



March 29, 2018

Mr. Glen Joseph  
Chair of the Compliance Monitoring Scheme Intersessional Working Group  
C/- gjoseph@mimra.com

Dear Glen:

Thank you for the opportunity to provide comments on the Report of Independent Review of the WCPFC Compliance Monitoring System in support of the CMS-IWG's task to develop a CMM proposal for consideration at WCPFC15 this December. The Independent Review, coupled with the comments tabled by many WCPFC stakeholders, including CCMs, observers and industry, on the CMS since 2011 provide a wealth of ideas and input to continue to improve the WCPFC Compliance Monitoring System (CMS).

Per Circular 2018/16, we submit the following initial comments from ISSF on the recommendations of the Report of Independent Review of the CMS. ISSF also nominates myself ([hkoehler@issf-foundation.org](mailto:hkoehler@issf-foundation.org)) and Ms. Claire van der Geest ([cvandergeest@issf-foundation.org](mailto:cvandergeest@issf-foundation.org)) to participate in the work of the CMS-IWG; we look forward to working constructively with all stakeholders on this issue through this IWG and in the Commission.

#### General Comments

We are pleased to note that the overwhelming response from stakeholders is that *'the CMS is core business of the Commission'*, that *'the CMS has made a positive contribution'* to WCPFC and that there has *'generally been increased responses from CCMs in addressing compliance issues'* (Section 2.4, paragraphs 8-10). The CMS is an important tool to assess Members' implementation of their obligations, address instances of non-compliance and, where required, provide support to enable those obligations to be fully met. To that end, ISSF considers that the implementation of the various iterations of the CMS has provided valuable lessons-learned and insights for its continued improvement.

We support the recommendation to identify ways to monitor the trends in compliance, flag State investigations (FSIs) and capacity building through time (Recommendation 2.7(a-c)). Clear and public reporting on such trends will be an asset to WCPFC engagement with the broader community as it would demonstrate a high level of accountability. The current reporting methods do provide significant data but options such as those highlighted in the Report (e.g., spider plots of key issues/CMMs in Section 2.5, paragraph 20) would present this complex information in a more easily accessible format.

We also agree with the feedback from stakeholders that the CMS must provide a balanced review of all gears, fleets and fishing related activities operating in the WCPFC Convention Area (Recommendation 5.4(f)), as it has been the long-standing position of ISSF that all gears must be managed in accordance with the scientific advice. Likewise, ISSF supports the recommendations on implementation of minimum



information requirements. However, we consider that this should not be limited to the FSI, but should be applied universally in WCPFC reporting, including in the Part II Reports. Outlining the minimum information requirements will provide clarity from the outset and save valuable time throughout the CMS process. Furthermore, minimum information requirements will enable CCMs to be prepared for possible questions at TCC and help address the concern that some CCMs are asked to provide more information at TCC as compared to others (Recommendation 6.5(a)).

ISSF supports the view that the CMS should focus on CCM implementation of the WCPFC CMMs and decisions, rather than individual vessel compliance, which is more appropriately taken up through other mechanisms, including the IUU Vessel Listing procedures. However, there may be merit in considering options in the new CMS CMM, or via amendments to the IUU Vessel List CMM, that would trigger closer inspection of a CCM's implementation of particular CMMs based on the number of IUU cases/nominations. For example, if there are a number of vessels nominated from a single flag State or numerous ongoing cases of alleged IUU fishing, this may be indicative of either a failure of the flag State to (1) implement its WCPFC obligations or (2) impose penalties of 'adequate severity' or take 'effective action'.

#### Considerations for an Amended/New CMS CMM

In developing a new or amended CMM, careful consideration of a range of issues is needed. ISSF agrees with the recommendation that the new or amended CMM be durable for a five-year period with an external review completed in year five only (Recommendation 12.5(b)). This will allow time for the CMS mature in its functioning, and for a body of experience with it to develop. ISSF also considers that a new or amended measure should clearly articulate the role and mandate of the Secretariat. This would include the Secretariat's role in relation to the assistance provided at TCC, and the preparation of the dCMRs and the ability to integrate various data sources (MCS or otherwise) to assess and/or validate the self-reporting by a CCM.

