



**COMMISSION
SEVENTEENTH REGULAR SESSION**
Electronic Meeting
8 – 15 December 2020

**DRAFT PROPOSAL FOR MODEL WESTERN AND CENTRAL PACIFIC FISHERIES
COMMISSION (WCPFC) CONSERVATION AND MANAGEMENT MEASURE ON HUMAN
RIGHTS AND LABOUR RIGHTS PROTECTIONS FOR FISHERIES OBSERVERS' SAFETY,
SECURITY AND WELL-BEING**

**WCPFC17-2020-OP06
19 November 2020**

Submitted by Human Rights at Sea



INDEPENDENT REVIEW

Photo Credit: Shutterstock.com

DRAFT PROPOSAL FOR MODEL WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC) CONSERVATION & MANAGEMENT MEASURE (CMM) ON HUMAN RIGHTS & LABOUR RIGHTS PROTECTIONS FOR FISHERIES OBSERVERS' SAFETY, SECURITY & WELL-BEING

A follow-up to the Human Rights at Sea Report:

FISHERIES OBSERVER DEATHS AT SEA, HUMAN RIGHTS & THE ROLE & RESPONSIBILITIES OF FISHERIES ORGANISATIONS

Dated 1st July 2020

18th NOVEMBER 2020



HUMAN RIGHTS AT SEA

www.humanrightsatsea.org

www.humanrightsatsea.org/publications/

#humanrightsatsea

© November 2020 Human Rights at Sea All Rights Reserved.

Human rights apply at sea, as they do on land

Table of contents

Glossary	2
Author	3
Review Funding.....	3
Conflicts of Interest.....	3
Peer Review.....	3
Drafting Support.....	3
Disclaimer.....	3
References	4
Background	4
Reasoning.....	4
Aim.....	4
Intent.....	4
Points of Note.....	5
Recommendation and Next Steps	5
KEY	5
Draft Proposal for Model WCPFC Conservation and Management Measure on Human Rights and Labour Rights Protections for Fisheries Observers' Safety, Security and Well-Being	6
Who We Are	13

Glossary

APO	Association for Professional Observers
CCM	WCPFC Commission Members, Cooperating Non-Members and Participating Territories
CMM	Conservation and Management Measure
FAO	Food and Agriculture Organization of the United Nations
HRAS	Human Rights at Sea
ILO	International Labour Organization
MRCC	Maritime Rescue Coordination Centre
NGO	Non-Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
P&I	Protection and Indemnity (Insurance)
RFV	Record of Fishing Vessels
RFMO	Regional Fisheries Management Organisation
ROP	Regional Observer Programme
SAR	Search and Rescue
SME	Subject Matter Expert
UDHR	Universal Declaration of Human Rights (1948)
UNCLOS	United Nations Convention on the Law of the Sea (1982)
WCPFC	Western and Central Pacific Fisheries Commission

Author

The author of this Independent Review and proposed model Western and Central Pacific Fisheries Commission (WCPFC) Conservation and Management Measure (CMM), is the UK-registered charitable non-governmental organisation (NGO), Human Rights at Sea (HRAS).¹ It is regulated by the UK Charity Commission and overseen by a Board of Trustees under English law. It has been supported in this work by instructed subject matter experts (SMEs) from within the global civil-society fisheries community, as well as national and international organisations.

Review Funding

The drafting of this proposed model WCPFC CMM has been funded by charitable funds from HRAS. Annual accounts are available to review via the UK Charity Commission website² while Impact and Annual organisation reports³ are also available to download via the charity's website.

Conflicts of Interest

There are no known conflicts of interest to be declared in the concept, preparation, drafting or publishing of this Report.

Peer Review⁴

- Ghislaine Llewellyn and Bubba Cook: WWF International and WWF Pacific
- Elizabeth Mitchell: Association for Professional Observers (US)
- Francisco Blaha: Independent Consultant (New Zealand)
- Courtney Farthing and Kamal Azmi: Global Fishing Watch

Drafting Support

- Mr Daniel Shepherd, Consultant (UK)
- Mr Jean Jacques Schwenzfeier, Consultant (SE Asia)

Disclaimer

The content of this Independent Review has been published by HRAS (or the Charity) following desk-top research, individual interviews and peer review. The contents have been checked as best as possible for accuracy by the authors at the time of writing. Human Rights at Sea is not liable in any way, whatsoever, in any jurisdiction for the contents of this Review which has been published in good faith in support of the Charity's Objectives. All text and images have been acknowledged where able. Any stated opinions, perspectives and comments are solely those of the authors quoted. Any omissions or factual inaccuracies should be immediately alerted to HRAS by writing to: enquiries@humanrightsatsea.org.

