



FIFTH REGULAR SESSION

Busan, Republic of Korea

8-12 December 2008

Draft Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes

WCPFC5-2008/17
14th November 2008

Prepared by the Chair of the AHTG [Data]

1. During the first six months of 2008, the Secretariat, worked electronically with Members, Cooperating Non-members and Participating Territories (CCMs), to develop a process and scope of work to address the requirements of paragraph 23 of the *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission* in relation to compliance and enforcement on the high seas and, for VMS data, for scientific purposes. By WCPFC Circulars #08/2008 (March 2008) and #14/2008 (June 2008), the Secretariat first invited CCMs to comment on draft Terms of Reference (ToR) to support the work of the Ad Hoc Task Group [Data] (AHTG [Data]), and second, to nominate an individual to chair the work of the Group. The Terms of Reference for the AHTG [Data] are appended at **Attachment A**. Ms Holly Koehler (USA) was selected to chair the AHTG [Data] for this purpose.

2. The AHTG [Data] Chair arranged for informal discussions on the work required to address the requirements of paragraph 23 in the margins of the Inter-sessional Working Group for the Regional Observer Programme on July 11, 2008 at Nadi, Fiji. Subsequently, the AHTG [Data] Chair reviewed current practices in other RFMOs and proposals on the subject previously tabled by several CCMs (WCPFC-TCC3-2008/DP10). Additionally, with respect to scientific purposes for VMS data, the AHTG [Data] Chair sought advice from the Scientific Committee's Statistics Specialist Working Group during the Fourth Regular Session of the Scientific Committee at Port Moresby, 11-22 August 2008. At the Fourth Regular Session of the Technical and Compliance Committee, 2-7 October 2008 at Pohnpei, Federated States of Micronesia, CCMs reviewed draft *Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes* prepared by the Chair. Subsequently CCMs were offered an opportunity, through until 24th October, to provide additional comments on the draft discussed at TCC4.

3. Taking into account these consultations and comments received from CCMs (included at Attachment B), the Chair has prepared a second draft for the *Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes* (Appendix C). The Chair has also include a cover note to

accompany this second draft with an invitation for CCMs to provide her with further comments in advance of the Session in Busan (Attachment D).

4. The Commission is invited to:
 - a. Review the draft provided at Appendix C.
 - b. Refine the draft as considered appropriate; and
 - c. Consider the adoption of the *Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes*, as revised, or
 - d. Consider any additional work required to support further consideration of these draft *Rules and Procedures*.



**Ad Hoc Task Group [Data]
[DRAFT] Terms of Reference**

1. The Ad Hoc Task Group [Data] (AHTG [Data]) will principally work electronically.
2. The AHTG [Data] may meet physically, from time to time, at a time and place to be agreed by the Commission. Such decisions may be made inter-sessionally in accordance with the Rules of Procedure of the Commission.
3. Physical meetings of the AHTG [Data] will normally be associated with sessions of the Commission, its subsidiary bodies or meetings of other bodies established by the Commission.
4. The tasks of the AHTG [Data] include, *inter alia*:
 - a. To provide the Commission with advice and recommendations in relation to, *inter alia*, the implementation of the Commission's *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission*;
 - b. To liaise on data-related matters with other data-related initiatives of the Commission such as the Scientific Committee's Statistics Specialist Working Group, the VMS Technical Working Group (VMS TWG) and the Inter-sessional Working Group for the Regional Observer Programme (IWG-ROP);
 - c. As priority tasks for 2008:
 - i. draft rules and procedures for access to and dissemination of non-public domain data associated with compliance and enforcement activities on the high seas, for consideration and adoption by the Commission (as proposed at paragraph 23 of the *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission*); and
 - ii. in consultation with the VMS TWG, ensure the rules and procedures developed in respect of paragraph 23 of the *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission* include rules for making VMS data available for scientific purposes.
5. The Commission may revise the tasks listed above at paragraph 4 from time to time.
6. The AHTG [Data] will report on its work to the Commission and its subsidiary bodies.

Comments on the draft Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data

Japan

General Comments:

- 1) The clear purpose of data dissemination must be to the flag state and the Secretariat.
- 2) Only geographical position and the date and time which are shown in Annex 1 of CMM2007-02 as VMS data will be provided. Flag state and vessel identification may be provided when the Executive Director acknowledges the necessity of the data for compliance and enforcement purpose.
- 3) CCMs which wish to receive non-public domain data should bear the cost from the data dissemination.
- 4) Add following the sentence because the VMS will be activated for the area north of 20N and west of 175E at the time the Commission determines:
“With respect to the area north of 20N and west of 175E, the Northern Committee shall make recommendations to the Commission on the implementation of this Rules and Procedure after the VMS system for this area is activated by the Commission.”
- 5) Put reservation for all numbers in blanket [] on the draft Rules and Procedures.

Individual Comments:

Paragraph 6

- Individual and commercial information (such as crew names) other than those seen in the WCPFC Record of Fishing Vessels must not be made available.
- “upon request by a CCM” should be inserted.
- Not actual reports but data of reports should be made available because actual reports could be written in other languages than English and could be indecipherable due to bad handwriting.

Paragraph 7

- Individual and commercial information such as trading company names, sales prices must not be made available.
- “upon request by a CCM” should be inserted.
- Not actual documentation but data of documentation should be made available because actual documentation could be written in other languages than English and could be indecipherable due to bad handwriting.

Paragraph 9

- Only near-real time VMS data within 100 n miles of the active inspection vessels at sea will be provided. VMS data to be made available must be limited as minimum as possible because the data include valuable information in terms of commerciality and safety. In addition, the “intended patrol area” is quite vague and could be described in any ways. The data to be made available must be restricted to within 100 nautical miles of the inspection vessel.

Paragraph 12

- “service providers authorized by the Executive Director” should be replaced by “service providers contracted by the Commission.”