It is clear from the Report that many share the view that the number of obligations currently being assessed through the CMS needs to be addressed. ISSF believes that it is important to not only continue to prioritize the obligations to be assessed, but to also clarify why these obligations have been selected; thereby providing guidance to Commission regarding which obligations need to be assessed and on what frequency.

ISSF suggests that the new CMS CMM, or the TCC, develop criteria that identifies the highest priority CMMs based on a risk assessment of the impact of non-compliance on meeting the WCPF Convention objectives. We consider that the criteria could include the following categories, which are similar to those used in the WCPFC Case File system:

- CMMs with catch or effort limits. Non-compliance with such CMMs would undermine the conservation and management of the resource, which would have impacts on economic development opportunities and food security for coastal States;
- CMMs with closed areas or prohibitions (e.g., FAD temporal/spatial closures; at-sea transshipment for purse seine vessels; shark finning, retention of certain shark species or whale shark encirclement);
- CCMs with specific procedures that are pre-requisites to allowing a particular activity (i.e., at-sea

- transshipment for longline, troll and other vessels);
- CCMs or decisions for data reporting, both for target and non-target species, including observer coverage requirements. Non-compliance with such CMMs would undermine the ability of the Commission to conduct stock assessments or other analyses, which would increase uncertainties in the scientific advice available to the Commission; and
  - CMMs that have provisions where differing interpretations are impacting effective implementation of the CMM itself, and therefore could impact the conservation and management of the stock.

Regarding the suggestion of a staggered assessment of lower prioritized obligations, we note that the current CMS CMM requires that successive instances of non-compliance triggers the escalation of the response to the non-compliance. Therefore, it is not clear how these obligations would trigger this response if the obligation was assessed only every two or three years. Moreover, the delayed assessment provides a protracted period during which the non-compliance could continue. One approach may be that for lower prioritized obligations that are only assessed periodically, any non-compliance is automatically escalated to the second-tier response and re-assessed for that CCM the following year.

ISSF also recognizes that addressing the perceived or real lack of accountability, fairness and equity in the CMS process will be fundamental to the adoption of a durable CMS. Regarding these issues, we provide the following input:

1. Establish a more rigorous process to report on the status of investigations and actions taken by Members in relation to identified areas of non-compliance. Although we note that there is partial information made available through paragraphs 8 and 24 of the current CMS CMM, these provisions should be strengthened to provide for public summary updates of the status reports of investigations. Such public summary updates would balance the importance of transparent reporting on the efforts being taken to address non-compliance with a Member's national regulatory and confidentiality requirements regarding ongoing investigations.
  - For example, although Appendix 2 of the Final CMS Report provides overarching information on CCM non-compliance, the FSI and the numbers of vessels, and the number of years of successive non-compliance, there is no useful public information about the actions taken and the status of the investigation, whether a violation was found, and if so what was done about it. In addition, the Final CMS Report should identify if a CCM that scored 'FSI' in year one, and again in year two, if the 'FSI' relates to the same infraction or a new one.
  - Further, unlike all other tuna RFMOs, there is no mechanism in the WCPFC to understand how any CCM has given effect to their obligations because the entire Part II Report is considered non-public domain data. Although there are components of the Part II Report that meet the WCPFC definition of non-public domain data (e.g. VMS data, ROP reports and details of ongoing investigations etc.), there are also many elements that do not meet the risk classification methodology for the WCPFC Information Security Policy. ISSF urges the Commission to review the Part II Reports and identify those data elements that can be made publically available in order to strengthen the perception of accountability in the WCPFC.

2. Consider making the identified “Capacity Assistance Needs” part of the public TCC report, or as a separate paper. Making this information public would provide potential donors, including civil society organizations, with the opportunity to consider mechanisms to support interested CCMs regarding these capacity building needs.

#### Scheme of Responses to Non-Compliance

ISSF has been, and continues to be, a strong advocate for the development and adoption of a scheme of responses to non-compliance. We note the previous proposals from Australia in 2010-2012 - together with the ICCAT and CCSBT schemes - provide a solid starting point for discussions at WCPFC. While we recognize the sensitivity of this issue, ISSF considers that the Report’s recommendation of a three-year timeframe to develop a scheme of responses to non-compliance is too long and should be reduced to the greatest extent possible.

