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**FFA MEMBERS SUBMISSION ON IMPLEMENTING ARTICLE 24(8) OF THE  
CONVENTION - VMS**

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**WCPFC8- 2011- DP/10  
7 November 2011**

**Paper prepared by FFA Members**



FFA

4 November 2011

Dr Charles Karnella  
Chair  
Western and Central Pacific Fisheries Commission  
PO Box 2356  
Kolonias  
Federated States of Micronesia

Dear Dr Karnella,

**FFA members' submission on implementing Article 24(8) of the Convention – Vessel Monitoring System**

I write in my capacity as the Chair of the Forum Fisheries Committee on behalf of the 17 FFA Members.

FFA members place a very high importance on monitoring fishing vessels in our Exclusive Economic Zones. We see that the ability to view both licensed and unlicensed vessels in our national waters as paramount to exercising the obligations placed on us under international law.

FFA members hold grave concerns about the restrictions that are currently placed on our ability to access data relating to our EEZs and have therefore prepared the attached delegation paper that collates all relevant provisions of the Convention, decisions of the Commission and CMM extracts.

We would be grateful if you could circulate this to other CCMs.

Should you or others require further information, please do not hesitate to contact Mr Mark Young ([mark.young@ffa.int](mailto:mark.young@ffa.int)).

Yours Sincerely

Faalavaau Perina Sila  
Chair  
Forum Fisheries Committee

### **Explanatory Note for Delegation Paper**

The attached Delegation Paper sets out key provisions from the Convention, relevant CMM, Resolution 2008-01, the SSPs, decisions of the Commission and the Joint VMS Review. It is provided to support the FFA Members' position to give effect to Article 24(8) for Commission VMS data of vessels in the waters of coastal States, and will be referred to in our interventions at the upcoming Commission meeting.

## **Delegation Paper**

### ***A. Convention Text***

#### **Article 5: Principles and measures for conservation and management**

In order to conserve and manage highly migratory fish stocks in the Convention Area in their entirety, the members of the Commission shall, in giving effect to their duty to cooperate in accordance with the 1982 Convention, the Agreement and this Convention:

- (j) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

#### **Article 7: Implementation of principles in areas under national jurisdiction**

(1) The principles and measures for conservation and management enumerated in article 5 shall be applied by coastal States within areas under national jurisdiction in the Convention Area in the exercise of their sovereign rights for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks.

(2) The members of the Commission shall give due consideration to the respective capacities of developing coastal States, in particular small island developing States, in the Convention Area to apply the provisions of articles 5 and 6 within areas under national jurisdiction and their need for assistance as provided for in this Convention.

#### **Article 8: Compatibility of conservation and management measures**

(1) Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory fish stocks in their entirety. To this end, the members of the Commission have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.

(3) The coastal State shall ensure that the measures adopted and applied by it to highly migratory fish stocks within areas under its national jurisdiction do not undermine the effectiveness of measures adopted by the Commission under this Convention in respect of the same stocks.

#### **Article 10: Functions of the Commission**

(1) Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks within areas under national jurisdiction, the functions of the Commission shall be to:

- (b) promote cooperation and coordination between members of the Commission to ensure that conservation and management measures for highly migratory fish stocks in areas under national jurisdiction and measures for the same stocks on the high seas are compatible;
- (h) adopt generally recommended international minimum standards for the responsible conduct of fishing operations;
- (i) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement, including a vessel monitoring system;

### **Article 21: Transparency**

The Commission shall promote transparency in its decision-making processes and other activities.

### **Article 23: Obligations of members of the Commission**

(1) Each member of the Commission shall promptly implement the provisions of this Convention and any conservation, management and other measures or matters which may be agreed pursuant to this Convention from time to time and shall cooperate in furthering the objective of this Convention.

### **Article 24: Flag State duties**

- (1) Each member of the Commission shall take such measures as may be necessary to ensure that:
- (a) fishing vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant hereto and that such vessels do not engage in any activity which undermine the effectiveness of such measures; and
  - (b) fishing vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of any Contracting Party.
- (3) It shall be a condition of every authorization issued by a member of the Commission that the fishing vessel in respect of which the authorization is issued:
- (a) conducts fishing within areas under the national jurisdiction of other States only where the fishing vessel holds any licence, permit or authorization that may be required by such other State; and
- (8) Each member of the Commission shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas. The standards, specifications and procedures for the use of such transmitters shall be established by the Commission, which shall operate a vessel monitoring system for all vessels that fish for highly migratory fish stocks on the high seas in the Convention Area. In establishing such standards, specifications and procedures, the Commission shall take into account the characteristics of traditional fishing vessels from developing States. The Commission, directly, and simultaneously with the flag State where the flag State so requires, or through such other organization designated by the Commission, shall receive information from the vessel monitoring system in accordance with the procedures adopted by the Commission. The procedures adopted by the Commission shall include appropriate measures to protect the confidentiality of information received through the vessel monitoring system. **Any member of the Commission may request that waters under its national jurisdiction be included within the area covered by such vessel monitoring system.**
- (9) Each member of the Commission shall require its fishing vessels that fish in the Convention Area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures to be determined by the coastal State.
- (10) The members of the Commission shall cooperate to ensure compatibility between national and high seas vessel monitoring systems.

