



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

**PROPOSAL FOR CONSERVATION AND MANAGEMENT MEASURE FOR THE
PROTECTION OF WCPFC REGIONAL OBSERVER PROGRAMME OBSERVERS**

WCPFC13-2016-DP21_rev3
9th December 2016

Proposal from United States of America

CONSERVATION AND MANAGEMENT MEASURE FOR THE PROTECTION OF WCPFC REGIONAL OBSERVER PROGRAMME OBSERVERS

The Western and Central Pacific Fisheries Commission (WCPFC):

In accordance with the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention);

Recalling Article 28(7) of the WCPF Convention, which requires the Commission to develop procedures and guidelines for the operation of the Regional Observer Programme (ROP);

Further recalling that Annex III, article 3 of the Convention expressly requires that the vessel operator and each member of the crew shall allow and assist any person identified as an observer under the ROP to carry out all duties safely and that 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;

Committing to the implementation of conservation and management measure (CMM) 2007-01, which clearly states the rights of observers shall include, *inter alia*, the freedom to carry out their duties without being assaulted, obstructed, resisted, delayed, intimidated or interfered with in the performance of their duties;

Recognizing that observers play a critical role in supporting effective management outcomes and therefore it is critical that measures are in place to ensure their safety while undertaking their duties;

Noting that CMM 2007-01 specifies that the responsibilities of vessel operators and captains shall include, *inter alia*, ensuring that ROP observers are not assaulted, obstructed, resisted, delayed, intimidated, interfered with, influenced, bribed or attempted to be bribed in the performance of their duties;

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 vessel operators and crew;

Further Noting the commitment in Article 94(7) of UNCLOS, regarding the duty of a flag State to cause an inquiry to be held into any loss of life or serious injury to nationals of another State which has been caused by a marine casualty or incident of navigation and involved a ship flying its flag;

Adopts the following conservation and management measure in accordance with the Article 10 of the Convention:

1. This CMM applies to WCPFC ROP observers on fishing trips operating under the WCPFC ROP¹.
2. Nothing in this measure shall prejudice the rights of relevant CCMs to enforce their laws with respect to the safety of vessel observers consistent with international law.
3. In the event that a WCPFC ROP observer dies, is missing or presumed fallen overboard, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:
 - a. immediately ceases all fishing operations;
 - b. immediately commences search and rescue if the observer is missing or presumed fallen overboard, and searches for at least 72 hours, unless the observer is found sooner, or unless instructed by the flag CCM to continue searching²;
 - c. immediately notifies the flag CCM;
 - d. immediately alerts other vessels in the vicinity by using all available means of communication;
 - e. cooperates fully in any search and rescue operation
 - f. whether or not the search is successful, return the vessels for further investigation to the nearest port, as agreed by the flag CCM and the observer provider;
 - g. provides the report to the observer provider and appropriate authorities on the incident; and
 - h. 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.
4. Paragraphs 3(a), (c) and (h) apply in the event that an observer dies. In addition, the flag CCM shall require that the fishing vessel ensure that the body is well-preserved for the purposes of an autopsy and investigation.
5. In the event that a WCPFC ROP observer suffers from a serious illness or injury that threatens his or her health or safety, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:
 - a. immediately ceases fishing operations;
 - b. immediately notifies the flag CCM
 - c. takes all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel;

¹ It is recognized that Japan is subject to domestic legal constraints, such that it is not able to meet all of the obligations contained in this CMM until such constraints are overcome. Until such constraints are overcome, Japan shall make utmost effort to implement all the provisions. If Japan has not implemented a provision contained in this CMM, such non-implementation shall not constitute non-compliance with this provision. However, Japan is obliged to explain at TCC which specific obligations are not being implemented and explain to TCC and WCPFC the reason for such non-implementation, as well as steps being taken to overcome these constraints. Notwithstanding these constraints Japan considers the issue of observer safety to be of paramount importance and will work to prevent incidents affecting observer safety.

² In the event of force majeure, flag CCMs may allow their vessels to cease search and rescue operations before 72 hours have elapsed.

