



FIFTH REGULAR SESSION

Busan, Republic of Korea

8-12 December 2008

DRAFT STANDARDS SPECIFICATIONS AND PROCEDURES FOR THE COMMISSION VMS

and

A DRAFT FFA-WCPFC VMS SERVICE LEVEL AGREEMENT

WCPFC5-2008/16 Suppl.

22nd November 2008

Prepared by the Secretariat

Introduction

1. WCPFC Circular 2008/06 distributed on 22nd February 2008 noted that the WCPFC4 decision in relation to the adoption of the “Pacific” Vessel Monitoring System (VMS) model for the Commission VMS at Guam had some implications for the advice and recommendations of TCC3 in relation to the Commission VMS.

2. Subsequently, the WCPFC Secretariat, with the assistance of the VMS consultant to TCC3 and WCPFC4, Mr Iain Hayes of Absolute Software, Mr David Marx (New Zealand) in his role as Chair of the VMS Technical Working Group (TWG) established by WCPFC4, and the FFA Secretariat, prepared some supplementary information for the “Pacific VMS” based on the discussions in the VMS Costing Working Group, chaired by Mr Glen Joseph (Marshall Islands), at WCPFC4. This supplementary material was distributed to all CCMs as Circular 2008/10 in March 2008.

VMS Standards, Specifications and Procedures

3. WCPFC4 established the VMS TWG for the purpose of addressing many of the items identified at paragraph 7 of Conservation and Management Measure 2007-02. Specifically, WCPFC4 (paragraph 142 WCPFC4 Summary Report) requested the VMS TWG to develop the standards, specifications and procedures (SSPs) for the Commission VMS called for in Article 24(8) of the Convention.

4. The VMS TWG worked electronically during the first seven months of 2008 to develop terms of reference (ToR) for the elaboration of the SSPs. Subsequently, Mr Robert Gallagher (Navigs s.a.r.l.) was selected to elaborate draft SSPs and these were considered at the Fourth Regular Session of the Technical and Compliance Committee (TCC4), 2-7 October 2008 at Pohnpei (WCPFC-TCC4-2008/09). TCC4 subsequently further developed that draft and, subject to final acceptance of paragraphs 5.3, 5.4 and 7.3.6, recommended the SSPs to the Fifth Regular Session of the Commission (WCPFC5) for approval (**Attachment A** and Attachment E of the TCC4 Summary Report).

FFA-WCPFC Service Level Agreement

5. The use of the Pacific VMS to deliver the Commission VMS necessitates the development of a formal arrangement with the FFA for software, hardware and technical support, owned by FFA, to be made available for the purposes of supporting the Commission VMS. TCC4 recommended that, on the basis that it had made progress towards finalisation of the SSPs,

that the WCPFC Secretariat enter into discussions with the FFA Secretariat with a view to preparing a draft Service Level Agreement (SLA) that will support and arrangement between the FFA and the Commission for the delivery of the Commission's VMS requirements. The draft FFA-WCPFC VMS SLA subsequently developed by the two Secretariats is annexed at **Attachment B**.

Recommendation

6. WCPFC5 is invited to:
 - a. Review the outcomes of TCC4 in respect of the draft SSPs;
 - b. Refine the draft SSPs, as appropriate, noting that paragraphs 5.3, 5.4 and 7.3.6 remained in square brackets at the conclusion of TCC4;
 - c. Adopt the SSPs, as refined;
 - d. Review and, in consultation with the FFA, refine as appropriate, the draft FFA-WCPFC VMS SLA,
 - e. Adopt the SLA, as refined; and
 - f. Consider an implementation schedule for the Commission VMS.



TECHNICAL AND COMPLIANCE COMMITTEE

Fourth Regular Session

2-7 October 2008

Pohnpei, Federated States of Micronesia

[COMMISSION VMS

Standards, Specifications and Procedures (SSP)]

WCPFC-TCC4-2008/29

Standards, specifications and procedures (SSP) for the fishing vessel monitoring system (VMS) of the Western and Central Pacific Fisheries Commission (WCPFC)

Responsible for conservation and management of highly migratory species within its convention area, WCPFC is empowered to establish a VMS under Article 24(8) of the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* and, subsequently, by the adoption of Conservation and Management Measure 2007-02 at its fourth regular session. Annex 1 of this Measure defines the basic, functional specification for the VMS in terms of the generic equipment to be used, position accuracy and reporting frequency and data delivery time.

The purpose of these SSP is to establish the terms of implementation of the VMS, including methods to ensure compliance of Automatic Location Communicators (ALCs: term identical with the FFA's Mobile Transceiver/Transmitter Unit or MTU) with the Annex 1 standards; inspection protocols; rules on polling; reporting frequencies; tampering prevention measures; and obligations and roles of fishing vessels, CCMs, the FFA secretariat and the Commission secretariat.

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.

2. Methods to ensure ALCs comply with WCPFC standards

1. Vessels subject to the Commission's VMS in the WCPFC Convention Area will be required to carry a fully operational ALC that complies with the full range of minimum standards set out in Annex 1 of CMM-2007-02, (hereafter referred to as Annex 1).