#### Transparency and Participation in the CMS

ISSF strongly supports the CMS process and considers that, in all but transparency, the WCPFC has a robust compliance assessment process with many best practice elements. The Report highlights that the WCPFC *‘falls short’* in this aspect and is inconsistent with both the Law of the Sea Convention and the UN Fish Stocks Agreement (Section 6.4, paragraphs 28-29), as well as the practices of other RFMOs. It is essential that the new or amended CMM resolves this long-standing issue. ISSF and other civil society and industry groups have provided detailed comments to the Commission on this issue in the past, which we will not repeat in this document (see Attachment 1 for Circulars 2013-09 and 2014-98).

It is our view that civil society participation in the CMS will provide a platform for greater accountability, equity and fairness in the process. Moreover, civil society organizations could provide background information on experiences and practices in other fora and support Members through targeted capacity building programs.

On the specific Report recommendations, ISSF maintains that all stakeholders be equitably treated. We have a number of questions about how the Report’s proposed “phased process” would be operationalized in practice, including how organizations would be chosen to be part of the phased access and when the transition would be completed and allow for all accredited observers to participate. If such a “phased process” is the only way to make progress, then the process must be fair, articulate the basis for choosing which organizations are afforded initial entry, clearly outline the terms and conditions for how this phased approach would be implemented by the Commission, and include a specific timeframe and work plan that would result in a fully transparent CMS with all accredited WCPFC observers being able to participate.

In relation to the draft Guidelines referred to in paragraph 33 of the Report, civil society organizations provided input to the Commission on 29 March 2017 in advance of the development of these draft guidelines (Attachment 2a). ISSF also provided detailed comments on the draft guidelines themselves to the Coordinator of the Intersessional Process on 21 April 2017 (Attachment 2b). Our comments and concerns on those draft guidelines remain as outlined in these previous communications. ISSF requests that the development of any guidelines, rules or procedures that would govern the participation of observers in the CMS take these concerns and comments fully into account.



We look forward to continuing to work with you, Chair, and with all CCMs and the Secretariat, on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Holly Koehler". The signature is written in a cursive, flowing style with a prominent flourish at the end.

Holly Koehler  
Vice President for Policy and Outreach

cc:

Dr. Lara Manarangi-Trott, WCPFC Compliance Manager  
Ms. Alexia Cole, TCC Chair

Attachments:

1. NGO letters dated 6 November 2013 (Circular 2013-119) and 12 November 2014 (Circular 2014-98) on civil society participation in the CMS.
2. ISSF letters dated 29 March 2017 and 21 April 2017 regarding the drafting of guidelines governing the participation of civil society organizations in the CMS.



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

**Circular No.: 2013/119  
Date: 12 November 2013  
No. pages: 4**

**LETTER ON WCPFC TRANSPARENCY FROM SOME NGO AND IGO  
REPRESENTATIVES**

Dear All,

Please find attached a letter from a combined group of concerned Non-Governmental Organisations and Inter-governmental Organisations who have raised a series of issues concerning the transparency of the Commission and its business.

Thanks



Professor Glenn Hurry  
Executive Director

November 6, 2013

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

Dear Professor Hurry:

This letter is submitted on behalf of several of the non-governmental organizations that participate in the Western and Central Pacific Fisheries Commission (WCPFC) process as accredited observers. We are writing to bring to the attention of the Commission our views on what we see as a disturbing trend regarding the level of transparency and openness in WCPFC meetings and information sharing.

With respect to meetings, the WCPFC is more often following the practice of having closed sessions for discussions that exclude observer representatives. Regarding information and documents, we note with concern that an increasing number of documents and other information is posted only on the secure side of the WCPFC website, including information about upcoming meetings or working groups. In addition, draft meeting reports are circulated only to CCMs and not accredited observers that attended and contributed to the meetings, such as the recent TCC9 meeting. We believe that much of this information is unnecessarily limited in its distribution and too many discussions are inappropriately designated as confidential.

The WCPF Convention is one of the most modern of regional fisheries management treaties, and during its negotiation a significant effort was made to ensure the text incorporated the principles and norms set by the UN Straddling and Highly Migratory Fish Stocks Agreement (article 12). During the Multilateral High Level Conference and Preparatory Conferences, the transparency provisions of Article 21 and rule 36 of the Commission's Rules and Procedures were difficult to negotiate, but the resulting texts in the Convention and the Rules set a high standard for transparency among tuna RFMOs. This was a noteworthy achievement. As a result, the Commission is in a good position to demonstrate a high degree of openness.