Paragraph 13

- Data retention should be permitted only when the Executive Director admits the necessity of the retention. The inspecting CCMs must destroy the near-real time VMS data immediately when the Executive Director recognizes that the data retention is no more necessary. The CCMs must report to the Executive Director when the destruction is completed.

Paragraph 15

- “service providers authorized by the Executive Director” should be replaced by “service providers contracted by the Commission.”

Paragraph 16

- The VMS data must be destroyed when the flag State undertakes its obligation and the coastal CCM must report it the Executive Director.

Paragraph 17

- VMS data for scientific purpose should be made available only when the flag state authorizes to do so.

- “service providers authorized by the Executive Director” should be replaced by “service providers contracted by the Commission.”

Paragraph 18

- Delete “vessel identification” because only position and time are agreed as VMS data. Any information about flag state and vessel name is not provided if near-real time VMS data is supplied for scientific purpose.

Paragraph 20

- Receivers of the VMS data should be limited just one organization in a CCM in accordance with paragraph 20 of the Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission.

Paragraph 23

- In case a member of the Commission fails to ensure the confidentiality and security of the data against this rules and Procedures, the Executive Director must immediately suspend providing the member with all the non-public domain data until when the Member is given re-authorization by the Executive Director after consultation with the flag states concerned.

New Paragraph as Paragraph 27

These rules and procedures do not prevent a CCM from fulfilling its domestic obligation in ensuring individual information security.



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October 23, 2008

Holly Koehler
Chair, AHTG(Data) of WCPFC
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Dear Ms. Koehler,

To follow up the conclusion of TCC4 meeting, I am writing to you to express our opinions on the drafted *Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes*.

Firstly, it should be noted that near-real time VMS data are highly sensitive due to business confidentiality. Our fishermen have great concerns on the disclosure of such information. In this regard, we still hesitate to consent to provide the near-real time VMS data to other Members unless there is a sufficient mechanism to assure that these data will only be used in compliance with the Rules and Procedures adopted by the Commission.

In addition, I would like to draw your attention to the special status of Chinese Taipei on the issue of High Sea Boarding and Inspection. Our vessels could only be boarded and inspected by those members that have submitted a notification to the Commission expressing that the High Sea Boarding and Inspection procedures shall apply in their entirety between a Contracting Party and Chinese Taipei. With this consideration, we would only agree those Contracting Parties that have submitted such a notification to obtain the near-real time VMS data of our vessels.

Furthermore, paragraph 9 provides that "Such data shall be provided for the area of the intended patrol only." However, there is no clear definition to confine an appropriate scope of the area. Therefore, a reasonable scope for the patrol cruise shall be further discussed if we all agree to provide this data.

As to the paragraph 15, regarding to VMS data for high seas areas adjacent to the EEZs of coastal states, we support the opinions expressed by European Union, that the function of this provision has been duplicated from paragraph 9, since it would not be much helpful for those members without an active



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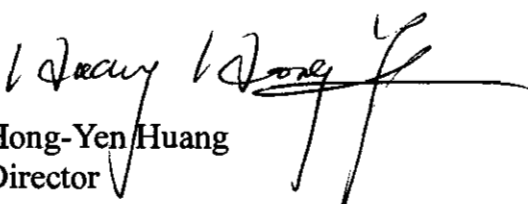
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inspection presence on the high seas in the Convention Area to obtain such information.

Last but not the least, the boundaries of EEZs of the coastal states should be recorded by the Commission in a transparent manner to ensure the data could be disseminated appropriately. We understand that this may be a sensitive issue, but it would need to be addressed anyhow.

I would like to take this chance to reiterate our appreciation to your hard efforts to accommodate this issue. Should you have any question on our position, please do not hesitate to contact us.

Sincerely Yours,


Hong-Yen Huang
Director
Deep Sea Fisheries Division

**U.S. Comments to the Chair’s Draft Rules and Procedures for the Protection of,
Access to, and Dissemination of Non-Public Domain Data
10/24/08**

General Comments:

1. As detailed in our comments below, the Chair’s draft raises several questions for the United States. How those questions are resolved may significantly affect the U.S. position on certain provisions and so we cannot definitively provide our position on those provisions at this time.
2. We suggest that one change that may make some of the remaining issues easier to resolve is if it is clearly specified, in the sections related to provision of data for enforcement and compliance purposes, that the data would be provided to the (or an) enforcement entity within a CCM. This approach will parallel similar procedures for HSB&I whereby each CCM must notify the Commission of authorized inspection entities. This will ensure greater understanding and sensitivity towards the use and protection of enforcement-sensitive information. We also suggest that there should be an explicit restriction that the enforcement entity may only use and share the information within the CMM to further its enforcement purpose.
3. This document seems to focus on near-real time dissemination of data. However, there are many instances for both enforcement and scientific purposes when we may want access to historical non-public domain data. There should be a clear provision that permits a CCM to request relevant historical data.

Comments on Section II:

4. Paragraph 2 states that the data will be made available for the purpose of compliance and enforcement activities on the high seas. How will CCMs demonstrate this purpose to the Commission? Will CCMs be required to provide some element of proof or documented substantiation? We note this is a difficult question given that in many instances CCMs are unlikely to be able to provide any substantive proof other than information that would be enforcement sensitive and may be unlikely to be shared – even with the Secretariat
5. In paragraph 2 and throughout the document, the phrase “will be made available” is used. This phrase does not clearly convey *how or to whom* data will be made available. This issue should be clarified.
6. We recommend rewriting the last sentence of paragraph 2 as follows for clarity purposes: “VMS data will **also** be made available for scientific purposes **only** in accordance with these Rules and Procedures.”

