FFA

FORUM FISHERIES COMMITTEE
ONE HUNDREDTH AND EIGHTEENTH MEETING

11-14 May 2021

Agenda Item:	**X**
Paper No:	**FFC118-INFO.06**
Title:	**PERSONS OF INTEREST**

Summary:

This paper provides an overview of the ongoing work on the Persons of Interest initiative. Although vessels are currently the focus of efforts to combat illegal, unreported and unregulated (IUU) fishing, it is persons (both natural and legal) who engage in IUU fishing. The objective of the POI initiative is to go beyond vessels and identify the operators and owners of vessels. In addition, the paper identifies potential tasks for the Secretariat and also seeks consideration of the draft POI Practice Guidelines.

Recommendations:

The Committee is invited to:

i. **Note that** the Secretariat continues to work on the POI initiative, including in particular
   a. the ongoing work on strengthening the implementation of the ISMS policy;
   b. preparing a POI Register and related mechanisms in advance of the fourth POI workshop (2022);
   c. assisting Members in the domestic implementation of the FFA POI initiative; and
   d. delivering training on beneficial ownership.

ii. **Note** the POI Practical Guidelinesfor consideration at the POI workshop in 2022.

1. Introduction

This paper provides an overview of the ongoing work on the Persons of Interest initiative. Although vessels are currently the focus of efforts to combat illegal, unreported and unregulated (IUU) fishing, it is persons (both natural and legal) who engage in IUU fishing. The objective of the POI initiative is to go beyond vessels and identify the operators and owners of vessels. The paper identifies potential tasks for the Secretariat and also seeks consideration of the draft POI Practice Guidelines.

2. Background

Based on the endorsement of NTSA Parties and FFC in May 2016, the Secretariat has undertaken key steps to progress this directive:

(a) WCPFC13: using the mandate from FFC, FFA Members sought and obtained the agreement of TCC12 and WCPFC13 in September and December 2016 respectively to include the master's name and nationality in the WCPFC IUU Vessel List;

(b) Draft POI Strategy: development of a draft strategy that would serve to assist Members and the Secretariat in the implementation of this work. The draft Strategy outlines seven key outcomes along with associated actions required for both the Secretariat and Members to achieve these outcomes:

Outcome 1: Sound legal basis to collect, share and use POI data
Outcome 2: Clear criteria for listing a 'person of interest'
Outcome 3: Unique Person Identifier
Outcome 4: Clear procedures for sharing of information for fisheries purposes
Outcome 5: Clear procedures for sharing of information for broader law enforcement purposes
Outcome 6: Better informed decision-making
Outcome 7: Sharing of POI data with WCPFC Members and with other regions to enable wider decision-making on fishing access around the world.

(c) MCSWG20, NTSA Parties, FFC Officials and FFC Ministers in 2017: these forums were presented the draft Strategy, and useful feedback was provided including prioritising work on the first key outcome in the Strategy to ensure a sound legal basis. All meetings endorsed that the work be progressed;

(d) Sound legal basis: The Secretariat engaged two eminent legal consultants, Professor Bill Edeson and Professor Don Mackay to prepare a report canvassing options to establish the legal basis for FFA members and the FFA secretariat to collect, share and use POI data as a part of a suite of measures to combat IUU fishing. As part of this effort, an analysis of national laws was undertaken. In general, there are broad powers under relevant domestic fisheries laws for fisheries officials to collect, use and disclose confidential information, which could include persons of interest information. Template regulations for NTSA Parties were also drafted;

(e) First POI workshop (March 2018): this workshop was presented as an updated draft of the POI Strategy. At the first POI workshop, the following key points, among others, were made:

(i) there is no legal obstacle to continuing this work;
(ii) the collection of information and the identification of who is a "Person of Interest", "beneficial owner" and a "person to watch". There was general agreement that the definition be left broad so that from a national perspective any person (natural or legal) could be considered as a POI. Under this, Members also considered "unique person identifier and what this could entail;
(iii) there is a need to develop clear procedures of when the information can be used and shared amongst Members; for fisheries purposes or for broader law enforcement in combating transnational crime that could be associated with fishing vessels.

(f) <u>Second POI workshop (March 2019):</u> Guided by the draft POI Strategy, the second POI workshop built upon the outcomes from the first POI workshop. A paper prepared by the two eminent legal consultants Professors Edeson and Mackay formed the basis for discussions during the workshop. The second POI workshop recommended fundamental components of the FFA POI Scheme, *inter alia*:
(i) Establishment and maintenance of the FFA POI Register;
(ii) Criteria for POI categories A, B and C; the workshop also identified the need for draft guidelines, practice notes and procedures be developed over time to assist with the implementation of categories A, B and C;
(iii) Responsibilities for the FFA Secretariat;
(iv) Responsibilities for Members; and the
(v) Unique Person Identifier.

(g) <u>FFC110 (May 2019):</u> At FFC110, the Committee noted the outcomes of the second POI workshop, endorsed the components of the FFA POI initiative, and tasked the Secretariat to progress development of the FFA POI initiative by: (a) developing a pilot version of the POI Register in advance of the third POI workshop; (b) preparing draft guidelines and procedures to support the operation of the FFA POI initiative; (c) assisting Members in the domestic implementation of the FFA POI initiative; and (d) delivering training on beneficial ownership.

(h) <u>Third POI workshop (May 2020):</u> In the third workshop, draft guidelines and procedures to support the operation of the POI initiative were introduced, and a pilot version of the POI Register was displayed. The meeting also considered amendments to the HMTCs in support of the POI initiative, and discussed beneficial ownership and the collection of such information through the FFA Vessel Register registration process. The importance of information security was emphasised with the need to ensure that the necessary information security arrangements are in place.

(i) <u>FFC114 (2020):</u> When considering progress with the POI initiative in 2020, the Committee tasked the Secretariat to undertake a comprehensive review of HMTCs including on their scope and application (also taking into account proposed amendments on the collection of POI related information) for consideration at its annual meeting in 2021. The Committee also tasked the Secretariat to review the application of the ISMS (in particular where it relates to the storage, security and dissemination of personal information).

(j) MCSWG24 (2021): Due to the busy schedule of meetings, a POI workshop could not be held in March 2021. However, MCSWG24: (i) noted the paper and the draft POI Guidelines; and (ii) considered future work required for the POI initiative.

3. Update on progress

In accordance with the directions of the Committee, the Secretariat has undertaken a review of the HMTCs taking into account interventions made during FFC114 as well as recent developments. The outcomes of the review were considered at a separate virtual HMTCs meeting held on the Monday 15 March 2021.

On the review of the application of the ISMS (in particular where it relates to the storage, security and dissemination of personal information), the Secretariat engaged Professor MacKay, with the support of Professor Edeson, to review the application of the ISMS and provide recommendations to the Secretariat. At the same time an internal working group was formed to consider the ISMS policy, liaise with Professor MacKay, and to make recommendations to the ISMS Committee. The ISMS Committee has met and has made arrangements for the implementation of recommendations made. These are elaborated in the WP on the ISMS review.

4. Tasks for the Secretariat

The POI project is innovative and groundbreaking and it is important that FFA maintains the momentum. Due to various factors however, there are certain POI tasks that have not been completed and are ongoing. These include: (a) the ongoing work on strengthening implementation of the ISMS policy; (b) preparing a POI Register and related mechanisms in advance of the fourth POI workshop (2022); (c) assisting Members in the domestic implementation of the FFA POI initiative; and (d) delivering training on beneficial ownership.

5. POI Practical Guidelines and Procedures

The development of the **POI Practical Guidelines and Procedures** (POI Guidelines) was tasked by FFC110 in 2019. The POI Guidelines are designed to assist FFA Members and the Secretariat to manage and effectively implement the POI initiative at the national and regional levels.

The draft POI Guidelines were first introduced at the Third POI meeting in 2020. In 2021, a revised draft of the POI Guidelines was noted by MCSWG24. The draft POI Guidelines for consideration and endorsement, as appropriate, is provided in the Attachment.

