

Original: English

**U.S. EXPLANATORY NOTE FOR PWG-415/2018:
DRAFT RECOMMENDATION BY ICCAT ON PROTECTING THE HEALTH AND
SAFETY OF OBSERVERS IN ICCAT'S REGIONAL OBSERVER PROGRAMS**
(a new proposal, previously discussed but not adopted as IMM_09C/i2018)

Proposal submitted by United States

Observers may spend days, weeks, or months aboard fishing and transshipment vessels. The work is intense, and conditions can be uncomfortable and even dangerous. Commercial fishing is one of the most hazardous occupations, and fisheries observers are exposed to similar risks as commercial fishermen. The United States has noted with great concern recent incidents in other RFMOs where fisheries observers have been lost at sea.

Preparing observers for safe deployment requires an active partnership among fisheries managers, observers, observer provider companies, and the fishing industry. Current ICCAT observer-related measures do not include sufficient provisions on the health and safety of observers. Given the importance of regional observers to the work of the Commission and the often dangerous nature of observing fishing operations at sea, ICCAT must ensure that its regional observer programs (ROPs) uphold minimum standards that ensure the health and safety of observers placed on vessels while participating in ROPs that are both mandated and run by ICCAT. U.S. proposal PWG-415/2018 seeks to codify such minimum standards for the health and safety of observers deployed by ICCAT in its ROPs. We consider that it is past time for ICCAT to adopt minimum standards for the health and safety of observers deployed in its ROPs, a step that is both within the organization's competency and a critical responsibility.

A proposal to establish minimum standards for the health and safety of observers has been discussed previously by ICCAT, most recently at the 2018 intersessional meeting of the Working Group on Integrated Monitoring Measures (IMM) as document IMM_09C/18. The version being submitted for consideration at the 2018 ICCAT Annual meeting reflects input received during the 2017 PWG and 2018 IMM meetings, most notably a request to include more specific details on the elements of an emergency action plan (EAP). The elements included in the plan specify the responsibilities of the Secretariat, flag CPCs and non-CPCs, observer providers, and vessel operators in the event that an observer dies, is missing or presumed fallen overboard, suffers from serious illness or injury, or is intimidated, threatened, or harassed. The content is consistent with EAP minimum standards already adopted in other RFMOs, in particular the WCPFC, IATTC, and CCAMLR.

The proposal also includes a requirement for the issuance of personal life-saving equipment that is used in coordination with Maritime Rescue Coordination Centers (MRCCs) to aid in observer health and safety. In order to establish an internationally coordinated system for the maritime search and rescue of people, the International Maritime Organization (IMO) approved the International Convention on Maritime Search and Rescue, which describes the structure of MRCCs. MRCCs provide coordination for cooperation of neighboring States in search and rescue operations at the regional level, optimizing use of maritime assets, both governmental and non-governmental. MRCCs may use specialized maritime search and rescue software and hardware, including communication to personal life saving equipment, such as emergency position indicating radio beacons. Additional information on MRCCs and contact information is available at:

- <https://sarcontacts.info/>
- <https://www.inmarsat.com/services/safety/maritime-rescue-co-ordination-centres/> and
- <http://www.imo.org/en/OurWork/Safety/RadioCommunicationsAndSearchAndRescue/SearchAndRescue/Pages/GlobalSARPlan.aspx>.

In summary, adoption of this proposal would ensure that there is an unambiguous ICCAT requirement to protect the health and safety of observers deployed in the Commission's ROPs. It would also clarify the obligations of CPCs and non-CPCs to ensure that their vessels comply with such requirements and ensure that procedures are put in place to address emergencies with a clear articulation of roles and responsibilities for carrying out those procedures.

Any increase in costs to the Commission resulting from formalizing these requirements in an ICCAT Recommendation are likely to be negligible as the observer providers participating in ICCAT ROPs are already training or requiring prerequisite training of observers and issuing safety equipment to them in line with the provisions of this proposal.