However, in our view the practice of the Commission has not lived up to this high standard. And more concerning is that over the last several years, we have seen an erosion of transparency in the WCPFC. The Commission has, increasingly, seriously considered or held closed sessions for working groups that we strongly believe should have been open. At the 9<sup>th</sup> Technical and Compliance Committee (TCC) meeting, observers were excluded from almost half of the meeting due to the Compliance Monitoring Review being held in closed sessions. In fact, all of the compliance discussions in the WCPFC to date have been held in closed sessions. We understand and respect the need to maintain a secure provisional discussion of potentially sensitive issues, or in the consideration of data or reports that might be considered non-public

Professor Glenn Hurry  
November 6, 2013  
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domain information pursuant to the Commission's rules on data access. However, the Commission's Rules and Procedures on closed sessions (rule 15) states 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). Further, we note that the 2007 data rules classify the Part 2 annual reports on compliance as low risk and yet the Commission keeps these reports confidential.

Again, we understand that certain negotiations and Heads of Delegation meetings need to be closed. However, we believe that accredited observer NGOs should be allowed to attend other Commission meetings and working groups. If deemed necessary, procedures could be developed to ensure that certain matters discussed in such meetings not be made public, which is the practice in some other tuna RFMOs.

We believe it is important to consider the transparency issues in the context of the practices of other RFMOs. The fact is that the WCPFC's use of closed sessions for discussion of CCM compliance with WCPFC obligations and conservation and management measures, and the lack of any detailed reports by WCPFC on the level of compliance, is not consistent with international best practices for RFMOs. Indeed, the Indian Ocean Tuna Commission (IOTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and Inter-American Tropical Tuna Commission (IATTC) all allow accredited observers to attend the compliance committees in their respective regions and make materials under discussion such as compliance reports publically available ahead of these sessions. We believe that the WCPFC should adhere to a standard at least commensurate with its sister organizations and consistent with international best practices and standards.

The WCPFC must maintain open and transparent procedures and operations to ensure the credibility and integrity of the process. Closed sessions, posting of information on the secure side of the WCPFC website, and limiting distribution of draft meeting reports to only CCMs 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. Moreover, closed sessions should be the rare exception, not the rule. Therefore, we respectfully request that the WCPFC Commission urgently reevaluate its policies and criteria for what information will be posted on the secure side of the WCPFC website or have limited circulation, as well as to make more transparent the compliance review process and ensure that other working group sessions are open to observers.

We kindly request your urgent attention to this very important issue.

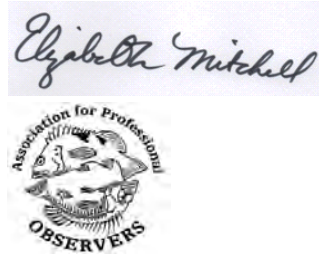
Very Respectfully,



Professor Glenn Hurry  
November 6, 2013  
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Secretariat to the Agreement on the Conservation of Albatrosses and Petrels



November 19, 2014

Dr. Lara Manarangi-Trott  
Interim Executive Director  
Western and Central Pacific Fisheries Commission  
Kaselehlie Street PO Box 2356  
Kolonia, Pohnpei State, 96941, Federated States of Micronesia

Dear Dr. Manarangi-Trott:

This letter is submitted on behalf of the undersigned non-governmental and industry organizations that participate and have a strong interest in the Western and Central Pacific Fisheries Commission (WCPFC) processes and outcomes. Collectively our organizations have thousands of staff working in offices and partner organizations in over a 100 countries and engage suppliers and provide advice to retailers, buyers and food service sectors regarding improvements in tuna sustainability. In addition, the undersigned industry organizations represent a considerable number of purse seine, longline and pole & line vessels active in WCPO tuna fisheries.

We are writing to the Commission regarding the serious problem of non-provision of operational catch and effort data by four Commission members - China, Japan, Korea and Chinese Taipei. The non-provision of operational level data from these CCMs must be addressed by the Commission at its upcoming meeting in Apia, Samoa as an urgent priority, consistent with the standards set out in the Scientific Data to be Provided to the Commission.