2. The installation and use of ALCs will be governed by rules, based upon the principles set down in this SSP, and adopted and published by the Commission.
3. Vessels with ALCs that comply with the full range of the minimum standards set out in Annex I, but that cannot be remotely polled must either have a regular reporting rate of one hour or less, or will carry and operate, in addition to the ALC, a means of two-way communication by voice (e.g., radio, satellite telephone) or data (e.g., telex, facsimile, email) permitting real time contact with the WCPFC Secretariat, as necessary, with the assistance of the flag CCM, in the English language.
4. At the time of registration of the VMS, vessels equipped with a means of two-way communication, as provided in paragraph 3 above, will declare this means of communication as well as relevant user ID and any additional information required by the Secretariat to be able to establish communications with the vessel.
5. Verification of compliance with the requirements of Annex 1 will be the responsibility of the flag-state CCM for a given vessel.
6. In preparing the initial list of approved ALCs, the WCPFC Secretariat will take into account lists approved by existing regional and sub-regional VMS programmes and lists approved by CCMs.
7. The Secretariat will assess proposals for inclusion of additional ALC makes and models on this list from both CCMs and equipment manufacturers. Approval of ALCs such requests will be based on assessments of ALCs against minimum standards for the Commission VMS as set out in Annex 1 of CMM 2007-02, WCPFC SSPs, as relevant, and using the methodology established by the FFA with expenses for type approval processing to be borne by the proposing entity.
8. The Secretariat will administer a Commission VMS database. For each fishing vessel required to report to the Commission VMS the flag CCM will submit all necessary data to complete its data file in the Commission's VMS database. This data will include the name of the vessel, unique vessel identification number (UVI)¹, radio call sign, length, gross registered tonnage, power of engine expressed in kilowatts/horsepower, types of fishing gear(s) used as well as the make, model, unique network identifier (user ID) and equipment identifier (manufacturer's serial number) of the ALC that vessel will be using to fulfil its Commission VMS reporting requirements.
9. Periodic audits of a representative sample of installed ALCs are to be carried out by CCMs to verify that the specification and standards as set out in Annex 1 are being complied with, and that there is no visible evidence of tampering.
10. The number of audits, to be planned on an annual basis, will be determined by cost/benefit, logistical and practical aspects.
11. CCMs are responsible for ensuring that the audits are conducted by qualified operatives, such as officers currently authorised under CCM national fisheries legislation.

¹ If, and when, adopted by the Commission

12. Audit reports will include measurements of ALC position accuracy, elapsed time between transmission and reception of data, and any physical anomalies (connections, power supply, evidence of tampering) noted by the inspectors.
13. The results of these audits will be provided to the Commission in the part 2 component of the annual report to the Commission by the CCMs and those results compiled by the Secretariat into a VMS Audit Report Document.
14. Furthermore, the Secretariat of the WCPFC, or its appointee will be, at the Secretariat's discretion and on *prima facie* grounds, entitled to audit ALCs from any CCM to independently verify conformity with standards. The execution of such examinations will be guided by an analysis of the on-going data files kept on each vessel. The resulting reports will be made available to the Commission through the Technical and Compliance Committee (TCC).

3. ALC inspection protocol

1. At the time of a boarding and inspection of a vessel authorised to fish in the Convention Area, such inspections to be conducted in accordance with national laws, when undertaken inside a country's EEZ and, when on the high seas, in accordance with the CMM-2006-08.
2. On boarding, the vessel master must make available for inspection, where so directed by an authorised fisheries officer or inspector, its ALC unit, including antenna, connectors and antenna cable.
3. Should a vessel master refuse access to its ALC unit, antenna and connectors to an authorised fisheries officer or inspector, the inspecting party will immediately inform the relevant flag state CCM and the Secretariat. The flag State will order the vessel to immediately comply. Any vessels which refuse this order will be directed by the flag State, or the chartering State, to head directly to port where a full inspection of the equipment in question can be carried out.
4. Failure to carry out this order may result in the suspension or revocation of a vessel's authorisation to fish in the Convention Area by the flag State responsible. The responsibilities of a vessel master during boarding and inspection on the high seas are detailed in CMM 2006-08.
5. A report issued as a result of each inspection will confirm conformity of the ALC unit and installation with the specifications set out in Annex 1. A copy of this report will be given to the master of the vessel and forwarded to the vessel's responsible flag State.
6. In the case where the inspection reveals any anomaly with the specification, the inspector will inform the flag State CCM, the Secretariat and, if applicable, its chartering State. From that date, the vessel operator will have 30 days to rectify the problem and to submit to a new inspection to verify the installation. During that period, the vessel will be required to report its position at intervals of four (4) hours by an alternative communications means approved by the Secretariat.

7. A report of each inspection will be submitted to the CCM to which the vessel is flagged and to the Commission by the inspecting authority, as provided for in CMM-2006-08 and at Article 25 of the Convention.

4. Rules on polling and reporting of ALC units incapable of being polled

1. Any request by the WCPFC monitoring authority for a vessel's current position must receive a response within 90 minutes after its transmission, that response to include the vessel position in latitude and longitude, and date and time of message transmission.

2. For vessels carrying an ALC that uses the ARGOS system to report to the Commission VMS, the Commission VMS will use the ARGOS proprietary positioning system as a means of verifying the GPS calculated positions provided by the vessel's ALC.

