

**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS,
PARTICIPATING TERRITORIES AND OBSERVERS**

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Draft guidelines to govern the participation of observers in CMS working group sessions

To All CCMs and Observers:

At WCPFC13, the Commission agreed to develop and adopt intersessionally, in time for use at TCC13, guidelines to enable the participation of NGO observers at closed meetings of the Commission and its subsidiary bodies. The United States offered to lead on this work and it has kindly prepared a draft set of guidelines, including a draft confidentiality agreement to be signed by individual observers, for their participation in CMS working group sessions. The criteria provided in paragraph 59 of paper WCPFC13-2016-33, prepared by the Secretariat, was used as the starting point for the proposed guidelines.

The United States would appreciate any feedback, suggested edits, comments that CCMs and Observers may have on these draft documents. Please send any comments, edits and suggestions directly to **Alexa Cole** (alexa.cole@noaa.gov) by **May 5, 2017**. The United States will prepare a revised draft that reflects the comments received for consideration of all CCMs for intersessional adoption in advance of TCC13.

The United States has proposed to limit the scope of these guidelines to the sole issue of enabling participation of Observers in the Compliance Monitoring Scheme working group sessions. The next step would be to recommend that at WCPFC14, the Commission consider whether it wishes to apply such guidelines more broadly, and incorporate them into its rules of procedure.

Yours sincerely,



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Article 21 of the Convention reflects the WCPFC's commitment to transparency in its decision-making and other activities, including through the participation of observers. Pursuant to that commitment, at WCPFC13, the Commission agreed to develop and adopt intersessionally, in time for use at TCC13, guidelines to enable the participation of NGO observers at closed meetings of the Commission and its subsidiary bodies under conditions which would ensure the confidentiality and non-disclosure of any information learned as a result of that participation, and sanctions for failure to comply with the rules and procedures relating to participation. The United States offered to work with interested parties to develop these guidelines. We have used the criteria provided in paragraph 59 of paper WCPFC13-2016-33, prepared by the Secretariat, as the starting point for the proposed guidelines below.

It is our recommendation that the Commission intersessionally adopt the guidelines below for the limited purpose of enabling the participation of observers in the Compliance Monitoring Scheme working group sessions held at TCC and the annual sessions. We recommend that at WCPFC14, the Commission consider applying such guidelines more broadly, and incorporating them into its rules of procedure.

We propose the following guidelines for intersessional adoption:

GUIDELINES FOR PARTICIPATION OF OBSERVERS IN CMS WORKING GROUP SESSIONS

The following guidelines will govern the participation of observers in any Compliance Monitoring Scheme working group sessions at TCC and the annual sessions. The Commission agrees that NGO observers¹, in addition to any observers not specifically addressed or covered by the Compliance Monitoring Scheme (CMM 2015-07)², may participate in the Compliance Monitoring Scheme working group sessions at TCC and annual sessions, pursuant to the following requirements:

1. Any observer may, at the time of meeting registration, request to attend any Compliance Monitoring Scheme working group session at TCC or annual sessions which considers the draft Compliance Monitoring Report and develops the provisional Compliance Monitoring Report (hereinafter referred to collectively as "CMS working group"). Only [1][2] individuals from each observer organization will be permitted to attend the CMS working group.
2. Each observer representative who attends a CMS working group session is required to sign and abide by a confidentiality agreement (see attachment A).

¹ The term "NGO observers" includes all accredited non-governmental organizations, regardless of whether they represent civil society or industry.

² See CMM 2015-07, para 21(i), which recognizes that special needs of SIDS and provides that the Commission will ensure "that inter-governmental sub-regional agencies which provide advice and assistance to these CCMs are able to participate in the processes established under the CMS, including by attending any working groups as observers and participating in accordance with Rule 36 of the Commission's Rules of Procedure, and having access to all relevant documents."

3. Each observer representative who attends a CMS working group session, as well as the observer organization they represent, is prohibited from:
 - a. disclosing any information obtained during the CMS working group sessions;
 - b. using information learned during the CMS working group session for any purpose other than those outlined in CMM 2015-07 para 1 and to support the continued development and refinement of the CMS;³
 - c. making public comments, including issuing press releases or releasing information to the media, on any matters which are discussed in the CMS working group sessions; or
 - d. retaining or possessing a copy outside a CMS working group session of any draft or provisional Compliance Monitoring Reports or any supporting non-public domain data.
4. Observers that attend CMS working group sessions will be provided access to the draft and provisional Compliance Monitoring Reports during the sessions, but will not be permitted to retain copies of the information.
5. All observers admitted to a CMS working group session shall comply with all existing rules and procedures applicable to their attendance in the meeting. Failure to comply with those existing rules and procedures, or with these guidelines, will result in the withdrawal of permission to attend the meeting by the presiding Chair of the meeting.
6. In the event of a breach of the confidentiality agreement or the terms of these guidelines, by either the individual who signed the agreement or the organization they represent, that individual and the organization they represent will not be permitted to attend any further CMS working group sessions in the current year or the following year. In the event of a second breach of the confidentiality agreement or the terms of these guidelines, by either the individual who signed the agreement or the organization they represent, that individual and the organization they represent will not be permitted to attend any further CMS working group sessions [for three years].
7. In the event of a situation addressed in paragraphs 5 or 6, CCMs may request that the Commission consider whether to rescind its invitation to the observer organization to attend future sessions of the Commission and its subsidiary bodies.
8. Other than as described in these guidelines, CMS working group sessions will be closed.

³ This is consistent with the restrictions, agreed to at WCPFC9 (see para 292 of WCPFC9 summary report), on CCMs' use of information learned through the CMS process.

**DRAFT Confidentiality Agreement for Observer Participation
in CMS Working Group Sessions**

Applicant name: _____
Address: _____
Phone Number: _____
Email Address: _____

Full name of Observer Institution, address and contact details:

I agree to the following:

1. To abide by the GUIDELINES FOR PARTICIPATION OF OBSERVERS IN CMS WORKING GROUP SESSIONS (CMS Guidelines) adopted by the Commission.
2. To not:
 - a. disclose any information obtained during the CMS working group sessions;
 - b. use information learned during the CMS working group session for any purpose other than those outlined in CMM 2015-07 para 1 and to support the continued development and refinement of the CMS;
 - c. make public comments, including issuing press releases or releasing information to the media, on any matters which are discussed in the CMS working group sessions; or
 - d. retain or possess a copy outside a CMS working group session of any draft or provisional Compliance Monitoring Reports or any supporting non-public domain data.
3. To abide by the Commission's data security standards as specified in the Commission's Information Security Policy, the Rules and Procedures for Protection, Access to, and Dissemination of, Data Compiled by the Commission, and the 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.
4. Applicant understands that in the event of a breach of the confidentiality agreement or the CMS Guidelines, by either the individual who signed the agreement or the organization they represent, that individual and the organization they represent will not be permitted to attend any further CMS working group sessions in the current year or the following year. In the event of a

ATTACHMENT A

second breach of the confidentiality agreement or the terms of these guidelines, by either the individual who signed the agreement or the organization they represent, that individual and the organization they represent will not be permitted to attend any further CMS working group sessions [for three years].

5. In addition, in the event of breach of the confidentiality agreement or the CMS Guidelines CCMs may request that the Commission consider whether to rescind its invitation to the observer organization to attend future sessions of the Commission and its subsidiary bodies.

6. That this Agreement may be terminated by giving written notice to the other party.

Signature of applicant

Date