The Science Provider, SPC has clearly enumerated the impact of operational level data gaps at recent meetings of the Scientific Committee and Technical and Compliance Committee. These impacts include:

- Inadequate breakdown of catch/effort by areas of national jurisdiction and the high seas or estimate catch/effort between EEZs and the high seas and therefore unable to provide scientific advice that effectively ameliorates the impact of fishing;
- Inability to accurately attribute catches from flag States to charter States due to possible double-counting;
- Failure to provide a complete set of catch and effort data for the public domain because of adherence to the Commission's "3 vessel rule" for public domain data;
- Insufficient assessment of the effectiveness of aspects of conservation measures, particularly spatial elements;
- Preventing the use of fine-scale stock assessment models, such as the SEAPODYM model that rely on operational level data as the fishery-dependent data input;
- Increased uncertainties in stock assessments due to inability to determine the effects of targeting shifts on catches and catch rates, which affect the scientific advice in unknown ways;

- Undermining the ability to identify historical trends in stock status that are not evident in aggregate data, and that could be taken into account in the stock assessments; for example, obtaining a better understanding of declines in longline bigeye tuna CPUE which are not apparent without access to operational data;
- Lack of integration between high seas VMS data with catch and effort data that is critical in verifying manual reporting information and operational data against VMS reports;
- Ineffectual verification and reconciliation of transshipment reports between the volumes of catch reported as transhipped and reported catches in logbooks; and
- Inability to determine the effectiveness of different mitigation methods on specific non-target species.

These four Commission members all have significant fleets operating in the WCPO, but have never provided the required operational level data to WCPFC. Moreover, none of these CCMs have submitted plans to resolve the impediments preventing the provision of operational catch and effort data as requested by the Commission in 2010.

Furthermore, the failure to provide operational level data by some of these same four CCMs is not limited only to the WCPO. A recent paper presented at the IOTC Working Party on Tropical Tunas, held from 15-19 November in Bali, Indonesia (<http://www.iotc.org/documents/spatial-considerations-bigeye-and-yellowfin-cpue-japanese-and-taiwanchina-longline>), illustrates how insufficient operational level data undermines the development of standardized longline CPUE indices, which are critically important inputs to stock assessments of bigeye and yellowfin tuna in the Indian Ocean.

This is an unacceptable situation and one that is not only undermining the effectiveness of WCPFC conservation and management measures, its MCS tools, the work of the scientists and transparency, but is also providing an unfair advantage to those nations because their degree of compliance cannot be evaluated. Moreover, it continues to place an unfair conservation burden on other WCPFC members who are implementing the conservation measures in good faith consistent with international law.

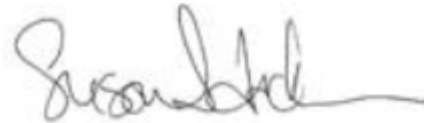
We note that an arrangement was drafted on the margins of SC10 between some of these CCMs and SPC to facilitate the availability of operational data for the Pacific wide bigeye stock assessment scheduled for 2015 (See Attachment F of the SC10 Report). While this arrangement may provide for some limited access to these needed data next year, it should not be viewed as a substitute for these CCMs' complying in full with the WCPFC data reporting requirements, nor should it be seen as fulfilling these fishing nations' outstanding reporting obligations.

We urge the following actions to address this matter, and to broadly deter CCM non-compliance with WCPFC obligations, at its upcoming meeting in Apia:

1. That these members act immediately to remedy this non-compliance and act in a manner consistent with their binding obligations to the WCPFC Convention.

2. That the WCPFC take swift action, such as triggering paragraph 7 of the WCPFC Data Rules for Non-Public Domain Data, as well as urgently developing, adopting and implementing a scheme for WCPFC responses to non-compliance as called for in the Compliance Monitoring Scheme measure (paragraph 1(iv) of CMM 2013-02), including assessing appropriate penalties to effectively deter this type of repeated and serious non-compliance.
3. That the Commission consider using its voting provisions, as outlined in Article 20 of the Convention, to address this persistent non-compliance in providing operational level data, if a decision by the Commission is going to be blocked by those members.

