



**COMMISSION
SIXTEENTH REGULAR SESSION**
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**DRAFT GUIDELINES FOR PARTICIPATION OF OBSERVERS IN CLOSED MEETINGS OF
THE COMMISSION AND ITS SUBSIDIARY BODIES WHICH CONSIDER THE
COMPLIANCE MONITORING REPORT**

**WCPFC16-2019-DP14
5 November 2019**

SUBMITTED BY THE UNITED STATES OF AMERICA

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THE COMMISSION AND ITS SUBSIDIARY BODIES WHICH CONSIDER THE
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**Prepared by the United States of America
for the
Sixteenth Regular Session of the
Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

Explanatory Note

As Members may recall, at WCFPC13, the Commission agreed to develop and adopt guidelines to enable the participation of NGO observers at closed meetings of the Commission and its subsidiary bodies, in advance of TCC13 (WCPFC13 Summary Report, para. 658). The United States volunteered to develop a set of draft guidelines as well as a draft confidentiality agreement to be signed by observer representatives for their participation in closed sessions that consider the compliance monitoring report. Members provided comments on early versions of the draft guidelines and a final version was circulated for intersessional adoption in advance of TCC13. However, Members were not able to agree on the proposed guidelines. Some Members indicated that it would be more appropriate to wait for the final report from the Independent Panel to review the Compliance Monitoring Scheme before making a final decision on the adoption of guidelines.

The final recommendations from the Independent Panel to review the Compliance Monitoring Scheme were circulated in March 2018 (WCPFC Circular 2018-15) and included a recommendation to adopt a phased process for observers to participate in all CMS discussions (Final Report from the Independent Panel to review the Compliance Monitoring Scheme, para. 34).

In 2018, the Commission adopted CMM 2018-07, Conservation and Management Measure for Compliance Monitoring Scheme (CMS), which commits the Commission to a multi-year work plan, including the development of guidelines for participation of observers in closed meetings of the Commission and its subsidiary bodies that consider the compliance monitoring report. The measure specifies that this work will take place during 2020-2021. During TCC15, in an effort to ensure that this work progresses during 2020, the United States offered to recirculate the previously drafted guidelines for the participation of observers in closed TCC and Commission sessions that consider the CMR.

Attached are the draft guidelines and draft confidentiality agreement as circulated in WCFPC Circular 2017-40. As agreed at TCC15, the United States is re-offering these draft guidelines for consideration by WCFPC16, where they could be considered under provisional agenda item 10.2, review of the work plan tasks to enhance the CMS.

GUIDELINES FOR PARTICIPATION OF OBSERVERS IN CLOSED MEETINGS OF THE COMMISSION AND ITS SUBSIDIARY BODIES WHICH CONSIDER THE COMPLIANCE MONITORING REPORT

The following guidelines will govern the participation of observers in any closed meetings of TCC or the annual Commission which consider the Compliance Monitoring Report (CMR). The Commission agrees that NGO observers¹ (not including any observers specifically addressed or covered by the Compliance Monitoring Scheme (CMM 2015-07, paragraph 21)², which are not covered by these guidelines) may participate in the closed meetings on the CMR at TCC and annual Commission meetings, pursuant to the following requirements:

1. Any observer may, at the time of registration to attend TCC or a Commission meeting, request to attend any closed meeting of that session that considers the CMR. Observers who failed to submit such a request are not able to attend the closed meetings that consider the CMR. Only 1 individual from each observer organization will be permitted to attend the CMS working group.
2. Each observer representative who registers for and attends a closed meeting on the CMR is required to sign and abide by a confidentiality agreement (see attachment A).
3. Each observer representative who attends a closed meeting on the CMR, other members of the organization represented, and the observer organization itself, is prohibited from:
 - a. disclosing any information obtained during the closed meeting on the CMR;
 - b. using information learned during a closed meeting on the CMR for any purpose other than participation in the closed meeting on the CMR;
 - c. making public comments, including, but not limited to, issuing press releases, releasing information to the media, or posting on social media, on any matters which are discussed in the closed meeting on the CMR; or
 - d. retaining or possessing a copy outside a closed meeting on the CMR of any draft or provisional Compliance Monitoring Reports or any supporting non-public domain data, to which access has been provided.
4. All observers admitted to a closed meeting on the CMR 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, may result in the withdrawal of permission to attend the meeting by the presiding Chair of the meeting.

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.” These guidelines do not apply to Cooperating Non-Members, as they may fully participate in CMR discussions.

5. If the presiding Chair of the meeting, in consultation with the Executive Director, determines there has been a breach of the confidentiality agreement or the terms of these guidelines, by either the individual who signed the agreement, other members of the organization represented, or the organization itself, that individual and the organization represented may not be permitted to attend any further closed meetings on the CMR in the current year and the following year. In the event of a second or subsequent breach of the confidentiality agreement or the terms of these guidelines, by either the individual who signed the agreement, other members of the organization represented, or the organization itself, that individual and the organization represented may not be permitted to attend any further closed meetings on the CMR for three years.

6. In the event of a situation addressed in paragraphs 4 or 5, 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.

7. Except as specifically provided in these guidelines, meetings which consider the CMR will be closed.

**CONFIDENTIALITY AGREEMENT FOR OBSERVER PARTICIPATION
IN CLOSED MEETINGS OF THE COMMISSION AND ITS SUBSIDIARY BODIES
WHICH CONSIDER
THE COMPLIANCE MONITORING REPORT**

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

Full name of Observer Institution, address and contact details:

Meeting to which the Confidentiality Agreement applies:

On behalf of [name of organization], I agree to the following:

1. To abide by the GUIDELINES FOR PARTICIPATION OF OBSERVERS IN CLOSED MEETINGS OF THE COMMISSION AND ITS SUBSIDIARY BODIES WHICH CONSIDER THE COMPLIANCE MONITORING REPORT (Observer CMR Guidelines) adopted by the Commission.
2. To not:
 - a. disclose any information obtained during the closed meeting on the Compliance Monitoring Report (CMR);
 - b. use information learned during the CMS working group session for any purpose other than participation in the closed meeting on the CMR;
 - c. make public comments, including, but not limited to, issuing press releases, releasing information to the media, or posting on social media, on any matters which are discussed in the closed meeting on the CMR; or
 - d. retain or possess a copy outside a closed meeting on the CMR of any draft or provisional Compliance Monitoring Reports or any supporting non-public domain data.
3. To comply with all existing rules and procedures applicable to my attendance in the meeting.
4. In the event of a breach of this confidentiality agreement or the Observer CMR Guidelines, by either the individual who signed this agreement, other individuals from the same organization or the organization itself, the individual who signed this agreement and the

organization represented will not be permitted to attend any further closed meetings on the CMR in the current year and the following year. In the event of a second or subsequent breach of this confidentiality agreement or the terms of the Observer CMR guidelines, by either the individual who signed this agreement, other individuals from the same organization or the organization itself, the individual who signed this agreement and the organization represented will not be permitted to attend any further closed meetings on the CMR for three years.

Signature of applicant

Date