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Rules and Procedures for the Protection, Access to, and Dissemination of High Seas Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Monitoring, Control or Surveillance (MCS) Activities and the Access to and Dissemination of High Seas VMS Data for Scientific Purposes

11th December 2009

Section I: Definitions

For the purpose of these Rules and Procedures, unless specifically defined herein, words and terms have the same meaning as in the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (“the Convention”), the Commission Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission), adopted by the Commission at its Fourth Annual Session in December 2007 (“the 2007 Rules and Procedures”) and any conservation and management measures or decisions adopted by the Commission.

Section II: Scope and Purpose

1. The scope of these Rules and Procedures is non-public domain¹ data and information covering high seas fishing activities in the Convention Area held by the Commission, including service providers or contractors acting on its behalf. Such data will be made available, principally by electronic means, for the purposes of fisheries monitoring, control or surveillance (MCS) activities in the high seas, the conduct of MCS activities by Members in areas under its national jurisdiction, and supporting an investigation, judicial or administrative proceeding, only in accordance with the 2007 Rules and Procedures and these Rules and Procedures. Vessel Monitoring System (VMS) data will also be made available, principally by electronic means, for scientific purposes in accordance with these Rules and Procedures.

2. Notwithstanding paragraph 1 above, paragraphs 17, 18, 19, 22, 29, 30, 31, and 32 of the 2007 Rules and Procedures apply to the protection, dissemination and access to, non-public domain data covered by these Rules and Procedures.

¹ As defined in Section 4.1 of the Commission’s Rules and Procedure for the Protection, Access to, and Dissemination of Data Compiled by the Commission.

Section III: General principles and Obligations

3. Non-public domain data and information held by the Commission and by service providers, or contractors acting on their behalf, contracted by the Commission shall be released only for the purposes described in Section II of these Rules and Procedures, and only in accordance with these Rules and Procedures; which reflect the policies of confidentiality and security of data and information adopted by the Commission.
4. Any data received from another RFMO will be considered WCPFC data once received and will be protected, accessed and disseminated pursuant to the 2007 Rules and Procedures and these Rules and Procedures.
5. Unless otherwise decided by the Member of the Commission responsible for its external affairs, a Participating Territory shall have the same access rights, confidentiality and security obligations and reporting requirements in respect of data and information compiled under these Rules and Procedures as Members.
6. Members of the Commission shall maintain the confidentiality and security of data received in accordance with these Rules and Procedures in a manner no less stringent than the security standards established by the Commission for the Secretariat in its Information Security Policy (ISP).
7. In accordance with procedures to be developed by the Commission, a Member of the Commission that has not fulfilled its obligations to provide data, as specified in *Scientific Data to be Provided to the Commission* or data obligations pursuant to conservation and management measures (CMMs) or other decisions of the Commission, to the Commission for two consecutive years shall not be granted access to non-public domain data and information in accordance with these Rules and Procedures until all such matters are rectified.
8. A Member of the Commission that has failed to comply with these Rules and Procedures shall immediately lose the ability to access non-public domain data and information in accordance with these Rules and Procedures until appropriate remedial actions have been taken by the Member and reported to the Commission in accordance with procedures to be developed by the Commission. The Secretariat will notify other Members of any Member(s) who no longer have access to non-public domain data pursuant to this paragraph.
9. The Secretariat and service providers contracted by the Commission shall provide data to Members in a timely manner.
10. Service providers and authorized sub-regional and national observer programs will provide data, excluding near-real time VMS data, to the Secretariat in accordance with reporting requirements adopted by the Commission.

Section IV: Provisions for Access and Dissemination

11. Members of the Commission shall notify the Secretariat of their MCS entities authorized to receive non-public domain data and information in accordance with these Rules and Procedures. Such notification shall include:

- A. all relevant contact information for the entity or entities (Authorized MCS Entities); and
- B. official point(s) of contact for each entity or entities, including telephone, facsimile numbers and email addresses (Authorized MCS Personnel).

