



**TECHNICAL AND COMPLIANCE COMMITTEE**

**Eighth Regular Session**

27 September- 2 October 2012

Pohnpei, Federated States of Micronesia

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**RE: WCPFC8 DECISION REGARDING NIUE'S COVERAGE BY THE WCPFC VMS**

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**WCPFC-TCC8-2012/IP15**

**4 September 2012**

**The advice of this decision is referred to in paragraph 265 of WCPFC8 Summary Report and was previously circulated to CCMs as WCPFC Circular 2012-41**

**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS AND  
PARTICIPATING TERRITORIES**

**Circular No. : 2012/41**

**Date: 29 June 2012**

**No. pages: 14**

Dear All

**Subject: Decision regarding Access to Commission VMS data by Niue**

A couple of you have raised concerns/objections to paragraph 263 of the draft report which states ... *"WCPFC8 agreed that the Commission would provide Niue with VMS data for fishing vessels present in the Niue EEZ which are reporting to the Commission VMS."* Most members appear to agree with the record as drafted on this issue or have decided against commenting.

I thought I would provide my views on the issue to you so that hopefully we can move forward. To provide background, the Secretariat has provided the transcripts of the discussion and the decision at the meeting from the audio recordings. These are attached for your reference. In providing you with this suggested way forward, I have sought the opinion and guidance of both the legal advisor and the Executive Director, as their views are useful in finding a way forward on difficult issues.

The audio-tape and the written transcripts are consistent with each other and both make clear that the Commission took a decision. The transcript of the decision is as follows:

Chair	<p>Thank you Cook Islands.</p> <p>Ok so we have the request from Niue to be... what is the word... to have access to the VMS data in its zone. Is anybody opposed to that?</p> <p>Seeing no opposition ... that is done.</p> <p>That takes us to the entry and exit issue, France, you said that you would delay presenting that until after the results of presenting the VMS issue. So France would you like to speak to your proposal?</p>
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The decision then taken by the Commission is recorded in the draft record as follows:  
**WCPFC8 agreed that the Commission would provide Niue with VMS data for fishing vessels present in the Niue EEZ which are reporting to the Commission VMS.**

There is no question in my mind that the Commission took a decision on this issue. Our legal advisor and Executive Director both are in agreement with this view. Because the discussion of this matter followed the earlier difficulty we had with a decision, I wanted to be sure that members were aware of what they were agreeing to. It is also my clear memory that the decision taken has been recorded correctly in the draft record of the meeting.

Some members have raised issues with compliance with Rule 20 of the Commission's Rules of Procedure. Rule 20 reads as follows:

*Proposals and amendments shall normally be circulated in writing to the Executive Director, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Commission unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.*

It is clear from the above that Rule 20 allows for some flexibility and is therefore not an absolute rule. Moreover, no party objected to the delegates from Niue presenting the proposal. I have discussed this at length with the legal advisor and there is nothing to indicate that Rule 20 was not complied with or that the Commission did not take a decision in this matter.

We have thought long and hard on this issue and how to be fair to all parties. There is in one outstanding issue: there was no document circulated as a meeting paper or at the meeting with a DP number on it that outlined what it was that Niue was seeking. It is my view that this lack of a written proposal could result in some question on exactly what the Commission agreed to give Niue as the Commission has not agreed on a template or alternate approach. However, prior to the meeting Niue did provide by email a copy of its proposal to the Secretariat and that letter is with the Secretariat. It is acknowledged that the letter was received (copy attached) and should have included in the meeting papers as a member paper for discussion and decision.

The Convention at article 24 (para 8) provides: ...*"Any member of the Commission may request that waters under its national jurisdiction be included within the area covered by such vessel monitoring system"*. The process for this is then clarified in paragraph 6 c of CMM 2011/02 (which replaced CMM 2007-02). The resolution of this matter would be straight forward if the Commission came to a decision on how to implement this provision of the Convention and paragraph 6 c of CMM 2011/02 This issue is to be discussed at TCC8 and I will ask the Chair of that Committee to ensure that the TCC bring forward a concrete proposal for the WCPFC9 endorsement in December.

