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POSITION STATEMENT TO TCC16

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16th Regular Session of the Technical and Compliance Committee (TCC) of the Western Central Pacific Fisheries Commission (WCPFC): Remote Online Meeting via Zoom – September 23 – 29, 2020

Introduction

The World Wide Fund for Nature (WWF) would like to again thank the Western and Central Pacific Fisheries Commission (WCPFC) Technical and Compliance Committee (TCC) for the opportunity to address the 16th Regular Session of the TCC (TCC16) as an observer and to address the critically important role that it plays in the proper management of the (Western Central Pacific Ocean) WCPO fisheries. The conservation and management of these important resources is dependent on the TCC's ability to consider, implement, assess, and monitor Conservation and Management Measures (CMMs). WWF supports the efforts of the TCC to forward recommendations for CMMs for consideration by the WCPFC as well as its role in ensuring compliance by member states with those measures.

WWF would like to offer the following position to the TCC. WWF wishes to reiterate its position offered in Port Moresby, Papua New Guinea, in December 2019 (WCPFC16) and, taking into account the WCPFC-related meetings held since, offer the recommendations listed below.

Fisheries Observers

The COVID-19 pandemic has created legitimate concerns over the potential exposure of observers, fishers, and port workers to the virus. As such, WWF recognises the unprecedented challenges presented by COVID-19 and the need to ensure the health and safety of those working in the fishing industry. In particular, WWF understands the difficulties with meeting human observer coverage requirements at this time, given widespread travel restrictions in many regions and the very real and legitimate concern for the virus to be transmitted and then brought onshore. However, WWF also steadfastly supports the proposals contained in the letter delivered by Pew on behalf of the NGO

community in support of interim alternative measures and the full reinstatement of observer requirements at the earliest available opportunity.[1]

It is unquestionable that information collected as part of a successful observer programme is critically important to the proper conservation and management of a fishery. Data collected by observers plays a central role in informing fisheries scientists and managers on everything ranging from stock assessments to non-target species impacts.[2] Furthermore, observers play an indispensable role in monitoring and documenting compliance with very important CMMs in the WCPO.[3] Therefore, securing appropriate observer coverage must be considered a top priority and member states must make a concerted effort to achieve that coverage.

All CCMs agreed to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention) text and other Commission obligations to ensure the *best scientific information or evidence available* is used in WCPFC decisions.[4] By its plain reading, this obligation not only requires members to actively *seek out* and *use* the best available scientific evidence, but also compels CCMs to ensure that measures taken result in the *generation* of the best available scientific evidence.[5] Any other interpretation would be absurd. Therefore, the WCPFC is obligated under the WCPF Convention to put data collection processes in place that secure the production and use of the best available scientific evidence for use in the WCPFC decision making process.

Calculation of Observer Coverage Metric

Over 13 years ago, the WCPFC established CMM 2007-01, which specified that coverage is to be 5% of effort in each non-purse seine fishery under the jurisdiction of the Commission and shall be achieved no later than 30 June 2012.[6] Specifically, low observer coverage in the longline fishery was identified as a significant conservation risk. Moreover, as indicated by the discussion at that time as well as discussion among members at WCPFC forums since, the arbitrary benchmark established at 5% was considered a starting point for a stepwise progression to appropriate observer coverage, never a final target as implied by some CCMs. Unfortunately, not only has achieving the principal objective of CMM 2007-01 proven difficult, but even measuring how it is achieved remains unsettled.

At the moment members self report their longline observer coverage under four separate metrics including:[7]

- Days at Sea - days observer is at sea compared to number of days fleet is at sea;
- Number of Trips - number of observer trips compared to trips by the fleet;
- Days Fished - observed fishing days compared to fleets fishing days; and
- Number of Hooks - number of hooks observed compared to fleet hooks used.