Attachment

Practical Guidelines and Procedures for POI

1.Introduction

It was agreed that the POI process would require some guidelines, practice notes, and procedures, as well as some training for FFA members in order for the POI scheme to become fully effective. The training would be especially important with respect to beneficial ownership of companies, and would also include case studies to assist members to better understand the processes of the POI Scheme. In particular, it was considered that the three categories of persons of interest, (categories A, B and C) would require some guidance for their effective implementation by members.

It is also worth recalling the purpose for which POI data is collected and which played a central role in setting up the POI scheme, namely, to inform the FFA registration process, better target MCS effort, provide better information for decision makers and also provide a means of verifying information from RFMOs.

2. Overview of the Procedures and the Process

To operate effectively, the POI process requires the collection of information by Members, and the passing on of that information to the Secretariat for inclusion on (1) its database of fishing vessels licensed by Members and (2) its POI database.

The information to be collected by a Member and to be provided to the Secretariat would be:

(i) Information on natural and legal persons associated with vessels which the Member is authorising to fish (these persons are not at this stage POI, but the information would be collected and provided to the Secretariat for its database of licensed fishing vessels in case they may subsequently become POI);

(ii) Information regarding the activity of a vessel which would bring it within the purview of Category A (this information would be provided under existing procedures regarding the denial or withdrawal of good standing of a vessel, so should not require new guidelines and procedures);

(iii) Information regarding the activity of a vessel or person which would bring them within the purview of Category B;

(iv) Information regarding the activity of a vessel or person which would warrant a person being identified as a person to watch under Category C;

(v) The prompt provision of information about any material changes which have occurred with regard to information already provided under (i) to (iv) above.

The role of the Secretariat would be to receive this information from Members and to compile it onto its database. The Secretariat would also receive detailed information on natural and legal persons associated with vessels at the time of registering those vessels on the Regional Register. All of this information would enable the Secretariat to cross-check whether POI associated with errant vessels are also associated with other vessels, in which case it would notify Members accordingly (or, in the case of Category A, would also deny the other associated vessels good standing). The Secretariat would also maintain a Register of POI which would be available to Members.

3. The importance of Members providing prompt, timely and accurate information to the Secretariat

As noted, for the POI process to operate effectively (and fairly), it requires Members to collect POI related data and information from available sources and to provide this to the Secretariat promptly in accordance with obligations in Article 19, Annex A of the NTSA and national laws.

Members need to ensure that this information is accurate and up-to-date when it is provided to the Secretariat.

Because the circumstances relating to particular POIs will change from time to time, which may affect whether they fall under category A, B or C, it is essential that Members also promptly and accurately update the Secretariat of any changes. Such changes may result in a POI moving from a more serious category to a less serious category, or from a less serious category to a more serious category.

For example, a POI which is category A due to the vessel operator having been convicted of a serious fisheries offence and not having paid the penalty, will move to category B once the penalty is paid. For the POI process to operate fairly, once the penalty has been paid, the Member in question should promptly notify the Secretariat so that the POI can be moved down to category B.

On the other hand, a POI which is category C due to their association with a vessel suspected of illegal activity, will move to category B if the vessel is subsequently convicted in relation to that activity. Again, this change in circumstance needs to be promptly notified to the Secretariat by the Member in question.

4. Which individuals should be included on a POI register?

It was agreed that owners, directors, *de facto* directors, shadow directors, charterers, operators, masters, fishing masters and navigators should be included on the POI register. The importance is stressed of looking behind the corporate veil to identify the natural persons controlling the operations of fishing vessels which is common practice in other sectors such as combatting money laundering.

Directors, shadow directors, operators, fishing masters and navigators should be included in the scope of the scheme. Definitions are needed for directors, *de facto* directors and shadow directors. The following definitions, which are standard definitions in companies legislation, are recommended:

'Directors' are those persons appointed in the normal way in accordance with the rules of the company in question.

'De facto directors' are those who have not been validly appointed but act in the position of a director.

'Shadow directors' are those whose instructions or wishes are customarily followed by the validly appointed directors.

These have been included in the current draft regulations attached. (See A**nnexes A and B)**

To improve transparency, it is recommended that the beneficial owners of vessels are also included in the POI register. This is to ensure that the person who is ultimately able to control the vessel, and the legal entity which owns it, is recorded. The beneficial owner and the legal owner may be the same person, and so easily identifiable. Alternatively, the beneficial owner may lie behind a wall of shell companies and other business structures which obscures ownership and control.

The following definition of a beneficial owner is drawn from Nauru's *Beneficial Ownership Act 2017,* and aligns with international approaches.

A beneficial owner is a natural person who has ultimate control, directly or indirectly, over the legal entity; who ultimately owns, directly or indirectly, the legal entity; or on whose behalf a legal entity is created.

The Summary of Record of Proceeding of the Honiara POI Workshop noted the comment by one participant that having POI data available to enforcement officers would mitigate risks at sea by, for example, a boarding party being able to take into account any past violent offences associated with a vessel or individuals on it before boarding (Summary Record paragraph 29 refers). This point was reiterated by a participant during the virtual Persons of Interest Workshop on 21 May 2020. The following additional language has therefore been proposed for Category "B" in the POI categories (see Annex E):

(g) where a crew member on a vessel has been involved in an assault, obstruction, resist, delay, refuse boarding to, intimidate, use of threatening or abusive language or behaving in a threatening or insulting manner, and interfering in any way with the performance of the duties of an authorised officer or observer. In such case the crew member involved shall be placed on the POI Register as an individual designation, even if their position on the vessel is less than that of master, fishing master or navigator. [comment: this is also a criterion for withdrawal of good standing under the HMTCs, so there is some overlap with Category "A"]

5. Unique person identifier

Background: Issues arise with characters used in non-Latin alphabets, the order of first and surnames, multiple people having the same name and where one person has multiple official names. Passports, tax numbers and driving licences are used in this regard as unique person identifiers to avoid confusion or mistaken identity issues.

There are two possible approaches:

(1) To use a passport number in conjunction with a person's name on the register. This would be safe and reliable as States seek to ensure accuracy of their databases. This is not confidential information.

(2) A more complex approach would involve setting up an FFA UPI for the purpose of the POI register. In this regard, the IMO recently special unique personal identifiers for companies and natural persons.

The complexity of the issue is illustrated by the fact that a simple three-character Mandarin name can be written in 36 different ways when translated into the Latin alphabet and that these names then have multiple different versions when translated back into Mandarin. In this regard, it was noted that there could be value in considering biometric methods of identification as these techniques are already making their way into the shipping and fisheries sector.

A pragmatic solution would be to use passport numbers but also still keeping options open for other systems such as biometric identification in the future.

Issues relating to individuals with dual and multiple citizenships, and changing passport numbers when expired and re-issued, posed additional challenges. Another challenge was that crew from vessels flagged to one Member may not always have passports and in this regard, it was suggested that a seafarer's logbook could be used where a passport is not available.

The passport number should therefore be the primary means of identification for a UPI as a pragmatic first step while leaving the door open to use other complementary techniques in the future.

It will be necessary to introduce the requirement as a condition at the licence application stage, as well as seeking adoption at some stage of the draft CMM for WCPFC. (**See Annex C**). For this to work, it will in effect need to be pursued at both the national level in legislation as well as at the regional level.

6. Information to be obtained when authorising a vessel to fish.

When authorising a vessel to fish in its territorial sea or exclusive economic zone, or to fish under its flag on the high seas, each Member should obtain the following information regarding the natural and legal persons associated with the vessel for provision to the Secretariat for inclusion in its database of licensed fishing vessels. (Note: the natural and legal persons referred to are not at this stage POI, but will become POI in the event that a vessel with which they are associated is involved in the activities covered in categories A or B, or persons to watch in relation to C.)

Information to be obtained would be:

- Name, address, date of birth and passport number of Master
- Name, address, date of birth and passport number of Fishing Master
- Name, address, date of birth and passport number of Navigator
- Name, address, date of birth and passport number of Charterer
- Names, addresses, dates of birth and passport numbers of Owner
- Names, addresses, dates of birth and passport numbers of Beneficial Owners
- Names, addresses, dates of birth and passport numbers of *de facto* Directors
- Names, addresses, dates of birth and passport numbers of shadow Directors

When the original passport is not available for inspection by the Member, a certified copy of the biodata page is to be provided to the Member. If the passport is not in the English language, a certified English language translation of the biodata page shall be provided.