In the meantime I have spoken to Niue officials and with their indulgence I propose the following:

- 1 That the Commission be tasked to complete and approve the process for granting these requests during WCPFC9, and;
- 2 If this does not occur then Niue receive VMS data on vessels in their zone from the Commission from 1 January 2013 under the terms and conditions similar to those for New Zealand or the Cook Islands.

Kind Regards,



Dr Charles Karnella  
Chairman  
WCPFC

**Transcript of voice recording: Day 5 – 30 March 2012 – Friday tape 03**

*Start: - Cooperating Non-Member participatory rights text was adopted (WCPFC8-2011-48 Rev 2)*

**(1hr 46:50 min) Cost-optimisation process**

Chair:	Cost-optimisation process, that was one that we were supposed to get back to after VMS and something else, and I think probably what we are going to have to do with that, is to have the Secretariat look at the report prepared by the Consultants and look at what we decided on VMS and I forget what the other thing is, and then make some recommendations to the Commission at its next meeting. I don't think we can do anything with that at this meeting. Anybody have a question or a comment?
Niue:	Mr Chair, I am just checking we are talking about VMS, because we are moving through things quite quickly. If that is the case, and you are suggesting deferring discussion until the next Commission meeting, could I ask for special consideration from this Commission for Niues application to have their zone covered by the Commission VMS? Thank you
Chair:	I am not at VMS, I am at cost-optimisation. And I mentioned in our earlier discussion that we would have to see what the Commission decided about VMS and one other thing, so I am suggesting that we are not able to do much with cost optimization at this meeting and we will have to carry that over to next meeting. We will get to VMS in a bit. United States please.
USA:	Thank you Mr Chair, our recollection on cost-optimisation is similar to yours. The only comment we would make were the two items that were looking to focus on which were the issues of the VMS as well as the Observer Programme. Because these are kind of the two big issues in the budget. Thank you Mr Chair
Chair	Thank you US. Ok now we have the Management Issues theme...

**(1hr 48:58) Management Issues theme... WCPFC8-2011-DP47 adopted**

**(1hr 49: 41)Management Objectives Workshop terms of reference... WCPFC8-2011-39 Rev2 adopted with condition that two international experts are appointed in a transparent manner**

**(1hr 56:21) VMS Template WCPFC8-2011-DP30 Rev3**

Chair	Now the moment that we have all been waiting for... Glen Joseph and Alexa Cole will waltz us around again willy. Which or who of you would like to give the Commission an update? Marshall Islands please...
RMI	Thanks Chair, I will pass the floor over to Alexa to flick the switch
Chair	Alright... flick his switch
USA	Thank you Chair, we have put up DP30 rev 3 and it has been circulated around the room. The Marshall Islands and I sat down and tried to sort of synthesize our two papers. Just to quickly talk folks through the changes, you will notice that we moved up to the top the decisions that we made last year at WCPFC, because they correctly noted these weren't actual decisions we were making here, we were just recalling the decisions we made last year.  And then we have made a little bit of, a couple of edits to, the chapeau of the paragraphs,