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(a new proposal, previously discussed but not adopted as IMM 09C/i2018)

Proposal submitted by United States

UNDERSCORING that safety of life at sea is a longstanding objective of international maritime governance, that observers collect data that are essential to the functions of the Commission, and that the health, safety, and welfare of observers is critical to their ability to perform their duties;

RECALLING the regional observer programs (ROPs) established in the *Recommendation by ICCAT on a Program for Transshipment* [Rec. 16-15] and the *Recommendation by ICCAT Amending the Recommendation 14-04 on Bluefin Tuna in the Eastern Atlantic and Mediterranean* [Rec. 17-07];

CONCERNED that ICCAT recommendations establishing these ROPs do not include requirements that adequately protect the health, safety, and welfare of observers;

ACKNOWLEDGING the need to for comprehensive and consistent requirements in ICCAT to protect the health, safety, and welfare of observers, in particular to supply necessary safety equipment and to supply or ensure proper training and to establish emergency procedures with respect to ICCAT ROPs;

RECALLING that the International Convention on Standards of Training, Certification, and Watch keeping for Fishing Vessel Certification (STCW-F), adopted by the International Maritime Organization (IMO) in 1995, sets forth safety training standards for observers and other fishing vessel personnel;

NOTING the commitments in international law, including the provisions of the International Convention on Maritime Search and Rescue, with regard to the development of an international maritime search and rescue plan for the rescue of persons in distress at sea;

NOTING existing contracts between the ICCAT Secretariat and ICCAT ROP observer providers that include observer health and safety requirements as well as associated materials establishing procedures for the implementation of such requirements;

**THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT)
RECOMMENDS THAT:**

The following shall apply to ensure the health, safety, and welfare of observers deployed pursuant to ICCAT ROPs established in the *Recommendation by ICCAT on a Program for Transshipment* [Rec. 16-15] and the *Recommendation by ICCAT Amending the Recommendation 14-04 on Bluefin Tuna in the Eastern Atlantic and Mediterranean* [Rec. 17-07]:

1. The observer provider shall provide or ensure observers have received safety training before they are deployed on a vessel for the first time and at appropriate intervals thereafter. Such training program must, at a minimum, meet the International Maritime Organization (IMO) safety training standards.
2. Before deploying an observer on a vessel for a trip, the observer provider shall ensure the observer is issued the following safety equipment:
 - a) an independent two-way satellite communication device and a waterproof personal life-saving beacon, which may consist of a single device such as a Satellite Emergency Notification Device, or a combination of an independent two-way satellite-based device, (e.g. an inReach messaging device) and a personal locator beacon (e.g., a ResQ Link device); and
 - b) other safety equipment, such as personal flotation devices (PFDs) and immersion suits, appropriate to the specific fishing operations and activities, including ocean area and distance from shore.

3. The observer provider shall have a designated contact point for deployed observers to use in cases of emergency.
4. The observer provider must have an established procedure for contacting and being contacted by the observer and the vessel, and, if necessary, for contacting the competent authority of the flag CPC or non-CPC. This procedure must provide for regularly scheduled contact with observers to confirm their health, safety, and welfare status and clearly describe the steps that must be taken in the event of various emergencies, including situations where an observer dies, is missing or presumed fallen overboard, suffers from a serious illness or injury that puts his or her health or safety at risk, has been assaulted, intimidated, threatened or harassed while on board a vessel, or if the observer requests to be removed from the vessel prior to the conclusion of the trip.
5. Flag CPCs or non-CPCs shall ensure their vessels that carry observers under an ICCAT ROP are outfitted with appropriate safety equipment for the entirety of each voyage, including the following:
 - a) A life raft of sufficient capacity for all persons onboard and with a certificate of inspection that is valid throughout the observer's deployment;
 - b) Life jackets of sufficient number for all persons onboard, and compliant with International Convention for the Safety of Life at Sea (SOLAS) standards; and
 - c) A properly registered Emergency Position Indicating Radio Beacon (EPIRB) and a Search and Rescue Transponder (SART) that will not expire until after the observer deployment ends.
6. The observer provider shall not deploy an observer on a vessel unless and until the observer is allowed to inspect all vessel safety equipment and document and report its status to the observer provider; observers shall not be deployed on vessels with outstanding safety discrepancies, in particular if the vessel does not meet the requirements of paragraph 5. If, during deployment, the observer provider or flag CPC or non-CPC determines that a serious risk to the health, safety, or welfare of the observer exists, the observer shall be removed from the vessel unless and until the risk is addressed.
7. Flag CPCs and non-CPCs with vessels carrying observers deployed under an ICCAT ROP shall develop and implement an Emergency Action Plan (EAP) to be followed in the event an observer dies, is missing or presumed fallen overboard, suffers from a serious illness or injury that threatens his or her health, safety, or welfare, or has been assaulted, intimidated, threatened or harassed. Such EAPs must include, *inter alia*, the elements in **Annex 1** of this Recommendation.