Because these metrics are each calculated differently and subject to different biases, it places an unnecessary burden on the scientific service provider to standardise data in such a way as to properly assess coverage. In effect, it forces the scientific service provider, and ultimately the WCPFC, to "compare apples with oranges" in a way that frustrates efficient analysis and, ultimately, timely and proper management. Moreover, because of the biases of the different metrics, it creates inequity among members that places more of the conservation burden on those using a more accurate and precise metric that is less susceptible to bias and manipulation.

The best scientific information available suggests that "number of hooks" represents the best method for achieving multiple objectives, including effectively calculating effort and

accurately assessing rare events like seabird interactions.[8] Three member states are currently assessing their observer coverage based on "number of hooks," proving it is practically feasible. Consequently, WWF recommends that the TCC confirm "number of hooks" as the best practice metric for all members calculating observer coverage on longline vessels and mandate a 5-year time frame to shift to use of this metric. If other metrics for calculating coverage are used in the transition toward "number of hooks," terms must be very clearly defined in advance and each metric must be calculated and reported by members in a way to be comparable to and consistent with "number of hooks" to the maximum extent possible.

Level of Observer Coverage

Notwithstanding the current situation under COVID-19, observer coverage rates on the non-purse seine fleet remain unacceptably low. Recent efforts by the Pacific Community to standardise observer coverage data indicate that region-wide observer coverage could be near 5%.[9] However, the best available scientific evidence indicates that even a consistently applied level of 5% coverage is statistically and practically useless to effectively achieve most management[10] or compliance objectives.[11]

Low observer coverage exacerbates bias as a result of fishers altering their fishing practices (*e.g*. discarding practices, handling and release practices, effort) and gear when an observer is present, which is a phenomenon known as the "observer effect."[12] The higher the observer coverage rate, the lower the bias from an observer effect, while the larger the proportion of fishing effort that is observed, the more accurately the monitoring data characterize or represent the fishery. Notwithstanding the observer effect, at just 5%, current observer coverage is not producing the quality or quantity of data necessary to properly manage the WCPO non-purse seine tuna fisheries.

At present, a lack of sufficient data that is typically generated through adequate observer coverage represents the single largest obstacle to establishing appropriate management measures. Uncertainty is continually cited in the WCPFC process as a reason for inaction, while the certainty offered by improved observer coverage seems to be consistently rejected, deferred, and delayed.

WWF concedes that different minimum levels of observer coverage may be necessary for different management or compliance purposes, depending on specific identified objectives. However, data collected under less than 100% coverage may be biased and misrepresent the fishery overall, resulting in management failures. Alternatively, 100% observer coverage, through human or electronic observers, would result in no bias from an observer effect. Thus, along with a consortium of other NGOs and with the support of prominent market partners, we have determined that because of conservation and compliance problems such as illegal fishing, misreported or unreported catch, and bycatch of endangered, threatened and protected species, that only an observer coverage rate of no less than 100%, through human or electronic observers, is acceptable.[13]

By continuing to fail to secure a scientifically or statistically valid level of observer coverage, particularly on longline vessels, the WCPFC fails to meet the charge of the WCPF Convention to generate and use the best available scientific information. Therefore, the WCPFC must take action to improve observer coverage across all longline vessels operating in the WCPFC Convention Area.

Observer Safety and Security

WWF has been reliably informed that several CCMs are not meeting their obligations under CMMs 2017-03 and 2018-05 to ensure the safety and security of fisheries observers. This is starkly evidenced by the loss of yet another fisheries observer, Eritara Aati of Kiribati, in March of this year.[14] As reported independently by multiple observers, several observer programmes are failing to provide the required safety equipment to observers upon deployment and, even prior to COVID-19, failing to meet obligations for repatriation of observers following completion of their assignments.

As a matter of health and human safety that the WCPFC has clearly committed to address through the respective CMMs, this failure must be urgently remedied and compliance breaches must be thoroughly discussed, investigated, and addressed as part of the Compliance Monitoring Review process.