### **Article 25: Compliance and enforcement**

- (1) Each member of the Commission shall enforce the provisions of this Convention and any conservation and management measures issued by the Commission.
- (6) Where there are reasonable grounds for believing that a fishing vessel on the high seas has engaged in unauthorized fishing within an area under the national jurisdiction of a member of the Commission, the flag State of that vessel, at the request of the member concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the member concerned in taking appropriate enforcement action in such cases and may authorize the relevant authorities of such member to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the 1982 Convention.

### **Article 27: Measures taken by a port State**

(3) Members of the Commission may adopt regulations empowering the relevant national authorities to prohibit landings and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission.

### **Article 29: Transhipment**

(2) Transhipment at a port or in an area within waters under the national jurisdiction of a member of the Commission shall take place in accordance with applicable national laws.

### **Article 30: Recognition of the special requirements of developing States**

(1) The Commission shall give full recognition to the special requirements of developing States Parties to this Convention, in particular small island developing States, and of territories and possessions, in relation to conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks.

(2) In giving effect to the duty to cooperate in the establishment of conservation and management measures for highly migratory fish stocks, the Commission shall take into account the special requirements of developing States Parties, in particular small island developing States, and of territories and possessions, in particular:

(a) the vulnerability of developing States Parties, in particular small island developing States, which are dependent on the exploitation of marine living resources, including for meeting the nutritional requirements of their populations or parts thereof;

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States Parties, and territories and possessions.

(3) The Commission shall establish a fund to facilitate the effective participation of developing States Parties, particularly small island developing States, and, where appropriate, territories and possessions, in the work of the Commission, including its meetings and those of its subsidiary bodies. The financial regulations of the Commission shall include guidelines for the administration of the fund and criteria for eligibility for assistance.

(4) Cooperation with developing States, and territories and possessions, for the purposes set out in this article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. Such assistance shall, inter alia, be directed towards:

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

## **Annex III. Terms and Conditions for Fishing**

### **Article 2: Compliance with national laws**

The operator of the vessel shall comply with the applicable national laws of each coastal State Party to this Convention in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be operated in accordance with such laws.

### **Article 6: Enforcement**

(6) At all times when the vessel is navigating through an area under the national jurisdiction of a member of the Commission in which it does not have a licence to fish, and at all times when the vessel is navigating on the high seas in the Convention Area and has not been authorized by its flag State to fish on the high seas, all fishing equipment on board the vessel shall be stowed or secured in such a manner that it is not readily available to be used for fishing.

## ***B. Resolution 2008-1***

**Resolves in accordance to articles 4, 8, 10 and 30 of the Convention that:**

1. CCMs will develop, interpret and apply conservation and management measures in the context of and in a manner consistent with the 1982 Convention and the Agreement. To this end, CCMs shall cooperate, either directly or through the Commission, to enhance the ability of developing states, particularly the least developed among them and SIDS and Territories in the Convention Area, to develop their own fisheries for highly migratory fish stocks, including but not limited to the high seas within the Convention Area.

## ***C. Commission VMS SSPs***

### **1. Application**

The SSPs shall apply to the Commission VMS that covers the high seas within the Convention Area. The SSP for the operation of VMS programs within waters under national jurisdiction shall be the exclusive responsibility of the Coastal State.

### **5. Vessel reporting, including position reporting frequencies**

(3) The Commission VMS shall include an automated alert to report when vessels enter or exit the high seas of the Convention Area. Vessels subject to the Commission's VMS must be reporting to the Commission VMS through automatic means upon entry into the high seas of the Convention Area and continue reporting until the high seas of the Convention Area is exited. In the case of ALC failure or malfunction, these reports shall be provided by the vessel on a manual basis. It is the responsibility of a vessel's flag State CCM to ensure compliance with this requirement.

### **7.2 CCMs**

(1) To utilize the Commission VMS in accordance with the Commission's conservation and management measures and any of the standards, specifications and procedures agreed by the Commission.

### **7.3 The WCPFC Secretariat**

(6) To utilize the Commission VMS in a manner consistent with the Convention, the Commission's conservation and management measures, and any of the standards, specifications and procedures relating to the Commission's VMS adopted by the Commission. Unless explicitly requested by a coastal State in accordance with Article 24(8) of the Convention the Commission shall not have access to, interfere with, or use any VMS data owned by the coastal State.