1 <https://www.humanrightsatsea.org>

2 <https://www.gov.uk/find-charity-information>

3 <https://www.humanrightsatsea.org/reports/>

4 Draft versions were sent to WCPFC delegates, the Pacific Islands Forum Fisheries Agency (FFA) and the Parties to the Nauru Agreement (PNA) Office, for information.

References

1. Handbook of Conservation Management Measures & Resolutions For WCPFC Regional Observer Programmes 2020.
2. CMM 2017-03: CMM on Protection of WCPFC ROP Observers.
3. Resolution 2018-01: Resolution on Labour standards for Crew on Fishing Vessels.
4. CMM 2018-05: CMM for the Regional Observer Programme.

Background

This proposed model WCPFC CMM document is focused on the issue of Fisheries Observers' safety, security and well-being.

It draws on the HRAS proposed 'Ten Recommendations' from the initial 1 July 2020 Report: '**Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations**',⁵ the follow-on 11 November 2020 Report: '**Developing Recommendations and Policy in Support of Fisheries Observers' Safety, Security and Well-being**',⁶ and the associated 11 November 2020 Survey Report: '**Understanding the Working Conditions of Western and Central Pacific Ocean Fisheries Observers: A Baseline Survey**'.⁷

This work is an independent proposition by HRAS in support of WCPFC Members' consideration on the topic, but at the time of publication it is not endorsed by any Member.

The proposed text is based on the underlying, fundamental and founding principle that; '**human rights apply at sea as they do on land**' and is aimed at assisting WCPFC Members with individual and collective development of supporting policies and legislation for Observer safety, security and well-being. This builds on the supportive and development work already undertaken by Members in this area.

Reasoning

The reason for the development of this series of reports and supporting reviews, is the increasing public international awareness of abuses towards Fisheries Observers highlighted by issues of concern. These issues include a lack of transparency in reporting of incidents, lack of availability of comprehensive employment contracts, lack of access to professional insurance provisions, ongoing concern for the level of coastal State engagement in investigations and the apparent lack of enforcement follow-up. Concerns also extend to the negative societal, financial and family support effects upon the dependents of deceased Fisheries Observers.

Aim

The aim of this independent work and model CMM, is to further support WCPFC Members in their collective efforts to draft a dedicated CMM specific to Fisheries Observers, thereby reinforcing individual safety, security and well-being.

Intent

The intent of the model CMM is to stimulate discussion as to the proposed text contents, its scope and its impact on WCPFC Members, as well as supporting policy and legislative development for other Regional Fisheries Management Organisations (RFMOs) who may also be reviewing the same issue.

5 HRAS, "REPORT: Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations – Human Rights at Sea," HRAS (Havant, 2020), <https://www.humanrightsatsea.org/2020/07/09/fisheries-observer-deaths-at-sea-report-version-availability-increased/>

6 HRAS, REPORT: 'Developing Recommendations and Policy in Support of Fisheries Observers' Safety, Security and Well-being' (Havant 2020), https://www.humanrightsatsea.org/wp-content/uploads/2020/11/Recommendations_Policy_for_Fisheries_Observers_Health_Safety_Wellbeing_11Nov20_SP_LOCKED-Optimised.pdf

7 HRAS, REPORT: 'Understanding the Working Conditions of Western and Central Pacific Ocean Fisheries Observers: A Baseline Survey' (Havant 2020), https://www.humanrightsatsea.org/wp-content/uploads/2020/11/HRAS_RIGHTS-LAB_FISHERIES_OBSERVER_PACIFIC_SURVEY-REPORT_11NOV20_SP_LOCKED.pdf or review at: <https://www.humanrightsatsea.org/publications/>

Points of Note

1. The proposed text has been reconciled with the contents of existing applicable WCPFC CMMs and Resolutions, noting a reflection of the existing language style for the reader's familiarity, ease of understanding and for CMM drafting continuity.
2. 'Fisheries Observers' have been capitalised for the sake of this document placing an onus on them as workers who constitute a specific and recognised professional grouping.
3. There appears to be an emerging need for a Fisheries Observer-specific CMM separate from a Crew CMM as;
 - a) Crew and Fisheries Observers have different roles to fulfill on board fishing vessels;
 - b) Fisheries Observer human and labour rights standards and protections should be specifically highlighted and educated against; and
 - c) Fisheries Observers have different employers to Crew, which are usually government or government agency-led.
4. There appears to be a need to expedite the application and implementation of more comprehensive CMM measures to protect Fisheries Observers and their livelihoods.
5. There is a need to better engage with, and support, registered dependents of Fisheries Observers who have died during their employment, are missing presumed fallen overboard, or have been otherwise incapacitated in the course of their duties, thus preventing or limiting their familial and/or financial contribution to their dependents' livelihood.

Recommendation and Next Steps

HRAS recommends that the proposed text is considered by WCPFC Members in part, or in whole, as the potential basis for a new and dedicated CMM for Fisheries Observers. As a next step, this model CMM, or revised version of, should be implemented to replace CMM 2017-03, Resolution 2018-01 and CMM 2018-05. In the alternative, the work could stand alone.