	<p>that outline exactly the decisions we will be taking here.</p> <p>Paragraph 5 is an addition from the RMI's paper, to make clear how the VMS data will be transmitted to coastal States. That it could go directly from the Pacific VMS rather than rather than coming through the Commission, to ensure compatibility between their national systems and the high seas vessel monitoring system.</p> <p>We added into what is labeled as a paragraph 7, that if members have a national VMS programme whose standards, specifications and procedures are equally stringent or more stringent than the Commissions, that those may apply. And if there are Commission members that wish to apply those standards, will provide a copy to the Commission, to the Secretariat, so that we can see them.</p> <p>We revised the language in paragraph 9 to make clear who data could be shared with, rather than who data could not be shared with. And made clear it can be shared with consistent with national SSPs, and with data sharing agreements and with other intergovernmental regional fisheries bodies, such as FFA, SPC etc.</p> <p>And there was a small addition to paragraph 10 and then a slight modification to the final paragraph 16 that these decisions will be reviewed or revised in two years.</p> <p>I believe that this should meet the needs of both coastal States desire for access to this data and flag States concern about data security, confidentiality issues. And we hope that we can meet RMI's desire to flick the switch as they say, or flick the switch. Thank you Chair</p>
Chair	Thank you, and thank the both of you for collaborating and producing a revised document. China please...
China	Thank you Mr Chairman, my delegation would like to congratulate the delegation from the Marshall Islands as well as the United States. Our understanding is that this is a very important issue, but it is also a very sensitive issue. So at this very later stage, that I have no time to contact our legal department and Law of the Sea office to review this one, so that we would like to suggest to defer this one, to the TCCs meeting and maybe we can have further discussion in the Commission meeting at the end of the year. Thank you.
Chair	European Union please
EU	Thank you very much Mr Chairman, we also join China in thanking both delegations which worked on that. Well actually, I also was a little bit busy and I had no possibility to look at that. So certainly we need some more time to look at that. I have already stated that we have some issue with international law, and as far as that one is followed we have no problem. Certainly we have no problem if someone has an issue to do with our vessels in their EEZ to start an investigation and provide the VMS data when they are going to ask us to do it on grounded basis. So it is not something that we keep for ourselves, if there is a doubt, as flag State we are able to provide this data within an investigation, with all the tracks and positions and signals which are needed. Thank you
Chair	Korea
Korea	Thank you Mr Chair, Thank you United States and Marshall Islands for the proposal, revised. Like previous speakers, China and the European Union, we always feel the VMS issue is very complex and very hard to understand all operational matters, regarding to or related to the MCS. And also it was very sensitive and very related to the sovereign rights, between flag

	States and coastal States, so we need more time to review and study all the documents and to provide our, Korea's, position on this document later. Thank you
Chair	Japan
Japan	Thank you Mr Chairman, we also thank United States and Marshall Islands and other members involved for preparing this document. We heard explanation from Marshall Islands today and we have great sympathy for its great presentation and we hope to solve this issue as soon as possible. Having said so, we have some technical concern, or one question we have, which is the difference between the WCPFC approval and FFA approval? And for example, some of the VMS which is approved in WCPFC is not in the FFA, so we are just wondering, and just want to request Secretariat to check that if this measure to go ahead, if there are any technical difficulty for implementing or realizing this question. So we just wanted to raise our flag, Thank you.
Chair	Ok it seems like this proposal is not going to be adopted at this meeting. So I would ... Marshall Islands
RMI	Thank you Chair, you are exactly right. Perhaps maybe just some thought on the way forward on this, so at least to emphasize the importance of it, and that it doesn't "stop dead in the water" here. It is an important and I recognize those who speak, particularly China, EU, Korea and Japan, so as a way forward chair, we will continue to work with this in the interest of the Commission for getting that data. But then there is also another way forward in this, in that simply we will change our laws that will require that for any vessels transiting in our waters will subject to a VMS and the VMS which is that of the coastal States, which is the national VMS which we prescribe. And if that would ultimately get us the VMS data that we require, and it is only, I might add, 20% of what is already available, then so be it. But we will continue to work with this, but we will flag that we will change our law to require that all vessels will have to transmit VMS one way or another. Thanks Chair
Chair	Thank you Marshall Islands. And for those of you who indicated that you had issues or you had to have some review, I would hope that you would get conceptually those reviews and issues taken care of, before the next TCC meeting, so that we can move this issue forward. Niue you wish the floor please
Niue	Thank you Chair, I would just like to wish this Commission to lend a hand towards Niue's plight at this point. We know that coming from a small island State and also a very very small island state with only two people in our fisheries, I guess this is one of the importance that we have put across our proposal for our EEZs to cover. I guess we would like to see the you know the management, conservation and management being really carried forward within our EEZ, in terms of MCS, to its limit, and helping also small island States and also small administrations, like Niue. And we would like you to consider, and at least give us, or grant us this, to go forward, to be adopted, please Chair. Thank you.
Chair	Thank you Niue, PNG please
PNG	Thank you Chair, good afternoon everybody. Chair we would like to lend our support to Niue and also Marshall Islands, we are very very disappointed, that some of these members sitting in this room, eventhough they argue and they talk about IUU, and they talk about strengthening MCS measures and compliance, this is just basically one of the messages that we should look at now that the high seas pockets are open, and it is very very important that we must, as coastal States, know who is moving in and out of our Exclusive Economic Zones, to have access to the high seas pockets. But we are disappointed that some of those members that fish in our waters see fit to really to try to delay this and drag this back to another TCC. I think this is unfair, this is a straightforward case, but unfortunately some

