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**PROPOSED CONSERVATION AND MANAGEMENT MEASURE ON THE
STANDARDS OF CONDUCT FOR ROP OBSERVERS**

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Proposal by the Republic of Korea and Japan

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Paper by the Republic of Korea and Japan

Explanatory Note

I. Introduction

The Republic of Korea (Korea) and Japan propose that major components of the *Code of Conduct for Observers*, presented by the Intercessional Working Group on Regional Observer Program to the Commission in March 2008, be taken out and placed into a Conservation and Management Measure to ensure that ROP Observers discharge their duties to ROP requirements and not engage in any activity that is likely to bring the ROP into disrepute, thereby contributing to the attainment of the objectives of the ROP and the safety of those on board the vessel on which ROP Observers are deployed. This proposal builds on paragraph 2 of Attachment K, Annex A of CMM 2007-01 (CMM on ROP), which broadly outlines the responsibilities of observers. This proposal also envisages a scheme that allows the master of vessels to check and report the conduct of Observers on board their vessels.

II. Rationale

The Code of Conduct and the Guidelines on the Rights and Responsibilities of Observers (Attachment K, Annex A of CMM 2007-01) provide a set of guiding principles relating to accepted behavior and standards of conduct while serving as an ROP Observer. However, there have been a growing number of incidents that involve ROP Observers' misconducts that often threaten the safety of the crew on board and interfere with the proper functioning of the vessel for lawful fishing operations.

While allegations on mistreatments of Observers by crew members are sufficiently dealt with in the framework of the Compliance Monitoring Scheme, Observers' misconducts are hardly brought to collective attention of TCC or the Commission. Sub-standard performance of ROP Observers (violent behaviors, being under the influence of a drug or alcohol, soliciting bribes, unjustified demand for disembarkation, etc) not only affects the safety of crew on board the

vessel and unduly hinders normal fishing operations but also undermines the integrity of ROP itself.

This concern will be addressed if the Commission makes it mandatory through a CMM for ROP Observer providers to ensure that their Observers perform their duties in accordance with the standards of conduct and hold them accountable when these standards are not met. Also, subjecting this CMM to the Compliance Monitoring Scheme will help the Commission identify room for improvement in ensuring the quality of ROP Observers' performance thereby contributing to strengthening the Program.

III. Consideration of CMM 2013-06

CMM 2013-06 requires that in considering any new proposal, the Commission shall apply the following questions to determine the nature and extent of the impact of the proposal on SIDS and territories in the Convention Area.

- Who is required to implement the proposal?
CCMs that provide Observers under the Regional Observer Program of the Commission are required to implement the proposal.
- Which CCMs would this proposal impact and in what ways and what proportion?
This proposal would require CCMs that provide ROP Observers to ensure that Observers they deploy on fishing vessels in the Convention Area carry out their tasks to ROP requirements and not engage in any activity that is likely to bring the ROP in disrepute.
- Are there linkages with other proposals or instruments in other Regional Fisheries Management Organizations or international organizations that reduce the burden of implementation?
No, there aren't.
- Does the proposal affect development opportunities of SIDS?
No, this proposal does not affect development opportunities of SIDS.

- Does the proposal affect SIDS domestic access to resources and development aspirations?

No, this proposal does not affect development opportunities of SIDS.

- What sources, including financial and human capacity, are needed by SIDS to implement the proposal?

This proposal does not impose extra financial or human capacity burdens on SIDSs.

- What mitigation measures are included in the proposal?

No mitigation measure is needed as there are no extra costs or burdens in addition to those already required for the implementation of ROP.

- What assistant mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?

This proposal does not place a disproportionate burden on SIDS, and the existing mechanisms can be used to train ROP Observers to meet all the requirements envisaged in the CMM.