KEY

'**HRAS Comments**' are specifically included to expand the reader's understanding of the reasoning behind the suggested text. Absence of a comment means the text should be self-explanatory, non-contentious and should not need any supporting explanation.

Highlighted content is used to draw the reader's attention to specific points emphasised in the proposed model CMM text.

Draft Proposal for Model WCPFC Conservation and Management Measure on Human Rights and Labour Rights Protections for Fisheries Observers' Safety, Security and Well-Being

CMM 202X-XX

The Commission for the Conservation and Management of Highly Migratory Fish Stock in the Western and Central Pacific Ocean;

Recalling Articles 6 and 8 of the 1995 FAO Code of Conduct for Responsible Fisheries which set out international standards, including labour standards for the responsible conduct of fishing operations to ensure fair work and living conditions;

Noting the Commission has to adopt accepted **international core human and labour rights standards** for the responsible and safe conduct of fishing operations;

***HRAS Comment:** Upfront noting of the need to adopt and implement core international human and labour rights standards based on the State responsibility to protect human rights, and the fair and reasonable application and implementation of human and labour rights standards for all workers at sea including Fisheries Observers.*

Noting the global ratification and implementation in national legislation of international standards concerning the protection of fundamental human rights under the **Universal Declaration of Human Rights (UDHR) 1948**, as a State obligation;

***HRAS Comment:** Upfront noting of the importance of explicit reference to the universally recognised and State agreed standards laid down in the 30 Articles of the Universal Declaration of Human Rights (UDHR) 1948.*

Noting the ratifications and implementation of the **International Labour Organization's Convention 188 (ILO C188)** 'Work in Fishing' Convention;

***HRAS Comment:** Upfront noting of the existence, scope and intent of ILO C188. This is set against a background that some States have not ratified ILO C188, but may still support the intent and actions in terms of safeguarding the safety, security and well-being of those working at sea in the global fishing industry.*

Noting as an agency of the United Nations the implied obligation of the Food and Agriculture Organization and any emanations of that agency to conduct their affairs in accordance with the **UDHR and core international Human Rights and Labour Rights Instruments**;

***HRAS Comment:** Upfront noting of the requirement by the FAO UN Agency to reflect the influence and necessity of the UDHR 1948, including established human and labour rights standards in conducting day-to-day activities.*

Noting the Commission previously adopted CMM **2017-03** on the Protection of WCPFC Regional Observer Programme Observers,⁸ and Resolution **2018-01** on Labour Standards For Crew On Fishing Vessels;⁹

***HRAS Comment:** Recognition of previously applicable CMMs and resolutions focusing in part, or in whole, on the issues raised in the present draft CMM.*

Noting that the FFA has adopted minimum terms and conditions on Observer safety¹⁰ and Crew safety;¹¹

Noting the increasing global attention to instances of poor human and labour working conditions, breaches of fundamental human rights protections, **mistreatment of Fisheries Observers including instances of unlawful killings, slavery, trafficking, servitude, forced labour and identification of actual or suspected child labour on board fishing vessels**;

***HRAS Comment:** Upfront noting of the increasing incidences of public awareness and reporting of human rights abuse and labour exploitation in the global fishing industry, and the associated acknowledgement of the scale and scope of abuse towards fisheries workers both at sea and in the related global supply chain. NB: The identification of abuses onboard vessels may come from Fisheries Observers themselves, crew or other persons in the supply chain.*

⁸ <https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>

⁹ <https://www.wcpfc.int/doc/resolution-2018-01/resolution-labour-standards-crew-fishing-vessels>

¹⁰ [https://www.ffa.int/mtcs\(9A\)](https://www.ffa.int/mtcs(9A))

¹¹ <https://www.ffa.int/node/2305>

Acknowledging the important role played by Fisheries Observers in assisting the scientific oversight and catch review of fishing vessel operations in compliance with WCPFC Conservation and Management Measures, and the central role that Fisheries Observers play in contributing to sustainable global fisheries and related fishing operations;

HRAS Comment: *It should be reflected in any WCPFC commentary on this proposed CMM, that sustainability of fisheries cannot be achieved without the explicit protection of worker's core human and labour rights. This must include worker awareness and education of those rights. Sustainability is enabled and achieved by people and consequently, their roles must always be safe and secure.*

Acknowledging that human rights apply at sea, as they do on land;

HRAS Comment: *Acknowledging the fundamental principle which underpins the assertion of the fair and reasonable application of an individual's fundamental rights and associated protections under the International Bill of Human Rights, including the UDHR 1948, both at sea and on land.*

Recalling efforts that WCPFC Members have made in recent years in improving the conditions and welfare of Fisheries Observers on board fishing vessels, and acknowledging the equal importance of the welfare of both Crew members and Fisheries Observers;