	people still want to practice and promote IUU. Thank you
Chair	FSM please
FSM	Thank you Mr Chairman, and this delegation is also disappointed at the outcome of this issue. We thought we were going to have some progress today. We would just like to support the comments made by Marshall Islands, Niue and Papua New Guinea. And FSM is already forward in its national legislation to require vessels transiting our waters to report, and we also have an agreement with the Commission that we signed before this issue was brought to the last Commission meeting, and the new process was taken up, so in that sense, we do support the request from Niue. Thanks
Chair	Samoa please
Samoa	Thank you Mr Chairman, just to simply add our disappointment that we have not managed to reach a decision today and to add our support to comments made by colleagues from FFA today. Thank you
Chair	Marshall Islands
RMI	Sorry to take the floor again, Chair. It was remiss of me not to acknowledge and support Niue's application because that is one way of getting the data, at the end of the day that is all what we are asking for. And if Niue, if it is the support they seek, then we will give it. Finally Chair, I want to thank Alexa and the US for working with us on this, we know it's a difficult one, we recognize that they place the importance in working with us to get this issue across. Unfortunately others just don't get it. So thanks.
Chair	Cook Islands please
Cook Islands	Thank you Chair, I recall that we made our application for the recent high special management zone. We did draft some domestic regulations and in the event that entry and exit reports would not be accepted. I suggest that perhaps a technical working group or some component of the Commission could draft some text for domestic regulations that could be circulated, so us Coastal States who wish to adopt national regulations can find some compatibility.
Chair	Thank you Cook Islands. Ok so we have the request from Niue to be... what is the word... to have access to the VMS data in its zone. Is anybody opposed to that?  Seeing no opposition ... that is done.  That takes us to the entry and exit issue, France, you said that you would delay presenting that until after the results of presenting the VMS issue. So France would you like to speak to your proposal?
France	Thank you Chair, as I said yesterday, or the day before, I have transmitted my comments to the US delegation because I consider that this issue can be solved or addressed within the VMS template agreement, so I would like to thank the United States and the Marshall Islands for their draft. I understand that it is a very hot issue, a sensitive issue, so if more work is needed regarding this aspect, I am ready to participate to another working group. Thanks
Chair	Thank you France, any comments?  That takes us to Port States Measures and basically we were not able to move that measure forward or make any progress here, so I want to check to see if there is any specific guidance that the Commission wants to give to the Technical and Compliance Committee so



	that next year we can actually make some progress, if not nail this issue down. The European Union please...
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**2 hrs 12:21 – discussion continued on Port State Measures Agreement**

**From:** James Tafatu [mailto:jtafatu@gmail.com]  
**Sent:** Wednesday, March 21, 2012 6:57 PM  
**To:** Glenn Hurry; Lucille Martinez  
**Subject:** Attachment for Niues Proposal for VMS

Dear Glen,

The following attachment is in reference to Brendon's earlier letter of Niues proposal intended for an arrangement between Niue and WCPFC to gain VMS Access to WCPFC vessels that enter into Niues EEZ.