Sincerely,



*Tom Agio*

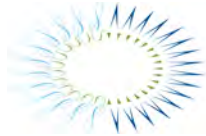
*Brian Hallman*



**American  
Tunaboat  
Association**

*Amend L*

*Nigella Hillgarth*



**THE  
PEW  
CHARITABLE TRUSTS**



**New England  
Aquarium**

*Protecting the blue planet*

*[Signature]*

*Secmont*



*[Signature]*



**Sustainable Fisheries  
PARTNERSHIP**

March 29, 2017

Dear Delegates and Executive Director Teo:

On behalf of several of the non-governmental organizations that participate in the Western and Central Pacific Fisheries Commission (WCPFC) process as Observers, we write to you to outline our views on transparency in the Compliance Monitoring Scheme (CMS) and within the WCPFC.

We appreciate that the WCPFC is taking steps to find a solution to this long-standing unresolved issue. However, in doing so, we remain mindful that the solution must be consistent with Article 21 of the WCPFC Convention and Rule 36 of the Commission's Rules of Procedure. Article 21 obligates the WCPFC to promote transparency and to afford organizations the opportunity to participate based on procedures that are not unduly restrictive. Therefore, WCPFC Members should set high standards that encourage transparency and consultation with and participation of accredited Observers in its work. The WCPFC is responsible for approximately 60% of the world's tuna catch, a valuable global resource, and the participation and engagement of civil society is both warranted and fundamental to ensuring strong and accountable management of this vital fishery.

At the 2016 Commission meeting, Members agreed to set a reasonable fee for Observer participation at the Commission meetings only, and to develop and adopt guidelines for the full participation of Observers during Commission sessions, including in the Compliance Monitoring Scheme (CMS) working group. As the group that will be affected by these guidelines, we strongly urge those CCMs that are working intersessionally on a draft to consult with all accredited Observers that participate in the WCPFC during this intersessional period, so that our views and input can be considered before the draft is presented to the Commission. An open process will facilitate a result that addresses the range of interests and concerns.

In the meantime, we take this opportunity to provide our views on these two issues.

#### Reasonable Fees

In relation to the setting a reasonable fee for Observer participation, as we noted in our statement in Fiji, it is important that a fee does not discourage participation by Observers, particularly smaller NGOs from Pacific Island and developing countries. To that end, we recommend that in setting a reasonable fee, the Executive Director consider allowing the first two representatives from any Observer organization to participate *without* paying a fee, but levy a fee for any additional representatives above two from an Observer organization.

#### Guidelines for Observer Participation in meetings of the Commission, including in the Compliance Monitoring Scheme working groups

Regarding the development of guidelines for Observer participation prepared by the WCPFC Legal Adviser (see paragraph 59 of WCPFC13-2016-33), we request that Members consider the attached elements to ensure any future guidelines produced by WCFPC:

1. Implement fully Article 21 in that the Commission 'shall promote transparency' and that procedures for Observer participation in the Rules of Procedure 'shall not be unduly restrictive...';
2. Are consistent with the processes and confidentiality procedures already outlined in paragraph 30 and Annex 2 of Appendix 3 to the 2007 Data Rules and Procedure and apply equally to both NGO and IGO Observers;

3. Allow Observers access to all relevant documents to be discussed in meetings and put in place a practice of clearly identifying those documents that are non-public to distinguish them from other documents of a public nature;

4. Ensure that any consequences for breaches of confidentiality are fair, transparent and consistently applied to Members, CNMs and all Observer organizations alike, as is currently outlined in paragraph 28 and Annex 2 of Appendix 3 of the 2007 Data Rules and Procedures and paragraph 8 of the 2010 MSCS Data Rules and Procedures; and

5. Establish a clear and fair process for evaluating any alleged breaches not only by Observers, but also by Members. For example, an assessment of alleged breaches of the guidelines and the data rules could form a component of the CMS.

We urge the Commission to ensure consistency among the rules and procedures, conservation and management measures and guidelines that have already been adopted. In operationalizing the decision to develop guidelines for Observer participation in the CMS working group, including access to relevant documents, Members must give effect to their obligations in the WCPFC Convention. In addition, we request Members implement the norms of the United Nations Fish Stocks Agreement, including the recommendations of its 2016 Resumed Review Conference, and maintain consistency with those procedures already adopted by the Commission and other best practices for Observer participation in other international fora and tuna RFMOs. Any weakening of the intent of Article 21 of the WCPFC Convention in the development of these new guidelines would be an unacceptable outcome.

