



INDEPENDENT REPORT

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DEVELOPING RECOMMENDATIONS & POLICY IN SUPPORT OF FISHERIES OBSERVERS' SAFETY, SECURITY & WELL-BEING

A follow-up to the Human Rights at Sea Report:

FISHERIES OBSERVER DEATHS AT SEA, HUMAN RIGHTS & THE ROLE & RESPONSIBILITIES OF FISHERIES ORGANISATIONS

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Glossary

AB	Accreditation Body	MHRDD	Mandatory Human Rights Due Diligence
AIDCP	Agreement on the International Dolphin Conservation Program	MMSI	Maritime Mobile Service Identity
AIS	Automatic Identification System	MSA	Maritime Situational Awareness
ALC	Automatic Location Communicator	MSA 2015	Modern Slavery Act 2015 (UK)
APO	Association for Professional Observers	MSA 2018	Modern Slavery Act 2018 (Australia)
BHR	Treaty Business and Human Rights Treaty	MSC	Marine Stewardship Council
CA	Conformity Assessment	MTU	Mobile Transceiver/Transmitter Units
CAB	Conformity Assessment Body	NFA	National Fisheries Authority (Papua New Guinea)
CB	Certification Body	NGO	Non-governmental organisation
CCM	WCPFC Commission Members, Cooperating Non-Members and Participating Territories	NOAA	National Oceanic and Atmospheric Administration
CMM	Conservation and Management Measures	NPFC	North Pacific Fisheries Commission
CH	Certificate Holder	OECD MNEs	Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises
COC	Chain of custody	P&I	Protection and Indemnity (Insurance)
COVID-19	Coronavirus Disease 2019	PNA	Parties to the Nauru Agreement
CPC	Cooperating Non-Contracting Party, Entity or Fishing Entity (ICCAT)/Contracting Parties and Cooperating Non-Contracting Parties (IOTC)/Members and Cooperating Non-Members (IATTC)	PNG	Papua New Guinea
CTA	Cape Town Agreement	RFB	Regional Fisheries Body
CTSCA	California Transparency in Supply Chains Act	RFID	Radio Frequency Identification
EAP	Emergency Action Plan	RFMO	Regional Fisheries Management Organisation
EEZ	Exclusive Economic Zone	RFV	Record of Fishing Vessels
EM	Electronic Monitoring	ROP	Regional Observer Programme
ER	Electronic Reporting	SAFET	Seafood and Fisheries Emerging Technologies Conference
FAD	Fish Aggregating Device	SME	Subject Matter Expert
FAO	Food and Agriculture Organization of the United Nations	SOLAS	International Convention for the Safety of Life at Sea
FFA	Pacific Islands Forum Fisheries Agency	SPRFMO	South Pacific Regional Fisheries Management Organisation
FMC	Fisheries Monitoring Centre	SSF	Small-Scale Fisheries
FOS	Friend of the Sea	SSO	Standard-Setting Organisation
FSM	Federated States of Micronesia	SSP	Standards, Specifications and Procedures
GFW	Global Fishing Watch	TFA	Taiwanese Fisheries Agency
GNSS	Global Navigation Satellite System	TCC	Technical and Compliance Committee (of theWCPFC)
GT	Gross Tonnage	UDHR	Universal Declaration of Human Rights
HRAS	Human Rights at Sea	UK	United Kingdom
HRASI	Human Rights at Sea International Ltd	UNGPS	United Nations Guiding Principles on Business and Human Rights
HRBA	Human Rights-Based Approach	UoC	Unit of Certification
IAF	International Accreditation Forum	USA	United States of America
IATTC	Inter-American Tropical Tuna Commission	UVI	Unique Vessel Identification Number
ICCAT	International Commission for the Conservation of Atlantic Tunas	VDS	Vessel Day Scheme
INTERPOL	International Criminal Police Organization	VDS	Vessel Detection System
ILO	International Labour Organization	VHF	Very High Frequency
ILO C188	ILO Work in Fishing Convention No.188	VMS	Vessel Monitoring System
IMO	International Maritime Organization	WCP	Western and Central Pacific
IOBR	International Observer Bill of Rights	WCPFC	Western and Central Pacific Fisheries Commission
IPNLF	International Pole and Line Foundation	WCPO	Western and Central Pacific Ocean
ISSF	International Seafood Sustainability Foundation	WWF	World Wildlife Fund
IUU	Illegal, unreported and unregulated		
MCS	Monitoring, Control, and Surveillance		
MFMRD	Ministry of Fisheries and Marine Resource Development (Kiribati)		

Foreword

This second Human Rights at Sea (HRAS) independent Report (the Report) is part of a dedicated series of internationally published documents addressing ongoing work place issues and concerns in respect to Fisheries Observers through delivering increased public awareness of the problems they face operating at sea. It aims to drive State-level, commercial and civil-society reflection on the matters raised herein, thereby resulting in related policy and legislative changes in-sector.

This Report specifically draws on a further and in-depth review of the HRAS proposed Ten Recommendations (the Recommendations) from the 1 July 2020 Report: **'Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations'**.¹ When referring to 'human rights', HRAS explicitly refers to the Universal Declaration on Human Rights 1948 and other pertinent human rights instruments.

The reason for the development of this series of reports, is the growing international awareness of abuses towards Fisheries Observers highlighted by issues of concern. These include a lack of transparency in reporting of incidents, lack of availability of comprehensive employment contracts, lack of access to professional insurance provisions, ongoing concern for the level of coastal State engagement in investigations and the apparent lack of enforcement follow-up. Concerns also extend to the negative societal, financial and family support effects upon the dependants of deceased Fisheries Observers.

The intent of the Report is to use this research and public awareness work as a model for addressing issues within Regional Fisheries Management Organisations (RFMOs).

It is important to note that the Recommendations' scope and detail go beyond that for any single national fishery, Regional Fisheries Body (RFB) or RFMO. This also includes international fisheries management organisations whose focus may be on a specific fish species, or a geographical area, for example. Indeed, the Recommendations, like the human rights they seek to protect both directly or indirectly, are designed to be universally applicable across the world's fisheries, fisheries management organisations and geographical boundaries.

In assessing both the feasibility and priority of these Recommendations it has become apparent that in some instances, they give rise to more questions than they do to providing solutions. There has also been the subsequent need during the review for clarifications to be included as part of the process.

Nonetheless, research progress has been made in the Report and with the findings from a separate but accompanying Western and Central Pacific Fisheries' Observer Survey, coupled with a separate but accompanying draft of a newly proposed model Western and Central Pacific Fisheries Commission (WCPFC²) Conservation and Management Measures (CMM) document; considerable civil society effort has been made to advance the present discussions to trigger discussion for necessary reforms.

Meantime, the often complex jurisdictional, mapping and resources overlap, the interrelationship between regional, sub-regional and national fisheries, the various international Fisheries Observer programmes attached to these fisheries, the data-sharing agreements between stakeholders, and the applications of monitoring, control and surveillance (MCS) technologies such as Vessel Monitoring System (VMS), can arguably leave the lay person confused.

Further, the differences between RFMOs, RFBs and other international fisheries bodies are not easily deciphered, nor are their functions and responsibilities easily delineated. Indeed, the inconsistencies in terminology across different parties' published materials simply serve to add further confusion to an already confusing landscape.

With such potential for wide-spread confusion it has been necessary to revisit some of the concepts in the 1 July Report and accordingly, explore the challenges raised in the present Report. This is not an attempt at 'reinventing the wheel', rather, it is borne out of a need to make sense of the landscape to navigate pathways towards sectoral change.

By way of framing, the WCPFC RFMO serves as the specific focus in terms of representing a regulatory body for initial consideration of the Recommendations' review, and a platform to consider the HRAS follow-on recommendations contained in this document. The Report is therefore a starting point.

Finally, sincere thanks to all individuals and organisations involved in the significant research, development, drafting, peer review and final production of this Report.

David Hammond Esq., CEO | Human Rights at Sea | 11 November 2020

1 HRAS, "REPORT: Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations – Human Rights at Sea," HRAS (Havant, 2020), <https://www.humanrightsatsea.org/2020/07/09/fisheries-observer-deaths-at-sea-report-version-availability-increased/>

2 <https://www.wcpfc.int/home>

Author

The author of this Report is the UK-registered charitable non-governmental organisation (NGO), Human Rights at Sea³, which is regulated by the UK Charity Commission and overseen by a Board of Trustees under English law. It has been supported by instructed subject matter experts (SMEs) from within the civil-society fisheries community, national and international organisations, and academic research staff of The University of Nottingham's Rights Lab (UK)⁴.

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Conflicts of Interest

There are no known conflicts of interest to be declared in the preparation, drafting or publishing of this Report.

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³ <https://www.humanrightsatsea.org>

⁴ <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/index.aspx>

⁵ <https://www.gov.uk/find-charity-information>

⁶ <https://www.humanrightsatsea.org/reports/>

Executive Summary

The Report's analysis and review of the majority of cases cited has, at the very least, prepared the ground for further regional Fisheries Observer policy and legal developments from which future work-streams can and will need to follow. Nonetheless, it is notable that some of the Ten Recommendations from the 1 July 2020 HRAS Report have not given rise to the same degree of clarity as others following individual analysis. Information gaps have therefore been highlighted requiring further engagement with regional State bodies and commercial fishing entities. It has also been noted that subsequent individual and regional State engagement will need to be undertaken, though this is beyond the scope of this Report.

Vessel Monitoring Systems (VMS) and Automatic identification System (AIS)

A lack of publicly available and accessible VMS data remains a barrier to transparency and can undermine essential safeguards in relation to protecting individual's fundamental human rights. The disparate policy approach adopted by competing coastal States in relation to disclosure of such data further complicates the situation. Region-wide analysis of the barriers to change with respect to current rules surrounding public disclosure of VMS is required. Indeed, individual State and regional leadership on this subject is vital in order to counteract the weaknesses inherent in purely relying on Automatic identification System (AIS) reporting data. RFMOs, such as the WCPFC, are therefore suitably positioned to take on this mantle, as are flag State authorities under their unique jurisdiction for upholding their State responsibility under Article 94 of the UN Convention on the Law of the Sea, 'Duties of the flag State'.

Insurance

Protection for Fisheries Observers through the guaranteed provision of adequate and specific professional insurance cover remains an unresolved issue, particularly noting historic Fisheries Observer cases that are under current investigation. Protection measures implemented over the past twenty years have attempted to address this shortfall, but the effect of these measures has yet to result in a comprehensive regional solution. Appropriate Protection and Indemnity (P&I) insurance cover and express commercial contractual requirements by retailers upon the employers of Fisheries Observers have been identified as a means of tightening-up such an essential pre-requisite and safeguard for working at sea. In short, Fisheries Observers should always be provided signed copies of essential work documents prior to boarding. This includes employment contract, proof of insurance, the programmes' Emergency Action Plan (with 24/7 contact numbers listed), safety equipment checklist; and the Vessel Safety Check List. These should be signed by the Fisheries Observer, the programme staff, and the vessel personnel.

Safety Equipment

The provision of durable marine safety equipment for Fisheries Observers has been identified as a key component for further ensuring their onboard safety and safeguarding their human rights (primarily the Right to Life). However, the actual extent to which Fisheries Observers have direct access to and are in receipt of such equipment remains unknown, while the efficacy and guaranteed duration of dedicated funding programmes designed to facilitate such safety provisions are unclear. Concurrent research endeavours in the form of an accompanying HRAS and University of Nottingham Rights Lab commissioned regional Pacific Observer Survey may go some way to help answer these questions. Nonetheless, larger-scaled and more in-depth surveying of Fisheries Observers is the only way to understand the wider picture. Based on the findings of any such follow-on surveys, relevant RFMOs and flag State administrations can mandate what actions must occur in order to ensure consistency in the safety and security of the individual worker across the entire sector and associated supply chain. Additionally, there is value in the anecdotal ground-truthing by observers who alert that a measure is not being implemented.

Monitoring

Surveillance and monitoring programmes of vessels upon which alleged human rights abuses occur remains a poorly coordinated issue in what appears to be an ill-defined work and policy area for States. There appears to be no one centralised programme database owned by a single entity, by way of example. Within the context of fisheries certification programmes, better strides towards improving the coordination among key stakeholders must be made through the amendment of respective standards underlying these programmes. Standard-Setting Organisations (SSOs) hold the key to defining these. Indeed, guidance to such SSOs in relation to the administration of fisheries certification programmes should be updated to help support such change.

Commercial Human Rights Application

In relation to the protection and respect of human rights and the legal obligations upon entities, the differences between the roles and responsibilities of private and public sector entities does not allow for a 'one-size-fits-all' approach to implementing human right protections. As stakeholders in companies' supply chains, Fisheries Observers are owed a direct responsibility to have their fundamental human rights respected by business. To ensure that private and charitable sector entities are held to the same levels of accountability as their public sector counterparts, an explicit, public and voluntary commitment to acceding to business and human rights norms as pioneered by initiatives such as the United Nations Global Compact, is now needed. This should be coupled with full policy disclosure of the business strategies companies adopt and implement related to human rights standards. This strikes at the heart of the prevailing closed business culture and apparent lack of appetite for transparency within the sector that currently occurs behind the 'corporate veil'. Further, there is also an urgent need to see real traction on speeding up implementation of all aspects of business and human rights norms, to strengthen human rights reporting legislation, and to prepare for the introduction of mandatory human rights due diligence laws (mHRDD).

Public Reporting

Another key area of the Report's review which remains unclear and requires further analysis, is the degree to which internal collation and reporting mechanisms for incidents of human rights abuses exist, what data is held and where, what data is publicly published and by what means. Direct engagement with fisheries management organisations and associated government entities such as port, coastal and flag State authorities are essential to understand the extent of such practice, but transparency of initial and follow-up reporting is a 'must' for change to occur. External public confidence in the transparency of incident reporting appears limited.

Investigations

Transparent investigations into the disappearance, or suspected murder of Fisheries Observers necessitating intergovernmental and inter-agency cooperation needs to be expanded and formalised at State-level. Such a process must become ingrained throughout the sector to ensure expedited casework, case closure, access to justice and assured routes to effective remediation. This process could also have a wider deterrent effect if protagonists realise that they can no longer hide behind flag State jurisdiction failures, jurisdictional boundary constraints and failures in access to, and disclosure of, data surrounding an incident at sea.

From a civil-society perspective, too many cases have fallen through the cracks or have not been subject to the same apparent degree of investigative rigour and scrutiny as others. Investigative protocols have seemingly not been applied evenly across the multi-jurisdictional environment and consequently, it appears to have compromised the integrity and findings of investigations leading to dependants feeling let down by the system. This is not an easy fix. However, an increasing range of technological tools can also be put at the disposal of stakeholders to help address such failings. Indeed, the role and responsibility of Interpol needs further analysis and engagement. This international constabulary institution could be pivotal in respect of determining how future cases are forensically investigated, prosecuted regionally thereby ensuring that justice for victims and victim's dependants is achieved.

Impunity

Impunity, or rather the perception of impunity from justice remains a core issue to be addressed at State-level with regard to investigations into the disappearance, suspected murder, suicide or medical neglect of Fisheries Observers. The families of Observers who have disappeared, or died, deserve to know what happened to their deceased relative. Family members are currently waiting years and in at least two cases, have died without Investigations being resolved. These deaths require that they are approached initially as a crime to ensure that the proper evidence is gathered to rule out criminality or criminal intent. The investigations therefore require regional, sub-regional and State-level cooperation and transparency of information and data, expanded and formalised in agreements, to ensure expedited casework; effective forensics and evidence gathering, using best practice standards; and access to justice.

Introduction

Aim and Scope

This second independent Report addresses the previous Ten Recommendations proposed in the 1 July 2020 Report. It reviews in detail those Recommendations in an assessed priority order. It offers a practical review, options and follow-on recommendations for future implementation, policy or legislative reform.

This work has a focus on the WCPFC policy and legislative framework, an RFMO which is pushing for regional change through policy development. However, although the WCPFC acts as a key focal point for this Report, the Report's analysis of the key issues and subsequent follow-on recommendations are intended for wider application and effect. Other RFMO entities and RFBs are therefore used to provide context and aid analysis, where appropriate.

Report Objectives:

- 1** Separately review, identify and assess each of the 1st July Report's Ten Recommendations in priority order for further programme development and to evidentially support the outputs through detailed Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis to be appended to this follow-on Report;
- 2** Identify and prepare for engagement with key stakeholders who are willing to engage and who can collectively lever change in the public and private sector as set against the Ten Recommendations;
- 3** **NB:** As a related and concurrent activity develop an initial Pacific-focused Fisheries Observer on-line scientific-based survey to research data sets and questions relating to working conditions, safety, security and well-being.
- 4** **NB:** As a related and concurrent activity develop and draft core text for a model CMM document to include human rights protections for State-level submission to the December 2020 WCPFC Annual Meeting and which could be exported globally as an example of good practice reflecting improvements on WCPFC 2017-03.



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Background

Methodology

The Ten Recommendations from the 1 July 2020 Report were analysed and afforded a subjective priority ranking by the authors according to perceived importance of the Recommendation, ease of its implementation and the likely outcome. This included any impediments to achieving the proposed reform.

The refined list of priority-ranked Recommendations was achieved through undertaking a SWOT analysis, the detail of which is appended to this Report at Appendix 1. The prioritised list of Recommendations forms the substance of this Report.

Each Recommendation retains the original wording, subject to some additional clarifications made where necessary. Each has been reviewed individually and juxtaposed against a backdrop of current fisheries practices, as well as potential impediments to suggested reform. Each Recommendation concludes with an analysis and/or comment followed by a follow-on recommendation(s).

The Report stops short of engaging directly with the various stakeholders individually identified as being central to effecting the relevant change. Such engagement is the preserve of future work.

Concurrent Activities

The first of the two related concurrent activities to this Report, was an online scientific WCP Fisheries Observer Survey⁷. The survey was undertaken through an existing partnership with the University of Nottingham's Right's Lab.⁸ The particulars of the survey, methodology employed and the findings form the substance of the separate, but accompanying report which should be read alongside this Report.

The second concurrent activity which should also be read alongside this Report, is a proposed model CMM in respect of Fisheries Observers' rights, safety and welfare, as well as for crew. It is specifically centred on Fisheries Observers operating in the Western and Central Pacific geographical area and focuses on the WCPFC RFMO. Despite this focus, the principles of the provisions of the CMM should be universally applicable, and it is hoped such a document can act as a blueprint for other RFMOs in respect of minimum human rights and labour rights protections for both Fisheries Observers and crew.



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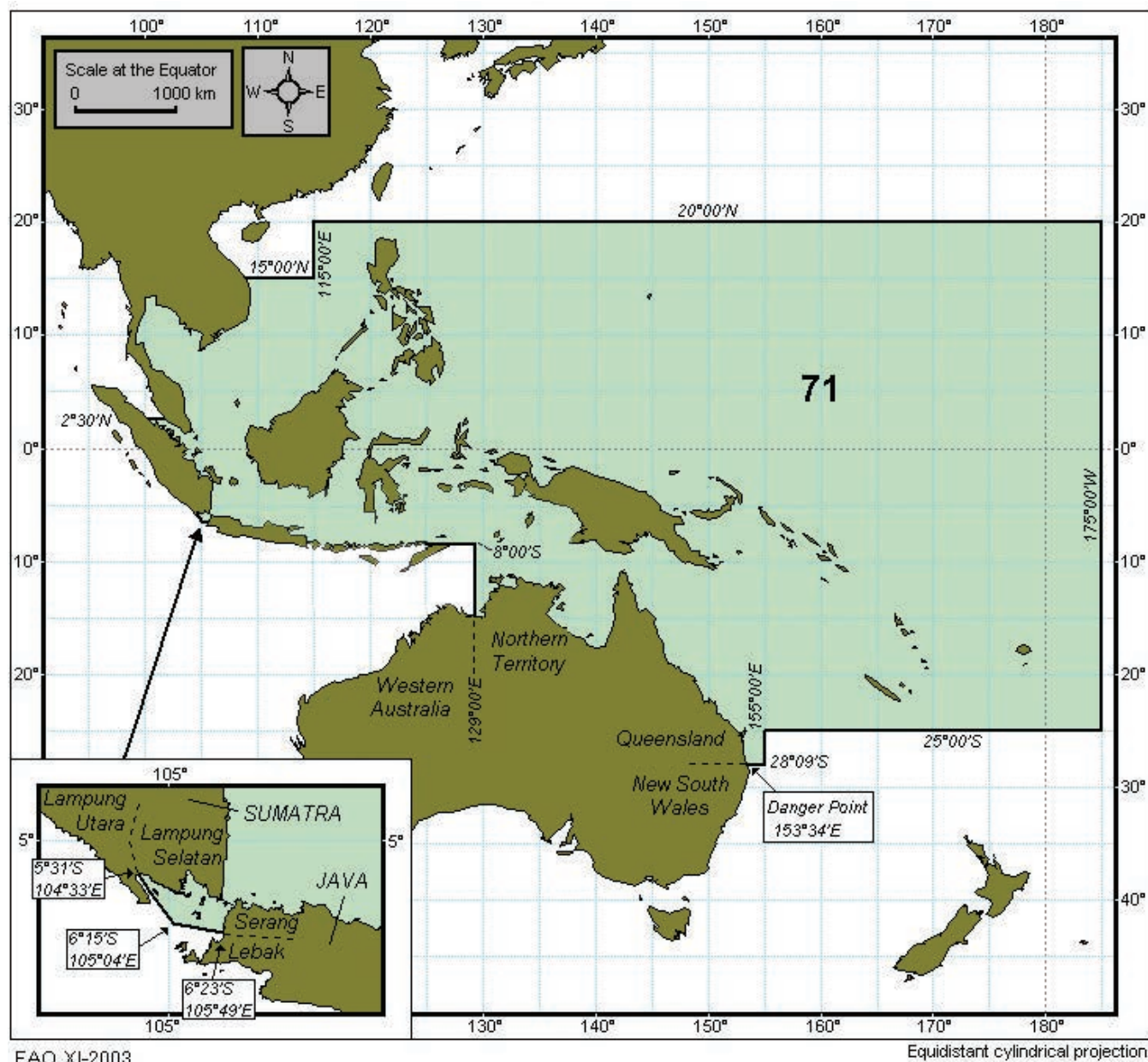
7 <https://www.humanrightsatsea.org/2020/09/04/fisheries-observers-survey-for-western-and-central-pacific-now-live/>

8 <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/index.aspx>

Geographical Scope

The geographic scope of this Report is centred on the Western and Central Pacific (WCP) area as defined by the FAO. The area is assigned Major Fishing Area status (see Figure 1).⁹

Figure 1: Pacific, Western Central (Major Fishing Area 71)



Source: FAO Major Fishing Areas. PACIFIC, WESTERN CENTRAL (Major Fishing Area 71). CWP Data Collection.¹⁰

⁹ FAO Major Fishing Areas for Statistical Purposes are arbitrary areas, the boundaries of which were determined in consultation with international fishery agencies – see: FAO, “Major Fishing Areas – General | Coordinating Working Party on Fishery Statistics (CWP) | Food and Agriculture Organization of the United Nations,” FAO, 2017, <http://www.fao.org/cwp-on-fishery-statistics/handbook/general-concepts/major-fishing-areas-general/en/>

¹⁰ FAO, “FAO Major Fishing Areas. PACIFIC, WESTERN CENTRAL (Major Fishing Area 71). CWP Data Collection.,” FAO Fisheries Division [online], 2004, <http://www.fao.org/fishery/area/Area71/en>



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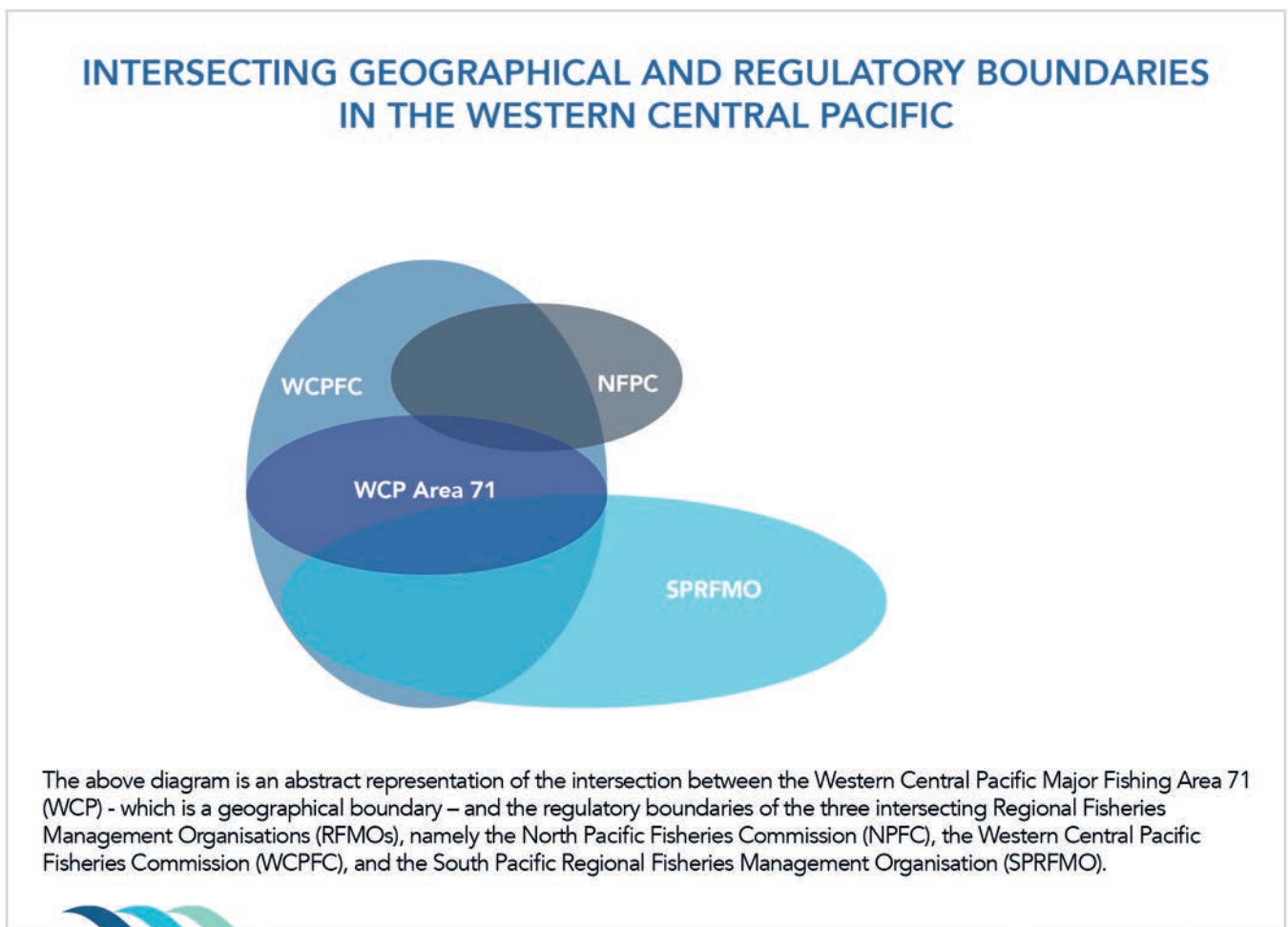
The WCP geographical area intersects the various regulatory boundaries of the RFMOs, other RFBs, international and national fisheries organisations in this area.

Specifically, three RFMOs intersect the geographical boundaries of the WCP as defined by the FAO. These are:

1. The Western and Central Pacific Fisheries Commission (WCPFC);
2. The South Pacific Regional Fisheries Management Organisation (SPRFMO); and
3. The North Pacific Fisheries Commission (NPFC).

Other RFBs and international fisheries organisations include the Pacific Islands Forum Fisheries Agency (FFA) and the Parties to the Nauru Agreement (PNA). Many national fisheries organisations of individual coastal States which are members of the various RFMOs, RFBs and international fisheries organisations also fall within the WCP geographical area.

Figure 2: Intersecting Geographical and Regulatory Boundaries in the Western Central Pacific



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Fisheries Observers: Context & Role

There is a documented history of worker abuse in the global fisheries sector, as well as reported alleged human rights abuses perpetrated towards Fisheries Observers, and crew, employed on board fishing vessels operating at sea. These workers can be vulnerable to exploitation and abuse, subject to human frailty, financial greed and the employer temptation to avoid accountability due to the unique context of the isolated maritime environment that they work in. This is further exacerbated by the lack of consistent and uniformly implemented regulations.

Observer Protection

Globally, Fisheries Observers play a key role in monitoring compliance with fisheries laws and regulations established through national and international policies, initiatives and conventions.¹¹ ¹² Their responsibilities include, among others, the monitoring of fishing vessels' compliance with fisheries regulations, fishing gears used, authorised fisheries, catch reporting and by-catch reporting and restrictions. They also fulfil a scientific function and collect and record biological data from representative fish samples, such as age and sex determinations, and length/weight measurements.¹³

They (and the crew) are subject to protections, such as those found in national criminal, health and safety legislation and fisheries management protocols, including the 2017 Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers.¹⁴ Further, where flag and coastal States have ratified, Fisheries Observers benefit indirectly from international protections such as the ILO Work in Fishing Convention No.188 (ILO C188)¹⁵ and the 2012 Cape Town Agreement (CTA) on fishing vessel safety.¹⁶ Observers should also be supported by a network of certified Observer managers, trainers and de-briefers as part of the established fisheries supply chain.

At Sea Observation

Observers are the 'human eyes on the water'. They are the only independent human element oversight mechanism for fisheries management activities at sea, and consequently they should be a reliable and fully supported check-and-balance for all national and international certification standards. Their safety, personal security and well-being on board should be assured so that they are able to undertake their professional role and return home at the end of their employment.¹⁷ The one-person Observer system is one of the industry's key assessment tools, but the current system is also compromised by human vulnerabilities and a lack of transparency, though this is being addressed through the suggested use of increased technical support.

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- 11 APO, "About Observers | APO Observers," Association for Professional Observers, 2020, <https://www.apo-observers.org/about-observers>
- 12 NOAA (2020). Fishing and Seafood: Fisheries Observers. National Oceanic and Atmospheric Administration (NOAA) Fisheries, US Department of Commerce. <https://www.fisheries.noaa.gov/topic/fishery-observers>
- 13 van Helvoort, G., 1986 Observer program operations manual. FAO Fish.Tech.Pap., (275): 207 p., <http://www.fao.org/3/S8480E/S8480E02.htm#ch2.5>
- 14 WCPFC, "Conservation and Management Measure for the Protection of WCPFC Regional Observer Programme Observers | WCPFC," WCPFC, 2017, <https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>
- 15 ILO (2007). C188 - Work in Fishing Convention, 2007 (No. 188). International Labour Organisation (ILO). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1210:0:0::NO::P12100_ILO_CODE:C188
- 16 IMO (2012). Press Briefing 44: Cape Town Agreement on safety of fishing vessels adopted in South Africa. Diplomatic Conference for the Adoption of an Agreement on the Implementation of the Provisions of Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977. Cape Town, South Africa, 9–11 October 2012. International Maritime Organization (IMO). <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/44-SFV-conf-ends.aspx#Xrvc7y2ZMWo>
- 17 Towers L (2015). Are Fisheries Observers Safe at Sea? The Fish Site, 26 November 2015. <https://thefishsite.com/articles/are-fisheries-observers-safe-at-sea>

Living and Working Conditions

On average, during an assignment, Fisheries Observers spend between five and 30 days on board a vessel. In some cases they will spend longer and back-to-back assignments will increase the time spent on board exponentially.¹⁸ They often work alone and sometimes live amongst unreceptive or even hostile crew who themselves may be vulnerable to corruption, have experienced exploitation, or may be regularly operating in unsafe working conditions. For balance, it should also be made clear that many Fisheries Observers equally work in safe, secure and well-managed working environments.

While there have been some concerted attempts to address Fisheries Observer issues in the sector,¹⁹ ²⁰ there has been a lack of robust State-level support, and a lack of routes to effective remedy and remediation for dependents when abuses have occurred. Consequently, international certification programmes have been, and continue to be, criticised by the human rights sector.²¹

Cases of Alleged Human Rights Abuse

A concerning pattern is seemingly emerging of Fisheries Observers either dying, or being unlawfully killed²² on fishing vessels. Since 2009, there have been seven unresolved disappearances of Observers, six of which were under the authority of RFMOs.²³ The circumstances involved in another five deaths were deemed suspicious by the Association for Professional Observers (APO), four of which were in the Pacific region. It should be emphasized that these figures are likely to be an underestimate due to a lack of transparency of agencies in reporting incidents publicly, though this cannot be said with any degree of certainty due to the current lack of a centralized database, as highlighted in this Report

The most recent tragedy, the yet unexplained death of Kiribati Observer, Eritara Aati Kaierua,²⁴ ²⁵ on board the Taiwanese registered and flagged WIN FAR NO.636 fishing vessel, is currently being investigated as a murder (homicide). A natural cause of death was ruled out by the responsible Kiribati Police Commissioner, Ioeru Tokantetaake,²⁶ and subject to confirmation, murder (homicide) is suspected, though at the time of writing, the authors understand that the vessel has been released from its arrest and has returned to fishing operations. Taiwanese Fisheries Agency authorities have meantime contacted Human Rights at Sea to reinforce their position that the outcome of the investigation remains pending, and the presumption of innocence is being followed by the flag State administration authorities.