We would like to see it tabled at this meeting as a matter of urgency for discussion and seek approval from the members.

Thank you

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James Tafatu  
MA in Maritime Policy  
P.O.Box 143  
Alofi  
Niue  
(683) 4032 or 4163

**DRAFT ARRANGEMENT BETWEEN  
NIUE  
AND THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION  
CONCERNING THE STANDARDS, SPECIFICATIONS AND PROCEDURES  
FOR THE INCLUSION OF THE WATERS UNDER THE NATIONAL  
JURISDICTION OF NIUE IN THE COMMISSION VESSEL MONITORING  
SYSTEM**

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(Hereafter referred to as the “Arrangement”)

In accordance with Article 24(8) of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Conservation and Management Measure 2007-02, the Standards, Specifications and Procedures (SSPs) for the Commission’s Vessel Monitoring System (VMS) adopted by the Commission and the 2007 Rules of Procedure for the Protection of, Access to, and Dissemination of Data Compiled by the Commission, Niue and the Western and Central Pacific Fisheries Commission (Commission) (hereafter referred to as the Participants) have reached the following Arrangement with the objective of fulfilling the request made by Niue for the Commission VMS to cover waters under the national jurisdiction of Niue.

**Paragraph 1**  
**Vessels to be covered**

The inclusion of the waters under the national jurisdiction of Niue in the Commission VMS will apply to all vessels subject to the Commission VMS that enter, transit through or occupy the waters under the national jurisdiction of Niue, for whatever purpose, with the exception of Niue flagged vessels or vessels operating under charter in Niue as duly notified to the Commission.

**Paragraph 2**  
**VMS Data ownership**

VMS data generated by the Commission VMS under this Arrangement, and paid for by Niue, will be owned by Niue.

**Paragraph 3**  
**VMS Data Access**

Access to the VMS position data from vessels to be covered in accordance with Paragraph 1 will only be granted to the following entities:

- Niue Department of Agriculture, Forestry and Fisheries or other agencies advised to the Commission Secretariat in writing by the designated point of contact at Niue;
- The Executive Director and authorised staff at the Commission Secretariat;

The Executive Director and authorised staff or service providers of the Commission Secretariat granted access to the VMS data generated by the Commission VMS for

the waters under the national jurisdiction of Niue will maintain the confidentiality and security of data received in a manner no less stringent than the security standards established by the Commission for the Secretariat in its Information Security Policy (ISP) and the Commission's 2007 Rules and Procedures for the Protection of, Access to, and Dissemination of Data Compiled by the Commission.

#### **Paragraph 4** **VMS Data Format**

The VMS position data for waters under the national jurisdiction of Niue is to be provided to Niue Department of Agriculture, Forestry and Fisheries in a form other than a "read only" format that allows for the data to be managed in order to change reporting rates.

#### **Paragraph 5**

##### **VMS Costs and Payments**

Air-time costs for the transmission of all VMS data generated by the Commission VMS for vessels within the waters under the national jurisdiction of Niue and any additional programming costs associated with activating this Arrangement within the Commission VMS will be borne by Niue Department of Agriculture, Forestry and Fisheries. Payments for air-time will be made half yearly within 30 days of the receipt of invoice from the Commission Secretariat. Payment frequency for air-time costs will be reviewed periodically. Payment for any required programming changes will be made in advance following the receipt by Niue Department of Agriculture, Forestry and Fisheries of a functional specification and associated costing from the Commission Secretariat.

#### **Paragraph 6** **Client Activation**

Niue requires one (1) client-activation to be paid for by the Commission. Additional activations may be requested with all costs associated with any additional activation to be borne by Niue Department of Agriculture, Forestry and Fisheries at a current cost of US\$1,150 each. The unit cost of client activations may be periodically reviewed to reflect the current policy of the Commission.