(In the unlikely event that passport numbers are not available other suitable national identification such as a seafarer book number may be used)

In addition, the following information will need to be sent to the FFA Secretariat:

- Name of vessel
- Flag and Registry of Vessel
- IMO Number (where applicable)
- [any other details to be required regarding vessel]

Where a vessel is flagged to another country, or where it is owned by a natural or legal person in another country, it is envisaged that the Member should require that the vessel provide a certificate from the government of that country or countries confirming that the details of ownership, including beneficial ownership, are correct according to any relevant registries of that country. The procedures for doing this will be further developed and discussed as part of the training programme on beneficial ownership.

If countries are unwilling or unable to confirm beneficial ownership information, Members may cross-check the information against that available from commercial third-party providers or conduct their own research. Alternatively, a Member may require the vessel owner (or other appropriate person) to sign a declaration certifying the accuracy of the beneficial ownership information if the Member determines that the information cannot otherwise be reasonably obtained or verified.

At the virtual Persons of Interest Workshop on 21 May 2020, a participant noted the administrative burden on small administrations, and that where additional documentation needs to be obtained from the State of residence for verification purposes for example, this would be better done by the FFA Secretariat when registering the vessel on the regional register rather than by the licensing State. When developing the Secretariat's procedures, account will be taken of such concerns with a view to relieving the burdens on FFA Members as far as possible.

The Member should require that the vessel or its agent must advise the Member of any changes to the information set out above within 14 days of such change.

This provision provides for this information to be collected by a Member when authorising a vessel to fish, or when subsequently updated by the vessel or its agent. It is envisaged that, over time, procedures would also be developed whereby Members would be able to crosscheck this information in other circumstances such as a Port State visit or other inspection of the vessel. This would be useful in ensuring that information is up to date, and also in providing an incentive to vessels to ensure it is up to date (since it would be subject to crosschecking in these circumstances).

7. Importance of getting the information at the application stage

The rationale for acquiring information relating to fishing vessels at the application stage is this: In the IUU listing context, once a vessel is identified as engaging in IUU fishing, it is unlikely to provide further information about individuals and companies involved in the operation or associated with the vessel. The interests of those involved is usually to protect associated individuals from being linked to the IUU fishing activity. Therefore, the leverage from the coastal State is held at the authorisation stage when the vessel is seeking authorisation to fish.

Also, the amount of information on RFMO authorised vessel lists is sparse and it is often impossible to ascertain the real companies and individuals. Often the address of the company is a just a port, city or PO Box number. Even where an address is given, this can just be an empty office. Another issue is that RFMOs have limited capacity to ensure the information is accurate and complete when entered on an authorised vessel list.

As noted, issues may arise where vessels are flagged to Members, but the owners are based in another State, for example, a Distant Water Fishing Nation (DWFN). In this instance, obligations need to be placed on the State of residence to ensure the veracity of the information. This can be done but depends on getting the information of the individuals involved at the authorisation stage from the country of incorporation or residence.

Accordingly, information on beneficial ownership should be collected at the application stage of an authorisation. Once that moment is passed, and an authorisation issued, there may be very little motivation for the applicant to provide further information. However, the local law or regulations should provide that further information may be subsequently sought and, if refused, could provide a basis for suspension or cancellation of the authorisation.

A regulation along the following lines could be considered for inclusion in the current draft regulations:

> *1.The [Minister/Director of Fisheries] may suspend an authorisation to fish where an application has already been authorised and if the [Minister/Director of Fisheries] considers that the information concerning the beneficial ownership of the vessel authorised is incomplete, inaccurate, or further information is required.*
>
> *2.Without prejudice to any other power conferred on [the Minister or Director of Fisheries], the [Minister/Director of Fisheries] may cancel the authorisation if the information sought is not provided within 14 days of the request being made.*

Some Members may possibly be concerned about the burden being created in passing this information to the Secretariat, but this is a necessary part of the process. For the system to act effectively there needs to be a central data collection point where all of the data can be collated and any linkages between various POI and other vessels can be established. Leaving the information solely in the hands of the Member does not achieve this.

For example, let's assume that vessel X has been refused good standing or has had its good standing withdrawn because of its involvement in the activities listed in category A, and Mr JJ has been listed as a beneficial owner of this vessel X. Mr JJ is also listed as a beneficial owner of two other vessels, Y and Z, which are authorised to fish elsewhere. The POI system requires that any other vessels with which Mr JJ is associated should also have their good standing withdrawn. Someone needs to do the crosscheck to see whether Mr JJ is listed as a beneficial owner of other vessels, and it would be very onerous for each and every Member to have to check its national records for this. It is much more efficient for a central point, the Secretariat, to do this by using a tailored computer programme.

The Secretariat would collect the same information from vessels when registering a vessel on the Regional Register. This would be cross-checked with the information collected at the national level.

8. The three POI categories (A, B, and C) [1]

Note that once these three categories have been finalised, consequential changes will need to be made to the draft regulations.

<u>Category A</u>

With regard to persons (natural and legal) associated with vessels in category A, there are various steps which need to be taken by Members and the Secretariat.

As noted, Members already provide information to the Secretariat about a vessel's activities falling under category A(a) or (b) [or (d)] for the purpose of requiring a vessel to be denied or deprived of good standing. These procedures are therefore already implemented in accordance with the processes regarding the operation of the Regional Register.

When taking action to deny a vessel of good standing, the Secretariat would crosscheck POI associated with that vessel against the other information it holds on its database. It would search its database for other vessels with which that POI is associated. The Secretariat will then refuse or withdraw the good standing of those vessels as well.

Members need to promptly inform the Secretariat in the event that the vessel subsequently complies with its requirements under A(a), (b) or (d) such as would enable reinstatement of the vessel's good standing and consequently the movement of associated POIs from category "A" to category "B". This would also enable reinstatement on the Regional Register of any additional vessels with which the POI is associated.

The Secretariat would notify Members of these outcomes.

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[1] These categories are contained in the version adopted at the March Workshop, but some additional drafting changes are also suggested to clarify and amplify some elements. These are included in the suggested revised version contained in **Annex E**.

Category "B".

This category of POI covers Persons who are associated with vessels which have been involved in the commission of offences but for which category A listing is not warranted.

Members should inform the Secretariat about vessels or natural or legal persons which have committed offences falling within the categories listed for B. Details should also be provided of the offences in question, so as to assist decision-makers in other Member countries with their assessment whether or not to grant a licence or authorisation.

Upon receipt of this information the Secretariat would crosscheck the POI associated with that vessel against the other information it holds on its database. It would search its database for other vessels with which the POI is associated. The Secretariat would then notify Members, including whether the POI is associated with other vessels, so that this information can be taken into account by national decision-makers when deciding whether to grant a licence or other authorisation to fish.

Category "C"

This category of POI covers persons who are suspected of committing offences or involvement in other activity which would warrant their being identified as persons to watch, or who are associated with vessels suspected of this.

Members would inform the Secretariat about such POI or vessels. The Secretariat will also check its database to ascertain whether such POI are also associated with other vessels on the database. In the event that they are associated with other vessels, this information would also be provided to the national authorities of other Members.

Procedures for Removal of a POI from the Register

As set out in the draft regulations, a Member may inform the Secretariat at any time that the information provided by them needs to be removed from the FFA POI Register, where:

(i) they consider that there was an error in the information provided;
(ii) they consider that the reason for inclusion on the POI Register no longer applies;
(iii) they are satisfied that the information provided in respect of a legal or natural person is no longer relevant to achieving the objectives of the POI strategy.

9. Beneficial Ownership

A vessel is beneficially owned if its registered owner is owned or controlled by another legal or natural person. Control may take a number of forms:

- a natural person(s) may directly or indirectly hold a minimum percentage of ownership interest in the legal person, for example more than 25% of shares.

- shareholders may exercise control alone or together with other shareholders, including through a contract, understanding, relationship, intermediary or tiered entity.
- a natural person(s) may exert control through other means, such as personal connections, over shareholders and others in control.
- a natural person(s) may exert control without ownership by financing the enterprise, through close and intimate family relationships, historical or contractual associations, and so on.

