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**REVIEW COMPATIBILITY OF WCPFC HIGH SEAS VMS WITH COASTAL VMS (TCC
WORKPLAN 2013-2015)**

WCPFC-TCC11-2015-15
27 August 2015

Purpose

1. This paper reviews the background and applicable provisions of the Convention, CMM and other related WCPFC decisions pertaining to the compatibility of high seas VMS with coastal VMS. TCC11 is invited to discuss this specific issue which was included as a priority task in the approved TCC workplan 2013-2015.

Background

2. The starting point for the topic of compatibility as it relates to the Commission VMS is Article 24 of the Convention, specifically paragraphs 8 – 10:

8. Each member of the Commission shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas. The standards, specifications and procedures for the use of such transmitters shall be established by the Commission, which shall operate a vessel monitoring system for all vessels that fish for highly migratory fish stocks on the high seas in the Convention Area. In establishing such standards, specifications and procedures, the Commission shall take into account the characteristics of traditional fishing vessels from developing States. The Commission, directly, and simultaneously with the flag State where the flag State so requires, or through such other organization designated by the Commission, shall receive information from the vessel monitoring system in accordance with the procedures adopted by the Commission. The procedures adopted by the Commission shall include appropriate measures to protect the confidentiality of information received through the vessel monitoring system. Any member of the Commission may request that waters under its national jurisdiction be included within the area covered by such vessel monitoring system.

9. Each member of the Commission shall require its fishing vessels that fish in the Convention Area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures to be determined by the coastal State.

10. The members of the Commission shall cooperate to ensure compatibility between national and high seas vessel monitoring systems.

3. To establish the Commission VMS, the Commission agreed in 2007 to CMM 2007-02 *Conservation and Management Measure on the Commission VMS* which included a number of provisions related to compatibility with coastal State VMS:

6. Applicability

(a) The Commission VMS shall apply to all fishing vessels that fish for highly migratory fish stocks on the high seas within the Convention Area.

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(c) Any CCM may request, for the Commission's consideration and approval that waters under its national jurisdiction be included within the area covered by the Commission VMS. Necessary expenses incurred in the inclusion of such area into the Commission VMS shall be borne by the CCM which made the request.

7. Nature and specification of the Commission VMS

(a) The Commission VMS shall be a stand-alone system:

- developed in and administered by the Secretariat of WCPFC under the guidance of the Commission, which receives data directly from fishing vessels operating on the high seas in the Convention Area; and
- with the added capability that it can accept VMS data forwarded from the FFA VMS, so that the fishing vessels operating on the high seas in the Convention Area will have the option to report data via the FFA VMS.

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9. Obligation of CCMs

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(b) CCMs shall cooperate to ensure compatibility between national and high seas VMSs.

4. In implementing the Commission VMS, a Service Level Agreement was concluded in December, 2008 with the Pacific Island Forum Fisheries Agency (FFA) for provision of VMS services, and the *Standards, specifications and procedures (SSP) for the fishing vessel monitoring system (VMS) of the Western and Central Pacific Fisheries Commission (WCPFC)* were adopted. WCPFC VMS services commenced in April 2009. A number of provisions in the SSPs are related to compatibility with coastal State VMS:

1. Application

The SSPs shall apply to the Commission VMS that covers the high seas within the Convention Area. The SSP for the operation of VMS programs within waters under national jurisdiction shall be the exclusive responsibility of the Coastal State.

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2. Methods to ensure ALCs comply with WCPFC standards

6. In preparing the initial list of approved ALCs, the WCPFC Secretariat will take into account lists approved by existing regional and sub-regional VMS programmes and lists approved by CCMs.

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5. Vessel reporting, including position reporting frequencies

3. The Commission VMS shall include an automated alert to report when vessels enter or exit the high seas of the Convention Area. Vessels subject to the Commission's VMS must be reporting to the Commission VMS through automatic means upon entry into the high seas of the Convention Area and continue reporting until the high seas of the Convention Area is exited. In the case of ALC failure or malfunction, these reports shall be provided by the vessel on a manual basis. It is the responsibility of a vessel's flag State CCM to ensure compliance with this requirement.

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7.3 The WCPFC Secretariat

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3. To develop and manage a service level agreement (SLA) with the FFA for provision of VMS services. An additional SLA may be required for the provision of VMS software, support and the possible provision of out sourced VMS services between the WCPFC secretariat and a software provider.

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6. To utilize the Commission VMS in a manner consistent with the Convention, the Commission's conservation and management measures, and any of the standards, specifications and procedures relating to the Commission's VMS adopted by the Commission. Unless explicitly requested by a coastal State in accordance with Article 24(8) of the Convention the Commission shall not have access to, interfere with, or use any VMS data owned by the coastal State.

