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**EUROPEAN UNION COMMENTS ON THE PROPOSAL OF THE REPUBLIC OF  
MARSHALL ISLANDS RESPECTING RIGHTS OF CHARTERING STATES TO  
ACCESS DATA**

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**WCPFC-TCC7-2011-DP/03**

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**Paper prepared by the European Union**



**EUROPEAN COMMISSION**

**DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES**

**INTERNATIONAL AFFAIRS AND MARKETS**

**INTERNATIONAL AFFAIRS, LAW OF THE SEA AND REGIONAL FISHERIES ORGANISATIONS**

Brussels,  
MARE-B.1/PN/ae(2011)

Ms Holly Koehler  
Chair AHTG [Data]  
Western and Central Pacific  
Fisheries Commission  
c/o Marine Conservation Office  
US Department of State  
Washington, DC  
U.S.A.

**Subject: EU Comments on the proposal of Republic of Marshal Islands concerning rights of chartering states to access data**

Dear Ms. Koehler,

I am writing in response to your request for comments on the inter-sessional proposal of the Republic of Marshal Islands (RMI) concerning the rights of chartering states to access data. In particular, the proposal suggests amendments to the 2007<sup>1</sup> and 2009<sup>2</sup> Rules and Procedures on public and non-public domain data, respectively.

According to our reading the RMI proposal relates to data:

- (1) that pertains to the **individual activities of a vessel** applying to be or being chartered, leased or similar, therefore such data is not public domain data by virtue of Art 9. of the 2007 Rules and Procedures;
- (2) that pertains to ongoing **monitoring and control of a chartered vessel** while on the HS (HS boarding and inspection reports, ROP data and information, VMS data and information and HS transshipment declarations and notices)

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<sup>1</sup> Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission (as refined and adopted at the Fourth Regular Session of the Commission, Tumon, Guam, USA, 2-7 December 2007)

<sup>2</sup> Rules and Procedures for the Protection, Access to, and Dissemination of High Seas Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Monitoring, Control or Surveillance (MCS) Activities and the Access to and Dissemination of High Seas VMS Data for Scientific Purposes

(3) that pertains to the **'history'** (page 2, line 8 of RMI proposal), including catch and effort data, of the vessel that is applying to operate or is currently operating under charter, lease or similar arrangements for the purpose of conducting fishing operations as an integral part of a domestic fleet and therefore

- does not concern data being collected during the charter or similar arrangement that is due for submission under the rules on Scientific Data to be Provided to the Commission (page 2, line 4-6 of RMI proposal);

- could cover any vessel that applies to be chartered, leased or similar without actual certainty that the charter would be completed (page 3, line 2 of proposal).

- applies to data for activities of a vessel as far back as it exists on the records of the Commission since there is no specific definition of what constitutes 'history of a vessel'.

As the RMI paper stands, the proposed access rights are very broad in their scope. Looking at records of an individual vessel (present and even more so historical) is in principle a sensitive matter not only for the Flag state but also for commercial operators. Charters and similar arrangements are by definition private commercial undertakings and frequently subject to confidentiality clauses.

In addition, RMI's suggestion that chartering states can access data for vessels simply applying for or considered for chartering makes such access potentially applicable to any vessel in the Convention area.

We would appreciate it if at TCC7 RMI provides some clarification on what they consider to be 'history of a vessel', how far back that history could go and give concrete examples of when 'historical' data and information may be needed by a chartering state. This would help us understand better the specific concerns and find the appropriate frame within which access to non-public domain data might be granted to chartering states. This frame should also tackle the issue of how access rights are terminated upon the expiration of a chartering agreement.

Furthermore, the EU would like to note that this issue should be considered in the light of the outcomes of the Catch Attribution Study and in parallel with the forthcoming renewal of the WCPFC Charter Notification Scheme, as the potential rights of access to data and their expiration would emanate from the notifications of a charter and of its termination.

The EU would like to suggest that, in the meantime, should a chartering state need access to any of the data described in the RMI proposal, it could either address a direct request to the Flag state or take advantage of the provisions of paragraph 30 of the 2007 Rules and Procedures.

Yours sincerely,



Roberto Cesari  
Head of EU Delegation to WCPFC