Sourcing and verifying accurate beneficial ownership information can be difficult. However, a number of countries are beginning to implement systems to better identify beneficial owners of assets and entities in order to strengthen their ability to fight corruption, serious and organised crime and improve tax transparency, in line with the FATF Recommendations, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and the OECD's Common Reporting Standard.

Some countries maintain centralised company registries containing beneficial ownership information, which may be either publicly available or available to authorised persons. In other countries, the information can only be obtained by searching individual company registers. This can be both time-consuming and expensive. Beneficial ownership information can also be obtained from third party providers who provide customer due diligence, Know Your Customer (KYC) and verification services for the financial sector. This information can be cross referenced against details held on IMO and RFMOs registries. The FFA may be able to engage the Pacific Fusion Centre to assist with validating beneficial ownership information, subject to resources.

A practical approach, in line with international approaches, would be for each Member to require vessel registrants to provide the details of the ultimate beneficial owner of the vessel where this amounts to 25% or more, or where the person has effective control of the vessel. This should include interests less than 25% but which cumulatively exceed 25%.

Members should be aware that there may be several corporate layers between the vessel registrant and the ultimate beneficial owner, which will require research to uncover. Accordingly, they should ensure that either they or the FFA Secretariat obtain authorisation from the vessel registrant or other appropriate entity to undertake that research.

Nauru's *Beneficial Ownership Act 2017*, subsection 27(c), provides an example of how this could be done. It allows "a third party that is authorised by a legal entity, to access beneficial ownership information in relation to that legal entity to which the authorisation applies."

In some cases, it will not be possible to obtain the details of the ultimate beneficial owner of the vessel. If the Member determines that the information cannot otherwise be reasonably obtained or verified, Members should be able to require the vessel owner (or other appropriate person) to sign a declaration certifying the accuracy of the beneficial ownership information they have provided. This should include:

- the full name of the legal entity;
- information about whether it is registered by a foreign registration body, including identification number, jurisdiction of registration, corporate structure, and the full name and full residential address of each beneficial owner;
- the full name of the appropriate officer;
- certification by the appropriate officer that the information contained in the disclosure certificate is true, accurate, and complete, to the best of their knowledge and belief; and
- the date of certification by the appropriate officer.

Members who are also members of the FATF or Asia Pacific Group on Money Laundering, may also consider designating their vessel registries as reporting institutions, should their National Risk Assessment indicate this is appropriate. The registry would then be subject to financial transaction reporting obligations, and would facilitate a closer relationship with each Member's Financial Intelligence Units (FIUs). FIUs serve as national centres to receive and analyse reports of suspicious transactions, and can share the results with local law enforcement agencies and internationally.

Reporting institutions must comply with customer due diligence obligations (adapted to address the risks present in the jurisdiction), retain records for a minimum period, and provide information regarding suspicious activity to their national FIU. National FIU can provide training on how to meet these obligations, investigate reports of suspicious activity, as well as conduct research into trends and developments in financial misconduct, informed by data available through their global network. For example, in response to risks identified in its Money Laundering and Terrorist Financing Risk Review, the Cook Islands designated its shipping registry, Maritime Cook Islands, as a reporting institution. Maritime Cook Islands must conduct customer due diligence on vessel registrants, and provide a suspicious activity report to the Cook Islands FIU if it has reasonable grounds to suspect the controlling principal of a vessel has, or is intending to use the vessel to commit a serious offence, or is connected to terrorist activity. The FIU can search registration of vessels, fishing licences, and other databases to detect evidence of such crimes for further investigation.

In the first instance, however, it should be recalled that under heading 7, it is recommended that information on beneficial ownership should be obtained at the authorisation stage. Although it is not expected that all applicants for a fisheries authorisation will be honest in providing this information, it will give Members an important tool in dealing with those found subsequently to have been dishonest.

Note that Annex 1 HMTCs make no reference to beneficial ownership information, and may need further consideration in this respect.

10. Role of FFA Members

Capacity issues at the national level will be an important issue for Members including in relation to collecting, verifying and keeping POI data up-to-date especially as regards shareholders and complex company arrangements.

It is the role of Members to strengthen national capacities, review legislation, policies and procedures and also strengthen inter-agency cooperation of national agencies.

Having POI data available to enforcement officers would mitigate risks at sea by, for example, a boarding party being able to take into account any past violent offences associated with a vessel or individuals on it before boarding.

In response to concerns relating to accuracy of data, it is not expected everyone will be completely honest in providing additional information at the licencing stage. The tactic is that by having vessels operators provide this information, we can then take action against them later and they cannot deny information they have provided earlier. Note also the proposal to include a regulation to facilitate getting information at a later stage included under heading 7 above.

(This is adapted from Annex C of the report of the March workshop.)

ROLE OF FFA MEMBERS shall be to:

1. strengthen national capacities through reviewing legislation, policies and procedures relating to data provision and management, noting resource constraints.

2. collect POI data and information from available sources and ensure it is accurate, up-to-date and provide this to the Secretariat in accordance with obligations in Article 19, Annex A of the NTSA and national laws.

3. strengthen inter-agency cooperation of national agencies.

4. provide timely updates on POI-related information to the Secretariat.

11. Role of FFA Secretariat

See separate document on the role of the FFA Secretariat, in **Annex F**.

12. RFMO Practice in making information available

While all RFMOs have records of authorised vessels, most do not include sufficient information to identify the people and companies that own and control the vessels on the register. There is a need to move to a situation where authorised vessel lists contain more information so that individuals (including beneficial owners) can be identified. Attention is drawn to the draft WCPFC CMM contained in Annex C which would require additional information relating to beneficial owners to be provided in an application to be on the record of fishing vessels. Once one RFMO moves on an issue like this, others are likely to follow suit.

FFA members should take up this matter with WCPFC in order to facilitate obtaining the information on beneficial owners, both legal and natural persons. In particular, they should promote the adoption of the draft CMM in Annex C.

13. Privacy

This issue has been exhaustively discussed at previous meetings on POI, and extensive research undertaken.

The draft regulations attached provide robust protection on the subject of privacy. See in particular, Regulations 6, 7, 8, and 9 in the draft regulations.

14. Draft regulations

Draft regulations for Parties and non-Parties have been developed and are attached at **Annexes A and B**. While some Members may be able to adopt such regulations without need to amend primary legislation, this would not be the case for all Members. This would need to be considered on a case-by-case basis.

It was noted that further work may be needed in relation to the references in the draft regulations to ‘persons of interest’ and ‘serious violation’, including the addition of ‘serious offence’ as defined in the HMTCs, and that the regulations will also need to be linked to the HMTCs. In this regard it was noted that for now these regulations are a work in progress.

15. Follow up action and strategy

Once the elements of a POI register have been agreed between Members, there is a need to get buy-in from foreign flag States based outside of the region to successfully implement the POI initiatives. In this regard, there will be push-back from DWFNs given past responses to initiatives requiring flag State action. This buy-in could be achieved through framing the initiative as part of the ongoing work in combatting IUU fishing which is supported by all States.

An important follow up will be to propose text for inclusion in the UN General Assembly resolutions and also engaging with key DWFNs in the post-Forum dialogue in the context of giving effect to the strong statements that are made by leaders on combatting IUU fishing.

It is also proposed to that Members raise relevant aspects of the initiative in US Tuna Treaty discussions in context of the regular consultations and also seek support from NGOs. The idea behind this strategy is to build political momentum behind this POI initiative. This is not just an issue for the FFA Members, although they are the core of this.

Finally, a draft POI checklist is included at **Annex D**.

Annex A: Draft Regulations for Parties to the NTSA

1. These Regulations are made pursuant to section [x] of *[X] Act.*

2. Purpose

The purpose of these regulations is:

(i) to provide a legal basis for the collection, use and sharing of fisheries data and intelligence, including in accordance with international treaties, with NTSA Parties, non-parties and organisations,

(ii) to ensure that fisheries data and intelligence provided is stored, managed, used and made available in accordance with relevant security standards and data sharing protocols adopted by the Forum Fisheries Committee of the Forum Fisheries Agency.

(iii) to establish a list of specific natural or legal POI.

PART A – General provisions

3. **Interpretation**.

3.1 For the purposes of these Regulations:

'Administrator' means the Director-General of the Forum Fisheries Agency, performing the role of administering the FFA POI register.