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#### **Paragraph 7** **Roles and Responsibilities**

*Niue*

Niue Department of Agriculture, Forestry and Fisheries will be Niue's agency responsible for managing the extension of the Commission VMS to cover waters under the national jurisdiction of the Cook Islands. This responsibility will include the following:

- Nomination of a designated point of contact for all issues relating to coverage of waters under the national jurisdiction of Niue as provided in ANNEX 1 and modified from time to time.

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- Authority to grant access to VMS position data from vessels to be covered in accordance with Paragraph 1 and to determine the nature and extent of that access
- In consultation with the Commission Secretariat, authority to amend this Arrangement and any rules relating to the coverage of Niue’s jurisdiction
- Payment of additional costs associated with the transmission of VMS data positions from vessels to be covered in accordance with Paragraph 1

*Secretariat*

The roles and responsibilities of the Commission Secretariat will be in accordance with the existing SSPs for the Commission VMS, where relevant, and Paragraph 8 below.

In addition, on execution of this Arrangement, the Commission Secretariat will advise all Commission Members, Cooperating Non-Members and Participating Territories (CCMs) of the inclusion of the waters under the national jurisdiction of Niue in the Commission VMS by letter and on the VMS section of the Commission’s website.

**Paragraph 8**  
**Standards, Specifications and Procedures (SSPs)**

For coverage of the waters under the national jurisdiction of Niue the existing SSPs for the Commission VMS will apply, where relevant, with the following additional requirements under section 5 of the SSPs.

1. The Commission VMS will include an automated alert to report when vessels enter or exit waters under the national jurisdiction of Niue. Vessels subject to the Commission’s VMS must be reporting to the Commission VMS through automatic means upon entry into waters under the national jurisdiction of Niue and continue reporting while in waters under the national jurisdiction of Niue.
2. While in waters under the national jurisdiction of Niue vessels subject to the Commission’s VMS must transmit automated position data to the Commission VMS ~~every every 1 hour~~ or at the standard default rate as agreed by the Commission.
3. In the event that the Commission adopts paragraph 5 of Section 5 of the Commission’s SSPs, this provision will not apply to this ~~Arrangement. Notwithstanding the measures the Commission adopts to deal with non-reception of WCPFC VMS data from vessels, the coastal States laws, policies and procedures shall apply.~~ Arrangement.
- 3.

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**Paragraph 9**  
**Final Provisions**

1. Any difference arising from the interpretation or implementation of this Arrangement will be resolved by negotiation between the Participants.

2. This Arrangement may be amended by the mutual written consent of the Participants.

3. This Arrangement will come into effect on *xxxx*.

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4. Either Participant may terminate this Arrangement by giving thirty (30) written days notice to the other Participant.

For Niue:

For the Western and Central Pacific Fisheries Commission:

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Mr Brendon Pasi  
Director of the Department of  
Agriculture, Forestry and Fisheries

*Ministry of xxxx*

\_\_\_\_\_

Professor Glen Hurry  
Western and Central Pacific Fisheries  
Commission

Signed at \_\_\_\_\_ this \_\_\_\_ day  
of \_\_\_\_\_ ~~2012~~

Signed at \_\_\_\_\_ this \_\_\_\_ day  
of \_\_\_\_\_ ~~2012~~

## ANNEX 1

### Niue Department of Agriculture, Forestry and Fisheries designated point of contact

For the purposes of administration of the *Arrangement between Niue and the Western and Central Pacific Fisheries Commission concerning the standards, specifications and procedures for the inclusion of the waters under the national jurisdiction of Niue in the Commission Vessel Monitoring System* the following is the designated point of contact and details:

Department of Agriculture, Forestry and Fishery

Government of Niue

P.O.Box 78

Alofi

Niue

Ph: +683 4032/4302

[xxxniue.mcs@mail.gov.nu](mailto:xxxniue.mcs@mail.gov.nu)

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