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Development of a SIOFA Observer code of conduct, including requirements for independence, managing conflicts of interest, and health and safety considerations for Scientific Observers

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SIOFA Scientific Committee Chair and Vice Chair

# **Development of a SIOFA Observer code of conduct, including requirements for independence, managing conflicts of interest, and health and safety considerations for Scientific Observers**

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## **Abstract**

The SIOFA Workshop on Harmonisation of Scientific Observers' Programmes (WHSOP, 2021 Annex D, para. 6) requested that the SC Chair and SC Vice Chair provide a draft proposal to SC7 for a SIOFA code of conduct, including requirements for independence, managing conflicts of interest, and health and safety considerations for Scientific Observers.

This paper summarises the key principles for a SIOFA Code of Conduct and suggested that the Scientific Committee and MoP work together to develop a draft SIOFA Code of Conduct for consideration at Scientific Committee and MoP meetings in 2023.

## **Recommendations**

The Scientific Committee request that the MoP task the Scientific Committee Chair and the Secretariat to:

1. Undertake intersessional discussions with CCPs on Scientific Committee and MoP on a potential code of conduct that specifies Scientific Observer, CCPs, and vessel responsibilities under a SIOFA Code of Conduct, including requirements for independence, managing conflicts of interest, and health and safety considerations for Scientific Observers.
2. Based on the intersessional discussions, the Scientific Committee Chair prepare a draft paper with options for a SIOFA Scientific Observer Code of Conduct to be considered by Scientific Committee and MoP in 2023.

## **1. Introduction**

The SIOFA Workshop on Harmonisation of Scientific Observers' Programmes (WHSOP, 2021 Annex D, para. 6) requested that the Scientific Committee Chair and Vice Chair provide a draft proposal to SC7 for a SIOFA code of conduct, including requirements for independence, managing conflicts of interest, and health and safety considerations for Scientific Observers.

Scientific observers collect essential scientific information on catch and bycatch data from CCP vessels in SIOFA fisheries. They monitor and collect data on where a vessel is fishing, the type of gear used, biological characteristics of the catch and bycatch, and interactions with marine mammals, sea turtles, seabirds, and other species of concern. Observers are the only independent data collection source for many of SIOFA's fisheries, and high-quality data from experienced and trained observers is essential for the scientific activities of the Scientific Committee.

The MoP relies heavily on the data collected by Observers in order to meet its objectives, and the reliability of these data depends on observers doing their jobs unimpeded and in a safe working environment, free from interference, harassment, intimidation, and assault.

Most RFMOs have implemented regulations for at-sea Observers, specifically health and safety and requirements for nations for the management and treatment of Observers. At the SIOFA Workshop on Harmonisation of Scientific Observers' Programmes, it was agreed that a SIOFA Code of Conduct to ensure an unimpeded and safe working environment, free from interference, harassment, intimidation, and assault would help ensure high-quality scientific data collection by Observers.

## **2. Key principles**

Requirements for a SIOFA Observer Code of Conduct should cover the responsibilities of CCPs and of Observers to ensure that human life is protected, duties can be carried out free of impediment, and high-quality scientific data can be collected by the Observers.

While each of the RFMOs with Observer Code of Conducts have specific requirements, in general these cover the following key principles:

1. Observer duties and the requirements for an Observer
2. Responsibilities of Observers in carrying out their duties, including objectivity and integrity
3. Responsibilities of Observers in maintaining confidentiality and data security
4. Restrictions on the role of Observers involvement in participating in or directing vessel operations
5. Responsibilities of CCPs to ensure safe working conditions, protection, security, and welfare of Observers including emergency action plans
6. Rights of Observers

## **3. Development of a draft SIOFA Observer Code of Conduct**

A potential draft of a SIOFA Code of Conduct is included below as Annex A. Depending on discussions at SC and MoP, this may be used as a starting point for intersessional discussions to develop a SIOFA Observer Code of Conduct.

As another example, the IOTC Observer code of conduct is attached as Annex B. The CCAMLR Scheme of International Scientific Observation also details the requirements for CCAMLR Members who supply and who carry Scientific Observers, and is available at:

<https://www.ccamlr.org/en/document/publications/text-ccamlr-scheme-international-scientific-observation>.

A list of relevant paragraphs in the SIOFA CMMS regarding Observers is given as Annex C.