12. The Secretariat shall maintain a register of Authorized MCS Entities and Personnel and the contact information provided. Members and the Secretariat shall ensure the register is kept up to date. The Secretariat shall make the register available to Members of the Commission on the secure section of the WCPFC website. Only the Authorized MCS Entities and Personnel recorded on the Commission's register are authorized to receive non-public domain data and information for MCS purposes in accordance with these Rules and Procedures. Members of the Commission shall ensure that data and information received pursuant to these Rules and Procedures may only be further disseminated by Authorized MCS Personnel to other personnel within Authorized MCS Entities responsible for fisheries MCS activities in the Convention Area, unless the data and information is being used in an investigation, judicial or administrative proceeding.

13. Authorized MCS Entities and Personnel may request and shall receive data covered by these Rules and Procedures for vessels that fish in waters under their jurisdiction and vessels applying to fish in their national waters, unload in their ports or transship within waters under their jurisdiction, except where paragraph 24 is applicable.

Commission Regional Observer Programme

14. The Executive Director, or designee, shall make available, upon written request, to Authorized MCS Personnel copies of observer reports for the high seas submitted to the Commission pursuant to the Commission's Regional Observer Programme (ROP), provided that the identity and contact information of individual observers is not revealed.

15. For the purpose of an investigation, judicial or administrative proceeding of an alleged violation of the provisions of the Convention, any conservation and management measures or decisions adopted by the Commission or applicable domestic laws and regulations, Authorized MCS Personnel may request and receive the identity and contact information for individual observers, if it is necessary to interview the observer to corroborate statements, have the observer serve as a witness, or to obtain additional information for that investigation, judicial or administrative proceeding.

16. Prior to contacting the observer, the Authorized MCS Personnel shall coordinate with the Member or sub-regional observer program responsible for the observer. Prior to initiating a judicial or administrative proceeding that may necessitate disclosure of the observer's identity or

the observer serving as a witness in such proceeding, the Authorized MCS Personnel shall inform in advance the Member or sub-regional observer program responsible for the observer.

High Seas Boarding and Inspection (HSB&I)

17. The Executive Director, or designee, shall make HSB&I reports submitted to the Commission by Contracting Parties available, upon written request, to Authorized MCS Entities and Personnel of Contracting Parties, and, subject to paragraph 5 of these Rules and Procedures, Authorized MCS Entities and Personnel of Participating Territories.

18. When, in accordance with the Commission's High Seas Boarding and Inspection Procedures, a Contracting Party has notified the Commission that those Procedures apply in their entirety as between that Contracting Party and a Fishing Entity, the Executive Director, or designee, shall make HSB&I reports submitted to the Commission regarding high seas boardings and inspections undertaken pursuant to paragraph 6 of the Commission's High Seas Boarding and Inspection Procedures by those Members available upon request to Authorized MCS Entities and Personnel of the Contracting Party concerned and a Fishing Entity.

High Seas VMS Data

19. The Executive Director, or designee, shall make available upon request to Authorized MCS Entities and Personnel VMS data received by the Commission pursuant to decisions of the Commission and the Commission's VMS Standards, Specifications, and Procedures (SSPs) for the planning and execution of MCS activities, as specified below.

20. VMS data other than near real-time may be made available to Authorized MCS Entities and Personnel upon request for MCS activities in high seas areas.

21. The Executive Director shall make near real-time VMS data² (ALC/static unique identifier, vessel identity (vessel name and WCPFC Identification number), current geographical position (in latitude and longitude) of the vessel, and date and time of the fixing of the position of the vessel) available to Authorized MCS Entities and Personnel for MCS activities in the high seas in accordance with the following provisions:

A. Only Authorized MCS Entities and Personnel from Members of the Commission with a MCS presence or capability³ in the high seas areas within the Convention Area will be able to obtain near-real time VMS data.

² For the purposes of these Rules and Procedures, "near real-time VMS data" means VMS data that are contemporaneous with the vessel's activity.