Comments on Section IV:

7. In paragraph 6, there are several issues we are concerned about:

a. Why are we limited to receiving reports only from the past calendar year? Many vessels – such as larger scale longline vessels – operate in the region and may only make port occasionally. It is possible that a boarding might uncover evidence or suspicion of violations from prior to that period. This information should be limited to just the past year.

b. When you reference “verification reports,” to which reports are you referring?

c. This provision prohibits the disclosure of the identity of the observer or inspector. This significantly erodes the utility of this information from an enforcement standpoint. Review of an observer or inspection report is often only the first step in an investigation into a violation. Typically, an investigator will then interview the observer or inspector to corroborate statements made in the report and to obtain additional information not contained in the report. In addition, if the case is charged and ends up going to court, the observer or inspector may be a critical witness for the successful prosecution of the violation. Prohibiting access to this information is extremely problematic from an enforcement standpoint – this is a fundamental issue from an enforcement perspective.

d. We suggest replacing the words “that are required to implement conservation and management measures ...” with “that are required pursuant to conservation and management measures ...”.

8. In paragraph 7, we have the same concern about the limited time frame for access to documents.

9. In paragraph 8, we note that depending on what your response is to the question in paragraph 7(b) above, we may or may not be comfortable with the release of these reports. We want to be clear that we will *not* release internal investigation reports generated solely within the jurisdiction of the United States. In addition, we can foresee situations where more than one member may have an interest in investigating and prosecuting violations at the same time, and this should be made operationally possible. Depending on what reports we are talking about, we are not certain that there is any need to prohibit their use for enforcement purposes just because there is another active investigation – there should simply be coordination by the various members.

Section V:

10. Paragraph 9 raises a couple of issues as well:

a. The phrase “with an active inspection presence on the high seas in the Convention Area” is used as the trigger for access to VMS data. This phrase could be

interpreted to mean many things, and so we think that this needs to be more precisely defined. For example, does “active” mean at that time, or generally having a history of a presence on the high seas of the convention area? How active is active? What if a CCM do not have a patrol boat currently out there, but could scramble a C-130 to do an overflight, and if violations were suspected, could send a patrol boat to follow? What if a CCM does not have patrol vessels that can regularly patrol the high seas, but they have a permanent shiprider agreement with the U.S. or other country? These CCMs may also have a need for access to VMS data.

b. The phrase “for the area of the intended patrol only” is also problematic. How will this area be precisely defined? How will the Commission identify what is the appropriate area? What if a patrol is a transit from Point A to Point B? The U.S. inspection entities, and we suspect the inspection entities of other CCMs, will not want to give the Commission detailed information about the area of patrol. Most USCG patrols are multi-mission and therefore involve concerns other than fish that may require greater discretion in the disclosure of the patrol area. We would suggest that CCMs can indicate a general area bounded by certain latitudes and longitudes, but that the area will need to be large enough so as to not hamper the effectiveness of the patrol.

11. Paragraph 10 raises similar concerns as paragraph 9:

a. The phrase “identify the high seas area of the Convention Area that will be patrolled” should be deleted to be consistent with changes we suggest to paragraph 9. The patrol area might be something such as “north of the equator and west of 150” and should not be much more specific than that.

b. We are OK with the 48 hour notification period; however, it would be useful if inspection authorities could obtain the VMS information beginning 48 hours (or some other time period) in advance of the patrol’s initiation. This would facilitate patrol planning prior to the vessel getting underway.

c. Although we are OK with the 24 hour notification period if a patrol is cancelled or changed, there may be some utility to making it also 48 hours for consistency and ease of application.

12. Paragraph 11’s requirement that vessels provide notification 48 hours prior to the end of a patrol is unrealistic. Enforcement vessels cannot always accurately predict when the patrol will end. If a notification requirement prior to return seems important, than it should perhaps be only 24 hours. We are conscious, however, that this contravenes our comment above regarding paragraph 9.

13. Paragraphs 12 – 16 seem to have some inconsistencies and may be able to be streamlined to be clearer. Although we are not unilaterally opposed to the destruction of VMS data that does not contain information of any violations, it needs to be clear that data that contains evidence of violations may be retained, and disclosed as necessary for a prosecution. In addition, there may be times where information may have some

relevance to future evidence of violations. There should be a mechanism to receive the data again, if necessary.

14. Paragraph 15 seems to indicate that if requested, any coastal CCM may receive VMS data for the high seas adjacent to its EEZ. Can a CCM receive that all that time, provided they destroy it (when it does not contain evidence of a violation)?

Section VI:

15. As discussed above, we recommend that the idea in paragraph 20 – 21, to notify the Secretariat of the entities able to receive scientific data, be expanded to also include entities able to receive enforcement and compliance data.

16. Paragraph 22 seems to imply that enforcement personnel will receive VMS data from the scientists. This should be reversed or they should both receive it independently, but enforcement data should not be funneled through the science community. Enforcement and compliance needs for the data tend to be more time-sensitive than most scientific applications.

17. Again, why is paragraph 23 limited only to the receipt of the data for science purposes? CCMs should have to safeguard this data regardless of whether it is for an enforcement or scientific purpose.

