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OBSERVER REPORTS FOR INVESTIGATIONS

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Proposal from the United States of America

OBSERVER REPORTS FOR INVESTIGATIONS

Proposal by the United States of America to the Seventeenth Regular Session of the Technical and Compliance Committee of the WCPFC

Background

Monitoring compliance with the Commission's conservation and management measures (CMMs) is a foundation of achieving the objective of the Convention. Without compliance monitoring and the enforcement by CCMs of our binding obligations, effective management is impossible. Article 28 of the Convention tasked the Commission with developing an observer program to collect scientific data and to monitor the implementation of the CMMs. Article 28(6)(e) requires observers to not only monitor but to report their findings. Article 28(7) requires the commission to develop procedures for "the dissemination of data and information collected by observers to the members of the Commission." The Convention in Articles 23, 24 and 25, requires members to ensure their nationals and fishing vessels comply with the provisions of the Convention and CMMs adopted by the Commission. For many of the CMMs, the only way for members to monitor compliance with our binding obligations is by obtaining and reviewing the full observer report from trips by our flagged vessels, most especially where potential violations have been flagged. This evidence is required to allow flag CCMs to thoroughly investigate and successfully prosecute violations.

The Commission created the Regional Observer Programme (ROP) CMM 2007-01 to implement the Convention requirements. One of the objectives of the ROP is to "monitor the implementation of the conservation and management measures adopted by the Commission." Paragraph 11 of the measure describes the use and transmittal of observer information and reports:

CCMs shall take advantage of the information collected by observers for the purpose of investigations under Convention Articles 23 and 25, and shall cooperate in the exchange of such information, including by proactively requesting, responding to, and facilitating the fulfilment of requests for, copies of observer reports in accordance with standards adopted by the Commission, as applicable.

Paragraph 11 establishes a general obligation for CCMs to cooperate in sharing observer reports to conduct investigations, but no standards have been adopted by the Commission on exactly what the obligations are for the timing of the requests for observer reports by flag CCMs or the obligations of the ROP in providing the requested observer reports. For several years, at TCC, flag CCMs have reported a lack of progress on investigations into alleged infractions of the CMMs, often because the observer reports have not been provided to them by the ROP

providers. The failure to get the information collected by observers into the hands of the flag CCMs whose obligation it is to investigate results in CMMs not being enforced.

To address this problem, TCC13 (paragraph 161 of its summary report) formed an observer working group (WG) to: “address the need for CCMs to obtain copies of observer reports for their vessels in a timely manner so that they may fulfill their responsibility to undertake investigations of possible violations.” The WG made recommendations to TCC to improve the flow of observer reports including a recommendation that the ROP Minimum Standards include a standard on the provision of observer reports that specifies the process and information to be exchanged. TCC14 did not endorse that recommendation of the WG, and the Commission did not adopt it.

Based on other recommendations of the WG and TCC, the Commission has made minor changes to the ROP Minimum Standards aimed at better informing flag members about potential violations, allowing more targeted observer report requests. It also is looking into making it easier for CCMs to request observer reports and for ROP providers to provide them through the online Compliance Case File System (CCFS). WCPFC17 endorsed the TCC16 recommendation to have the Secretariat evaluate the possibility of using the CCFS to serve as a messaging tool for CCM observer report requests and ROP provider responses. Although this might be a helpful step towards providing greater clarity on observer report requests and ROP provider responses, it is not likely sufficient to substantially improve the flow of observer reports between ROP providers and flag CCMs. Additionally, this upgrade to the CCFS could take years.

Until this problem is addressed and CCMs have ready access to the observer reports needed to take enforcement actions, the Commission cannot rely on observers for compliance monitoring of the CMMs. Accordingly, the United States proposes that TCC17 make the following recommendation to the Commission.

TCC recommendation

TCC17 notes that in accordance with CMM 2007-01 paragraph 11, CCMs shall cooperate in the exchange of observer information, including responding to, and facilitating the fulfilment of requests for, copies of observer reports in accordance with standards adopted by the Commission.

TCC17 recommends that the Commission not adopt measures that depend on observers to ensure compliance until it has established effective mechanisms for the sharing of observer reports from ROP Providers to CCMs that need the reports for investigations.