³ For the purposes of these Rules and Procedures, "a MCS presence or capability on the high seas of the Convention Area" includes monitoring, compliance and enforcement opportunities under regional cooperative enforcement arrangements, such as, but not limited to, ship-rider agreements, reciprocal arrangements under the Niue Treaty, or other bilateral arrangements.

B. Authorized MCS Entities or Personnel will request near real-time VMS data for the intended area of high seas MCS activities and provide the geographic area (in multiples of 10 degrees latitude and longitude with a north and south latitude boundary and an east and west longitude boundary) for such activities.

C. Authorized MCS Entities or Personnel shall advise the Secretariat at least 48 hours if possible in advance of the commencement of MCS activities in the notified geographic area of the high seas areas of the Convention Area. In the event that the MCS activities will no longer take place or if the notified geographic area of the high seas has changed, the Secretariat will be notified at least 48 hours in advance if possible.

D. The Executive Director or service providers contracted by the Commission shall then provide near real-time VMS data only for the notified geographic area of the high seas in the Convention Area.

E. In the event of an ongoing, real-time MCS action, Authorized MCS Entities and Personnel may request the Secretariat to provide near real-time VMS data for a specified geographic area (as outlined in B above) with less than 48 hours notice. The Executive Director or service providers contracted by the Commission shall make their best effort to comply with this request.

F. Service providers contracted by the Commission shall release near real-time VMS data to Authorized MCS Entities and Personnel only if authorized to do so by the Executive Director.

G. Authorized MCS Entities and Personnel shall notify the Secretariat 24 hours prior to the completion of the high seas MCS activities for which near real-time VMS data has been provided. The Executive Director shall not release, or authorize service providers contracted by the Commission to release, near real-time VMS data after the 24 hours have elapsed.

22. Authorized MCS Entities and Personnel may request and shall receive near real-time VMS data for high seas areas adjacent to and not more than 100 nautical miles from their exclusive economic zones (EEZs) for the purpose of conducting MCS activities, including in areas under their national jurisdiction.

23. Authorized MCS Entities and Personnel may request and shall receive VMS data other than near real-time for high seas areas adjacent to and not more than 100 nautical miles from their exclusive economic zones (EEZs) for the purpose of conducting MCS activities, including in areas under their national jurisdiction.

24. In activating the Commission VMS for the area of high seas in the Convention Area north of 20°N and west of 175°E, the Commission will agree on the scope of application of the VMS portion of Section IV of these Rules and Procedures to this area. In the interim, these Rules and Procedures apply to VMS data generated by any vessel fishing for highly migratory fish stocks in the high seas of the Convention Area north of 20°N and west of 175°E, only with the consent of the flag State. However, nothing in this paragraph will constrain access to VMS

data identified in paragraphs 22 or 23 for the Exclusive Economic Zones that straddle the boundaries of this area.

25. Authorized MCS Entities and Personnel may request and shall receive near-real time VMS data and VMS data other than near real-time for MCS activities in specific high seas areas which the Commission has closed to fishing, such as high seas pockets. Access to such data shall be limited to the time and area of the closure as specified in conservation and management measures or decisions adopted by the Commission.

Transshipment Notices and Declarations

26. Pre-transshipment notices and WCPFC Transshipment Declarations, which, in accordance with the 2007 Rules and Procedures are non-public domain data, will be made available to Members for the purposes of fisheries monitoring, control or surveillance in accordance with these Rules of Procedure, with the exception of paragraphs 14-25 and Section VI.

27. The Executive Director, or designee, shall make available, upon written request or pursuant to a standing request established in accordance with paragraph 50, to Authorized MCS Entities and Personnel copies of pre-transshipment notices and WCPFC Transshipment Declarations.