18 van Helvoort, G., 1986 Observer program operations manual. FAO Fish.Tech.Pap., (275): 207 p., <http://www.fao.org/3/S8480E/S8480E02.htm>

19 WWF, "Solomon Islands Tuna Fisheries Are Ready to Shift to Electronic Reporting | WWF," WWF, 2018, https://wwf.panda.org/wwf_news/?329834/Solomon-Islands-tuna-fisheries-are-ready-to-shift-to-electronic-reporting; WWF, "Observers and Innovations | WWF," WWF, 2016, https://wwf.panda.org/our_work/our_focus/oceans_practice/smart_fishing/how_we_do_this/good_governance2/transparent_seas_observers_and_innovations/; WWF, "Electronic Monitoring for Transparency in Ghana's Tuna Fleet | Projects | WWF," WWF, 2020, <https://www.worldwildlife.org/projects/electronic-monitoring-for-transparency-in-ghana-s-tuna-fleet>

20 Four RFMOs mandate a specific process in the event that an Observer disappears or dies: Ewell C, Hocevar J, Mitchell E, Snowden S, Jacquet J (2020). An evaluation of Regional Fisheries Management Organisation at-sea compliance monitoring and observer programs. Marine Policy; 115: 103842. <https://doi.org/10.1016/j.marpol.2020.103842>

21 See for example: McGill A (2017). Comments to the Marine Stewardship Council regarding proposed labour requirements. 14 May 2017. Seafood Working Group facilitator. https://laborrightrights.org/sites/default/files/publications/Comments%20to%20the%20Marine%20Stewardship%20Council%20regarding%20proposed%20labor%20requirements_FINAL.pdf

22 Soldiers and police may lawfully kill someone in the line of their duty i.e. in self-defence on the individual or a collective group but should always be subject to independent legal oversight and scrutiny.

23 APO "Observer Casualties": <https://www.apo-observers.org/misses>

24 The Guardian. Karen McVeigh. <https://www.theguardian.com/environment/2020/may/22/disappearances-danger-and-death-what-is-happening-to-fishery-observers> 22 May 2020.

25 Also known as Eritara Kaierua Aati. His passport states: 'Eritara Aati'. PNA ID showed the name Eritara Aatii. He did not use 'Kaierua' in official IDs even though it is the family name. Aatii or Aati was Eritara's fathers' name. In Kiribati, fathers' names can be used as surnames.

26 Orlowski A (2020). Kiribati fishery observer dies at sea in the South Pacific. Seafood Source, 14 April 2020. <https://www.seafoodsource.com/news/supply-trade/kiribati-fishery-observer-dies-at-sea-in-the-south-pacific>

Prioritised Review of the Ten Recommendations²⁷

Priority Recommendation No. 1

“

Recommends that any Observer death, disappearance, illness or injury must be immediately reported to the Observer programmes, and subsequently there should be forfeiture of confidentiality with full disclosure [clarified to reflect ‘full transparent and public disclosure’] of any VMS data associated with any voyage where an Observer disappears or dies at sea.

”

Relevant Regulatory Framework

The Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers CMM 2017-03²⁸ serves as a regulatory framework for the protection of the WCPFC’s observers. Alongside advising procedures for incidents of assault, intimidation and threats or harassment, it stipulates among other procedures, that:

"§ 3. In the event that a WCPFC ROP [Regional Observer Programme] observer dies, is missing or presumed fallen overboard, the CCM to which the fishing vessel is flagged shall ensure that the fishing vessel:

[...]

c. immediately notifies the flag CCM;

[...]

g. provides the report to the observer provider and appropriate authorities on the incident;

[...]

4. Paragraphs 3(a), (c) and (h) apply in the event that an observer dies. In addition, the flag CCM shall require that the fishing vessel ensure that the body is well-preserved for the purposes of an autopsy and investigation."²⁹

While CMM 2017-03 stipulates that the incident must be immediately reported to the flag CCM, it does not stipulate that an immediate notification be made to the Observer programme (or indeed the flag CCM, respective Observer programme, and nearest Coastal State). This arguably denies the respective Observer programme a stake in the investigations in the immediate aftermath of an incident. It cuts short potential benefits and analytical advantages derived from the Observer programme’s access to MCS. It also cuts short potential benefits deriving from the Observer programme’s likely greater geographical proximity to the vessel in question. Any harmful intention by a vessel’s crew or negligence might receive further impact by the delay caused in communication relayed from a vessel to a flag State to the Observer programme. By way of example, this measure was a US proposed measure brought about, in part, by Usaia Masibalavu’s case, which remains unresolved, regarding whether he was medically neglected. Simultaneously, the US began a national safety review, citing Usaia’s case as an impetus because it was a US flagged vessel.³⁰

²⁷ Reflecting the original 1st July Report Recommendation wording.

²⁸ WCPFC, "Conservation and Management Measure for the Protection of WCPFC Regional Observer Programme Observers | WCPFC," WCPFC, 2017, <https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>

²⁹ WCPFC.

³⁰ NOAA Fisheries: National Observer Safety Program Review. Jane DiCosimo National Observer Program Coordinator September 19, 2019 https://www.npfmc.org/wp-content/PDFdocuments/conservation_issues/Observer/OAC_Observer%20Safety_DiCosimo916.pdf

CMM 2017-03 might therefore benefit from an amendment of §3 c. and g. for example, stipulating that the fishing vessel (§3.c.) “immediately notifies the flag CCM and the respective Observers’ provider and the nearest Coastal state” and (§3.g.) “provides the report to the Observer provider, the flag CCM and appropriate authorities, including the nearest Coastal state, on the incident”. There should also be a requirement to include reporting to port State authorities.

Similar recommendations have been made by the Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Agreement on the International Dolphin Conservation Program (AIDCP).³¹

In the IATTC ‘RESOLUTION ON IMPROVING OBSERVER SAFETY AT SEA: EMERGENCY ACTION PLAN’, it states: “*In the event that an observer dies, is missing or presumed fallen overboard, the CPCs [Members and Cooperating Non-Members] to which the fishing vessel is flagged shall ensure that the fishing vessel: [... §3.] c. immediately notifies the flag CPC and the observer provider*” [emphasis added].³² The IATTC resolution stipulates similar notification of both the flag State and the Observer provider in the case of an Observer falling ill or if the Observer has been intimidated or threatened.

A subsequent forfeiture of confidentiality with full disclosure of any VMS data associated with any voyage where an Observer disappears or dies at sea is seemingly not covered in relevant RFMO measures, i.e. CMM 2014-02,³³ the Standards, Specifications and Procedures (SSPs)³⁴, or the Commission VMS Standard Operating Procedures.³⁵ This requires review.

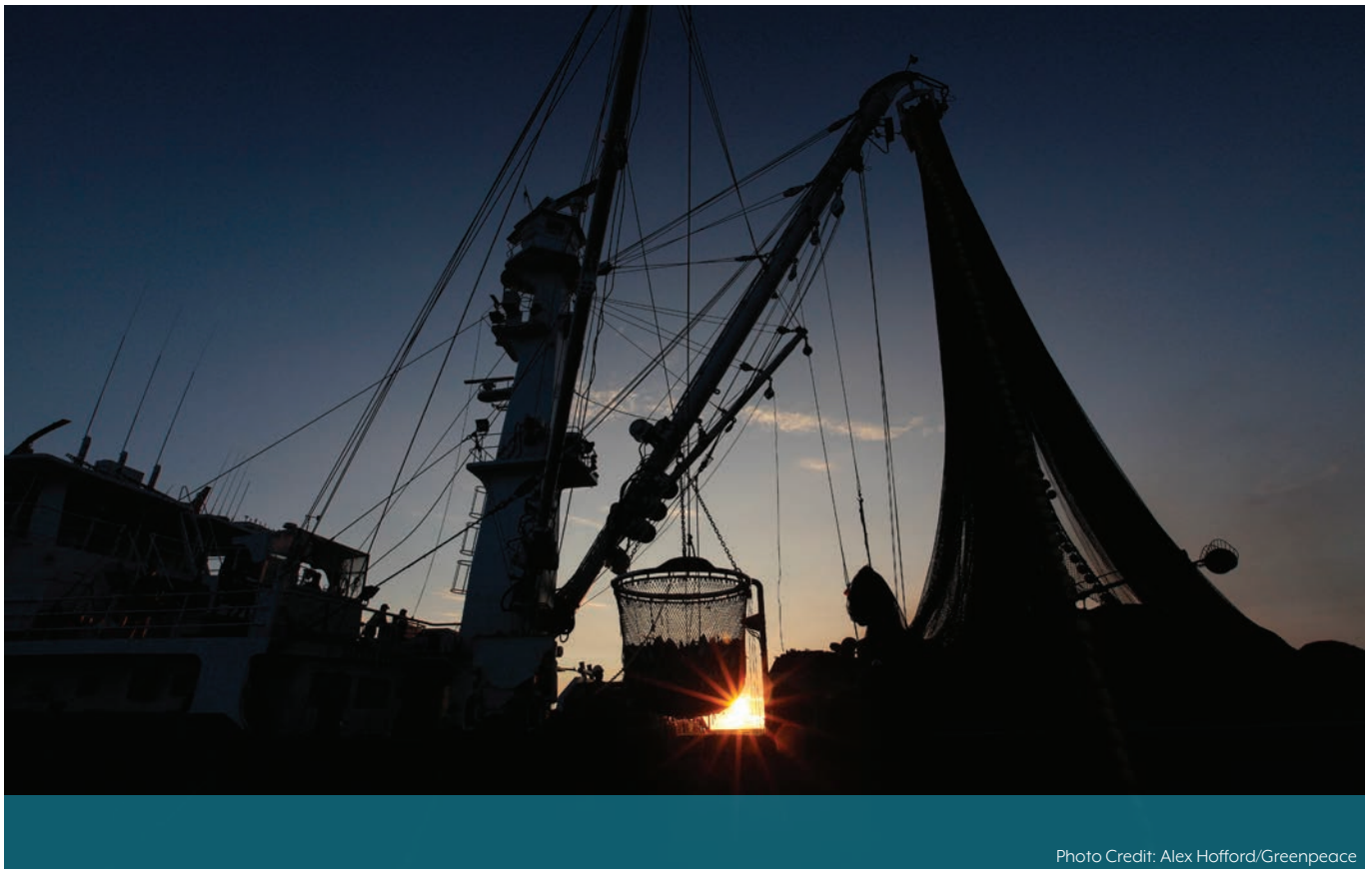


Photo Credit: Alex Hofford/Greenpeace

- 31 IATTC, “RESOLUTION ON IMPROVING OBSERVER SAFETY AT SEA: EMERGENCY ACTION PLAN” (San Diego, August 2018), https://www.iatcc.org/PDFFiles/Resolutions/IATTC/English/C-18-07-Active_Observer%20safety%20at%20sea.pdf; ICCAT, “RECOMMENDATION BY ICCAT ON PROTECTING THE HEALTH AND SAFETY OF OBSERVERS IN ICCAT’S REGIONAL OBSERVER PROGRAMS,” 2019, <https://www.iccat.int/Documents/Recs/compendiopdf-e/2019-10-e.pdf>; AIDCP, “RESOLUTION A-18-03 ON IMPROVING OBSERVER SAFETY AT SEA: EMERGENCY ACTION PLAN AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM 38 TH MEETING OF THE PARTIES,” 2018, <http://sarcontacts.info>
- 32 IATTC, “RESOLUTION ON IMPROVING OBSERVER SAFETY AT SEA: EMERGENCY ACTION PLAN,” I.
- 33 WCPFC, “Conservation and Management Measure 2014-02,” WCPFC, 2014, <https://www.wcpfc.int/doc/cmm-2014-02/conservation-and-management-measure-commission-vms>
- 34 WCPFC, “Vessel Monitoring System Standards Specifications and Procedures (SSPs)_version as at Dec 2018 (WCPFC15) | WCPFC,” WCPFC, 2018, <https://www.wcpfc.int/doc/tcc-02/vessel-monitoring-system-standards-specifications-and-procedures-ssps>
- 35 WCPFC, “Commission VMS Standard Operating Procedures | WCPFC,” WCPFC, 2018, <https://www.wcpfc.int/doc/commission-vms-standard-operating-procedures>

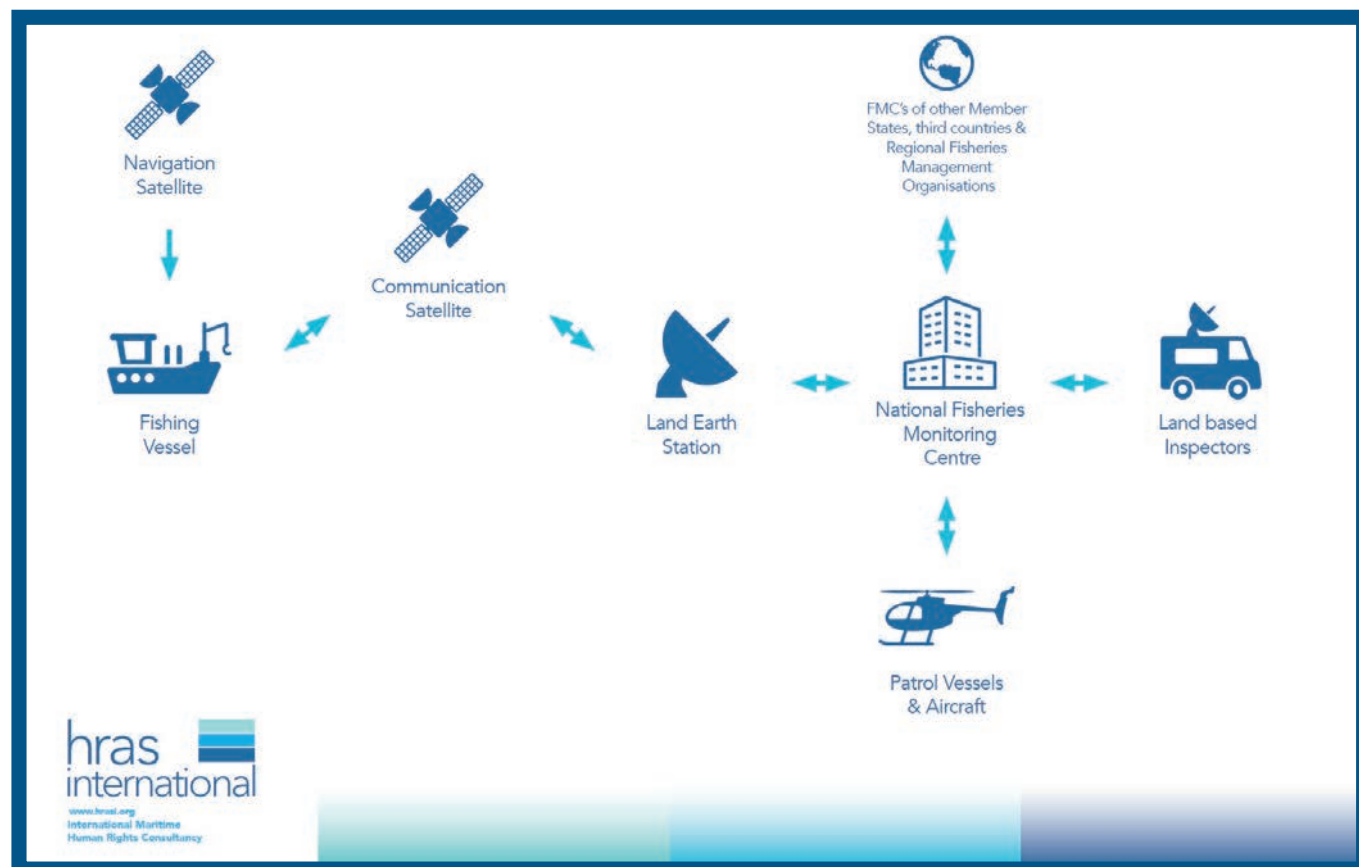
VMS: A Brief History and Overview of the Technology

Vessel Monitoring Systems (VMS) form an integral part of fisheries MCS programmes. The technology has been around since the late 1990s. Having been progressively implemented by coastal and flag States during this time, VMS is now an established standard monitoring tool within wider fisheries management.³⁶

How it Works

VMS is a satellite-based information communications system which monitors vessel activity at regular intervals and provides data to national fisheries monitoring centres (FMCs) and/or regional FMCs (Figure 3.). Data such as location, course and speed are received by the vessel from a navigation satellite and transmitted from that vessel via a communications satellite. This data is then intercepted by a land-earth station which then shares the data with the national or regional FMC. This data allows monitoring behaviour of fishing vessels in real-time, in particular for control purposes, and can be shared with the national or regional FMC's own air, land and maritime assets or indeed with the FMCs of other nations.

Figure 3: The Structure of Vessel Monitoring Systems (VMS) for Fisheries



Source: HRAS, REPORT: Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations – Human Rights at Sea, 2020.³⁷

³⁶ See: John M. Davis, "MONITORING CONTROL SURVEILLANCE AND VESSEL MONITORING SYSTEM REQUIREMENTS TO COMBAT IUU FISHING (John M. Davis)," FAO, 2000, <http://www.fao.org/3/y3274e/y3274e0g.htm>

³⁷ HRAS, "REPORT: Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations – Human Rights at Sea." HRAS, 2020, <https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/>

VMS systems use different communications technology³⁸, depending on the functionality required by the VMS system.³⁹ The VMSs used by fishing vessels are also subject to approval by the vessel's flag State registry. RFMOs, such as the WCPFC, aim to harmonise their VMSs with national VMSs to maximise compatibility and functionality within the high seas' regime and in-zone areas.⁴⁰ National and regional VMSs are therefore mindful of the need to develop systems which facilitate data sharing, encourage integration and avoid duplication of work.

It should be noted that not all fishing vessels are required by law to have VMS on board. Some are, such as those operating under the FFAs 'Harmonised Minimum Terms and Conditions for Access by Fishing Vessels'.⁴¹ However, the legal framework mandating its use is determined at national and regional level. Therefore, the data obtained and subsequently shared often varies from FMC to FMC, whether national or regional. Indeed, VMS programmes have different data-reporting requirements.

Basics of VMS Application in the Context of Fisheries Observers

VMS has numerous applications in the maritime environment. From law enforcement and search and rescue (SAR), to resource management and disrupting IUU fishing operations. In the fisheries monitoring and control context, the technology's primary application has been with respect to restrictions related to geographical areas.

For example, areas which are closed for either fishing or navigation or other activity (e.g. transshipment of fish at sea); areas which are closed at particular times; areas which are restricted for fishing or other activity, to certain vessels on the basis of nationality, type, size, licence status areas for which the amount of access is to be timed or counted, and areas which are subject to quota or other catch restrictions.⁴²

Within the wider MCS framework, the work of Fisheries Observers complements VMS. When coupled and verified with VMS, independently collected information at sea, such as tracking bycatch, catch composition and gear configuration data, helps support responsible fisheries management.⁴³ VMS is therefore already an indirect component of the work of Fisheries Observers.

Application: Human Rights Protections

Although not a stated application of the technology, **an unintended by-product of VMS relates to its application in respect of protecting individual's fundamental human rights⁴⁴.**

VMS can be used as a means of providing Fisheries Observers (and crew) with an added layer of assurance that their safety and well-being is being monitored by the beneficiaries of such data. Coupled with this it could, if publicly disclosed, provide third-party welfare providers with the assurance that they will have access to certain data in the event of an incident on board which is detrimental to the physical and/or mental well-being of Observers and crew. Nonetheless, such an application or indeed such a benefit of the technology, is yet to receive widespread recognition.

Furthermore, it is not necessarily the case that national and regional FMCs share VMS data with third-party welfare providers in the event of illness, injury or death to Fisheries Observers and/or crew.

In the recent case of the death of Fisheries Observer Eritara Aati Kaierua, which is still under investigation, VMS data remains off-limits for third-party scrutiny. The Taiwanese Fisheries Agency (TFA), representing the involved CMM, responded in a letter to HRAS, that it could not share relevant VMS data, due to domestic legislation forbidding it.⁴⁵

38 Such as Iridium, Inmarsat and Argos.

39 See also: MPA, "MPA Enforcement: Practitioners Employ Mix of High-Tech and Community-Based Strategies | MPA News," MPANEWS, November 2000, <https://mpanews.openchannels.org/news/mpa-news/mpa-enforcement-practitioners-employ-mix-high-tech-and-community-based-strategies>

40 See: WCPFC, "Statement Describing Purpose and Principles of the WCPFC VMS | WCPFC," WCPFC, February 2012, <https://www.wcpfc.int/doc/tcc-03/statement-describing-purpose-and-principles-wcpfc-vms>

41 Paragraph 15, FFA (2016) Harmonised Minimum Terms and Conditions for Access by Fishing Vessels, https://www.ffa.int/system/files/HMTC_as_revised_by_FFCI10_May_2019_-_FINAL.pdf

42 See: FAO, "Fishing Operations - Vessel Monitoring Systems," FAO, 2001, <http://www.fao.org/3/a-w9633e.pdf>

43 See: PEW, "Tracking Fishing Vessels Around the Globe," PEWTRUSTS, April 2017, https://www.pewtrusts.org/-/media/assets/2017/04/illegal_fishing_tracking_fishing_vessels_around_the_globe.pdf

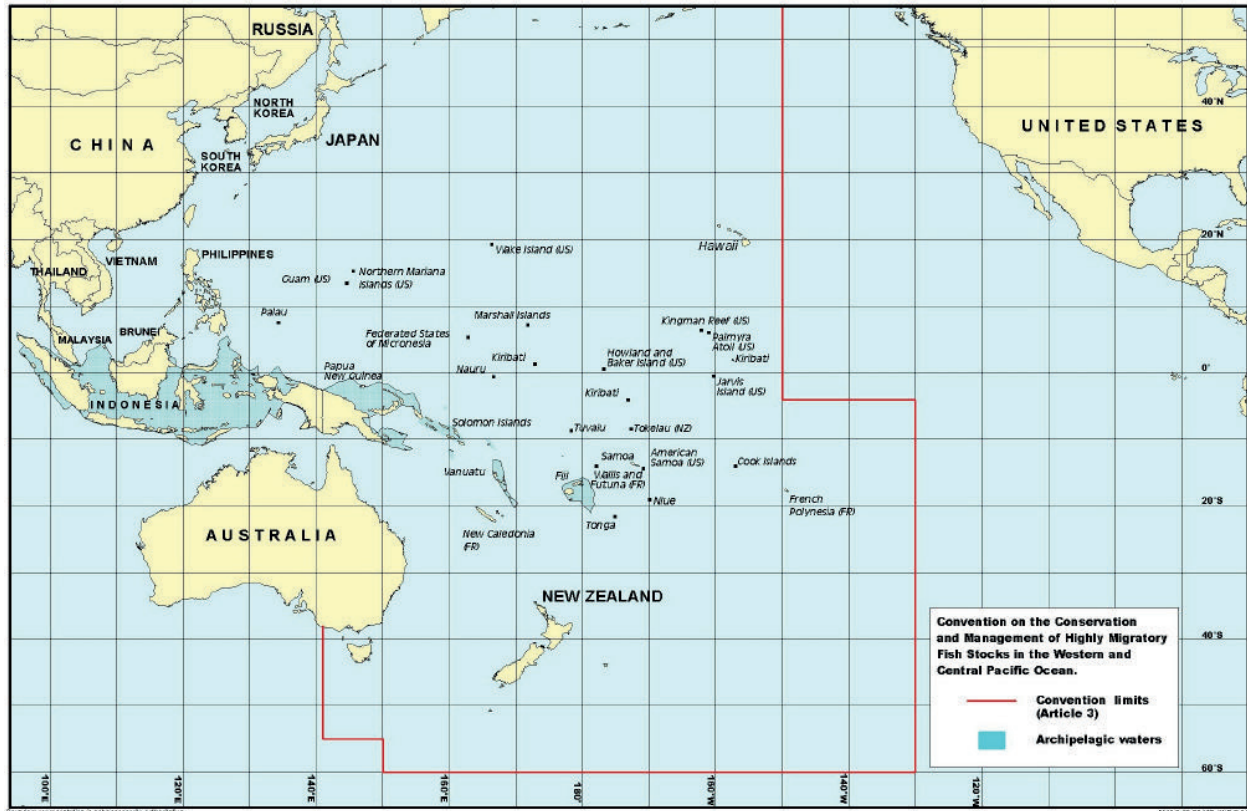
44 Based on the 1948 Universal Declaration on Human Rights: <https://www.un.org/en/universal-declaration-human-rights/>

45 When asked about publicising VMS data received from Win Far 636, the vessel implied in the investigations related to Eritara Kaierua's death, the Taiwanese Fisheries Agency stated that: "It is not allowed to arbitrarily disclose VMS data of fishing vessels according to the domestic laws of Taiwan." Letter of evidence submitted to HRAS dated June 9, 2020 from Deputy Director Kuo-Ping Lin of the Taiwanese Fisheries Agency, Council of Agriculture, Executive Yuan.

Data Management and Accessibility – Who is Managing VMS and its Data in the Region?

VMS application in the WCPFC Convention Area is regulated by the WCPFC and managed in collaboration with the Pacific Islands Forum Fisheries Agency (FFA) (see also Figures 4 and 5). A Service Level Agreement (SLA) with the FFA for the provision of the ‘WCPFC VMS’ services was formalised in 2008, coming into operation in 2009.

Figure 4: WCPFC Convention Area Map⁴⁶



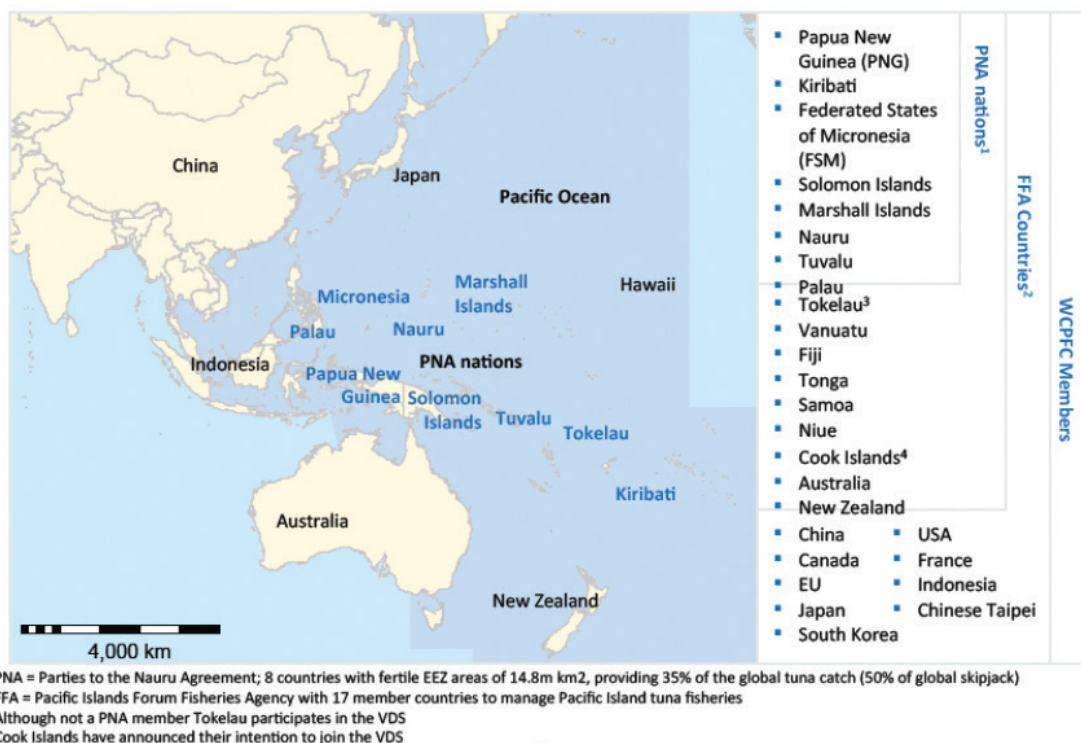
Source: Convention Area Map | WCPFC, WCPFC, 2020.⁴⁷

46 The WCPFC “Commission VMS” area slightly diverts from Major Fishing Area 71, with its limits currently set at south of 20°N, east of 175°E and north of 20°N in the Convention Area.

47 WCPFC, “Convention Area Map | WCPFC,” WCPFC, 2020, <https://www.wcpfc.int/doc/convention-area-map>

An overview of the overlapping convention areas is given in Figure 5. The map includes the PNA, formed by eight countries in the region, which also make up part of the FFA and the WCPFC.

Figure 5: Governance and Tuna-related Institutions in the Pacific



Source: Anonymous, Governance and Tuna-related Institutions in the Pacific (Part 2) — Francisco Blaha, 2015.⁴⁸

Note:⁴⁹

1. PNA = Parties to the Nauru Agreement; eight countries with fertile EEZ areas of 14.8m km², providing 35% of the global tuna catch (50% of global skipjack);
2. FFA = Pacific Islands Forum Fisheries Agency with 17 member countries to manage Pacific Island tuna fisheries;
3. Although not a PNA member Tokelau participates in the Vessel Day Scheme (VDS);⁵⁰
4. Cook Islands have announced their intention to join the VDS.

CMM 2014-02 defines the WCPFC ‘Commission VMS’, activated on January 1, 2008 to cover “the area of the Convention Area south of 20°N, and east of 175°E in the area of the Convention Area north of 20°N. [...] With respect to the area north of 20°N and west of 175°E, the system will be activated at a date to be determined by the Commission.”^{51 52}

The so-called ‘Pacific VMS’ is a contracted system providing VMS information to the FFA VMS and the WCPFC VMS systems, with more than 3,000 WCPFC-registered vessels reporting to the WCPFC’s VMS. WCPFC VMS also receives high seas VMS information from FFA-registered vessels, through the SLA with the FFA.⁵³ The FFA in turn provides Pacific countries with data analysis and surveillance operations, also through the FFA’s VMS.⁵⁴

48 Anonymous, “Governance and Tuna Related Institutions in the Pacific (Part 2)”, franciscoblaha.info, 2015, <http://www.franciscoblaha.info/blog/2015/9/19/908pw6eg97vb0jumedlmz8r1kbvjmk>

49 Based on peer review submissions of Francisco Blaha.

50 FFA, “Introduction | Pacific Islands Forum Fisheries Agency (FFA)”, FFA, 2020, <https://www.ffa.int/vds>

51 WCPFC, “Conservation and Management Measure 2014-02,” 1.

52 While the Commission VMS and FAO Area 71 slightly diverge, as a matter of application any protections for observers should apply throughout the Convention Area.

53 WCPFC, “Vessel Monitoring System | WCPFC,” WCPFC, 2020, <https://www.wcpfc.int/vessel-monitoring-system>

54 Even during recent months, when Observer deployments had been suspended due to Covid-19. See: FFA Media, “FFA Continues to Monitor Fishing amidst COVID-19 Situation: Media Release – FFA’s Tuna Pacific: Fisheries News and Views,” tuna pacific, May 2020, <https://www.tunapacific.org/2020/05/25/ffa-continues-to-monitor-fishing-amidst-covid-19-situation-media-release/>

The FFA's VMS is based at the FFA's regional headquarters in Honiara, Solomon Islands and is accessible to all its 17 member countries,⁵⁵ enabling them to track and monitor the position, speed and direction of registered fishing vessels and therefore fishing activities using a variety of fishing gear⁵⁶ across the region. The issues highlighted in this Report, however, once again go to the lack of public access to, and transparency of VMS data outside of the member States' access.

Applicability

Standards, specifications and procedures (SSP) for the VMS of the WCPFC stipulate that: *"The SSPs shall apply to the Commission VMS that covers the high seas within the Convention Area. The SSP for the operation of VMS programs within waters under national jurisdiction shall be the exclusive responsibility of the Coastal State."*⁵⁷ The WCPFC VMS system limits vessels reporting to the WCPFC to two ways: 1) directly to the WCPFC VMS, or 2) to the WCPFC through the FFA VMS.

CMM 2014-02 stipulates that *"Any fishing vessels fishing for highly migratory fish stocks on the high seas within the areas of the Convention Area [...] that move into the area north of 20°N and west of 175°E shall keep their ALCs [Automatic Location Communicators] activated and continue to report to the Commission in accordance with this Conservation and Management Measure,"*⁵⁸ applicable *"to all vessels in excess of 24 metres in length with an activation date of 1 January 2008, and it shall apply to all vessels 24 metres in length or less with an activation date of 1 January 2009."*⁵⁹

Who are the Beneficiaries?

The current beneficiaries of direct access to VMS data are coastal and flag State FMCs and those FMCs of certain RFMOs. Other international fisheries management organisations such as the PNA also benefit from direct access to VMS data. Who these beneficiaries share such data with, and on what terms, is largely governed by data protection laws and bilateral/multilateral agreements.

Who Has Access? And Who Doesn't But Should Have?

Authorised Cooperating Members, cooperating non-members and Participating Territories (of the WCPFC) (collectively termed CCMs) in the Pacific region can access the VMS data in the form of a list of all vessels' VMS reporting status on the Record of Fishing Vessels (RFV).⁶⁰ Detailed information to the CCM is provided on request.

The VMS Manager acting on behalf of the WCPFC can provide its users access to the Commission VMS, that is to an individual user, after being requested from an authorised CCM⁶¹ official.

Access to VMS data is therefore privileged and ultimately the preserve of State entities, whether such entities are acting on a national or regional basis. But who does not have access to such data that should? Publicly available VMS data⁶² is limited but precedents for disclosure do exist.

55 See: FFA, "FFA Members," FFA, 2020, <https://www.ffa.int/members#2/-18.6/2.0>

56 See: FFA, "Matrix Fishing Fleet," FFA, 2008, https://www.ffa.int/system/files/VMS_2008_Matrix_fishing_fleet.pdf

57 WCPFC, "Vessel Monitoring System Standards Specifications and Procedures (SSPs)_version as at Dec 2018 (WCPFC15) | WCPFC."

58 WCPFC, "Conservation and Management Measure 2014-02," 1.

59 WCPFC, 2.

60 WCPFC, "Vessel Monitoring System | WCPFC."

61 Cooperating Members, Cooperating non-members and Participating Territories (of the WCPFC).

62 <https://www.wcpfc.int/doc/data-02/rules-and-procedures-protection-access-and-dissemination-data-compiled-commission>

VMS: A Precedent for Change?