CONSERVATION AND MANAGEMENT MEASURE ON THE STANDARDS OF CONDUCT FOR ROP OBSERVERS

Conservation and Management Measure 2017-XX

The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;

Recalling that the Commission adopted CMM 2007-01 for the Regional Observer Program (ROP);

Recalling further that Intersessional Working Group on ROP, which was established in accordance with CMM 2006-07, agreed in 2008 that the interim standard for “Code of Conduct” is that each CCM should have a Code of Conduct in place, available to each observer, available for review and if not in place, to be developed in 2008;

Recognizing the importance of ROP to the work of the Commission with its contribution to compliance monitoring and data collection;

Concerned that there have been an increasing number of incidents involving ROP Observers’ misconducts that often threaten the safety of the crew on board and interfere with the proper functioning of the vessel for fishing operations;

Noting that ROP Observers are obligated to carry out their tasks to ROP requirements and not to engage in any activity that is likely to bring the ROP into disrepute;

Noting further that ROP Observers should be guided by a set of guiding principles relating to accepted behavior and standards of conduct to be applied to ROP Observers from the time of engagement until all ROP responsibilities associated with an ROP trip are discharged;

Recognizing that maintaining high-quality performance of ROP Observers will ensure the integrity of the ROP;

Adopts in accordance with Article 10 of the Convention, the following Conservation and Management Measure:

1. CCMs that provide Observers under the Commission ROP shall ensure that Observers fully comply with the following requirements (a) preceding a vessel boarding, (b) on boarding a

vessel, and (c) while on board a vessel:

(a) Preceding a vessel boarding, Observers shall:

- i. always arrive to board the vessel in a healthy condition and are not in any way under the influence of alcohol, illegal substances or any legal substances that prevent Observers from properly discharging their duties; and if Observers fail to meet their obligation by turning up to the vessel in an intoxicated state they can be refused boarding by the master of the vessel;
- ii. unless otherwise arranged, where practical, arrive no later than 4 hours before the scheduled departure time advised by the master of vessel and/or their agents; and
- iii. not carry alcohol, betel nut, illegal substances or any legal substance that prevent Observer from properly discharging their duties onto the vessel.

(b) On boarding a vessel, Observers shall:

- i. as soon as possible on boarding a vessel, present themselves with identification to the master of the vessel;
- ii. ensure they have completed any formalities needed for joining the vessel; and
- iii. stow all observer equipment neatly in a safe and secure manner in the area that has been allocated by the master of the vessel.

(c) While on board a vessel, Observers shall:

- i. maintain their independence and impartiality at all times;
- ii. comply with requirements established in the laws and regulations of the flag CCM of the vessel;
- iii. communicate regularly with the vessel master on relevant observer issues and duties;
- iv. not unduly hinder or interfere with the proper functioning of the vessel for fishing operations or navigation purposes;
- v. respect the hierarchy and general rules of behavior, including in respect of safety and sanitary rules and daily work schedules that apply to all vessel personnel;
- vi. respect the private property and living space of the master and crew of the vessel;
- vii. maintain personal hygiene, bathe regularly and wash their clothes frequently to the extent practicable;
- viii. refrain from using bad language ,exhibiting bad behavior and shall respect cultural customs of the crew and the flag CCM of the vessel;
- ix. keep away from arguments or confrontations and remain calm in all situations;
- x. ensure that all data and information with respect to fishing operations of the vessel and of the vessel owner collected while on board are kept secure and confidential at all

- times on board and on shore and not retain copies thereof;
- xi. not accept inducement with money or gifts of any kind, for them to neglect their duty or in any other way act unfavorable to their proper duties;
 - xii. not enter into cabins or other areas of the vessel designated as clean areas in work clothes that are impregnated with fish remnants, blood and or other fish parts;
 - xiii. not drink alcohol unless authorized by the master of the vessel for special occasions, not chew betel nut on board the vessel and not smoke in areas where it is forbidden, and where or when requested not to smoke;
 - xiv. not use any vessel communication system for private or business use without permission by the master and/or radio-operator of the vessel; and
 - xv. not give any directions or notices outside their observer responsibilities and authority to the master of the vessel or to any member of the crew since they have no enforcement powers;
 - xvi. understand and follow the emergency procedures aboard the vessel; and

(d) On arrival in a port, Observers shall:

- i. respect any instructions from the master, port authority, immigration, customs or quarantine officers when in port;
- ii. stay on board until the master or a port authority, immigration, customs or quarantine officers gives them clearance to disembark; and
- iii. disembark the vessel when given a clearance to do so, with all their equipment and any samples taken as part of their duties as a observer, as soon as practical on arriving in port, unless otherwise agreed between the observer provider and the vessel operator.

Actions to be taken against Observer misconducts

2. If Observers are reported by the vessel master to the observer provider that they have failed to pay hotel costs or other charges, damaged accommodation or any facilities, or are responsible for any other action which has caused damage which requires financial compensation in the process of traveling and returning journeys, they will have their contract terminated and be asked to reimburse all costs for such damages.

