



**TECHNICAL AND COMPLIANCE COMMITTEE**

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**APPLICATION OF THE COMMISSION VMS TO THE NATIONAL WATERS OF  
MEMBERS (rev3)**

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**WCPFC-TCC8-2012-DP08\_rev3**

**1 October 2012**

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## APPLICATION OF THE COMMISSION VMS TO THE NATIONAL WATERS OF MEMBERS

### Background

At WCPFC7, the following decisions (contained in WCPFC-2010-DP27 rev 1), which remain in effect, were taken:

- a. 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.
- b. 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.
- c. 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.
- d. 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

Recommended language for consideration by TCC8:

TCC8 recommends that the Commission adopt the following paragraphs as decisions relating to the application of the Commission VMS solely to waters under the jurisdiction of Members and to complement and support Members' national VMS, including compatibility:

1. Coastal States, particularly Small Island Developing States, have a legitimate and pressing need to increase their ability to monitor fishing vessels in their national waters to ensure the effectiveness of measures adopted by the Commission or domestic laws or regulations of any Member are not undermined. CCMs that are both SIDS and coastal States are some of the smallest developing nations in the world.
2. Flag States have a legitimate right to know when vessels flying their flag in the Convention Area are being monitored and must consent to that monitoring in the national waters of another Member. CCMs consented to the monitoring of vessels flying their flag in the

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Convention Area at WCPFC7, pending resolution of an agreed upon template agreement. CCMs have agreed to take the decisions captured in paragraph 4 below instead of creating a template agreement.

3. All Members have an interest in ensuring that vessels that are authorized to fish in the Convention Area do so in accordance with the provisions of the Convention, any conservation and management measures or decisions adopted by the Commission or domestic laws or regulations of any Member when operating in waters under its jurisdiction. Effective conservation and management in Members' national waters is critical to the success of the Commission as these areas are where the majority of catch and effort occurs in the Convention Area.

4. CCMs have agreed that rather than adopting a specific template agreement, as specified by WCPFC-2010-DP27 rev 1, the following principles will govern the application of the Commission VMS to the national waters of any Member that requests such application and the provision of those data (hereinafter "in-zone VMS data") to Members:

a. Members that have existing national VMS programs may choose to have the Commission provide the in-zone VMS data for [vessels reporting to the Commission VMS] who enter their national waters directly to their national VMS to ensure compatibility between national and high seas vessel monitoring systems.

b. Vessels reporting to the Commission VMS that enter the national waters of a Member whose waters are included in the Commission VMS retain all their navigational rights, including transit, innocent passage and freedom of navigation under international law. Vessels in transit will not be subject to MCS activities based solely on the in-zone VMS data provided.

c. The in-zone VMS data will be provided only to Authorized MCS Personnel and Authorized Management Personnel, as defined in paragraphs 11 and 32, respectively, of the Commission's 2009 Rules and Procedures or to FFA Secretariat on behalf of FFA Members.

d. Members will use the in-zone VMS data only for (i) monitoring, control and surveillance purposes and for (ii) scientific purposes as described in paragraph 35 of the Commission Rules and Procedures for the Protection of, 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, first adopted in 2009 (Commission's 2009 Rules and Procedures).

e. Members shall maintain the confidentiality and security of the in-zone VMS data in a manner no less stringent than the security standards established by the Commission for the Secretariat in its Information Security Policy. Failure to maintain the confidentiality and security of the VMS data in accordance with the provisions of this paragraph will result in suspending the flow of VMS data from WCPFC to the respective coastal State until the standards are met.

f. Members will destroy any in-zone VMS data received for its national waters

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within 15 days of receipt, unless such data are necessary for (i) an investigation or a judicial or administrative proceeding of an alleged violation of the provisions of the Convention, any conservation and management measures or decisions adopted by the Commission or domestic laws or regulations of the Member or (ii) a scientific purpose as described in paragraph 35 of the Commission's 2009 Rules and Procedures. Members will report on their compliance with this requirement in Part 2 of their Annual Report.

g. Members may only share in-zone VMS data with intergovernmental regional fisheries bodies and the Flag State to answer a specific and precise request for MCS purposes and with the Authorized MCS Entities and Personnel, as defined in paragraph 11 of the Commission's 2009 Rules and Procedures, of other Members for the purpose of conducting MCS activities. The in-zone VMS data will be shared in a manner consistent with Members' national VMS SSPs and the WCPFC rules and procedures, and in accordance with the confidentiality and retention and destruction requirements established herein.

h. Members will be responsible for any additional costs associated with the application of the Commission's VMS to their national waters, as determined by the Executive Director. However, this issue will be revisited in the event that there is any change to the cost and payment structure of the Commission's VMS. Failure to make timely payment of the additional costs, if any, identified by the Executive Director will result in a suspension of the provision of in-zone data until payment is made.

i. A Member's national waters will be included in the Commission's VMS only at that Member's request and Members are not obligated to request inclusion.

j. Upon receipt of a request by a Member pursuant to paragraph 12, the Executive Director shall immediately notify Members of the Commission of the request by circular. The waters of the Member making a request under paragraph 12 shall be included in the Commission's VMS 30 days after the date of that circular.

k. The Executive Director shall establish and maintain a list on the Commission's website of all the Members whose waters are included in the Commission's VMS.

l. In the event that two or more Members have conflicting claimed EEZ geographical coordinates, VMS data for the disputed area will only be provided to any of those Members with the agreement of all of those Members. If any of those Members objects to the provision of VMS data in the disputed area, none of those Members will be provided such data. [No Member may object to the provision of in-zone VMS data in disputed areas not associated with its own claimed EEZ.]

[lbis.

Chinese Taipei Proposed language for lbis:

In the event that any Member has fleets fishing in the disputed zone claimed to be EEZ by another Member but the claim of disputed zone is not recognized by international law or fully accepted by the concerned Member(s), no Member will be provided such data.

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Chair's proposed rewrite of lbis:

In the event that any Member has disputed another Member's claimed EEZ geographical coordinates, no Member will be provided in-zone VMS data in the disputed area until and unless the dispute is either formally resolved under international law or the Members have reached an agreement.]

m. The implementation of these decisions will be in accordance with the provisions of the Convention including Article 3(2) of the Convention.

n. The implementation of and compliance with these decisions will be subject to review under the existing and any future Compliance Monitoring Scheme.

o. These decisions will be effective 60 days after the Commission meeting and shall only allow for the provision of data generated from that date forward. These decisions will be reviewed or revised in two years. During this period, CCMs will consider additional technical solutions to address concerns of illegal fishing occurring in waters under the jurisdiction of Members.