## **4. Recommendations**

In order to progress a SIOFA Code of Conduct, the Scientific Committee could request that the MoP task the Scientific Committee Chair and the Secretariat to:

1. Undertake intersessional discussions with CCPs on Scientific Committee and MoP on a potential code of conduct that specifies Scientific Observer, CCP, and vessel responsibilities under a SIOFA Code of Conduct, including requirements for independence, managing conflicts of interest, and health and safety considerations for Scientific Observers.
2. Based on the intersessional discussions, the Scientific Committee Chair propose a draft paper with options for a SIOFA Scientific Observer Code of Conduct to be considered by Scientific Committee and MoP in 2023.

## **5. References**

Workshop on Harmonisation of Scientific Observers' Programmes (2021). Report of the Workshop on Harmonisation of Scientific Observers' Programmes of the Southern Indian Ocean Fisheries Agreement (SIOFA). SC7. Southern Indian Ocean Fisheries Agreement (SIOFA).

## **ANNEX A: Draft SIOFA Observer Code of Conduct**

### **A.1 Draft text of the draft SIOFA Scientific Observer Scheme**

These Guiding Principles relating to standards of conduct aim to promote responsible practices to ensure a high standard of professionalism with a view toward minimising the health and safety risks to scientific observers during their employment. This document does not intend to supersede any relevant laws which may be more extensive or restrictive.

#### **Designation of SIOFA Scientific Observers<sup>1</sup>**

1. Each CCP of SIOFA may designate observers referred to in Article 6 of the South Indian Ocean Fisheries Agreement (SIOFA).
  - a. The Meeting of Parties (MoP) will specify activities of scientific observers on board vessels. Additional scientific activities may be tasked by CCPs provided these do not conflict with, or detract from, the activities specified by the MoP.
  - b. CCPs shall designate adequately qualified scientific observers who shall be familiar with the harvesting and scientific research activities to be observed, the provisions of SIOFA and the Conservation Management Measures adopted under it, and who are adequately educated, trained and capable of carrying out competently the duties of scientific observers as required by the MoP.
  - c. CCPs shall ensure that scientific observers possess a valid medical certificate issued by a qualified medical examiner stating the scientific observer is physically and mentally fit for duty;
  - d. Prior to deployment, scientific observers may conduct a safety inspection and a familiarisation tour of the fishing vessel.
  - e. CCPs shall ensure that vessel masters, operators, or owners cannot refuse to accept a scientific observer deployment.
  - f. Scientific observers shall be able to communicate in the language of the Flag State of the vessels on which they carry out their activities unless another language is agreed upon by the CCP for that vessel.
  - g. The scientific observers shall be given the status of ship's officers. Accommodation and meals for scientific observers on board shall be of a standard commensurate with this status.
  - h. The scientific observer will maintain high standards of professionalism; attempt at all times to have a professional and courteous relationship with the fishing vessel master, crew and wider industry.
  - i. CCPs shall ensure that their vessel operators cooperate fully with the scientific observers to enable them to carry out the tasks assigned to them by the MoP. This will include allowing scientific observers access to data, equipment and those operations of the vessel necessary to fulfil their duties as required by the MoP.
  - j. CCPs shall ensure that their vessel operators cooperate fully with scientific observers to enable the observers to carry out their data collection duties as specified by the MoP without

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<sup>1</sup> "Scientific Observer" means a person who is authorized and certified by a CCP to observe, monitor, and collect scientific information aboard fishing vessels.

impediment or influence. Arrangements shall be made for messages to be sent and received on behalf of scientific observers using the vessel's communication equipment and operator. After notifying the Master, scientific observers shall be allowed such access as is necessary to undertake observation duties, including the vessel's navigation equipment and personnel to determine the vessel's position, course and speed.

- k. CCPs shall take appropriate action with respect to their vessels to ensure safe working conditions, the protection, security and welfare of scientific observers in the performance of their duties, and to provide them with medical care and safeguard their freedom and dignity in adherence to all pertinent international maritime regulations.
- l. For transfers at sea, CCPs shall:
  - i. ensure that their vessel operators conduct transfers of observers under safe conditions and with the agreement of the observers
  - ii. conduct the transfer in a manner which maximises the safety of observers and crew during the procedure, and
  - iii. provide experienced crew members to assist observers during any transfer which is made.
- m. Arrangements involving the transportation and boarding of scientific observers shall be organised so as to minimise interference with harvesting and research operations.
- n. Scientific observers shall provide to the relevant fishing Masters copies of such records, prepared by the scientific observers, as the Masters may wish to retain.
- o. CCPs shall ensure that their scientific observers carry insurance satisfactory to the Parties concerned.
- p. Unless otherwise agreed, the equipment, clothing and salary, any related allowances, cost of on-board accommodation and meals of the scientific observer shall be borne by the CCP.
- q. CCPs are responsible for providing scientific observers, before any boarding for a trip, with an independent two-way communication satellite device and a waterproof personal lifesaving beacon, noting that this may consist of a single device such as 'Satellite Emergency Notification Device' or it may be a combination of an independent satellite-based system, such as a satellite phone plus a portable lifesaving beacon.
- r. CCPs shall assign and supply scientific observers and fishing Masters with the contact details of a designated contact point to use in cases of emergency;
- s. CCPs shall provide for regularly scheduled contact with scientific observers to confirm their health, safety, and welfare status.

