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Application-Commission-VMS-National-Waters-Members-US

WCPFC9-2012-DP08 Rev2
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APPLICATION OF THE COMMISSION VMS TO WATERS UNDER THE NATIONAL JURISDICTION OF MEMBERS

WCPFC9 adopts 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:

1. 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.
2. 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.
3. 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.
4. 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:
 - a. 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.
 - b. 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.
 - c. 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.

cbis. 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.

cter. 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.

d. 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).

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

k. 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.

l. 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.

l^{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.

m. The implementation of these decisions shall be in accordance with the provisions of the Convention including Article 3(2) of the Convention.

n. The implementation of and compliance with these decisions will be subject to review under the existing and any future Compliance Monitoring Scheme.

o. 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.