Data protection and security concerns could be raised in favour of restricting access to VMS data, normally on the basis of 'giving away' the fishing grounds to competitors. Yet vessels often operate the Automatic Identification System (AIS) turned on. This is another maritime monitoring technology that is widely mandated to be switched on as stipulated by the International Convention for the Safety of Life at Sea (SOLAS). It is publicly available and live.⁶³

There is good reasoning to say that, when fitted, both AIS and VMS should be made public, that way, if AIS is turned off for security reasons then the VMS remains on. Nonetheless, this argument is not necessarily supported across States.

Example: Global Fishing Watch

GFW aims to shine a light on global fishing activity by analysing and publishing fishing vessel and fisheries data. This data and analysis can support government, research organisation and enforcement agency efforts to develop and implement informed, effective fisheries policies.

Precedents for the publication of VMS show that public sharing is indeed possible. GFW has partnerships with Indonesia, Peru, Chile, Panama and Costa Rica in order to share their VMS. Each has agreed to share VMS data publicly. GFW normally displays this data with 72 hours delay from the actual receipt and the published information is also aggregated and redacted in order to protect the proprietary information yet present enough information that it is clear which vessel is doing what.⁶⁴ It is worth noting that the EU mandates the use of AIS on fishing vessels of 15m and above, and other countries have also chosen to mandate the use of AIS where VMS is not present.

Arguments in favour of sharing VMS data publicly, including vessel identification, registration and authorisation information, and point to improved surveillance capacity and the encouragement of vessels to comply with regulations. Vessels with a history of non-compliance or even unauthorised vessels are easier to identify and can be singled out for inspection.

Fisheries management officials, often operating over vast swathes of ocean and with limited capacity, can benefit from the support of the public or third sector initiatives, such as GFW. Vessels which turn off monitoring and tracking devices, or who report false information during fishing activities, should be held accountable upon arrival at port by local port State authorities.

Indonesia, the second largest wild-caught seafood producer in the world, was the first country to share its VMS data, comprising all Indonesian-flagged fishing vessels on the publicly available GFW platform, starting in June 2017. Chile's opening similarly added over 700 fishing vessels to the map.⁶⁵ GFW is a transparency initiative, championed by the Indonesian Ministry of Marine Affairs and Fisheries, which at the time, called for all coastal nations to join and also publish its VMS data.⁶⁶ Other countries did follow suit, with Peru making its VMS data publicly available in October 2018,⁶⁷ Panama, one year later, Chile in March 2020, Costa Rica committed in July 2020⁶⁸ and others pledging to follow their example soon.⁶⁹ Peru went even further in 2020, by banning vessels lacking satellite tracking equipment from entering its port, as a means to combat illegal fishing.⁷⁰



63 Via platforms such as MarineTraffic, Vesseltracker.

64 Kimberly Vosburgh, "Costa Rica and Global Fishing Watch Sign Agreement to Give Greater Transparency to Fishing Activity – Global Fishing Watch," Global Fishing Watch, July 29, 2020, <https://globalfishingwatch.org/press-release/costa-rica-mou/>

65 Businesswire, "Oceana Celebrates the Public Release of Chile's Fishing Vessel Tracking Data | Business Wire."

66 See: Priyankar Bhunia, "Indonesia Steps Forward as First Nation in the World to Publicly Share Vessel Monitoring System Data - IUU Watch," June 2017, <http://www.iuuwatch.eu/2017/06/indonesia-steps-forward-first-nation-world-publicly-share-vessel-monitoring-system-data/>; "Indonesia VMS Joint Statement - Global Fishing Watch," June 2017, <https://globalfishingwatch.org/programs/indonesia-vms/indonesia-vms-joint-statement/>.

67 Oceana, "Peru's Vessel Tracking Data Now Publicly Available Through Global Fishing Watch | Oceana USA," October 26, 2018, <https://usa.oceana.org/press-releases/perus-vessel-tracking-data-now-publicly-available-through-global-fishing-watch>

68 Vosburgh, "Costa Rica and Global Fishing Watch Sign Agreement to Give Greater Transparency to Fishing Activity - Global Fishing Watch."

69 See: Businesswire, "Oceana Celebrates the Public Release of Chile's Fishing Vessel Tracking Data | Business Wire," businesswire.com, March 3, 2020, <https://www.businesswire.com/news/home/20200303005790/en/Oceana-Celebrates-Public-Release-Chile's-Fishing-Vessel>

70 Matilde Mereghetti, "Peru Bans Vessels Lacking Satellite Trackers from Its Ports.," undercurrent news, 2020, <https://www.undercurrentnews.com/2020/08/31/peru-bans-vessels-lacking-satellite-trackers-from-its-ports/>

Further evidence in support of the present Recommendation to publicly share vessel monitoring data is provided by Oceania⁷¹ and the Bloomberg Vibrant Oceans initiative.⁷² “Overfishing and illegal fishing put our oceans and our global food supply at risk of collapse,” said Melissa Wright, of Bloomberg Philanthropies. “By making its vessel data available to the world, the Chilean government is setting an example for healthier, more productive oceans.”⁷³ GFW aims to have 20 countries signed up to its monitoring platform by 2022.⁷⁴

GFW is also actively promoting ‘Sustainability through Transparency’⁷⁵ by the combined usage of VMS data and AIS and presenting a global picture of fishing effect. Such coupling of technologies allows gaps in monitoring to be filled. These gaps are presented either because the vessels are not fitted with the equipment or, in certain geographies, where AIS data doesn’t reliably get received, normally due to the density of transmission and insufficient receivers. This results in areas where AIS coverage is poor and other means of tracking are needed.⁷⁶ They are also investigating credible methods for tracking smaller vessels and for identifying hotspots of vessels that are not sharing information using AIS and VMS.⁷⁷

The information displayed in GFW’s platform uses machine learning, a type of Artificial Intelligence (AI), to analyse thousands of tracks. Today, GFW processes up to 60 million data points a day from 300,000 vessels. AI makes a huge problem manageable. That said, the ‘machine’ is always learning so it is possible that a vessel is identified as fishing when it is not.⁷⁸

The publicising of VMS data enhances accuracy and tracking of commercial fishing vessels in near real time. It also allows the monitoring of fishing activities by vessels which are not required to carry AIS due to their size (see also Recommendation 2).⁷⁹

Example: Indonesia



Indonesia is a case in point, where the publication of VMS data added about 5,000 medium-sized commercial fishing vessels to the GFW platform. The geography of Indonesia means that much of the activity is in an AIS black spot so the public VMS is vital. By publishing this vessel data, Indonesia is taking steps to fulfil their flag State responsibilities. In addition to informing strong monitoring, control and surveillance measures, this data can be used by stakeholders such as fisheries management bodies and NGOs in their management and research activities.

As the CEO GFW states “IUU fishing threatens food security and livelihoods; bonded labour and transnational crime result in detrimental impacts on the economy, society and the environment. Nevertheless, it persists because ocean governance is disconnected and inconsistently applied. By promoting transparency, information sharing and global cooperation, the Blue Paper offers a cost-efficient and effective means to stamp out the huge damage IUU fishing does to fisheries — and all who depend on them”.⁸⁰

Long’s arguments receive support by a study conducted by Longépé et al.⁸¹ The authors analyse the effectiveness of combining available technologies such as spaceborne Vessel Detection System (VDS), AIS and VMS to combating illegal fishing in Indonesia. The study revealed that as of 2016 up to 42% of all fishing vessels active in Indonesian waters were illegal fishing vessels and not carrying VMS.⁸² Usage of a combination of solutions targeting illegal fishing activities has led to a decrease of illegal fishing vessels in Indonesian waters.

71 The Oceana initiative “was established by a group of leading foundations — The Pew Charitable Trusts, Oak Foundation, Marisla Foundation (formerly Homeland Foundation), Sandler Foundation, and the Rockefeller Brothers Fund” Oceana, “About Us | Oceana,” Oceana, 2020, <https://oceana.org/about-oceana/about-us>

72 Bloomberg Philanthropies, “Vibrant Oceans | Bloomberg Philanthropies,” Bloomberg, 2020, <https://www.bloomberg.org/program/environment/vibrant-oceans/#overview>

73 Businesswire, “Oceana Celebrates the Public Release of Chile’s Fishing Vessel Tracking Data | Business Wire.”

74 Businesswire.

75 “Global Fishing Watch | Sustainability through Transparency,” Global Fishing Watch, 2020, <https://globalfishingwatch.org/map/>

76 <https://globalfishingwatch.org/data-blog/ais-coverage-data-coming-soon/>

77 Example of Iranian fishing vessels operating in Somali waters: <https://globalfishingwatch.org/impacts/illegal-fishing-northwest-indian-ocean/>

78 GFW therefore designates all identifications of fishing activities as “apparent”, not certain. See: Businesswire, “Oceana Celebrates the Public Release of Chile’s Fishing Vessel Tracking Data | Business Wire.”

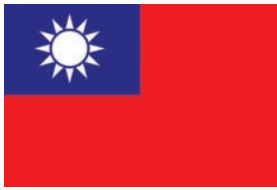
79 For the text of Chapter V as of 2002, see: Maritime Safety Committee, “RESOLUTION MSC.99(73) - ADOPTION OF AMENDMENTS TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, AS AMENDED,” IMO, 2000, <http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-%28MSC%29/Documents/MS-C.99%2873%29.pdf>; AND IMO, “SOLAS CHAPTER V SAFETY OF NAVIGATION,” IMO, 2002, <http://www.imo.org/en/OurWork/facilitation/documents/solas%20v%20on%20safety%20of%20navigation.pdf>

80 <https://www.nature.com/articles/s43016-020-0121-y>

81 Nicolas Longépé et al., “Completing Fishing Monitoring with Spaceborne Vessel Detection System (VDS) and Automatic Identification System (AIS) to Assess Illegal Fishing in Indonesia,” Marine Pollution Bulletin 131 (2018): 33–39, <https://doi.org/10.1016/j.marpolbul.2017.10.016>

82 Longépé et al.

Example: Taiwan



Another case supporting the argument is to be found with Taiwanese fishing activities. The country presently has three fishing fleets in the region and, next to China, is the biggest distant-water fishing nation in the Pacific. Taiwan has the **second** largest number of ocean-going fishing vessels in the world, despite the country's size.

After receiving an EU yellow card for its numerous shortcomings in fishing practices, the country undertook efforts to reform its fisheries legal framework, implement new control tools and improve the traceability of marine fisheries products and the yellow card was eventually lifted in 2019.⁸³

Taiwanese fishing vessels are obliged to report their position on a daily basis to the TFA,⁸⁴ while operating in distant waters, including the WCP, indicating its VMS operation running in parallel to the WCPFC's VMS.

One of the EU's critique points was its flawed VMS system, which as of 2016 remained understaffed and under-resourced. A team of less than 20 staff members had to monitor the positions of more than 1,000 vessels, while monitoring and reporting suffered from long delays and a lack of funding for communications to the vessels out at sea through satellite communications equipment. These impediments led to lengthy delays of up to ten days for a command by the monitoring operators to reach a captain suspected of violating regulations.⁸⁵ Impediments such as these present significant challenges to any fisheries authority. External support could therefore benefit existing national or regional VMS monitoring efforts.

Barriers to Change?

Data sharing and confidentiality provisions in national legislation might be brought forward as an argument against the public sharing of VMS data received by regional bodies, or member States forming part of RFMOs.⁸⁶ In the case of the WCP, it is the WCPFC which retains the right of access to the VMS data and technology used.⁸⁷ The flag CCM is obliged to submit relevant information to the Commission's VMS database, in order to operate in the WCPFC Convention Area, including the "name of the vessel, unique vessel identification number (UVI) [* if and when adopted by the Commission], radio call sign, length, gross registered tonnage, power of engine expressed in kilowatts/horsepower, types of fishing gear(s) used as well as the make, model, unique network identifier (user ID) and equipment identifier (manufacturer's serial number) of the ALC that vessel will be using to fulfil its Commission VMS reporting requirements."⁸⁸

NGO Engagement

State authorities might say that non-governmental organisations (NGOs) or other civil-society third parties should not get involved in criminal investigations since they do not generally possess the relevant experience or mandate to conduct investigations. Furthermore, their intervention may simply serve to hamper the investigative effort. A responsible and collaborative handling of such data is the answer to such concerns and where, instead of hampering, the accumulated expertise and knowledge base from NGO's work should and could benefit investigations.

NGOs' involvement in policy development, monitoring and implementation is a well-proven, encouraged and acknowledged practice within the international system, and also at regional level.

The UN acknowledges the vital role of the active involvement of civil society, NGOs, the private sector, and other committed actors, when faced with challenges that go beyond one nation's domestic realm, issues that *"cannot be met, or at least not as effectively, by individual governments and the community of States alone."*⁸⁹

83 European Commission, "Illegal Fishing: EU Lifts Taiwan's Yellow Card," EUROPEAN COMMISSION, June 2019, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3397

84 Francisco Blaha, "Taiwan in Fisheries — Francisco Blaha," 2016, <http://www.franciscoblaha.info/blog/2016/4/3/taiwan-in-fisheries>

85 See Xueli Li, "Indiscriminate Catching, Washing Fish, and Fraud—the Truth in the Eyes of Observers—The Reporter," 2016, <https://www.twreporter.org/a/far-sea-fishing-taiwan-truth> for a detailed description.

86 As in the aforementioned case of the vessel Win Far 636, related to Eritara Kaiierua's death, where the Taiwanese Fisheries Agency stated: "It is not allowed to arbitrarily disclose VMS data of fishing vessels according to the domestic laws of Taiwan." Letter of evidence submitted to HRAS dated June 9, 2020 from Deputy Director Kuo-Ping Lin of the Taiwanese Fisheries Agency, Council of Agriculture, Executive Yuan.

87 The WCPFC has gateways for the following services: Argos, Faria, Halios, CLS Mobile Transceiver/Transmitter Units (MTUs) using the Iridium service, Inmarsat C, SkyMate. For further details see: "Collecte Localisation Satellites" or CLS Group is a provider for worldwide monitoring and surveillance technology. <https://www.cls-telemetry.com/cls-satellite-monitoring/>

88 WCPFC, "Commission VMS Standard Operating Procedures | WCPFC."

89 UNNGLS, "UN SYSTEM ENGAGEMENT WITH NGOS, CIVIL SOCIETY, THE PRIVATE SECTOR, AND OTHER ACTORS," 2005, v.

The answer to the above concern should therefore be for States and regional RFMOs to build long-lasting beneficial and inclusive relationships with relevant stakeholders, including NGOs and civil-society organisations, in order to seek effective solutions to the problems emerging with IUU, a lack of security, and human or labour rights protection at sea.

Analysis, Comment and Recommendations

An analysis of the actual barriers to change with respect to current rules surrounding disclosure of VMS data, i.e. why it is not generally open to public scrutiny, could and should be undertaken within the Pacific region. This could include input from industry stakeholders, such as Observers themselves, regulatory bodies and other non-governmental stakeholders. The outcome would be a better and in-depth understanding of the current impediments to increased transparency with regards to VMS data and MCS information in general.

A commitment to publicising VMS data by WCPFC member States could follow, in the event that the above evaluation supports this proposition, followed by necessary regulatory and legislative changes, which could be in the form of an amendment to CMM 2014-02 and the WCPFC's Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission as well as collaborative, inclusive approaches to policy development, monitoring and implementation. CMM 2017-03 might benefit from an amendment of §3 c and g. stipulating that the fishing vessel immediately notifies the flag CCM and the Observer provider.

An eventual implementation of such measures would result in increased transparency of fishing activities; increased capacity for MCS operations; enhancing Observers' and crew's security; a positive impact on the efforts for sustainable fisheries management, fish stocks and effective relationships between all relevant stakeholders.

Follow-On Recommendations

HRAS Recommends:

- 1 Region-wide analysis of barriers to change with respect to current rules surrounding public disclosure of VMS;
- 2 Pending evaluation, a commitment to publicizing VMS data by WCPFC member States, followed by necessary regulatory and legislative changes, amending WCPFC CMM 2014-02;
- 3 Participatory approaches to policy development, monitoring and implementation;
- 4 Amending WCPFC CMM 2017-03 §3. c. and g. and for example, stipulating that the fishing vessel (§3.c.) "*immediately notifies the flag CCM and the respective Observers' provider and the nearest Coastal state*" and (§3.g.) "*provides the report to the Observer provider, the flag CCM and appropriate authorities, including the nearest Coastal state, on the incident*".

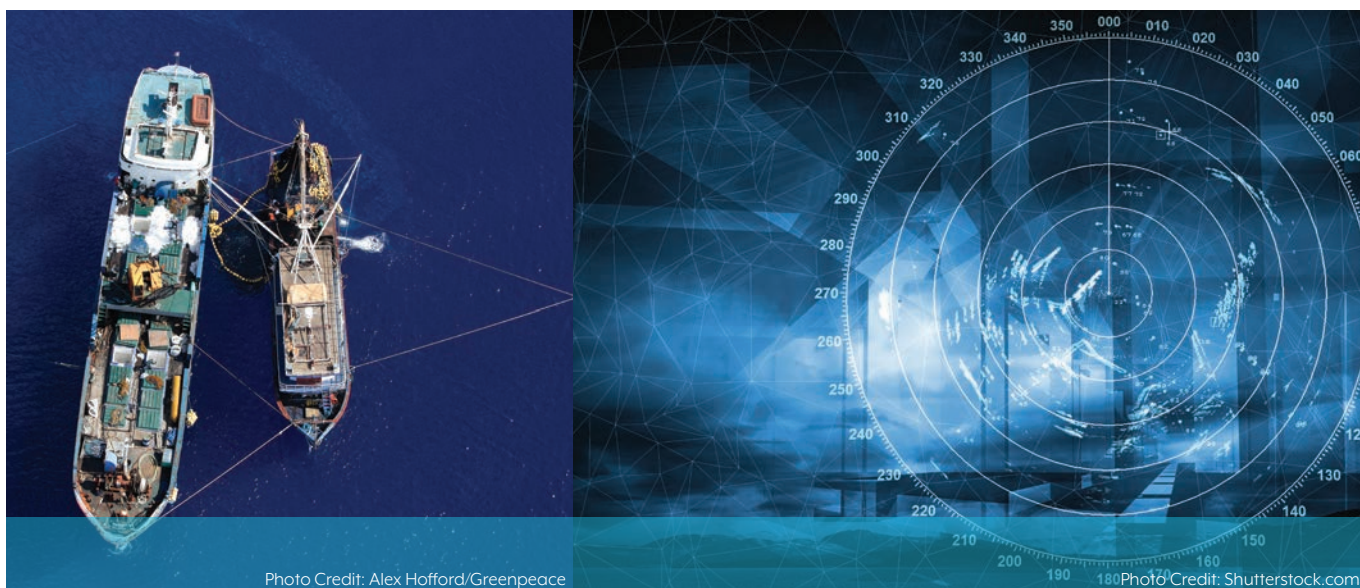


Photo Credit: Alex Hofford/Greenpeace

Photo Credit: Shutterstock.com

Priority Recommendation No.2

“

Recommends that international fisheries certification organisations should mandate all registered vessels, as part of the contractual terms and conditions for use of their schemes, to promote, and where able, to assure:

- *continuous operation of AIS on all certified vessels to allow public cross-referencing with VMS data at all times;*
- *independent access [clarified as referring to ‘public access’], review and monitoring of vessel and fleet VMS data;*
- *two Observers per vessel, or one Observer plus on-board tamper-proof equipment supporting electronic monitoring.*

”

Revision and the Need for a Broad Alliance

Where the original Recommendation focused on the positive impact international fisheries certification organisations could generate when mandating continuous operation of AIS on all certified vessels to allow public cross-referencing with VMS data at all times, an in-depth review of this Recommendation has brought to light the need for a broader alliance among stakeholders to help realise this goal. Among others, this alliance is highly dependent on the inclusion of fisheries management organisations.

With regards to Electronic Monitoring (EM), the International Seafood Sustainability Foundation (ISSF)⁹⁰ is one such forward-looking broad alliance. It comprises charitable organisations, RFMO's, scientists and scientific agencies, NGOs, the vessel community, companies, retailers and food service companies advocating for the expansion of onboard EM.⁹¹

This Recommendation is subsequently addressed in the light of a multi-stakeholder approach to effecting change.

AIS: A Brief History and Overview of the Technology

The Automatic Identification System (AIS) is a positioning system available worldwide, fitted on board vessels in the form of transponders, continuously transmitting a signal (unless switched off). Any party with an AIS receiver can obtain that data, such as other vessels, land-based stations or satellites. Plotting the signal on a map allows visualisation of a vessel's position, course and speed. AIS was developed as a short-range (10-20 miles) system but can nowadays operate through low-orbit satellites, extending its reach and accessibility globally.

The AIS was adopted as a new requirement for vessels of a certain size by the International Maritime Organization (IMO) in 2000. It is governed by Regulation 19 of the International Convention for the Safety of Life at Sea (SOLAS) Chapter V - Safety of Navigation. Chapter V requires all ships to carry AIS installations and to provide information about the ship to other ships and to coastal authorities automatically. AIS is required to be “fitted aboard all ships of 300 gross tonnage and upwards engaged on international voyages, cargo ships of 500 gross tonnage and upwards not engaged on international voyages and all passenger ships irrespective of size. The requirement became effective for all ships by 31 December 2004. Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.”⁹²

There are two types of AIS transponders, Class A and Class B. Class A is mandated on commercial and passenger vessels, as per the above definition, while Class B has been developed for smaller, mainly leisure vessels, benefitting from the advantages of the AIS system, yet also suitable for smaller fishing vessels and lifeboats.

⁹⁰ ISSF, “About | International Seafood Sustainability Foundation,” ISS-Foundation, 2020, <https://iss-foundation.org/who-we-are/about/>

⁹¹ ISSF, “Position Statements | International Seafood Sustainability Foundation,” 2020, <https://iss-foundation.org/what-we-do/influence/position-statements/download-info/2020-iotc-position-statement/>

⁹² IMO, “Automatic Identification Systems (AIS),” IMO, 2020, <http://www.imo.org/en/OurWork/Safety/Navigation/Pages/AIS.aspx>

AIS transponders send messages through two dedicated Very High Frequency (VHF) frequencies 161.975MHz and 162.025MHz⁹³ integrating standardised VHF transceivers with other devices, such as a GPS positioning device, and electronic navigation sensors like a rate of turn indicator and a gyrocompass.⁹⁴ All Class-A-carrying vessels are mandated to be connected with a Global Navigation Satellite System (GNSS) antenna, hooked up with the GNSS, generating the transponder's location.⁹⁵ AIS-SAT or SAT-AIS is the transmission of such data through satellites, allowing to track a vessel's position even in remote waters, distant from any ship- or land-based receiver, that is beyond the radio horizon.

AIS's initial purpose was for vessels to see and to be seen, as a means to avoid collision and therefore supplement marine radar. Today, it is an integral part of Maritime Situational Awareness (MSA). With vessel tracking, intelligence gathering, knowledge extraction, vessel behaviour and anomaly detection on vessel movements,⁹⁶ its contemporary applications go beyond mere collision avoidance.

HRAS Comment: The use of AIS as a monitoring tool has been, and is still being met with some resistance, yet the arguments made against it could be argued to appear outdated. For example, claims of piracy fears in the fishing sector (which are virtually non-existent in the WCPFC region), and the giving up of secret fishing spots.

POINT: Fisheries are a public resource, managed using public funds, and intended to be managed in the public interest. Therefore, the default for information on those fisheries should be public.

AIS: Flaws and Manipulation

A flaw appears to come with the SOLAS regulation itself. It leaves room for interpretation towards the applicability of AIS.

In Chapter V, it states under Regulation 1 - Application, §1. "Unless expressly provided otherwise, this chapter shall apply to all ships on all voyages [...]"⁹⁷

Then further below, Regulation 1, §4 it says: "The Administration shall determine to what extent the provisions of regulations 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 do not apply⁹⁸ to the following categories of ships: 1. ships below 150 gross tonnage engaged on any voyage; 2. ships below 500 gross tonnage not engaged on international voyages; and 3. fishing vessels."⁹⁹

Regulation 19.2.4 states that "all ships of 300 gross tonnage and upwards engaged on international voyages [...] shall be fitted with an automatic identification system,"¹⁰⁰ which would include fishing vessels, meeting these criteria.

“ All ships, including fishing vessels have to abide by the AIS stipulations, unless otherwise specified by the Administration, which is the flag administration, or the flag State. ”

93 Clément Iphar et al., "Risk Analysis of Falsified Automatic Identification System for the Improvement of Maritime Traffic Safety," 2016.

94 See: Dimitrios Dalaklis, "Vulnerabilities of the Automatic Identification System in the Era of Maritime Autonomous Surface Ships," World Maritime University, 2018, https://www.researchgate.net/profile/Dalaklis_Dimitrios/publication/325688207_Vulnerabilities_of_the_Automatic_Identification_System_in_the_Era_of_Maritime_Autonomous_Surface_Ships/links/5b1e52d345851587f29fe924/Vulnerabilities-of-the-Automatic-Identifica

95 GNSS uses a combination of existing satellite systems. See also International Maritime Organization, "GUIDELINES FOR THE INSTALLATION OF A SHIPBORNE AUTOMATIC IDENTIFICATION SYSTEM (AIS)" (London, UK, UK, 2003), <http://www.imo.org/en/OurWork/Safety/Navigation/Documents/227.pdf>

96 Fabio Mazzarella et al., "A Novel Anomaly Detection Approach to Identify Intentional AIS On-off Switching," Expert Systems with Applications 78 (2017): 110-23, <https://doi.org/https://doi.org/10.1016/j.eswa.2017.02.011>

97 IMO, "SOLAS CHAPTER V SAFETY OF NAVIGATION REGULATION I-Application," IMO, 2000, <http://www.imo.org/en/OurWork/facilitation/documents/solas%20v%20on%20safety%20of%20navigation.pdf>

98 Emphasis by HRAS.

99 IMO, "SOLAS CHAPTER V SAFETY OF NAVIGATION REGULATION I-Application."

100 Maritime Safety Committee, "RESOLUTION MSC.99(73) - ADOPTION OF AMENDMENTS TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, AS AMENDED," 129-30.

One could interpret Regulation 1, §4 to be saying that AIS is not globally mandated for fishing vessels per se, a reading supported by GFW.¹⁰¹ On the other hand, one could read the Regulation to be stipulating an obligation for the exception to be formulated by the Administration, not the norm. Interpreted that way, it says all ships, including fishing vessels have to abide by the AIS stipulations, unless otherwise specified by the Administration, which is the flag administration, or the flag State.

REGULATION 3, §1 – Exemptions and equivalents, further supports this interpretation/reading, where it states: “The Administration may grant general exemptions to ships without mechanical means of propulsion from the requirements of regulations 15, 17, 18, 19 (except 19.2.1.7), 20, 22, 24, 25, 26, 27 and 28,”¹⁰² since it repeats the necessity of formulating the exemption, albeit for a different category of vessels.

This vague wording however leaves the application to the satisfaction of the Administration open to interpretation and needs further legal review for clarification.

Nonetheless, according to an Observer HRAS spoke with, AIS is to be switched on as an obligation for all fishing vessels supervised by the FFA.¹⁰³ There is FFA authority to support this.¹⁰⁴

Data Manipulation

AIS data provides maritime authorities and users with essential data to improve vessels’ safety during navigation. Tampering with the AIS data however, provides a cover for illicit activities, such as smuggling (for example of sanctioned commodities)¹⁰⁵ or trafficking of arms, narcotics and people, piracy, waste disposal and environmental pollution, unauthorised fishing in protected areas or other incidents of illegal, unreported and unregulated (IUU) fishing activities. AIS, as a self-reporting system, is vulnerable to “spoofing”, which is the “intentional reporting of incorrect information.”¹⁰⁶ An AIS signal can either be modified or turned off entirely during a vessel’s voyage and activities. As of 2014, 1 out of every 100 ships was transmitting a false signal on AIS and GPS manipulation was on the rise, mostly by Chinese fishing vessels.¹⁰⁷

Data Anomalies and Concerns

Three types of erroneous data are mainly associated with AIS: 1) errors or unintentional broadcasting of data of low quality or simply unavailability of services, due to poor coverage, too many signals in one place, weather, or jamming; 2) falsification, the intentional broadcast of wrong information or turning the transponder off; 3) spoofing, the intentional modification of AIS data, by third parties to the transponder-receiver system with the goal to transmit false data.¹⁰⁸

Essentially these are two categories of intentional manipulation of AIS transmissions, wrong data input and modifying transmissions. The outcomes of such manipulations for vessels are ‘going dark’, that is disappearing from screens, appearing in places other than their actual position (GPS manipulation), shared, fraud or incomplete identities (vessels using the same or wrong name, IMO number or Maritime Mobile Service Identity (MMSI) or omitting the name while sending their position) or wrong reporting of their actual activities or destinations.

‘Fish washing’ is another practice benefitting from switching off AIS. A common practice for Taiwanese fishing vessels, as reported by Li, is for a captain to arrange for their vessel to meet a reefer and turn off the vessel’s transceiver during transshipment, in order to avoid detection by fisheries departments and then falsely reporting the locator system’s failure.¹⁰⁹

101 GFW, “What Is the Automatic Identification System (AIS)? | Global Fishing Watch,” GFW, 2020, <https://globalfishingwatch.org/faqs/what-is-ais/>

102 IMO, “SOLAS CHAPTER V SAFETY OF NAVIGATION REGULATION I-Application.”

103 In a call with an FFA Observer, 3 September 2020. The Observer preferred to remain anonymous.

104 https://ffa.int/system/files/REG14_FFA%20Letter%20AIS%20From%20July2015.pdf

105 As analysed in detail by Fenton for Windward Adina Fenton, “Mind the AIS Gap – Windward,” windward, November 2019, <https://wnwd.com/blog/mind-the-ais-gap/>

106 Tao Zhang et al., “Detection of AIS Closing Behaviour and MMSI Spoofing Behaviour of Ships Based on Spatiotemporal Data,” Remote Sensing 12, no. 4 (2020): 702, <https://www.mdpi.com/2072-4292/12/4/702/html>

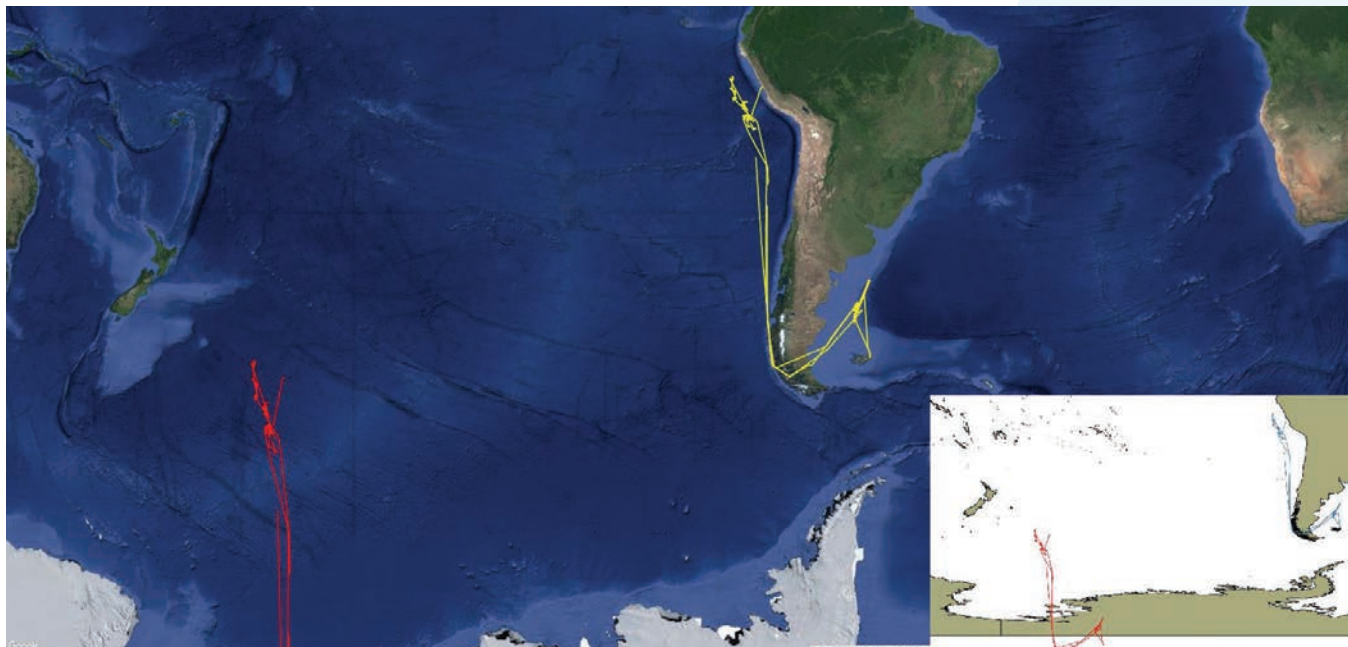
107 Windward, “An Analysis of the Magnitude and Implications of Growing Data Manipulation at Sea,” *arbitrage-maritime*, 2014, <http://www.arbitrage-maritime.org/fr/Gazette/G36complement/Windward.pdf>; “One in a Hundred Ships Using Fake AIS Identities as Manipulation Increases – Stop Illegal Fishing,” October 2014, <https://stopillegalfishing.com/press-links/one-in-a-hundred-ships-using-fake-ais-identities-as-manipulation-increases/>; “One in a Hundred Ships Using Fake AIS Identities as Manipulation Increases,” *defence web*, 2014, <https://www.defenceweb.co.za/security/maritime-security/one-in-a-hundred-ships-using-fake-ais-identities-as-manipulation-increases/>

108 Iphar et al., “Risk Analysis of Falsified Automatic Identification System for the Improvement of Maritime Traffic Safety”; Mazzarella et al., “A Novel Anomaly Detection Approach to Identify Intentional AIS On-off Switching”; Oceanosanos, “ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE SOUTH ATLANTIC,” 2018, <http://oceanosanos.org/wp-content/uploads/2018/11/OS-Report-0001.pdf>

109 Li, “Indiscriminate Catching, Washing Fish, and Fraud-the Truth in the Eyes of Observers-The Reporter.”

Ships use going dark to conceal the origin and destination of cargo, such as trans-shipments at sea.¹¹⁰ Sometimes they would simply swap latitude and longitude, as described in a post by GFW, to cover illegal fishing activities.¹¹¹ With the right skill set, such activities are still detectable, as in the case of Lu Yan Yuan Yu 10, reported to be sailing across Antarctica, while it had been illegally fishing in Argentinian waters (Figure 6).¹¹²

Figure 6: Lu Yan Yuan Yu 10 Reporting to Sail Across Antarctica



Source: Global Fishing Watch, “When Vessels Report False Locations,” Global Fishing Watch, 2016.¹¹³

NB: The red tracks show the broadcast position of the Lu Yan Yuan Yu 10 apparently transiting across Antarctica (inset). The yellow tracks show its true location along the coast of South America passing through the Strait of Magellan and into port at Lima, Peru.¹¹⁴

Online platforms are not without criticism. Their data is allegedly vulnerable to manipulation through hacking.¹¹⁵ Evidence suggests reason for such criticism yet falls short of discrediting entire platforms, such as Marine Traffic or GFW. On the contrary, they provide further weight to the argument for greater transparency through combined technological solutions.