5. The current operative CMM for the Commission VMS is CMM 2014-02 *Conservation and Management Measure on the Commission VMS*. This is the second revision of the CMM for the Commission VMS, but the agreed modifications since CMM 2007-02 did not modify the above listed provisions related to compatibility of VMS services between high seas and coastal VMS.

6. The Statement of Purpose and Principles for the Commission VMS also includes the following related requirements:

Purpose: The purpose of the Commission Vessel Monitoring System (VMS) is to cost-effectively monitor the activities of fishing vessels authorized by flag States to fish for highly migratory fish species in the Convention Area in areas beyond jurisdiction of the Flag State. Data collected by the Commission VMS will be securely stored and used by the Commission and its Members, Cooperating Non-Members, and Participating Territories (CCMs) to achieve compliance with Conservation and Management Measures (CMMs), fisheries scientific analysis and sound fisheries management decision-making in the Convention Area.

Principles

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Compatible - The Commission VMS should maximize compatibility and functionality in harmony with national VMSs so that not only is the high seas regime monitored to promote and achieve compliance with CMMs, but also streamlined management of in-zone areas is facilitated, where requested, to help maintain the integrity of the EEZs and ensure coastal States meet their obligations as CCMs thus giving effect to Article 30.

7. In 2011, the WCPFC VMS was reviewed to assess the performance of the Service Level Agreement in providing an effective and efficient VMS services for the Commission. The report from the study was presented to TCC7 and WCPFC8. An overview of the key findings of the review and their consideration are referenced in working paper WCPFC-TCC11-2015-16.

Application of the Commission VMS to national waters of members

8. At WCPFC7 (2010), the following decisions (contained in WCPFC-2010-DP27 rev 1) were agreed:

a. The Commission approved the application of the Commission VMS, pursuant to Article 24(8) of the WCPF Convention and Paragraph 6(c) of CMM 2007-02, to the national waters of all Commission Members that request such application.

b. A Commission Member's decision to exercise the option to apply the Commission VMS to its waters will not affect, impair or invalidate its participation in any other future or existing national or regional VMS program. Nothing in this decision in any way affects, impairs or invalidates the operation of VMS programs within the waters under national jurisdiction, which, as stated in the SSPs, shall be the exclusive responsibility of the coastal State.

c. The Secretariat will provide notification to all CCMs when any Commission Member exercises the option to apply the Commission VMS to its national waters. The Secretariat will maintain an updated list of all CCMs that have access to Commission VMS data in their waters on the secure area of the WCPFC website.

d. The Secretariat will develop a template agreement, for Commission review and approval, which will be used for all Commission Members exercising this option. The template agreement will address details regarding the application of the Commission VMS to the individual Commission Member's waters, including any costs that may be associated

9. Subsequently at WCPFC9 (2012) the Commission also agreed to a series of decisions within the report on "the application of the Commission VMS solely to waters under the jurisdiction of Members and to complement and support Members' national VMS, including compatibility." (WCPFC9 Summary Report paragraph 239, and reproduced as Attachment 1). Of note for TCC11's consideration is that the decision is to be reviewed or revised after two years.

10. The following table provides the list of WCPFC Members whose waters are included in the Commission VMS, which is maintained by the Secretariat in accordance with the WCPFC9 decision:

Table 1. List of WCPFC Members whose waters are included in the Commission VMS, which is maintained by the Secretariat in accordance with the WCPFC9 Decision.

WCPFC MEMBER	DATE REQUEST WAS RECEIVED	DATE INCLUSION OF NATIONAL WATERS BECAME EFFECTIVE	AREAS OF NATIONAL WATERS INCLUDED
New Zealand*		23 Feb 2010 (Tokelau was activated on 22 Aug 2012)	Waters under the national jurisdiction of New Zealand, which includes the Tokelau EEZ.
Cook Islands*		14 May 2010	Waters under the national jurisdiction of Cook Islands
Niue*		1 Jan 2013	Waters under the national jurisdiction of Niue
United States of America	16 January 2013	9 March 2013	The national waters of the United States (comprising the EEZ areas around the Hawaiian Islands, Kingman Reef and Palmyra Atoll, Johnston Atoll, Wake Island, Jarvis Island, Howland and Baker Islands, Guam and the Northern Mariana Islands, and the Aleutian Islands and Alaska Peninsula west of 150 degrees west longitude, and the portion of the EEZ around American Samoa).
Australia	13 February 2013	15 March 2013	The national waters of the Australia (comprising the EEZ areas around the Australia mainland and islands, Christmas Island, Cocos (Keeling) Islands, Macquarie Island, Norfolk Island, Heard and McDonald)
Federated States of Micronesia	5 March 2013	4 April 2013	FSM's national waters
France	14 May 2013	13 June 2013	Waters under the jurisdiction of France around New Caledonia
France	20 May 2013	16 June 2013	Waters under the jurisdiction of France around French Polynesia Waters under the jurisdiction of France around Wallis and Futuna

