



**COMMISSION
EIGHTH REGULAR SESSION**
Tumon, Guam, USA
26-30 March 2012

COASTAL STATES (FFA) VMS AND THE COMMISSION VMS

**WCPFC8- 2011-DP/40
20 March 2012**

Paper prepared by RMI

Republic of the Marshall Islands

Delegation Paper

Coastal States (FFA) VMS and the Commission VMS.

Background:

The Republic of the Marshall Islands continues to struggle to monitor Commission registered vessels that are in its waters, but are not reporting to its national Vessel Monitoring System. The Commission has an obligation to give effect to Article 30 of the Convention to assist SIDS. Article 30(4) states that: "...such assistance shall, inter alia, be directed towards... (c) monitoring, control, surveillance, compliance and enforcement, including... access to technology and equipment..." Access to technology includes access to Commission VMS in-zone data. The Commission VMS can already provide SIDS the type of assistance envisaged by this Article. It is in place, operational, and already paid for by all CCMs, including SIDS.

The Convention clearly anticipated that the national VMS of members would be utilized for monitoring of WCPFC vessels when within the coastal State waters. Article 24(8) states "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, specifications and procedures to be determined by the coastal State."

The issues seems to be centered on the access of Commission VMS data for Commission registered vessels that are otherwise not on the coastal states VMS – and are either transiting or otherwise IUU fishing in coastal states jurisdictions. For the RMI, the Commission VMS and the policy that surrounds it, is an impediment where certain vessels can enter, transit, without being monitored, by our national VMS - Nor could it be monitored by the WCFPC Commission VMS. The RMI utilizes the FFA VMS as its coastal states VMS. All vessels seeking to operate in the RMI must be registered and equipped with the necessary authorized units as per the FFA VMS registration procedure. The Commission VMS continues to develop and evolve, and one of the gray area is jurisdictional creep of the Commission VMS from high seas to in-zone.

At the heart of the debate, is a development of a Commission template where coastal states can gain access to Commission VMS in-zone data. Whereas, CMM 07/02 (para 4) and the Commission VMS SSP (para 1, 7.3(6)) is specific on the area of application for the Commission VMS. **So, why do we need to get agreement with the Commission for data that otherwise they should not and do not have?**

Commission VMS:

At the Policy level, the Commission VMS is a stand-alone system, however, technically it is integrated with the FFA VMS system (the Pacific VMS). This integration is defined further in the SSP and the SLA. In giving effect to the Commission VMS, CMM07/02, it also defines the FFA VMS with respect to its area of application, specifically coastal states VMS. If it is not clear, the Commission VMS is charged only with High Seas monitoring (data), while the coastal states VMS covers areas of national jurisdiction. The development of Commission VMS through the Pacific VMS, utilizing the FFA VMS, means technically, they are one in the same with different sets of rules and area of application. From the vessel registry standpoint, requirements are almost identical and vessels can be construed as being on the same system. The RMI believes that the issue is not about the Commission VMS reporting in-zone data directly to Coastal states, but rather a technical switch to allow the coastal states VMS, in our case the FFA VMS, to receive Commission VMS data. To do so will enhance our ability to manage our zone throughout the range. To do so, would be **in accordance with article 24(8)(9)(10), Article 30(2), Annex III, article 2. To do otherwise, would mean the Commission may be harboring and accessory to IUU activity in coastal states waters.**

Coastal States VMS:

As stated earlier, the RMI, like other coastal state members of the FFA, utilizes the FFA VMS as its national VMS required for all fishing vessels operating in its waters. The system was developed by the FFA well before the establishment of the Commission, and is considered an integral part of the Pacific regional MCS tool. It has been used extensively and successfully in national patrol programs, joint enforcement exercises, not to mention complimentary analytical work for stock assessments, and management purposes. It is against these backgrounds that the development of the Commission VMS is based – compatibility and efficiency. And so again, technically it is a matter of a “switch” where both systems can communicate and share data (both in-zone and high seas fishing efforts) - key features which are highlighted in the measure CMM 07/02, Article 24(9), and Article 30 of the convention text.

CMM 0702 - “• with the added capability that it can accept VMS data forwarded from the FFA VMS, so that the fishing vessels operating on the high seas in the Convention Area will have the option to report data via the FFA VMS.”

Article 24(9) of the convention text. - “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 –fing transmitters in accordance with the standards, specifications and procedures to be determined by the coastal States.”

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;
 - (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and fishworkers, as well as indigenous people in developing States Parties, particularly small island developing States Parties, and territories and possessions; and
 - (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:
 - (a) improved conservation and management of highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;
 - (b) stock assessment and scientific research; and
 - (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.