(i) 'confidential information' means any fisheries data and intelligence listed in Annex A of the Niue Treaty Subsidiary Agreement that is required to be provided under Article 19 of that Agreement [and] [country to insert any other information that they wish to designate as 'confidential'].

(ii)'Directors' are those persons appointed in the normal way in accordance with the rules of the company in question.

(iii)'De facto directors' are those who have not been validly appointed but act in the position of a director.

(*iv*) 'NTSA' means the *Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* done at Honiara, Solomon Islands on 2 November 2012

(*v*) 'personal information' includes an opinion.

(*vi*) a 'serious violation' means:

> (a) fishing without a valid licence, authorization or permit issued by [name of country], another coastal State, or group of coastal States;
>
> (b) failing to maintain accurate records of catch and catch-related data, as required by [country] or another relevant coastal State or the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of [the country] or another relevant coastal State, organization or arrangement;
>
> (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by [Country] or another relevant

coastal State or relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear or prohibited fishing methods;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations of the fisheries laws of [country] or another relevant coastal State which together constitute a serious disregard of conservation and management measures;

(i) use of force against an authorised officer or observer;

(j) providing false information in respect of an application for an authorisation; or

(k) transhipment of fish and fish products without authorisation.

(*vii*) 'Shadow directors' are those whose instructions or wishes are customarily followed by the validly appointed directors.

3.2 For the purposes of these Regulations, terms defined in the NTSA shall have the same meaning set out in the NTSA.

4. The National Authority

4.1. The [insert relevant fisheries Department/Agency or Authority] shall be responsible for giving effect to these regulations.

4.2 All personnel authorised to access the Niue Treaty Information System nominated in [name of country's] Annex C(2) notification shall have authority to access confidential information stored on the information management facility.

4.3 In accordance with the FFA's Information Security Management System policy as amended, and [any relevant domestic policies], confidential information must not be disclosed to any person or organisation unless that person or organisation is authorised to access that information.

4.4 Official contacts nominated in [name of country's] Annex C(2) shall have the authority to collect and provide confidential information to NTSA Parties, non-Parties and organisations, where appropriate and to the NTSA Administrator, as provided for under the NTSA.

5 Power to obtain and disclose POI Information.

5.1 Official Contacts of the National Authority shall have the power to obtain identifying information from courts, tribunals and police concerning natural and legal persons convicted of a serious violation for the purpose of having that type of confidential information shared with other NTSA Parties and the NTSA Administrator, and placed on the FFA POI Register to be maintained by the NTSA Administrator.

5.2 Official Contacts of the National Authority shall have the power to obtain specific details from courts, tribunals and police on all fully adjudicated prosecutions, violations and settlements relating to fishing vessels that are a matter of public record, for the purpose of having that type of confidential information shared with other NTSA Parties and the NTSA Administrator.

6 Confidentiality

6.1 Confidential information obtained under the NTSA must only be accessed if the person is authorised to access that information.

6.2 Confidential information must not be disclosed to any person or organisation unless that person or organisation is authorised to access that information and the person disclosing the information is authorised to disclose it.

6.3 Personnel authorised to access the Niue Treaty Information System or information management facility shall only access confidential information to the extent that it is necessary to carry out their duties and responsibilities under the Act.

6.4 Personnel authorised to access the Niue Treaty Information System or information management facility must take appropriate action to minimise the risk of unauthorised disclosure of confidential information.

7. Authority to disclose information.

7.1 Official Contacts nominated in [name of country's] Annex C (2) notification shall have the authority to disclose confidential information obtained to:

(i) a government of a foreign country party to the NTSA;

(ii) an instrumentality of such a government;

(iii) an international organisation; and

(iv) the Administrator of the NTSA.

7.2 Prior to any personal information being forwarded to any of the bodies referred to in paragraph 7.1 above, the Official Contact shall make reasonable efforts to inform in writing the natural or legal person concerned and provide that person an opportunity to draw attention in writing to any inaccuracy in the information.[2]

7.3 If no reply has been received within twenty-one days from the date on which the Official Contact first sought to inform the natural or legal person concerned, the personal information transmitted to that person shall be deemed to be correct.

[2]In normal circumstances, there will be information available on a licence application form which will meet the requirement of reasonable efforts to inform the legal or natural person in writing of the confidential information being transmitted.
In the event that such information is not available from such a source, requesting the assistance of the flag State might help. In the case of a legal person, a request for information from a company registry might reveal something.
In the end, the steps taken need to be reasonable but that does not mean exhaustive.

7.4 If an Official Contact is satisfied that the personal information is correct, or no reply has been received in accordance with subparagraph 7.3, he or she may transmit it to the Administrator, or to any of the bodies referred to in paragraph 7.1 above.

7.5 Where an Official Contact is satisfied that the personal information is incorrect in a significant particular, he or she shall not transmit that information.[3]

7.6 An Official Contact may inform the Administrator at any time that the personal information provided by her or him needs to be removed from the FFA POI Register where:

(i) he or she considers that there was an error in the personal information sent to the Administrator,

(ii) the Official Contact considers that the reason for inclusion on the FFA POI Register no longer applies, or

(iii) the Official Contact is satisfied that the personal information provided in respect of a legal or natural person is no longer relevant to achieving the objectives of the NTSA.

Part B - Specific provisions for confidential information relating to POI for Fisheries Purposes

8. Criteria for inclusion.

1. The criteria for inclusion on the POI Register shall be as follows:

(a) fully adjudicated cases before national courts or tribunals in respect of serious violations of fisheries laws and regulations by natural or legal persons, where a natural or legal person has not complied with a civil or criminal judgment in respect of such violations;

(b) evidence exists that gives reasonable cause to believe that the operator has committed a serious offence against the fisheries laws or regulations of an FFA member and it has not been possible to bring the operator to trial;
(c) where a natural or legal person has been named against an IUU vessel list adopted by an RFMO or regional fisheries organisation;
(d) fully adjudicated cases before national courts or tribunals in respect of serious violations of fisheries laws and regulations by natural or legal persons, where any penalties imposed have been paid or otherwise satisfied;

(e) settlements of serious violations concerning natural or legal persons where the information is publicly listed or is otherwise available;

(f) recidivist offenders in relation to violating fisheries laws and regulations;

(g) instances where a natural or legal person has not complied with a civil or criminal judgment in respect of a serious violation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures;

[3] Note: when Parties provide fisheries data and intelligence, it will be stored in a database that is managed by the Administrator and accessible by all other NTSA Parties so there would be no need for a country to separately provide to other NTSA Parties. This would be helpful for Article 21 information sharing with non-NTSA parties or organisations.

(i) Instances where a natural or legal person has been found guilty of a serious violation of the fisheries laws of another State;

(g) where a natural or legal person has been named against an IUU vessel list adopted by an RFMO or regional fisheries organisation;

(h) where a natural or legal person has been found guilty of a transnational crime including money laundering, drug trafficking, the slave trade, or reckless disregard for the health or safety or harsh treatment of workers, committed on board a fishing vessel.

2. Where there is a reasonable suspicion that a natural or legal person has committed a serious violation or has otherwise acted in a manner that warrants their inclusion on the list in accordance with these criteria, the Official Contact may include that person on that list.

9. Use of POI information

9.1 Where a natural or legal person has been placed on the POI Register maintained by the Administrator under the NTSA, this information shall be taken into account by those authorised to grant authorisations or to suspend or cancel authorisations when deciding whether to grant an authorisation or other authorisation to fish in of any fishing vessel in which such person is listed as the master, fishing master, navigator, charterer, owner, director, *de facto* director, and shadow director.

9.2 POI information may also be used to inform monitoring, control and surveillance planning and conduct of activities, provide better information for decision makers verifying at the national level information sourced from regional fisheries management organizations, and to assist with a decision whether or not to register a vessel with good standing on the FFA register, or as appropriate.

10. Extra-territorial effect

These Regulations shall have extraterritorial effect according to their tenor.

Annex B: Draft Regulation for non-parties to the NTSA.