“ **Once some of the data is corrupt, all data is suspect.** ”

AIS data manipulation and altering transmissions can be carried out on board a vessel by using a computer and respective software which bypasses the on-board GPS.¹¹⁶ It harms maritime security and enables illicit activities, undermining the credibility of MCS throughout the maritime sphere – “*once some of the data is corrupt, all data is suspect,*”¹¹⁷ an argument shared in other more recent publications and contexts.¹¹⁸ Commodity flow interpretations appear distorted as a result and decision-makers rely on imprecise data. Between 2012 and 2014, Windward analysed the AIS usage behaviour of over 200,000 vessels, finding that 1% used fake IMO numbers, while over half of the vessels didn’t report their destination correctly.¹¹⁹ Over one quarter of all vessels worldwide turned their AIS off more than 10% of the time under sail.

¹¹⁰ Fenton, “Mind the AIS Gap – Windward.”

¹¹¹ Global Fishing Watch, “When Vessels Report False Locations,” Global Fishing Watch, August 2016, <https://globalfishingwatch.org/data/when-vessels-report-false-locations/>

¹¹² <https://www.bbc.co.uk/news/world-latin-america-35815444>

¹¹³ Global Fishing Watch.

¹¹⁴ Global Fishing Watch.

¹¹⁵ Dalaklis, “Vulnerabilities of the Automatic Identification System in the Era of Maritime Autonomous Surface Ships.”

¹¹⁶ Dalaklis, “Vulnerabilities of the Automatic Identification System in the Era of Maritime Autonomous Surface Ships.”

¹¹⁷ Windward, “An Analysis of the Magnitude and Implications of Growing Data Manipulation at Sea,” 2.

¹¹⁸ See: Oceanosanos, “ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE SOUTH ATLANTIC.”

¹¹⁹ Windward, “An Analysis of the Magnitude and Implications of Growing Data Manipulation at Sea.”

Detection of AIS data anomaly with regards to whether the ‘dropout’ in transmission is the product of intentional manipulation or of physical circumstances, like a vessel being out of line-of-sight, requires meticulous analysis and remains understudied.¹²⁰ GPS tampering impedes efforts for a sustainable management of fisheries, as the continuous invasion of the Galapagos Marine Reserve or the Taiwanese off-the-records transshipments at sea exemplify.

To the credit of AIS, the Windward study identifies most AIS data to be accurate, yet those ‘AIS manipulators’ yield a massive impact on trust and maritime situational analysis, undermining watch lists and sustainability.¹²¹

AIS: Why International Fisheries Certification Organisations Should Make its Permanent Switched-on Status Compulsory

While AIS remains a weak system with limited possibilities to verify data accuracy and associated with an increase in data manipulation, it has significantly improved MCS and maritime safety and security.

Viewed as a complementary service to marine radar and (publicly available) VMS and the inclusion of AIS-SAT, it enhances the capabilities of observing parties and strengthens not only MSA and thus maritime security, but also hampers illicit activities to some degree, benefitting sustainable fisheries management.¹²² It should be seen as an additional threshold for those with malicious intentions though it cannot be the sole cornerstone of MCS in favour of sustainable fisheries and a safe maritime environment.

“ The ‘system of honour’, with AIS inputs relying on good faith in those navigating the vessels, is increasingly showing its deficiencies. ”

The ‘system of honour’, with AIS inputs relying on good faith in those navigating the vessels, is increasingly showing its deficiencies. While being mandatory by regulation, it remains voluntary in practice, leaving the choice to use it to the vessel operators. The mandatory obligation to keep it switched on at all times as part of international certification schemes, subject to certain exceptions where the safety of life at sea is at issue, is nonetheless an effective counter-measure to fraud and manipulation and will increase the credibility of international fisheries certification organisations, often exposed to critique for not upping the ante in favour of higher standards and for turning a blind eye to severe shortcomings in MCS of vessels, sailing under their umbrella.¹²³

“ International fisheries certification organisations should take a stand for transparency, labour rights, safety at sea and sustainable fisheries by making the continuous operation of AIS mandatory on certified vessels. ”

Although the application of AIS to fishing vessels, according to SOLAS, is disputable, its value for scientific evaluation and sustainable management of fisheries is not. Vessels with AIS account for over 50% of the fishing effort more than 100NM from shore and more than 80% in the high seas.¹²⁴

A lack of transparency regarding high seas fishing impedes the necessary calculation of fishing efforts, associated costs and their impacts on crew welfare and environment, such as it distorts the evaluation of economic viability of distant-water fishing efforts. Using satellite data obtained through AIS and VMS provides for urgently needed increased transparency and consequently for a more adequate picture of fisheries globally.¹²⁵

International fisheries certification organisations should take a stand for transparency, labour rights, safety at sea and sustainable fisheries by making the continuous operation of AIS mandatory on certified vessels, subject to the exception above.

¹²⁰ Mazzearella et al., “A Novel Anomaly Detection Approach to Identify Intentional AIS On-off Switching.”

¹²¹ Windward, “An Analysis of the Magnitude and Implications of Growing Data Manipulation at Sea.”

¹²² See also Fish-I Africa, “THE POTENTIAL USE OF AIS AS A FISHERIES MONITORING TOOL,” Stop Illegal Fishing, 2017, <https://stopillegalfishing.com/wp-content/uploads/2018/01/Potential-Use-of-AIS-as-a-Fisheries-Monitoring-Tool-WEB.pdf> for an analysis of AIS potential use as a fisheries monitoring tool complementary to VMS.

¹²³ Oceanosanos in their study of illicit behaviour related to AIS modifications in Montevideo go as far as suggesting vessels, that regularly turn their AIS off, when under operation, should not be allowed operating in port, should not be permitted to offload their catch Oceanosanos, “ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE SOUTH ATLANTIC.”

¹²⁴ GFW, “What Is the Automatic Identification System (AIS)? | Global Fishing Watch”; Enric Sala et al., “The Economics of Fishing the High Seas,” Science Advances 4, no. 6 (June 1, 2018): eaat2504, <https://doi.org/10.1126/sciadv.aat2504>

¹²⁵ Sala et al., “The Economics of Fishing the High Seas.”

Remote Monitoring – An Opportunity?

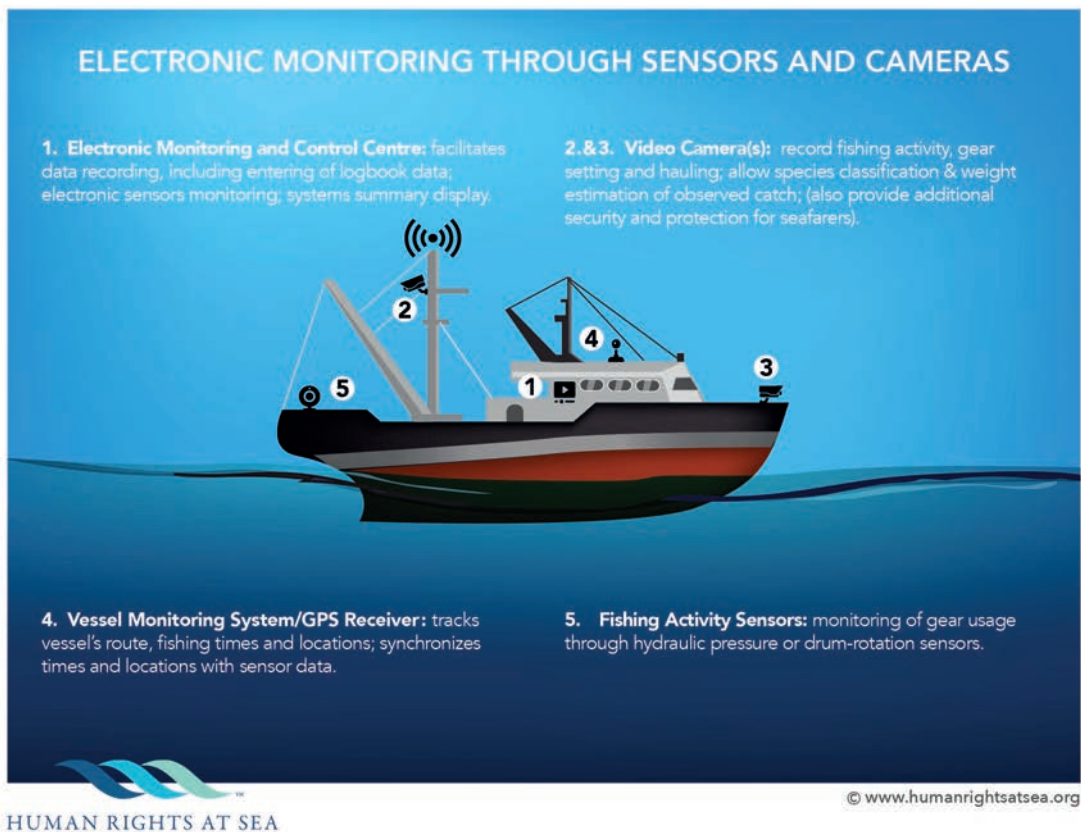
Data is essential to organisations that protect the ocean’s resources.¹²⁶ Inclusive approaches with regards to stakeholders and technology, including remote monitoring, will be of advantage to all actors involved, and first and foremost increase safety, security and sustainability in fisheries. Initiatives such as the Seafood and Fisheries Emerging Technologies Conference (SAFET), where a broad coalition of industry, government, and non-government institutions come together to explore emerging technologies that could be applied to improve the conservation and management of the world’s fisheries show that such endeavours are not without precedence and have already gained some traction.¹²⁷

The goal of SAFET’s conference summarises what HRAS also believes will enhance the benefit of cross-referencing technologies in favour of human rights at sea and sustainable fisheries management. It will: “1. Improve and clarify the understanding of the existing MCS and supply chain traceability environment; 2. Objectively review emerging and advancing technologies that might contribute to less expensive and more efficient MCS and supply chain traceability; and, 3. Advance future implementation of innovative emerging technologies in MCS and supply chain traceability applications where appropriate.”¹²⁸ The cross-referencing of technologies and their usage to analyse fisheries in a variety of regards and by multiple stakeholders should be seen and encouraged in a similar vein. Inclusion, not exclusion.

Electronic Monitoring

With regards to Electronic Monitoring (EM) two types of monitoring should be considered: a) EM through sensors and cameras; and b) vessel monitoring/tracking systems like VMS/AIS¹²⁹ (Figures 6 and 7).

Figure 7: Electronic Monitoring Through Sensors and Cameras¹³⁰



¹²⁶ Javier De La Col, “IMPROVING OBSERVER COVERAGE AT SEA: ELECTRIC MONITORING SESSION IV Overview of Emerging Technologies,” 2019, https://114973d1-ff11-4a1e-a6ae-708c3e9c607f.filesusr.com/ugd/al7859_a71aa53ada664cafb7631e03889083db.pdf.

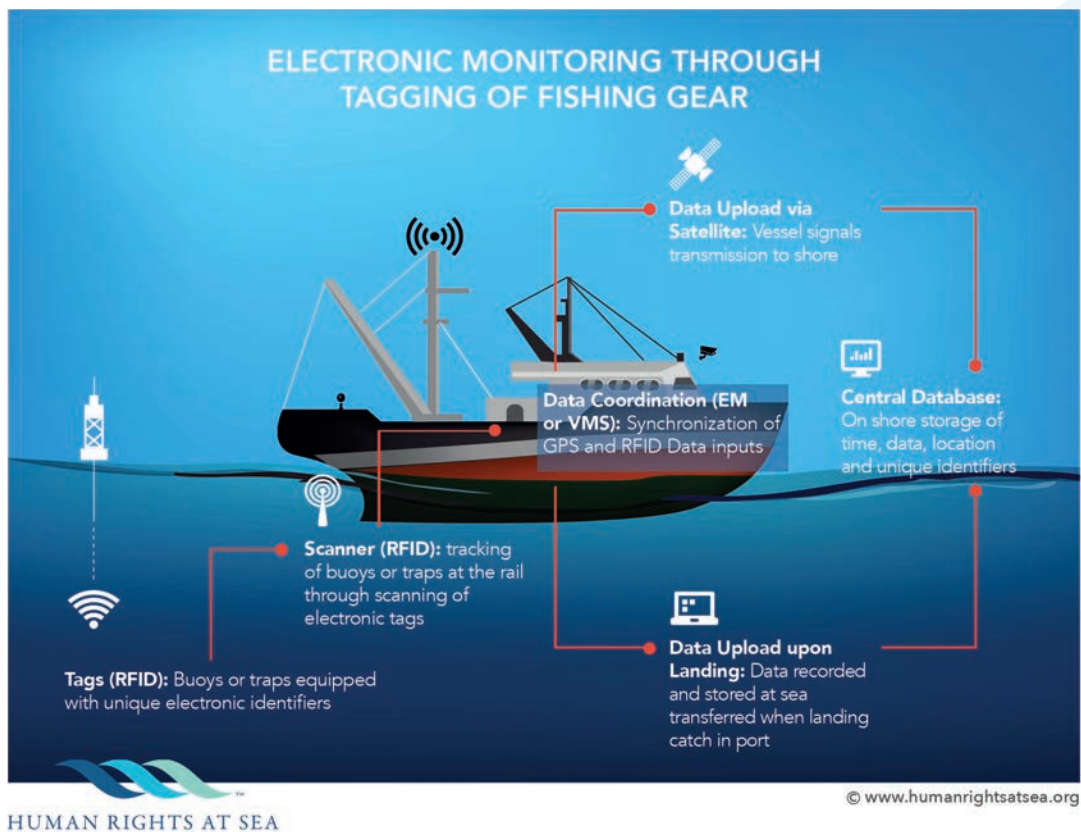
¹²⁷ SAFET, “Seafood and Fisheries Emerging Technology,” seafoodandfisheriesemergingtechnology.com, 2020, <https://www.seafoodandfisheriesemergingtechnology.com/>.

¹²⁸ SAFET.

¹²⁹ AIS was initially not a tracking or monitoring system but can be used as such to a certain degree, as the above explanations reveal.

¹³⁰ Based on: James Gibbon, “Electronic Monitoring: A Key Tool for Global Fisheries | The Pew Charitable Trusts,” PEW, September 20, 2019, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/09/electronic-monitoring-a-key-tool-for-global-fisheries>; Ecotrust Canada, “Launching a Social Enterprise Where Data Empowers Local Fisheries | Ecotrust Canada,” Ecotrust, 2014, <https://ecotrust.ca/latest/blog/launching-a-social-enterprise-where-data-empowers-local-fisheries/>.

Figure 8: Electronic Monitoring Through Tagging of Fishing Gear¹³¹



Electronic Monitoring – Opportunities

“ *EM can be seen as a cost-effective opportunity to acquire 100% Observer coverage in areas where it is still needed.* ”

EM is reported to have a range of positive effects. While supporting Observers’ safety at sea, it enhances the prediction of sensitive species, leads to better quota setting and higher sustainability in catches.¹³² It also supports management institutions and processes. EM can integrate vessel tracking and logbook features, a feature increasing an Observer’s safety and serving as a deterrent to captains who wish to see the Observer change their entries.¹³³ Smart EM solutions incorporate data from cameras,¹³⁴ sensors and other technology, for example Radio Frequency Identification (RFID), Smart Buoys and engine diagnostics.

A Pew Charitable Trusts (Pew) study describes EM as a key tool for global fisheries, improving governments’ and RFMO’s oversight of high-seas fleets,¹³⁵ improving needed increased oversight of catches, bycatches, compliance and fishing efforts, as recognised by fisheries managers and scientists alike as a guarantee for sustainable fisheries.

¹³¹ Based on: Amanda Barney, “EM 2.0: New Technology in Data Capture & Analysis for Delivery at Scale” (Bangkok, February 2019), <https://www.seafoodandfisheriesemergingtechnology.com/2019-bangkok>

¹³² Christopher Cusack, “Beyond Monitoring: Unlocking the Full Potential of EM” (Bangkok, 2019).

¹³³ As reportedly happened in the cases of deceased Observer Tamwabeti, who received a death threat and was subject to intimidation on a voyage in early 2019, as reported in: MRAG, “Review of the IATTC Regional Observer Programme Covering the Period January 1, 2018-February 26, 2019,” 2019, https://iattc.org/Meetings/Meetings2019/IATTC-94/Docs/_English/CAF-07_ADDENDUM%201%20MRAG%20Americas%20Program%20to%20monitor%20transshipments%20at%20sea.pdf AND Simone Cagilaba, testifying before the House Committee on Natural Resources Cagilaba SSB, “Written Testimony of Simone S.B Cagilaba US Multilateral Treaty Observer, South Pacific (1997–2015) Before the House Committee on Natural Resources, Subcommittee on Oversight and Investigations Sexual Harassment at the National Oceanic and Atmospheric Administration” (Washington DC, 2020).

¹³⁴ See also: Inews, “Government to Pay up to \$60 Million to Install Cameras on Commercial Fishing Boats | 1 NEWS | TVNZ,” Inews, 2020, <https://www.tvnz.co.nz/one-news/new-zealand/government-pay-up-60-million-install-cameras-commercial-fishing-boats>

¹³⁵ Gibbon, “Electronic Monitoring: A Key Tool for Global Fisheries | The Pew Charitable Trusts.”

A complementary usage of EM to onboard observers provides a proven opportunity to enhance the efforts by RFMOs and governments for better fisheries management, while also improving onboard Observers' safety and human rights at sea and the protection of marine ecosystems alike.¹³⁶

EM can be seen as a cost-effective alternative to placing more onboard Observers on fishing vessels¹³⁷ or as an additional effort to increase MCS capacity, while also enhancing onboard Observers' safety.

In a variety of studies reviewing the application and performance of EM in fisheries (for Peru, Alaska and Denmark), EM technology was shown to be cheaper than onboard Observers, with 50%, 27–41 % and 15% less costs respectively, while improving the accuracy of onboard logbooks; reducing illegal, unreported and unregulated fishing; increasing data collection on bycatch species for biodiversity and conservation concerns; and expanding authorities' ability to monitor compliance with regulations.¹³⁸

The WCPFC recognised EM's potential in a report brought to its attention at the 10th regular Commission session by Dunn and Knuckey, who recommended the implementation of e-monitoring and e-reporting (ER) without delay.¹³⁹ EM doesn't come without challenges, yet improves the paper onboard logbooks or reports provided by skipper and Observer. Digitalisation of both, plus EM installations significantly ensures a reduction in opportunity for tampering with data provided in the logbooks/reports and provides quick analysis capacity for RFMOs, in near real time.

In order to align the data provided by human Observers on board and EM technology, EM standards are useful to put in place, that bring both data collected by Observers and by EM together. EM should also be seen as a cost-effective opportunity to acquire 100% Observer coverage in areas where it is still needed, by complementing current onboard human Observers.

More needs to be done by RFMOs, in terms of funding, implementation and harmonisation to make EM work, as observed among others by Pew.¹⁴⁰ While Observer coverage on purse seine fleets in the ICCAT, WCPFC and IATTC is mandatory on all vessels, the targets for deploying Observers on long line vessels remain shockingly low at a 5% level for WCPFC and IATTC, for example, and even the 5% is often still unmet in reality.¹⁴¹

These low levels of Observer coverage in the first place, paired with recent challenges to deploy Observers at all, due to Covid-19, create a convincing case for supplementing human Observers with EM, as recognised by regional fisheries bodies.¹⁴² Emery et al come to a similar conclusion for the WCPFC, identifying “*that 78% of the longline fields can be collected with current EM technology, with 84% of these used in scientific analyses. For the 16% of fields not routinely used in scientific analyses, the introduction of EM may facilitate a sufficient increase in data availability to support their future use*”, and while examining the capability of EM for the WCPFC, advocate for “*a holistic and integrated approach to the use of EM in future research and monitoring programmes in both the WCPO and global longline fisheries*”.¹⁴³

What does the reality look like? The WCPFC started to consider the usage of ER and EM in 2014 and agreed to develop a set of draft standards, specifications and procedures for the use of ER and EM technologies in WCPFC fisheries.¹⁴⁴ ER standards were consequently adopted in 2016 (e-reporting SSPs) and in December 2018 ER standards for Observer data were approved for inclusion.

136 Christopher Ewell et al., “An Evaluation of Regional Fisheries Management Organization At-Sea Compliance Monitoring and Observer Programs,” *Marine Policy* 115 (2020): 103842, <https://doi.org/10.1016/j.marpol.2020.103842>; Gibbon, “Electronic Monitoring: A Key Tool for Global Fisheries | The Pew Charitable Trusts.”

137 Ewell et al., “An Evaluation of Regional Fisheries Management Organization At-Sea Compliance Monitoring and Observer Programs.”

138 Gibbon, “Electronic Monitoring: A Key Tool for Global Fisheries | The Pew Charitable Trusts.”

139 WCPFC, “Potential for E-Reporting and E-Monitoring in the Western and Central Pacific Tuna Fisheries (Rev1) | WCPFC,” WCPFC, November 2013, <https://www.wcpfc.int/node/5586>

140 Gibbon, “Electronic Monitoring: A Key Tool for Global Fisheries | The Pew Charitable Trusts.”

141 Mark Michelin, Nicole M Sarto, and Robert Gillett, “Roadmap for Electronic Monitoring in RFMOs Roadmap for Electronic Monitoring in RFMOs 2 Roadmap for Electronic Monitoring in RFMOs,” 2020.

142 Exemplified by the Sixteenth Annual Session of the Forum Fisheries Committee Ministers Meeting, where “Ministers welcomed FSM's leadership on the issue of electronic monitoring through the Technology for Tuna Transparency (T3) Challenge, recognising the potential for electronic monitoring to be a game changer for improving management of longline fisheries, and tasked the FFA Secretariat to work with Members to develop an electronic monitoring policy, in collaboration with PNAO and SPC, to be considered at their meeting in 2020” FFC Min16, “Statement of Outcomes from the Sixteen Annual Session of the Forum Fisheries Committee Ministers Meeting (FFC Min16),” 2016, https://ffa.int/system/files/FFCMIN16_Ministers_Communique_final_1.pdf. See also: FFA Media, “FFA Continues to Monitor Fishing amidst COVID-19 Situation: Media Release – FFA's Tuna Pacific: Fisheries News and Views.” AND Jenni Metcalfe, “E-Monitoring: Potential Game Changer for Managing Pacific Longline Tuna Fisheries – FFA's Tuna Pacific: Fisheries News and Views,” tuna pacific, 2019, <https://www.tunapacific.org/2019/07/17/e-monitoring-potential-game-changer-for-managing-pacific-longline-tuna-fisheries/>

143 Timothy Emery et al., “The Use of Electronic Monitoring within Tuna Longline Fisheries: Implications for International Data Collection, Analysis and Reporting,” *Reviews in Fish Biology and Fisheries*, August 29, 2018, <https://doi.org/10.1007/s11160-018-9533-2>

144 WCPFC, “Electronic Reporting | WCPFC,” WCPFC, 2019, <https://www.wcpfc.int/electronic-reporting>

In its latest performance review, the WCPFC states that long line EM data comprised 286 trips (for 2017) and 137 trips (for 2018), whereas a few Pacific nations have made use of EM under the standards formulated by the WCPFC: French Polynesia had implemented ER on 25 vessels; Fiji on five vessels; New Caledonia on three; Tonga three; and Samoa three vessels.¹⁴⁵ Whereas these initiatives remain fragmented, the WCPFC reports a significant increase of CCMs usage and alignment of EM/ER standards with long line operational and Observer data reported.¹⁴⁶

Two Observers Per Vessel, or One Observer Plus On-board Tamper-proof Equipment Supporting Electronic Monitoring?

“ *Complementary EM plus mandatory personal safety equipment is a stronger and more effective measure than the two Observers’ onboard target.* ”

Considering the above identified shortage of Observers with regards to the WCPFC and lack of space on fishing vessels to provide for suitable accommodation, in addition to the cost-effective potential identified through complementary EM installations, it is unlikely that a two Observers per vessel policy would find the necessary backing from decision-makers and vessel operators alike. An indicative improvement of Observers’ safety are emergency communication devices and personal locator beacons, as recently mandated in new regulations by the National Oceanic and Atmospheric Administration (NOAA) for all Observers on board purse seine vessels,¹⁴⁷ which will be discussed in more detail later on in this Report. Complementary EM plus mandatory personal safety equipment is a stronger and more effective measure than the two Observers’ onboard target.

Analysis, Comment and Recommendations

Short-term measures to the benefit of Observers’ safety will be to advocate for publicising VMS; the enhanced usage of complementary EM; and an increase of coverage on long line fishing vessels in the WCPFC by supplementing onboard Observers with EM installations.

An obligation to keep AIS permanently switched on, on all participating fishing vessels, subject to any imposed State sanction for a compliance breach should form part of all international fisheries certification programmes. Meanwhile, a broader alliance, including fisheries management organisations is needed to affect the necessary change.

The ISSF has prepared a position statement addressing monitoring, control, and surveillance (MCS) and compliance processes for consideration at the 24th session of the Indian Ocean Tuna Commission (IOTC), which will take place from 2-6 November 2020. ISSF advocates for the development and adoption of “*minimum standards for electronic monitoring systems (EMS) and an e-reporting information system both for logbooks and observers for all gears in 2021 so that large-scale purse seine vessels – and all vessels engaged in at-sea transshipment, regardless of gear type – are required to have 100% observer coverage within five years*”.¹⁴⁸

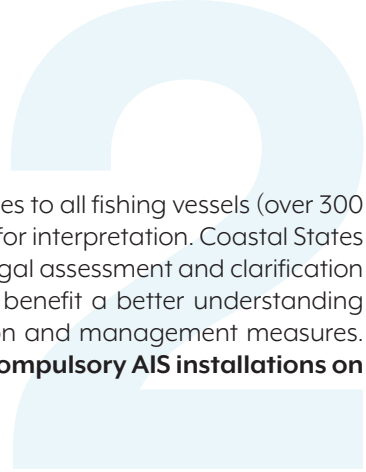
While the WCPFC has made significant progress with regards to ER and EM, the technology’s usage remains fragmented. A commitment through a position statement, similar to the ISSFs statement and consequential policy could be made at the WCPFC’s 17th regular session of the commission scheduled for December 2020.

145 WCPFC, “Annual Report on the Performance of the E-Reporting Standards and Their Application | WCPFC,” WCPFC, 2019, <https://www.wcpfc.int/doc/wcpfc-tcc15-2019-rpl0/annual-report-performance-e-reporting-standards-and-their-application>

146 WCPFC.

147 NOAA, “U.S. Adopts Safety Improvements for Observers in Pacific Tuna Fisheries | NOAA Fisheries,” NOAA, August 2020, <https://www.fisheries.noaa.gov/feature-story/us-adopts-safety-improvements-observers-pacific-tuna-fisheries>

148 ISSF, “Position Statements | International Seafood Sustainability Foundation,” 2020, <https://iss-foundation.org/what-we-do/influence/position-statements/download-info/2020-iotc-position-statement/>



HRAS takes a stand for the default position of the requirement to have AIS installed applies to all fishing vessels (over 300 GRT; engaged in an international voyage). Yet, the relevant SOLAS Chapter leaves room for interpretation. Coastal States could impose stricter regulations with regards to AIS, regardless of SOLAS. An in-depth legal assessment and clarification of the implications of SOLAS Chapter V, with regards to AIS on fishing vessels, would benefit a better understanding of the status quo, associated issues and open space for action as part of conservation and management measures. **There are, otherwise, no technical reasons to exclude smaller fishing vessels from compulsory AIS installations on board either.**

Conclusion

HRAS concludes to recommend inclusion, not exclusion of AIS. In a similar vein to the potential outcomes for priority Recommendation 1 (VMS), inclusive/participatory approaches to policy development, monitoring and implementation and MCS measures should be adopted. As the sections on both Recommendations 1 and 2 have elaborated, such participatory approaches will benefit all stakeholders, enhancing human rights at sea through the deterrent effect of greater transparency, and will result in increased safety, security and sustainability in fisheries.

Follow-On Recommendations

HRAS Recommends:

- 1** Input to the WCPFC's 17th regular session of the Commission highlighting EM as a means to achieve 100% observer coverage (where it is yet to be achieved) and increased protection for observers, resulting in a position statement and/or policy and a renewed commitment to the implementation of ER/EM technologies in the region;
- 2** Commitment of relevant parties to the WCPFC's 17th regular session of the commission to 100% coverage on long line fisheries, through complementary onboard Observers and EM programmes;
- 3** Commitment by international fisheries certification programmes and RFMO's to implement mandatory permanent AIS switched on status, as part of their underlying standards;
- 4** Enhanced usage of AIS data for MCS purposes complementary to publicised VMS data by CCMs to the WCPFC;
- 5** Mandatory AIS (carried, operational, and switched on at all times) on all fishing vessels subject to sanction if the AIS unit or signal is tampered with throughout the WCPFC;
- 6** Mandatory AIS (carried, operational, and switched on at all times) on any fishing vessel operating under a sustainability certification subject to revocation if the unit or signal is tampered with throughout the WCPFC (pending clarification of the current status, policy amendments could be made to relevant CMMs);
- 7** In the first instance, an update/legal assessment/amendment/clarification of SOLAS Chapter V, or in the alternative, that flag State responsibilities with respect to AIS must be the priority, with transparent accountability to the international community through public disclosure;
- 8** Participatory, inclusive approaches benefitting all stakeholders and enhancing human rights at sea through the deterrent effect of greater transparency resulting in increased safety, security and sustainability in fisheries.

Priority Recommendation No.3

“

Recommends that in the circumstances of a death at sea, employers must act expeditiously to compensate families for their loss, while ensuring that, at all times, effective insurance policies are in place.”

”

Employers, Insurance and Fisheries Observers

This Recommendation targets the matter of adequate professional insurance coverage held by employers of Fisheries Observers. This can be viewed as an extension of the suite of risk management measures employers of Fisheries Observers have at their disposal. Insurance is a risk mitigation measure that reputable entities should be addressing as part of best management practice.

Employers

'Employers' of Fisheries Observers are not necessarily easy to pinpoint. They may be government agencies, private entities, or contractors acting on behalf of a government agency. In some cases, it may just be the Fisheries Observers themselves. The waters are muddied further by the type of engagement defining the relationship between Fisheries Observers and their 'employers', i.e. is it a contract of service (employed) or a contract for services (self-employed)? By way of example, Fisheries Observers may be engaged on a self-employed basis by a private entity as part of a regional Observer programme and assigned to a particular vessel. It may seem obvious that the private entity should be responsible for ensuring adequate insurance cover is in place. However, as a self-employed person, i.e. independent contractor, subject to the terms of his or her engagement, the Fisheries Observer may be responsible for holding relevant insurance cover. Further, the relevant fisheries management organisation may have responsibilities for ensuring adequate insurance cover, i.e. as part of its Observer programme minimum standards. Furthermore, the owner of the vessel, the charterer, and/or the vessel operator (if different), may be liable for such insurance cover.

Insurance

In a 2008 paper, at the Second Intersessional Working Group of the Regional Observer Programme in Nadi, Fiji, the WCPFC comprehensively addressed the matter of insurance and legal liability with respect to onboard Fisheries Observers.¹⁴⁹ The paper expertly dissected the subject matter and clearly outlined the framework that 'should' exist to ensure adequate insurance coverage. The paper was deemed necessary as it was clearly felt that the issue of insurance and legal liability in relation to Fisheries Observers had, at the time, not been given the attention it deserved. There was limited information and scant research had been undertaken in this specific area.

Protection and Indemnity (P&I)

The paper presented the concept and practice of third-party risk coverage in shipping law, defined as P&I coverage. Reputable shipowners, vessel operators and ship charterers (including fishing vessel owners, operators and charterers) make third-party claims a high priority in their suite of insurance policies. P&I covers claims arising out of injury or damage incurred by others (i.e. third parties) from vessel operations. Under P&I policies, Fisheries Observers are generally treated as third parties, or, in correct parlance, 'persons carried on board'.

The paper prescribed a list of risks that should be covered as part of such insurance coverage. Among others, these included personal injury; loss of life; loss of equipment and personal effects; medical coverage, including medical evacuation if required; and, repatriation costs if required. However, the existence of a P&I policy cannot always be guaranteed.

¹⁴⁹ WCPFC (2008) On-Board Fisheries Observers Legal Liability and Insurance, WCPFC/IWG-ROP2/2008-08, 22 March 2008, <https://www.wcpfc.int/node/1473>



QUESTION. Should coastal and flag States, RFMOs, RFBs and other international fisheries management organisations therefore be mandating that vessels have appropriate P&I cover in place?