WCPFC MEMBER	DATE REQUEST WAS RECEIVED	DATE INCLUSION OF NATIONAL WATERS BECAME EFFECTIVE	AREAS OF NATIONAL WATERS INCLUDED
Palau	2 August 2013	1 Sept 2013	Palau's national waters
Tuvalu	8 August 2013	8 Sept 2013	Tuvalu national waters
Samoa	6 September 2013	6 October 2013	National waters of Samoa
Tonga	25 November 2014	13 March 2015	National waters of Tonga
Nauru	19 June 2015	19 July 2015	National waters of Nauru

**These three Members had their national waters included in the Commission VMS in accordance with previous WCPFC decisions.*

Discussion

11. This paper is provided to assist TCC11 with its consideration of this project priority specific task. The review of the background demonstrates that the principle of compatibility has underpinned the range of decisions taken by the Commission in its design, development and implementation of the Commission VMS.

12. One aspect that appears to the Secretariat to perhaps warrant some further consideration at TCC11 are arrangements that would provide some improved checks to identify and support the VMS reporting by vessels when they change between the WCPFC VMS and FFA VMS systems. In recent times there have been a number of instances where, through WCPFC members High Seas Boarding and Inspections, Port Inspections or MCS operations, vessels have been identified as possibly not meeting WCPFC VMS requirements, but further investigations have found that there were some procedural issues which delayed activating the VTAF (Vessel Tracking Activation Form) details. Often the vessel that previously was reporting through the FFA VMS, was not properly activated to report directly to the WCPFC VMS.

Recommendation

13. TCC11 is invited to consider the following reporting mechanism developed to better support enhanced compatibility between the WCPFC and FFA VMS systems:

1. WCPFC Secretariat to publish and maintain through WCPFC online systems, that are accessible by authorized CCM users, a list of RFV vessels WCPFC VMS reporting status. The list will be updated at least once a week, and will be based on the details of vessels as contained in the RFV. The list will confirm those vessels which VTAF details are held by WCPFC and the date of receipt, and the current VMS reporting channel to the WCPFC VMS (for example, WCPFC-direct; through FFA; manual reporting or not-reporting).
2. FFA Secretariat is requested to assist the WCPFC Secretariat with establishing and maintaining updated information, including a list of vessels that are presently in Good Standing on the FFA Register and/or regular updates of vessels which are reporting through the FFA-VMS. The modes of transmission for the information, will involve direct links between the Commission's and FFA Secretariats databases.
3. It is the responsibility of flag CCMs to
 - a. regularly review their respective lists, and to advise the WCPFC Secretariat of any changes to their vessels WCPFC VMS reporting status from that shown in the published list; and
 - b. ensure that the Secretariat has an updated VTAF, and is advised [xx days] before expiry of their good standing status with FFA.

EXCERPT FROM WCPFC9 SUMMARY REPORT

239. WCPFC9 adopted the following paragraphs as decisions relating to the application of the Commission VMS solely to waters under the jurisdiction of Members and to complement and support Members' national VMS, including compatibility:

- a. Coastal States, particularly Small Island Developing States, have a legitimate and pressing need to increase their ability to monitor fishing vessels in waters under their national jurisdiction to ensure the effectiveness of measures adopted by the Commission or domestic laws or regulations of any Member are not undermined. CCMs that are both SIDS and coastal States are some of the smallest developing nations in the world.
- b. Flag States have a legitimate right to know when vessels flying their flag in the Convention Area are being monitored and must consent to that monitoring in the waters under the national jurisdiction of another Member. CCMs consented to the monitoring of vessels flying their flag in the Convention Area at WCPFC7, pending resolution of an agreed upon template agreement. CCMs have agreed to take the decisions captured in paragraph 4 below instead of creating a template agreement.
- c. All Members have an interest in ensuring that vessels that are authorized to fish in the Convention Area do so in accordance with the provisions of the Convention, any conservation and management measures or decisions adopted by the Commission or domestic laws or regulations of any Member when operating in waters under its jurisdiction. Effective conservation and management in waters under the jurisdiction of Members is critical to the success of the Commission as these areas are where the majority of catch and effort occurs in the Convention Area.
- d. CCMs have agreed that rather than adopting a specific template agreement, as specified by WCPFC-2010-DP27 rev 1, the following principles will govern the application of the Commission VMS to the national waters of any Member that requests such application and the provision of those data (hereinafter "in-zone VMS data") to Members:
 - i. Members that have existing national VMS programs may choose to have the Commission provide the in-zone VMS data for vessels reporting to the Commission VMS who enter waters under their national jurisdiction directly to their national VMS to ensure compatibility between national and high seas vessel monitoring systems.
 - ii. Vessels reporting to the Commission VMS that enter the waters under the national jurisdiction of a Member whose waters are included within the area covered by the Commission's VMS retain all their navigational rights, including transit, innocent passage and freedom of navigation under international law. Vessels in transit will not be subject to MCS activities based solely on the in-zone VMS data provided.
 - iii. The in-zone VMS data will be provided only to Authorized MCS Personnel and Authorized Management Personnel, as defined in paragraphs 11 and 32, respectively, of the Commission's 2009 Rules and Procedures or to FFA Secretariat on behalf of FFA Members, and to the WCPFC Secretariat.
 - iii(bis). These data will be used for further investigation if a violation of a conservation and management measure or national law of a coastal state by the relevant vessel