3. If the observer is reported by the vessel master to the observer provider to be under the influence of alcohol, illegal substances or any legal substances that prevent observer duties prior to boarding and this is confirmed by the observer provider, national or regional observer coordinator or approved agents in writing, they shall be withdrawn from the vessel. The observer provider shall investigate the incident and take the appropriate action and shall inform

the observer provider on the outcomes of the investigation. If Observers are found to be accountable for their actions, they will be liable for all costs associated with their travel and or any advance payments. The observer provider if required shall make arrangements with the observer for the reimbursement for costs associated with their travel and or any advance payments.

4. If the observer is reported by the vessel master to the observer provider; that they have breached relevant rules stipulated by this CMM, misbehaved, caused unwarranted disruption or failed to maintain sanitary requirements, or are under the influence of alcohol, illegal substances or any legal substances that prevent observer duties during the trip period they are on board the vessel; the observer provider shall investigate the claims made by the vessel master. The observer provider shall make a determination on the outcomes of the investigation; observers may be suspended or terminated if it is deemed warranted. Observers may also be responsible for the costs of damages that can be proven were caused by them while on the vessel.

5. Depending on the circumstances, and after a thorough investigation, Observer if found to be the cause of the problem as reported, may be suspended from ROP duties for a minimum of 6 months for the first such occurrence. If observers are given another chance after the minimum period of disqualification is served and the CMM is breached a second time, an automatic life-long disqualification from the ROP will be imposed.

Role of the master and crew of a vessel

6. The master and crew of a vessel to which an ROP Observer is assigned shall ensure full cooperation with him/her the Observer in complying with his/her relevant obligations under this CMM.

7. By the end of the trip covered by an ROP Observer, the master of the vessel shall fill out the Observer Compliance Checklist (Attachment) and compile supporting documents, if any, and report them back both to the flag CCM of the vessel and the observer provider.

Appeals

8. The observer that is alleged to have breached the provisions of the CMM and affected by any decision or action taken in accordance with paragraphs 3-5 of this CMM has the right of appeal against such decision or action. The appeal will be in accordance with the relevant rules of procedures to be developed by TCC 14 and to be approved by WCPFC 15 on these matters.

Compliance Monitoring

9. The Compliance with this CMM will be subject to the Compliance Monitoring Scheme of the Commission.

Attachment

Observer Compliance Checklist

This Checklist is to be filled in by the master of a fishing vessel to which an ROP Observer is assigned. The master shall provide the list to the flag state of the vessel and the Observer provider after the end of each trip covered by the ROP Observer. Any supporting documents, including photographs, shall accompany this List.

Trip Information			
The flag and name of the vessel:			
Period of the Trip covered by the Observer (from the date of Observer’s arrival in and departure from the vessel)	(dd.mm.yyyy – dd.mm.yyyy)		
name of the Observer			
Observer provider			
Checklist			
(Positive List) The Observer assigned to this vessel...	YES	NO	Remarks
1. arrived to board the vessel in a healthy condition and are not in any way under the influence of any illegal, legal substances or alcohol.			
2. presented themselves with identification to the master of the vessel.			
3. completed all formalities needed for joining the vessel.			
4. respected the private property and living space of the master and crew.			
5. maintained personal hygiene, bathed regularly and washed their clothes frequently.			
(Negative List) The Observer assigned to this vessel...	YES	NO	Remarks

6. used bad or obscene languages.			
7. physically or verbally assaulted or threatened the master or crew.			
8. carried alcohol, betel nut or any other illegal substances onto the vessel.			
9. accepted or asked for money or gifts of any kind, for them to neglect his or her duty or in any other way act unfavorable to their proper duties.			
10. entered into cabins or other areas of the vessel designated as clean areas in work clothes that are impregnated with fish remnants, blood and or other fish parts.			
11. drank alcohol without authorization of the master			
12. gave any directions or notices outside their observer responsibilities and authority to the master or to any member of the crew.			
13. demanded to disembark without any justifiable reasons.			
14. caused damages to the property on the vessel as a result of violent behaviors.			
15. used vessel communication system for private or business use without permission by the master and/or radio-operator of the vessel.			
16. released any data and information collected whilst on board and subject to confidentiality to a third party.			

Any additional information

I hereby ascertain that the above information is true to the best of knowledge.

(dd.mm.yyyy)

signature by the master
