall be responsible for the following, as required and specified by the observer service provider:
- (i) the cost of all safety equipment to be used by the observer;
 - (ii) in the event of injury or illness of the observer, full repatriation and medical costs, as applicable, where the observer is returned to port for medical reasons;
 - (iii) in the event of injury or death of the observer, to pay for the autopsy, funeral expenses, and adequate costs for medical, repatriation, loss of earnings, and other related expenses as applicable;
 - (iv) in the event of death of the observer, to ensure that the body is well preserved for the purposes of an autopsy and investigation.
- (a) The operator shall assist the observer service provider to replace or disembark the observer at the nearest port where any member of the immediate family, namely spouse, child or parent, is seriously ill or has died.

¹ The operator shall consult with the observer service provider, and the replacement and transfer of the observer shall only take place with the consent of the observer service provider. At the direction of the observer service provider, the operator may be ordered back to port.

**FFA VIEWS ON THE REVISED DRAFT ON THE CONSERVATION AND MANAGEMENT MEASURE FOR
THE PROTECTION OF WCPFC REGIONAL OBSERVER PROGRAMME OBSERVERS**

REVISED draft CMM	FFA Secretariat comments
<p>Preamble NOTE paras 8 and 9</p> <p>8. Further Recognizing the commitments in Articles 98 and 146 of the United Nations Convention on the Law of the Sea (UNCLOS), to render assistance and protect human life, and the International Convention on Maritime Search and Rescue, as amended and overseen by the International Maritime Organization, which outlines the responsibilities of governments related to search procedures including the organization and coordination of actions, cooperation between States, and operating procedures for vessels operators and crew;</p> <p>9. Further Noting ... the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), including Article 3, which addresses crimes perpetrated at sea resulting in injury or death for all individuals;</p>	<p>These provisions appear standard with references to relevant paras from the WCPF Convention, CMM 2007-01, as well as the LOSC. There is also new text to underline the importance of the observer’s role.</p>
<p><u>1. This CMM applies to ROP observers on ROP fishing trips [anywhere] [in the WCPF Convention Area].</u></p>	<p>This new text is in response to a request by FFA Members that the area of application is consistent with the scope of the Commission ROP (the original text had this broadly pegged to “the Convention Area”).</p> <p>NOTE the bracketed text remains. Suggested text to clarify as follows: “1. This CMM applies to ROP observers on ROP fishing trips [anywhere] [in the WCPF Convention Area]. <u>operating under the WCPFC ROP.</u>”</p>
<p><u>2. Commission Members, Cooperating Non-Members and Participating Territories (CCMs) shall ensure that all fishing vessels flying their flag, when operating carrying in the WCPF Convention Area WCPFC ROP observers, abide by all applicable international requirements, procedures and protocols.</u></p>	<p>“abide by all applicable international requirements, procedures and protocols” – it would be useful to clarify (i) what exactly these are; two have been noted in the Preamble, and (ii) where the obligations set out in those instruments go beyond what is set out in the measure.</p>

	<p>It is important to ensure that this measure is clear on what it is binding members to and that this does not impose obligations on members that are not party to the “applicable” instruments.</p>
<p>4-3. Subject to para. 3 bis, in the event that an ROP observer dies, is missing or presumed fallen overboard, the while embarked on their vessel. In addition, CCM to which the fishing vessel is flaggeds shall ensure that in such an event, the fishing vessels flying their flag shall:</p> <p>a. immediately ceases all fishing operations;</p> <p>b. immediately commences search and rescue, and searches for at least 72 hours or as otherwise instructed by the flag CCM;</p> <p>c. immediately notifies the appropriate Maritime Rescue Coordination Centre,²; a-d. as soon as possible notifies the flag CCM state, the observer provider and the Secretariat of the incident as soon as possible;</p> <p>b. — e. cooperates fully in any search and rescue operation, including alerting other vessels in the vicinity;</p> <p>e. — f. cooperates fully in any and all official investigations, and preserves any potential evidence and the personal effects and quarters of the deceased or missing observer.</p>	<p>The revision has captured some of the key steps put forward by FFA Members from the FFA MTCs 2016 but not all of them. Consideration to be given to (i) deleting the reference to the flag State instructing the vessel as to when to cease the search and rescue, and consideration be given to the observer provider’s role in this (ii) to immediately notifying the MRCC and listing these centres (iii) to notifying asap the observer provider alongside the flag State and the WCPFC Secretariat.</p> <p>Consideration to also be given to (i) clarifying text on alerts to vessels and (ii) underlining the FFA position as follows:</p> <p>b. immediately commences search and rescue, and searches for at least 72 hours or as otherwise instructed by the flag CCM;</p> <p>“d bis. immediately alerts other vessels in the vicinity by using all available means of communication;</p> <p>e. cooperates fully in any search and rescue operation, including alerting other vessels in the vicinity;</p> <p>e bis. whether or not the search is successful, returns the vessel for further investigation to the nearest convenient port, as designated by the observer service provider in consultation with the flag State;</p> <p>e ter. provides a full report to the observer provider and appropriate authorities on the incident;</p> <p>e quater. remains in port for investigation until further notice;</p> <p>Consideration to also be given to adding a new paragraph to (i) clarify which obligations will apply in the case of death of an observer and (ii) to include the FFA position as follows;</p> <p><u>3 bis. Paragraphs 3(a), (d) and (f) apply in the event that an observer dies. In addition, the CCM to which the fishing vessel is flagged shall require that fishing</u></p>