[Note: The draft regulation for non-parties to the NTSA has been developed in recognition that while some FFA Members are not yet Party to the NTSA, the intention behind the POI Strategy is for all FFA Members to be involved in the provision and sharing of persons of interest data and intelligence. The draft regulation for non-parties to the NTSA includes additional definitions rather than cross-referencing to the text of the NTSA for interpretation of those terms. This is important as for certain legal systems, incorporation of treaty terms into domestic law can only occur where the relevant country is a party to the treaty concerned.]

1. These Regulations are made pursuant to section [x] of *[X] Act.*

2. Purpose

The purpose of these regulations is:
(i) to provide a legal basis for the collection, use and sharing of POI data and intelligence, including in accordance with international treaties;
(ii) to ensure that POI data and intelligence provided is stored, managed, used and made available in accordance with relevant security standards and data sharing protocols adopted by the Forum Fisheries Committee of the Forum Fisheries Agency.
(iii) to establish a list of specific natural or legal POI

PART A – General provisions

3. **Interpretation**.

3.1 For the purposes of these Regulations:
(*i*) 'Administrator' means the Director-General of the Forum Fisheries Agency, performing the role of administering the FFA POI Register.
(*ii*)'Directors' are those persons appointed in the normal way in accordance with the rules of the company in question.

(iii) 'De facto directors' are those who have not been validly appointed but act in the position of a director.

(*iv*) 'confidential information' means any POI data and intelligence, including information concerning the identity of specific natural or legal persons of interest from a national fisheries perspective, the reasons for listing such persons on the FFA POI Register and any specific requests regarding action to be taken with respect to those persons [and] [country to insert any other information that they wish to designate as 'confidential'].
(*v*) 'information management facility' means the information management system used by the Administrator to store, manage and make available POI data.
(*vi)* 'NTSA' means the *Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* done at Honiara, Solomon Islands on 2 November 2012
(*vii*) 'personal information' includes an opinion;
(*viii*) a 'serious violation' means:

> (a) fishing without a valid licence, authorization or permit issued by [name of country], another coastal State, or group of coastal States.
> (b) failing to maintain accurate records of catch and catch-related data, as required by [country] or another relevant coastal State or the relevant subregional or regional fisheries management organization or arrangement, or

serious misreporting of catch, contrary to the catch reporting requirements of [the country] or another relevant coastal State, organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by [Country] or another relevant coastal State or relevant subregional or regional fisheries management organization or arrangement;
(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
(e) using prohibited fishing gear or prohibited fishing methods;
(f) falsifying or concealing the markings, identity or registration of a fishing vessel;
(g) concealing, tampering with or disposing of evidence relating to an investigation;
(h) multiple violations of the fisheries laws of [country] or another relevant coastal State which together constitute a serious disregard of conservation and management measures;
(i) use of force against an authorised officer or observer;
(j) providing false information in respect of an application for an authorisation; or
(k) transhipment of fish and fish products without authorisation.

(*ix*) 'Shadow directors' are those whose instructions or wishes are customarily followed by the validly appointed directors.

4. The National Authority

4.1. The [insert relevant fisheries Department/Agency or Authority] ('the National Authority') shall be responsible for giving effect to these regulations.
4.2 All personnel authorised to access the FFA POI Register as by [insert relevant fisheries Department/Agency or Authority] shall have authority to access confidential information stored on the information management facility.
4.3 In accordance with the FFA's Information Security Management System policy as amended, and [any relevant domestic policies], confidential information must not be disclosed to any person or organisation unless that person or organisation is authorised to access that information.
4.4 [Insert relevant fisheries Department/Agency or Authority] shall nominate one or more Official Contacts.
4.4 Official contacts shall have the authority to collect and provide confidential information to FFA Members and organisations, where appropriate and to the Administrator, as provided for under this Regulation.

5 Power to obtain and disclose POI Information.

5.1 Official Contacts of the National Authority shall have the power to obtain identifying information from courts, tribunals and police concerning natural and legal persons convicted of a serious violation for the purpose of having that type of confidential information shared with other FFA Members and the Administrator, and placed on the FFA POI Register to be maintained by the Administrator.

5.2 Official Contacts of the National Authority shall have the power to obtain specific details from courts, tribunals and police on all fully adjudicated prosecutions, violations and settlements relating to fishing vessels that are a matter of public record, for the purpose of having that type of confidential information shared with other FFA Members and the Administrator.

6 Confidentiality

6.1 Confidential information obtained for the purposes of the POI Strategy must only be accessed if the person is authorised to access that information.

6.2 Confidential information must not be disclosed to any person or organisation unless that person or organisation is authorised to access that information and the person disclosing the information is authorised to disclose it.

6.3 Personnel authorised to access the FFA POI Register or information management facility shall only access confidential information to the extent that it is necessary to carry out their duties and responsibilities under the Act.

6.4 Personnel authorised to access the FFA POI Register or information management facility must take appropriate action to minimise the risk of unauthorised disclosure of confidential information.

7. Authority to disclose information.

7.1 Official Contacts shall have the authority to disclose confidential information obtained to:

(i) a government of a foreign country which is a Member of the FFA;
(ii) an instrumentality of such a government;
(iii) an international organisation; and
(iv) the Administrator.

7.2 Prior to any personal information being forwarded to any of the bodies referred to in paragraph 7.1 above, the Official Contact shall make reasonable efforts to inform in writing the natural or legal person concerned and provide that person an opportunity to draw attention in writing to any inaccuracy in the information.[4]

7.3 If no reply has been received within twenty-one days from the date on which the Official Contact first sought to inform the natural or legal person concerned, the personal information transmitted to that person shall be deemed to be correct.

7.4 If an Official Contact is satisfied that the personal information is correct, or no reply has been received in accordance with sub paragraph 7.3, he or she may transmit it to the Administrator, or to any of the bodies referred to in paragraph 7.1 above.

7.5 Where an Official Contact is satisfied that the personal information is incorrect in a significant particular, he or she shall not transmit that information.

7.6 An Official Contact may inform the Administrator at any time that the personal information provided by her or him needs to be removed from the FFA POI Register where:

(i) he or she considers that there was an error in the personal information sent to the Administrator,
(ii) the Official Contact considers that the reason for inclusion on the FFA POI Register no longer applies, or

[4] In normal circumstances, there will be information available on a licence application form which will meet the requirement of reasonable efforts to inform the legal or natural person in writing of the confidential information being transmitted.
In the event that such information is not available from such a source, requesting the assistance of the flag State might help. In the case of a legal person, a request for information from a company registry might reveal something.
In the end, the steps taken need to be reasonable but that does not mean exhaustive.

(iii) the Official Contact is satisfied that the personal information provided in respect of a legal or natural person is no longer relevant to achieving the objectives of the POI strategy.

Part B - Specific provisions for confidential information relating to POI for Fisheries Purposes

8. Criteria for inclusion.[5]

1. The criteria for inclusion on the FFA POI Register shall be as follows:
(a) fully adjudicated cases before national courts or tribunals in respect of serious violations of fisheries laws and regulations by natural or legal persons, where a natural or legal person has not complied with a civil or criminal judgment in respect of such violations;
(b) evidence exists that gives reasonable cause to believe that the operator has committed a serious offence against the fisheries laws or regulations of an FFA member and it has not been possible to bring the operator to trial;
(c) where a natural or legal person has been named against an IUU vessel list adopted by an RFMO or regional fisheries organisation;
(d) fully adjudicated cases before national courts or tribunals in respect of serious violations of fisheries laws and regulations by natural or legal persons, where any penalties imposed have been paid or otherwise satisfied;
(e) settlements of serious violations concerning natural or legal persons where the information is publicly listed or is otherwise available;
(f) recidivist offenders in relation to violating fisheries laws and regulations;
(g) multiple violations which together constitute a serious disregard of conservation and management measures;
(h) Instances where a natural or legal person has been found guilty of a serious violation of the fisheries laws of another State;
(i) where a natural or legal person has been found guilty of a transnational crime including money laundering, drug trafficking, the slave trade, or reckless disregard for the health or safety or harsh treatment of workers, committed on board a fishing vessel.

2. Where there is a reasonable suspicion that a natural or legal person has committed a serious violation or has otherwise acted in a manner that warrants their inclusion on the Register in accordance with these criteria, the Official Contact may include them on that Register.