Reaffirming the importance of the roles and responsibilities of port, coastal and flag States under international law regarding fishing vessels flying their flag, including with respect to safety at sea, core human rights standards and protections, and labour conditions on fishing vessels;

HRAS Comment: *Important to note that CMMs can be applied not just by Members, but also through a combination of global port, coastal and flag State administration activities and punitive actions comprising enforcement of core international instruments including, but not limited to, the UN Convention on the Law of the Sea (UNCLOS) 1982, the International Convention on Maritime Search and Rescue (SAR) 1979, and the ILO Working in Fishing Convention (ILO C188).*

Mindful that WCPFC Members have a legitimate interest in ensuring the presence and participation of Fisheries Observers on board vessels that catch highly migratory fish stocks in their waters, and that CCMs are interested in promoting safe and decent employment conditions, including direct access to welfare and legal support for all workers;

HRAS Comment: *Having direct and unfettered access to both welfare facilities which provide respite, succor and access to health, safety and well-being assistance for Fisheries Observers, as well as having access to routes to legal support, goes to the individual's fundamental human rights' protections reflecting UDHR 1948 and also expands upon the intent of ILO C188.*

Adopts, in accordance with Article 5 (d-f) and 10 (1)(h) of the Convention that:

1. CCMs shall support every effort to ensure that their relevant national legislation fully extends to all Fisheries Observers working on fishing vessels flying their flag in the WCPFC Convention Area, and that CCMs will adopt binding measures into their national legislation to establish core standards regulating Fisheries Observer human rights protections and standards, and labour conditions, within two years of the CMM adoption.

HRAS Comment: *There is a need to adopt and embed proposed measures within a scheduled time frame to assure Fisheries Observer's rights are protected in law by Members and the issues being raised are not otherwise held in abeyance.*

Core human rights standards should reflect and refer to established International Human Rights Law standards and related instruments including the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights¹², the International Covenant on Economic, Social and Cultural Rights¹³, the International Covenant on Civil and Political Rights¹⁴ and the Optional Protocol to the International Covenant on Civil and Political Rights¹⁵. Members should additionally refer to regional human rights Conventions and national human rights legislation. For further detail as to universal human rights instruments see the OHCHR web page.¹⁶

Implementation: *The issue of a pathway to implementation should be addressed by Members as a specific agenda item. This assumes that a model CMM text is first accepted either in part, or in whole, and supported for review/amendment by Members.*

12 <https://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx>

13 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

14 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

15 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>

16 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

2. CCMs shall ensure the effective enforcement of all relevant legislation, including by identifying and prosecuting all violations of relevant national and international laws relating to the unlawful treatment of Fisheries Observers on board fishing vessels landing fish in their ports or operating in their waters, and by publicly reporting all prosecutions to act as a deterrent mechanism against perceptions of impunity.

HRAS Comment: There is a need for explicit State enforcement with transparent and expedited routes to effective legal remedy for abuses towards Fisheries Observers. Such implementation and public awareness of which may act as a deterrent mechanism against those individuals and entities who consider themselves able to act with impunity from consequences.

3. CCMs shall implement national measures within two years of the CMM adoption, consistent with generally accepted core international human rights protections and labour standards for Fisheries Observers on fishing vessels. This is to ensure fair, safe and secure working conditions on board for all Fisheries Observers operating on fishing vessels flying their flag, and operating within the WCPF Convention area, including, *inter alia*:

HRAS Comment: There is a need to agree time limits for CMM adoption to ensure that members do not avoid implementation and thereby instead achieve unity and conformity in the CMM application. Measures should not be minimal in their scope, or viewed as being set as a minimum, rather they must reflect core provisions of established International Human Rights Law standards and related instruments.

- a) A safe and secure working environment with minimum risk to health, safety and well-being;
- b) Fair terms of employment, that are enshrined in a mandatory industry WCPFC standard contract which is made available to the employee, in a form and language that facilitates the employee's understanding of the terms, and which is agreed with by the employee;

HRAS Comment: There is an urgent need for a mandatory industry (and WCPFC) standard employment contract available in multiple languages that is agreed and understood by the Fisheries Observer prior to boarding any vessel and departure on any trip. The Fisheries Observer must have the time to be able to read and understand the terms and conditions, as well as employment safeguards, including, but not limited to support for dependents in the case of any accident which stops or restricts future employment prospects.

- c) Provision of an employee-signed contract from the employer prior to any vessel departure, including the express requirement for emergency contact provisions and employer's insurance details;

HRAS Comment: Emergency contact details must be registered, available to the employers and used in the event of any incident which affects the health, safety and well-being of the Fisheries Observer. This includes access by both the Fisheries Observer and their registered dependents to insurance policy documentation and associated support in the event of submitting a claim against the policy.