5. Vessel reporting, including position reporting frequencies

1. In accordance with Annex 1, ALCs fitted to vessels subject to the Commission's VMS must be capable of transmitting data hourly. The Commission may vary these standards depending upon the fishery, applicable Conservation and Management Measures or for monitoring control and surveillance purposes.

2. The Secretariat will require written authorisation from the vessel operator to download a DNID or equivalent. Should a vessel operator withhold such an authorisation then the vessel's authorisation to fish may be made invalid by the relevant flag State CCM.

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 before entry into the Convention Area and continue reporting until 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.]

4. In the event of non-reception of two consecutive, programmed high seas VMS positions, and where the Secretariat has exhausted all reasonable steps to re-establish normal automatic reception of VMS positions the Secretariat shall inform the vessel's flag State CCM and the vessel Master. From the time of transmission of this communication to the CCM, the vessel Master shall be required to take immediate steps to re-establish automatic reporting and in any event within [30 days or at its first port of call if less than 30 days]. During this period the vessel shall be required to report its position manually to the Secretariat every [8][4] hours. In cases where automatic reporting has not been re-established within [30] days the CCM shall order the vessel to cease fishing, stow all fishing gear and return to port. The vessel may recommence fishing on the high seas only when the ALC has been confirmed as operational by the Secretariat following the flag State CCM informing the Secretariat that the vessel's automatic reporting complies with the regulations established in this SSP.

5. In exceptional circumstances, the flag State CCM may extend the period established in paragraph 4 for an additional consecutive [15] days during which time the vessel will continue to report its position manually every [4] hours to the Secretariat while on the high seas. When such permission is provided the flag State CCM shall provide a report to the Secretariat as to the nature of the exceptional circumstances and steps taken to re-establish automatic reporting. Such reports shall be included in the Secretariat's annual report on the operations of the Commission's VMS to the TCC as required under paragraph 7.3.9.

6. The Secretariat shall maintain and make available to all CCMs a current list of those vessels subject to manual reporting and the duration of that reporting.

6. Measures to prevent tampering

1. Before being authorized for operation aboard vessels authorised to fish in the Convention Area, ALCs must be included on the WCPFC approved list of ALCs.

2. ALCs so designated during their type approval process, will be fitted with a physical security mechanism to prevent access to the processing unit.

3. It will be the responsibility of WCPFC to provide CCMs with requirements for the physical security, which will be chosen taking into account the cost, facility of fitting and security quality as well as relevant ISO standards.

4. Data routes from ALCs to the Commission VMS will use international data communications services provided by recognized telecommunications authorities whose systems and operations conform to current ISO guidelines for network data security, or to standards that may supersede these guidelines in the future or their equivalents.

5. The auditing processes described in Section 1 of this document will be used to assure that anti-tampering and, tamper-evident, standards for ALCs are being met.

6. Security of the Commission Secretariat's VMS data will reflect the Secretariat's role as the guardian of the confidential VMS data for the high seas in Convention Area.

7. All security standards, procedures and practices will be consistent with the Commission's Information Security Policy (ISP).

8. Access to the Secretariat's VMS data computer system will be in conformity with the Commission's ISP.

9. A set of Standard Operating Procedures, elaborated by the Secretariat, and subject to approval by the Commission on the recommendation of the TCC, will be developed to deal with all operational anomalies of the VMS, such as interruption of position reports, downloading of DNIDs and their equivalent and responding to reports providing incoherent data (e.g. vessel on land, excessive speed, etc.).

10. The integrity of the Secretariat's VMS data will be verified annually by qualified personnel, exterior to Commission Secretariat staff.

7. Obligations and roles of fishing vessels, CCMs, Service Level Provider(s) and the WCPFC Secretariat

7.1 Fishing vessel obligations

1. To register, carry and continually operate an ALC that meets the standards set out in Annex 1 as well as any additional standards, specifications and procedures agreed by the Commission.
2. To provide access to the ALC, associated connections and antennas, when directed by authorized fisheries officers, inspectors or other authorized persons or organizations, in accordance with relevant inspection provisions whilst on the high seas or in port.
3. To carry aboard and monitor at all times a two-way communication device that supports real-time communication between vessels and the Commission's VMS, with the assistance of the flag State, as necessary.
4. To ensure that a vessel's ALC is protected from any attempt to tamper with its operation, data transmission or integrity of data transmitted in conformity with Section 5 above.

7.2 CCMs

1. To ensure compliance by their vessels and operators with the provisions of Annex 1 and any other WCPFC standards, specifications and procedures, including those that may be established in relation to the management and use of VMS data in the high seas by application of the inspection protocol described in section 2 above.
2. To conduct and report results of ALC inspections in accordance to procedures established for that purpose, results to include data specified in Section 2 above.
3. 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.
4. To provide to the WCPFC Secretariat a list of all ALC inspections by flag and vessels type, including a summary of the results of each inspection.
5. To report, by e-mail, facsimile or data entry procedures established by the Commission to the Secretariat within a period of 5 days any registered ALC, including connections and antennas, associated vessels (by name and flag) and vessel masters that appear to not be in compliance with CMM-2007-02 and/or specifications and procedures agreed by the Commission as well as the details of the non-compliance. The Secretariat will issue an acknowledgement of reception of each report and, in the absence of this acknowledgement within 72 hours of transmission, the CCM is required to re-transmit any unacknowledged report.