Section V: Retention and Destruction Requirements

28. Subject to paragraph 29, Authorized MCS Entities and Personnel shall destroy any non-public domain data received under these Rules and Procedures, including any copies or derivatives of such data, including full erasure of all electronic data, within:

- (a) 168 hours or 7 days following the completion of its MCS activities on the high seas per paragraphs 21 and 25 above; or
- (b) 168 hours or 7 days following the completion of MCS activities, including in areas under its national jurisdiction per paragraphs 13, 22 and 23 above; or
- (c) 72 hours or 3 days following the receipt of data not related to current MCS activities covered by subparagraphs (a) and (b) above

Members of the Commission shall ensure that their Authorized MCS Entities develop and maintain internal administrative procedures to track and document compliance with this paragraph.

29. Authorized MCS Entities and Personnel may retain non-public domain data received under these Rules and Procedures for longer than the periods specified in paragraph 28 only if it is part of an investigation, judicial or administrative proceeding of an alleged violation of the provisions of the Convention, any conservation and management measures or decisions adopted by the Commission, or domestic laws and regulations.

30. Notwithstanding paragraphs 28 and 29 above, all VMS data received by the Commission pursuant to conservation and management measures adopted by the Commission, other decisions of the Commission and the Commission's VMS SSPs shall be retained by the Commission, or service providers contracted by the Commission, in accordance with the SSPs and any other procedures agreed by the Commission.

Section VI: Provisions for Access and Dissemination of high seas VMS data for Scientific Purposes

31. The Executive Director, or service providers contracted by the Commission, shall make available high seas VMS data for scientific purposes, as described in paragraph 35 below, to Members of the Commission. However, VMS data for the area of high seas in the Convention Area north of 20°N and west of 175°E shall be made available only with the consent of the Member(s) who provided the data to the Commission.

32. Members of the Commission shall notify the Secretariat of the Management entities authorized to receive high seas VMS data for scientific purposes in accordance with these Rules and Procedures. Such notification shall include:

- A. all relevant contact information for the entity or entities (Authorized Management Entities); and
- B. point(s) of contact for each entity, including telephone and facsimile numbers and email addresses (Authorized Management Personnel).

33. The Secretariat shall maintain a register of Authorized Management Entities and Personnel and the contact information provided. Members of the Commission and the Secretariat shall ensure the register is kept up to date. The Secretariat shall make the register available to Members on the secure section of the WCPFC website. Only the Authorized Management Entities and Personnel recorded on the Commission's register are authorized to receive high seas VMS data for scientific purposes in accordance with these Rules and Procedures.

34. Authorized Management Personnel will be required to submit a Data Request Form at annex 1 of appendix 3 and sign the Confidentiality Agreement at annex 2 of appendix 3 of the 2007 Rules and Procedures.

35. High seas VMS data shall be made available for the following scientific purposes:

- (a) Estimating fine-scale distribution of fishing effort for use in oceanographic research.
- (b) Planning tagging programmes;
- (c) Estimating or validating the recapture positions of tag returns;
- (d) Modeling the special dynamics of fishing effort for use in the operational models associated with any future management strategy evaluation (MSE) work;
- (e) Estimating abundance indices using effective effort from fine-scale vessel specific data.
- (f) Validating logbook data; and
- (g) Any other scientific purposes as decided by the Commission.

36. Except for sub-paragraph (b), VMS data described in paragraph 35 shall be made available to Authorized Management Entities with a two-year time lag.

37. Near-real time high seas VMS data will be made available to Authorized Management Entities and Personnel for the specific scientific purpose identified in sub-paragraph 35(b), in accordance with these Rules and Procedures, and only with the consent of the Member(s) who provided the data to the Commission.

38. High seas VMS data may also be shared with other regional fisheries management organizations (RFMOs), if the Commission decides to enter into agreements for the exchange of such data with other RFMOs. Such agreements must include requirements that the other RFMO provide comparable VMS data on a reciprocal basis and maintain the data provided to it in a manner no less stringent than the security standards established by the Commission for the Secretariat in its Information Security Policy (ISP). At each annual session the Executive Director will provide copies of VMS data exchange agreements that exist with other RFMOs and a summary of the data exchanges that occurred during the previous 12 months under such agreements.