External Contracts and Liability

The existence of a P&I policy does not discharge employers from their responsibilities with respect to such risk coverage for Fisheries Observers. The 2008 paper highlighted the need for P&I fishing vessel members to inform their respective clubs where a contract had been entered into between the member and the entity that places the Observer on the vessel, i.e. the Observer provider. It also highlighted the case where on-board fishery Observers might be covered for certain liabilities and risks, arising out of their employment, by their direct employer. Under both scenarios, such contracts should account for Fisheries Observer legal liability and insurance. Managed properly, liability under contract can complement the insurance coverage in place for Fisheries Observers. However, if neglected, due to specific P&I rules relating to external contracts, insured parties may find themselves exposed under both P&I and contract arrangements, thereby disadvantaging the very individuals such coverage is designed to protect.

It is certainly not the case that employers should leave all questions arising out of liability to their P&I clubs. Far from it. Indeed, the 2008 paper encouraged a system of over insurance rather than under insurance. **Employers of Fisheries Observers should therefore ensure adequate risk coverage for such employees, regardless of whether any other risk coverage is in place.** Such a mutual liability insurance arrangement has apparent precedent in other fisheries regions, e.g. EU.¹⁵⁰

Current Insurance and Liability Standards

“ [P]roviders are to ensure that their observers have health, safety and liability insurance available to them before embarking on an observer trip. ”

The 2008 paper ultimately gave rise to the insurance and liability provisions contained within the WCPFC Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05).¹⁵¹

The CMM, which is still in force, prescribes “(T)he provision to the ROP observer, while onboard the vessel, insurance coverage for the duration of the observer’s time onboard the vessel.”¹⁵² The Agreed Minimum Standards and Guidelines of the Regional Observer Programme,¹⁵³ a document which is supplementary and complementary to the CMM, further stipulates that “[P]roviders are to ensure that their observers have health, safety and liability insurance available to them before embarking on an observer trip.”¹⁵⁴ Further, “(T)he standard for insurance of observers for ROP duties is that CCMS will use existing national standards for health and safety insurance.”¹⁵⁵

¹⁵⁰ Ibid. p.10.

¹⁵¹ WCPFC Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05), <https://www.wcpfc.int/doc/cmm-2018-05/conservation-and-management-measure-regional-observer-programme>

¹⁵² Ibid. Annex B, Paragraph 2(k), p.8.

¹⁵³ WCPFC The Agreed Minimum Standards and Guidelines of the Regional Observer Programme, <https://www.wcpfc.int/docx/wcpfc-regional-observer-programme-standards%20updated%202016>

¹⁵⁴ Ibid. p.9.

¹⁵⁵ Ibid.

In a similar vein, the SPRFMO in its Conservation and Management Measure Establishing the SPRFMO Observer Programme,¹⁵⁶ stipulates the following in relation to insurance and liability requirements:

National observer programmes or service providers must demonstrate that observers have health, safety and liability insurance commensurate with the national standards of the observer programme or service provider for such insurance for the duration of any deployment before placing the observer on a vessel.¹⁵⁷

Although the intention of the respective WCPFC and SPRFMO CMMs positions is to clarify the situation with respect to the standard for insurance cover, by relying on national standards, a potential weakness is introduced into this system in that the national fisheries programme requirements in relation to insurance and liability in one country may not be as high as the requirements in another.

The WCPFC 2008 paper also considered the matter of fishery Observer liability under national legislation. It cautioned that liability related to fishery Observers may be further complicated by the common or statutory law of the relevant coastal or island State, and the jurisdictional issues which may arise out of any claims for injury and/or death. Among the considerations, it highlighted the State where the incident occurred; the State where the person came on board; the place of domicile of the vessel owner; the place of business of the fishing company; and, the flag State of the vessel, as examples which could all potentially further muddy the waters.

Other Examples of Insurance and Liability Standards

There is precedent elsewhere in the global fisheries sector with respect to standards of insurance and liability. ILO C188¹⁵⁸ sets certain minimum requirements for insurance coverage for both employed and self-employed fishermen. Article 38 sets out certain requirements in relation to protection in the case of work-related sickness, injury or death.¹⁵⁹ Also, some members have adopted laws, regulations or other measures which specify the scope of such insurance coverage in the fisher's work agreement,¹⁶⁰ the presence of which is mandated under Articles 16-20.¹⁶¹ Although ILO C188 expressly excludes Fisheries Observers from its scope,¹⁶² the model is replicable and could easily be mirrored and implemented specifically in relation to Fisheries Observers through a dedicated CMM.



Photo Credit: Human Rights at Sea



Photo Credit: Alex Hafford/Greenpeace

¹⁵⁶ SPRFMO (2019) Conservation and Management Measure Establishing the SPRFMO Observer Programme, CMM 16-2019, <https://www.sprfmo.int/assets/Fisheries/Conservation-and-Management-Measures/2019-CMMs/CMM-16-2019-5Mar2019.pdf>

¹⁵⁷ Ibid. Annex 3, Insurance and Liability, p.16.

¹⁵⁸ ILO C188 – Work in Fishing Convention, 2007 (No. 188), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::PI2100_ILO_CODE:C188

¹⁵⁹ Ibid. Art. 38

¹⁶⁰ Maritime and Coastguard Agency (2019) Model Fisherman's Work Agreements, <https://www.gov.uk/government/publications/model-fishermans-work-agreements>

¹⁶¹ Articles 16-20, ILO C188 – Work in Fishing Convention, 2007 (No. 188).

¹⁶² Article 2 of ILO C188 sets out the scope of the convention in relation to 'fishers' and Article 1(e) defines a 'fisher'.

International Observer Bill of Rights (IOBR)¹⁶³

“...the IOBR protects the rights of Observers to a written contract that clearly defines employment terms including health, life and disability insurance terms.”

In relation to Fisheries Observers per se, significant efforts have long since been made to advance the cause of insurance and liability standards, albeit not to a level that has hitherto involved ILO engagement.

The 2014 International Observer Bill of Rights (IOBR) was first presented at the Seventh International Observer and Monitoring Conference (IFOMC) in Chile.¹⁶⁴ It was later submitted by the World Wildlife Fund (WWF) to the WCPFC Technical and Compliance Committee (TCC) and tabled at their Tenth Regular Session in Pohnpei, Federated States of Micronesia (FSM), over the period 25–30 September 2014. It was subsequently tabled at the WCPFC Commission Eleventh Regular Session held in Apia, Samoa, in December the same year.¹⁶⁵

The IOBR built on the original Observer Bill of Rights (OBR) published in 2000,¹⁶⁶ and sets out, among others, certain rights in relation to insurance cover that should be afforded to Fisheries Observers.

The document is not binding upon WCPFC members. However, it acts as a good reference and solid baseline from which certain minimum standards can be advanced. Among the insurance specific provisions, the IOBR protects the rights of Observers to a written contract that clearly defines employment terms including health, life and disability insurance terms.¹⁶⁷ It also sets out the rights of Observers in relation to a competitive wage package which includes the provision of insurance with coverage ranging from basic health insurance, both during and beyond employment periods, life insurance which specifically compensates a named beneficiary in case of death, and disability insurance for long-term, cumulative injury arising from work-related injuries.¹⁶⁸

That such a document has existed in some form or another since 2000 is telling in two ways. First, it is clear evidence that the human rights of Fisheries Observers have been on the radar for the past 20 years. Secondly, it is a damning indictment on the progress made to date given that we are still debating similar issues all these years later.”

Analysis, Comment and Recommendations

There is a plethora of authoritative guidance on the subject of insurance and legal liability in relation to Fisheries Observers. Indeed, the guidance expects a high standard from insuring parties. Some of the guidance relates to binding obligations but a large degree remains advisory only. Yet, even where the guidance is binding in nature, the detail remains arguably too general. This may explain why many uninsured fishing vessels still get through the net. **With enforcement measures seemingly weak in some of the more vulnerable fisheries, it is no surprise that IUU fishing continues to occur and Fisheries Observers remain vulnerable to exploitation in this field.**

Further, employers have a moral obligation to support the families of observers who die. In all observer deaths reviewed by APO, the family was not afforded even the most basic information about the loss of their loved one. Family representatives should immediately be given key documents that would allow them to pursue compensation. This must include the Observers' contract, proof of insurance, and basic circumstantial information. One of the most common sentiments expressed by family members is that they are just told that their loved one dies and that's it. No autopsy, no contract, nor a declaration of basic employment details.

¹⁶³ 2013. See: International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes. <https://www.apo-observers.org/billofrights>

¹⁶⁴ See: APO, <https://www.apo-observers.org/copy-of-ibor>

¹⁶⁵ WWF (2014) International Observer Bill of Rights – A Guide to the Health, Safety, Welfare and Professionalism of Observers, WCPFCII-2014-OP03, <https://www.wcpfc.int/node/20013>

¹⁶⁶ IFOMC (2000) Observer Bill of Rights, https://eee0b4ee-ed80-4c1c-a622-965eeb7c6b45.filesusr.com/ugd/a5edc2_41a470358b864c03bd4801e220ebdd3b.pdf

¹⁶⁷ Article I(3), WWF (2014) International Observer Bill of Rights.

¹⁶⁸ Ibid. Article III(3).

Follow-On Recommendations

HRAS Recommends:

- 1** Through the medium of revisions to Observer-related CMMs and as a condition of an operator's license, implementation of measures to prevent Fisheries Observers from being allowed to be on board vessels that do not have appropriate P&I cover in place. Such records should be maintained by the respective RFMO as part of the Record of Fishing Vessels.
- 2** Employers must clearly and expressly demonstrate the lengths to which they have gone to ensure adequate insurance for Observers and their dependents prior to each and every trip informing them through written evidence. Furthermore, this information should be lodged with the relevant Observer programme and RFMO as a matter of policy and procedure prior to each trip.

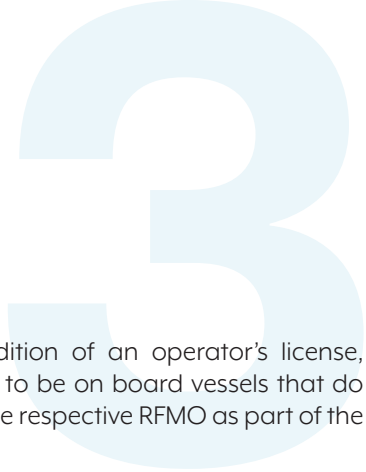


Photo Credit: Human Rights at Sea

Priority Recommendation No.4

“

Recommends that there must be a mandated provision of personal communication devices independent of any vessel communications electronic systems for all Observers working at sea, globally.

”

Durable Marine Safety Equipment

While the Recommendation suggests personal communication devices, upon review it should also include other durable marine safety equipment, as a means to improve Observers' safety while on a mission and as recommended by a variety of international Observer programmes (see below).

In 2016, the WCPFC updated its *Agreed Minimum Standards and Guidelines of the Regional Observer Programme*, and it has seen further updating in 2018 and 2019.¹⁶⁹ The updates addressed Observer safety at sea, by mandating that as of 1 January 2017 “Each ROP authorised observer programme shall ensure that observers from their programme will be provided before any boarding for a trip,

- *an approved independent two-way communication satellite device; and*
- *a waterproof personal lifesaving beacon.*¹⁷⁰

Both tools could, in practice, be one device.

The document further stipulates, that “Each CCM with an ROP authorised observer programme will ensure that they have an ‘Emergency Action Plan’ (EAP) in place to accommodate any reported observer emergency including interference, harassment, intimidation and other personal safety issues.”¹⁷¹

The EAP is of relevance to the operation of both the two-way communication satellite device and the waterproof personal lifesaving beacon, since it clearly outlines when to report, whom to report to (Observer programmes must have a designated officer handling communications and maintaining a device capable of receiving a signal from an Observer's two-way communications device), follow-up responses, remedial action and how to complete the EAP protocol (reported incidents of harassment, interference, or intimidation have to be resolved through recognised legal or otherwise defined national procedure).¹⁷²

In 2018, the FFA invited interested parties to submit a tender proposal for supplying durable marine safety equipment for the FFA Observer Program. The stated aim of the request for tender was to improve Observers' safety through the supply of the following safety equipment:

1. Personal location beacon (PLB) (ACR ResQLink+2881, model PLB 375);
2. Two-way satellite communication device (Delorme in Reach, Iridium);
3. Inflatable life vest/personal flotation device (PFDs);¹⁷³
4. Water-activated strobe light.

169 WCPFC, “Agreed Minimum Standards and Guidelines of the Regional Observer Programme,” 2016, <https://www.wcpfc.int/system/files/Agreed%20Minimum%20Standards%20of%20the%20Regional%20Observer%20Programme.pdf>; WCPFC, “WCPFC Regional Observer Programme Standards & ROP Guidelines Updated 2019 | WCPFC,” WCPFC, 2018, <https://www.wcpfc.int/docx/wcpfc-regional-observer-programme-standards-updated-2016>

170 WCPFC, “Agreed Minimum Standards and Guidelines of the Regional Observer Programme,” 16.

171 WCPFC, 16.

172 WCPFC, “Agreed Minimum Standards and Guidelines of the Regional Observer Programme”; WCPFC, “WCPFC Regional Observer Programme Standards & ROP Guidelines Updated 2019 | WCPFC.”

173 This is required to be provided for all crew, including observers, under the IMO Cape Town Agreement (CTA). If the CTA were in force or implemented by the WCPFC Coastal States, the responsibility would fall to the flag State of the vessel, who could pass on the requirement and therefore costs to the vessel operator.



Bidders were requested to “demonstrate the capacity to arrange delivery and provide the indicative shipping costs for the following destinations:

- a. Cook Islands (Rarotonga)
- b. Fiji (Suva)
- c. Federated States of Micronesia (Pohnpei)
- d. Kiribati (Tarawa)
- e. Marshal Islands (Majuro)
- f. Nauru
- g. Palau (Koror)
- h. Papua New Guinea (Port Moresby)
- i. Samoa (Apia)
- j. Solomon Islands (Honiara)
- k. Tonga (Nukuálofa)
- l. Tuvalu (Funafuti)
- m. Vanuatu (Port Villa).¹⁷⁴

Deadline for submissions was 31 October 2018.

Accessibility to Equipment – Status and Barriers

Reality seems to look somewhat different. In the case of Eritara Aati Kaierua, according to reliable information from an immediate family member, HRAS was informed that Eritara neither had a personal communication device, nor a locator beacon, nor a life vest when embarking on his voyage with the Win Far 636. This was despite the fact that in September 2019, 50 Delorme / Garmin InReach plus flotation devices were provided to Fisheries Observers as part of the Tobwaan Waara support programme to Kiribati’s Ministry of Fisheries and Marine Resources Development (MFMRD).¹⁷⁵

“ Reliable information as to the status of the provision of such equipment is currently lacking or hard to come by. ”

Anecdotally, informal APO discussions with Pacific Island Observers suggest that the implementation remains patchy, with Kiribati, Solomon Islands, Palau and Fiji not supplying their Observers with respective communication devices. What are the barriers to implementation? What do the Observers say? Reliable information as to the status of the provision of such equipment is seemingly lacking or hard to come by. The findings of the HRAS - Rights Lab Pacific Observer Survey may shed some light on actual distribution numbers.

The IATTC, AIDCP and ICCAT have similarly endorsed safety equipment and EAPs, including an independent two-way satellite communication device suitable for use at sea, a waterproof personal life-saving beacon and personal flotation devices/life vests to be issued to Observers before going out at sea.¹⁷⁶

“ Where could additional funding come from? ”

In practice, however, the availability of equipment relies on funding and the reliability of the agency staff on shore to answer an emergency call. The programme’s Emergency Action Plan should be provided to the observer including observer programme current contact numbers of individual(s) responsible for responding to an emergency.

¹⁷⁴ FFA, “TC05/1718: Supplying of Durable Marine Safety Equipment | Pacific Islands Forum Fisheries Agency (FFA),” FFA, 2018, <https://www.ffa.int/node/2079>

¹⁷⁵ <https://www.mfmr.gov.ki/signing-of-second-phase-for-tobwaan-waara-program-in-kiribati/>

¹⁷⁶ AIDCP, “RESOLUTION A-18-02 ON IMPROVING OBSERVER SAFETY AT SEA: SAFETY EQUIPMENT AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM 38 TH MEETING OF THE PARTIES,” 2018, https://www.iattc.org/PDFFiles/Resolutions/AIDCP/English/A-18-02-Active_Observer%20safety%20at%20sea%20equipment.pdf; IATTC, “RESOLUTION ON IMPROVING OBSERVER SAFETY AT SEA: EMERGENCY ACTION PLAN”; NOAA, “U.S. Adopts Safety Improvements for Observers in Pacific Tuna Fisheries | NOAA Fisheries”; ICCAT, “RECOMMENDATION BY ICCAT ON PROTECTING THE HEALTH AND SAFETY OF OBSERVERS IN ICCAT’S REGIONAL OBSERVER PROGRAMS.”

In the case of the IATTC and AIDCP, partial funding was secured through the NOAA and US Department of State.¹⁷⁷ With regards to other Observer programmes, sufficient funds might not be available to meet the mandate of providing each and every Observer with the relevant equipment. Yet, as IATTC Executive Director Dr Guillermo Compeán stated, “*Personal locator beacons and two-way communication devices facilitate confidential and timely communication between observers and managers of their respective programmes in times of emergency, as well as allow rescue if observers fall overboard. This equipment also ensures to the observer an extra layer of comfort and feeling of being supported, which is particularly appreciated for [observers] who work in isolation under demanding conditions.*”¹⁷⁸

Barriers such as funding should be addressed in relevant stakeholder forums and meetings: where could additional funding come from? The fishing industry, States, Standard-Setting Organisations (SSO)? A solution should and can be worked out between all stakeholders.

Analysis, Comment and Recommendations

Expected results of HRAS' survey in collaboration with the University of Nottingham's Rights Lab are relevant to this Recommendation and will be published separately.

The extent of the provision of durable marine safety equipment to Observer programmes internationally remains unclear. Essential to moving forward on the matter is addressing barriers such as funding, and why the issue of such essential equipment is not an employment safety condition of working at sea.

Meantime, a financially sustainable solution should be worked out between all stakeholders, including the consideration of the maintenance, upkeep, and repair/replacement of equipment. Observer programmes should have effective procedures in place to ensure equipment does not go missing and, if it does, that the Observer programme is held liable. Any effort by a crew member to tamper with or otherwise damage the safety equipment should be treated as a direct attack on the Observer and the vessel operator and owner should be held responsible. Fisheries Observers should always be deployed on trips with necessary and mandated durable safety equipment.

Follow-On Recommendations

HRAS Recommends:

- 1** Review of the outcomes of the HRAS - Nottingham Rights Lab data set survey results, based on direct inputs from Fisheries Observers;
- 2** A comprehensive study or survey of a bigger geographical scope, assessing the provision of durable marine safety equipment to Observer programmes internationally, that have already mandated the provision of such equipment, a 'reality check', assessing status and barriers;
- 3** Addressing of barriers such as funding in relevant forums and meetings, trying to answer where additional funding could come from. A sustainable solution should be worked out between all stakeholders;
- 4** That Fisheries Observers must always deploy on missions with necessary and mandated durable safety equipment including two-way communication devices.
- 5** Annual, independent, publicly-disclosed reviews of each Regional Observer Programme.

¹⁷⁷ NOAA, “U.S. Adopts Safety Improvements for Observers in Pacific Tuna Fisheries | NOAA Fisheries.”

¹⁷⁸ NOAA.

Priority Recommendation No.5

“

Recommends that international fisheries certification organisations should maintain centralised, consistent, up-to-date, and publicly available lists of all certified vessels, and where applicable include available registration details, as well as those suspended and/or excluded, with regular proactive public disclosure of the reasoning for suspension and/or exclusion.”

”

What are International Fisheries Certification Organisations?

Clarification: When the term ‘international fisheries certification organisations’ is used the authors are essentially using a catch-all term to describe any entity that is involved in the system of private voluntary standard-setting and certification against that standard. The authors are not referring to official government convened certification programmes or nationally set standards.

The latest Seafood Certifications Guide describes the world of certification and eco-labelling as a confounding one. “Scores of certifications overlap, compete, and sometimes contradict one another. Eco-labels often do the same. Figuring out how they work, what they cover, who operates them, and how robust their standards are can be a time-consuming, and sometimes nigh-on-impossible task.”¹⁷⁹ Scratching the surface therefore reveals that the system is not as simple as to warrant the use of such a catch-all term. Such a term is too broad to sufficiently define the entities to which this and the succeeding Recommendation applies.

Current system: The system of private voluntary standard-setting and certification can be reduced to four interrelated component parts. These parts can be categorised accordingly:

1. Standard-Setting Organisations
2. Accreditation Bodies
3. Certification Bodies
4. Certificate Holders

Standard-Setting Organisations

The SSO does exactly that, it sets the standard upon which certification ultimately rests. Such organisations may be public or private in capacity. The important thing is that such organisations possess the requisite knowledge and expertise, and are recognised as possessing such, to set the standard in the first place. Standards may be international, regional, or national in scope.

¹⁷⁹ Seafood Source (2020) Seafood Certifications Guide <https://www.seafoodsource.com/educational-resources/seafood-certifications-guide>

Accreditation Bodies

The Accreditation Body (AB) is responsible for assessing and subsequently accrediting organisations that provide certification against agreed standards, namely Certification Bodies (CB). This is known as the process of accreditation. The SSO's certification programme is formally recognised by the AB. For legitimacy and independence, ABs are ordinarily afforded national accreditation body status and authorised by respective national governments to ensure that national accreditation criteria are met by CBs.¹⁸⁰ To ensure international consistency with respect to standards and the certification thereof, national accreditation bodies sign up as members of the International Accreditation Forum (IAF).¹⁸¹ However, not all ABs are afforded national accreditation status, and many will act in a private capacity only.¹⁸²

Certification Bodies

CBs, sometimes referred to as Conformity Assessment Bodies (CABs), provide the actual certification against agreed standards. They are expert in the provision of certification services. They should be independent and impartial, as such they are often afforded what is termed, third-party status, i.e. they are recognised as being independent of the parties setting the standard and those seeking certification against the standard. CBs conduct audits on prospective Certificate Holders (CHs)¹⁸³ and certify the precise Unit of Certification (UoC) covered by the audit, i.e. the constituent element/s for which certification is sought.

Certificate Holders

CHs are those entities voluntarily seeking actual certification against an agreed standard. They specify what aspect of their business they want certifying, i.e. what the UoC is. They are audited directly by the CBs. The audit comprises of a series of assessments designed to determine directly or indirectly whether or not relevant requirements are met. Together, these constitute what is termed the Conformity Assessment (CA) (See Figure 8 for an overview of the path towards certification against a standard).



Photo Credit: Alex Hofford/Greenpeace

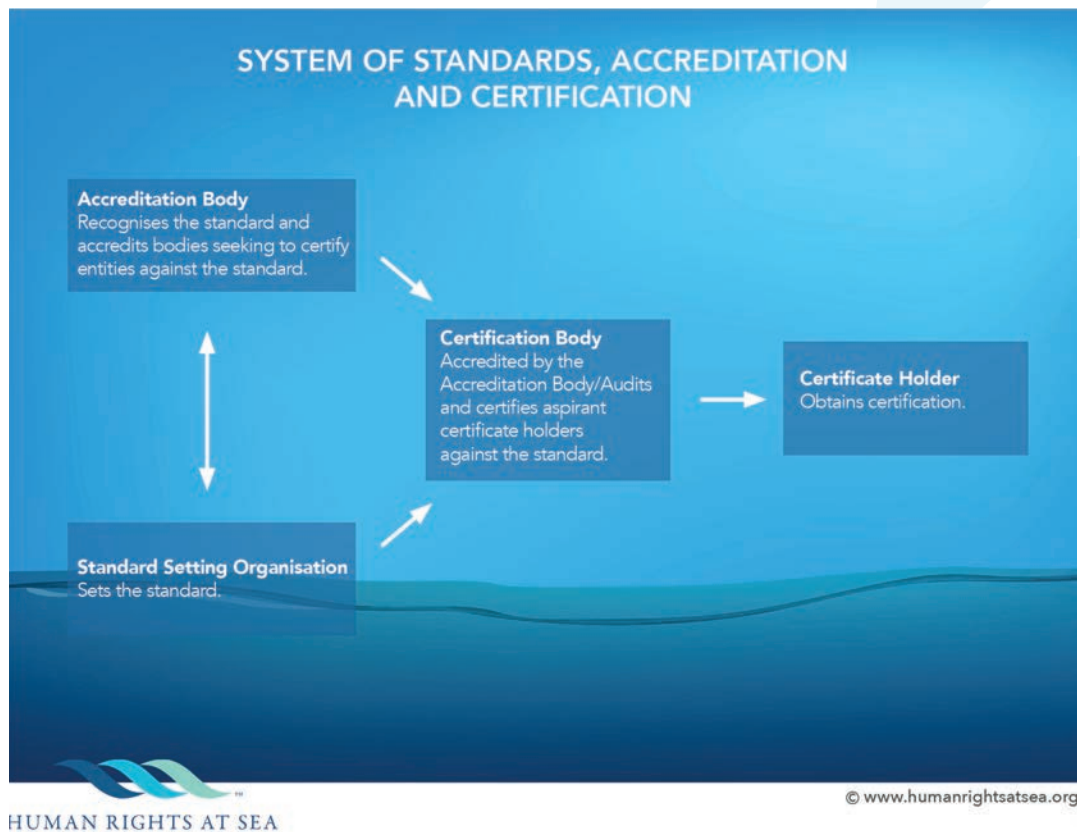
¹⁸⁰ Friend of the Sea's (FOS) certification programme is accredited by the Italian national accreditation body, Accredia, who in turn accredits the CBs providing certification against the FOS standard. (<https://friendofthesea.org/find-certification-bodies/>) (accessed on 2 November 2020).

¹⁸¹ <https://www.iaf.nu>

¹⁸² For example, Assurance Services International (ASI), the AB responsible for accrediting CBs against the MSC standard, is a private entity – <https://www.asi-assurance.org/s/governance>

¹⁸³ Certificate Holders (CHs), is a term afforded to stakeholders seeking certification.

Figure 9: System of Standards, Accreditation and Certification



Fisheries Standards and Certification Programmes

“ SSOs determine the scope, terms and particular requirements of the standards that fisheries certification programmes are based upon. ”

In the context of the present Recommendation, when we call upon ‘international fisheries certification organisations’ to maintain centralised, consistent, up-to-date, and publicly available lists of all certified vessels, who is it we are asking to maintain such databases? The answer in this case is almost certainly the SSOs.

SSOs in the context of fisheries include the likes of the MSC¹⁸⁴ and Friend of the Sea (FOS).¹⁸⁵ Both SSOs are examples of international standards. Further, both standards are examples of *private voluntary standards*, i.e. the standards and accompanying certification programmes are privately and voluntarily set and administered by SSOs, audited and certified by CBs, and entered into by CHs.¹⁸⁶

This latter point regarding the private and voluntary setting of standards is important. SSOs determine the scope, terms and particular requirements of the standards that fisheries certification programmes are based upon. Not the CBs. Not the ABs. And certainly not the CHs. Therefore, to effect change in the standard, one must engage directly with the SSOs.

Private standards in fisheries and the attendant certification against such standards are often driven by the demands and reputational concerns of large-scale retailers and food services. Such standards and certification programmes broadly fall into one of two categories: food safety / quality, and ecolabelling / sustainability.

¹⁸⁴ <https://www.msc.org/uk/>

¹⁸⁵ <https://friendofthesea.org>

¹⁸⁶ Standards set by public authorities, usually referred to as ‘technical regulations’, are typically mandatory. Private standards by definition are voluntary. See World Trade Organization (WTO) Agreement on Technical Barriers to Trade, https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm (accessed 19 August 2020).

MSC and FOS are categorised as ecolabelling / sustainability certification programmes. Each programme has its own criteria, assessment processes, levels of transparency and sponsors. What is covered by the programmes can vary considerably: bycatch issues, fishing methods and gear, sustainability of stocks, conservation of ecosystems and, more recently, social and economic development. It is clear that the standards sitting behind these certification programmes are a means of assuring buyers of the quality of products or the conformity of processes and production methods.¹⁸⁷

What are SSOs Currently Doing in Relation to Such Vessel Lists?

“ *SSOs are seemingly the judges in their own cause, i.e. the only entities able to instigate the necessary changes.* ”

Current practice with respect to SSOs and the maintenance of centralised, consistent, up-to-date and publicly available lists of all certified vessels is a limited and uncoordinated practice at best. The Food and Agriculture Organization (FAO) Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries (the Ecolabelling Guidelines),¹⁸⁸ provides a good reference for SSOs in the conduct of their standard-setting businesses. The Ecolabelling Guidelines are voluntary and, by design, do not specify any standard compliance criteria. This remains the preserve of SSOs. Yet, both MSC¹⁸⁹ and FOS¹⁹⁰ expressly reference the Ecolabelling Guidelines in their publicly available documents.

The Ecolabelling Guidelines therefore neither expressly nor impliedly advise that such vessel data be made publicly available. As one might reasonably expect, the Ecolabelling Guidelines are silent on the matter. The same guidelines are also silent on the content of the data records maintained by SSOs. Such criteria evidently fall outside the intended parameters of the guidelines.

Therefore, in the absence of such guidance, SSOs are free to set their own standards in relation to vessel data. They are the judges in their own cause, i.e. the only entities able to define and instigate changes to their standards.

Where the Ecolabelling Guidelines are descriptive is in relation to the suspension of certificates, the bodies responsible for setting the conditions for such suspension, and the public disclosure and timing of the information disclosed. The matter of suspension and/or withdrawal of certification is addressed in the succeeding Recommendation and will not be elaborated on further at this juncture.

Of the publicly available data maintained by the aforementioned SSOs, little coordination exists. Each SSO maintains data records different to the next and in different forms. Both SSOs maintain lists of vessels certified under their respective programmes.

FOS seemingly maintains its own comprehensive data records in relation to its list of certified vessels to its Tuna Approved Fleet.¹⁹¹ MSC, on the other hand, seemingly maintains lists of vessels for some of its certified fisheries. However, this system of vessel data recording is unevenly applied, and the lists of vessels are provided by the individual CH, if at all. Consequently, there is a notable discrepancy between the scope and detail of the individual vessel lists maintained.

187 p. xiii, FAO (2011) Private Standards and Certification in Fisheries and Aquaculture: Current Practice and Emerging Issues, Rome, Italy, <http://www.fao.org/3/i1948e/i1948e.pdf>

188 FAO (2009) Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries. Food and Agriculture Organization of the United Nations (FAO), Rome, Italy. <http://www.fao.org/3/i1119t/i1119t.pdf> (accessed 17 August 2020)

189 Marine Stewardship Council (2018) MSC Standard Setting Procedure, Version 5.0, 5 July 2018. https://www.msc.org/docs/default-source/default-document-library/msc-standard-setting-procedure.pdf?sfvrsn=dfda000b_14 (accessed on 2 November 2020)

190 FOS (2017) Audit Guidance for the Friend of the Sea Standards, Version 1, 27 October 2017. https://friendofthesea.org/wp-content/uploads/Audit-Guidance-for-Friend-of-the-Sea-Standards_v1.pdf (accessed on 2 November 2020)

191 https://friendofthesea.org/wp-content/uploads/Approved-Vessels_Customers-for-Tuna-04_06_2019.pdf (accessed on 2 November 2020) & https://friendofthesea.org/wp-content/uploads/Approved-Vessels-for-Tuna-25_03_2020.pdf (accessed 2 November 2020).

FOS Data Records

Specifically, FOS maintain publicly available records relating to certified fisheries in regard to the following information:

- Basic information covering: species scientific name, FAO area and fishing method;
- Audit information covering: last audit date, next audit date, current status and a link to the audit report and audit history;
- Fishery description covering: name of fishery client, fishing area, fishing vessels sampled as part of audit, fishing method, certified species, management summary, stock status summary, bycatch/discards, habitat impact, social accountability performance and conclusion with reasons for approval.
- **Tuna Approved Fleet list covering: company name, country of flag, fishing areas covered, fishing method, targeted species, ship owner, registration number, name of vessel, landing port and certificate status.**

It must be stated that at first instance, some of the data records seem incomplete, i.e. information relating to the date of the next audit. There may well be justifiable cause for this. However, if there is, then it is not immediately apparent.

Also, with respect to their Tuna Approved Fleet list, at the time of writing, there are two areas on their website where you can click the link to download the list. One link produces a PDF document dated 04/06/2019¹⁹² while the other link produces a PDF document dated 25/03/2020.¹⁹³ Both links contain the words 'Tuna Approved Fleets'. Again, unless looking at the URL it is not immediately apparent that the lists are different. On closer scrutiny, it is apparent that the lists are not only different in time but also different in content. This is a simple enough error to remedy. However, left uncorrected it leaves scope for confusion and is potentially misleading as to the facts.

Nonetheless, such vessel data records are a good basis from which to develop the criteria for data recording and are a good example of a potentially replicable model within the sector.



Photo Credit: Shutterstock.com

¹⁹² <https://friendofthesea.org/approved-fisheries/tuna/> (accessed on 2 November 2020)

¹⁹³ <https://friendofthesea.org/approved-fisheries/> (accessed on 2 November 2020)

MSC Data Records

MSC maintains publicly available data records relating to certified fisheries in regard to the following information:¹⁹⁴

- General view information covering: fishery, species, gear types, locations, certificate status in relation to the MSC standard and tonnage in relation to the UoC;¹⁹⁵
- Map view information;¹⁹⁶
- Species view information covering: fishery name, certified status and FAO region;
- Detailed view information covering: certifier, certified status, certified since date, certificate expires date, fishery overview (including species, gear type, location and tonnage), an about-the-fishery page, certificates and traceability documents, market information and assessment documents including in some cases vessel lists.

