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**PROPOSAL OF THE REPUBLIC OF MARSHALL ISLANDS RESPECTING  
RIGHTS OF CHARTERING STATES TO ACCESS DATA**

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**WCPFC-TCC7-2011-DP/02**  
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**Paper prepared by the Republic of the Marshall Islands**

## **Proposal of the Republic of the Marshall Islands**

### **AHTG [data] and rights of chartering States to access data**

At WCPFC7 FFA members offered to provide a paper on two items, which could be a starting point for the work of the AHTG[data] in 2011:

- Right of chartering States to access WCPFC-held data
- The process for taking into account the right of the chartering State with respect to data it has provided for chartered vessels

#### *Background*

The WCPFC has adopted two sets of data rules and procedures that stipulate the conditions and procedures for CCMs to access WCPFC-held data.<sup>1</sup> As a general rule these data rules and procedures have embraced the following principles:

*CCMs shall have access to data to serve the purposes of the Convention, including data:*

- (a) covering vessels flying their flag in the WCPFC Convention Area;*
- (b) covering any vessels fishing in waters under their jurisdiction;*
- (c) covering vessels applying to fish in their national waters, unloading in their ports or transshipping fish within waters under their jurisdiction;*

In general, this means that coastal States, flag States and port States/licensing States have access to data related to a vessel's fishing activities that the WCPFC holds, even if another CCM has provided that data to the Commission or if the Commission has collected that information directly.

An area that was overlooked in the development of the data rules and procedures was to recognise that chartering CCMs may require similar dedicated access to WCPFC held-data which relates to vessels that they charter. Such WCPFC-data would be those which may have been provided by another CCM to the Commission, or they may have been collected by the WCPFC directly, and so are not necessarily data that the chartering State has provided to the WCPFC. The purpose of this paper is to consider the circumstances where chartering States might need to access WCPFC-held data that they themselves did not provide to the WCPFC and to consider possible amendments to the WCPFC data access rules which might accommodate provisions to facilitate such access.

*Gap analysis on areas where chartering members or territories might need access to WCPFC-held data*

**Operational-level catch and effort data, aggregated catch and effort data and size composition data during the duration of the charter**

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<sup>1</sup> 2007 Rules and Procedures for Protection, Access to, and Dissemination of Data compiled by the Commission; 2009 Rules and Procedures for Protection, Access to, 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.

The 2007 data provision rules “Scientific data to be provided to the Commission” covers the provision by CCMs of annual catch estimates, number of vessels, operational-level catch and effort data, catch and effort data aggregated by time period and geographic area, and size composition data. In this regard it should be noted that chartering States are responsible for providing these data to the WCPFC.<sup>2</sup> Coastal States may also provide these data to the Commission if they choose. Therefore in general we can expect that the chartering member or territory should already have adequate access to operational-level catch and effort data, aggregated catch and effort data, and size composition data for the duration of a charter. However, there may be a need for specific provisions should a member wish to access WCPFC-held data related to the history of a vessel that is being considered or is applying to operate under a charter, lease or similar arrangement for the purposes of conducting fishing operations in the Convention Area.

*Possible amendments to 2007 Data Access Rules and Procedures to create a new general rule related to access by chartering members and territories:*

5. CCMs shall have access to data to serve the purposes of the Convention, including data:

(a) ...

(c bis) covering vessels applying to operate, or which do operate, under charter, lease or other similar mechanisms for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering member or territory

...(d)

19. CCMs shall have access to Non-Public Domain data to serve the purposes of the Convention, including data:

(a) ...

(c bis) covering vessels applying to operate, or which do operate, under charter, lease or other similar mechanisms for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering member or territory

...(d)

High Seas non-public domain data and information (for example, High Seas Boarding and Inspection Reports, ROP data and information, VMS data and information and High Seas Transshipment Declarations and notices).

The relevant WCPFC access data rules and procedures are the high seas MCS data rules and procedures which were adopted by the Commission in 2009. These data rules and procedures recognise the general principles elaborated in the 2007 data rules and procedures. Additionally Authorised MCS Personnel of CCMs are given scope in the 2009 Data Rules and Procedures to request data or information should they wish or in other MCS circumstances. These rules are broad enough to provide adequate scope for chartering members to request and receive data and information

<sup>2</sup> Flag states or entities shall be responsible for providing to the Commission scientific data covering vessels they have flagged, except for vessels operating under joint-venture or charter arrangements with another state such that the vessels operate, for all intents and purposes, as local vessels of the other state, in which case the other state shall be responsible for the provision of data to the Commission.

for their chartered vessels which either the WCPFC has collected, or which has been provided by other CCMs to the Commission. However, for completeness and for improved clarity in the data rules and procedures, it would be desirable to include a specific provision that allows chartering members or territories to request this information, on the basis of presently having or considering a charter arrangement for a specific vessel.