These EAPs shall be submitted to the Executive Secretary for posting on the ICCAT web site as soon as possible after the entry into force of this recommendation. New or amended EAPs shall be provided to the Executive Secretary for posting when they become available.

[...]

8. Beginning on 1 January 2020, vessels flagged to CPCs or non-CPCs that have not submitted EAPs shall not be eligible to carry an observer from an ICCAT ROP. Further, should available information indicate that an EAP is not consistent with the standards set out in **Annex 1**, the Commission may decide that the deployment of an observer on a vessel of the concerned flag CPC or non-CPC shall be delayed until the inconsistency has been sufficiently addressed.
9. The Commission may also decide that a vessel is ineligible to carry an ICCAT regional observer where the flag CPC or non-CPC has previously failed to investigate any reported instances of observer interference, harassment, intimidation, assault, or unsafe working conditions or, where warranted, to take appropriate corrective action, consistent with their domestic law.
10. The observer provider and flag CPCs and non-CPCs with vessels carrying observers deployed under an ICCAT ROP shall submit to the Executive Secretary reports on observer incidents triggering provisions of the EAP, including any corrective action taken by the flag CPC or non-CPC. The Executive Secretary shall transmit such reports to the Commission, consistent with applicable confidentiality rules, for its review at each annual meeting or, where warranted, more frequently.

11. Flag CPCs and non-CPCs shall cooperate to the maximum extent possible with and provide for the participation of, as appropriate and consistent with domestic law, the CPC or non-CPC of the observer in search and rescue operations and investigations of cases where the observer dies, is missing or presumed fallen overboard, suffers from a serious illness or injury that threatens his or her health or safety, or has been assaulted, intimidated, threatened or harassed while on board a vessel.
12. The Executive Secretary shall notify concerned flag CPCs and non-CPCs that a condition of participating in any ICCAT ROP is the development, implementation, and submission of an EAP as described in paragraphs 7 and 8 above.
13. Nothing in this recommendation shall prejudice the exercise of discretion by the observer provider not to deploy an observer on a vessel because of concerns about risk to the observer's health, safety, or welfare.
14. Nothing in this measure shall prejudice the rights of relevant CPCs and non-CPCs to enforce their laws with respect to the safety of observers consistent with international law.

Elements of ROP Emergency Action Plan (EAP)