Of the vessel lists that are uploaded, little information relating to vessels authorised to operate in the certified fisheries is available through the MSC website. If there are more detailed vessel lists, it is not readily apparent how one accesses such data. What is clear is that the publicly available data relating to vessels is inconsistent. For example, some lists include the vessel name and registration number¹⁹⁷ while others include the vessel name and owner.¹⁹⁸ Further, to access vessel lists relating to some MSC-certified fisheries, one has to search for the individual CH's website and look for such data on their site.¹⁹⁹

Scope for Improvement

Based on a revised understanding of the term 'international fisheries certification organisations', the Recommendation proposes that SSOs maintain centralised, consistent, up-to-date and publicly available lists of all certified vessels. Additionally, and where applicable, these lists should include available registration details, as well as information relating to those vessels either suspended or withdrawn from the certification programme. Furthermore, such suspensions or withdrawals should be accompanied by regular proactive public disclosure of the reasoning for suspension or withdrawal.

What might this new approach look like in practice?

- A centralized list of vessels certified under respective fishery certification programmes would mean collating a list of all vessels certified to operate under each of the certified fisheries and storing that list in a single place, either as an interactive or downloadable document on their website.
- A consistent list of vessels certified under respective fishery certification programmes would mean maintaining the same information and format for all vessels operating under the fisheries certificate programme. This could include information relating to company name, country of flag, fishing areas covered, fishing method, targeted species, vessel owner name and address, vessel registration number, name of vessel, landing port and certificate status. It could even extend to include the locations of vessels and the names of crew and Fisheries Observers on board, current and past, contracted to each of the vessels over a specified time period. The important point would be that the same data is maintained and displayed consistently for each vessel.

194 https://fisheries.msc.org/en/fisheries/@@search?q=&term=&bucket=&start=0&stop=10&_start_=_fishery_name%3Asequence&_end_=_fishery_name%3Asequence&_start_=_species%3Asequence&_end_=_species%3Asequence&_start_=_gear_types%3Asequence&_end_=_gear_types%3Asequence&_start_=_locations%3Asequence&_end_=_locations%3Asequence&_start_=_status%3Asequence&_end_=_status%3Asequence&search=search (accessed on 2 November 2020)

195 https://fisheries.msc.org/en/fisheries/@@search?q=tuna&term=&bucket=&start=0&stop=10&_start_=_fishery_name%3Asequence&_end_=_fishery_name%3Asequence&_start_=_species%3Asequence&_end_=_species%3Asequence&_start_=_gear_types%3Asequence&_end_=_gear_types%3Asequence&_start_=_locations%3Asequence&_end_=_locations%3Asequence&_start_=_status%3Asequence&_end_=_status%3Asequence&search=search (accessed on 2 November 2020)

196 https://fisheries.msc.org/en/fisheries/@@search?q=tuna&term=&bucket=&start=0&stop=10&_start_=_fishery_name%3Asequence&_end_=_fishery_name%3Asequence&_start_=_species%3Asequence&_end_=_species%3Asequence&_start_=_gear_types%3Asequence&_end_=_gear_types%3Asequence&_start_=_locations%3Asequence&_end_=_locations%3Asequence&_start_=_status%3Asequence&_end_=_status%3Asequence&search=search (accessed on 2 November 2020)

197 <https://fisheries.msc.org/en/fisheries/fiun-barents-norwegian-sea-cod-and-haddock/@@certificates> (accessed on 2 November 2020)

198 <https://fisheries.msc.org/en/fisheries/western-bering-sea-pacific-cod-and-pacific-halibut-longline/@@assessments> (accessed on 2 November 2020)

199 For example, at the time of writing there was no vessel list uploaded under the MSC-certified fishery, PNA Western and Central Pacific skipjack and yellowfin, unassociated / non FAD set, tuna purse seine, <https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/@@view> (accessed on 2 November 2020). To obtain this data one had to go to the PNA website, https://pnatuna.com/system/files/filedepot/72/FSMA%20Vessel%20List_08June2020.pdf (accessed on 2 November 2020)

Key Points for the approach

- Up-to-date lists would mean providing frequently updated (i.e. weekly) or real-time information with respect to vessels certified under respective fishery certification programmes. There is nothing stopping MSC or FOS from requiring vessels under their respective certification programmes to disclose VMS data or the names of all persons on board for each and every trip. This would require a proactive and collaborative approach between the SSOs who would display the information, the CHs who would be responsible for providing the detail of the information, and the CBs for enforcing the requirement under the certification programme. The question is, would all CHs be willing to disclose this information as part of their certification against the standard?
- Publicly available lists would mean that vessel lists would be easily and freely accessible. The obvious means for achieving such accessibility would be for respective SSOs to upload the vessel lists to their websites and provide clear pathways to downloading such information.
- Suspension and withdrawal information, the conditions of which will be addressed in the succeeding Recommendation, would also be included as part of the information held. A specific link to details relating to the substance of the suspension or withdrawal and the reasons underlying this would be available as part of this criterion.

System Benefits

“ Human rights protections and any measures enacted to support this objective rely on clear, comprehensive and open systems to be adopted. ”

The strengths and benefits of such a transparent system speak for themselves. Human rights protections and any measures enacted to support this objective rely on clear, comprehensive and open systems to be adopted. A system such as this is easily implemented. The data is already collected and maintained to a certain degree and therefore only needs to be organised, regularly updated and made public.

A number of interested entities would benefit from such a system. The SSOs would benefit by enhancing their transparency in the supply chain endeavours and reap the reputational rewards associated with taking the lead on such reforms. Parties further downstream in the supply chain, i.e. buyers, would benefit from greater assurance that their supply chain is transparent and that safeguards to limit compromise of their supply chain are in place. Human rights charities would benefit from having a publicly accessible database which they can monitor and use to hold defaulting parties to account. And Fisheries Observers and crew working on board these vessels would do so in the knowledge that they are part of a certification programme that cares for the safety and well-being of their person and that they are not simply out of sight and out of mind while out on the high seas.

Such a database of vessels would provide concerned parties with a facility they can access if they independently conclude abuses might be occurring on those vessels. Managed systematically and updated regularly, it would also help to confirm that human rights abuses are not occurring on certified vessels.

Analysis, Comment and Recommendations

It is not known whether current commercial confidentiality agreements between the respective SSOs, various CBs and CHs may preclude certain data from being uploaded and made publicly available. Further analysis of the contractual terms and conditions of certification against individual standards and what information is contractually required to be disclosed by each CH is necessary to help answer this question.

Similarly, national data protection laws may preclude the publishing of certain information, and any disclosure of personal data relating to crew and Fisheries Observers may require their prior express consent. The terms of their respective employment contracts may also have a bearing on what information may be disclosed, though civil-society concerns as to delays for achieving disclosure in abuse cases remains a live issue.

Information relating to the location of vessels may cause concerns surrounding commercial competition and the security of assets, though this should not be used as an excuse for lack of disclosure in cases of human rights abuse. This issue has also been highlighted in greater detail in the discussions on VMS and AIS.

There may also be resistance from SSOs on the ground that maintaining such comprehensive vessel lists is too onerous an undertaking and that it is neither within the design nor remit of the fisheries certification programmes to be a chronicle of such data. Current practice, namely the fact that such data is already maintained albeit not in a centralised form, would suggest otherwise, however.

Follow-On Recommendations

HRAS Recommends:

- 1** SSOs write a statement publicly committing to implementation of such reforms to current practice outlining the exact terms of their commitment, its scope and the information they intend to maintain, disclose and on what basis. These reforms should form part of the standard and bind all parties within the certification programme, i.e. SSOs, CBs, CHs and any party within the Chain of Custody (CoC). Further, SSOs should set a clear time frame for implementation of such reforms.
- 2** Where agreement and action among fisheries-related SSOs can be reached, a combined and centrally maintained and managed database of all vessels certified to operate under respective fisheries certification programmes throughout the world should be kept.
- 3** Integration with RFMO and RFB Records of Fishing Vessel for greater transparency and management capacity should be explored.



Priority Recommendation No.6

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Recommends that international fisheries certification organisations should immediately freeze the certificates of all vessels involved in allegations of human rights abuse until investigations are concluded. This would allow buyers to avoid problematic vessels, protect the remainder of the supply chain and provide reassurance that due process is being carried out by competent authorities.

”

Who is Responsible for Suspension and Withdrawal?

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It is a requirement of the independence of the system of standards, accreditation and certification that a palpable and clearly defined ‘separation of powers’ exists between the SSO, AB and CB.

”

Recommendation 5 called for lists of vessels suspended and/or excluded, with regular proactive public disclosure of the reasoning for suspension and/or exclusion, to be held.

This aspect of Recommendation 5 is better addressed under the present Recommendation 6, which effectively calls for the immediate suspension of certificates where alleged human rights abuses occur on board vessels falling within the UoC. Such suspension should remain in place until investigations by the competent authorities are concluded and a determination as to the fishery’s future certificate status can be responsibly made.

As identified above, the term ‘international fisheries organisations’ is too broad to sufficiently define the entities to which this and the above Recommendation applies. Whereas the preceding Recommendation primarily identified the SSO as the main decision-making body in terms of giving effect to the various aspects of the reforms being called for, the decision-making responsibility is shared in this instance and fundamentally contingent upon the proactive role of CBs.

It is a requirement of the independence of the system of standards, accreditation and certification that a clearly defined ‘separation of powers’ exists between the SSO, AB and CB.

CBs are responsible for auditing and subsequently certifying CHs. They are also responsible for the ongoing surveillance of the CHs during the certification period. It stands to reason, therefore, that CBs are also responsible for determining whether or not a CH should be suspended or excluded (withdrawn) from the certification programme where a matter of compliance might be at issue. In the present context of certified fisheries and allegations of human rights abuse on board certified vessels, i.e. those vessels falling within the fishery UoC, this Recommendation calls for human rights abuses to fall expressly within the scope of compliance within the standard. Consequently, any breach of such compliance criteria should give immediate effect to either suspension or withdrawal of a CH’s certified status.

How are Suspensions and Withdrawals Currently Administered?

“ *As the standard setter, the SSO determines at first instance what must be complied with and the level of compliance necessary for the standard of certification to be met.* ”

As identified, both FOS and MSC reference the Ecolabelling Guidelines as a basis for their respective fisheries certification programmes. It is therefore fair to consider the guidance this document provides in relation to the suspension and/or withdrawal of certification.

Paragraph 133 of the Ecolabelling Guidelines places a positive duty on CBs to “*specify the conditions under which certification may be suspended or withdrawn*”.²⁰⁰ Certification may be suspended or withdrawn “*partially or in total*” and “*for all or part of the scope of certification*”.²⁰¹ Paragraph 134 further requires CBs to ensure that CHs discontinue any, and all, use of advertising in relation to certification under the related programme and return any documents as required by the CB.²⁰² For full effect and thoroughness, this presumably requires the CH’s use of the CB logo and Ecolabel to desist.

Of note, Paragraph 134 further requires that “*(T)he certification body should also be responsible for informing the public about the withdrawal or suspension after the appeals process is exhausted*”.²⁰³ In line with the preceding Recommendation and public disclosure of the reasoning for suspension or withdrawal of a certificate, there is clear precedent and expectation upon CBs to fulfil this requirement.

As an example, RINA,²⁰⁴ a FOS Standard CB accredited by the Italian national accreditation body, Accredia,²⁰⁵ specifies the conditions under which FOS programme certification may be suspended or withdrawn.²⁰⁶ FOS further bolsters these criteria by producing its own guidance documentation in respect of suspension and withdrawal of certificates.²⁰⁷ It is worth noting that the conditions are largely generic and of a procedural nature.

There is no exhaustive list specifying the detailed circumstances under which suspension or withdrawal will be made. However, reading through the lines, the conditions for suspension and/or withdrawal are cross-referenced with the compliance requirements of the FOS standard. So, among other conditions, CBs will look at the underlying standard to see whether or not compliance has been maintained or breached. The standard must therefore clearly define both the scope and level of compliance required.²⁰⁸ This is the responsibility of the SSO.

The SSO is therefore not entirely divorced from the process of suspension and/or withdrawal. **As the standard setter, the SSO determines at first instance what must be complied with and the level of compliance necessary for the standard of certification to be met.**

For allegations of human rights abuses to constitute a condition under which suspension and/or withdrawal of certificate occurs, this would seemingly have to be defined and included in the standard and subsequently afforded a strict level of compliance, i.e. an essential level of compliance, the breach of which would constitute a major non-compliance.

200 Paragraph 133, FAO (2009) Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries. Food and Agriculture Organization of the United Nations (FAO), Rome, Italy. <http://www.fao.org/3/i1119t/i1119t.pdf> (accessed 17 August 2020).

201 Ibid.

202 Paragraph 134, Ibid.

203 Ibid.

204 <https://www.rina.org/en>

205 <https://www.accredia.it/en/>

206 Ch.9, Para. 9.1, RINA (2019) General Rules for the Certification According to the Friend of the Sea Standard, Revision 4, March 21, 2019, https://shared.rina.org/SResources/Documents/rule_FOS_en.pdf (accessed 20/08/2020).

207 FOS (2019) FOS 0001 – Certification Procedure, FOS-Aqua, FOS-Wild, FOS-FF, FOS-FM, FOS-FO, FOS-O3 and CoC General Requirements, September 10th, 2019, https://friendofthesea.org/wp-content/uploads/10092019_FOTS_FOS-0001-ver.9.3.pdf (accessed 20 August 2020).

208 For example, FOS employ a system which recognises both ‘major’ and ‘minor’ non-compliances and commensurate levels of compliance which are categorised as ‘essential’, ‘important’, or as a ‘recommendation’ only.

What Human Rights Protections Criteria Within the Fisheries Certification Programmes Presently Exist?

Some certified fisheries under both the FOS and MSC²⁰⁹ certification programmes have to meet certain social accountability criteria. Specifically, these include measures relating to protections against forced and child labour and enhancing workers' health and safety. However, other human and labour rights protections do not seem to be expressly covered as part of the present standards and therefore CBs may not be measuring a CH's compliance in the context that this and the preceding Recommendation call for.

For example, looking at the FOS audit guidance for certification against the FOS Wild and CoC Standards, human rights are narrowly defined to include forced and child labour and generic worker health and safety measures.²¹⁰ **This begs the question, when deciding on the suspension or withdrawal of certificates, are CBs generally interpreting allegations of human rights abuses in the same narrow way that present fisheries standards prescribe?**

One cannot exclude a CBs' own legal and moral obligations, independent of the underlying standard and compliance criteria, to interpret their responsibilities with respect to suspension and withdrawal conditions in accordance with fundamental human rights law.

For example, RINA expressly states that it "applies the principles of the Universal Declaration of Human Rights, UN Convention on the Rights of the Child, International Labour Organization and the OECD Guidelines regarding Multinational Enterprises" in the conduct of its business.²¹¹ In doing so, **is RINA therefore impliedly creating and committing itself to a specific set of human rights-based conditions under which certification may be suspended or withdrawn by the CB?**

In one way or another, CBs are clearly accountable under the present system. However, what safeguards are in place to ensure that the CBs themselves uphold their responsibilities under the relevant fisheries certification programme?

ABs, responsible for accrediting CBs to perform their certification function in relation to standards, play a crucial role in ensuring the integrity of the system. Paragraph 92 of the Ecolabelling Guidelines states that ABs "*should specify the conditions under which accreditation may be suspended or withdrawn, partially or in total, for all or part of the scope of accreditation*".²¹² Therefore, CBs themselves may have their accreditation suspended or withdrawn should they fail to carry out their function in the prescribed manner agreed with their accreditor.

In order to understand conditions that might give rise to the suspension or withdrawal of a CB's accredited status, we must look to the individual arrangement in place between the AB and CB. The obligations of ABs and the influence they wield needs to be considered in greater detail in order to ascertain this.

²⁰⁹ See MSC approach to forced and child labour, <https://www.msc.org/what-we-are-doing/our-approach/forced-and-child-labour>

²¹⁰ See Section 8 in 2.4.5 and Section 3 in 2.2.4 FOS (2017) Audit Guidance for Friend of the Sea Standards, Version 1, 27 October 2017, https://friendofthesea.org/wp-content/uploads/Audit-Guidance-for-Friend-of-the-Sea-Standards_v1.pdf

²¹¹ <https://www.rina.org/en/about-us/compliance>

²¹² Paragraph 92, FAO (2009) Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries.

Is the Current System Fit for Purpose?

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SSOs need to amend their respective standards to include express compliance requirements with respect to human rights, and the abuses thereof, on board certified vessels.

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To all intents and purposes, the current system fulfils the demands called for by the present and preceding Recommendations. Responsibilities lie at every level, but it is the established role of the CB to determine whether or not suspension or withdrawal of certificate is enforced. However, as part of the criteria for determining suspension and/or withdrawal, a CB will look to the underlying standard and level of compliance required with that standard in order to determine a CH's certificate status. This is where, under the current system, the **SSOs need to amend their respective standards to include express compliance requirements with respect to human rights, and the abuses thereof, on board certified vessels.**

Implementing the Recommendations to include express reference to human rights within the standard will help maintain the integrity of the supply chain, which, as identified, will benefit a number of parties. However, the proposed criteria for triggering a suspension or withdrawal decision in relation to allegations of human rights abuses needs to be robust and fair but also timely and effective. There is therefore a balancing act to be performed in this regard.

Insofar as the system for disclosing information relating to the decision to suspend or withdraw certification is concerned, this needs to be approached proactively. It must neither be a reactive (i.e. disclosed upon request) nor a dormant system (i.e. disclosed but not highlighted). A simple 'email sign-up' system which automatically updates recipients when a vessel under a certified fishery is suspended or withdrawn could easily be implemented. Other models of equal efficacy could also be adopted.

Analysis, Comment and Recommendations

Few if any significant obstacles present themselves in the implementation of certain aspects of Recommendations 5 and 6. The current system supports what is being called for and the capacity to update the standards with specific human rights compliance criteria is at the disposal of SSOs.

However, the law of unintended consequences does counsel one to look ahead and anticipate potential 'side-effects'.

Any update to a standard would therefore have to safeguard against a scenario whereby as a consequence of an alleged abuse of human rights, the crew on board a subject vessel is not exposed to any physical or verbal abuse, or that publicly available information does not incite vigilantism of any sort. It is vital that safeguards ensuring due process without any prejudice to the principle of the presumption of innocence are in place.

The potential for unintended human rights consequences flowing from this Recommendation in the form of stranded, unpaid and out of work Fisheries Observers and crew must also be considered. Mitigation for the suspension and or withdrawal of certificates (following a complaint) could therefore include:

- i) voluntary and immediate engagement of an allocated independent oversight body with a set time limit for review, determination and final decision, as enshrined in the respective standard and conditions for suspension and withdrawal of certificate (if so taken into account);
- ii) transparent public disclosure of the complaint process;
- iii) crew access to pro bono legal support, advice and representation throughout the process.

Follow-On Recommendations

HRAS Recommends:

- 1** SSOs commit to amend their respective standards to include express compliance requirements with respect to human rights and the abuses thereof on board certified vessels. CBs should be informed of this impending amendment and should plan accordingly with respect to their responsibilities relating to suspension and withdrawal decisions in accordance with the new criteria.
- 2** The FAO Ecolabelling Guidelines should be updated to include express reference to the requirement for human rights provisions and the provisions relating to health, safety and labour laws in fishing, as advanced by the IMO, ILO and FAO in their recent joint publication,²¹³ to be incorporated into all private voluntary standards, both present and future.



Photo Credit: iStockphoto.com

²¹³ FAO (2020) Joining forces to shape the fishery sector of tomorrow: Promoting safety and decent work in fisheries through the application of international standards, Rome, <http://www.fao.org/3/cb0627en/CB0627EN.pdf>

Priority Recommendation No.7

“

Recommends that all fisheries management organisations, fisheries certification organisations and bodies and fisheries management platforms should have, as a bare minimum, public-facing policies that reflect published business strategies to include fundamental human rights protections and necessary safeguards for all workers in their area of influence, reflecting international legislative and voluntary human rights and labour rights norms.

”

Who are These Various Management and Certification Organisations, Bodies and Platforms?

Clarification: When the 1 July Report speaks about ‘fisheries management organisations’, it is using a catch-all term to describe a number of entities fulfilling a similar, yet jurisdictionally distinct function. These entities operate at regional, sub-regional and national levels and have competencies and responsibilities to reflect these regulatory boundaries. The scope of competencies and responsibilities may be categorised as general, i.e. area specific or specialised, i.e. species specific. Tuna is often categorised separately but can be said to constitute a subset of the specialised category.²¹⁴ Such entities are invariably public in nature, i.e. governmental or intergovernmental.

Examples include FAO RFMOs such as the WCPFC,²¹⁵ RFBs such as the FFA,²¹⁶ other international fisheries management organisations such as the Parties to the Nauru Agreement (PNA),²¹⁷ and national fisheries management organisations such as the Taiwanese Fisheries Agency (TFA)²¹⁸ and Kiribati Ministry of Fisheries and Marine Resources Development (MFMRD).²¹⁹

‘Fisheries certification organisations’ have been discussed and defined above. They include SSOs, ABs and CBs. With the exception of some ABs which have agreements with governments to fulfil quasi-government functions as national accreditation bodies, all such entities are private in nature.

‘Fisheries management platforms’ is a catch-all term used to define other entities involved in the improvement of fisheries management. Such entities may be from the private or charity sector. Private sector entities may be focused on the provision of professional services and the enhancement of fisheries management through advice and consultancy. Charity sector entities may be advocacy-focused and encourage change through commissioned research and scientifically backed evidence. Examples of private sector fisheries management platforms include MRAG and MRAG Americas.²²⁰ Examples of charity sector fisheries management platforms include the International Seafood Sustainability Foundation (ISSF)²²¹ and the International Pole and Line Foundation (IPNLF).²²²

214 Stefán Ásmundsson (2016) Regional Fisheries Management Organizations (RFMOs): Who Are They, What Is Their Geographic Coverage on the High Seas and Which Ones Should Be Considered as General RFMOs, Tuna RFMOs, and Specialized RFMOs?, Convention on Biological Diversity, <https://www.cbd.int/doc/meetings/mar/soiom-2016-01/other/soiom-2016-01-fao-19-en.pdf>

215 <https://www.wcpfc.int/home>

216 <https://www.ffa.int>

217 <https://www.pnatuna.com/about-us>

218 <https://www.fao.gov.tw/en/>

219 <https://www.mfmr.gov.ki/>

220 <https://mrag.co.uk> and <https://www.mragamericas.com>

221 <https://iss-foundation.org/>

222 <http://ipnlf.org/>

What Public-facing Human Rights Policy Information Currently Exists?

In terms of international human rights protections, most if not all public fisheries management organisations in the WCP geographical area fall, directly or indirectly, under provisions of the Universal Declaration of Human Rights (UDHR) and certain core international human rights instruments.²²³ For example, as fisheries management organisations of individual nation States, they are caught by virtue of direct signature to the UDHR and/or international human rights treaties.

RFMOs

As RFMOs, they may also fall indirectly under the aegis of UN human rights protections. For example, either by virtue of direct national membership of the FAO, or as direct members, participating territories, or cooperating non-members of RFMOs – which themselves are FAO-convened organisations. As an agency of the UN, under its constitution,²²⁴ the FAO may expressly or impliedly place certain obligations upon its membership to observe certain fundamental human rights law as promulgated by the UN system. For example, the Right to Food²²⁵ and the Human Rights-Based Approach (HRBA) to small-scale fisheries (SSF) can be considered binding upon its members.²²⁶

RFBs

RFBs are not necessarily caught by the same UN human rights protections regime as RFMOs as they constitute international fisheries agreements outside the FAO framework. If RFBs are caught by any human rights protections regime it is by virtue of the fact that their constituent members are either direct signatories to human rights treaties, or direct members of the FAO, or indeed both.

Private and Charitable Entities

Private and charitable entities which constitute the fisheries certification organisations and management platforms are not subject to the same international human rights protections and legislative regime as public entities. Specific domestic legislation may exist, e.g. the Modern Slavery Act 2015 (MSA 2015) in the UK,²²⁷ the California Transparency in Supply Chains Act (CTSCA) in the USA,²²⁸ and the Modern Slavery Act 2018 (MSA 2018) in Australia.²²⁹ Such legislation places a positive duty on private and charitable entities to ensure that their supply chains are free from slavery and/or forced labour and that transparency in supply chain statements are produced each year to highlight the measures such entities are implementing, or not, to mitigate the risk.

Similarly, but indirectly, certain employment, health and safety, anti-bribery and criminal legislation may exist to protect human rights. But away from specific domestic legislative measures, there are limited examples of 'hard law' human rights obligations upon private entities. The system therefore relies on such entities to subscribe to voluntary human rights and labour norms such as the United Nations Guiding Principles on Business and Human Rights (UNGPs)²³⁰ and/or the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises (OECD MNEs).²³¹

223 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

224 <http://www.fao.org/3/a-mp046e.pdf>

225 FAO (2013) The Human Right to Adequate Food in the Global Strategic Framework for Food Security and Nutrition: A Global Consensus, Rome, 2013, <http://www.fao.org/3/a-i3546e.pdf>

226 FAO (2015) Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries: in the Context of Food Security and Poverty Eradication, Rome, 2015, <http://www.fao.org/3/a-i4356en.pdf>

227 <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

228 <https://oag.ca.gov/SB657>

229 <https://www.legislation.gov.au/Details/C2018A00153>

230 UN (2011) Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, New York & Geneva, 2011, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

231 'OECD (2011) Guidelines for Multinational Enterprises, 2011 Edition, <http://mneguidelines.oecd.org/guidelines/>

Public / Private Divide

“ *It is clear that public sector entities on the one hand and private and charitable sector entities on the other, are subject to different regimes and obligations under international human rights protections.* ”

It is clear that public sector entities on the one hand and private and charitable sector entities on the other, are subject to different regimes and obligations under international human rights protections. The publication or not of policy documents and/or guidance notes subsequently reflects this. It is also clear that from a basic trawl of the public-facing websites of the various entities mentioned above, few entities expressly address human rights within their policies and reflective business (or otherwise) strategies. If they do, then such information is not readily available to view.

Due to their very nature, public entities are less likely to produce policy documents with respect to business strategies and their impact on human rights. They are more likely to enact legislation, issue regulations and/or directives, publish government level guidance or reports, or, in the case of RFMOs, produce Conservation and Management Measures (CMMs) which are binding upon their respective members. Indeed, much like the way a RFMO CMM mandates certain requirements of its members, the FFA's 'Harmonised Minimum Terms and Conditions for Access by Fishing Vessels' document sets out certain binding requirements upon its members. But like CMMs, this document does not constitute a policy document which reflects published business strategies including fundamental human rights protections which reflect international legislative and voluntary human rights and labour rights norms. Part V of this document does set out the responsibilities of Operators with respect to certain crew employment conditions and these are reflective of ILO C188 provisions. It also expressly states, albeit generally, the responsibilities of Operators to observe and respect the human rights of crew in accordance with accepted international human rights standards.²³²

Such a document, as in the case of CMMs, serves to reinforce the different ways public and private/charitable entities deal with policy documents. In lieu of published policy documentation, these measures can be viewed in the light of public-facing strategies towards the protection of human rights. Indeed, they can act as yardsticks against which these institutions can be held to account. But they are not express human rights policy documents *per se*.

Charitable and private entities on the other hand can effectively demonstrate their strategic approach to human rights protections through the publication of such public-facing policy documentation. They may already be legally required to do so. If not, they can voluntarily subscribe to such a regimen.²³³

Some of the entities which have been referenced above, namely SSOs, promote a CoC model which requires transparency in the supply chain. This model is widely recognised and accepted practice within fisheries certification programmes. However, as identified, under the current referenced certification programmes, CoC requirements do not necessarily incorporate human rights considerations. If they do, they are limited to forced and child labour, and worker health and safety considerations. That said, there is precedent for monitoring such human rights considerations and therefore scope to build upon this in the future.

²³² https://www.ffa.int/system/files/HMTC_os_revised_by_FFCI10_May_2019_-_FINAL.pdf

²³³ For example, MSC commits to the principles of the MSA 2015 but states that it is not required to do so: <https://www.msc.org/about-the-msc/commitment-to-the-principles-of-the-modern-slavery-act-2015>

Analysis, Comment and Recommendations

“ Published policy documents should be an accurate reflection of how such entities approach the matter of human rights protections. They should also establish the basis against which such entities can be held to account. ”

The role and responsibility of businesses operating in the sector in addressing human rights abuses of Fisheries Observers cannot be overstated. There is a pressing need for greater progress on a number of potential fronts to achieve greater action on protecting their rights (and the rights of others in the sector) and providing remedy when they are harmed. Among others, these should include:

- speeding up implementation of all aspects of the UNGPs by companies – public commitments to human rights, human rights due diligence, remedy mechanisms and reporting (be that under modern slavery disclosure legislation, or other);
- strengthening human rights reporting legislation (UK, Australian MSAs, CTSCA) to include penalties to ensure compliance by those required to report;
- introduction of mandatory human rights due diligence laws (mHRDD) applicable to companies – forcing companies to identify the potential for abuses against stakeholders, such as fisheries observers, and act to address.

It is important that entities who commit to publish their policies outlining business (or similar) strategies towards the protection of human rights do not simply engage in a written exercise that bears little meaning to their business operations in practice. This is not the intent of the Recommendation. **Published policy documents should be an accurate reflection of how such entities approach the matter of human rights protections. They should also establish the basis against which such entities can be held to account.**

The Recommendation requires private and charitable (and public where feasible) entities, to adopt a ‘warts and all’ attitude towards business and human rights. It is no good entities being transparent when things go right but opaque when things go wrong. Voluntary human rights norms expect a ‘know and show’ approach. It is not mandatory to adopt such an approach. Even if such an approach is adopted, the provisions of such a policy commitment do not necessarily become enforceable. However, entities will find it hard to justify why they have not acted in accordance with published strategies if in the event human rights abuses are identified to have occurred. This may be why some entities are reluctant to adopt such a voluntary approach in the first place.

Further, there may be hesitancy within the sector to voluntarily subscribe to a transparent business and human rights regime and publish one’s policy commitments, because others in the sector are not doing it. If some of the larger private and/or charitable entities engage in the process, others may follow. Better still, national and/or regional entities such as RFMOs could mandate that the private and charitable sector entities commit to such an approach.

Follow-On Recommendation

HRAS Recommends:

- 1 Private and charitable entities within the fisheries sector make an express public commitment to draft policies outlining their business strategies in relation to human rights and established IMO, ILO and FAO fisheries-related health, safety and labour norms and laws. These policies are published in accordance with transparent voluntary business and human rights norms underlined by national and/or regional level guidance, i.e. RFMO CMM specifying the obligations of stakeholders in relation to transparent business and human rights practices.



Photo Credit: Shutterstock.com



Photo Credit: Alex Hofford/Greenpeace

Priority Recommendation No.8

“

Recommends that all fisheries management organisations should introduce internal collation and reporting mechanisms for the recording of incidents of human rights and labour rights abuses, for subsequent investigation by the competent authorities. This should include published pathways for internal reporting, investigation, external independent review and routes to remediation and effective remedy.”

”

The Difficulty with Public Institutions

Clarification: As defined above, ‘fisheries management organisations’ comprise of various regional, sub-regional and national entities. These include RFMOs, RFBs and other international fisheries bodies,²³⁴ and national fisheries bodies. They are distinguished in that they are invariably defined by their constitution, i.e. they are State-run or State-comprised entities.

When one talks about ‘internal collation and reporting mechanisms’ for the recording of human rights abuses, one is talking about risk management procedures in the context of corporate social responsibility (CSR). However, State-run or State-comprised entities, such fisheries management organisations are unlikely to expose the workings of their management systems to the general public despite requests to do so.

Pathways for internal reporting, investigation, external independent review and routes to remediation and effective remedy may be published, but few State-run or State- entities manage their operations in full view of public scrutiny. They are unlikely to publish the details of their investigative findings and disclose them to external entities for independent review. More often than not, this responsibility will fall to a State-administered entity vested with investigative or constabulary responsibilities such as a coastguard agency, government department accredited with maritime safety and security, or port State authorities, by way of example.

What is the Current Practice?

It is difficult to know exactly what fisheries management organisations are doing in relation to this Recommendation. It is clear that there is no RFMO within the FAO expressly publishing such information as part of their own reporting mechanisms, and neither, on a public-facing level at least, are any of the RFBs, other international fisheries bodies, or national fisheries organisations within the WCP geographical area. The Recommendation therefore gives rise to more questions than answers.

As referenced above, the WCPFC imposes certain reporting obligations on flag CCMs, Observer providers and fishing vessels in the event of injury, death, assault, intimidation, threats and/or harassment to Fisheries Observers.²³⁵ The WCPFC also ‘encourages’ its members to implement measures for crew onboard fishing vessels consistent with international labour standards.²³⁶

Similarly, the FFA’s Harmonised Minimum Terms and Conditions for Access by Fishing Vessels sets out the reporting obligations of operators in relation to Observer safety in the event of certain specified scenarios. While this is evidence of the expected procedure prescribed by RFMOs and RFBs for their members in relation to human rights reporting mechanisms, it stops short of setting out a comprehensive strategy for dealing with such instances. Rather, the obligation to do this is passed on to flag CCMs, national Observer providers or vessel operators.