The Problem:

At the operational level, the RMI receives VMS data from fishing vessels as a condition for authorized operation in-zone. The RMI cannot through its national VMS, monitor and surveil fishing vessels that are on the Commission VMS, but are otherwise not on the RMI national VMS – while in the RMI Exclusive Economic Zone. During WCPFC7, it was reported that of the 1,500 vessels on the Commission's high seas VMS, only 20-30% were reported as being in the High Seas. 70% is perceived to be in coastal states EEZ, yet, neither the Commission nor the coastal states concerned can monitor their activity through their VMS. There is definitely something wrong with this scheme.

The issue with respect to the rules surrounding the Commission VMS access, is somehow being interpreted and applied in a manner inconsistent with the spirit of the convention in lending support to Coastal states ability to manage and monitor its areas of competence. It is OUTRAGOUS, in its current perception where it creates real potential opportunities for IUU operations in coastal states jurisdiction.

The Commission is fixated on a solution where coastal states enter in an agreement, or a template development, centering on the Convention text Article 24(8) and Commission VMS (07/02) applicability clause where,

(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."

For a small fisheries administration in the RMI, this is not ideal, nor does it help and so therefore, the current system setup (Commission VMS) is flawed. We have a system that can readily communicate with the Commission VMS, through the PACIFIC SYSTEM. The Commission has the legal and moral obligation to assist by simply allowing the communication channel (Commission VMS, through the Pacific VMS and FFA VMS) in order for the RMI to receive VMS data on Commission registered vessels when such vessels are in the RMI EEZ. Further Article 24(8), clearly sets out that this "switch" should be possible – coastal States are able to specify the SSPs for VMS operating in their waters, and so should by right be able to require that vessels reporting directly to the Commission VMS report directly to their chosen national VMS system when within waters under their national jurisdiction.

The Solution:

the solution for the RMI is to simply turn on the "switch" from the Commission VMS to transmit VMS near real time data to our coastal state VMS, in particular, from the Pacific VMS through to the FFA VMS – and to do so in a manner no different than how we currently receive VMS data and how the Commission receive its VMSs data. Central to this is para 9 of CMM07/02, where:

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

The solution is not to extend the mandate of the Commission VMS beyond its area of competence, and certainly not into the jurisdictions of coastal states with national VMS. The Commission must stop proposing and developing measures that extend beyond the high seas, especially measures that encroaches into areas of national jurisdictions of coastal states, in particular, FFA members where it will undermine our sovereignty and sovereign rights to participate, develop and manage our national fishery. The Commission must develop management measures for the high seas that would assist and compliment coastal states management and development aspirations.

The Commission is currently conducting a review of the VMS, and the RMI participated in an interview with the review team. Several areas of the system were discussed, and aside from the Cost, the RMI pointed out the flaw in the system, where our FFA system does not have access to Commission VMS registered vessel whilst in our waters. The Commission VMS will continue to evolve and develop. However, it does not have to evolve and develop to allow coastal states such as RMI to be receiving VMS data from the Pacific VMS. As it is now, it already capable.

Recommendations:

Without prejudice to sovereign rights of coastal states, while ensuring that measures does not place a disproportionate burden on SIDS, and while fulfilling commission obligations to assist coastal states in their monitoring, control, surveillance, compliance and enforcement, including through access to technology and equipment (Commission VMS), the Commission can;

1. Agree and approve that the Commission VMS provide the FFA VMS, required data where Vessels on the Commissions VMS are not on the FFA VMS, but are deemed to be in Coastal States EEZ.

Or.

2. Adopt a measure that specifies the VMS SSPs for FFA member countries as it relates to the Commission VMS. These SSPs would enable the Pacific VMS to directly provide to the FFA VMS, the VMS data for vessels that are reporting directly to the Commission VMS when these vessels are within the areas under national jurisdiction of FFA members.

RMI PROPOSAL

DRAFT MEASURE

The Commission for the conservation and management of highly migratory fish stocks in the Western and Central Pacific Ocean:

In accordance with the Convention on the Conservation and Management of Highly Migratory

Noting the adoption of the Commission VMS and the area of application (07/02)

Further noting the definition (07/02) of the Forum Fisheries Agency Vessel Monitoring System (FFA VMS) and the application of said system through its coastal state members

Recalling that the Commission VMS, as a stand-alone system, will have the option of reporting to the FFA system.

Noting also the specifics of coastal states VMS in the Standards, specifications and Procedures (WCPFC VMS SSP)

Notwithstanding the CMM 07/02 (para 4) and the Commission VMS SSP (para 1, 7.3(6)) that covers vessels in the high seas, and

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

In accordance with article 24(8)(9) (10) and Article 30(2)

Recognizes the following standards, specifications and procedures determined by the FFA Members:

The Pacific VMS is to directly provide to the FFA VMS, the VMS data for vessels that are reporting directly to the Commission VMS when these vessels are within the areas under national jurisdiction of FFA members.

Commission at each annual session shall review implementation of this measure.