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

	<i>FFA comments</i>
Section I: Definitions	
<p>1. For the purpose of these Rules and Procedures, unless specifically defined, words and terms have the same meaning as in the Western and Central Pacific Fisheries Convention (“the Convention”), the Commission Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission, adopted by the Commission at its Fourth Annual Session in December 2007 and any conservation and management measures adopted thus far by the Commission.</p>	<p><i>Ambiguity with use of “thus far”</i></p> <p><i>Need specific reference to WCPFC Information Security Policy and para 21 of the existing rules.</i></p> <p><i>Note need to ensure that VMS data can be released as per paragraph 32 of existing rules (force majeure circumstances)</i></p>
Section II: Scope and Purpose	
<p>2. The scope of these Rules and Procedures is non-public domain* data and information covering high seas fishing activities in the Convention Area, held by the WCPFC Commission including service providers or contractors acting on their behalf. Such data will be made available for the purpose of compliance and enforcement activities on the high seas only in accordance with these Rules and Procedures. [VMS data will be made available for scientific purposes only in accordance with these Rules and Procedures.] [* 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.]</p>	<p><i>Need to have a link in Section II to the VMS Standards, Specifications and Procedures, High Seas Boarding and Inspection Scheme, CMM for Regional Observer Programme, and CMM for Commission VMS. – need to be sure that this is not too limiting</i></p> <p><i>Clarify that these rules are limited to rules for access to and dissemination of WCPFC-held data that relates to high seas fishing activities (as per title above).</i></p> <p><i>VMS data will be made available for scientific purposes only – need for clarity on the phrasing of the sentence because it can be read two ways.</i></p>
<p>3. Section 4 of the Commission Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission, adopted by the Commission at its Fourth Annual Session in December 2007, apply <i>mutatis mutandis</i> to the protection, dissemination and access to, non-public domain data covered by these Rules and Procedures.</p>	

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

Section III: Basic principles	
<p>4. Non public domain data and information held by the Commission and by service providers contracted by the Commission shall only be released 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 determined by the Commission.</p>	
<p>5. Unless otherwise decided by the Member of the Commission responsible for its external affairs, a Participating Territory shall have the same access rights to data under these Rules and Procedures as Members.</p>	
Section IV: Provisions for Access and Dissemination	
<p>6. The Executive Director, or designee, shall make available upon written request to Members of the Commission observation, verification and inspection reports submitted by Commission Members, Cooperating Non-Members and Participating Territories (CCMs) that are required to implement conservation and management measures adopted by the Commission for high seas areas, covering the period 1 January to 31 December of the previous year, provided that under no circumstances shall the identity of individual observers or inspectors be identifiable.</p>	<p><i>Need cross reference to Data request form in existing rules and procedures, which would be completed by the authorised representative of Commission member, as per paragraph 20 of the existing rules.</i></p> <p><i>Inclusion of the time period, may be too limiting. As a minimum should at least be two years, similar to WCPFC IUU list.</i></p> <p><i>Clarify that access and dissemination of data using this provision relates to rules for access to and dissemination of high seas data that relates to implementation of high seas conservation and management measures.</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

<p><u>7.</u> The Executive Director, or designee, shall make available to Members, <u>upon written request</u>, documentation submitted by CCMs, <u>covering the period 1 January to 31 December of the previous year</u>, that may be required to implement conservation and management measures adopted by the Commission <u>for high seas areas, including</u> to monitor and track the trade, loading or unloading, or catch of species covered by the Convention. Such Conservation and Management Measures may stipulate further rules and procedures regarding access to and dissemination of such documents to protect the confidentiality and security of such information. <u>]</u></p>	<p><i>This paragraph is not clear. Seems to be introducing into these rules aspects of new schemes that are still matters of contention.</i></p> <p><i>Inclusion of the time period, may be too limiting. As a minimum should at least be two years, similar to WCPFC IUU list.</i></p> <p><i>“including” – is more inclusive of alternative measures that the WCPFC may adopt, in addition to possible catch documentation schemes, transshipment schemes or Port inspection documentation.</i></p> <p><i>Clarify that access and dissemination of data using this provision relates to rules for access to and dissemination of high seas data that relates to implementation of high seas conservation and management measures.</i></p>
<p>8. Reports described in paragraph <u>5-6</u> above shall not be disseminated if the Secretariat has been notified by a Member of the Commission that such reports are part of an <u>[active investigation]</u> or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures adopted by the Commission. Members of the Commission shall, in accordance with Article 25 of the Convention, inform the Commission when the investigation <u>or judicial proceedings</u> is completed. After such a notification, the Secretariat may release the reports in accordance with paragraph <u>5-6</u> above.</p>	<p><i>The cross-references herein should probably be paragraph 6 (instead of paragraph 5).</i></p> <p><i>“Active Investigation” – concern that this phrase could be used to unnecessarily limit access to data.</i></p> <p><i>Inclusion of judicial proceedings is consistent with first sentence in this para.</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

Section V: Data provided pursuant to the Commission's Vessel Monitoring System (VMS)	
<p><i>A general concern is that Section V does not seem to provide access to Historical VMS data (not near-real time VMS data for compliance and enforcement purposes). One option might be to redraft V(i) so it is not specific to "near-real time" VMS data, and instead refers to access to VMS data for compliance and enforcement purposes. A separate section might then be developed that sets out specific rules and procedures relating to access to near-real time VMS data and procedures to limit risks.</i></p>	
<p>V(i) Release of near-real time VMS data for compliance and enforcement purposes</p>	
<p>9. <u>The Executive Director shall make available near-real time VMS data to Members of the Commission for the planning and execution of compliance and enforcement activities on the high seas. The Executive Director shall make available near real time VMS data to Members of the Commission with an active inspection presence on the high seas in the Convention Area. Such data shall be provided for the area of the intended patrol only.</u> Service providers contracted by the Commission shall only release near-real time VMS data to Members of the Commission if authorized to do so by the Executive Director and only in accordance with these Rules and Procedures.</p>	<p><i>- These provisions were based on procedures in CCAMLR and North East Atlantic and are not practical for compliance and enforcement purposes in the WCPFC Convention Area.</i></p> <p><i>- The changes removes the spatial and temporal limitations – particularly the active inspection presence and the area of intended patrol.</i></p> <p><i>-Vessels travelling from national waters into the high seas, need to have access to relevant information to prepare for compliance and enforcement activities on the high seas. There is a need to link to text on VMS Standards, Specifications and Procedures..</i></p>
<p><u>[10. Members of the Commission shall notify the Secretariat within [48] hours of the commencement of high seas inspection activities and identify the high seas area of the Convention Area that will be patrolled. Members of the Commission shall notify the Secretariat within [24] hours if the inspection patrol will no longer take place or if the high seas area to be patrolled has changed.]</u></p>	<p><i>This paragraph would now be inconsistent with possible alternative text for para 9.</i></p> <p><i>para 10 would be troublesome to practically implement, because of the risks of disclosing intended flight paths and vessel paths.</i></p> <p><i>CCAMLR – procedures are overly limiting and unique to operational conditions in the southern ocean.</i></p>
<p><u>[11. Members of the Commission shall notify the Secretariat [48] hours prior to the completion of the high seas inspection 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 [48] hours have elapsed.]</u></p>	<p><i>This paragraph would now be inconsistent with possible alternative text for para 9.</i></p> <p><i>This paragraph would be troublesome to practically implement – it is difficult to determine the specific time when investigations would be complete.</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