6. To apply sanctions and penalties sufficient to deter violations of applicable VMS requirements and standards and to report action taken and sanctions applied to ensure compliance.

7.3 The WCPFC Secretariat

1. To ensure that data once received at the Commission VMS is not altered, accessed, manipulated, copied or interfered with in any way, or used by anyone other than those authorized to do so, as prescribed in the Commission's ISP and the associated rules and procedures developed by the AHTG [Data] adopted by the Commission.

2. To provide a stable, reliable, fully maintained and supported Commission VMS that conforms to the security standards set out in the Commission's ISP.

3. To develop and manage a service level agreement (SLA) with the FFA for provision of VMS services. An additional SLA may be required for the provision of VMS software, support and the possible provision of out sourced VMS services between the WCPFC secretariat and a software provider.

4. SLAs will include provisions for confidentiality and non-disclosure; SLA contract clauses; services provided under the SLA; service rates; target response times; help desk support; billing; possible provision of outsourced VMS services (e.g. front-line ALC management).

5. To enter into, and to maintain, direct contracts with mobile communications service providers for the provision of position (and other) data from the ALCs to the Commission VMS. A strategy of joining cooperating RFMOs, where possible, will be followed to achieve a goal of negotiating the best possible rates for these services.

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.] USA/RMI wants to consider

7. To administer the list of ALCs approved for use in the Commission VMS.

8. To compile and circulate to all CCMs a list of registered ALCs by vessel and flag reported to the Commission in compliance or non-compliance with CCM-2007-02 and these standards, specifications and procedures, as agreed by the Commission.

9. To monitor and report annually to the TCC the performance of the Commission VMS and its application and, as necessary, make recommendations for improvements or modifications to the system, standards, specifications or procedures established to support it, in order to ensure the Commission VMS continues to function as a stable, secure, reliable, cost effective, efficient, fully maintained and supported system.

10. The Secretariat will include in its annual report (6.3.9) on the operations of the Commission's VMS to the Technical and Compliance Committee, all details for non-compliant ALCs detected in the previous 12 months. The TCC may recommend

appropriate penalties or sanctions to the Commission as a means of deterring non-compliance.

DRAFT
SERVICE LEVEL AGREEMENT

Between

The Western Central Pacific Fisheries Commission

And

The Pacific Islands Forum Fisheries Agency

In respect of

The implementation and provision of services for the Western and Central Pacific Fisheries
Commission Vessel Monitoring System

PARTIES TO THE AGREEMENT

The Parties to this Agreement are:

- i) The Western and Central Pacific Fisheries Commission, established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean 2000, and located at Kaselehlle Street, P.O Box 2356, Pohnpei, Federated States of Micronesia (hereafter Commission) of the one part;
- ii) The Pacific Islands Forum Fisheries Agency, established by the Forum Fisheries Agency Convention 1979 and located at 1 FFA Road, P.O Box 629, Honiara, Solomon Islands (hereafter FFA) of the other part.

RECITALS

WHEREAS since 1998, the Pacific Islands Forum Fisheries Agency has been operating the FFA Vessel Monitoring System to assist in the monitoring, control and surveillance of fishing vessels in the Pacific Islands region;

AND WHEREAS the Commission is required by the Convention to establish cooperative mechanisms for effective monitoring, control, surveillance and enforcement, including a vessel monitoring system;

AND WHEREAS the Commission adopted in 2006 and 2007 measures to establish and implement the Commission VMS to monitor fishing vessels in the high seas within the Convention Area;

AND WHEREAS the Commission and FFA entered into a Memorandum of Understanding for cooperation, consultation, and collaboration;

AND WHEREAS the Commission further agreed to enter into a Service Level Agreement with FFA for the provision of Commission VMS services;

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED:-

1. INTERPRETATION

1.1 For the purposes of this Agreement:-

- i) "Acceptance Test" means the test against attributes, criteria and deliverables undertaken by the Commission described in Schedule 2;
- ii) "Access Date" means the date from which the FFA is to be given access to the Installation Site for the purpose of this Agreement;
- iii) "Agreement" means this Agreement including all Schedules appended hereto;
- iv) "Agreement Acceptance Date" (AAD) means the date by which the Acceptance Tests for the System or part thereof are to have been completed;
- v) "Automatic Location Communicator" or "ALC" has the same meaning as Mobile Transmitting Unit or "MTU";

- vi) “Commission Vessel Monitoring System” or “Commission VMS” means the system referred to in Article 24(8) of the Convention including Standards, Specifications and Procedures adopted and amended from time to time by the Commission;
- vii) “Convention” means the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;
- viii) “Intellectual Property Rights” includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, trade secrets, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement;
- ix) “Licensed Software” means the software provided to the Commission and includes any update or new release of that software under the licence and any material related to the licensed software;
- x) “Mobile Communications Service Provider” or “MCSP” means any provider of MTU data transmission services for VMS;
- xi) “Mobile Transmitting Unit” or “MTU” means a unit fitted on board a vessel to enable tracking of the vessel. An MTU usually contains a Global Positioning System (GPS) module and a transceiver module. In its most basic form the transceiver modules transmits the GPS derived time, date and position via a communications service to a Monitoring Station;
- xii) “Outage” occurs when the Commission is unable to access the Pacific VMS network. Outages can be scheduled or unscheduled;
- xiii) “Pacific Vessel Monitoring System” or “ Pacific VMS” means the satellite based VMS established by the FFA;
- xiv) “Service Level Agreement” means this Agreement;
- xv) “Services” means the services described in Schedule 2;

1.2 In this Agreement, unless the contrary intention appears:

- i) monetary references are references to United States Dollars;
- ii) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer; and
- iii) a cross-reference to a clause number is a reference to all its subclauses.