1. In the event that an ROP observer dies, is missing or presumed fallen overboard, the CPC or non-CPC to which the fishing vessel is flagged shall take necessary measures to require that the fishing vessel:
 - a) immediately ceases all fishing operations;
 - b) immediately notifies the appropriate Maritime Rescue Coordination Center (MRCC), flag CPC or non-CPC, and the observer provider;
 - c) immediately commences search and rescue if the observer is missing or presumed fallen overboard, and searches for at least 72 hours, unless the observer is found sooner, or unless instructed by the flag CPC or non-CPC to continue searching¹;
 - d) immediately alerts other vessels in the vicinity by using all available means of communication;
 - e) cooperates fully in any search and rescue operation;
 - f) whether or not the search is successful, promptly returns to the nearest port for further investigation, as agreed by the flag CPC or non-CPC and the observer provider;
 - g) promptly provides a report on the incident to the observer provider and appropriate flag State authorities; and
 - h) cooperates fully in all official investigations, and preserves any potential evidence and the personal effects and quarters of the deceased or missing observer.
2. In addition, in the event that an ROP observer dies while deployed, the flag CPC or non-CPC shall require that the fishing vessel ensure that the body is well-preserved for the purposes of an autopsy and investigation.
3. In the event that an ROP observer suffers from a serious illness or injury that threatens his or her health or safety, the CPC or non-CPC to which the fishing vessel is flagged shall take necessary measures to require that the fishing vessel:
 - a) immediately ceases fishing operations;
 - b) immediately notifies the flag CPC or non-CPC, observer provider, and relevant MRCC to advise if a medical evacuation is warranted;
 - c) takes all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel;
 - d) where necessary and appropriate, including as directed by the observer provider, if not already directed by the flag CPC or non-CPC, 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.
4. For the purposes of paragraphs 1 through 3, the flag CPC or non-CPC shall ensure that the appropriate MRCC, observer provider, and the Secretariat are immediately notified of the incident, actions taken or underway to address the situation, and any assistance that may be required.
5. In the event that there are reasonable grounds to believe an ROP observer has been assaulted, intimidated, threatened, or harassed such that their health or safety is endangered and the observer or the observer provider indicates to the CPC or non-CPC to which the fishing vessel is flagged that they wish for the observer to be removed from the fishing vessel, the CPC or non-CPC to which the fishing vessel is flagged shall take necessary measures to require 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 flag CPC or non-CPC and the observer provider of the situation, including the status and location of the observer, as soon as possible;

¹ In the event of force majeure, CPCs and non-CPCs may allow their vessels to cease search and rescue operations before 72 hours have elapsed.

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- c) facilitates the safe disembarkation of the observer in a manner and place, as agreed by the flag CPC or non-CPC and the observer provider, that facilitates access to any needed medical treatment; and
 - d) cooperates fully in any and all official investigations into the incident.
6. In the event that there are reasonable grounds to believe that an ROP observer has been assaulted, intimidated, threatened, or harassed but neither the observer nor the observer provider wishes that the observer be removed from the fishing vessel, the CPC or non-CPC to which the fishing vessel is flagged shall take necessary measures to require that the fishing vessel:
- a) takes action to preserve the safety of the observer and mitigate and resolve the situation on board as soon as possible;
 - b) notifies the flag CPC or non-CPC and the observer provider of the situation as soon as possible; and
 - c) cooperates fully in all official investigations into the incident.
7. If any of the events in paragraphs 1 through 5 occur, port CPCs or non-CPCs shall facilitate entry of the fishing vessel to allow disembarkation of the ROP observer and, to the extent possible, assist in any investigations if so requested by the flag CPC or non-CPC.
8. In the event that, after disembarkation from a fishing vessel of an ROP observer, an observer provider identifies, such as during the course of debriefing the observer, a possible situation involving assault or harassment of the observer while on board the fishing vessel, the observer provider shall notify, in writing, the flag CPC or non-CPC and the Secretariat.
9. If notified, under paragraph 5b, 6b, or 8, that an observer has been assaulted or harassed, the flag CPC or non-CPC 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 by the observer provider, including providing the report to the observer provider and appropriate authorities of the incident; and
 - c) promptly notify the observer provider and the Secretariat of the results of its investigation and any actions taken.
10. CPCs shall also encourage vessels flying their flag to participate, to the greatest extent possible, in any search and rescue operations involving an ROP observer.
11. Where requested, relevant observer providers and CPCs or non-CPCs shall cooperate in each other's investigations, including providing their incident reports for any incidents indicated in paragraphs 1 through 6 to facilitate any investigations as appropriate.