<p><u>12. The inspection authorities of</u> Members of the Commission shall destroy the near-real time VMS data provided by the Executive Director, or service providers authorized by the Executive Director, within [24] hours following the completion of its high seas inspection activities. <u>]</u></p>	<p><i>This paragraph would now be inconsistent with possible alternative text for para 9.</i></p> <p><i>It should be noted that it is near to impossible to erase electronic data.</i></p> <p><i>Is there a difference between “destroy”, “delete”?</i></p> <p><i>In practice, 24 hours is definitely not sufficient to be able to meet the criteria of being used in a judicial proceeding. Judicial proceedings occur months or years after the offence. There is a need for the ability to undertake thorough investigation.</i></p> <p><i>It is the Member that is obliged to ensure the data is maintained in accordance with the ISP, and not the inspection authority.</i></p>
<p>13. <u>The inspection authorities of</u> Members of the Commission may only retain near-real time VMS data if it is part of an active investigation or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures adopted by the Commission.</p>	<p><i>There needs to be a linkage here to the VMS Standards, Specifications and Procedures, and paragraph 15 below.</i></p> <p><i>It is the Member that is obliged to ensure the data is maintained in accordance with the ISP, and not the inspection authority.</i></p>
<p>14. The inspection authorities of Members of the Commission shall also delete any VMS data associated with any investigation that is provided to the flag State once that flag State has undertaken its obligations in accordance with Article 25 of the Convention, <u>and any other conservation and management measure adopted by the Commission</u>. A summary report of the status of the investigation shall be included in Part 2 of the Annual Report to the Commission.</p>	<p><i>Is there a difference between “destroy”, “delete”?</i></p> <p><i>Such as WCPFC IUU CMM.</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

<p>15. Members of the Commission may request and receive near-real time VMS data for areas of high seas areas adjacent to and not more than [100] nautical miles from their exclusive economic zones. Such Members shall destroy the near-real time VMS data provided by the Executive Director, or service providers authorized by the Executive Director, [72] hours following dispatch by the Executive Director, or service providers authorized by the Executive Director. The Member of the Commission shall acknowledge receipt of the data immediately once it is received. The Member of the Commission shall advise the Executive Director once the data has been destroyed.</p>	<p><i>This provision is similar to that in the FSM, RMI and Palau modification of TCC1 Report Attachment F, tabled at TCC3. However, this paragraph is more restrictive than was implied in the FFA members proposal to TCC3. For instance, access was automatic but here it is on request, and involves a receipt procedure. Also unlike the FFA proposal, this text proposes that coastal States be required to have a process to destroy data that is [72 hours] old.</i></p> <p><i>Compared to paragraph 12 alternative text, this text envisages access to high seas VMS data for the purpose of planning and executing monitoring and compliance activities in areas under national jurisdiction.</i></p> <p><i>Acknowledge that 100 nautical miles could be a minimum standard, however in certain parts of the Convention Area there may be different levels of risk that necessitates greater spatial and temporal access. For example, a super seiner travels at faster than 20knots, and within a few hours a vessel could traverse 100 nautical miles.</i></p> <p><i>There needs to be a linkage here to the VMS Standards, Specifications and Procedures.</i></p>
<p>16. A Member of the Commission may only retain near-real time VMS data provided pursuant to paragraph 44_15 above longer than [72] hours if it is part of an active investigation or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures adopted by the Commission. Members of the Commission shall delete any VMS data associated with an investigation that is provided to the flag State once that flag State has undertaken its obligations in accordance with Article 25 of the Convention <u>or any conservation and management measures adopted by the Commission</u>. A summary report of the status of the investigation shall be included in Part 2 of the Annual Report the Member of the Commission provides to the Commission.</p>	<p><i>When is VMS data no longer near-real time?</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

<u>V (ii) Release of VMS data for Scientific Purposes</u>	
<p>17. The Executive Director, or service providers authorized by the Executive Director, shall make available VMS data for scientific purposes, as described in paragraph 47<u>18</u> below, to CCMs.</p> <p>This data may also be made available to other regional fisheries management organizations, in accordance with Section 4.5 of the Commission’s Rules and Procedure for the Protection, Access to, and Dissemination of Data Compiled by the Commission, upon request.</p> <p>The Executive Director, or service providers authorized by the Executive Director, may make VMS data available to other persons in accordance with Section 4.6 of Commission’s Rules and Procedure for the Protection, Access to, and Dissemination of Data Compiled by the Commission.</p>	<p><i>Note this provides access to Cooperating Non-Members, to VMS data for scientific purposes.</i></p> <p><i>With respect to access to VMS data for scientific purposes by other RFMOs, it should be noted that Appendix 4 of the current rules do not provide for exchange of VMS data at all. Additionally it should be noted that were Appendix 4 to be modified to incorporate VMS data for scientific purposes, the condition is that such exchange is conditional on equivalent data being exchanged on a reciprocal basis.</i></p> <p><i>With respect to 4.6 – this refers to access to VMS data for scientific purposes by other persons (including Universities, researchers, NGOs, media, consultants, industry, federations etc.). Under these circumstances there are processes for the request, the requirement for a confidentiality agreement and prior authorisation of the CCM that provided that data. Maybe an issue to be clarified in this instance, is whether the authority for such releases should come from the Commission, or the flag State?</i></p>
<p>18. VMS data, including vessel identification, location and time, shall be made available for the following scientific purposes:</p> <ul style="list-style-type: none"> (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 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. 	<p><i>This is taken directly from the SC4 Statistics Working Group record. These specifically were suggestions made by FFA member participants in that SC specialist working group.</i></p> <p><i>It should be noted that some of these purposes for use of VMS data would not be necessary if there was greater coverage across all fisheries of operational level catch and effort data.</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

