



**COMMISSION**  
**SIXTEENTH REGULAR SESSION**  
Port Moresby, Papua New Guinea  
5 - 11 December 2019

---

**NGO Comments on the US Proposal 14: 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)**

---

**WCPFC16-2019-OP13**  
**03 December**  
**11.35am**

**Submitted by**  
**ISSF**

Jung-Re Riley Kim  
Chair Western and Central Pacific Fisheries Commission  
PO Box 2356  
Kolonia Federated States of Micronesia  
via: [riley1126@korea.kr](mailto:riley1126@korea.kr) and [rileykim1126@gmail.com](mailto:rileykim1126@gmail.com)

3 December 2019

Dear Riley

**NGO Comments on the US Proposal 14: 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)**

The undersigned organizations write to you as accredited observer organizations to the Western and Central Pacific Fisheries Commission. Our organizations work in more than 100 countries and engage suppliers and provide advice to retailers, buyers and food service sectors regarding improvements in tuna sustainability which is integral to businesses and livelihoods, as well as the health of the marine environment. The views expressed in this letter are without prejudice to the development of future positions collectively or individually.

We remain committed to improving WCPFC's transparency and the participation of civil society organizations in the work of the Commission. To that end, attached are our collective views on the current draft Guidelines for observer participation in closed sessions of the Commission and its subsidiary bodies.

Annex A outlines our key concerns with the current draft Guidelines and provides suggested amendments to the Guidelines and Confidentiality Agreement for the consideration of CCMs. In providing these comments, we are seeking to work with CCMs to bring WCPFC's practices in line with other RFMOs and international best practices for the participation of observers in RFMOs.

We thank you for circulating this letter and the Annex to all CCMs and making it available as an observer paper on the WCPFC 16 meeting site. We look forward to fruitful discussions at this session and throughout 2020, including the CMS IWG, on this issue.

Sincerely



A handwritten signature in black ink, which appears to read 'Holly Koehler'.



cc: Feleti Teo, Executive Director WCPFC via [Feleti.Teo@wcpfc.int](mailto:Feleti.Teo@wcpfc.int)

## **Annex A: NGO Comments on the US Proposal 14: 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)**

The undersigned organizations thank the United States for submitting WCPFC16-2019-DP14 *Draft Guidelines for Participation of Observers in Closed Meetings of the Commission and its Subsidiary Bodies Which Consider the Compliance Monitoring Report* to WCPFC16. We recognize that this is a challenging issue and appreciate the opportunity to once again engage on this important issue to find a balanced process for allowing greater participation of observers in the Compliance Monitoring Scheme (CMS) process, including access to all relevant information, the working group meetings that consider the compliance monitoring report (CMR), and the work of the Commission generally. In general, we are not opposed to guidelines for how observers may participate in CMS. Nonetheless, we believe that the draft Guidelines and confidentiality agreement outlined in WCPFC16-2019-DP14 do not yet adequately balance ensuring confidentiality of CMS discussions with ensuring the guidelines for observer participation are fair and equitable. These comments, which include specific revisions to the Guidelines and confidentiality agreement, are intended to achieve this balance.

### **1. Clarify the rules and procedures applicable to observers**

Paragraph 4 of the draft Guidelines requires that observers ‘shall comply with all existing rules and procedures applicable to their attendance in the meeting’. However, the draft Guidelines do not provide any specific guidance on what those ‘existing rules and procedures’ are (beyond what is outlined in Rule 36 of the Commission ROPs). The Guidelines must be clear regarding all the rules and procedures that observers are expected to follow given the serious consequences for breaches outlined in the draft Guidelines.

### **2. Implement a fair process for alleged breaches**

The draft Guidelines provide no guidance on the process to be followed in the event of an alleged breach of the Guidelines.

Although paragraph 5 gives the presiding Chair the authority to determine whether there is a breach, the draft Guidelines are silent as to the process for how an alleged breach is to be notified to the Chair, Commission and/or the observer concerned. The draft Guidelines provide no instruction to obtain and assess relevant information/evidence from the party alleging the breach or from the observer alleged to have breached the Guidelines. The draft Guidelines do not contain a procedure for determining if a breach has occurred or a procedure that affords observers appropriate due process, including the opportunity to refute the allegation and provide evidence to contradict the allegation before the penalty is applied.

A requirement for the presiding Chair to consult with all relevant parties before a decision is made regarding an alleged breach should be included in the Guidelines to safeguard against unfounded allegations and to ensure integrity and fairness of the process consistent with Article 21 of the WCPF Convention.

We suggest that these concerns can be addressed by inserting a clear procedure that includes the presiding Chair obtaining information from all relevant parties, asking the party making the allegation to do so in writing and specifying the rule alleged to have been breached, when and how. The procedure could operate in the following manner:

- a. A Member must make an allegation in writing that describes the nature of the breach (who, when, how and what element of the guidelines was breached), to the presiding Chair.