- d) Decent working and living conditions on board vessels, including access to sufficient clean potable fresh water and food, operational safety protection and medical care that facilitate high standards of personal sanitary hygiene;

HRAS Comment: Sanitation must be a priority as applicable to the context of the vessel. This must include access to clean potable fresh water at all times and without exception.

- e) Decent and regular salary payments comprising fair levels of remuneration without unlawful deductions from source;

HRAS Comment: There must be consistent, decent and regular salary payments at levels which are not exploitative. This also includes the prevention of unofficially imposed and unlawful deductions from source by employers, agents or any other entity within the recruitment supply chain.

- f) Appropriate, comprehensive and in-date Protection and Indemnity (P&I) insurance for the Fisheries Observer with duplicate copies made available for dependents assuring proof of insurance. This should include a written explanation of the scope of insurance coverage and all procedures to claim if injured, or for families to claim in the event of death, or incapacity, of the Fisheries Observer; and

- g) Providing Fisheries Observers with the free and unfettered opportunity to disembark, terminate the contract of employment, and seek direct repatriation to their home State at the earliest opportunity possible at their employer's cost.

HRAS Comment: Further, WCPFC should establish an Observer database and share it with Member States by request. An annually published overview of Observer numbers, nationalities, working locations and qualifications, by way of example, should be published for transparency's sake.

4. CCMs shall implement measures requiring owners of any and all vessels whose details are listed in the Record of Fishing Vessels (RFV) and authorised to fish in the WCPFC Convention Area beyond the national jurisdiction of the member of the Commission whose flag the vessel is flying, to hold comprehensive P&I insurance cover which includes, *inter alia*:

- a) express reference to the anticipated presence of Fisheries Observers on board RFV-listed vessels as persons on board; and

- b) express requirement upon vessel owners to liaise with employers of Fisheries Observers and arrange sight of the Fisheries Observers' contract of employment and to notify the relevant P&I Club of the relevant terms and conditions of the contract of employment.
5. CCMs shall implement measures requiring employers of Fisheries Observers to clearly and expressly state in formal correspondence to the vessel's company, the required proof of comprehensive P&I insurance for each Observer prior to each trip. The proof of insurance should reflect the specific information for each and every Regional Observer Programme (ROP) trip within the WCPFC Convention Area. This includes the name of the Fisheries Observer, specifics about their coverage and signed by the ROP staff.

***HRAS Comment:** There must be assured provision and access to comprehensive P&I insurance cover for the Fisheries Observer and, de facto, for their registered dependants. The process and understanding of the insurance terms and conditions must be plainly written and able to be fairly and reasonably understood by the lay person.*

6. CCMs shall implement measures requiring any and all vessels whose details are listed in the Record of Fishing Vessels (RFV) and authorised to fish in the WCPFC Convention Area beyond the national jurisdiction of the member of the Commission whose flag the vessel is flying, to have on-board Automatic Identification System (AIS) technology and, at all times when operating in areas outside of State jurisdiction, including within the Economic Exclusion Zone (EEZ), to sail with AIS turned on as a safety precaution. If AIS is turned off without reasonable, justifiable and evidenced excuse, owners will become subject to Member State investigation, suspension and potential sanction. WCPFC shall compile an annual list of owners and vessels that violate these AIS requirements and further, suspend and sanction those who do not rectify their failings as per WCPFC and Member State regulation(s) and/or policy.

***HRAS Comment:** Notwithstanding existing requirements for its use, AIS should be used as a core safety feature for every vessel which, if not used without reasonable, justifiable and evidenced excuse through logged statements by the vessel's Master, should be considered for punitive Member State sanction. The procedure for notifying, investigating and logging violations should be developed by WCPFC and enacted by Members as an overt deterrent effect for the deliberate misuse of AIS.*

Confirmed violations should be collated by both Members and the WCPFC, and made publicly available to review. They should be officially recorded in a centralized system and the outcomes of any punitive sanctions and remediation be monitored by WCPFC. This should include those owners/vessels/fleets linked to private international sustainability and social rights certification bodies, which, themselves, should publicly list and accurately reflect violations for due consideration and internal remedial administrative action. This should include transparent publication of the violation and reasons for suspension.

Violations not rectified as per WCPFC or Member State regulations and/or policy would, subject to the terms and conditions of the regulation(s) and/or policy, be automatically elevated to consideration of a sanction as determined by the Member. Sanctions should be drafted into legislation to achieve an effective remedy that is lawfully applied.

7. CCMs shall implement measures requiring all Members to disclose, 72 hours after receipt of a legitimate and formal written request from an investigating authority, Vessel Monitoring System (VMS) data detailing specified vessel data where an act or allegation of human rights and/or labour rights abuse occurs. Disclosure may be to flag, coastal or port State authorities, including the State of which the Fisheries Observer is a citizen, mutually agreed national or international constabulary and investigative authorities including, but not limited to, Interpol, and registered civil-society organisations.