39. The Executive Director, or service providers contracted by the Commission, on authorization by the Executive Director, may make high seas VMS data available to other persons for scientific purposes in accordance with Section 4.6 of the 2007 Rules and Procedures.

Section VII: Data Provided to the Commission Voluntarily

40. Non-public domain data and information not required to be provided to the Commission by the provisions of the Convention, CMMs adopted by the Commission, or other decisions of the Commission shall not be considered held by the Commission and covered by the 2007 Rules and Procedures and these Rules and Procedures.

41. When such data and information is voluntarily provided the Commission, the Secretariat shall only release such data and information to Members, other than the Member that voluntarily provided the data and information, in accordance with protocols established between the contributing Member and the Secretariat.

42. Notwithstanding paragraph 41, the Secretariat and service providers contracted by the Commission shall have access, in accordance with Section 4.3 of the 2007 Rules and Procedures, to data and information covered by this section in order to perform their WCPFC duties and responsibilities.

Section VIII: Periodic Review and Reporting

43. The Commission shall periodically review these Rules and Procedures, and any subsidiary documents, and amend these if necessary.

44. Members of the Commission shall include in their Part 2 Annual Report to the

Commission information on the domestic measures that they have taken to ensure the confidentiality of the data and information received pursuant to these Rules and Procedures. Members of the Commission shall provide in their Part 2 Annual Report to the Commission a statement affirming that they have complied with the data retention and destruction requirements of Section V of these Rules and Procedures. In addition, Members of the Commission shall include a summary report of the status of any investigation, judicial or administrative proceedings in Part 2 of its Annual Report to the Commission at the next session of the Technical and Compliance Committee (TCC) until the conclusion of the investigation, judicial or administrative proceedings.

45. The Secretariat will also report on any communications with States that are not Members of the Commission to the next session of the TCC in relation to any matter that a Member has requested its assistance with under these provisions of these Rules and Procedures.

Section IV: Final Clauses

46. These Rules and Procedures do not prevent a Member of the Commission from authorizing the release of any data it has provided to the Commission.

47. These Rules and Procedures do not prevent or restrict a Member of the Commission from access to data from VMS, HSB&I, and high seas trip reports of observers (minus identity and contact information, except in accordance with paragraph 16) covered by these Rules and Procedures for vessels flying its flag in the Convention Area, except where paragraphs 7 and 8 are applicable.

48. These Rules and Procedures do not prevent or restrict a Member of the Commission from access to data from VMS, HSB&I, and high seas trip reports of observers (minus identity and contact information, except in accordance with paragraph 16) covered by these Rules and Procedures for a vessel that is alleged to have or has engaged in fishing activities in areas under that Member's national jurisdiction in violation of that Member's domestic laws and regulations, for the purpose of an investigation, judicial or administrative proceeding related to that violation, except where paragraphs 7 and 8 are applicable. In this case, the Member shall notify the flag State concerned in accordance with paragraph 10 of Article 25 of the Convention.

49. These Rules and Procedures do not prevent a Member of the Commission from establishing agreements or arrangements with other Members regarding the release of non-public domain data it has provided to the Commission, or utilizing existing agreements or arrangements, for the purpose of MCS activities or scientific purposes, including developing standing authorizations for such releases of data between such Members.

50. In giving effect to these Rules and Procedures, the Secretariat may develop mechanisms to facilitate standing requests from Members for data and information covered by these Rules and Procedures, such as to cover established time periods.

ADDENDUM – TRANSHIPMENT NOTICES AND DECLARATIONS

Pre-transshipment notices and WCPFC Transshipment Declarations, which, in accordance with the 2007 Rules and Procedures are non-public domain data, will be made available to Members for purposes of fisheries monitoring, control or surveillance in accordance with these Rules of Procedure, with the exception of paragraphs 14-25 and Section VI.

The Executive Director, or designee, shall make available, upon written request or pursuant to a standing request established in accordance with paragraph 48, to Authorized MCS Entities and Personnel copies of pre-transshipment notices and WCPFC Transshipment Declarations.