- b. The presiding Chair shall notify the observer in question and allow the individual/organization to respond to the alleged breach, either verbally or in writing, to the presiding Chair, Executive Director and Commission Chair.
- c. The presiding Chair shall, in consultation with the Executive Director and Commission Chair, and after reviewing all applicable information, including from the observer in question, consider the validity of the complaint and determine if a breach of these Guidelines or the confidentiality agreement has occurred.

This procedure is not burdensome and is fair to all parties.

### **3. Ensure penalties are not excessive in their severity and scope**

The penalty of losing access to the current CMS working group session (paragraph 5 and 6) or future CMS sessions (paragraph 6) are excessive both in severity and scope. Currently, the draft Guidelines apply a penalty of loss of attendance for two years for one offense of any type whether major or minor, can be applied to the entire observer organization, and could result in an observer organization being prevented from attending all future Commission and subsidiary body meetings. Such penalties are not equal in scope or severity to CCMs that breach the 2007 or 2009 WCPFC Data Rules establishing an unequal standard.

### **4. Limit individuals on observer delegations to the same number of representatives to which the organization has paid to attend the Commission meeting**

Paragraph 1 of the draft Guidelines seeks to limit observer participation in closed meetings to one individual from each accredited observer organization. Noting the recommendation from the CMS Review (paragraph 34(e)) and recalling that the Commission agreed to implement a fee for observer participation in the WCPFC Commission meetings (WCPFC 13, paragraph 656), we suggest that the number of individuals be limited to the same number of representatives involved in the CMS working group meetings as the organization pays to attend the WCPFC Commission meetings. We note, as the Secretariat did in WCPFC13-2016-33, that very few NGO observers typically attend meetings of the Technical and Compliance Committee, where the bulk of the discussions concerning the CMR occur.

### **5. Provide access to all papers prior to the commencement of the meeting**

To enable constructive engagement in the CMS discussions, the draft Guidelines should specify that registered observers attending the CMS working group session will be provided access to all of the draft and provisional compliance monitoring reports and any other relevant materials immediately after the signed confidentiality agreement has been received by the WCPFC Secretariat.

## **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 observers<sup>1</sup> (not including any observers specifically addressed or covered by the Compliance Monitoring Scheme (CMM 2015-07, paragraph 21)<sup>2</sup>, 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 do not submit such a request are not able to attend the closed meetings that consider the CMR. Only the same number of individual observers from each observer organization that has paid the required fee to attend the annual WCPFC Commission meetings 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).

2bis. Observer participants will be provided with access to the draft and provisional compliance monitoring reports and any other relevant information immediately after they have signed the confidentiality agreement and paid the required fees to attend the annual WCPFC Commission meeting.

3. Each observer representative who attends a closed meeting on the CMR, other members of the organization represented, and the observer organization itself, are 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

---

<sup>1</sup> The term “NGO observers” includes all accredited non-governmental organizations, regardless of whether they represent civil society or industry.

<sup>2</sup> 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.

- 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 considering the CMR shall comply with these Guidelines and the rules specified in the confidentiality agreement. Failure to comply with these Guidelines and the confidentiality agreement may result in the withdrawal of permission to attend the meeting by the presiding Chair of the meeting.

#### Process for Alleged Breaches of the Guidelines and/or the Confidentiality Agreement

4bis. A member must submit a complaint in writing to the presiding Chair. When submitting a complaint, the member must specify the provision of these Guidelines or the confidentiality agreement that the observer is alleged to have breached, when and how.

4ter. The presiding Chair shall notify the observer in question and allow the individual /organization to respond to the alleged breach in writing to the presiding Chair, Executive Director and Commission Chair.

4quater. The presiding Chair shall, in consultation with the Executive Director and Commission Chair, and after reviewing all applicable information, including from the observer in question, consider the validity of the complaint and determine if a breach of these Guidelines and/or the confidentiality agreement has occurred

5. If the presiding Chair of the meeting, in consultation with the Executive Director and Commission Chair, determines there has been a breach of the confidentiality agreement and/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. In the event of a second consecutive breach of the confidentiality agreement and/or the terms of these Guidelines, by either the individual who signed the agreement, other members of the organization represented, or the organization itself, the presiding Chair of the meeting, in consultation with the Executive Director and Commission Chair, may decide to exclude the observer or the organization from attending future closed sessions on the CMR for up to a maximum of two 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 the observer CMS Guidelines and confidentiality agreement 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, that individual who signed this agreement and the organization represented may not be permitted to attend any further closed meetings on the CMR in the current year. In the event of a second consecutive breach of this confidentiality agreement and/or the terms of the Observer CMR Guidelines by either the individual who signed this agreement, other members of the organization represented, or the organization itself, the presiding Chair of the meeting, in consultation with the Executive Director and Commission Chair, may decide to exclude the observer or the organization represented from attending any future closed sessions on the CMR for a maximum of two years.

---

Signature of applicant

---

Date