### **Objectivity and integrity**

- 2. In order to maintain the objectivity and scientific integrity of the data, CCPs and the vessels on which scientific observers are deployed and the scientific observers themselves, shall uphold and promote the following provisions:
  - a. A scientific observer appointed in accordance with SIOFA shall not:
    - i. contravene the requirements established in the laws and regulations of the CCP or violate general rules of behaviour and safety that apply to all vessel personnel, provided such rules do not interfere with the duties of the observer;
    - ii. inhibit the proper functioning and fishing activities of the vessel;

- iii. solicit or accept, directly or indirectly, any gratuity, gift, favour, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by SIOFA, or who has interests that may be substantially affected by the performance or non-performance of the official duties of scientific observers, with the exception of meals, accommodations, or salary when provided by the vessel;
  - iv. solicit or accept employment as a crew member or an employee of the fishing vessel while employed as scientific observer;
  - v. have been convicted of a serious criminal offense for five years prior to appointment as an observer;
  - vi. engage in any illegal actions or any other activities that would reflect negatively on his/her image as a professional scientist, on other scientific observers, on the integrity of data collection, or on SIOFA as a whole;
  - vii. have any financial interest in, or relationship with, any vessel or business harvesting or processing products from a SIOFA fishery.
- b. The owner, Master, agent, and crew of a vessel on which a scientific observer is deployed shall not:
  - i. offer a scientific observer, either directly or indirectly, any gratuity, gift, favour, loan, or anything of monetary value, except for meals, accommodations or salary when provided by the vessel;
  - ii. intimidate, or interfere with the duties of a scientific observer;
  - iii. interfere with or bias the sampling procedure employed by a scientific observer;
  - iv. tamper with, destroy, or discard a scientific observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;
  - v. prohibit, impede, threaten, or coerce, an observer from/into collecting samples, making observations, or otherwise performing the observer's duties;
  - vi. harass a scientific observer; or
  - vii. interfere with or prevent the observer from communicating with the associated CCP, including by preventing the scientific observer from having access to the vessel's communication equipment.
- c. CCPs shall seek, to the extent possible, to avoid having a scientific observer appointed undertake multiple consecutive trips on the same vessel within the SIOFA Area.
- d. CCPs shall require that a scientific observer in accordance with applicable confidentiality requirements shall not:
  - i. disclose verbal, written, or other evidence or observations made on-board a vessel, or observations made in a processing facility, including data or commercially sensitive vessel-specific fishing, processing, and marketing information, to any person except to the Secretariat or an authorised officer of the CCP;
  - ii. take data or observer logbooks from one vessel onto another, except that if an observer is unable to submit data before being redeployed on another vessel, the scientific observer shall take reasonable steps to safeguard the data and observer logbooks.
- e. When a CCP receives information regarding actions of the scientific observer that may contravene the provisions of these scientific observer requirements, the CCP shall take prompt and appropriate action, in accordance with its domestic law. The CCP will notify the SIOFA Secretariat and the MoP of any appropriate action taken.
- f. When a CCP receives information regarding actions of the vessel owner, Master, agent, or crew that may contravene the provisions of the scientific observer requirements, they shall

take prompt and appropriate action, in accordance with its domestic law. The CCP will notify the SIOFA Secretariat and the MoP of any appropriate action taken.

- g. CCPs who have designated scientific observers will take the initiative in implementing assignments identified by the Commission.
- h. Members shall implement the procedures described in the Emergency Action Plan for emergencies involving the scientific observer. CCPs shall ensure that the vessel owner or operator, or their designee, is informed of relevant procedures in advance of deployment of any scientific observer and cooperates in carrying out these procedures.