Finally, we wish to reiterate that Observers share with all WCPFC Members the common goal of ensuring the Pacific tuna fisheries are sustainably managed for the countries and communities that benefit from them. Our organizations collectively invest substantial time and effort to support the WCPFC in finding solutions that meet the Commission's objectives. Observers provide independent perspectives of diverse stakeholders and technical expertise. Our organizations contribute to the work of the Commission and work collaboratively with WCPFC Members and with sub-regional organizations, by providing:

- information to inform development of conservation and management measures;
- technical and/or capacity building assistance;
- technical reviews of WCPFC practice in the context of other RFMOs;
- gap analyses to identify necessary improvements including in conservation and management measures; and
- targeted funding to address specific needs or gaps.

Unfortunately, we note that there have been allegations of non-compliance with the current WCPFC data protection and dissemination rules. However, these instances did not involve accredited Observer organizations. The Observers who have signed this letter have diligently and faithfully adhered to all the rules and procedures of the WCPFC and its subsidiary bodies so to be able to fully participate in these processes. Failure of the WCPFC to address breaches by CCMs under the existing data protection and dissemination rules should not be used as a reason to undermine transparency by preventing the participation of accredited Observers in the CMS and the work of the WCPFC.

We look forward to continuing to work in good faith with all Members of the Commission in all aspects of the Commission's work and to expediently resolving these issues in a manner consistent with the WCPFC Convention.

Sincerely,



*Susan Bird*



*David*



*Alana*



*William Boy*

Lewis & Clark  
Law School



*Chris*



*CW Cook*



*Mandi*



*Richard Cook Jr*



*JR*



## **Observer Participation Guideline Elements**

**March 2017**

### Overarching Principles:

Article 21 of the WCPFC Convention: “The Commission shall promote transparency in its decision-making processes and other activities. Representatives from intergovernmental organizations and non-governmental organizations concerned with matters relevant to the implementation of this Convention shall be afforded the opportunity to participate in the meetings of the Commission and its subsidiary bodies as observers or otherwise as appropriate. The rules of procedure of the Commission shall provide for such participation. The procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall be given timely access to pertinent information subject to the rules and procedures which the Commission may adopt.”

### Observer Participation Guidelines and Confidentially Agreement Elements:

1. The guidelines must be applicable to all non-CCM organizations in the WCPFC, e.g., not distinguish between IGO, eNGO, Industry organizations, CNMS, etc.
2. Regarding a Confidentiality Agreement:
  - a. The guidelines must make clear that the non-disclosure provisions apply only until after the Commission meeting (or adoption of reports, if later), for example, when the final CMR report is adopted by the Commission and is therefore publically available;
  - b. The guidelines must clearly outline the due process for any alleged breaches and any “sanctions” should not be extraordinary and must apply equally to both observers and CCMs;
  - c. The guidelines must be clear that after signing a confidentiality agreement observers will be explicitly allowed access to all relevant documents in advance of the relevant meeting on the same basis as CCMs;
  - d. The guidelines should not include a requirement to seek the approval of any/all individual CCMs either once or annually for access to the NP domain data included in documents as the adoption of the guidelines and signature of the confidentiality agreement would equal a standing authorization per the existing WCPFC data rules; and
  - e. The guidelines should not include a requirement to delete all documents received after the relevant meeting.
3. The confidentiality agreement itself must clearly outline the following items:
  - a. No disclosure of non-public document or NP data, e.g., documents that include Part 2 Reports or the draft CMR reports for all CCMs; and
  - b. No disclosure of the discussions relating to confidential data on a specific CCM (but it would be acceptable for an observer or CCM to talk in general terms about areas of non-compliance overall), including in press releases, blogs, interviews, published reports.
4. The guidelines must explicitly provide that any allegations of breaches must be evaluated through an established process that is fair and transparent. This process should be the same, or equivalent, to any process applied to CCMs.



April 21, 2017

Ms. Alex Cole  
United State Delegation  
Coordinator of the Intersessional Process

Dear Alexa,

Thank you for coordinating and leading the intersessional process to develop guidelines to enable the participation of NGO observers in closed meetings of the WCPFC Commission and its subsidiary bodies.

