

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,



GREENPEACE

Lewis & Clark
Law School



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.