² [refer to, or attach, list or map of Maritime Rescue Coordination Centres]

	<p><u>vessel to ensure that the body is well-preserved for the purposes of an autopsy and investigation.”</u></p>
<p>2-4. In the event that an <u>ROP</u> observer suffers from a serious illness or injury that threatens their his or her health or safety, <u>the CCM to which the fishing vessel is flagged while on board a vessel flying their flag, when operating in the WCPF Convention Area, CCMs</u> shall ensure that such the fishing vessels shall:</p> <p>a. <u>Immediately ceases fishing operations</u>;</p> <p>b. takes any all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel;</p> <p>c. <u>immediately notifies</u> the appropriate Maritime Rescue Coordination Centre;</p> <p>d. <u>as soon as possible notifies</u> the flag stateCCM, the observer provider and the Secretariat of the situation as soon as possible;</p> <p>e. <u>as appropriate and as soon as practicable</u>, facilitates the disembarkation <u>and transport</u> of the observer to <u>a medical facility equipped to provide the required care</u>; an appropriate facility for medical care, as soon as practicable;</p> <p>f. <u>cooperates</u> fully in any and all official investigations into the cause of the illness or injury.</p>	<p>The revision reflects the FFA positions to immediately cease fishing but does not go as far as to (i) require immediate notification to the observer provider, and consultation (ii) remove the reference to ‘as soon as practicable’, and (iii) include the ability of the observer provider to direct the vessel to the nearest convenient port to disembark the observer for full and proper medical attention.</p> <p>Consideration to include the FFA position as follows:</p> <p>c. immediately notifies the appropriate Maritime Rescue Coordination Centre <u>and the observer provider</u>;</p> <p>d. as soon as possible notifies the flag CCM, the observer provider and the Secretariat of the situation;</p> <p>e. as appropriate and as soon as practicable, where directed by the observer provider, if not already directed by the flag CCM, facilitates the disembarkation and transport of the observer to a medical facility equipped to provide the required care; and</p>
<p>3-5. In the event that an observer is assaulted or harassed while on board a vessel flying their flag, when operating in the WCPF Convention Area, to such an extent that the observer or the observer provider indicates that they wish for the observer to be removed from the fishing vessel prior to the conclusion of the fishing trip, <u>the CCM to which the fishing vessel is flagged</u>s shall ensure that such the fishing vessels shall:</p> <p>a. <u>Immediately</u> takes <u>action</u> to mitigate and resolve the situation on board as soon as possible;</p> <p>b. <u>notifies</u> the flag stateCCM and the observer provider of the situation as soon as possible;</p>	<p>The revision does not include any of the FFA positions taken from the FFA MTCs 2016 to (i) require immediate cessation of fishing, (ii) allow the observer provider to direct a vessel back to port if required, (iii) not limit to any condition “assaulted or harassed...to such an extent”; and (iv) require immediate notification to the observer provider, and consultation.</p> <p>In addition, FFA Members propose that:</p> <ul style="list-style-type: none"> the observer provider, not the observer, shall make the decision on disembarkation of the observer – this is to remove any pressure placed on observers by the master “assaulted or harassed” – this phrase needs to be replaced with the wider scope of situations set out in the FFA MTCs, the Convention and CMM 2007-01, namely “assault, obstruct, resist, delay,

c. facilitates the disembarkation of the observer for any needed medical treatment ~~and replacement of the observer as quickly as possible~~; and
 d. cooperates fully in any and all official investigations into the incident.

refuse boarding to, intimidate or interfere with observers in the performance of their duties”

- separate out the incident of “assault” from the other incidents, and requiring that the observer is immediately disembarked at the nearest convenient port
- inclusion of compensation for loss of earnings for the observer whenever an early disembarkation is required for assault or any of the named incidents.