### **Emergency Action Plan**

3. In the event an observer dies, is missing or presumed fallen overboard, the CCP shall ensure that the fishing vessel:
  - a. immediately suspends all fishing operations;
  - b. immediately commences search and rescue if the observer is missing or presumed fallen overboard, and search for at least 72 hours, or until the search is called off by the Maritime Rescue Coordination Centre (MRCC), unless the observer is found sooner;
  - c. immediately notifies the appropriate MRCC and relevant domestic authorities, and alert other vessels in the vicinity by using all available means of communication;
  - d. cooperates fully in any search and rescue operation;
  - e. provides a report to the appropriate authorities on the incident; and
  - f. cooperates fully in any and all official investigations and with all directions, including by returning to port if appropriate, and preserves any potential evidence and the personal effects and quarters of the deceased or missing observer.
4. CCPs shall ensure that any authorized High Seas Boarding and Inspection vessels flying their flag cooperate, to the greatest extent possible, in any search and rescue operation involving an observer. CCPs shall also encourage any other vessels flying their flag to participate, to the greatest extent possible, in any search and rescue operations involving a SIOFA observer.
5. Paragraphs 3(a), (e) and (f) apply in the event that an observer dies. In addition, CCPs shall require that the fishing vessel ensure that the body is well-preserved for the purposes of an autopsy and investigation.
6. In the event that an observer suffers from a potentially serious illness or serious injury that may threaten his or her life or safety, the vessel shall seek medical advice through the relevant MRCC. If the MRCC has been advised by the pertinent medical professional that the observer suffers from a serious illness or injury that threatens his or her life or safety, the CCP shall ensure that the vessel:
  - a. immediately suspends fishing operations;
  - b. immediately notifies the appropriate MRCC and relevant domestic authorities;
  - c. takes all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel;
  - d. if recommended by the MRCC or requested by the relevant domestic authorities, facilitates the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and
  - e. cooperates fully in any and all official investigations into the cause of the illness or injury.
7. In the event that there are reasonable grounds to believe an observer has been assaulted, intimidated, threatened, or harassed such that their health or safety is endangered, the CCP shall ensure that the fishing vessel:
  - a. immediately takes action to preserve the safety of the observer and mitigate and resolve the situation on board;



- b. notifies the observer provider or employer of the situation, including the status and location of the observer, as soon as possible;
  - c. facilitates the safe disembarkation of the observer in a manner and place that facilitates access to any needed medical treatment; and
  - d. cooperates fully in any and all official investigations into the incident.
8. CCPs shall facilitate entry into their ports of vessels carrying SIOFA observers to allow disembarkation of the observer.
9. CCPs shall, to the extent possible, assist in any follow-up investigation conducted by relevant authorities, to the extent possible, assist in any investigations if so requested by the flag CCM.
10. In the event that, after disembarkation from a fishing vessel of an observer, the CCP identifies – such as during the course of debriefing the observer – a possible violation against the observer, including a violation involving assault or harassment of the observer while on board the fishing vessel, the CCP shall notify the Secretariat and the MoP, and shall:
- a. investigate the event based on the information provided by the observer provider and take any appropriate action in response to the results of the investigation;
  - b. cooperate fully in any investigation conducted; and
  - c. notify the MoP and the Secretariat of the results of its investigation and any actions taken.
11. Where requested, CCPs shall cooperate in each other's investigations, including, as appropriate and consistent with their domestic laws, by providing their incident reports, into any incidents involving observers described in paragraphs above.

## **A.2 Consequential modifications to SIOFA CMMs of the draft SIOFA Observer Code of Conduct.**

Modify CMM 2021/14 (High Seas Barding and Inspection Procedures) to modify paragraph 41(o) to:

41. For the purposes of this measure, a serious violation includes the following violations of the provisions of the Agreement or CMMs: *[note: items a–n, p not shown]*
- o. breaching observer ~~safety~~ requirements **of the SIOFA Scientific Observer Scheme** ~~after such requirements have been formally adopted by the Meeting of the Parties;~~ and

## **ANNEX B: IOTC Regional Observer Scheme Code of Conduct (IOTC–2019–S23–10[E])**

Observers are required to conform to an internationally recognised code of conduct to become certified. This requires that:

1) Observers may not participate in any activity which would cause a reasonable person to question the impartiality or objectivity with which the Regional Observer Scheme is administered.

- Observers may not have a direct financial interest in the observed fishery, other than the provision of observer services. This includes, but is not limited to, vessels or shore-side facilities involved in the catching or processing of the fishery products, companies selling supplies or services to those vessels or shore-side facilities or companies purchasing raw or processed products from these vessels or shore-side facilities. The interests of a spouse or minor child are considered those of the observer.
- Observers may not solicit or accept, directly or indirectly, any gratuity, gift, favour, entertainment, loan or anything of monetary value from anyone who conducts activities that are regulated by IOTC, or who has interests that may be substantially affected by the performance or non-performance of the observers' official duties.
- Observers may not solicit or accept employment as a crew member or an employee of the vessel in any fishery while employed as an observer.
- Observers may not serve as observers on any vessel owned or operated by a person who previously employed the observer in any capacity.
- A person may not serve as an observer in a fishery during the 3 consecutive months following the last day of his/her employment as a paid crew member or employee in that fishery.