2. OBJECTIVES

The objectives of this Agreement are:

- i) To give effect to the decision of the Fourth Session of the Commission convened in Guam in 2007 to use the Pacific VMS to implement the Commission VMS; and
- ii) To define the relationship for the provision of services between the Commission and FFA in respect of the implementation of the Commission VMS.

3. FFA RESPONSIBILITIES

3.1 The responsibilities of FFA under this Agreement are to:

- i) Provide for the establishment, maintenance, diagnostic and support infrastructure and services to the Commission VMS ;
- ii) Provide mobile transmission unit (MTU) or automatic location communicator (ALC) management services in accordance with the procedures set out in Schedule 2;
- iii) Provide communication gateways for the following MCSPs: Inmarsat C and D+, Iridium, and CLS Argos.
- iv) Provide additional communication gateways to the Commission subject to an agreed cost-recovered development programme, on request;

- v) Maintain a record of all support calls from the Commission including tracking number, problem description, action taken to resolve the problem and the final resolution action recommended to rectify the fault;
- vi) Ensure security of Commission VMS data in accordance with Commission standards, rules and procedures;
- vii) Provide training for implementation of Commission VMS to Commission staff in accordance with Schedule 2.
- viii) Provide services for the Commission VMS independent of the existing FFA VMS;
- ix) Provide high seas VMS data in near real-time to the Commission from vessels on the FFA Vessel Register without any additional charges;
- x) Provide ninety (90) days prior notification to the Commission of any planned changes to the Pacific VMS that may affect the Commission VMS.

3.2 The specific services to be provided by FFA under this Agreement are outlined in detail in Schedule 2.

3.3 The services described in Schedule 2 of this Agreement shall be available each day of the year.

4. SERVICE GOALS

4.1 FFA will endeavour to make the services in Schedule 2 available not less than 99.7% of the time.

4.2 In the event of an unscheduled outage, the outage shall be dealt with by the FFA in accordance with the response times in Schedule 2 Table 3. FFA will use reasonable endeavours to identify, and notify the Commission, of the cause of an outage. All unscheduled outages shall be logged by the FFA and reported to the Executive Director of the Commission.

4.3 FFA shall not be responsible for rectifying faults outside the Pacific VMS network.

4.4 For a scheduled outage, the FFA shall notify the Commission at least seven (7) days before the said scheduled outage.

5. RESPONSIBILITIES OF THE COMMISSION

5.1 The responsibilities of the Commission under this Agreement are to:

- i) Provide necessary information to FFA to enable the monitoring of MTUs;
- ii) Determine users and access rights and data sharing in accordance with Commission standards and notification to FFA in a timely manner;
- iii) Pay specified charges and fees to FFA in accordance with this Agreement;
- iv) Obtain and manage contracts with Mobile Communications Service Providers (MCSP) to provide for collection of VMS Data from all Commission vessels reporting high seas data direct to the Commission VMS.
- v) Carry out Acceptance Tests to identify any malfunctions, faults or abnormalities in the performance of services under this Agreement. The Testing Period shall commence from a date agreed between the Parties and end as per the agreed implementation plan. Upon the completion of the Acceptance Tests, the Executive Director of the Commission shall notify the Director General of FFA of the Agreement Acceptance Date.

- vi) Advise FFA of any applicable policies, decisions or measures, including amendments to the SSPs, adopted by the Commission from time to time that may impact on the delivery of services as specified in Schedule 2.

6. INTELLECTUAL PROPERTY

- 6.1 Nothing in this Agreement affects the ownership of any intellectual property rights created or owned by the FFA before or arising from its performance of the services specified in Clause 3 and Schedule 2 to this Agreement.

7. OWNERSHIP OF DATA

- 7.1 All data compiled by the Commission VMS under this Agreement shall be owned by the Commission.

8. WARRANTY

- 8.1 The FFA warrants that the Commission's use of services under this Agreement, will not infringe the Intellectual Property Rights of any person or legal entity.
- 8.2 The FFA further warrants that it has the necessary rights to use the licences as provided in Schedule 2.

9. ASSIGNMENT AND SUB-CONTRACTING

- 9.1 Neither Party shall assign or sub-contract any of their responsibilities under this Agreement without the prior written consent of the other Party.