***HRAS Comment:** Disclosure of VMS data, noting Members' varying positions and legislative stances towards disclosure, should be made available to those investigative stakeholders listed and recognised by WCPFC, with a 72-hour delay, for the fair and reasonable investigation and oversight of investigation into any act or allegation of human or labour rights abuse on board the vessel(s). Requests for disclosure should be made by the designated investigating authority and which, at first instance, may be the flag State administration through a designated person/function/role with delegated authority. This is due to the flag State having primary jurisdiction over the vessel. Members also should consider requests for disclosure from national authorities reflecting a victim's citizenship, a victim's legal representative(s) and civil society organisations with a legitimate interest and/or WCPFC observer status. Verification and approval of the request will be subject to the Member State's regulation(s) and/or policy.*

8. In the event that a Fisheries Observer on board a fishing vessel 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 (SAR) if the Fisheries Observer is missing or presumed fallen overboard, and searches for at least 72 hours, unless the Fisheries Observer is found sooner, or unless instructed by the flag CCM to continue searching;¹⁷
 - c) immediately notifies the flag CCM, Maritime Rescue Coordination Centre (MRCC),¹⁸ ROP and relevant agencies;
HRAS Comment: *There should be a wider notification than just the flag CCM and which should include the relevant SAR authorities and ROP, as a bare minimum.*
 - 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) immediately alerts any registered dependents through the emergency contact provisions;
HRAS Comment: *Registered dependents should be made aware of any incidents which have befallen a Fisheries Observer, unless the Fisheries Observer has explicitly opted out of such an action in their written emergency contact provisions. Dependents should not have to learn of a potential or actual incident through informal channels or the likes of social media posts. This extends the duty of care by employers to the well-being of dependents.*
 - g) alerts any certification programme under which the vessel is fishing;
HRAS Comment: *Private international certification programmes for sustainability and social rights must be made aware of any incident which relates to the death, disappearance or otherwise the missing overboard of a Fisheries Observer. They must record the incident and take all necessary internal and remedial actions for themselves, and any instructed third parties to that certification programme, and act in accordance with established policies. Simple awareness of and public commentary about an incident should no longer be a sufficient response. Certification programmes and bodies must themselves become platforms and tools for supporting the prevention of abuses towards Fisheries Observers.*
 - h) whether or not the search is successful, return the vessel for further investigation to the nearest port, as agreed by the flag CCM and the Fisheries Observer provider;
 - i) provides the report to the Fisheries Observer provider, the fisheries authority of the CMM of which the Observer is a citizen, and appropriate authorities on the incident within 96 hours; and
 - j) cooperates fully in any and all official investigations and preserves any potential evidence, the personal effects and quarters of the deceased or missing Fisheries Observer.
HRAS Comment: *The vessel will most probably be the crime scene therefore forensic evidence will need to be preserved by qualified persons. It will most likely be a flag CMM decision for any intervention to occur while still at sea to preserve evidence such as the interception by coastguard / police / naval authorities prior to arrival in port. If already alongside under port / coastal State jurisdiction any fishing-related activities should cease immediately and State officials must commence an investigation. Speed of evidence collection and collation is critical to assuring the chain of custody for the evidence.*
9. Paragraphs 8(a), (c), (f), (g), (h), (i) and (j) apply in the event that a Fisheries Observer dies. In addition, the flag CCM shall require that the fishing vessel ensures that the body is immediately secured and well-preserved for the purposes of an autopsy, investigation and repatriation. Any death of a Fisheries Observer should trigger a mandatory autopsy and toxicology examination by a competent licensed coroner/pathologist, including the option for a second opinion where requested, available, and which is not conflicted with or by the first autopsy.
HRAS Comment: *There should always be a mandatory autopsy by a qualified and registered expert. The findings must be released not just to the flag CCM and ROP, but to the registered dependents. It must include the option of an entirely independent second opinion that is not in anyway, whatsoever, conflicted with the first, as requested by the dependents, or their authorised legal representatives.*
10. In the event that a Fisheries 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, the Maritime Rescue Coordination Centre (MRCC) and ROP;
 - c) takes all necessary actions to care for the Fisheries Observer and provide any medical treatment available and possible on board the vessel;
 - d) immediately alerts any dependents through the emergency contact provisions;
 - e) alerts any certification programme under which the vessel is fishing;
 - f) where directed by the Fisheries Observer provider, if not already directed by the flag CCM, facilitates the disembarkation and transport of the Fisheries Observer to a medical facility equipped to provide the required care, as soon as practicable at the provider's expense; and

¹⁷ In the event of force majeure, flag CCMs may allow their vessels to cease search and rescue operations before 72 hours have elapsed.