WWF recommends the TCC:

- **Recognise the calculation of observer coverage on the basis of "number of hooks" as best practice and mandate a transition to calculation of observer coverage based on "number of hooks";**
- **Establish a plan to increase observer coverage, by human observers or electronic monitoring, across all longline vessels operating in the WCPFC Convention Area on an annual basis to achieve 100% coverage by 2026; and**
- **Transparently and decisively address failures to meet obligations for observer safety and security.**

Transhipment Monitoring

Transhipment remains one of the most prominent weaknesses in catch documentation and verification that leads to Illegal, Unreported, and Unregulated (IUU) catch in the WCPO.[15] WWF again notes that the most simple, efficient, and effective solution to the challenges of transhipment-related IUU is to simply prohibit all at-sea transhipment and require all fishing vessels to land their catch at the nearest available designated port in the WCPO following the conclusion of fishing activity. However, acknowledging that such a prohibition on transhipment is politically unlikely, WWF supports an substantial reforms and improvements for all at-sea transhipments, including:

- 100% monitoring through human observers or EM on all delivering and receiving vessels;
- prompt advance notification of all transhipments;
- timely delivery of all transhipment reports to the WCPFC; and
- strong sanctions for non-compliance.

WWF also recommends that transhipment requirements be buttressed by verification and validation of transhipment activities through redundant systems such as the use of a vessel monitoring system (VMS) supplemented by an operating automated identification system (AIS). If through investigation of suspected unreported transhipment activity indicated supporting procedures and technologies, it is determined that transhipment activity was conducted in violation of transhipment rules, the offending vessel should be subject to

sanctions including removal from good standing, license revocation, and listing on the IUU vessel list.

Transhipment Observer Impartiality/Performance

A highly experienced transhipment observer recently confidentially contacted WWF. This observer expressed serious concerns regarding the performance of observers on some transhipment vessels throughout the Pacific, particularly those operating on the high seas. They noted that in many cases the observer was an observer in name only, conducting activities including:

- performing duties beyond the responsibility of a fisheries observer, such as directing deck operations and crew activity; and
- interfering with documentation collected as part of transhipment activity, including reviewing and changing the records of other observers before submission.

In short, these observers were acting more like an employee of the company or vessel than a fisheries observer. If this report is true, these transhipment observers are neither objective nor impartial, which should raise concerns about the validity and veracity of the data they collect and submit to the WCPFC because observers must be competent, independent, impartial, and objective for the information collected to be considered valid and reliable.

The report of this observer only strengthens the need for further review and reform of current transhipment practices, particularly the observer transhipment monitoring protocol. This report also further emphasises the need for other electronic systems, such as AIS and EM, to independently verify transhipment activities. Thus, the WCPFC should prioritise the activity and engagement of the Transhipment Inter-sessional Working Group (IWG), which seems to have stalled.

WWF recommends the TCC:

- **Support 100% observer coverage on delivering and receiving vessels engaged in at-sea transhipment;**
- **Prioritise the development and application of EM for transhipment monitoring;**
- **Support or endorse the use of technology including VMS, AIS, and EM to verify and validate transhipment activity; and**
- **Investigate reports of transhipment observer performance that is contrary to appropriate observer protocols.**