10. FINANCIAL ARRANGEMENTS

- 10.1 The payment for the provision of the services as outlined in Schedule 2 to this Agreement is described in detail in Schedule 3.
- 10.2 Services shall be paid for upon receipt of an FFA invoice, and will include:
 - i) One off costs associated with initial set up as described in Schedule 3 Table 1; and
 - ii) Recurring costs as specified in Schedule 3 Tables 2, 3, 4 and 5.
- 10.3 Support and enhancement activities that cannot be undertaken within the scope of this Agreement will require separate funding. Such activities will be managed as a Change Request (Schedule 4) and provided at the rates shown at Schedule 3 Tables 6 and 7.
- 10.4 If the Commission deems site visits necessary, the costs for travel and accommodation in respect of each visit will be invoiced by FFA to the Commission. Whenever FFA staff is required to travel to discharge obligations under this Agreement, FFA Staff will be reimbursed by the Commission in accordance with Schedule 3 Table 7.
- 10.5 Transport (including airfares and taxis), telephone and other costs that are necessarily incurred for business reasons will be reimbursed, upon production of receipts, by the Commission.

- 10.6** The financial arrangements and fees in this Agreement shall be reviewed on an annual basis unless otherwise agreed by the Parties.
- 10.7** Invoices forwarded by the FFA must be correctly addressed and include the:
- i) Description of Services;
 - ii) Charges and expenses to be invoiced (including a description of the services the invoice relates to);
 - iii) Bank account details for payment of the invoice by electronic funds transfer; and
 - iv) Date for payment which shall be fourteen (14) days upon receipt of invoice.

11. ADMINISTRATION

For the purpose of administering this Agreement, contact officers designated by the Commission and FFA are listed in Schedule 1. The Commission and FFA will advise each other of any revisions to the list of contact officers.

12. MONITORING AND REVIEW

- 12.1** The operation of this agreement will be reviewed quarterly by both Parties. Monitoring reports will be produced quarterly by FFA and will include:
- i) statistical information on service-level outputs, and
 - ii) a statement on delivery and any remedial plans to improve services.
- 12.2** In the third quarter of each calendar year, the requirements of both Parties for the forthcoming calendar year will be discussed. Agreement will be reached over key performance targets for the service provided and the level and cost of the service needed to achieve these targets in the coming year.
- 12.3** The Parties shall cooperate with audit processes and procedures related to the provision of services under this Agreement if required by either Party.

13. CONFIDENTIALITY

The Commission and FFA shall ensure confidentiality is maintained at all times and in all matters relating to any part of this Agreement, including compliance with the Commission's rules and procedures, measures and policies relating to confidentiality and access to Commission VMS data.

14. DURATION OF AGREEMENT

- 14.1** The initial term of this Agreement will be thirty six (36) months, beginning on the date of the signing of this Agreement. The Agreement will continue thereafter on a yearly basis.
- 14.2** This Agreement will terminate when either Party gives the other a minimum of six (6) months notice in writing to terminate the Agreement.

14.3 This Agreement shall terminate without notice if FFA is prevented from providing the services, as described in Schedule 2, for any reason as specified in clause 14.4.

14.4 In the event that a Party cannot perform any of its obligations under this Agreement due to circumstances beyond its reasonable control (*force majeure*), including but not limited to, acts of God, war, industrial disputes, change of law, power or mechanical failure, defects in telecommunication equipment and/or computer viruses, that party's obligations are suspended for as long as the Force Majeure continues, and if the *force majeure* continues for more than sixty (60) consecutive days preventing either Party from performing its obligations, then either Party may terminate this Agreement.

14.5 In the event of termination, the Commission shall pay FFA, on the production of a final invoice, all monies due and payable within fourteen (14) days of receipt of the invoice.

15. GOOD FAITH

15.1 The Parties agree to fulfil their responsibilities and implement this Agreement in good faith.

16. DEFAULT

If either Party is in default under this Agreement on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Agreement, the Party not in default may terminate this Agreement in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either Party.

17. RESOLUTION OF DISPUTES

17.1 In the event that a dispute arises regarding the level of service provided by FFA and the discharge the responsibilities of the WCPFC under this Agreement, the Parties to this Agreement shall use their best endeavours to resolve any dispute between them through consultation.

17.2 If the Parties to this Agreement are not able to resolve the dispute through consultation, they shall endeavour to settle the dispute by any peaceful means including mediation, conciliation, and arbitration.

18. AMENDMENTS

Any amendments or variations to this Agreement must be recorded in writing and signed by the Parties to this Agreement.

19. *ENTIRE AGREEMENT AND VARIATION*

19.1 This Agreement contains the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

19.2 No agreement or understanding varying or extending this Agreement shall be legally binding upon either Party unless in writing and signed by both Parties.

20. *SEVERABILITY*

Each provision of this Agreement and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

| Signed For and on Behalf of the Western and Central Pacific Fisheries Commission | Signed For and on Behalf of the Pacific Islands Forum Fisheries Agency |
|---|---|
| BY:..... . | BY:..... . |
| TITLE: Executive Director | TITLE: Director General |
| Signature: | Signature: |
| DATE: / /2008 | DATE: / /2008 |

SCHEDULES:

| | |
|------------|-----------------------|
| SCHEDULE 1 | AGREEMENT DETAILS |
| SCHEDULE 2 | STATEMENT OF SERVICES |
| SCHEDULE 3 | CHARGES AND PAYMENT |
| SCHEDULE 4 | CHANGE ORDER |