¹⁸ <http://sarcontacts.info/>

- g) cooperates fully in any and all official investigations into the cause of the illness or injury.
11. In the event that there are reasonable grounds to believe a Fisheries Observer has been assaulted, intimidated, threatened or harassed such that their health or safety is endangered and the Fisheries Observer or Fisheries Observer provider indicates to the CCM to which the fishing vessel is flagged that they wish for the Fisheries Observer to be removed from the fishing vessel, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:
- immediately acts to preserve the safety of the Fisheries Observer and mitigate and resolve the situation on board;
 - immediately notifies the flag CCM, ROP and the Fisheries Observer provider of the situation, including the status and location of the Fisheries Observer, as soon as possible;
 - immediately alerts any dependents through the emergency contact provisions;
 - alerts any certification programme under which the vessel is fishing;
 - facilitates the safe disembarkation of the Fisheries Observer in a manner and place, as agreed by the flag CCM and the Fisheries Observer provider, that facilitates access to any needed medical treatment at the expense of the provider; and
 - cooperates fully in any and all official investigations into the incident.
12. In the event that there are reasonable grounds to believe that a Fisheries Observer has been assaulted, intimidated, threatened or harassed but neither the Fisheries Observer or Fisheries Observer provider wishes that the Fisheries Observer be removed from the fishing vessel, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:
- immediately acts to preserve the safety of the Fisheries Observer and mitigate and resolve the situation on board as soon as possible;
 - immediately notifies the flag CCM, ROP and the Fisheries Observer provider of the situation as soon as possible;
 - immediately alerts any dependents through the emergency contact provision;
 - alerts any certification programme under which the vessel is fishing; and
 - cooperates fully in all official investigations into the incident.
13. If any of the events in paragraphs 11–12 occur, port CCMs shall facilitate entry of the fishing vessel to allow disembarkation of the Fisheries Observer and, to the extent possible, assist in any investigations if so requested by the flag CCM.
14. In support of the Fisheries Observer voice, in the event that after disembarkation from a fishing vessel, a Fisheries Observer or Fisheries Observer provider identifies a possible violation or incident of abuse involving assault or harassment of the Fisheries Observer while on board the fishing vessel, the Fisheries Observer provider shall notify in writing the flag CCM, ROP and the Secretariat. The flag CCM shall:
- immediately investigate, through competent constabulary and/or licensed investigators, the event based on the information provided by the Observer provider and take any appropriate action in response to the results of the investigation;
 - cooperate fully in any investigation conducted by the Fisheries Observer provider, including providing the report to the Fisheries Observer provider and appropriate authorities of the incident; and
 - notify the Fisheries Observer provider and the Secretariat of the results of its investigation and any actions taken.
15. CCMs shall ensure that their Fisheries Observer providers:
- understand, promulgate and ensure awareness of, and assure compliance with core international and national human rights and labour rights standards for all Fisheries Observers;
 - immediately notify the flag CCM and ROP in the event that a Fisheries Observer dies, is missing or presumed fallen overboard in the course of their duties;
 - cooperate fully in any search and rescue operation;
 - cooperate fully in any and all official investigations into any incident involving a Fisheries Observer;
 - facilitate the disembarkation and replacement of a Fisheries Observer in a situation involving the serious illness or injury of that Fisheries Observer as soon as possible; and
 - facilitate the disembarkation of a Fisheries Observer in any situation involving the assault, intimidation, threats to, or harassment of that Fisheries Observer to such an extent that the Fisheries Observer wishes to be removed from the vessel, as soon as possible.
16. CCMs shall ensure that in the event that a Fisheries Observer dies, is missing or presumed fallen overboard in the course of their duties, the immediate notification of should be made and the registered dependent(s) should be provided with key employment documents linked to their related Fisheries Observer. The following minimum information and documents should be held on file in the event the Fisheries Observer cannot competently act on their own behalf:
- Signed employment contract;

- b) Signed proof of insurance with specifications of coverage and exceptions;
- c) Identification of the agreement under which a vessel is fishing;
- d) Vessel records of on-board safety policy, measures and safety drill documentation;
- e) The Fisheries Observer's signed Vessel Safety Checklist;
- f) The list of all equipment the Fisheries Observer deployed with, including confirmation of the required safety equipment held by the Fisheries Observer;
- g) A list of all ROP equipment and personal belongings;
- h) A list of welfare support and resources available to the dependents for dealing with sudden loss to family income and living resources; and
- i) Confirmation of immediate dependent income payment.

HRAS Comment: *There is a need to be explicit about the engagement, support and financial provisions for registered dependents of a Fisheries Observer if they die, are missing or presumed fallen overboard in the course of their duties. This includes ensuring comprehensive after care for the dependents in a sensitive and timely manner which does not unnecessarily extend any post-incident suffering due to failures to act by employers and/or insurers.*

17. CCMs shall establish and refer to an established WCPFC working group vested with specific responsibility for the management of any, and all reported incidences of human rights and labour rights abuses, and the subsequent dissemination of that information to relevant CCM investigatory authorities with the capacity to investigate and prosecute instances of human and labour rights abuses wheresoever the evidential threshold is met. This may be in concert with National Human Rights Commissions, or other State authorities, and/or recognised human and labour rights organisations.