We have carefully reviewed the draft guidelines and confidentiality agreement contained in Circular 2017/24, dated 3 April 2017. ISSF has three major concerns with the guidelines and confidentiality agreement as currently drafted:

**1. Lack of a Process for Alleged Breaches.**

There is no guidance included in the current draft on what the process will be in the event of alleged breaches of the guidelines, rules and procedures and the confidentiality agreement. Specifically, paragraphs 5-7 relating to alleged breaches of “all existing rules of procedure applicable to their attendance in the meeting,” the confidentiality agreement and/or the terms of the guidelines do not include clear procedures for how an alleged breach is identified and notified to the Chair, Commission or the Observer concerned, or what evidence must be provided by the CCM making the allegation. The guidelines also do not contain procedures for how it is determined if the breach occurred or a process to afford Observers the opportunity to refute the allegation and provide evidence in their defense before the penalty is applied.

This lack of a fair and open process is particularly striking when coupled with the penalties outlined in paragraphs 5-7. The penalty of losing access to the current CMS working group session (paragraphs 5 and 6) or future CMS sessions (paragraph 6) are excessive both in severity (two years of loss of attendance for one “offense” of any type, whether minor or major) and scope (it would extend to the whole Observer organization, not just the individual, and could result in an Observer organization being prevented from attending from all future Commission and other subsidiary body meetings). In addition, such penalties are not equal in scope or severity to CCMs that breach the 2007 or 2009 WCPFC Data Rules, which sets up an unequitable standard.



Given the kinds of penalties being contemplated, the guidelines must also contain detailed, transparent and fair procedures that clearly outline how breaches are alleged and litigated, before penalties are applied. Without this addition to the package, the guidelines could be ripe for misuse and abuse that will compromise and undermine, not promote, transparency in the work of the WCPFC.

## **2. Limitation on the Number of Observer Representatives.**

As the Commission has agreed to implement a fee for participation in the WCPFC Commission meetings (paragraph 656 of the WCPFC13 Report), ISSF believes that Observer organizations should be able to send the same number of representatives to the Compliance Monitoring Scheme (CMS) working group meetings as they pay a fee for to attend the WCPFC Commission meetings.

## **3. Lack of Clarity regarding the Applicable “Existing Rules and Procedures” and the “Data Security Standards.”**

The draft guidelines require Observers to comply with “all existing rules of procedure applicable to their attendance in the meeting.” The draft confidentiality agreement requires Observers to abide by the Commission’s data security standards as specified in the Commission’s Information Security Policy (ISP) and the Rules and Procedures for data access and dissemination.

Having reviewed the Commission’s ISP, it is unclear what security standards Observers are required to comply with. The ISP outlines procedures and requirements for the Secretariat, WCPFC employees, contractors, service providers, etc., and pertains to the organization and management of security, asset management, human resource security, physical and environmental security, communications and operations management, access control, acquisition and maintenance, information security incident management, business continuity management and compliance. It is similarly unclear what in the 2007 and 2009 Data Rules Observers must comply with as those rules cover access to data by CCMs, with exception of paragraph 30 of the 2007 Data Rules that is presumably to be superseded by the guidelines under development.

Further, for both the ISP and the Data Rules, since the draft guidelines and confidentiality agreement do not allow Observers “to 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” the requirement to maintain data in a manner no less stringent than the security standards established by the Commission is illogical.

Given that any alleged breach could trigger an Observer being removed from a meeting and/or banned from future Commission meetings, the guidelines and confidentiality agreement must be explicit with regard to the rules and standards with which Observers must comply.

ISSF notes the United States’ proposal to limit the scope of these guidelines to the sole issue of enabling Observers to attend the CMS working group sessions, and that WCPFC14 will need to take up whether to apply the guidelines more broadly and incorporate them into the Commission’s Rules of Procedure. Given this, it is imperative to ensure that the guidelines and



confidentiality agreement are carefully drafted to ensure that WCPFC upholds Article 21 of its Convention and Rule 36 of its Rules of Procedure.

We again thank you for your efforts to guide the development of guidelines for Observer participation. ISSF looks forward to continuing to work with the WCPFC on this important topic to ensure the establishment and implementation of best practice RFMO transparency procedures that allow the effective participation of civil society in the work of the WCPFC, including the CMS working groups.

Sincerely,

A handwritten signature in black ink that reads "Holly Koehler". The signature is written in a cursive style with a prominent flourish at the end.

Holly Koehler  
Vice President for Policy and Outreach