Schedule One – Agreement Details

| Item number | Description | Clause Reference | Details |
|-------------|---|---|--|
| 1. | Commission details | | Western and Central Pacific Fisheries Commission Kaselehlie Street, P.O Box 2356, Pohnpei, Federated States of Micronesia |
| 2. | FFA details | Error! Reference source not found. | Pacific Islands Forum Fisheries Agency 1 FFA Road, P.O. Box 629, Honiara, Solomon Islands |
| 3. | Commission Representative | | Executive Director |
| 4. | FFA Representative | | Director General |
| 5. | Commencement Date | | Agreement is to commence on date of execution |
| 6. | Initial Duration of Agreement | | Thirty six (36) months |
| 7. | Additional Period | | Renewable every year after the initial duration of Agreement |
| 8. | Support Period and Warranty Period | | For duration of Agreement |
| 9. | Updates and New Releases | | The FFA is required to provide: - Updates - New Releases |
| 10. | Ongoing Support Services | Error! Reference source not found. | For duration of Agreement |
| 11. | Acceptance testing of Software | Clause 5.1(v)Error! Reference source not found. | |
| 12. | Period for Acceptance | Clause 5.1(v) | As per agreed implementation plan |
| 13. | Unforeseen events - termination period | Clauses 14.3 & 14.4 | Termination without notice if FFA unable to carry out services due to <i>force majeure</i> or any lawful reason |
| 14. | Address for Notices | | Commission: Executive Director Western and Central Pacific Fisheries Commission Kaselehlie Street, P.O Box 2356, Pohnpei, Federated States of Micronesia FFA: Director General Pacific Islands Forum Fisheries Agency 1 FFA Road, P.O. Box 629, Honiara, Solomon Islands |
| 15. | Dispute Resolution | Clause 17 | If the Parties are not able to resolve |

| Item number | Description | Clause Reference | Details |
|-------------|-------------|------------------|---|
| | | | dispute through consultation, they shall endeavour to settle the dispute by any peaceful means including mediation, conciliation, and arbitration |

Designated Contacts:

WCPFC
 PO Box 2356
 Pohnpei
 Federated States of Micronesia
 Tel: (691) 320 1992
 Fax: (691) 320 1108
 email: wcpfc@wcpfc.int

| Position | Phone | Fax | Email |
|--------------------|-------|-----|-------|
| VMS Manager | | | |
| ICT Manager | | | |
| Compliance Manager | | | |

FFA
 1 FFA Road
 P O Box 629
 Honiara
 Solomon Islands
 Tel: (677) 21114
 Fax: (677) 23995
 Email: vms@ffa.int

| Position | Phone | Fax | Email |
|------------------|-------|-----|-------|
| VMS Manager | | | |
| VMS Duty Officer | | | |
| VMS Helpdesk | | | |

Schedule Two – Statement of Services

Purpose:

- a) To give effect to the decision of the Fourth Session of the Commission convened in Guam in 2007 to use the Pacific VMS to implement the Commission VMS; and
- b) To define the relationship for the provision of services between the Commission and FFA in respect of the implementation of the Commission VMS.

Table 1- Services

| Description of Services | |
|-------------------------------------|---|
| Commission VMS Services | <ol style="list-style-type: none"> 1. Provision of database services for the storage and processing of Commission VMS data 2. Provision of communication services for position data reporting and Commission VMS commands sent to vessels 3. Provision of access to the Commission VMS data through front end software, including the ability to set alerts for the Commission VMS, send commands (e.g. reporting rate changes, immediate poll) |
| Managed services for Commission VMS | <ol style="list-style-type: none"> 1. Registration of vessels onto the Commission VMS: <ol style="list-style-type: none"> a. Entry of vessels onto the Commission VMS b. Provision for two attempts to start a vessels reporting, after two attempts the matter reverts back to the Commission for resolution and another fee will fall due when the issue on board the vessel has been rectified 2. Maintenance of MCSP communications services, to the point it is determined that the problem may lie with the MCSPs contracted by the Commission, at which point the matter is referred back to the Commission for follow up |

Table 2 – Delivery and Installation

| | Item | Remarks |
|----|----------------------------|-------------------------------------|
| 1. | Delivery date | [As per agreed Implementation Plan] |
| 2. | Delivery place | [As per agreed Implementation Plan] |
| 3. | Installation of System | [As per agreed Implementation Plan] |
| 4. | Implementation of Services | [As per agreed Implementation Plan] |

Table 3 – Support Services

| Description of Services | | |
|-------------------------|---|--------------------|
| Support Hours | 24 hours a day 7 days a week | |
| Remote access | Authorised Virtual Private Network (VPN) Access | |
| Fault Level | Response Times | |
| | 09:00 to 05:00 Western Pacific Time (+11 hrs GMT) Monday to Friday, excluding public holidays | At all other times |
| Critical | 4 hours | 24 hours |
| Urgent | 24 hours | 72 hours |
| Normal | 24 hours | 72 hours |
| Low Priority | 72 hours | 72 hours |

Guaranteed Time to Respond:

Acknowledgement after receiving notice of fault – within thirty (30) minutes.

Definitions of Fault Level:

Critical:

- Fault entirely prevents operation of system and/or causes, or potentially could cause, data loss (or)
- Fault prevents critical component of the system from operating, during a Law Enforcement or other critical operation (and)
- Restarts, or other defined maintenance procedures, are not effective in temporarily resolving the fault.