<p>19. Except for sub-paragraphs (a), (b) and (c), VMS data described in paragraph 47-18 shall be made available on a [two] year time lag. Near-real time VMS data will be made available for the specific scientific purpose identified in sub-paragraph (b), in accordance with these Rules and Procedures.</p>	<p><i>Is two years lag ok, do we want to make data available less than two years? Some FFA members have a one-year lag requirement.</i></p>
<p style="text-align: center;">Section VI: Specific Administrative Requirements for Near-Real Time VMS Data</p> <p><i>Note the linkages between this section and paragraphs 20-22 of the existing rules. Is there a need for more specific procedures for VMS data, than is provided for in paragraphs 20-22 of the existing rules?</i></p>	
<p>20. Members of the Commission shall notify the Secretariat of their authorities authorized to receive near-real time VMS data and information under Section V of these Rules and Procedures. Such notification shall include all relevant contact information, including telephone and facsimile numbers and email addresses.</p>	<p><i>Should they be government officers only, or should they also include designates of a national government, such as operational surveillance agencies?</i></p>
<p>21. The Secretariat shall maintain a list of such authorities authorized to receive near-real time VMS data and information and the contact information provided. Members and the Secretariat shall ensure the list is kept up to date. The Secretariat shall make available the list to Members of the Commission upon written request.</p>	
<p>22. Members of the Commission shall ensure that near-real time VMS data received under Section V(i) of these Rules and Procedures will be disseminated only to their authorized inspection and enforcement personnel responsible for fisheries compliance and enforcement activities on the high seas in the Convention Area.</p>	<p><i>To include judicial personnel and not necessarily be directly linked to high seas boarding and inspection persons, whilst maintaining the need to be “authorised”, Also accommodating compliance and enforcement of areas under national jurisdiction.</i></p>

FFA Comments on the DRAFT Rules and Procedures for the Protection, Access to, and Dissemination of Non-Public Domain Data Compiled by the Commission for the Purpose of Compliance and Enforcement Activities on the High Seas and Scientific Purposes (as set out in TCC4-WP17) as at 1 October 2008.

<p>23. Members of the Commission shall ensure the confidentiality and security of the near-real time VMS data and information received pursuant to Section V of these Rules and Procedures in a manner no less stringent than the security standards established by the Commission for the WCPFC Secretariat.</p> <p>The 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 near-real time VMS data and information received pursuant to Section V of these Rules and Procedures.</p>	
<p>Section VII: Periodic Review</p>	
<p>24. The Commission shall periodically review these Rules and Procedures, and any subsidiary documents, and amend these if necessary.</p>	
<p>Section VIII: Final Clauses</p>	
<p>25. These Rules and Procedures do not prevent a CCM from authorizing the release of any data it has provided to the Commission.</p>	<p><i>There may be a need to clarify to whom authority is required from. For instance, is it flag State or the State that conducted the inspection? In the case of observer reports is it the flag State or the State whose national conducted the ROP activities? For VMS is it the flag State?</i></p>
<p>26. These Rules and Procedures do not prevent a CCM from establishing agreements or arrangements with other CCMs regarding the release of non public domain data it has provided to the Commission or utilise existing agreements or arrangements, for the purpose of compliance and enforcement activities or scientific purposes, including standing authorizations for such releases of data.</p>	<p><i>Does this provision provide sufficient recognition of existing arrangements?</i></p>

[Second Draft]
11.12.08

**Rules and Procedures for the Protection, Access to, and Dissemination of
Non-Public Domain Data and Information Compiled by the Commission for the Purpose of
Compliance and Enforcement Activities on the High Seas and Scientific Purposes**

Section I: Definitions

For the purpose of these Rules and Procedures, unless specifically defined, 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 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 their behalf. Such data will be made available, principally by electronic means, for the purpose of compliance and enforcement activities on the high seas only in accordance with 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. Section 4 of the Commission Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission, adopted by the Commission at its Fourth Annual Session in December 2007, apply *mutatis mutandis* to the protection, dissemination and access to, non-public domain data covered by these Rules and Procedures.

Section III: General principles and Obligations

3. Non public domain data and information held by the Commission and by service providers contracted by the Commission shall only be released 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 determined by the Commission.

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.

4. Unless otherwise decided by the Member of the Commission responsible for its external affairs, a Participating Territory shall have the same access rights to data under these Rules and Procedures as Members.

5. 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.

6. 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. A Member of the Commission whose representative, authorized in accordance with paragraphs 10 and 35 below, failed to observe the rules stipulated in these Rules and Procedures shall immediately lose access to 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.

Section IV: Provisions for Access and Dissemination for the Purpose of Compliance and Enforcement Activities on the High Seas

7. Members of the Commission shall ensure that data and information received pursuant to these Rules and Procedures is disseminated only to their authorized enforcement personnel responsible for fisheries compliance and enforcement activities on the high seas in the Convention Area.

8. Members of the Commission shall notify the Secretariat of their enforcement authorities authorized to receive non public domain data and information in accordance with these Rules and Procedures. Such notification shall include all relevant contact information, including telephone and facsimile numbers and email addresses.

