



COMMISSION

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**PARTICIPATION OF OBSERVERS AT THE WCPFC-
WWF, PEW AND GREENPEACE**

**WCPFC10-2013-OP07
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December 3, 2013

Professor Glenn Hurry
Executive Director
Western and Central Pacific Fisheries Commission
Kaselehlie Street PO Box 2356
Kolonias, Pohnpei State, 96941, Federated States of Micronesia

Dear Professor Hurry:

This letter is submitted on behalf of WWF, Pew, and Greenpeace with respect to the non-governmental organizations (NGOs) that participate in the Western and Central Pacific Fisheries Commission (WCPFC; Commission) process as accredited observers. We are writing to respectfully request that the Commission urgently and clearly resolve the continuing challenge to observer involvement in the Commission process in favor of increased transparency and observer participation consistent with the legal and policy mandates governing the operation of the Commission. The Commission must ensure the appropriate and mandated participation of observers not only with regard to the current “small working group for tropical tunas” at WCPFC10, but also within the context of the overall functioning of the Commission.

International Transparency and Observer Policy Guidance

Existing legal and policy guidance for international forums, including the WCPFC is clear regarding the participation of observers in the Commission process. The Fish Stocks Review Conference¹ and the convention text of the United Nations Fish Stocks Agreement (UNFSA)² itself have both emphasized the importance of transparency in science and in the operation of fisheries management bodies. Current best practice requires:

- Observer acceptance subject to a majority vote;
- Access by observers to the agenda and all documents received by delegations, subject only to commercial confidentiality;
- Attendance at all meetings, including of subsidiary bodies;
- Ability to make interventions, under the control of the Chair; and

¹ Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. United Nations Ocean and Law of the Sea. Accessed December 02, 2013. Available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/465/87/PDF/N1046587.pdf?OpenElement>.

² Agreement For The Implementation Of The Provisions Of The United Nations Convention On The Law Of The Sea Of 10 December 1982 Relating To The Conservation And Management Of Straddling Fish Stocks And Highly Migratory Fish Stocks. United Nations Conference On Straddling Fish Stocks And Highly Migratory Fish Stocks. Article 12, Paragraph 2. Accessed December 02, 2013. Available from http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm

- Ability to circulate relevant documents.

Furthermore, the Almaty Guidelines developed under the Aarhus Convention³ similarly state that participation of public stakeholders should be as broad as possible, and that each Party should encourage international forums to make available the agenda, drafts, agreed resolutions and reports in a timely manner, the public should be allowed at all relevant stages of the decision-making process, subject only to specific and transparent exclusions, and stress the entitlement to have access to all documents relevant to the decision-making process produced for the meetings, to circulate written statements and to speak at meetings.⁴

Therefore, applicable international law and policy clearly favors the full participation of observers and the transparency that accompanies an open and inclusive public process.

WCPFC Convention Text and Rules of Procedure

The WCPFC Rules and Procedures recognise the rights of observers in participating at the convention deliberations as follows:

- Observers may sit at meetings of the Commission and its subsidiary bodies, and
- Upon the invitation of the Chairman and subject to the approval of the Commission or the relevant subsidiary body, may make oral statements on matters within the scope of their activities;
- Written statements within the scope of their activities which are relevant to the work of the Commission may, subject to the approval of the Chairman, be distributed at meetings of the Commission and its subsidiary bodies.⁵

Additionally, the Commission's Rules and Procedures on closed sessions explicitly state that the meetings of the Commission and its subsidiary bodies shall be open unless the Commission or the subsidiary body concerned decides *that exceptional circumstances require that meetings be held in closed session* (emphasis added).⁶

No exceptional circumstances have been identified with respect to the negotiation of a new tropical tuna CMM as this is the usual work of the Commission. Therefore these sessions should be kept open to observer delegations and observers should be allowed to both attend and speak in these sessions.

Lastly, placing restrictions on the ability of an observer to intervene during an officially sanctioned WCPFC meeting or report back to other NGO participants

³ Public Participation in International Forums. United Nations Economic Commission for Europe (UNECE). Accessed December 02, 2013. Available from <http://www.unece.org/env/pp/ppif.html>.

⁴ *Id* at Section 5, Paragraph 33-36.

⁵ Rules of Procedure. Western and Central Pacific Fisheries Commission. Section XII, Rule 36, Paragraph 5. As adopted at the Inaugural Session, Pohnpei, Federated States of Micronesia, 9-10 December 2004. Available from http://www.wcpfc.int/system/files/Rules_of_Procedure.pdf.

⁶ *Id* at Section VI, Rule 15, Paragraph 1.

regarding the discussion and outcomes of the meeting constitutes “unduly restrictive procedures” in contravention of the WCPFC Convention.⁷

The Role of Observers

NGO Observers offer collaboration, funding, input, expertise, technical support, and partnerships to the Commission. In many cases, NGOs play a central role in helping Commission CCMs to deliver strong and ever-improving management of this unique and globally important fishery.

In the Western and Central Pacific Ocean (WCPO) region, NGOs have collectively invested substantial time and effort in supporting governments in delivering on their commitments and share a common goal of seeing the tuna fisheries managed for the benefit of the countries and communities that benefit from these resources. Additionally, NGOs share an interest in ensuring the ecosystems are also well managed, which require appropriate management of fishing activities to ensure continued healthy oceans. To treat observers as somehow ancillary or problematic in these critical negotiations is misplaced, and detracts from the core business of ensuring that all entities who can constructively contribute to improvements in management measures are able to fully participate.

Conclusion

The NGO community remains extremely concerned that member states have once again attempted to exclude the NGO community from the WCPFC process despite a letter submitted to the WCPFC on November 6, 2013, emphasizing the need for greater transparency in the process. As stated in that letter, “The WCPFC must maintain open and transparent procedures and operations to ensure the credibility and integrity of the process. Closed sessions...should only be employed when there is a clearly defined need to ensure the confidentiality or security of information discussed in accordance with agreed rules and procedures.” This position is clearly supported in policy in the WCPFC convention text, through the United Nations Fish Stocks Agreement, and through broader multilateral agreements that several WCPFC members are party to, in particular the Almaty guidelines to the Aarhus convention.

Transparency and accountability are fundamental principles underpinning governance discussions to ensure that no stakeholders are unduly intimidated, that logic and science-based decision making prevail, and to ensure that when hard decisions are necessary they are taken in a thoughtful, meaningful, and fair way. The best outcomes for WCPFC will be achieved with full and transparent negotiations, where the outputs and outcomes can be seen to be credible and based on legitimate discussion, compromise and consensus. The NGOs that participate in the WCPFC process have collectively demonstrated, over a number of years, that they take this challenge and responsibility seriously, and the Commission should too.

The NGO community contributes substantially to the development and implementation of sustainable fisheries in the Western and Central Pacific Ocean tuna

⁷ Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Western and Central Pacific Fisheries Commission. Article 7, Section 21. Available from <http://www.wcpfc.int/system/files/text.pdf>.

fisheries through research, analysis, expertise, advice, and funding. As such, the NGO observers are important stewards of the resource as well as stakeholders in the WCPFC process and deserve to be present in the decision making process that takes place within the WCPFC.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Alfred Lee Cook Jr.", written in a cursive style.

World Wide Fund for Nature (WWF)