234 For example, the Parties to the Nauru Agreement (PNA) is neither an RFMO nor a recognised FAO RFB, but it is a sub-regional international fisheries management organisation comprised of eight member States responsible for the sustainable management of tuna stocks using purse seine fishing gear, <https://www.pnatuna.com>

235 WCPFC (2017) Conservation and Management Measure for the Protection of WCPFC Regional Observer Programme Observers, CMM 2017-03, <https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>

236 WCPFC (2018) Resolution on Labour Standards for Crew on Fishing Vessels, <https://www.wcpfc.int/doc/resolution-2018-01/resolution-labour-standards-crew-fishing-vessels>

Similarly, since 1 January 2017, the WCPFC has prescribed that “observers must be able to do their jobs unimpeded and in a safe working environment, free from interference, harassment, intimidation, and assault.”²³⁷ To support this endeavour, it has been mandatory for each ROP-authorized Observer programme to establish in their respective programmes a 24-hour emergency contact for the observer. Also, an Emergency Action Plan (EAP) must be in place, the procedures of which must be communicated to each observer prior to departing on their trip. This plan “must include communications protocol and appropriate contact information in an emergency” and, as a minimum, will include guidance on when to report, who to report to, follow-up responses, remedial action and guidance on completing the EAP protocols.²³⁸

Extant internal collation and reporting mechanisms with respect to fish stocks, species, over-fishing and any transgressions, could act as a template for developing human rights reporting mechanisms, e.g. see the objectives of the Commission ROP of the WCPFC.²³⁹

Analysis, Comment and Recommendations

In order to give effect to this Recommendation, further questions need to be asked of the various fisheries management organisations. Firstly, it remains unclear whether such organisations maintain internal collation and reporting mechanisms for the recording of incidents of human rights and labour rights abuses. Secondly, if they do, it remains unclear whether these mechanisms include pathways for internal reporting, internal investigation, external independent review and routes to remediation and effective remedy. Thirdly, it remains unclear whether this information is published (in any form) for public awareness and if so where this information is published. Lastly, if such information is not published, why do these organisations choose not to publish this information?

Follow-On Recommendation

HRAS Recommends:

- 1 Direct engagement with various fisheries management organisations at the regional, sub-regional and national levels, in particular WCPFC and FFA, to ascertain the current strategy and the extent to which internal collation and reporting mechanisms in respect of incidents of human rights abuses exist, what information is held and what information is published and by what means.



Photo Credit: Paul Hilton / Greenpeace

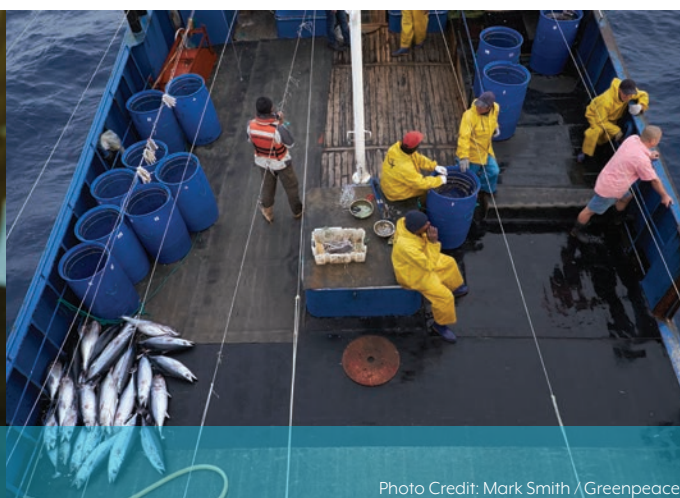


Photo Credit: Mark Smith / Greenpeace

237 WCPFC (2019) Agreed Minimum Standards and Guidelines of the Regional Observer Programme, <https://www.wcpfc.int/docx/wcpfc-regional-observer-programme-standards%20updated%202016>

238 P.16, Ibid.

239 Paragraph 4, WCPFC Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05), <https://www.wcpfc.int/doc/cmm-2018-05/conservation-and-management-measure-regional-observer-programme>

Priority Recommendation No.9

“

Recommends regular engagement of Interpol, alongside flag, port and coastal state authorities, for all violations of individual fundamental human rights of Fisheries Observers and crew, including, but not limited to, murder (homicide), violence towards the person resulting in bodily harm, sexual assaults, slavery, trafficking and deaths at sea.”

”

Interpol – Independent and Interjurisdictional

“

Interpol has the ability to work inter-governmentally, across borders, and is able to pursue investigations, even after suspects have left the country where they were initially charged, should new evidence emerge.

”

Investigations into maritime crime are often hampered by jurisdictional boundaries, the necessity to work across borders, or the mere ambiguity as to who should be in charge and who provides oversight. States can easily shrug off their responsibility and associated costs or uncomfortable facts, due to a lack of clear mandates. Complacency of authorities, political or commercial interests or under-resourcing of responsible national agencies can also cause further impediments.²⁴⁰

An inter-agency approach, unimpeded by such obstacles, can provide a solution. A regional inter-governmental body could take on such an interagency function, whereas in the meantime Interpol has the ability to work inter-governmentally, across borders, and is able to pursue investigations, even after suspects have left the country where they were initially charged, should new evidence emerge. Interpol also benefits from additional resources such as translation/interpretation capacity, cybercrime and IT expertise, and a broad understanding of applicable international law.

A case that would have benefitted from such cross-border investigative capacities is the death of Charles Lasisi. Suspects were acquitted of the charge of murder due to a lack of evidence and left the country (PNG). Allegations that a murder occurred, emerged later. However, no further effort to prosecute those responsible has been made since.

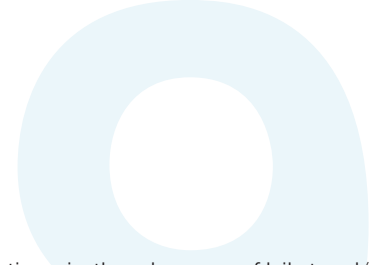
Interpol – Status in the Region

All Pacific nations are members of Interpol.²⁴¹ This implies that little effort is required to further convince countries of the benefits of collaboration in the field of international crime.

The independence of investigations is crucial to essentially improve Observers' and other seafarers' safety, since investigations should not be impeded by national, regional or commercial interests. Interpol's investigations serve a higher good and can therefore be considered to come with at least a lesser degree of bias than other national authorities might have to deal with. Interpol is currently involved with the investigations into the death of Eritara Aati Kaiarua.

²⁴⁰ As one Observer told HRAS confidentially with regards to alleged complacency or negligence of relevant authorities: “When you are out there, safety equipment will not help you, if there is no answering, receiving party on the other end.” In a call, 3 September 2020. The Observer prefers to remain anonymous.

²⁴¹ Interpol, “INTERPOL Member Countries,” Interpol, 2020, <https://www.interpol.int/en/Who-we-are/Member-countries>



Barriers to Cooperation with Interpol

Barriers could be that Interpol needs a State to require support in transnational investigations in the absence of bilateral/multilateral or regional agreements; or that its priority areas do not always reflect the crimes under consideration. Interpol formulates “six priority crime areas: drugs and organized crime, financial and high-tech crime, fugitives, public safety and terrorism, trafficking in human beings (including crimes against children), and corruption.”²⁴² Interpol further acts as a supportive and a training body, which means it needs commitment and eventually funding or at least facilitation by concerned member states. Opponents could argue Interpol’s mandate does not cover all violations of individual fundamental human rights of Fisheries Observers and crew and that a change in the mandate at UN level would not be feasible. Lack of funding, reliance on third-party support and initiative might create an additional barrier to deeper ties with the organisation.

Opportunities

Interpol’s mandate and core functions (securing global police communications services; global databases and data services; operational police support services; training and development) could be described as an opportunity to its member states: an opportunity to conduct and receive accredited investigations, to close off cases, which are currently pending in many cases of Observers and crew deaths. It could help member states to gain some credibility and trust, instead of being perceived to be negligent or dragging cases on. A deeper engagement with Interpol would be seen by many as an opportunity to subscribe to best management practices and to actually create a real impact in regard to improving Observers’ and crew safety. Endeavours such as ‘Project Scale’ are comparable examples.²⁴³

Interpol’s mandate for maritime security could be extended to include the protection of individual fundamental human rights.²⁴⁴ A regional commitment and establishment of regular engagement with Interpol, for example through the medium of a revision to the present Observer-focused WCPFC CMMs or FFA licencing terms and conditions, where in certain specified cases of alleged human rights abuses it would be incumbent upon flag, coastal and port states to request the assistance of Interpol. This could serve as a transferable example of best management practice to other RFMOs and RFBs globally.

Interpol could assist the likes of WCPFC and FFA in drafting the necessary revisions and implementing the attendant reporting procedures. It could also establish a regional centralised investigative system and body to manage such reports. The body would be premised on internationally recognised investigative standards and protocols. This would assure victims and their dependents and any other concerned parties of the investigative rigour with which their case will be dealt.

Analysis, Comment and Recommendations

A professional centralised investigative system and body will enable constant incident reporting and monitoring, enabling trend analysis, prediction and preventive rapid intervention when needed. Such an approach would essentially improve security management and investigative capacities in the maritime sphere. A uniformed agency would thus address root causes of crimes committed against crew and Observers. Interpol could fulfil such a function in collaboration with regional fisheries management bodies, or an intergovernmental and interagency body, which includes the involvement of non-governmental stakeholders. This could be used as a means to conduct investigations according to international best practices (as provided by or developed with Interpol). This pathway would further create an opportunity to establish a global registry of violations and infringements that could assist other RFMOs and even national governments in targeting their limited MCS resources in a risk-based way maximising available capacity and resources.

242 UN, “INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL),” 2017, https://www.un.org/sc/ctc/wp-content/uploads/2017/02/icpo_background-information.pdf

243 <https://www.interpol.int/en/News-and-Events/News/2013/INTERPOL-launches-Project-Scale-to-combat-fisheries-crime>

244 Interpol, “Maritime Crime,” Interpol, 2020, <https://www.interpol.int/en/Crimes/Maritime-crime>

Follow-On Recommendations

HRAS Recommends:

- 1** An engagement with Interpol as to where the present Recommendation fits with respect to Interpol's mandate and operational areas;
- 2** To ascertain how Interpol gets involved (procedural), including who pays for an Interpol mission;
- 3** To extend Interpol's mandate for maritime security to include the protection of individual fundamental human rights;
- 4** The development of best practices and investigative protocols in cooperation with Interpol to be implemented at regional level;
- 5** To improve security management and investigations capacities by establishing a regional intergovernmental and interagency body responsible for investigations, incident management (trend analysis, prediction, prevention and rapid interventions), in cooperation with Interpol.



Photo Credit: Jean Jaques Schwenzfeier

Priority Recommendation No. 10

“

Recommends transparent and unimpeded investigations into all cases of human rights violations against Fisheries Observers and crew, including the full and unredacted public disclosure of the facts, findings and outcome by the state authorities involved, for public scrutiny by those related international fisheries certification organisations, Observer associations and civil-society entities with a vested interest.’

”

Unsolved Cases

Numerous cases of known Fisheries Observers and crewman fatalities have been documented over the last two decades by organisations such as Pacific Dialogue and the Association for Professional Observers (APO). Their reports have been widely published.²⁴⁵ In many of these cases, circumstances remain unclear, cases unresolved and perpetrators unfound. Details are missing, and withheld from the public. Even the most basic of information is withheld from the family, such as locations; where the victims disappeared; from what vessels they disappeared; contracts; insurance; autopsy reports; certificate of death or even a confirmation of which programme authority they were hired. (see Table 1). This raises the question, how can cases remain unresolved, sometimes decade after the incident occurred? The level of public information currently available is patchy and no central public database is yet available.

Transparent Investigations: Stipulations Versus Reality

Clear regulations exist within the WCPFC for the case of harm to a Fisheries Observer, as stipulated within CMM 2017-03, which describes the responsibilities of a vessel, where such incident occurs. What the CMM does not describe is how investigations should be undertaken or whether there is a common investigation protocol acknowledged by and disseminated through CCMs. The document mentions incident reports to be filed and cooperation with official investigations expected such as evidence to be preserved. Yet, these regulations read more like a gentleman's agreement than detailed instructions relevant for investigations. They guide the vessels, but not the investigations. On the backdrop of existing cases, with sometimes confusing information drawn from public sources and only piecemeal bits here and there, more questions arise, and cases remain afflicted with the suspicion of irregularity and a lot of question marks.

Case Study – Missing PNG Observers

In 2018, 18 Papua New Guineans (PNG) working on foreign-owned fishing vessels were reported by EAST Sepik Governor Allan Bird to have disappeared without a trace within its 200-mile Exclusive Economic Zone (EEZ) since 2014;²⁴⁶ this figure was interpreted by some to be referring to 18 Observers, yet later redacted to four missing Observers by fisheries minister Basa in PNG's parliament.²⁴⁷ Some of the other missing persons were allegedly crewmen in other positions and not mentioned further. Circumstances reported with regards to the four Observers remain fragmented, yet their deaths in line of operation were acknowledged by relevant authorities and led to the acceptance of increased Observer safety measures by the WCPFC in 2016.²⁴⁸

245 HRAS, "REPORT: Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations – Human Rights at Sea"; Ewell et al., "An Evaluation of Regional Fisheries Management Organization At-Sea Compliance Monitoring and Observer Programs."

246 Jeffrey Elapa, "Missing without a Trace – Post Courier," Post Courier, February 2018, <https://postcourier.com.pg/missing-without-trace/>

247 The National, "Fisheries to Monitor Observers," The National, 2018, <https://www.thenational.com.pg/fisheries-monitor-observers/>

248 WCPFC, "Conservation and Management Measure for the Protection of WCPFC Regional Observer Programme Observers | WCPFC," WCPFC, 2016, <https://www.wcpfc.int/doc/cmm-2016-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>; FFA Media, "Deaths of PNG Fisheries Observers Hastens New Safety Rules – FFA's Tuna Pacific: Fisheries News and Views," 2016, <https://www.tunapacific.org/2016/12/10/deaths-of-png-fisheries-observers-hastens-new-safety-rules/>; Ronald Toito'ona, "The Pacific Wins the Day as Japan Obstructs, Then Agrees to Observers Safety Measure – FFA's Tuna Pacific: Fisheries News and Views," 2016, <https://www.tunapacific.org/2016/12/10/the-pacific-wins-the-day-as-japan-obstructs-then-agrees-to-observers-safety-measure/>

Case No. 1: Charlie Lasisi

Charlie Lasisi was employed as an Observer with PNG's National Fisheries Authority (NFA) when he disappeared in 2010 on board Dolores 838²⁴⁹ in the Bismark seas near PNG's Indonesian border (2° 04.5863 S, 142° 04.80000 E).²⁵⁰ According to a PNG blog, police said the Observer Lasisi had been complaining about dolphins being fished by the vessel.²⁵¹ It is unclear who in person reported his disappearance, but according to an article published by WikiTribune,²⁵² PNG police found Mr Lasisi had disappeared on 29 March 2010, a report was sent on 31 March to the NFA Managing Director Sylvester Pokajam and the National Maritime Safety Authority, who consequently sent officers to investigate on the suspicion of murder.²⁵³ The vessel is owned by the Philippines Rd Tuna Ventures, Inc. (Formerly South Sea Fishing Ventures), which runs the Madang-based RD Tuna Cannery Limited in Madang Province, PNG. Six Filipino crew members were brought to Port Moresby for questioning and were charged for the alleged murder of Mr. Lasisi.²⁵⁴ Charges against the six suspects were later dismissed and the suspects discharged, with the reason given that the prosecution had only provided circumstantial and insufficient evidence for a trial; all evidence, also in the form of testimonies, was dismissed by the Papua New Guinea district court to be "irrelevant".²⁵⁵

It was later reported that his remains were discovered off the coast of West Sepik in October 2015, bound in chains, suggesting a murder had taken place.²⁵⁶ It is unclear though how the body was identified or when exactly it was found. The report alleging the above by Dr. Kailola is from 2015, but no date is given in her account as to when the body was found. To the knowledge of HRAS no further indictment was brought. Questions therefore remain unanswered both in respect of the investigation itself and the circumstances reported as further outlined below. The case continues to be overshadowed by uncertainty, due to a lack of comprehensive recording of evidence and facts (in the public domain) and probably a lack of transparency with regards to the investigation's results.

“ Lessons could be learned, and shortcomings addressed. ”

Police retained DNA samples from the family to corroborate the identity of the body found, yet botched them two times, according to an interview with family members, conducted by the APO.²⁵⁷ Part of the issues were bureaucratic hurdles, with authorities putting a stop to the samples being sent to Australia for analysis, according to the family. When apprehended a third time for DNA samples, the family refused to cooperate. Then how was the body identified? Details remain fragmented, at least within the public domain. Should they be publicised? A publication would at least shed light on the circumstances, as far as they had been investigated. It would also potentially reveal cross-jurisdictional hurdles which impeded cooperation across borders and bring some closure to the family in the case. A publication would also help to distinguish facts from allegations, as far as they have been established. Lessons could be learned, and shortcomings addressed.

249 Association for Professional Observers, "Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths – Cause of Death Undetermined, Died under Suspicious Circumstances, Not Reported by Agency Officials and/or Is Still Being Investigated.," APO, 2020, <https://www.apo-observers.org/misses>

250 Papua New Guinea District Court, "Wilfred v Famini [2010] PGDC 43; DCI031 (9 November 2010)," pacific islands legal information institute, November 2010, <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGDC/2010/43.html?stem=&synonyms=&query=lasisi>

251 PNG exposed Blog, "What Has Happened to the RD Tuna Murder Case? | PNG exposed Blog," November 2010, <https://pngexposed.wordpress.com/2010/11/07/what-has-happened-to-the-rd-tuna-murder-case/>

252 Joyce R, Anderson R, van Boven R Bale P, "Updated: Murder and Abuse – the Price of Your Sashimi – WikiTribune," 2017, <http://oldwp.wikitribune.com/wt/news/article/7995/>

253 PNGexposedBlog, "What Has Happened to the RD Tuna Murder Case? | PNGexposed Blog."

254 Papua New Guinea District Court, "Wilfred v Famini [2010] PGDC 43; DCI031 (9 November 2010)."

255 Papua New Guinea District Court.

256 Kailola, Patricia. "Crew Conditions on Fishing Vessels in the Pacific Islands Region." Pacific Tuna Forum 2015, Infofish, September 2015. https://eee0b4ee-ed80-4c1c-a622-965eeb7c6b45.filesusr.com/ugd/a5edc2_835328cdd1774d71976247b51f4dc07c.pdf?index=true AND Kailola, Patricia. "Under-Reporting of Slavery and Abuse in Pacific Fisheries – AP - Forced Labour Net." ILO, 2015. <http://apflnet.ilo.org/news/under-reporting-of-slavery-and-abuse-in-pacific-fisheries>

257 <https://www.apo-observers.org>

Case No. 2: Wesley Talia

Wesley Talia went missing in 2015 in the waters of New Ireland where his body was later found by locals floating in the sea in similar clothing to a “ship’s standard clothing.”²⁵⁸ A slightly different account by a source cited by the APO tells that local villagers saw the body of a man, similar in size to Wesley’s floating in the water, wrapped in a “blue cloak”, similar to “the vessels” livery.²⁵⁹ Although the name of the specific vessel he was on could not be obtained, the vessel was one out of a fleet of seven to nine vessels, unusually licensed to the PNG provincial government rather than to the national government, while Talia was deployed by the PNG national Observer programme, according to the source cited by the APO.²⁶⁰ The NFA dismissed the villagers’ accounts as unsubstantiated and no further investigations were carried out. As in the case of Lasisi, key facts were either not obtained or documented, showing a shocking lack of investigative best practices and incident logging. The body found floating was associated with Wesley Talia, albeit never recovered as it seems; neither local nor national authorities were willing or able to follow up on the villagers’ accounts, as well as being apparently incapable of capturing the most essential information with regards to the missing Observer.

“ [F]ragmented information sharing opens the stage for rampant speculation and uncredited accounts of what has happened... ”

We have to ask again, how is it possible to know that he was deployed on a foreign vessel, deployed by PNG’s Observer provider, the NFA, part of a fleet of seven to nine vessels, yet the name of the vessel remains unknown? It is hardly conceivable that the NFA would not have records of where they deploy their Observers. So, is the information withheld, although his death was acknowledged to have happened while on duty by the authorities? Or are and were the relevant authorities unwilling to share these details publicly for whatever reason they might have had, good or bad? In any event, such fragmented information sharing opens the stage for rampant speculation and uncredited accounts of what has happened, while on the other hand sloppy incident management and investigations give reason to suspect at best negligence at worst complacency.

Case No. 3: Larry Gavin

“ 5WH – Who, Where, When, What, Why, How? ”

Larry Gavin was a PNG Observer until 2016 when he was lost at sea. However, no records of the vessel he was on, the circumstances of his disappearance or even where he came from in PNG, can be found within the public domain. No investigation was reported to have been carried out to find the cause of his disappearance.²⁶¹ Again, the question arises, if he disappeared from a vessel, while committing to his duties as an Observer, how is it possible that his disappearance became publicly acknowledged, yet not from which vessel, nor any details of the circumstances? Documentation within the public domain is patchy to say the least. Are there official records, if so, why haven’t they been made public? His case is another example for a call to centralised incident management, adhering to investigative best practices, capturing at the least the 5WHs (Who, Where, When, What, Why, How), where possible and quickly after reports of an incident emerge.

258 Raymond Sigimet, “Fishing’s Dark Side: The Cases of Missing NFA Observers – Keith Jackson & Friends: PNG ATTITUDE,” PNG Attitude, 2019, https://asopa.typepad.com/asopa_people/2019/01/fishings-dark-side-the-cases-of-missing-nfa-observers.html

259 Association for Professional Observers, “Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths – Cause of Death Undetermined, Died under Suspicious Circumstances, Not Reported by Agency Officials and/or Is Still Being Investigated.”

260 Association for Professional Observers.

261 Association for Professional Observers; Sigimet, “Fishing’s Dark Side: The Cases of Missing NFA Observers - Keith Jackson & Friends: PNG ATTITUDE”; Bale P, “Updated: Murder and Abuse – the Price of Your Sashimi – WikiTribune.”

Case No. 4: James Numbaru Jnr.

James Numbaru Jnr. was an NFA Observer on board the Chinese-flagged fishing vessel Feng Xiang No. 818 when he was reported missing, around 3.38 pm (UTC) on 28 June 2017.²⁶² Authorities concluded that onboard CCTV had filmed Mr Numbaru removing his clothes, being disoriented, falling over repeatedly, appearing drunk and then falling overboard.²⁶³ Nonetheless, circumstances remain murky, since new safety rules, introduced in 2016 were allegedly not followed by starting a search and rescue mission, when the Observer fell overboard.²⁶⁴ According to Bale et al, GFW analysis shows that the vessel continued to fish for four hours and no search and rescue activities were observable in the following 72 hours.²⁶⁵ It is not clear from this account of events whether the Observer's disappearance had already been reported at that time or not. Furthermore, "his notebook revealed that he made a notation of pollution just three days before he disappeared. The film also indicated that there may have been a witness, as Mr Numbaru was seen on the CCTV film footage, while on the lower deck arguing with someone on the upper deck, who was out of view of the camera,"²⁶⁶ according to the APO. None of Numbaru's clothing was preserved and the Feng Xiang 818 crews were not interviewed by police, according to Bale et al,²⁶⁷ yet the NFA was reported to be investigating. According to the APO, no official explanation had been given despite several attempts made to obtain information on his disappearance and Feng Xiang 818 continued to fish within PNG waters despite being under investigation; the APO further alleged that evidence had been actively destroyed by the Feng Xiang 818, including all but 40 minutes of the 12 CCTV cameras' onboard recordings.²⁶⁸

“ [A]lleged circumstances would benefit from clear incident reporting and transparent investigations. ”

Numbaru's case and alleged circumstances would benefit from clear incident reporting and transparent investigations. If information was made publicly available by a centralised authorised body, implied allegations of complacency and negligence could be dispelled.



Photo Credit: Alex Hofford/Greenpeace

262 Association for Professional Observers, "Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths – Cause of Death Undetermined, Died under Suspicious Circumstances, Not Reported by Agency Officials and/or Is Still Being Investigated."; Elapa, "Missing without a Trace – Post Courier"; RNZ, "PNG Parliament Told about Fisheries Observers Who Disappear | RNZ News," rnz.co.nz, 2018, <https://www.rnz.co.nz/international/pacific-news/350530/png-parliament-told-about-fisheries-observers-who-disappear>

263 Association for Professional Observers, "Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths – Cause of Death Undetermined, Died under Suspicious Circumstances, Not Reported by Agency Officials and/or Is Still Being Investigated."

264 Association for Professional Observers.

265 Bale P, "Updated: Murder and Abuse – the Price of Your Sashimi – WikiTribune."

266 Association for Professional Observers, "Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths – Cause of Death Undetermined, Died under Suspicious Circumstances, Not Reported by Agency Officials and/or Is Still Being Investigated."

267 Bale P, "Updated: Murder and Abuse – the Price of Your Sashimi – WikiTribune."

268 Commenting on: Sigimet, "Fishing's Dark Side: The Cases of Missing NFA Observers – Keith Jackson & Friends: PNG ATTITUDE."

Other Cases Case No.5: Tamwabeti

According to an article by Stuff New Zealand, Antin Tamwabeti died under circumstances about which little is known. The author, Vance, reports he “*is believed to have died by suicide, onshore.*”²⁶⁹ Where does this information come from? Who believes this to be the case? Where was he last deployed? How were the circumstances on his last mission? How and when did he die? All these questions remain unanswered, yet his death is mentioned in a set of unlawful deaths of Observers at sea.

A detailed description submitted by MRAG Americas to the IATTC sheds some light on circumstances during what was likely his last deployment. The description of incidents occurring in 2019 also give another example of how Observer intimidation and threats to their life impacts their service. They might have impacted his emotional and mental condition as well. Before his death, Tamwabeti received a death threat and was subject to intimidation on a voyage in early 2019, as reported by MRAG.²⁷⁰ A few quotes from the detailed description summarise the events:

“The following report summarises the incidents that occurred during the deployment of IATTC observer, Mr Antin Tamwabeti on the M/V Shin Ho Chun No. 102, from December 18th, 2019 to January 21st, 2019. The observer boarded in Papeete, Tahiti and the vessel proceeded to the fishing grounds to begin transshipments. On January 3, 2019 at 8PM EST the IATTC observer sent an inReach message to MRAG expressing concerns regarding the conduct of the captain, Tin Aung Hlaing of Myanmar, and crew towards him.

[...]
The problems between the observer and the captain may have started because during the first transshipments on the Shin Ho Chun No.102 the observer made some initial identifications of small BET/YFT mixed in with the Albacore tuna.

[...]
With a view to de-escalating the situation on board, on January 9th MRAG Americas communicated with Tunago Shipping to establish a Plan of Action that would ensure the observer’s safety, while allowing the vessel to complete the scheduled transshipments before disembarking the observer in Papeete.

[...]
By 1PM EST on the 10th Mr Tamwabeti had agreed with the plan of action. Subsequently we received a very disturbing message from the observer at 4:11 PM EST via inReach. Mr Tamwabeti advised us that he had been passed a hand-written note by one of the crew stating “They will kill you”.

[...]
Exactly what transpired on the Shin Ho Chun No.102 between 12/31/18 and 1/21/2019 is not clear, in terms of whether actions by the Captain and crew were deliberate, misconstrued, and malicious or intended to be mischievous. Based on the communication with our observer Mr Tamwabeti and others, MRAG Americas has concluded that, whether intentional or not, there were at least several events involving the behaviour of the crew and captain that led to the IATTC observer, Antin Tamwabeti being harassed and feeling intimidated. Mr Tamwabeti had no one on the vessel to whom he felt he could safely relay his concerns. He did not trust the independence of the Vanuatu WCPFC observer, nor the Taiwanese observers. This led to his significantly heightened level of concern for his safety. Once he was reassured by MRAG that he would not be directly harmed and that enough of a “spotlight” was shining on the parties so that his safety was in the best interests of the vessel, he felt able to complete his duties and that he would be returned safely to port.”²⁷¹

“ An accessible central depository would provide for greater clarity and transparency...” ”

The MRAG report showcases how reporting and documentation should be conducted. While it remains unclear what happened in the aftermath of the incidents reported, it is also unclear whether information related to his death is not held by his former employers or relevant authorities. Nonetheless they are withdrawn from public scrutiny and thus give space to speculation and suspicion. An accessible central depository that holds respective information and is willing and able to share this information would provide for greater clarity and transparency, as it would enable addressing the root causes, by interagency evaluation of what went wrong in managing his (and others) security during the incident and aftermath.

269 Andrea Vance, “Death on the High Seas; the Mysterious Death of a Humble Fishing Observer | Stuff.Co.Nz,” stuff, 2020, <https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation>

270 MRAG, “Review of the IATTC Regional Observer Programme Covering the Period January 1, 2018-February 26, 2019,” 16–18.

271 MRAG, 16–18.

Gap Analysis – Evidence Deficiencies in Previous Investigations

Data collated, as for example by Pacific Dialogue Ltd, remains widely incomplete, probably due to a lack of full disclosure by competent authorities for some cases. A brief look at known cases with significant unknown factors, such as the name of the seafarer, the company they worked for, the vessel name, flag state, date, location where they disappeared, or their citizenship, underlines how patchy information within the public domain is. It adds to the astonishment one is left with in regard to how it could be known that crewmen and Observers disappeared, but not on which vessel they were, when they disappeared or in which location/RFMO they disappeared (see Table 1).

Table 1: Gap Analysis, the ‘Unknown’

NAME	POSITION	VESSEL, TYPE	COMPANY	LOCATION	FLAG	DATE	CITIZENSHIP	CAUSE/STATUS	SOURCE OF RECORD
Two Pohnpeian Crew	Crewman	LL	Unknown	East New Britain Province PNG	Taiwan	2010	Federated States of Micronesia	‘went missing’	SPC Fisheries Newsletter #133 Sept/Dec 2010
Unknown	Chief Engineer	K Camellia LL Limited, Fiji	Fiore Marine	Tuvalu	Fiji	14 Apr 2011	China	murder	High Court of Tuvalu (2012). Regina v Kamikamica [2012] TVHC 4; Criminal Case 03 of 2011 (21 January 2012). http://www.paclii.org/tv/cases/TVHC/2012/4.html
Unknown	Crewman	Unknown	Unknown	Unknown	Unknown	16 Nov 2012	China	murder/assault	www.fijivillage.com , 29 Nov 2012; The Fiji Times, 30 Nov, 2012
Lu Yong	Crewman	Unknown	Unknown	Palau Waters	Unknown	29 Mar 2012	China	accident	Urbina, Ian (2016). Palau vs. the Poachers. New York Times. https://www.nytimes.com/2016/02/21/magazine/palau-vs-the-poachers.html
Unknown	Crewman	Chokyu Maru, LL	Japan	Tahitian Waters		Aug 2013	Indonesia	sick?; went berserk	Koroi, Roland (2013). Police investigate death on foreign fishing vessel. Fijian Broadcasting Corporation. https://www.fbcnews.com.fj/news/police-investigate-death-on-foreign-fishing-vessel/ and www.fijivillage.com , 28 Aug 2013
Shuiyao Wang	Crewman	Two PS Vessels	Unknown	Marshall Islands	USA & Taiwan	2013	China?	helicopter crash into purse seiner	RNZ (2013). One dead from Western Pacific helicopter collision with purse seiner. Radio New Zealand, 7 March 2013. https://www.radionz.co.nz/international/pacific-news/210679/one-dead-from-western-pacific-helicopter-collision-with-purse-seiner
Mesake Kaisuva	Crewman	Unknown	Unknown	Fiji	Unknown	04 Feb 2013	Fiji	pneumonia?	pers. comm. Salote Kaisuva, Feb 2019

NAME	POSITION	VESSEL, TYPE	COMPANY	LOCATION	FLAG	DATE	CITIZENSHIP	CAUSE/STATUS	SOURCE OF RECORD
Wesley Talia	Observer	Unknown	Unknown	Off New Ireland PNG Waters	Unknown	2015	Papua New Guinea	Unknown	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse - the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wiki.tribune.com/zt/news/article/7995/
Larry Gavin	Observer	Unknown	Unknown	Unknown	Unknown	2016	Papua New Guinea	'lost at sea'	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse - the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wiki.tribune.com/zt/news/article/7995/
Usaia Masibalavu	Observer	Western Pacific	Western Pacific Fisheries Inc.	Unknown	USA	21 May 2016	Fiji	infection from injury	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse - the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wiki.tribune.com/zt/news/article/7995/
Unknown	Crewman	Feng Xiang 818	Ningbo Yongfa Ocean Fisheries CO.,LTD	Tahitian Waters	China	Jan 2016	Fiji	suicide	Fiji Sun (2016) Police: Fijian commits suicide fishing vessel. Fiji Sun. https://www.pressreader.com/fiji/fiji-sun/20160109/281573764684376
Unknown	Crewman	Tunago no. 61, LL	Tunago	High Seas	Vanuatu	2018	Indonesia	murder/ 'fell overboard'	Fiji Sun 6 June 2018
Three People Missing	Unknown	Unknown	Unknown	Fiji	Unknown	Jan-July 2018	Unknown	Unknown	Fiji Village, 13 Aug 2018; Fiji Sun, 14 Aug 2018
Amini	Crewman	Unknown	Unknown	Unknown	Unknown	Unknown	Fiji	Unknown	pers. comm Salote Kaisuva, 2019
Antin Tamwabeti	Observer					2019-2020 (exact date Unknown)	Unknown	suicide	Before his death, Tamwabeti received a death threat and was subject to intimidation on a voyage in early 2019, as reported by the IATTC. ¹ and Bubba Cook, WWF, email correspondence, 16, 24 Mar 2020; also Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. ²

Source: Pacific Dialogue Ltd, Fiji, May 2020. Updated HRAS 15 June 2020. Correct at the time of writing.

- https://iattc.org/Meetings/Meetings2019/IATTC-94/Docs/_English/CAF-07_ADDENDUM%201%20MRAG%20Americas%20Program%20to%20monitor%20transshipments%20at%20sea.pdf
- <https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation>

Note: The referenced cases do not include other unresolved or pending cases. Table 1 only highlights those cases with significant ‘unknowns’.