References

[1] Nickson, Amanda, 07 August 2020, Joint Letter on COVID-19 Response in Commercial Fisheries.
[2] *See e.g.* Davies, S.L. 2003. Guidelines for Developing an at-Sea Fishery Observer Programme. FAO Fisheries Technical Paper 414, ISSN 0429-9345. Food And Agriculture Organization Of The United Nations, Rome.
[3] *Id* at 5. (Observers can register compliance with fisheries management laws, regulations and plans; record catch composition, prohibited species, by-catch, size limits, discarding, area and gear restrictions; validate vessel logbooks and the labelling of processed fish.); *see also* Palma, M.A.E. 2010. Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing. Volume 6 of Legal Aspects of Sustainable Development, ISBN 9789004175754. Martinus Nijhoff Publishers, p. 142.
[4] The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western Pacific Ocean (WCPF Convention) establishes the Western and Central Pacific Fisheries Commission (WCPFC). Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Part II, Article 5, paragraph (b) ("...the members of the Commission shall...ensure that such measures are based on the best scientific evidence available…"), Sept. 5, 2000, 2275 U.N.T.S. 40532, https://www.wcpfc.int/system/files/text.pdf.
[5] *Id at* Part III, Article 10, paragraph (1)(e) ("...the functions of the Commission shall be to…compile and disseminate accurate and complete statistical data to ensure that the best scientific information is available…").
[6] WCPFC, *Conservation and Management Measure for the Regional Observer Programme*, at 9, CMM 2007–01 (Dec. 2-7, 2007), https://www.wcpfc.int/doc/cmm-2007-01/conservation-and-management-measure-regional-observer-programme [Superseded by CMM 2018–05, which consolidated other observer related issues into a single measure]
[7] WCPFC, Status Of Observer Data Management, WCPFC-SC16-ST-IP-02, at 18, Table 4 (Sept. 2, 2020)
[8] Dietrich, K. *et al.* Best Practices for the Collection of Longline Data to Facilitate Research and Analysis to Reduce Bycatch of Protected Species, NOAA Technical Memorandum NMFS-OPR-35 March 2007. at 25, March 2007. ("Fishing effort can be derived from information collected on number of hooks deployed or retrieved. The number of hooks deployed was ranked as critical or preferred by 81% of data user[s]…"); *see also* IATTC, Scientific Advisory Committee, SAC-10-04 – Longline observer program reports, at 2 (13-17 May 2019)("Number of hooks is considered a more accurate measure of longline effort."); *see also* IATTC, Scientific Advisory Committee, SAC-10 INF-H - Standardization of Reporting Formats and Effort Reporting for Longline Fisheries (Resolution C-11-08), at 3, (13-17 May 2019) ("…number of hooks is the most precise, and is the standard metric used both by the other tuna RFMOs and by the IATTC for scientific purposes.")
[9] *Supra note 7* at 20-21, Tables 5 and 6. (Sept. 2, 2020).
[10] *See* Lawson, T. 2003. Observer coverage rates and the accuracy and reliability of estimates of CPUE for offshore longline fleets targeting South Pacific albacore. Working Paper SWG–4. Sixteenth Meeting of the Standing Committee on Tuna and Billifsh, 9–16 July 2003, Mooloolaba, Queensland, Australia. Oceanic Fisheries Programme, Secretariat of the Pacific Community, Noumea, New Caledonia; *See also* Lawson, T. 2004. Observer coverage rates and reliability of CPUE estimates for offshore longliners in tropical waters of the Western and Central Pacific Ocean. Working Paper SWG-4, Seventeenth Meeting of the Standing Committee on Tuna and Billfish, 9-18 August 2004, Majuro, Republic of Marshall Islands.
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[12] Gilman, Eric & Zimring, Mark. 2018. Meeting the objectives of fisheries observer programs through electronic monitoring. 10.13140/RG.2.2.28000.99846.
[13] Leading Environmental NGOs Stand Together to Call for 100% Observer Coverage on Industrial Tuna Fishing Vessels (June 29, 2019) *retrievable at* https://www.prnewswire.com/news-releases/leading-environmental-ngos-stand-together-to-call-for-100-observer-coverage-on-industrial-tuna-fishing-vessels-300873686.html.
[14] Vance, Andrea. *UN Asked to Step In After Mysterious Death Of Fisheries Observer*. Stuff (July 13, 2020) *retrievable at* https://www.stuff.co.nz/environment/122112141/un-asked-to-step-in-after-mysterious-death-of-fisheries-observer.
[15] *See e.g.* Boerder K., et al, Global hot spots of transshipment of fish catch at sea. Science Advances 25 Jul 2018: Vol. 4, no. 7, DOI: 10.1126/sciadv.aat7159.

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