Suggested text as follows:

5. Subject to 5 bis, in the event that an observer is, or is alleged to have been, assaulted, or harassed obstructed, resisted, delayed, refused boarding to, intimidated or interfered with observers in the performance of their duties to such an extent that the observer or the observer provider indicates that they wish for and the observer provider requests for the observer to be removed from the fishing vessel, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:

- a. Immediately takes action to mitigate and resolve the situation on board;
- b. notifies the flag CCM ~~and the observer provider of the situation as soon as possible;~~
b bis immediately notifies and consults with the observer provider;
- c. where directed by the observer provider, immediately ceases fishing, and returns to the nearest convenient port facilitate the disembarkation of to disembark the observer for any needed medical treatment and replacement of the observer as quickly as possible; and
- d. cooperates fully in any and all official investigations into the incident.

5bis In addition to (a), (b), (b bis) and (d), in the event that an observer is assaulted, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel immediately ceases fishing, and returns to the nearest designated port to disembark the observer.

5ter Where an observer is disembarked early due to any of the incidents stated in paragraph 5, the observer shall be compensated his or her loss of earnings for that fishing trip.

~~4.6.~~ In the event that an ROP observer is, or is alleged to have been,

The revision has taken note of our concern on the term “alleged” and recognises that this could have

~~assaulted or harassed obstructed, resisted, delayed, [refused boarding to], intimidated or interfered with observers in the performance of their duties while on board a vessel flying their flag, when operating in the WCPF Convention Area, but neither the observer nor the observer provider, does not seek wishes that the observer be removed from the fishing vessel prior to the conclusion of the fishing trip, the CCM to which the fishing vessel is flagged~~s shall ensure that ~~such the fishing vessels shall:~~

- ~~It~~akes action to mitigate and resolve the situation on board as soon as possible;
- notifiesy the flag stateCCM and observer provider of the situation as soon as possible; and
- cooperates fully in any and all official investigations into the incident.

occurred rather than simply alleged. The key difference here with para.5 remains that in the opinion of the observer provider OR the observer, the observer is not to be removed from the vessel prior to the end of the trip.

Consideration to including “alleged” in para.5 so that there is no distinction and this text is not used as an obstacle later when the observer provider seeks a disembarkation.

Underline FFA position to delete the situation of “assault” from this paragraph as the observer will be removed from the vessel, as explained under para.5.

7. If any of the events in paragraphs 2-5 occur, port CCMs, shall, to the extent possible, facilitate entry of the fishing vessel to allow disembarkation of the ROP observer and assist in any investigations.

This new text is in response to the FFA position that there could be a role for port States, and encouraging language to incorporate this.

~~5-8.~~ In the event that, after disembarkation from a fishing vessel of an ROP observer, during the course of a debriefing of an observer, an observer provider ~~associated with a CCM's national observer program~~ identifies such as during the course of debriefing the ~~observer a~~n possible ~~alleged~~ violation involving assault or harassment of the an ROP observer while on board the fishing vessel occurred while on board a vessel flying its flag, when operating in the WCPF Convention Area, the observer provider shall notify the flag CCM and the Secretariat, and the flag CCM shall investigate ~~any such the~~ event and take any appropriate action in response to the results of the investigation. The flag CCM shall notify the observer provider and the Secretariat of the results of its investigation and any actions taken.

The revision (i) has broadened out the situations where the observer provider is required to notify the flag State by the words “such as” and (ii) still does not recognise that the observer provider would conduct its own investigation and take action.

Suggested text as follows:

“...the observer provider shall notify the flag CCM and the Secretariat, and the flag CCM shall: (i) investigate the event and take any appropriate action in response to the results of the investigation; (ii) cooperate fully in any investigation conducted by the observer provider, including providing a full report to the observer provider and appropriate authorities on the incident; ~~The flag CCM shall~~ (iii) notify the observer provider and the Secretariat of the results of its investigation and any actions taken.”