*Possible amendments to 2009 High Seas Data Access Rules and Procedures to include a general rule related to chartering members and territories:*

13. Authorized MCS Entities and Personnel may request and shall receive data covered by these Rules and Procedures for (i) vessels that fish in waters under their jurisdiction, and (ii) vessels applying to fish in their national waters, unload in their ports or transship within waters under their jurisdiction, or (iii) vessels applying to operate, or which do operate, under charter, lease or other similar mechanisms for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering member or territory, except where paragraph 24 is applicable.

#### *Relevance of WCPFC Catch Attribution Study*

The 2011 Charter Catch Attribution study for the WCPFC demonstrated that there is a degree of complexity with catch attribution practices in the WCPFC. In particular it appears that not all charter arrangements are currently notified to the Commission and there is not a consistent application of catch/effort attribution practices among CCMs or by SPC as the data services provider to the WCPFC. These characteristics may need to be considered in the context of elaborating rules for access to data by chartering members or territories. In particular, something of a general non-prescriptive nature may be required as provisions relating to when chartering members or territories may access WCPFC-held data. The purpose of any data access rules and procedures that are drafted for chartering members or territories should be to take into account these differences in chartering practices, and not seek to resolve the attribution of catches between flag States and chartering States.

*Is the WCPFC charter notification scheme (CMM 2009-08) a relevant basis for limiting the scope of access by chartering members or territories to WCPFC-held data?*

The Charter notification CMM might be considered as a potential basis for determining the pool of chartering members or territories and the vessels to which access to data might be permissible. In considering this option a review of the purpose and scope of the WCPFC Charter Notification Scheme (CMM 2009-08) is required.

The scheme provides a mechanism for chartering members or territories to keep the WCPFC Secretariat and other CCMs, including flag States, apprised of the charter arrangements that they have in place. The intended benefit of a notification scheme was to reduce the double-counting that was a perceived risk from charter arrangements. For Pacific Island countries and territories, the value of the Charter Notification Scheme is that it provides a mechanism for them to transparently specify which vessels are considered by the chartering member or territory to be an integral part of their domestic fleet (paragraph 1 of CMM 2009-08). This means that such

vessels, for the duration of the charter arrangement, would have their catch and/or effort attributed to the chartering member or territory, and not attributed to the flag State. Consequently any exemptions in CMMs for the domestic fleets of Small Island developing States or Territories from the application of catch or effort limits would also apply to these chartered vessels for the duration of the charter.

However, experience in the use of the Charter notification scheme, particularly by Small Island developing States or Territories has been mixed. In part this may be because it is not obligatory for all charter arrangements to be notified to the WCPFC in accordance with CMM 2009-08. Use of the Charter notification scheme is encouraged to improve transparency about which vessels are domestic vessels of the small island developing States or Territories for the purpose of catch and effort limits in CMMs. Furthermore, for those fisheries where flag-based limits are in place, there is currently limited monitoring that the WCPFC Secretariat is currently capable of undertaking to assess CCM compliance with applicable catch and effort limits under CMMs, at least to the extent that the WCPFC charter notification scheme might be relevant. Additionally, with the growing shift in conservation and management measures away from flag-based limits to zone-based management arrangements, the relevance of the WCPFC charter notification scheme will likely decrease further in relevance, except where high seas limits apply. Finally, the potentially short-life span of CMM 2009-08 with an expiry in December 2011 unless the Commission renews it, also leaves some uncertainty as to the future ability to use this CMM as a reference tool for charter arrangements in the WCPFC Convention Area.

As a result, currently the WCPFC Charter notification scheme probably is not a good basis for determining the scope for access by chartering States to WCPFC-held data.

*Is there a need for specific recognition in the data access rules for chartering members or territories as providers of data that the WCPFC holds related to their vessels?*

This might be considered relevant in the case of non-public domain data or information where a request has been submitted for the release of these data and approval of the provider of the data is required. There is not a similar specific identification that is currently applied to give flag States or coastal States any higher power of authority over the release of particular information related to their vessels or data related to their EEZs. Given this, it is probably unnecessary for any special recognition to be given to chartering members or territories with respect to WCPFC-held data related to their vessels.

*Summary:*

The following amendments are proposed to the 2007 and 2009 WCPFC data access rules and procedures:

*Possible amendments to 2007 Data Access Rules and Procedures to create a new general rule related to chartering members and territories:*

5. CCMs shall have access to data to serve the purposes of the Convention, including data:

(a) ...

(c bis) covering vessels applying to operate, or which do operate, under charter, lease

or other similar mechanisms for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering member or territory

...(d)

19. CCMs shall have access to Non-Public Domain data to serve the purposes of the Convention, including data:

(a) ...

(c bis) covering vessels applying to operate, or which do operate, under charter, lease or other similar mechanisms for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering member or territory

...(d)

*Possible amendments to 2009 High Seas Data Access Rules and Procedures to include a general rule related to chartering members and territories:*

13. Authorized MCS Entities and Personnel may request and shall receive data covered by these Rules and Procedures for (i) vessels that fish in waters under their jurisdiction, and (ii) vessels applying to fish in their national waters, unload in their ports or transship within waters under their jurisdiction, or (iii) vessels applying to operate, or which do operate, under charter, lease or other similar mechanisms for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering member or territory, except where paragraph 24 is applicable.