HRAS Comment: *There is a need for a centralised and coordinated WCPFC working group (either ad hoc or permanent) as the focal point for all alleged cases of abuse to ensure a single point of reference for the collation and dissemination of facts and evidence. This will require a WCPFC policy provision to establish the working group and set out its terms of reference. This should be reviewed and revised as necessary on an annual basis.*

18. CCMs shall implement measures which uphold and facilitate the uninhibited right of those in witness of human rights abuses or knowledge thereof, to report to the aforementioned permanent working group, any act or allegation of human rights abuse howsoever that information may be obtained. The working group shall be publicly accountable.

19. CCMs shall ensure that any authorised High Seas Boarding and Inspection vessels flying their flag cooperate, to the greatest extent possible, in any search and rescue operation involving a Fisheries 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 Fisheries Observer.

HRAS Comment: *Query whether, or not, there is a need for High Seas Boarding and Inspection vessels¹⁹ to have a specific mandate under respective domestic laws to inspect the working and living conditions of Fisheries Observers if such legislation is currently absent?*

20. Whenever requested, relevant Fisheries Observer providers and CCMs shall cooperate in each other's investigations, including providing their incident reports for any incidents indicated in paragraphs 8 through 16 to facilitate any investigations as appropriate.

21. CCMs shall work with any entities involved in the recruitment of Fisheries Observers to implement the provisions of this measure.

22. CCMs shall apply and, where appropriate, strengthen effective jurisdiction and control over vessels flying their flag and to exercise due diligence to improve and enforce requirements regarding core human rights and labour rights protections, standards and conditions on board all licensed fishing vessels.

23. All CCMs shall report progress on implementation of this measure, annually, to the Commission to apply this measure. CCMs are further encouraged to make concerted efforts and consider innovative options to assist developing CCMs, both flag CCMs and coastal CCMs, in the development and strengthening of relevant domestic legislation and in the enforcement of that legislation, including working with local industries (which includes labour and recruitment agents and applicable civil-society organisations) to help them meet the core standards in this measure.

¹⁹ <https://www.wcpfc.int/folder/high-seas-boarding-inspection>

Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.


The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.


OUR MISSION


To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.




STAY IN CONTACT

 We welcome any questions, comments or suggestions. Please send your feedback to:
Human Rights at Sea, VBS Langstone Technology Park, Langstone Road, Havant. PO9 1SA. UK

 Email: enquiries@humanrightsatsea.org

 www.humanrightsatsea.org

 As an independent charity, Human Rights at Sea relies on public donations, commercial philanthropy and grant support to continue delivering its work globally. Was this publication of use to you? Would you have paid a consultant to provide the same information? If so, please consider a donation to us, or engage directly with us.

 www.justgiving.com/hras/donate

 **ONLINE DEDICATED NEWS**
www.humanrightsatsea.org/news/

 **CASE STUDIES**
www.humanrightsatsea.org/case-studies/

 **PUBLICATIONS**
www.humanrightsatsea.org/publications/

OUR CONSULTANCY. INSTRUCT US



www.hراسi.org
International Maritime
Human Rights Consultancy

We are promoting and supporting:



Proud to be 'Green'

All of our publications are printed on FSC certified paper so you can be confident that we aren't harming the world's forests. The Forest Stewardship Council (FSC) is an international non-profit organisation dedicated to promoting responsible forestry all over the world to ensure they meet the highest environmental and social standards by protecting wildlife habitat and respecting the rights of indigenous local communities.

Human Rights at Sea

INDEPENDENT REVIEW

DRAFT PROPOSAL FOR MODEL WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC) CONSERVATION & MANAGEMENT MEASURE (CMM) ON HUMAN RIGHTS & LABOUR RIGHTS PROTECTIONS FOR FISHERIES OBSERVERS' SAFETY, SECURITY & WELL-BEING



Photo Credit: Alex Hoffer/Greenpeace








HUMAN RIGHTS AT SEA

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment.

Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

© November 2020 Human Rights at Sea All Rights Reserved.

-  enquiries@humanrightsatsea.org
-  www.facebook.com/humanrightsatsea/
-  twitter.com/hratsea
-  <https://www.linkedin.com/company/human-rights-at-sea/>
-  Human Rights at Sea

www.humanrightsatsea.org
www.humanrightsatsea.org/publications/

VBS Langstone Technology Park, Langstone Road
HAVANT PO9 1SA, United Kingdom

ISBN 978-1-913252-27-4