9. Use of POI information

9.1 Where a natural or legal person has been placed on the FFA POI Register maintained by the Administrator, this information shall be taken into account by those authorised to grant licences or to suspend or cancel licences when deciding whether to grant a licence or other authorisation to fish in respect of any fishing vessel in which such person is listed as the master, the fishing master, navigator, charterer, owner, director, *de facto* director, and shadow director.

[5] Clause 8.1 is intended to cover those criteria which fall within Category A (Clause 8.1(a)-(c)) and Category B (Clause 8.1 (d)-(i)), as described in the FFA Persons of Interest Discussion Paper. Clause 8.2 is intended to cover Category C POI, as described in the FFA Persons of Interest Discussion Paper.

9.2 POI information may also be used to inform monitoring, control and surveillance planning and conduct of activities, provide better information for decision makers verifying at the national level information sourced from regional fisheries management organizations, and to assist with decision whether or not to register a vessel with good standing on the FFA register, or as appropriate.

10. Extra-territorial effect
These Regulations shall have extraterritorial effect according to their tenor.

Annex C: Strategy for better identifying POI including beneficial owners

Draft WCPFC Conservation and Management Measure
The Western and Central Pacific Fisheries Commission (WCPFC):

Recalling its previous expressions of concern about vessels carrying out illegal, unreported and unregulated (IUU) fishing activities in the Convention Area which undermine the effectiveness of the conservation measures adopted by the WCPFC,

Conscious of the need to continue to address, as a matter of priority, the issue of vessels conducting IUU fishing activities,

Recalling Articles 23 and 25 of the WCPFC Convention regarding the obligations of members of the Commission and provisions for compliance and enforcement,

Recalling Conservation and Management Measure 2010-06 to establish a List of Vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the WCPO,

Recalling Conservation and Management Measure 2018-06 regarding the WCPFC Record of Fishing Vessels and Authorization to Fish,

Bearing in mind United Nations General Assembly resolution 72/72 of 5 December 2017, paragraph 74 of which urges States to effectively exercise jurisdiction and control over their nationals, including beneficial owners, and vessels flying their flag, in order to prevent and deter them from engaging in illegal, unreported and unregulated fishing activities or supporting vessels engaging in illegal, unreported and unregulated fishing activities, including those vessels listed by regional fisheries management organizations or arrangements as engaged in those activities, and to facilitate mutual assistance to ensure that such actions can be investigated and proper sanctions imposed;

Convinced of the need to better identify persons of interest (POI) involved in the operation and ownership of vessels carrying out IUU fishing, including beneficial owners, for the purpose of implementing paragraph 19 of CMM 2010-06, so as to ensure the more effective implementation of the IUU Vessel list;

Adopts the following conservation and management measures in accordance with Article 10 of the Convention:

Members' record of fishing vessels
Paragraph 6 of CMM 2018-06 shall be amended as follows:
33
(1)….
(b) name and address of the owner or owners, including beneficial owners as referred to in subparagraph 2(b), dates of birth in the case of natural persons, and their Unique Person Identifiers (UPIs) as referred to in subparagraph 2(d);

(b *bis*) name and address of the operator or operators, and charterers if any, their dates of birth in the case of natural persons, and their UPIs;

(c) name, address, nationality and date of birth of the master and fishing master and their UPIs;

(2)(a) Where a name or address is required to be submitted to the Executive Director under this paragraph, the information provided shall be stated accurately and with sufficient detail and clarity to enable the legal entity or person and their address to be precisely identified.

(b) For the purposes of subparagraph 1(b), a "beneficial owner" of a vessel is a natural person who:
i) owns, directly or indirectly, more than 25% of the vessel; or

ii) who has ultimate and effective control of the vessel, either directly or indirectly.
(c) For the purpose of subparagraph 2(b)(ii), "control" includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to determine decisions about financial and operating policies.

(d) A Unique Person Identifier (UPI) is an official identity number such as a passport number or social security number, or any other officially issued number or identification that is specific to and unique to the individual in question, or a company or other registration number in the case of a legal entity that is not a natural person, and which can therefore be used as a corroborative means to specifically identify them.

Annex D: Draft POI Checklist

(Note: this is subject to change as a result of various policy decisions yet to be taken)

ACTION BY MEMBERS

(A) Collection of Information by Members when authorising vessels

(1) When authorising a vessel to fish in its Exclusive Economic Zone, or to fish under its flag on the high seas, each Member should obtain the following information regarding the natural and legal persons associated with the vessel:

- Name, address, date of birth and passport number of Master
- Name, address, date of birth and passport number of Fishing Master
- Name, address, date of birth and passport number of Navigator
- Name, address, date of birth and passport number of Charterer
- Names, addresses, dates of birth and passport numbers of Owner
- Names, addresses, dates of birth and passport numbers of Beneficial Owners
- Names, addresses, dates of birth and passport numbers of *de facto* Directors
- Names, addresses, dates of birth and passport numbers of shadow Directors

When the original passport is not available for inspection by the Member, a certified copy of the biodata page is to be provided to the Member. If the passport is not in the English language, a certified English language translation of the biodata page shall be provided.

(In the unlikely event that passport numbers are not available other suitable national identification such as a seafarer book number may be used)

- The Beneficial Owners, *de facto* Directors and shadow Directors should be determined on the following basis:
  A Beneficial Owner is……….[see discussion above at pages 3 and 9]
  A *de facto* Director is……….[see discussion above at pages 3 and 9]]
  A shadow Director is………..[see discussion above at pages 3 and 9]]

- Where a vessel is flagged to another country, and/or where it is owned by a natural or legal person in another country, the Member should require that the vessel provide a certificate from the government of that country or countries confirming that the details of ownership, including beneficial ownership are correct according to any relevant registries of that country or in accordance with FATF procedures.

- Members should require that the vessel or its agent must advise the Member of any changes to the information set out above within 14 days of such change.

(B) Provision of this Information by Members to the Secretariat

(1) When a Member has collected this information, it should be provided to the Secretariat within 14 days for inclusion on the FFA Register of Licensed Fishing Vessels, as well as the following information:

- Name of vessel
- Flag and Registry of Vessel
- IMO Number (where applicable)
- Any other details that are required regarding the vessel for inclusion in the Register of Licensed Fishing Vessels

(2) Any changes to this information should also be notified to the Secretariat within 14 days.

(C) Provision of Information regarding vessels which will affect their good standing on the Regional Register (category "A" POI refers)

Members should provide this information to the Secretariat in accordance with the procedures relating to the operation of the Regional Register.

Members should promptly inform the Secretariat of any changes to this information which would result in the reinstatement of a vessel's good standing, in accordance with the procedures relating to the operation of the Regional Register.

(D) Provision of Information regarding vessels involved in category "B" offences (category "B" POI refers)

Members should inform the Secretariat about vessels or natural or legal persons which have committed offences or violations falling within the categories listed for B.

As much detail as possible should also be provided of the offences or violations in question, so as to assist decision-makers in other Member countries with their assessment whether or not to grant a licence or authorisation in light of these offences or violations.

(E) Provision of information regarding persons to watch (category "C" POI)

Members may inform the Secretariat about vessels or persons who are suspected of committing offences or violations or of involvement in other activity which would warrant their being identified as persons to watch in category "C".

(F) A Member may request Removal of a POI from the POI Register

A Member may inform the Secretariat at any time that the information provided by them needs to be removed from the FFA POI Register, where:

(i) they consider that there was an error in the information provided;

(ii) they consider that the reason for inclusion on the POI Register no longer applies;

(ii) they are satisfied that the information provided in respect of a legal or natural person is no longer relevant to achieving the objectives of the POI strategy.

ACTION BY THE FFA SECRETARIAT

(A) Collecting information relevant for possible POI purposes when registering vessels under the Regional Register

(B) Maintaining a database of information collected under (A) and also information provided by Members when authorising vessels

The FFA Secretariat will receive from Members the information they have collected when authorising a vessel to fish in its Exclusive Economic Zone, or to fish under its flag on the high seas, under (B) above.

This information will be compiled by the Secretariat onto a database.