9. The Secretariat shall maintain a register of such enforcement authorities authorized to receive data and information and the contact information provided. Members and the Secretariat shall ensure the list is kept up to date. The Secretariat shall make available the list to Members of the Commission upon written request. Only the enforcement authorities listed on the Commission's register are authorized to receive non public domain data and information in accordance with these Rules and Procedures.

10. Members of the Commission shall also notify the Secretariat of a small number of representatives (preferably only 2) in their enforcement authorities authorized to receive non-public domain data in accordance with these Rules and Procedures. Such notification will include name, affiliation, and contact information (e.g. telephone, facsimile, email address). The Secretariat will maintain a list of such authorized representatives. Members of the Commission

and the Secretariat shall ensure the list of representatives is kept up to date and made available to Members upon written request.

11. Authorized representative(s) of Members of the Commission are responsible for ensuring the confidentiality and security of the non-public domain data according to its risk classification and in a manner consistent with security standards established by the Commission for the Secretariat in its Information Security Policy. Such authorized representatives 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 Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission.

Commission Regional Observer Programme

12. The Executive Director, or designee, shall make available, upon request, to Members of the Commission observer reports for the high seas submitted to the Commission pursuant to CMM 2007-01 to implement the Commission's Regional Observer Programme (ROP), provided that the identity of individual observers is not revealed.

13. A Member of the Commission may request additional information from the Member responsible for an observer, including the name of individual observers if, as part of an investigation or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures or decisions adopted by the Commission, it is necessary, *inter alia*, to interview the observer to corroborate statements, have the observer serve as a witness, or to obtain additional information for the investigation or judicial proceedings. Members of the Commission shall, in accordance with Article 25 of the Convention, inform the Commission when the investigation is completed.

14. If the Secretariat has been notified by a Member of the Commission that observer reports are part of an investigation or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures or decisions adopted by the Commission, the Executive Director shall facilitate consultations between the Member undertaking the investigation or judicial proceedings and the Member making the request pursuant to paragraphs 12 and 13 above to ensure there is coordination between the authorized enforcement authorities of each Member.

High Seas Boarding and Inspection (HSB&I)

15. The Executive Director, or designee, shall make available upon request to Contracting Parties, and, subject to paragraph 4 of these Rules and Procedures, Participating Territories HSB&I reports submitted to the Commission pursuant to CMM 2006-08.

16. With respect to access to and dissemination of HSB&I data and information, these Rules and Procedures apply to a Contracting Party and a Fishing Entity when the Contracting Party concerned has notified the Commission that the High Seas Boarding and Inspection Procedures

apply in their entirety as between that Contracting Party and a Fishing Entity, in accordance with paragraph 6 of CMM 2006-08.

Section V: Data provided pursuant to the Commission's High Seas Vessel Monitoring System (VMS)

Release of VMS data for compliance and enforcement purposes on the high seas

17. The Executive Director, or designee, shall make available upon request to Members of the Commission VMS data submitted to the Commission pursuant to CMM 2007-02, or other decisions of the Commission, and the Commission's VMS Standards, Specifications, and Procedures (SSPs) for the planning and execution of compliance and enforcement activities on the high seas.

18. VMS data that is older than [30] days may be made available to Members upon request for the purpose of planning compliance and enforcement activities on the high seas in accordance with these Rules and Procedures.

19. Members of the Commission shall ensure the confidentiality and security of VMS data received pursuant to these Rules and Procedures in a manner no less stringent than the security standards established by the Commission for the WCPFC Secretariat in its Information Security Policy.

Release of near real-time VMS data for compliance and enforcement purposes on the high seas

20. Near real-time² VMS data for the purpose of executing compliance and enforcement activities on the high seas shall only be made available in accordance the provisions of this Section. The Executive Director shall make available near real-time VMS data (geographical position, speed and time) to Members of the Commission with a monitoring, control and inspection presence or capability³ on the high seas in the Convention Area

21. Members of the Commission shall advise the Secretariat of the high seas areas it intends to, or proposes to, conduct monitoring, control, and inspection activities, and request near real-time VMS data (geographical position, speed and time) for those areas, in accordance with this Section and these Rules and Procedures. The Executive Director or service providers contracted by the Commission shall then provide near real-time VMS data for the area of the intended, or proposed, patrol only.

² For the purposes of these Rules and Procedures, "near real-time" means VMS data that is less than [30] days old.

³ For the purposes of these Rules and Procedures, "a monitoring, control and inspection presence or capability on the high seas of the Convention Area" includes compliance and enforcement opportunities under regional cooperative enforcement arrangements, such as ship-rider agreements or reciprocal arrangements under the Niue Treaty.

22. Members of the Commission shall advise the Secretariat within [48] hours of the commencement of monitoring, control and inspection activities on the high seas of the Convention Area, 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) to be patrolled. 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. Members of the Commission shall notify the Secretariat within [48] hours if the monitoring, control and inspection activities on the high seas of the Convention Area will no longer take place or if the high seas area to be patrolled has changed.
23. Service providers contracted by the Commission shall only release near real-time VMS data to Members of the Commission if authorized to do so by the Executive Director and only in accordance with this Section and these Rules and Procedures.
24. Members of the Commission shall notify the Secretariat [24] hours prior to the completion of the high seas inspection 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.
25. Subject to paragraph 26, Members of the Commission shall ensure that their authorized enforcement authorities, notified to the Secretariat pursuant to paragraph 8 above, destroy near real-time VMS data, including any copies of such data, provided by the Executive Director, or service providers contracted by the Commission, within [24] hours following the completion of its high seas monitoring, control and inspection activities.
26. Authorized enforcement authorities of Members of the Commission may only retain near real-time VMS data for longer than [24] hours if it is part of an active investigation or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures or decisions adopted by the Commission.
27. The authorized enforcement authorities of Members of the Commission shall also destroy any near real-time VMS data and any copies of such data, including full erasure of all electronic data, associated with any investigation that is provided to the flag State once that flag State has undertaken its obligations in accordance with Article 25 of the Convention, and any other conservation and management measure or decision adopted by the Commission. A summary report of the status of the investigation shall be included in Part 2 of the Annual Report to the Commission at the next session of the Technical and Compliance Committee.
28. Members of the Commission may request and receive near real-time VMS data for areas of high seas areas adjacent to and not more than [100] nautical miles from their exclusive economic zones (EEZs) for the purpose of conducting monitoring, control and inspection activities in areas under the national jurisdiction of the Member. The Member of the Commission shall acknowledge receipt of the data immediately once it is received. Subject to paragraph 29, such Members shall destroy the near real-time VMS data and any copies of such data, including full erasure of all electronic data, provided by the Executive Director, or service providers contracted by the Commission, [72] hours following dispatch by the Executive Director or service

