



TECHNICAL AND COMPLIANCE COMMITTEE
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STATUS OF THE AD-HOC TASK GROUP [DATA]

WCPFC-TCC4-2008/17
3 September 2008

Introduction

During the first six months of 2008, the Secretariat, working 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.

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.

Noting that the AHTG [Data] Chair continues to consult with CCMs on the further development and refinement of this draft, her attached communication, and accompanying draft rules and procedures to address the requirements of paragraph 23 of the Commission's *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission* (**Attachment B**), are tabled for information and comment by the TCC.



**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.

25 August 2008

Dear Colleagues,

Please find attached my first 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.

In developing the attached Chair's draft I drew upon comments received during our informal discussion on July 11, 2008 in Nadi, Fiji, following the IWG-ROP2 meeting, current practices in other RFMOs, and proposals on the subject previously tabled by several CCMs (WCPFC-TCC3-2008/DP10). Additionally, the attached draft incorporates the initial advice provided by the Statistics Specialist Working Group at SC4 with respect to scientific purposes for VMS data.

The attached are ROPs separate from those adopted by the Commission at its Fourth Annual Meeting in Guam last year, as stipulated by paragraphs 23 and 24 of those ROPs. And these ROPs address only the specific cases of compliance and enforcement purposes on the high seas and, for VMS data, scientific purposes. However, the draft is designed to be read together with the other Commission ROPs so to avoid excessive duplication or repetition of certain provisions. In this regard, if the attached draft ROPs do not address a specific issue it is because it is covered by the existing Commission ROPs.

I note that the indicative schedule for the TCC4 Meeting (WCPFC-TCC4-2008/05) has scheduled a meeting of the AHTG [Data] for the evening of Thursday, October 2. In order to make as much progress on the draft ROPs as possible at that session, I invite CCMs to provide comments on the attached Chair's draft in advance of TCC4. Further, I am prepared to be available for informal consultations with delegations in Pohnpei in the days that precede the start of TCC4, 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 in the coming weeks.

Sincerely,

Original Signed
Holly Koehler
Chair, AHTG [Data]

[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**

Section I: Definitions

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.

Section II: Scope and Purpose

2. The scope of these Rules and Procedures is non-public domain¹ data and information 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.

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 *mutatis mutandis* to the protection, dissemination and access to, non-public domain data covered by these Rules and Procedures.

Section III: Basic principles

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.

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.

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.

Section IV: Provisions for Access and Dissemination

6. The Executive Director, or designee, shall make available 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, 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.

7. The Executive Director, or designee, shall make available to Members documentation submitted by CCMs, covering the period 1 January to 31 December of the previous year, that may be required to implement conservation and management measures adopted by the Commission 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

8. Reports described in paragraph 5 above shall not be disseminated if the Secretariat has been notified by a Member of the Commission that such reports are 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, in accordance with Article 25 of the Convention, inform the Commission when the investigation is completed. After such a notification, the Secretariat may release the reports in accordance with paragraph 5 above.

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

V(i) Release of near-real time VMS data for compliance and enforcement purposes

9. 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. 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.

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.

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.

12. The inspection authorities of 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.

13. The inspection authorities of 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.

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. A summary report of the status of the investigation shall be included in Part 2 of the Annual Report to the Commission.

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.

16. A Member of the Commission may only retain near-real time VMS data provided pursuant to paragraph 14 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. 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.

V(ii) Release of VMS data for scientific purposes

17. The Executive Director, or service providers authorized by the Executive Director, shall make available VMS data for scientific purposes, as described in paragraph 17 below, to CCMs. 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. 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.

18. VMS data, including vessel identification, location and time, 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 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.

19. Except for sub-paragraph (b), VMS data described in paragraph 17 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.

Section VI: Specific Administrative Requirements for Near-Real Time VMS Data

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.

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.

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 compliance and enforcement activities on the high seas in the Convention Area.

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. 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.

Section VII: Periodic Review

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

Section VIII: Final Clauses

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

26. These Rules and Procedures do not prevent a CCM from establishing agreements with other CCMs regarding the release of non public domain data it has provided to the Commission, for the purpose of compliance and enforcement activities or scientific purposes, including standing authorizations for such releases of data.