



TECHNICAL AND COMPLIANCE COMMITTEE

Eighth Regular Session

27 September- 2 October 2012

Pohnpei, Federated States of Micronesia

**AHTG[DATA] OUTSTANDING TASK: RULES FOR ACCESS BY CHARTERING STATES
TO DATA FOR THEIR VESSELS**

WCPFC-TCC8-2012 -IP09

30 August 2012

1. At TCC6 issues were raised regarding a) the rights of chartering States to access data, and b) the process for data release taking into account the right of the chartering State with respect to data it has provided for the chartered vessels. The Commission subsequently tasked the AHTG-Data to work intersessionally on these issues. The Marshall Islands submitted a proposal with respect to this issue (WCPFC-TCC7-2011-DP/02). In 2011, the EU and Chinese Taipei responded with WCPFC-TCC7-2011-DP/03 and WCPFC-TCC7-2011-DP/04 respectively. Copies of these three documents are attached.
2. TCC7 agreed to task the AHTG-Data with revisiting these issues in 2012 pending the outcome of discussions of the catch attribution study and the possible renewal of CMM 2009-08 by WCPFC8.
3. At WCPFC8, CMM 2009-08 was extended until 31 December 2012 (CMM 2011-05).

TCC8 is invited to discuss this matter.



TECHNICAL AND COMPLIANCE COMMITTEE
Seventh Regular Session
28 September - 4 October 2011
Pohnpei, Federated States of Micronesia

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

WCPFC-TCC7-2011-DP/02
06 September 2011

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.¹ 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

¹ 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.² 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

² 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.



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

WCPFC-TCC7-2011-DP/03

06 September 2011

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 2007¹ and 2009² 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)

¹ 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)

² 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



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

WCPFC-TCC7-2011-DP/04

06 September 2011

Paper prepared by Chinese Taipei



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June 22, 2011

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

Subject: RMI proposal

Dear Ms. Koehler,

I am writing to make some comments with regard to RMI's proposal for the amendment to AHTG [Data] and rights of charting states to access data.

In accordance with the WCPFC Convention Article 24, a member of the Commission shall authorize the use of vessels flying its flag for fishing in the Convention Area beyond areas of national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels, and to ensure fishing vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant hereto. It clearly stipulates that the flag state has the duties to manage its fishing vessels operating on the high seas.

The existing CMM-2009-08 entitling CMM on Notification of Vessel Chartering is in fact a requirement for chartering CCM to notify the Secretariat of the vessels chartered for further notification to the flag CCM concerned. There is no provision relating to the rights and responsibilities of chartering CCMs over chartering vessels while operating on the high seas. CMM 2009-08 is due for renewal in 2011. During the review of the renewal of the CMM, matters concerning chartering of vessels can be discussed and inserted, including who should have access to data of the fishing activities of the vessels should also be discussed.

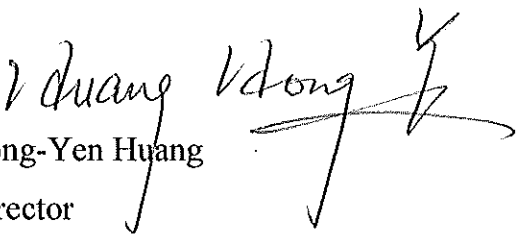
Furthermore, we think that there should be a clear procedure to confirm whether a fishing vessel is under charter, lease, or other similar arrangement, for eligibility of data access.



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In light of the abovementioned reasons, we suggest that RMI's proposal should be discussed in TCC7 in conjunction with the renewal and revision of CMM 2009-08, and discussing RMI's proposal alone is premature.

Sincerely yours,


Hong-Yen Huang
Director
Deep Sea Fisheries Division

c.c. Prof. Glenn Hurry