Urgent:

- Fault prevents operation of significant portions of the system functionality, in such a manner as to impact operational use.
- Restarts, or other defined maintenance procedures, are partially effective as a temporary resolution to the fault.

Normal:

- Fault prevents operation of specific portions of the system, in a manner that is not critical to operations but where prompt resolution is desirable.

Low Priority:

- Fault affects non-critical functionality, with workaround or alternative method of accessing similar functionality available.

Table 4 - Training

| Requirement |
|--|
| Initial training of Commission Secretariat [As per agreed Implementation Plan] |

Table 5 – Deliverables

| | Deliverables |
|---|--|
| 1 | Project Management and Implementation Plan |
| 2 | Commission VMS System Configuration |
| 3 | Desktop hardware delivered and installed in Commission Secretariat |
| 4 | System Acceptance Testing |
| 5 | Training of Commission Secretariat |
| 6 | Web-enabled Electronic Vessel Registration |
| 7 | Helpdesk |
| 8 | CCM Client activations |

Table 6 - Documentation

| | Documentation |
|----|----------------------|
| 1. | User Manual |
| 2. | |
| 3. | |

Schedule 3 – Payments and Charges

Schedule of Payments

- 3.1 One time set up costs shall be paid on receipt of invoice on execution of this Agreement.
- 3.2 Monthly recurring costs shall be payable quarterly in advance on receipt of invoice.
- 3.3 Additional monthly costs based on vessel and user activations shall be invoiced.

Pacific VMS Pricing Schedule

Table 1 - One Time Set Up Costs

| Item | USD |
|---|-------------|
| Total One Time Setup Cost (inclusive of all hardware, software, systems, project management, consulting, installation, commissioning and billing system setup costs). The price quoted includes each and every one-time cost pertaining to the delivery of a fully operational VMS 'turn-key' system. ^(1 &2) | \$93,290.00 |

Notes: set up of five (5) VMS Client licenses for the Commission Secretariat as per cost estimates developed in the VMS Costing Working Group at the Fourth Session of the Commission to a mutually agreed implementation plan

Table 2 - VMS MTU Activation / De-activation Services per MTU

| Service: | USD |
|--|----------|
| Electronic Vessel Registry & Licensing per MTU: ⁽¹⁾ | \$200.00 |
| Deactivation of VMS Licensing per MTU: ⁽²⁾ | \$50.00 |

Notes;

⁽¹⁾One Time activation charge per Vessel Electronic Registry of shipborne VMS MTU equipment registering or re-flagging onto the Commission VMS authorized to use this service.

⁽²⁾One time de-activation charge per vessel MTU de-registering from the Commission VMS.

Table 3 - VMS Activation / De-activation Services per Client/User

| Service: | USD |
|--|------------|
| Activation of VMS Licensing per Client: ⁽¹⁾ | \$1,250.00 |
| Deactivation of VMS Licensing per Client: ⁽²⁾ | \$250.00 |

Notes;

⁽¹⁾ One Time activation charge per WCPFC VMS Client / User Name & Password registering onto the Commission VMS added to authorized user list for this service

⁽²⁾ One time de-activation charge per VMS Client / User Name & Password registering onto the Commission VMS.

Table 4 - Pacific VMS Data Centre Services (Monthly Recurring)

| Service: | USD |
|---|-------------------|
| Pacific VMS Data Centre Hardware, Software Systems per MTU: | \$18.00 |
| Network, Tape Backup & Internet Charges (5GB IN / 20GB OUT / 2MB) | \$1,250.00 |
| Help Desk & SLA support | \$1,000.00 |
| Other (any charges not itemized above should be indicated here if they are incurred on a recurring basis) | |

Table 5 - FFA MCSP Rates

| Product: | USD |
|--|---------------|
| + VMS Position Report (each) ⁽¹⁾ | \$0.05 |
| + Demand Transmission (each) ⁽¹⁾ | \$0.30 |
| + Modification of Interval (each) ⁽¹⁾ | \$1.50 |

Notes:

⁽¹⁾ Additional MCSP reporting rates.**Table 6 - Hourly Rates**

| Services: | Rate (USD) |
|--|-------------------|
| System Project Management Design & Configuration, Software Installation, Maintenance, Repair, Technical Services, IT Services and Training | \$150/hr |

Table 7 – Daily Rates

| Services: | Rate: |
|---|--------------|
| Daily Subsistence Allowance (DSA) shall be based on published United Nations Development Programme (UNDP) rates for applicable location | As published |

Schedule 4 – Change Order

This Change Order (including its attachments, if any) serves to vary this Agreement in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of this Agreement continue unaffected.

| | |
|--|--|
| Change Order number | |
| Raised by | |
| Details of change (use attachments if required) | |
| Implementation date of Change Order | |
| Effect on Services | |
| Plan for implementing the change | |
| Effect on Service Charges | |
| Effect on Service Level Requirements | |
| Effect on Documentation | |
| Impact on end users | |
| Other relevant matters (eg transitional impacts) | |

Commission

Name (print)

Position

Signature

Date

FFA

Name (print)

Position

Signature

Date