(C) Cross-checking of information regarding POI and vessels

(1) (a) When the Secretariat receives information from a Member about the commission of a serious offence by a vessel operator which would warrant it being denied good standing on the Regional Register in accordance with the procedures regarding the Regional Register, it will check its database to identify other natural or legal persons associated with that vessel, who shall become Category "A" POI.

(b) The Secretariat shall then check its database to ascertain whether Category "A" POI are also associated with other vessels on the Regional Register.

(c) If a Category "A"POI is associated with any other vessels on the Regional Register, such other vessels shall also have their good standing withdrawn.

(d) The Secretariat will follow a similar procedure with regard to any vessel which has been listed on an IUU Vessel List in accordance with (d) in Category "A", or which satisfies other grounds which may be specified in the HMTCs in accordance with (e) in Category "A".

(e) When a Member has informed the Secretariat of any changes which would result in the reinstatement of a vessel's good standing in accordance with the procedures relating to the operation of the Regional Register, the good standing of other associated vessels shall also be reinstated, and the associated POI shall be moved from a Category "A" POI to a Category "B" POI.

(2) (a) When the Secretariat receives information from a Member about offences or violations which have been committed by a vessel within the scope of Category "B", it will check its database to identify other natural or legal persons associated with that vessel, who shall be Category "B" POI. Where the offences or violations have been committed by natural or legal persons rather than a vessel those persons shall be Category "B" POI.

(b) This includes information regarding crew members who have been involved in assault, obstruction, resist, delay, refuse boarding to, intimidate, use of threatening or abusive language or behaving in a threatening or insulting manner, and interfering in any way with the performance of the duties of an authorised officer or observer in accordance with (g) in Category "B", so that enforcement officers or observers dealing with the vessel in future can be forewarned of the presence of such persons.

(c) The Secretariat shall then check the information on its database to ascertain whether Category "B" POI are also associated with other vessels.

(d) The information in (a) and (c), including the details of the offences or violations, shall be communicated to Members so that this information can be taken into account by national decision-makers when deciding whether to grant a licence or other authorisation to fish to Category "B" POI or vessels with which they are associated.

(e) The information in (b) shall be communicated to Members, so that enforcement officers or observers dealing with the vessel in future can be forewarned of the presence of such crew members.

(3) (a) When a Member has informed the Secretariat about vessels or persons who are suspected of committing offences or violations or of involvement in other activity which would warrant their being identified as persons to watch as category "C" POI, this information will be made available by the Secretariat to the national authorities of other members.

(b) The Secretariat will also check its database to ascertain whether category "C" POI are also associated with other vessels on the database, and if they are this information would also be provided to the national authorities of other Members for their information.

(D) FFA POI Register

The FFA will maintain a Register of Persons of Interest in Categories "A", "B" and "C", and will make information on it available to Members, as well as to Non-Members in accordance with procedures developed pursuant to Outcome 7 of the Draft POI Strategy.

(E) Cooperation with Non-Members

The FFA Secretariat may also more generally cooperate with non-members, including the receiving and sharing of information when approved, in accordance with procedures developed pursuant to Outcome 7 of the Draft POI Strategy.

<u>Annex E: Draft POI Categories, including proposed revisions highlighted in yellow (see section 8, page 7, above)</u>

Category “A”

A Category "A" Person of Interest is any Person who is associated with a vessel which is liable to be refused good standing or to have its good standing withdrawn for the following reasons in accordance with the HMTCs:

(a) the vessel operator* has been convicted of a serious offence against the fisheries laws or regulations of an FFA member and has not fully complied with any civil or criminal judgement in respect of such offence; or

(b) evidence exists that gives reasonable cause to believe that the operator* has committed a serious offence against the fisheries laws or regulations of an FFA member and it has not been possible to bring the operator to trial; or

(c) following notification by the Director-General on behalf of the FFA members the vessel operator*uses, continues to use or attempts to use fishing methods or fishing gear that are banned or considered harmful by the Forum Fisheries Committee; or

(d) the vessel has been listed on an IUU Vessel List of an RFMO or RFMO-like body and this will be grounds for the Director-General to have such vessel’s good standing withdrawn until such time as that vessel has been removed from the IUU list; or

(e) any other grounds which may be specified in the HMTCs for refusing a vessel good standing or withdrawing its good standing.

Any other vessel with which a Category "A" Person of Interest is associated shall also have its good standing refused or withdrawn.

*”Operator” includes the master and fishing master

Category “B”

This category of POI would be persons who are associated with vessels which have been involved in the commission of offences or violations, including serious offences covered by Category A, but do not warrant or longer warrant category “A” listing, for example, because the vessels have paid the requisite penalties. Without limiting how FFA Members define serious offences against their fisheries laws and regulation, the criteria for inclusion here would be:

(a) fully adjudicated cases before national courts or tribunals in respect of serious violations of fisheries laws and regulations by natural or legal persons, where any penalties imposed have been paid or otherwise satisfied; or

(b) settlements of serious violations concerning natural or legal persons where the information is publicly listed or is otherwise available; or

(c) recidivist offenders in relation to violating fisheries laws and regulations; or

(d) multiple violations which together constitute a serious disregard of conservation and management measures; or

(e) [deleted];

(f) where a natural or legal person has been found guilty of a transnational crime including money laundering, drug trafficking, the slave trade, or reckless disregard for the health or safety or harsh treatment of workers, committed on board, or in association with, a fishing vessel.

(g) where a crew member on a vessel has been involved in an assault, obstruction, resist, delay, refuse boarding to, intimidate, use of threatening or abusive language or behaving in a threatening or insulting manner, and interfering in any way with the performance of the duties of an authorised officer or observer. In such case the crew member involved shall be placed on the POI Register as an individual designation, even if their position on the vessel is less than that of master, fishing master or navigator

Where a natural or legal person has been placed on the POI Register as category "B", this information would be taken into account by national decision-makers when deciding whether to grant a licence or other authorisation to fish, but the ultimate decision whether or not to grant the licence or authorisation would remain with the national decision-makers.

Category "C"

This category of POI would be persons who are associated with vessels which are suspected of committing offences or involvement in other activity which would warrant their being identified as <u>persons to watch</u>.

Where there is a suspicion that a natural or legal person has committed a serious violation or has otherwise acted in a manner that warrants their inclusion on the Register in accordance with these criteria, the Official Contact may include them on that Register as category "C".

This information would be made available to national authorities. In its essence, it will be a working arrangement.

Annex F: Role of FFA Secretariat

While FFC retains the primary responsibility for providing general policy and administrative guidance for the operation of the POI register, the day to day work will be delegated to the FFA Secretariat, and this is given through the ISMS policy.

In particular, The FFA Secretariat should:

1. act as a repository of POI information from FFA Members (including NTSA and non-parties) and FFA non-Members for the purposes of maintaining the FFA POI Register.

2. should take an active role in de-listing of vessels associated with those POIs, in relation to Category A POIs (i.e. those who have not paid fines or who have not submitted themselves to the jurisdiction of the coastal State) a role similar to the processes occurring in RFMOs recognising each other's IUU vessel lists. However, the rules to achieve this will need to be clear and should not be left as a discretionary area for the Director-General.

(Note that the rules referred to will need to be drafted once the Categories of POI are finalised.)

3. develop and maintain the necessary IT infrastructure using the RIMF2 platform for the FFA POI Register that will allow FFA Members (including NTSA and non-Parties) access to the POI registry in accordance with consent provided by Parties in relation to the information.

4. ensure compatibility with IT systems including but not limited to the PNA Register.

5. ensure that security standards consistent with the FFA ISMS Policy are in place for POI information.

6. establish standards and guidance for Members to report POI information and assistance where requested.

7. to the extent possible, ensure that POI information received is accurate and reliable, including through liaising with relevant international and regional agencies.

8. liaise with relevant Members in relation to possible updates.

9. share POI information with Quads Partners and international organisations where consent of FFA Members (including NTSA and non-parties) has been provided.

10. where consent has been provided, use POI information for the colour coding scheme for vessels as part of the Regional Surveillance Picture.

11. provide assistance in reviewing national laws (in particular privacy laws) of FFA Members (including NTSA and non-parties) to remove domestic obstacles to providing POI information.

12. The Secretariat will organise training on beneficial ownership, possibly through the FFA/ANCORS negotiations course, or a separate course specifically dedicated to the subject.