



COMMISSION
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**PROPOSAL FOR AMENDMENT TO CONSERVATION AND MANAGEMENT MEASURE
FOR REGIONAL OBSERVER PROGRAMME (CMM 2007-01)**

WCPFC11-2014-DP07
3 November 2014

Paper submitted by FFA Members



FFA

1st November 2014

Dr SungKwon Soh
Interim Executive Director
Western and Central Pacific Fisheries Commission
PO Box 2356, Kolonia
Federated States of Micronesia

Dear SungKwon,

Proposal for amendment of CMM 2007-01

I write on behalf of the 17 members of the Forum Fisheries Agency.

Please find attached a short paper addressing the issue of vessel captains reviewing and providing comment on observer reports. FFA members acknowledge that this is an issue that has consumed a great deal of time in the TCC and WCPFC over recent years and trust that our proposed amendment will assist the Commission to move forward.

Yours Sincerely

Feleti Tulafono
Chair
Forum Fisheries Committee



FFC CCMs proposal addressing access by Vessel Captains to Observer Reports

Explanatory Note

Summary

FFA members propose to amend CMM 2007-01 to remove the current provisions that provide for the vessel master to be able to view and comment on observer reports. There are a number of reasons for this, including:

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.

Issue

Paragraph 1(c) of Attachment K, Annex B of CMM 2007-01, includes the following:

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.

This provision is not implemented and has been discussed at TCC and WCPFC meetings for several years without resolution. These discussions have also confused other issues, such as flag State access to ROP data, which is very different.

This provision was included in 2007, before the commissions data rules were developed. This was also at a time when the compliance role of observers was unknown. The Commission now has carefully crafted and very powerful rules for the access to and protection of data, including ROP data, and it is very clear that observer information is used for compliance action. This compliance action takes place at the national level (flag or coastal States) and the regional level (observer data is used in the Compliance Monitoring Scheme).

FFA members therefore propose to delete paragraph 1(c) of Attachment K, Annex B of CMM 2007-01.

Justification

1. It directly compromises the safety and impartiality of the observer;

Observers are already placed in a difficult position of reporting on issues of potential non-compliance on issues that have potentially serious implications for both vessels and flag States. Cases of bribery, intimidation and extortion have already occurred.

The compliance role of observers is far more explicit than many other RFMOs where this type of provision comes from.

The observer report is critical to the science, management and compliance activities of the Commission and CCMs. FFA members seek to minimise the opportunities for undue influence on the information recorded by observers, which are created through the current paragraph. This is a particular risk for observers that undertake back to back, or multiple trips on the same vessel, which is quite common.

2. It has created confusion amongst flag States on how they can gain access to ROP data

In discussions to date, several flag State CCMs have linked this paragraph to their own ability to access ROP data and some have even used the lack of implementation of this paragraph as an excuse as why certain data could not be collected or submitted.

FFA members seek to clarify that **this proposal does not in any way impact on the existing opportunities that flag States have to access Commission data on their vessels.** The data rules make it clear that ROP data (which is different to “observer reports”) can be accessed by flag States. The procedure to do so is simple and relies on the flag State making a request of the WCPFC Secretariat to release the data. There is no role or ability of observer providers or coastal States to authorize (or prevent) release of such information.

FFA members encourage flag States to use the opportunities afforded to them under the data rules to access and use observer data for their flagged vessels. In addition, FFA members are committed to combatting IUU fishing, especially where it occurs in our EEZs. Where a flag State has accessed ROP data and identified a potential issue, we welcome direct consultation to facilitate provision of further relevant information and cooperation in investigating and prosecuting offences.

3. It is contrary to the Commission’s rules and procedures for the protection, access to, and dissemination of data.

The Commission’s data rules have developed since CMM 2007-01 was agreed. They classify observer data as high risk non-public domain data. There are specific rules and procedures for access to this data that have been agreed and implemented by all CCMs. As explained above, this includes almost unfettered access to ROP data by flag States.

Paragraphs 30 and 31 of the “2007 Data Rules” set out a clear and specific procedure for stakeholders other than CCMs to gain access to non-public domain data, such as ROP data. None of these specific requirements are included in CMM 2007-01. If vessel masters have a particular need to review ROP data for their vessel, then they must access that data in accordance with these paragraphs.

4. It is impractical.

The provision ignores the fact that an observers report is not finalised until after they have disembarked and been formally debriefed by a qualified debriefer. It is inappropriate to consider provision of the report to any Party until after the debriefing is finished. It is also impractical to delay submission of the report after debriefing while captains are given the opportunity to provide comments.

Conclusion

FFA members continue to strengthen our national and sub-regional observer programs, including in investing heavily in the training and professionalism of our observers. We would welcome discussions focused on increasing the usability of ROP data by flag States for compliance purposes. This could include provision of a revised version of the “Gen 3” form (compliance issues) to flag States upon their request. We also encourage flag States to improve their working relationship with observer providers to facilitate cooperation in the identification, investigation and prosecution of fisheries offences by their vessels. The effective and efficient relationship between the FFA Secretariat and the US in this regard could form a model for wider application.