



Agenda Item:	13
Paper No:	FFC118-WP.10
Title:	<i>HARMONISED MINIMUM TERMS AND CONDITIONS</i>

Summary:

The HMTCs serve as a key strategic tool for FFA Members to regulate access to their waters. They are a fundamental mechanism for setting leading standards for FFA Members to protect and maximise benefits from their fisheries resources.

This paper updates the Committee on the review of the HMTCs including on their scope and application. The nature, scope and application of the HMTCs deserves further consideration as they have policy implications.

In accordance with the standing directive of the Committee, policy matters are reserved for the Committee.

Recommendations:

The Committee is invited to:

- i. **Note** the legal foundation, scope and application of the HMTCs and provide directions as appropriate;
- ii. **Consider** the proposed amendments to the HMTCs set out in Annex 2; and
- iii. **Endorse** the proposed amendments to the HMTCs as appropriate.

1. Introduction

The HMTCs serve as a key strategic tool for FFA Members to regulate access to their waters. They are a fundamental mechanism for setting leading standards for FFA Members to protect, as well as to maximise benefits from, their fisheries resources. This paper updates the Committee on the review of the HMTCs including on their scope and application. The nature, scope and application of the HMTCs deserves further consideration as there are policy implications. In accordance with the standing directive of the Forum Fisheries Committee policy matters are reserved for the Committee.

2. Background to the review

In 2020, the Committee at its 114th session directed the Secretariat to undertake a comprehensive review of the HMTCs on their scope and application, and to take into account proposed amendments on the collection of person of interest related information.

The Secretariat convened a one-day virtual HMTCs meeting on the 15th March 2021 to consider the initial findings from the review and to seek Members' feedback on the review and comments on the HMTCs in general. The outcomes of the HMTCs meeting were considered by MCSWG24 in March 2021.

After reviewing the proposed amendments to the HMTCs and their implications, and considering other matters that may be included, MCSWG24: (i) noted the proposed amendments and encouraged Members to provide feedback to the Secretariat prior to FFC118; and (ii) tasked the Secretariat to provide a report to clarify issues relating to the legal foundation, scope and application of the HMTCs to FFC118. Hitherto, the Secretariat has not received any feedback on the proposed amendments to the HMTCs.

3. Historical Development of HMTCs

The HMTCs (known then as the “harmonised minimum standards for foreign fishing vessels”) were first recommended by FFC to the Forum Leaders in 1982. The recommendations were for the adoption of harmonised standards by Forum countries together with participating countries and included general provisions relating to uniform vessel identification, catch and position reporting, catch and effort log sheets, requirement for observers, and stowage of fishing gear when in transit. **Attachment 1** contains an extract of the FFC7 decision setting out the recommendations.

By the 1990s these standards had become the “harmonised minimum terms and conditions for foreign fishing vessel access”. Additional conditions included the explicit requirement for the appointment of a local agent, provisions of enforcement and hours of notification for transshipment and entry into or departure from fisheries zones including ports.

Since then, Members have been adding explicit requirements under specific parts, with the addition of MCS and fisheries management provisions in 2013 when the Secretariat carried out a comprehensive review of the HMTCs. A timeline of these changes is listed in detail in **Attachment 2**. In 2016 there was another review

undertaken by the Secretariat, which looked at the inclusion of provisions of observer safety, e-monitoring and e-reporting measures.

4. Legal foundation, scope and application of the HMTCs

The Committee at its 7th session in 1982 made specific recommendations to the Forum on harmonised measures for access (see **Attachment 1**). The chapeau for the recommendations are framed with the use of the words “should be taken” or “should be adopted” or “should take”. The use of the auxiliary verb “should” indicates a recommendation. The HMTCs contain harmonised measures that allows each FFA Member to decide on how they are to implement such measures.

The HMTCs were designed to apply to fishing access by foreign fishing vessels; as is seen from the FFC7 decision, the main objective of the HMTCs is to have in place standard minimum terms and conditions of licence for foreign fishing vessels to have access to fish within the Members’ fisheries zones. Although there have been updates and additions to the HMTCs over 40 years, the scope and application has remained the same, i.e. primary application to foreign fishing vessels.

In terms of the area of application, the HMTCs includes reference to “fisheries zone” which denotes the “exclusive economic zone”. This interpretation aligns with the decision of the Forum in August 1977 to establish the FFA as well as the text of the FFA Convention. Although there are measures in the HMTCs that relate to measures in ports, the area of application is primarily the exclusive economic zone.

With the growing number of Members becoming flag states, a question for discussion is whether the scope of the HMTCs should be expanded to include Member’s flagged vessels. For the purposes of promoting clarity, a fishing vessel flagged to a Member is currently expected to be treated as a foreign fishing vessel by other Members when fishing within the EEZs of those Members. The exception to that is if there are other arrangements in place such as *The Federated States of Micronesia Arrangement for Regional Fisheries Access* which allows the “home Party” to support fishing access by a vessel to the waters of other parties to that arrangement.

The application of HMTCs to FFA Member flagged vessels is not novel as FFC Ministers made a commitment in 2019 to extend the minimum crewing measures to domestically flagged vessels fishing within their own EEZs.

There may also be a need to consider the development of guidelines that identify the obligations of FFA flag States as prescribed by international instruments such as the 1982 UN Convention on the Law of the Sea, regional and subregional instruments including WCPFC, and decisions of international adjudicatory bodies. Such guidelines may not be part of the HMTCs but may stand alone.

In discussions thus far on the amendments to the HMTCs, a number of Members have stated that the scope and application of the HMTCs should be maintained as it is, as Members’ flagged vessels are covered under the sovereignty of a State. Additionally, some Members pointed out that the HMTCs should focus on setting out minimum terms and conditions for access for foreign fishing vessels within the exclusive economic zone and not in areas of sovereignty. Importantly, two Members

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noted the need to further review the scope and application of the HMTCs so as to properly determine the content of any future HMTCs.

5. Proposed amendments

The proposed amendments to the HMTCs that were considered in the HMTCs meeting on 15 March 2021 as well as MCSWG24 is provided in **Attachment 3**. Members are invited to consider these amendments and endorse, as appropriate.

Attachment 1 **EXTRACT FROM FFC7 (1982)**

Harmonisation Workshop Recommendations

The FFC decided on a plan for the implementation of the recommendations from the Workshop on the Harmonisation and Co-ordination of Fisheries Regimes and Access Agreements, as follows:

15. A) The FFC recommends to Forum that the following action with regard to foreign fishing vessels should be taken by Forum countries, together with other participating countries: -

(i) A regional register of foreign fishing vessels be established at the Forum Fisheries Agency.

(ii) Only vessels which are accorded "good standing" status on the register be granted fishing licences in the region, in accordance with detailed arrangements to be agreed by member countries.

iii) