



**FOURTH MEETING
INTERSESSIONAL WORKING GROUP
REGIONAL OBSERVER PROGRAMME (IWG-ROP4)
Novotel Hotel, Nadi, FIJI
July 6 - 8, 2015**

**An Option for Observer Programme Reporting Consistent with CMM 2007-01, Attachment B,
Annex C Paragraph 1 (C)**

**WCPFC-2015- IWGROP4 -09
19 June 2015**

Task for IWG-ROP4

1. Noting that WCPFC11-2014-DP07 was not agreed, WCPFC11 agreed that the IWG-ROP should also encourage discussion to develop processes to facilitate the provision of data, including observer reports, from the observer providers and placement information from Flag States to the Commission.

Introduction

2. The issue of the right of the vessel captain to view observer reports has been discussed and mentioned at a number of meetings of the Commission. Despite considerable discussion it appears that CCMs have a very different understanding of the interpretations of Attachment K Annex B para 1 of CMM 2007-01.

CMM 2007-01 Attachment K Annex B para 1 (C)

Guidelines on the Rights and Responsibilities of Vessel Operators, Captain and Crew

The rights of vessel operators and captains shall include:

- c) Timely notification from the observer provider on completion of the observer's trip of any comments regarding the vessel operations. The captain shall have the opportunity to review and comment on the observer's report, and shall have the right to include additional information deemed relevant or a personal statement.*

3. The topic has been the subject of a proposed measure submitted to WCPFC8 as WCPFC8-2011-DP36, and also at TCC8 WCPFC-TCC8-2012/DP09 by China, European Union, Japan, Republic of Korea and Chinese Taipei. It was also the focus of a paper submitted by FFA countries (WCPFC11-2014-DP07). Although there appears to be several interpretations of this portion of the measure and it is beyond the scope of this paper to summarize all that have been expressed to date, the two extremes can be summarized as follows:

- (a) Observer "reports" in any manner **should not** be made available to the vessel owners/operators before or immediately after an observer disembarks a vessel.

i. The proponents of this interpretation have legitimate concerns over the health and safety of the observer, especially if an observer has to provide "the reports" to the vessel before or just after they leave a vessel. In many instances, these "reports" may indicate negative activities or allegations of unauthorized activities that may have occurred on the vessel during the time the observer was on board the vessel. This could lead to pressure on a disembarking observer to modify the observer's reports - which should not be done in any instance (prior to debriefing etc.).

ii. CCMs supporting this same perspective hold that that all the data and information collected during the course of a trip must be checked for accuracy and quality control during standardized debriefing sessions and protocol. The position is that the vessel operator/owner will be alerted in due course if there have been any alleged infringements to answer to, and at that time, the vessel owner/operator will be fully allowed to respond to any alleged infringements. In line with this thinking, the FFA countries submitted reasoning to omit the current provisions of the paragraph in the paper WCPFC11-2014-DP07 which included the basic reasoning;

1. It directly compromises the safety and impartiality of the observer;
2. It has created confusion amongst flag States on how they can gain access to ROP data;
3. It is contrary to the Commission's rules and procedures for the protection, access to, and dissemination of data; and
4. It is impractical.

b) The alternative view is that a plain language interpretation of Paragraph 1 (c) indicates that the captain has a right to view "the reports" before or just after observer disembarkation.

4. Their interpretation of timely as stated in the paragraph is being interpreted as proximal to the time of the observer disembarking the vessel (after a trip or trips). The main reason for essentially immediate post trip access to "the reports" is so the Captain may be allowed to put in comments or provide an explanation on any alleged unauthorized activity as may be reported by the observer. The proponents of this interpretation believe that paragraph 1(c) indicates this allows the captain and vessel owners access to all observer "reports" and to make comments on any infringements soon after the alleged activity has occurred. Additionally, beyond the ability to the comment issue (as is the case allowed in at least one other tuna RFMO) -- is that immediate access allows vessel owners and operators to obtain statements from the crew etc. and collect records to support their perspectives given that some allegations may not come to light for months- possibly years, after the alleged infractions. The paper TCC8-2012/DP09 submitted by the EU an China, European Union, Japan, Republic of Korea and Chinese Taipei suggests that a new paragraph be added to clarify the responsibilities of observer providers in Attachment K of Annex A of CMM 2007-01

"The responsibilities of observer providers shall include: The observer provider shall ensure timely provision of preliminary observer reports to vessel operators/captains as well as to the competent authority in the flag CCM upon completion of their observer trips and ensure the opportunity for vessel operators/captains to review and comment on the observer reports under paragraph 1.c), Annex B." The preliminary observer reports shall contain all non-compliance findings, if any, to be reported by the observer in the final report. The preliminary report shall be delivered to the vessel operator/captain for review and eventual comments upon arrival of the vessel in port. The observer provider shall also ensure

prompt submission of the final observer report to the Commission and the competent authority of the flag CCM.”

5. There are a host of middle ground positions that have also been articulated at meetings of both the Commission and TCC. We do not attempt to summarize those here, rather this paper attempts to present the key elements of the two diametrically opposed views that have resulted in continued lack of agreement on this important issue. At the IWG-ROP4 we seek a discussion to determine if there is a way some of the information collected by observers during a course of a trip could be transmitted to vessel owners and operators. But that concerns regarding observer health and safety are fully addressed, while balancing the need for a transparent process to resolve alleged infringements of regional rules and standards.

Information

6. A major shortcoming of paragraph 1 (c) is that during the original drafting several important elements were not clearly defined or precisely described in the measure. This is not uncommon with many measures -- several which are related to observer activities. For instance, the passage contains word “timely”-- which can and does mean different things to different people. More importantly is that beyond observer providers or practitioners also there is no precise understanding on what the cited "observer report" entails.

7. In reality, observers have a number of reports, forms or logs that they complete for a single trip on a purse seiner, long line or a pole and line vessel. Many of these reports are the same general report forms used for each gear type and have a dual purpose in assisting scientific data collections as well as being used for compliance purposes,

8. The regionally accepted standard forms (aka reports) in the WCPO for purse seiners and other gear types are:

- a) a “vessel trip monitoring report” --This is often referred to as Form Gen-3 and ask the observer to record in a “Yes/No” format what an observer has witnessed on the vessel in relation to operations, social behavior, log sheet recording of position and catch, species of special interest interactions, sea safety issues and adherence to national regulation and WCPFC Conservation Measures.
- b) “Pollution report” Form Gen-6 This report is included as a report on the possible MARPOL incidents witnessed by the observer on the vessel on which they are carrying out their observer duties. The report also includes pollution observed and reported by the observer that may come from other vessels or other external pollution sources.
- c) After the trip there will be a purse seine or long line trip report submitted by the observer on a number of things witnessed for items not covered in the data fields as well as compiling in a written format a summary of the information collected.
- d) Purse seining and long line gear report - this is a report on the type of gear and the characteristics of an individual vessel the observer boards. The forms referred to as PS-1 or LL-1 asks for trip details, vessel characteristics, fishing, gear and electronics used during the vessels fishing trip.
- e) Debriefing report. The debriefer will compile a report that indicates that all forms, the trip report and the journal have been submitted, and will also cross-check the data fields by questioning the observer and by reading the comments, the journal and written report section.

Discussion Guide and possible way forward:

9. In an attempt to balance the views summarized above, the following is provided as the Chair's attempt to have a solution-oriented discussion on this issue:

10. There are, as indicated above many forms, logs, and pieces of information completed by observers on trips of both longline and purse seine gear types. It is clear that not all "reports" are appropriate or lend themselves to review by vessel operators in advance of debriefing or quality control protocols implemented by the various observer programmes. For instance, edits to observer data collected on length frequency data would never be appropriate (and are typically flagged by automated quality control algorithms). Additionally, under no circumstance should an observer be placed in a situation in which she/he believes there is a need to modify reporting based on coercion of any type from any exogenous source (other than as appropriate on debriefing by programme officials etc.). With these basic tenants in mind the following could be considered:

11. On completion of a trip or trips the observer are usually, but not always, debriefed by programme officers soon after they arrive back at port. This may not be immediately after the observer has disembarked the vessel, as debriefing is determined by the number of debriefers available, and also number of observers queued up to be debriefed. In most cases, debriefing occurs within 21 days of disembarkation. Part of the regional standard debriefing process is a form called General Form 3 (Gen-3 see attachment 1). This form is a brief summary of various operational, management, scientific and compliance related elements that are answered in a 'Yes or No' format to a number of questions related to activities that the observer witnessed while on the vessel. If a "Yes" answer is marked for the question, there is typically little or no detail given by the observer on this form. The incident may be documented in more detail somewhere else by the observer; normally the personnel journal/diary of the observer or the observer will be required to provide additional documentation as deemed appropriate by the debriefer or other programme personnel (e.g., compliance personnel). It should be noted that not all the activities listed on the Gen 3 form indicate infringements if a "Yes" box are ticked. If the event is related to a compliance issue (e.g., a regulation or law) that a positive response represents an alleged infraction, this is typically further investigated by an enforcement professional, as deemed appropriate by the observer providers' staff or on a set of protocols the provider may have in place.

12. It is proposed that a copy of the Gen-3 form could be made available after the observer has disembarked the vessel, by the observer provider to either the vessel operator or given the lag time between the observer arriving back for debriefing, that it be forwarded to the vessel owner, management firm or designated representative (ideally in that same port). The Gen-3 provided will note if the observer has been fully debriefed or if the Gen-3 should be considered a preliminary version of the report. The final debriefed Gen-3 copy could be supplied by the provider of the observer, if requested by the official contacts for the flag State of the vessel.

13. This information will give any captain/owner the right to get this Gen-3 report through their flag State contacts. This would help put on notice that a vessel maybe investigated after an alleged incident had occurred.

14. However, allowing the vessel operator to have a copy of observer Gen-3 report would only indicate a portion of the possible alleged infringement by the vessel related to that summary. There is the possibility of other allegations based on observer data collected that will be reviewed by the various

programme staff and enforcement professionals as part of the standard debriefing or data review process. However, the concerns related to the health and safety of the observer and the provision of information that may lead to alleged infractions will be mitigated.

15. The following procedure could be a step by step guide for access to a copy of the Gen-3 form by the vessel captain or owner:

- a) Observer witnesses an event that indicates “Yes” on the Gen -3 form;
- b) Observer keeps this report (and all other data) confidential and returns to home port or disembarkation point;
- c) Observer fully disembarks the vessel;
- d) Observer hands in their collection of data and reports to an authorized observer provider/person;
- e) Observer arriving back from the vessel in observers home port, or if required, has to travel back to home country & awaits debriefing;
- f) Observer is debriefed as soon as is possible after finishing the trip/trips*;
- g) Vessel captain/owners/point of contact will communicate with flag State official contacts, asking them to request a copy of the Gen-3 for a particular trip from the appropriate provider.
- h) Upon request from the vessel captain owners or the point of contact, the authorised Flag state official contacts and request from the observer provider** a copy of the Gen-3 form for a particular trip;
- i) Provider ensures the observer is safely disembarked from the vessel and has returned to their home port and has been fully debriefed before they send either a hard or electronically, a copy of the Gen-3 form to the Vessel captain/owners or point of contact.
- j) Flag state officials may request a copy of the Gen-3 form for a particular trip on a vessel; the request should not be of a general nature. E.g., asking the provider to supply Gen-3 forms for *all* trips *automatically*.

*If an observers carries out one or more trips consecutively on the same vessel. That vessel cannot request through their official contacts a copy of any Gen-3 compiled by that observer until the observer has completely finished his trips on the vessel and has fully disembarked the vessel.

** Request could be sent via the Commission Secretariat or other sub regional organizations who would verify the persons making the request are genuine official contacts and act as intermediators between the flag State and the provider if they so wish.

16. The above is a guide for discussion; a number of other options or amendments are viable. Participants are encouraged to provide these possible alternatives given the various views expressed to date. Whatever the decision made it needs to be concise so all parties have the same understanding and the health and safety of the observer is the prime consideration while attempting to accommodate the vessel owner and operators legitimate need to obtain information collected while observer was resident on his/her vessel in a timely manner as deemed appropriate by the Commission.

17. If WG participants can agree on this proposal or a variation that is agreeable to all, then a recommendation can be made to the TCC on how to interpret the precise meaning of CMM 2007-01 Attachment B Annex C paragraph 1 (c).