2) Observers may not participate in any activity which could impair the observer's ability to perform his/her duties. This includes, but is not limited to Engaging in drinking of alcoholic beverages while on duty

- Engaging in the use or distribution of illegal substances
- Becoming physically or emotionally involved with vessel personnel

3) Observers may not participate in any activity which could adversely affect the efficient accomplishment of the Scheme's mission.

- Observers must refrain from engaging in any illegal actions according to the laws and regulations of the flag State that exercises jurisdiction over the vessel to which the observer is assigned.
- Observers must avoid any behaviour that could adversely affect the confidence of the public in the integrity of observers, the IOTC Regional Observer Scheme or the IOTC.
- Observers must record all scientific data accurately and honestly.
- If the observer chooses to report any suspected violations of regulations relevant to conservation of marine resources or their environment that they observe, it must be done honestly.
- Observers must preserve the confidentiality of the collected data and observations made on board the fishing vessels, in accordance with Resolution 12/02, and shall treat as confidential all information with respect to the fishing operations of the vessel on which they are deployed.

4) Observer involvement in vessel operations

- Observers shall respect the hierarchy and general rules of behaviour which apply to all vessel personnel, provided such rules do not interfere with the duties of the observer under this scheme.
- In all aspects involving vessel operations and safety at sea the observer will fall under the authority of the Captain.
- Scientific observers will have no authority to advise or direct any of the vessel operational activities or have any authority over any of the vessel personnel.
- Scientific observers should have access to all operational areas of the vessel necessary to complete their work including the bridge, navigation and communication equipment. However, the observer

should attempt to secure co-operation with officers to ensure that their work does not interfere with normal fishing and operational activities.

## **Annex C: Summary of relevant paragraphs in current SIOFA CMMs**

### **1. CMM 2018/09 (Control)**

#### **Scientific observer programme**

11. Without prejudice to other requirements in specific CMMs, each Contracting Party, CNCP and PFE shall ensure that the scientific observers carried by vessels flying its flag operating in the Agreement Area are qualified and authorised to perform their tasks and record any requested data.

### **2. CMM 2020/01 (Interim Bottom Fishing Measures)**

#### **Scientific observer coverage**

39. Each CCP shall ensure that any vessel flying its flag and undertaking bottom fishing in the Agreement Area:

- a. using trawl gear has 100 percent scientific observer coverage for the duration of the trip; and
- b. subject to paragraph 45b, using any other bottom fishing gear type has 20 percent scientific observer coverage in any fishing year<sup>6</sup>.

<sup>6</sup> For line fishing this should be expressed as the percentage of the total number of observed hooks or days.

40. Consistent with paragraph 13 of the SIOFA Data Standards CMM (CMM 2021/02), the Scientific Committee shall review the observer coverage levels prescribed in paragraph 39 at its ordinary meeting in 2018 and provide advice to the Meeting of the Parties thereon.

41. The scientific observer coverage levels outlined in paragraph 39 shall be fulfilled through the use of human observers, except to the extent authorised by the Meeting of the Parties pursuant to paragraph 43 c.

#### **Interim Protected Area Designation**

45. CCPs shall provisionally apply the following measures in the areas listed on Annex 3 until the adoption of a dedicated research and management plan, referred to in paragraph 6 e., for each area at MoP6:

- a. CCPs shall prohibit all vessels flying their flag from engaging in bottom fishing, excluding line and trap methods; and
- b. For all other gears, CCPs shall ensure each vessel flying their flag has a scientific observer onboard at all times while fishing inside those areas.

### **3. CMM 2021/15 (Management of Demersal Stocks)**

#### **Management measures for toothfish in the Del Cano Area [FAO Subarea 51.7] Observers**

25. Each vessel participating in the fishery shall have at least one scientific observer on board throughout all fishing activities within the fishing period. The observer shall have a target of observing 25% of hooks hauled per line over the duration of the fishing deployment.

#### **Management & research measures for toothfish in Williams Ridge [FAO Subarea 57.4]**

49. Each vessel participating in the fishery shall have at least one scientific observer on board throughout all fishing activities within the fishing period. The observer shall have a target of observing 25% of hooks hauled per line over the duration of the fishing deployment.

**4. CMM 2021/14 (High Seas Boarding and Inspection Procedures)**

41. For the purposes of this measure, a serious violation includes the following violations of the provisions of the Agreement or CMMs: *[note: items a–n, p not shown]*

- p. breaching observer safety requirements after such requirements have been formally adopted by the Meeting of the Parties; and