



SEVENTH REGULAR SESSION
Honolulu, Hawaii, USA
6-10 December 2010

USA POSITION ON PARA 24(8) OF THE CONVENTION AND CMM 2007-02

WCPFC7-2010-DP/14
14 November 2010

Position Paper prepared by the USA



**U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration**

NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax: (808) 973-2941

12 November, 2010

Professor Glenn Hurry
Executive Director
Western and Central Pacific Fisheries Commission
P.O. Box 2356
Kolonia
Pohnpei, Federated States of Micronesia, 96940

Dear Professor Hurry:

I am writing with regard to the application of Article 24(8) of the WCPF Convention, more specifically, the expansion of the Commission VMS to the Exclusive Economic Zones of CCMs. I request that you circulate this letter to all CCMs for their awareness.

Article 24(8) charges the Commission to operate a VMS for all CCMs' fishing vessels that fish for highly migratory fish stocks on the high seas of the Convention Area. Article 24(8) further provides that "[a]ny member of the Commission may request that waters under its national jurisdiction be included within the area covered by such vessel monitoring system." The Commission's VMS measure, CMM 2007-02, states in paragraph 6(c) that "[a]ny CCM may, request, *for the Commission's consideration and approval*, that waters under its national jurisdiction be included within the area covered by the Commission VMS." (Emphasis added).

At WCPFC6, New Zealand requested that waters under its national jurisdiction be included within the area covered by the Commission VMS. This issue came up on the last afternoon of the annual meeting and was the subject of limited discussion. Paragraph 395 of the WCPFC6 meeting report reflects a decision that these matters are to be considered a bilateral issue between the Secretariat and the requesting country.

We are aware that the Secretariat has entered into a similar arrangement with at least one additional CCM although no requests were submitted "for the Commission's consideration and approval," as required under CMM 2007-02. It is our understanding that both CCMs have access to VMS data on all vessels reporting to the Commission's VMS when those vessels are in the waters under the jurisdiction of those CCMs. In our view, this is not a bilateral matter, but rather a matter for the Commission's consideration and approval in accordance with CMM 2007-02.

Our concerns are not related to the requests by CCMs to have the Commission VMS apply in their waters or to the scope of those requests. We recognize the utility from an MCS perspective of expanding the scope of the Commission VMS into national waters and are well aware of the struggles of all coastal



CCMs, particularly Small Island Developing States, to police their waters and prevent unlawful incursions by unlicensed vessels.

Instead, our concern relates to the implementation of Commission CMMs in something other than the manner specified. As noted above, the WCPFC6 meeting report reflects a decision that these are bilateral matters. However, a meeting report cannot modify, amend or supersede the explicit language of an existing WCPFC conservation and management measure.

Moreover, this is not simply a matter of procedure, but also of substance, as it is necessary to obtain consent from a flag-State on the use or dissemination of VMS information from its vessels (unless such consent is obtained from individual vessels or otherwise already provided via another Commission decision or procedure.)

As a result, it is our view that paragraph 6(c) of CMM 2007-02 remains in effect and is not affected by a decision point captured in the meeting record of WCPFC6. In addition, although the discussion at WCPFC6 was truncated, we believe that New Zealand properly brought its request to the Commission for its consideration and approval, and received that approval in accordance with CMM 2007-02.

If other members wish to have the Commission VMS apply in waters under their jurisdiction, the United States is predisposed to consider those requests favorably, but we believe that those requests require an affirmative decision by the Commission. We would welcome the review of any such requests at WCPFC7 from CCMs. If any such requests are received, we request that the Chair add this item to the WCPFC7 agenda and make time available for the consideration of these requests.

Sincerely,



Charles Karnella, Ph.D.
International Fisheries Administrator

Cc: William Gibbons-Fly, U.S. Department of State