## ***D. Commission Vessel Monitoring System (CMM 2007-02)***

*The Western and Central Pacific Fisheries Commission (WCPFC),*

**Recalling** the relevant provisions of the Convention, in particular Articles 3 and 24 (8), (9) and (10);

**Noting** the importance of the vessel monitoring system as a tool to effectively support the principles and measures for the conservation and management of highly migratory species within the Convention Area;

**Mindful** of the rights and obligations of Commission Members, Cooperating Non- Members and Participating Territories (CCMs) in promoting the effective implementation of conservation and management measures adopted by the Commission;

*Further mindful* of the key principles upon which the vessel monitoring system is based, including the confidentiality and security of information handled by the system, and its efficiency, cost-effectiveness and flexibility.

*Adopts*, in accordance with Article 10 of the WCPFC Convention the following process relating to the implementation of the WCPFC Vessel Monitoring System (Commission VMS)

## **5. Definitions**

(b) FFA Secretariat means the Secretariat of the Pacific Islands Forum Fisheries Agency based at Honiara, Solomon Islands;

(c) FFA VMS means the vessel monitoring system developed, managed and operated by the FFA Secretariat and members of the Pacific Islands Forum Fisheries Agency;

## **6. Applicability**

(c) Any 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. Necessary expenses incurred in the inclusion of such area into the Commission VMS shall be borne by the CCM which made the request.

## **9. Obligation of CCMs**

(b) CCMs shall cooperate to ensure compatibility between national and high seas VMSs.

## ***E. Relevant decisions of the Commission***

### **Decision at WCPFC5**

#### **Paragraph 118**

WCPFC5 adopted the VMS SSPs produced by TCC4 with agreed amendments to paragraphs 5.3 and 7.3.6. WCPFC5 recommended that CCMs work to resolve issues relating to bracketed text in paragraphs 5.4 and 5.5 of the VMS SSPs prior to TCC5.

### **Decision at WCPFC6**

#### **16.2 Extension of VMS to waters under national jurisdiction**

#### **Paragraph 394**

Under Article 24(8) of the Convention, any Commission Member may request that waters under its national jurisdiction be included within the area covered by the Commission VMS. WCPFC6 was invited to consider the proposed application of the Commission VMS by a CCM wishing to obtain position information for a vessel inside its waters under national jurisdiction that is not part of its national VMS.

#### **Paragraph 395**

WCPFC6 agreed that this was essentially a bilateral issue between the CCM and the Secretariat, and that an agreement to extend the VMS to waters under national jurisdiction in this case in no way undermines the exclusive control of coastal States over their national waters.

### **Decision at WCPFC7**

#### **Paragraph 333**

In response to a query, the Compliance Manager indicated that the VMS currently collects data regarding EEZs, and the Commission pays for that data, but the data is quarantined, and countries

and the Commission do not see it. The proposed access arrangement would enable members to see data of Commission vessels in their EEZ. There would be costs associated with data access only if a member requested an increase in the polling rate for vessels. He noted that of the approximately 1,500 vessels registered exclusively on the Commission VMS, only 20%-30% are on high seas; about 70% are in member EEZs, but that data is not visible, despite being paid for by the Commission.

**Paragraph 335**

WCPFC7 adopted WCPFC7-2010-DP-27 (Rev 1), while noting that the inclusion of waters under the national jurisdiction of a member of the Commission within the area covered by the Commission VMS will not determine any disputed boundary and will be without prejudice to the final determination of such boundaries.

**WCPFC7-2010-DP-27 (Rev 1) US Proposal for Application of the Commission VMS to national waters of CCMs**

In order to ensure a transparent process in accordance with Article 24(8) of the WCPF Convention and Paragraph 6(c) of CMM 2007-02 we recommend that the following decisions be adopted at this meeting:

1. The Commission approved the application of the Commission VMS, pursuant to Article 24(8) of the WCPF Convention and Paragraph 6(c) of CMM 2007-02, to the national waters of all Commission Members that request such application.
2. A Commission Member's decision to exercise the option to apply the Commission VMS to its waters will not affect, impair or invalidate its participation in any other future or existing national or regional VMS program. Nothing in this decision in any way affects, impairs or invalidates the operation of VMS programs within the waters under national jurisdiction, which, as stated in the SSPs, shall be the exclusive responsibility of the coastal State.
3. The Secretariat will provide notification to all CCMs when any Commission Member exercises the option to apply the Commission VMS to its national waters. The Secretariat will maintain an updated list of all CCMs that have access to Commission VMS data in their waters on the secure area of the WCPFC website.
4. The Secretariat will develop a template agreement, for Commission review and approval, which will be used for all Commission Members exercising this option. The template agreement will address details regarding the application of the Commission VMS to the individual Commission Member's waters, including any costs that may be associated.