is suspected. CCMs will notify the Secretariat of the appropriate point of contact(s) to be used by flag States and coastal States for the purpose of any such investigation. The Secretariat will maintain that list on the secure section of the Commission's website.

- iii(ter). The VMS data of any vessel that is under the status of manual reporting as described in the VMS SSPs shall be forward to the Authorized MCS Personnel and Authorized Management Personnel of the coastal Member in whose water a vessel is transiting.
- iv. Members will use the in-zone VMS data only for (i) monitoring, control and surveillance purposes and for (ii) scientific purposes as described in paragraph 35 of the Commission Rules and Procedures for the Protection of, 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, first adopted in 2009 (Commission's 2009 Rules and Procedures).
- v. Members shall maintain the confidentiality and security of the in-zone VMS data in a manner no less stringent than the security standards established by the Commission for the Secretariat in its Information Security Policy. Failure to maintain the confidentiality and security of the VMS data in accordance with the provisions of this paragraph will result in suspending the flow of VMS data from WCPFC to the respective coastal State until the standards are met.
- vi. Members will destroy any in-zone VMS data received for waters under its national jurisdiction within 15 days of receipt, unless such data are necessary for (i) an investigation or a 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 or regulations of the Member or (ii) a scientific purpose as described in paragraph 35 of the Commission's 2009 Rules and Procedures. Members will report on their compliance with this requirement in Part 2 of their Annual Report.
- vii. Members may only share in-zone VMS data with intergovernmental regional fisheries bodies and the Flag State to answer a specific and precise request for MCS purposes and with the Authorized MCS Entities and Personnel, as defined in paragraph 11 of the Commission's 2009 Rules and Procedures, of other Members for the purpose of conducting MCS activities. The in-zone VMS data will be shared in a manner consistent with Members' national VMS SSPs and the WCPFC rules and procedures, and in accordance with the confidentiality and retention and destruction requirements established herein.
- viii. Members will be responsible for any additional costs associated with the application of the Commission's VMS to waters under their national jurisdiction, as determined by the Executive Director. However, this issue will be revisited in the event that there is any change to the cost and payment structure of the Commission's VMS. Failure to make timely payment of the additional costs, if any, identified by the Executive Director will result in a suspension of the provision of in-zone data until payment is made.
- ix. Waters under a Member's national jurisdiction will be included within the area covered by the Commission's VMS only at that Member's request and Members are not obligated to request such inclusion.

- x. Upon receipt of a request by a Member pursuant to subparagraph i, the Executive Director shall immediately notify Members of the Commission of the request by circular. The waters under the national jurisdiction of the Member making a request under subparagraph i shall be included within the area covered by the Commission's VMS 30 days after the date of that circular.
- xi. The Executive Director shall establish and maintain a list on the Commission's website of all the Members whose waters are included in the Commission's VMS.
- xii. In the event that two or more Members have conflicting claimed EEZ geographical coordinates, such area will not be included within the area covered by the Commission VMS and, therefore, the VMS data for such area will only be provided to any of those Members with the agreement of all of those Members. If any of those Members objects to the provision of VMS data in such area, none of those Members will be provided such data.
 - xii(bis). No Member may object to the provision of in-zone VMS data in areas not associated with its own claimed EEZ. In the event that any Member has objected to another Member's claimed EEZ geographical coordinates, no Member will be provided in-zone VMS data in the area until and unless the Members have reached an agreement to include the area within the area covered by the Commission's VMS.
- xiii. The implementation of these decisions shall be in accordance with the provisions of the Convention including Article 3(2) of the Convention.
- xiv. The implementation of and compliance with these decisions will be subject to review under the existing and any future Compliance Monitoring Scheme.
- xv. These decisions will be effective 60 days after the Commission meeting and shall only allow for the provision of data generated from that date forward. These decisions will be reviewed or revised in two years. During this period, CCMs will consider additional technical solutions to address concerns of illegal fishing occurring in waters.