providers contracted by the Commission. The Member of the Commission shall advise the Executive Director once the near real-time VMS data and any copies have been destroyed, including full erasure of all electronic data.

29. A Member of the Commission may only retain near-real time VMS data provided pursuant to paragraph 28 above longer than [72] hours if it is part of an active investigation or judicial proceeding of an alleged violation of the provisions of the Convention or any conservation and management measures or decisions adopted by the Commission. Members of the Commission shall destroy any near real-time VMS data and any copies of such data, including full erasure of all electronic data, associated with an investigation that is provided to the flag State once that flag State has undertaken its obligations in accordance with Article 25 of the Convention and any conservation and management measures or decisions adopted by the Commission. The Member of the Commission shall advise the Executive Director once the near real-time VMS data and any copies have been destroyed, including full erasure of all electronic data. A summary report of the status of the investigation shall be included in Part 2 of the Annual Report the Member of the Commission provides to the Commission at the next session of the Technical and Compliance Committee.

30. Notwithstanding paragraphs 25, 27, and 28 above, all VMS data submitted to the Commission pursuant to CMM 2007-02 and the Commission's VMS Standards, Specifications, and Procedures (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.

31. Section V will apply to the area north of 20°N and west of 175°E after the Commission VMS has been activated for that area of the high seas in the Convention Area.

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

32. The Executive Director, or service providers contracted by the Commission, shall make available high seas VMS data for scientific purposes, as described in paragraph 37 below, to Members of the Commission.

33. Members of the Commission shall notify the Secretariat of the authorities authorized to receive high seas VMS data for scientific purposes in accordance with these Rules and Procedures. Such notification shall include all relevant contact information, including telephone and facsimile numbers and email addresses.

34. The Secretariat shall maintain a register of such authorities authorized to receive high seas VMS data for scientific purposes and the contact information provided. Members of the Commission and the Secretariat shall ensure the list is kept up to date. The Secretariat shall make available the list to Members upon written request. Only the authorities listed on the Commission's register are authorized to receive high seas VMS data for scientific purposes accordance with these Rules and Procedures.

35. Members of the Commission shall also notify the Secretariat of a small number of representatives (preferably only 2) in their authorities authorized to receive high seas VMS data for scientific purposes. Such notification will include name, affiliation, and contact information (e.g. telephone, facsimile, email address). The Secretariat will maintain a list of such authorized representatives. Members of the Commission and the Secretariat shall ensure the list of representatives is kept up to date and made available to Members upon written request.

36. Authorized representative(s) of Members of the Commission are responsible for ensuring the confidentiality and security of VMS data according to its risk classification and in a manner consistent with security standards established by the Commission for the Secretariat in its Information Security Policy. Such authorized representatives 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 Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission

37. 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.

38. Except for sub-paragraph (b), VMS data described in paragraph 37 shall be made available on a [two] year time lag.

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

40. High seas VMS data may also be shared with other regional fisheries management organizations (RFMOs), if the Commission enters into agreements for the exchange of such data with other RFMOs. Such agreements must include requirements that the other RFMO provides equivalent VMS data on a reciprocal basis and maintains the data provided to them in a manner consistent with the security standards established by the Commission. At each annual session the Executive Director will provide copies of 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. For the purposes of these Rules and Procedures, the following organisations will be treated as being equivalent to a RFMO:

- International Scientific Committee (ISC)
- Secretariat of the Pacific Community (SPC)

41. The Executive Director, or service providers contracted by the Commission, on authorization by the Executive Director, may make VMS data available to other persons for scientific purposes in accordance with Section 4.6 of Commission's Rules and Procedure for the Protection, Access to, and Dissemination of Data Compiled by the Commission.

Section VII: Periodic Review

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

Section VIII: Final Clauses

43. 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.

44. 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 utilize existing agreements or arrangements, for the purpose of compliance and enforcement activities or scientific purposes, including standing authorizations for such releases of data.

November 12, 2008

Dear Colleagues,

Please find attached my second draft of the separate rules and procedures (ROPs) for the protection, access to, and dissemination of non public domain data for the purposes of compliance and enforcement on the high seas, and, in the case of VMS data, scientific purposes.

The attached draft attempts to incorporate the comments received during our discussion of the first draft of the ROPs during TCC4 and the written comments submitted by CCMs. The written comments submitted to me by October 24th are enclosed in this communication for your information.

I note that the indicative schedule for the Annual Commission Meeting in Busan (WCPFC5-2008/04 Rev.1) has scheduled time for the AHTG [Data] on Tuesday December 9th. In order to make as much progress on the draft ROPs as possible at that time, I invite CCMs to provide comments on the attached Chair's second draft in advance of WCPFC5. Further, I am prepared to be available for informal consultations with delegations in Busan, if this would be helpful or desired.

Please contact me directly at koehlerhr@state.gov with any questions or concerns.

I look forward to working with you all again in December.

Sincerely,

Holly Koehler

Chair, AHTG [Data]