- d. 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, as soon as practicable; and
 - e. cooperates fully in any and all official investigations into the cause of the illness or injury.
6. For the purposes of paragraphs 3 and 4, the flag CCM shall ensure that the appropriate Maritime Rescue Coordination Centre³, observer provider and Secretariat are immediately notified.
7. In the event that there are reasonable grounds to believe a WCPFC ROP observer has been assaulted, intimidated, threatened, or harassed such that their health or safety is endangered and the observer or the observer provider indicates to the CCM to which the fishing vessel is flagged that they wish 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 preserve the safety of the observer and mitigate and resolve the situation on board;
 - b. notifies the flag CCM and the observer provider of the situation, including the status and location of the observer, as soon as possible;
 - c. facilitates the safe disembarkation of the observer in a manner and place, as agreed by the flag CCM and the observer provider, that facilitates access to any needed medical treatment; and
 - d. cooperates fully in any and all official investigations into the incident.
8. In the event that there are reasonable grounds to believe that a WCPFC ROP observer has been assaulted, intimidated, threatened, or harassed but neither the observer nor the observer provider wishes that the observer be removed from the fishing vessel, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:
- a. takes action to preserve the safety of the observer and mitigate and resolve the situation on board as soon as possible;
 - b. notifies the flag CCM and the observer provider of the situation as soon as possible; and
 - c. cooperates fully in all official investigations into the incident.
9. If any of the events in paragraphs 3-7 occur, port CCMs, shall facilitate entry of the fishing vessel to allow disembarkation of the WCPFC ROP observer and, to the extent possible, assist in any investigations if so requested by the flag CCM.
10. In the event that, after disembarkation from a fishing vessel of a WCPFC ROP observer, an observer provider identifies—such as during the course of debriefing the observer—a possible violation involving assault or harassment of the observer while on board the fishing vessel, the observer provider shall notify, in writing, the flag CCM and the Secretariat, and the flag CCM shall:
- a. investigate the event based on the information provided by the observer provider and take any appropriate action in response to the results of the investigation;

³ <http://sarcontacts.info/>

- b. cooperate fully in any investigation conducted by the observer provider, including providing the report to the observer provider and appropriate authorities of the incident; and
 - c. notify the observer provider and the Secretariat of the results of its investigation and any actions taken.
11. CCMs shall ensure that their national observer providers:
- a. immediately notify the flag CCM in the event that a WCPFC ROP observer dies, is missing or presumed fallen overboard in the course of observer duties;
 - b. cooperate fully in any search and rescue operation;
 - c. cooperate fully in any and all official investigations into any incident involving an WCPFC ROP observer;
 - d. facilitate the disembarkation and replacement of a WCPFC ROP observer in a situation involving the serious illness or injury of that observer as soon as possible;
 - e. facilitate the disembarkation of a WCPFC ROP observer in any situation involving the assault, intimidation, threats to, or harassment of that observer to such an extent that the observer wishes to be removed from the vessel, as soon as possible; and
 - f. provide the flag CCM with a copy of the observer report on alleged violations involving that provider's observer upon request, pursuant to the WCPFC Rules and Procedures for Protection, Access to, and Dissemination of Data Compiled by the Commission and Rules and Procedures for the Protection, Access to, and Dissemination of High Seas Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Monitoring, Control or Surveillance (MCS) Activities and the Access to and Dissemination of High Seas VMS Data for Scientific Purposes.
12. Notwithstanding paragraph 1 CCMs shall ensure that any authorized High Seas Boarding and Inspection vessels flying their flag cooperate, to the greatest extent possible, in any search and rescue operation involving an observer. CCMs shall also encourage any other vessels flying their flag to participate, to the greatest extent possible, in any search and rescue operations involving a WCPFC ROP observer.
13. Where requested relevant observer providers, and CCMs shall cooperate in each other's investigations including providing their incident reports for any incidents indicated in paragraphs 3 through 6 to facilitate any investigations as appropriate.
14. The Technical and Compliance Committee and the Commission will review this conservation and management measure no later than 2019 and periodically thereafter. Notwithstanding this provision CCMs may submit a proposal to amend this CMM at any time.