Same suggestion applies to para.9 as follows:

~~6.9.~~ In the event that, while an ROP observer is on board a fishing vessel, the flag-a CCM identifies/uncovers a possible alleged violation involving assault or harassment of the an ROP observer while on board a vessel flying its flag, when operating in the WCPF Convention Area, or is notified by the Secretariat or another party of such an alleged a possible violation, the flag CCM shall investigate any such event and take appropriate action in response to the results of the investigation. The CCM shall notify the observer provider and the Secretariat of the results of its investigation and any actions taken.

“...the flag CCM shall:
 (i) immediately notify the observer provider;
 (ii) investigate any such event and take appropriate action in response to the results of the investigation;
 (iii) cooperate fully in any investigation conducted by the observer provider, including providing a full report to the observer provider and appropriate authorities on the incident; and
 (iv) ~~The CCM shall notifying~~ the observer provider and the Secretariat of the results of its investigation and any actions taken.”

~~7.10.~~ CCMs shall ensure that any observer providers associated with their national observer program:
 a. notify the appropriate Maritime Rescue Coordination Centre, the flag ~~state~~State, and the Secretariat as soon as possible in the event ~~of the death of that~~ an ROP observer ~~dies, if an observer is~~ missing or presumed fallen overboard in the course of his or her duties;
 b. cooperate fully in any search and rescue operation;
 c. **cooperate fully in any and all official investigations into any incident involving an ROP observer;**
 d. where appropriate, facilitate the disembarkation and replacement of an ROP observer in a situation involving the serious illness or injury of that observer as soon as practicable;
 e. facilitate the disembarkation and replacement of an ROP observer, as soon as possible, in any situation involving the assault or harassment of that observer to such an extent that the observer wishes to be removed from the vessel;
 f. **notify the flag state CCM as soon as possible in the event that during debriefing or a review of observer reports an alleged violation involving an observer is identified; and**
 g. **provide the flag state CCM with a copy of the observer report in every**

The revision has not addressed the concerns highlighted by FFA Members on (f) and (g).
 NOTE
 (i) para(f) is redundant as it is already covered in para.8;
 (ii) on (g), the online case file system is proving to be a useful tool to provide an early alert to the flag State on alleged violations against observers on their vessels. The flag State is provided with sufficient information to be made aware that an allegation has been made, and can then request further details from the observer provider;
 (iii) in addition, another tool for early notification is through the pre-notification process from observer providers to flag States;
 (iv) the Data Rules already provide a process for CCMs to request copies of observer reports for the high seas submitted to the Commission pursuant to the Commission’s ROP.
 Proposal to delete (f).
 Proposal to amend (g) as follows:
provide the flag CCM with a summary from a copy of the observer report in every event that involves an alleged violations involving that provider’s an ROP observer.

<p>event that involves an alleged violation involving an <u>ROP</u> observer.</p>	
<p>8-11. CCMs shall ensure that any authorized High Seas Boarding and Inspection vessels flying their flag cooperate in the course of a high seas boarding and inspection patrol, to the greatest extent possible, in any search and rescue operation involving an WCPFC Regional Observer Programme authorized <u>ROP</u> observer. <u>CCMs shall also encourage any other vessels flying their flag to participate, to the greatest extent possible, in any search and rescue operations involving an ROP observer.</u></p>	<p>The revision has not addressed the FFA Members' concern as it uses discretionary language and is inconsistent with the FFA MTCs, which is to alert all vessels in the vicinity. This is the appropriate course of action – to reach out to all nearby vessels to assist in these emergency situations.</p>
<p><u>12. Nothing in this measure will prejudice the rights of coastal States to enforce their laws with respect to the safety of vessel observers.</u></p>	<p>This new text is in response to the FFA Members' position that this measure not prejudice coastal States' actions for violations that occur within their waters. It is also important to ensure, as highlighted above, that the observer provider is not precluded or undermined in any way from conducting their own investigations and taking appropriate action.</p> <p>Proposal to amend as follows:</p> <p>12. Nothing in this measure shall <u>will</u> prejudice the rights of coastal States to enforce their laws, <u>or the rights of observer providers to investigate and take appropriate action</u>, with respect to the safety of vessel observers.</p>
<p>8-13. <u>The Technical and Compliance Committee and the Commission will review this conservation and management measure no later than 2019 and periodically thereafter.</u></p>	<p>This new text sets out the timing of the review. Given that the measure is setting out new standards, it would be useful to assess how it is implemented in its first year and conduct a review in 2017 before WCPFC14.</p>