The above cases highlight outstanding ‘unknowns’, regarding the most basic facts, not to speak of all the other cases, where investigations remain ‘pending’ or no one seems to have been brought to justice, while some of the vessels implicated continue to fish within the region.²⁷²

Proposed Model: Strengths / Benefits

Serious crimes such as illegal fishing, drug trafficking, maritime piracy, human trafficking, people smuggling and firearms trafficking increasingly involve the use of vessels (naturally in the context of illegal fishing). In the aftermath of a crewman’s or Observer’s unlawful death questions arise – what they might have seen that others did not want them to witness. In order to substantiate or disarm such suspicions, digital forensics can be used as an investigative tool. Electronic equipment on vessels could provide police with relevant information on criminals and organised crime networks, trafficking routes and operations, according to Interpol.²⁷³ Regional guidelines and trainings could be developed in collaboration with Interpol, including training on digital forensics in maritime investigations. Current regional guidelines could be reviewed to advance past and potential future investigations, in order to protect, prevent and prosecute. Do current investigative best practices compare with international standards set by Interpol or similar organisations? Are they well enough prepared to counter the cross-jurisdictional and cross-boundary hurdles?

Harmonisation of investigative protocols, to overcome cross-jurisdictional and cross-boundary issues should be sought, starting with regional alignments of protocols, which could later be transferred to global level or other regions and RFMOs.

Dedicated security management, including incident management, trend analysis and rapid response should be enabled at regional level, such as the creation of a professional centralised investigations body, could help addressing root causes of maritime crimes and serve the protection of human rights at sea, while dispelling suspicions and rampant confused reporting based on fragmented evidence.

Analysis, Comment and Recommendations

Much public information is patchy and probably mostly based on circumstantial evidence. Best practices seem neither upheld by official bodies, nor by NGOs and media, leading to rumours and rampant incomplete reports about incidents. The conclusions drawn from reviewing the previous Priority Recommendation 9 are similar to the conclusions to be drawn for Recommendation 10. Best practices for investigations have to be implemented, barriers, such as cross-boundary restrictions to be overcome and information should be stored and managed in a regional centralised archive, managed by a dedicated intergovernmental and perhaps interagency body, or at least an intergovernmental body that is working with a participatory, transparent interagency approach. Dedicated regional security management, including incident monitoring and management will significantly increase the creditworthiness of efforts undertaken and provide for prediction, protection and rapid intervention.

²⁷² See also: HRAS, “REPORT: Fisheries Observer Deaths at Sea, Human Rights and the Role and Responsibilities of Fisheries Organisations – Human Rights at Sea.”

²⁷³ Interpol, “Using Digital Forensics to Investigate Maritime Crime,” Interpol, 2019, <https://www.interpol.int/en/News-and-Events/News/2019/Using-digital-forensics-to-investigate-maritime-crime>; Interpol, “INTERPOL Spotlights Role of Digital Forensics in Maritime Investigations,” Interpol, 2018, <https://www.interpol.int/en/News-and-Events/News/2018/INTERPOL-spotlights-role-of-digital-forensics-in-maritime-investigations>

Follow-On Recommendations

HRAS Recommends:

- 1** To develop and maintain a centralised archive (in the format of an open and accessible database) of cases of disappearance and murder, supporting professional incident management, trend analysis and rapid intervention;
- 2** To establish further facts with regards to past cases by collecting evidence currently remaining in different places and to provide a centralised archive with respective information collected;
- 3** The development of best management practices for investigations, supported by Interpol and relevant non-governmental organisations (inter-agency solution);
- 4** The harmonization of investigative protocols, to overcome cross-jurisdictional and cross-boundary issues, starting with regional alignments of protocols, which could later be transferred to a global level or other regions and RFMOs;
- 5** To enable cross-jurisdictional and cross-border sharing of information related to cases with the WCPFC taking the lead and maintaining a central archive;
- 6** The establishment of a dedicated intergovernmental and perhaps interagency body or at least an intergovernmental body, that is working with a participatory, transparent interagency approach, open to third-sector engagement (NGOs, SMEs and other stakeholders) with a mandate for maritime security management, incident management, trend analysis and rapid response (including response to Observers 'two-way communication devices, as mandated by the Agreed Minimum Standards and Guidelines of the Regional Observer Programme').²⁷⁴



Photo Credit: Shutterstock.com

²⁷⁴ WCPFC, "Agreed Minimum Standards and Guidelines of the Regional Observer Programme"; WCPFC, "WCPFC Regional Observer Programme Standards & ROP Guidelines Updated 2019 | WCPFC."



Photo Credits: Alex Hafford/Greenpeace

Report Conclusions

As anticipated, this review into the 1st July Report Ten Recommendations has raised further questions and prospective lines of enquiry. That said, analysis has been carried out and strides made in terms of advancing the objectives of this Report. Key stakeholders have been identified and pathways towards reform appear better defined. Some outstanding issues remain which are addressed by the follow-up recommendations to each of the prioritised Recommendations.

Outstanding Issues

In the WCPFC, issues surrounding the scope, geographical limits and disclosure of VMS regulations and data require greater clarity, while the issue over the question of mandatory usage of AIS on board vessels remains. Further questions as to what has become of the FFA tender, and to what extent Observers are issued durable marine safety equipment in the WCPFC region are outstanding.

In terms of insurance coverage for Fisheries Observers, it is not clear whether any of the RFMOs, RFBs, or national fisheries management organisations require vessels operating within their purview to hold adequate P&I insurance cover which expressly includes coverage of Fisheries Observers. There is also some uncertainty over the use of the term 'provider' in the context of insurance, and the responsibilities of parties to the insurance cover in relation to Fisheries Observers. For example, who or what is considered a 'provider' for the purposes of insurance and legal liability requires clarity.

Where matters of standards, accreditation and certification are concerned, the system in operation, although well established and generally practiced across different industries, is, in the context of fisheries, clearly in need of further review with respect to embedding human rights protections. Without external intervention, SSOs currently lie at the heart of this endeavour and hold the key to change. For example, the extent to which comprehensive and transparent vessel lists are maintained under certain fisheries certification programmes is a matter which was first raised in the 1 July Report. On closer scrutiny of such lists, the information maintained by some fisheries certification programmes are not as comprehensive as others. In particular, the dearth of information relating to vessels seems more prevalent in cases of certified fisheries in the WCP. Why is this?

The role of ABs in determining minimum requirements with respect to the application of human rights protections within standards, and the power or influence that they wield over conditions leading to suspension and/or withdrawal of certificates remains unclear and unregulated. Further development and engagement with such entities is required.

Two key questions remain unanswered. Who can report allegations of human rights abuses, and to which party in the fisheries certification programme can they rely on to handle this information in a responsible and lawful way? These questions are not unique to the fisheries certification programmes. Indeed, the same questions could be levelled at the RFMOs, RFBs and national fisheries organisations. Could this be a future RFMO mandated procedure and requirement upon members? Is this issue ripe for a new CMM text consideration?

As for public, private and charitable entities within the sector adopting practices commensurate with the UNGPs, outwardly this does not appear to be widely practised.²⁷⁵ Policy documentation relating to human rights protections, transparency in the supply chain and modern slavery are absent from the public-facing websites of many of the key stakeholders. This does not mean to say that such policy documentation does not exist. However, if it does exist, why is it not made public? Further, many of these entities are bound by certain legislative requirements such as the MSA 2015, but seemingly interpret their obligations in respect of such legislation in narrow terms. This is neither in keeping with the spirit of such legislation nor voluntary human rights norms such as the UNGPs.

²⁷⁵ This is not an isolated observation, other entities such as the Business and Human Rights Resource Centre (BHRRC) have found this to be the case: <https://www.business-humanrights.org/en/from-us/briefings/out-of-sight-modern-slavery-in-pacific-supply-chains-of-canned-tuna/>



Photo Credits: Human Rights at Sea

Further, with the possible introduction of mHRDD applicable to companies, measures which would compel companies to identify the potential for abuses against stakeholders, such as fisheries observers, on the horizon, now is the time for such entities to act and avoid the onerous reverse engineering actions so many have fallen foul to in the past. Indeed, emerging calls for a Business and Human Rights Treaty (BHR) are gathering pace with the latest Second Revised Draft published in August 2020.²⁷⁶

Finally, where fisheries management organisations' internal collation and reporting mechanisms for incidents of human rights abuse are concerned, direct engagement with such entities is advocated. Public disclosure of such available information is seemingly not common practice, and understanding the processes involved in accessing such information remains high on the agenda.



Photo Credits: Mark Smith/Greenpeace

²⁷⁶ https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf; see also <http://opiniojuris.org/2020/09/08/bhr-symposium-the-business-and-human-rights-treaty-in-2020-the-draft-is-negotiation-ready-but-are-states-ready/>

Follow-On Recommendations – Summary

The following is a consolidated version of the follow-on HRAS Recommendations arising out of the present review of the 1 July Report. They are listed in their Priority Recommendations (PR) order.

PR1: HRAS Recommends:

- 1 Region-wide analysis of barriers to change with respect to current rules surrounding public disclosure of VMS;
- 2 Pending evaluation, a commitment to publicizing VMS data by WCPFC member States, followed by necessary regulatory and legislative changes, amending WCPFC CMM 2014-02;
- 3 Participatory approaches to policy development, monitoring and implementation;
- 4 Amending WCPFC CMM 2017-03 §3. c. and g. and for example, stipulating that the fishing vessel (§3.c.) “*immediately notifies the flag CCM and the respective Observers’ provider and the nearest Coastal state*” and (§3.g.) “*provides the report to the Observer provider, the flag CCM and appropriate authorities, including the nearest Coastal state, on the incident*”.

PR2: HRAS Recommends:

- 1 Input to the WCPFC’s 17th regular session of the Commission highlighting EM as a means to achieve 100% observer coverage (where it is yet to be achieved) and increased protection for observers, resulting in a position statement and/or policy and a renewed commitment to the implementation of ER/EM technologies in the region;
- 2 Commitment of relevant parties to the WCPFC’s 17th regular session of the commission to 100% coverage on long line fisheries, through complementary onboard Observers and EM programmes;
- 3 Commitment by international fisheries certification programmes and RFMO’s to implement mandatory permanent AIS switched on status, as part of their underlying standards;
- 4 Enhanced usage of AIS data for MCS purposes complementary to publicised VMS data by CCMs to the WCPFC;
- 5 Mandatory AIS (carried, operational, and switched on at all times) on all fishing vessels subject to sanction if the AIS unit or signal is tampered with throughout the WCPFC;
- 6 Mandatory AIS (carried, operational, and switched on at all times) on any fishing vessel operating under a sustainability certification subject to revocation if the unit or signal is tampered with throughout the WCPFC (pending clarification of the current status, policy amendments could be made to relevant CMMs);
- 7 In the first instance, an update/legal assessment/amendment/clarification of SOLAS Chapter V, or in the alternative, that flag State responsibilities with respect to AIS must be the priority, with transparent accountability to the international community through public disclosure;
- 8 Participatory, inclusive approaches benefitting all stakeholders and enhancing human rights at sea through the deterrent effect of greater transparency resulting in increased safety, security and sustainability in fisheries.

PR3: HRAS Recommends:

- 1 Through the medium of revisions to Observer-related CMMs and as a condition of an operator's license, implementation of measures to prevent Fisheries Observers from being allowed to be on board vessels that do not have appropriate P&I cover in place. Such records should be maintained by the respective RFMO as part of the Record of Fishing Vessels.
- 2 Employers must clearly and expressly demonstrate the lengths to which they have gone to ensure adequate insurance for Observers and their dependents prior to each and every trip informing them through written evidence. Furthermore, this information should be lodged with the relevant Observer programme and RFMO as a matter of policy and procedure prior to each trip.

PR4: HRAS Recommends:

- 1 Review of the outcomes of the HRAS - Nottingham Rights Lab data set survey results, based on direct inputs from Fisheries Observers;
- 2 A comprehensive study or survey of a bigger geographical scope, assessing the provision of durable marine safety equipment to Observer programmes internationally, that have already mandated the provision of such equipment, a 'reality check', assessing status and barriers;
- 3 Addressing of barriers such as funding in relevant forums and meetings, trying to answer where additional funding could come from. A sustainable solution should be worked out between all stakeholders;
- 4 That Fisheries Observers must always deploy on missions with necessary and mandated durable safety equipment including two-way communication devices.
- 5 Annual, independent, publicly-disclosed reviews of each Regional Observer Programme.

PR5: HRAS Recommends:

- 1 SSOs write a statement publicly committing to implementation of such reforms to current practice outlining the exact terms of their commitment, its scope and the information they intend to maintain, disclose and on what basis. These reforms should form part of the standard and bind all parties within the certification programme, i.e. SSOs, CBs, CHs and any party within the Chain of Custody (CoC). Further, SSOs should set a clear time frame for implementation of such reforms.
- 2 Where agreement and action among fisheries-related SSOs can be reached, a combined and centrally maintained and managed database of all vessels certified to operate under respective fisheries certification programmes throughout the world should be kept.
- 3 Integration with RFMO and RFB Records of Fishing Vessel for greater transparency and management capacity should be explored.

PR6: HRAS Recommends:

- 1 SSOs commit to amend their respective standards to include express compliance requirements with respect to human rights and the abuses thereof on board certified vessels. CBs should be informed of this impending amendment and should plan accordingly with respect to their responsibilities relating to suspension and withdrawal decisions in accordance with the new criteria.
- 2 The FAO Ecolabelling Guidelines should be updated to include express reference to the requirement for human rights provisions and the provisions relating to health, safety and labour laws in fishing, as advanced by the IMO, ILO and FAO in their recent joint publication,²⁷⁷ to be incorporated into all private voluntary standards, both present and future.

PR7: HRAS Recommends:

- 1 Private and charitable entities within the fisheries sector make an express public commitment to draft policies outlining their business strategies in relation to human rights and established IMO, ILO and FAO fisheries-related health, safety and labour norms and laws. These policies are published in accordance with transparent voluntary business and human rights norms underlined by national and/or regional level guidance, i.e. RFMO CMM specifying the obligations of stakeholders in relation to transparent business and human rights practices.

PR8: HRAS Recommends:

- 1 Direct engagement with various fisheries management organisations at the regional, sub-regional and national levels, in particular WCPFC and FFA, to ascertain the current strategy and the extent to which internal collation and reporting mechanisms in respect of incidents of human rights abuses exist, what information is held and what information is published and by what means.

PR9: HRAS Recommends:

- 1 An engagement with Interpol as to where the present Recommendation fits with respect to Interpol's mandate and operational areas;
- 2 To ascertain how Interpol gets involved (procedural), including who pays for an Interpol mission;
To extend Interpol's mandate for maritime security to include the protection of individual fundamental human rights;
- 3 The development of best practices and investigative protocols in cooperation with Interpol to be implemented at regional level;
- 4 To improve security management and investigations capacities by establishing a regional intergovernmental and interagency body responsible for investigations, incident management (trend analysis, prediction, prevention and rapid interventions), in cooperation with Interpol.

²⁷⁷ FAO (2020) Joining forces to shape the fishery sector of tomorrow: Promoting safety and decent work in fisheries through the application of international standards, Rome, <http://www.fao.org/3/cb0627en/CB0627EN.pdf>

PRIO: HRAS Recommends:

- 1** To develop and maintain a centralised archive (in the format of an open and accessible database) of cases of disappearance and murder, supporting professional incident management, trend analysis and rapid intervention;
- 2** To establish further facts with regards to past cases by collecting evidence currently remaining in different places and to provide a centralised archive with respective information collected;
- 3** The development of best management practices for investigations, supported by Interpol and relevant non-governmental organisations (inter-agency solution);
- 4** The harmonization of investigative protocols, to overcome cross-jurisdictional and cross-boundary issues, starting with regional alignments of protocols, which could later be transferred to a global level or other regions and RFMOs;
- 5** To enable cross-jurisdictional and cross-border sharing of information related to cases with the WCPFC taking the lead and maintaining a central archive;
- 6** The establishment of a dedicated intergovernmental and perhaps interagency body or at least an intergovernmental body, that is working with a participatory, transparent interagency approach, open to third-sector engagement (NGOs, SMEs and other stakeholders) with a mandate for maritime security management, incident management, trend analysis and rapid response (including response to Observers' two-way communication devices, as mandated by the Agreed Minimum Standards and Guidelines of the Regional Observer Programme).²⁷⁸



278 WCPFC, "Agreed Minimum Standards and Guidelines of the Regional Observer Programme"; WCPFC, "WCPFC Regional Observer Programme Standards & ROP Guidelines Updated 2019 | WCPFC."

Appendices

Appendix 1: Ten Recommendations SWOT Analysis

NB: The SWOT analysis refers to the original order of the 1st July Report's Ten Recommendations and has been disclosed to enhance public understanding of the process comprising the background review by HRAS.

1. **“Recommends transparent and unimpeded investigations into all cases of human rights violations against Fisheries Observers and crew, including the full and unredacted public disclosure of the facts, findings and outcome by the state authorities involved, for public scrutiny by those related international fisheries certification organisations, Observer associations and civil-society entities with a vested interest.”**

Strengths

- We can support our argument by collecting further information on past cases and by pointing out gaps, suspicious omissions, in-action and poor evidence collection examples regarding those cases.
- Contact of relevant stakeholders and actors such as Interpol has already been established by HRAS.

Weaknesses

- Information on past cases not available in centralised form.
- No centralised database for Observers, no single body representing all regions, no welfare mechanism and no complaints referral mechanism.
- Some cases have happened a long time ago, witnesses, crew and family might not be available any longer.
- No in-country missions by us possible, due to Covid-19 restrictions, only secondary information likely available at this stage.
- Spread over a wide region, it might be unclear who the relevant authorities are to disclose information, it might be a timely effort to find out.

Opportunities

- There is more to learn from each of the cases, as publicly available court proceedings indicate, for example:
- WIN FAR 636/Eritara Aati: <http://www.paclii.org/cgi-bin/sinodisp/ki/cases/KIHC/2020/15.html?stem=&synonyms=&query=Win%20Far>
- Lasisi: <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGDC/2010/65.html>
- For all known cases, or those mentioned by HRAS Report, we could collect as much information as possible by combing through public records, updates on the investigations and by accessing sources, such as the APO, Pacific Dialogue, Bubba Cook and the families to which we have an established contact already. APO and the Pacific Islands Legal Information Institute (<http://www.paclii.org/>) can be a starting point.
- A certain readiness of key stakeholders for improving best practices for investigation:
- MSC recently announced to be investing in Observer's safety research.
- Best practices were allegedly not applied in the past cases, this could be highlighted by our Report, while pointing to best practices that should be applied (see transcript of interview with Lasisi's family for a bad example: https://eee0b4ee-ed80-4c1c-a622-965eeb7c6b45.filesusr.com/ugd/a5edc2_51cdcac7b4384e3ca4e77b3995d29a8c.pdf)
- Similar interviews could be used for storytelling.
- An update on the investigations for Eritara Aati's case could be used as a showcase (likely for how not to do it).
- Developing 'Investigation Best practices' could be hooked to the IOBR and existing CMM 2017-031.

Threats

- Authorities and international fisheries certification organisations might not be too supportive of in-depth investigations or higher standards, since it might impact their fisheries reputation and shed a light on corruption and/or incompetence.
- Multi jurisdiction could impede further progress.
- NGO competition to address the issue as opposed to collective engagement.

2. “Recommends regular engagement of Interpol, alongside flag, port and coastal state authorities, for all violations of individual fundamental human rights of Fisheries Observers and crew, including, but not limited to, murder (homicide), violence towards the person resulting in bodily harm, sexual assaults, slavery, trafficking and deaths at sea.”

Strengths

- HRAS has access to Interpol at their request.
- Interpol could be considered to be acknowledged throughout the region as a respectable, independent and unbiased actor.
- Interpol has the ability to work inter-governmentally, across borders, thus will be able to pursue investigations, even after suspects have left the country where they were initially charged (should new evidence emerge, for example)
- All Pacific nations are members of Interpol. (<https://www.interpol.int/en/Who-we-are/Member-countries#:~:text=INTERPOL%20has%20194%20member%20countries,police%20with%20our%20global%20network>)

Weaknesses

- Interpol needs a state to require support in transnational investigations in the absence of a bilateral/regional agreement.
- Its priority areas do not always reflect our targeted crimes (“six priority crime areas: drugs and organized crime, financial and high-tech crime, fugitives, public safety and terrorism, trafficking in human beings (including crimes against children), and corruption”. https://www.un.org/sc/ctc/wp-content/uploads/2017/02/icpo_background-Information.pdf)

Opportunities

- Building on the observations for Recommendation 1 we can argue that the independence of investigations is crucial to essentially improve Observers’ safety, pointing out that investigations should not be impeded by national, regional or commercial interests and that Interpol’s investigations serve a higher good.
- An update on the investigations for Eritara Aati’s case could be used as a showcase for how Interpol’s involvement could strengthen investigations (need to check on the status first).
- Interpol’s mandate and core functions could be described as an opportunity to its member states: an opportunity to conduct and receive accredited investigations, to close off cases (which is currently not the case for Observers or crew) instead of being perceived to be negligent or dragging cases on, to be perceived to be operating with best practices and to actually create a sustained impact in regards to improving Observers’ and crew safety, such as impeding international crime.
- Interpol’s mandate for maritime security could be extended to include the protection of individual fundamental human rights or at least an assessment is necessary (on our part) as to where our Recommendation fits with Interpol’s mandate and operational areas (<https://www.interpol.int/en/Crimes/Maritime-crime>)
- We need to further establish (could be part of the Report) as to how Interpol gets involved (procedural), including who pays for an Interpol mission.

Threats

- Opponents could argue Interpol’s mandate does not cover all violations of individual fundamental human rights of Fisheries Observers and crew and that a change in the mandate would not be feasible.
- Lack of funding/who pays for an Interpol mission (clarification needed) declared as an argument against involving Interpol?
- Reliant on third-party support.
- Reliant on third-party initiative.

3. “Recommends that any Observer death, disappearance, illness or injury must be immediately reported to the Observer programmes, and subsequently there should be forfeiture of confidentiality with full disclosure of any VMS data associated with any voyage where an Observer disappears or dies at sea.”

Strengths

- Precedents have already been made, with Indonesia being the first country to share its VMS data publicly (2017) to prevent IUU (<http://www.iuuwatch.eu/2017/06/indonesia-steps-forward-first-nation-world-publicly-share-vessel-monitoring-system-data/> AND <https://globalfishingwatch.org/programs/indonesia-vms/indonesia-vms-joint-statement/>), followed by Peru, October 2018, Panama, October 2019, Chile, March 2020 (see: <https://globalfishingwatch.org/programs/indonesia-vms/>)

Weaknesses

- VMS cross-jurisdictional Issues including lack of bilateral and multilateral agreements.
- Technical issues (see: <http://www.fao.org/3/y3274e/y3274e0g.htm>, source a bit old, but some issues might still apply).
- The reporting party might be biased, if it is not the Observer him/herself reporting.
- The VMS system is in itself not very transparent, need to get a better understanding through SMEs.

Opportunities

- Identify (further) cases where VMS data has been disclosed to the public and argue with them in favour of Recommendation 3.
- Review of how VMS is currently installed and operated (regionally).
- The obligation to immediately report incidents could be used to support the need for electronic monitoring and independent means of communication accessible to the Observers.
- Engagement with other AI projects/programmes such as Global Fishing Watch.

Threats

- Remote operations of DWF might be used to call such reporting technically unfeasible.
- It might be said that reporting is already carried out in the best possible ways, with no need for improvements.
- It could be argued, that NGOs or other ‘third parties’ should not get involved in criminal investigations, since they haven’t the experience nor mandate or might hamper results.
- It could be argued that VMS data open to the public might open the door to speculation or impede a vessel’s security.
- Corruption might negatively reflect on the interest in transparency.

4. “Recommends that there must be a mandated provision of personal communication devices independent of any vessel communications electronic systems for all Observers working at sea, globally.”

Strengths

- The position is strongly supported by APO.
- It is a recommendation that would hardly be disputed by anyone.
- WCPFC and FFA have already been active on such equipment (see below) and supposedly “Since the beginning of 2017, observers are all meant to be equipped with an emergency beacon and two-way communication device in order to stay in touch with their agency.” (<https://pacificdata.org/story/observer-safety-and-new-technologies-discussed-18th-regional-observer-coordinators-workshop>).
- We received a statement by a family member, that Eritara Aati did not receive his two-way communication device before his last mission.

Weaknesses

- Hard to assess, where and to what extent these devices are currently deployed. Without access to the Observers themselves, we would currently have to rely on secondary, probably biased sources, such as the FFA or the PNA.
- Need access and approach to the devices makers to see if they can release data about sales and locations.
- Reliable information could come in the form of responses to respective questions as part of the envisioned survey, but we would have to wait for the survey to be finished.
- It is already mandated by the WCPFC and the FFA that Observers are provided with personal communication devices, failing implementation might be (arguably) due to a lack of resources or the implementation phase not completed (tbc).

Opportunities

- Garmin inReach devices are advocated for APO. (<https://www.garmin.com/en-US/inreach/personal/>)
- According to family member, such a communication device was supposed to be handed over to Eritara Kaierua as part of an effort to equip all (PNA/FFA? tbc) Observers with durable marine safety equipment.
- The WCPFC published an assessment of “COSTS AND BENEFITS OF ELECTRONIC FISHERIES INFORMATION SYSTEMS APPLIED IN FFA COUNTRIES AND IDENTIFICATION OF THE LEGISLATIVE, REGULATORY AND POLICY SUPPORTING REQUIREMENTS” in 2016 (https://www.wcpfc.int/file/90002/download?token=kVQ_UQRG), the FFA followed with a public tender to interested parties for “Supplying of Durable Marine Safety Equipment” (<https://www.ffa.int/node/2079>). On the 18th Regional Observer Coordinators Workshop (ROCW18 held by the FFA, WCPFC and SPC, <https://www.pirfo.org/index.php/component/content/article/96-rocw/152-18th-regional-observer-coordinators-workshop?Itemid=437>) in 2018 the issue was on the top of the agenda. “The ROCW18 theme was Observer Programme best practices with enhancement of observer safety and electronic monitoring and reporting.” We could do a reality check and use it as part of our advocacy/argumentation.
- Questions as to the current extent of supply of marine safety equipment to Observers could be asked as part of the survey.
- Review the IOBR and its relevance for the Recommendation(s), has it been implemented, did the WCPFC sign up for it? Or did individual states commit to it?
- Review the Annexes to the IOBR: CCROP-HS and CCROP-SR for relevance to our work.

Threats

- Lack of reliable information as to the status of the provision of such equipment currently.
- Argument might not be as strong on the backdrop of FFA and WCPFC already committed to the cause (could also serve as a strength).

5. “Recommends that international fisheries certification organisations should mandate all registered vessels, as part of the contractual terms and conditions for use of their schemes, to promote, and where able, to assure continuous operation of AIS on all certified vessels to allow public cross-referencing with VMS data at all times; independent access, review and monitoring of vessel and fleet VMS data; two Observers per vessel, or one Observer plus on-board tamper-proof equipment supporting electronic monitoring.”

Strengths

- Remote monitoring is supported by FFA as a crucial means to obstruct IUU at this very moment, the AIS argument could be strengthened in that context (“FFA Director General Dr Manu Tupou-Roosen said: ‘Stopping the use of observers on board fishing vessels during the coronavirus crisis does not mean that illegal fishing will go unchecked. Right now, FFA continues supporting Pacific countries with other tools such as the Vessel Monitoring System, surveillance operations and data analysis.’” <https://www.tunapacific.org/tag/observers/>)
- As per relevant SOLAS stipulation “AIS to be fitted aboard all ships of 300 Gross Tonnage (GT) and upwards engaged on international voyages [...] regardless of where they operate”, most fishing vessels will likely fall under this category.
- International fisheries certification organisations can hardly say no to this argument, since AIS is already fitted aboard and there aren’t any arguments, at least not in the Pacific, for not keeping it switched on (exemptions could be declared, such as a risk for piracy or robbery).

Weaknesses

- Public cross-referencing might not be of interest to governmental stakeholders.
- VMS data is not available publicly, so cross-referencing requires public availability of VMS too.

Opportunities

- The above mentioned SOLAS regulation.
- No known security risks in the Pacific region that could allow switching off AIS (noting AIS is also used for issues with UN sanctions)
- Discrepancies observed in Eritara’s case and other AIS-related cases (see internal Oceanmind report) could favour the argument.
- Certification organisations could be approached to ask for their take on the Recommendation.

Threats

- Even if made mandatory, vessels could always claim bad weather or reception issues.
- AIS can be tampered with while at sea.

6. “Recommends that international fisheries certification organisations should maintain centralised, consistent, up-to-date, and publicly available lists of all certified vessels, and where applicable include available registration details, as well as those suspended and/or excluded, with regular proactive public disclosure of the reasoning for suspension and/or exclusion”.

STRENGTHS

- Transparent.
- Structured.
- Easily organised and managed.
- Information should already exist.
- Supply chain assurance.

WEAKNESSES

- Reliant on organisations’ mandates, internal policies and agreements by boards to undertake such a workstream.
- Reliant on organisations’ support.
- Reliant on organisations’ initiative.
- Reliant on organisation’s funding.
- Would potentially impede business IP and breach engagement contracts with fisheries and owners.
- Fisheries and owners may not wish to engage and share data.

OPPORTUNITIES

- Open collaboration between organisations.
- Image re-branding.

THREATS

- Commercial confidentiality.
- Data protection.
- Resistance from third parties.

7. “Recommends that international fisheries certification organisations should immediately freeze the certificates of all vessels involved in allegations of human rights abuse until investigations are concluded. This would allow buyers to avoid problematic vessels, protect the remainder of the supply chain and provide reassurance that due process is being carried out by competent authorities.”

STRENGTHS

- Transparent.
- Proactive.
- Encourages greater due diligence.
- Encourages BMP.
- Supply chain assurance.
- Supports investigation.

WEAKNESSES

- Reliant on organisations’ support.
- Reliant on organisations’ initiative.
- Reliant on organisations’ funding.

OPPORTUNITIES

- Evidences collaboration with authorities and other entities.
- Improves image.
- Improves transparency.

THREATS

- What evidence is there that this is not already practised?
- Resistance from organisations and all within the supply chain who do not wish to reflect good practice such as the 2011 UNGPs ‘Know and Show’ principle, or simply do not wish to engage as there is no legislative requirement to in the likes of ILO188.
- Commercial confidentiality.
- Data protection.

8. “Recommends that all fisheries management organisations, fisheries certification organisations and bodies, and fisheries management platforms should have, as a bare minimum, public-facing policies that reflect published business strategies to include fundamental human rights protections and necessary safeguards for all workers in their area of influence, reflecting international legislative and voluntary human rights and labour rights norms.”

STRENGTHS

- Simple to implement.
- Model policies already exist.
- Not time-consuming.
- Not onerous on organisations.

WEAKNESSES

- Policy words must reflect in actual change.
- Policies can be used as a veil to bad practice.

OPPORTUNITIES

- Transparent.
- Evidence of cultural change.

THREATS

- Resistance from organisations.
- Policies in word only.

9. “Recommends that all fisheries management organisations should introduce internal collation and reporting mechanisms for the recording of incidents of human rights and labour rights abuses, for subsequent investigation by the competent authorities. This should include published pathways for internal reporting, investigation, external independent review, and routes to remediation and effective remedy.”

STRENGTHS

- Comprehensive grievance record-keeping mechanism.
- In keeping with 2011 UNGPs.
- Transparent.
- Business enabler.

WEAKNESSES

- If such incidences are worthy of investigation by the competent authorities, then why would they not be raised at first instance?
- Could encourage such organisations to ‘sit’ on information
- Could slow down remedial action and prejudice the very people such an initiative is designed to support?
- Reliant on organisations’ uptake.
- Reliant on organisations’ initiative.
- Reliant on organisations’ management.
- Reliant on organisations’ funding.
- Potentially onerous undertaking.
- Largely contingent upon whistle-blowers.
- Potentially slow process.

OPPORTUNITIES

- Creates trust.
- Collaborative approach.
- Reflects UNGP intent.

THREATS

- Non-disclosure as a matter of written/unwritten policy.
- Erroneous recording.

10. “Recommends that in the circumstances of a death at sea, employers must act expeditiously to compensate families for their loss, while ensuring that, at all times, effective insurance policies are in place.”

STRENGTHS

- Simple to implement.
- Supports families.
- Evidence of a basic form of welfare system in operation (albeit a single payment and often no follow-up).
- Insurers will want their reputations upheld.
- Standard model compensation packages can be transparent.
- Payable regardless of the circumstances such as protection and indemnity (P&I) insurance.

WEAKNESSES

- Will require regional fisheries management oversight/drive
- Reliant on employers’ buy-in.
- Although simple to implement it is not necessarily simple to access or receive compensation in the event of a claim.

OPPORTUNITIES

- Collaboration with insurers.
- Simple and effective show of commitment.
- Reputational reward.
- Assurance for Fisheries Observers and their dependants.
- Assurance for supply-chain customers.

THREATS

- Unscrupulous owners and unscrupulous insurers could corrupt the system.
- Delayed payment or non-payment due to lack of effective investigations, and judicial rulings that are delayed due to lack of evidence, obstruction or failure of dependants to be able to access/afford access to legal support.

Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.


The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

OUR MISSION


To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.




STAY IN CONTACT

 We welcome any questions, comments or suggestions. Please send your feedback to:
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Human Rights at Sea

INDEPENDENT REPORT

DEVELOPING RECOMMENDATIONS & POLICY IN SUPPORT OF FISHERIES OBSERVERS' SAFETY, SECURITY & WELL-BEING



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HUMAN RIGHTS AT SEA

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment.

Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

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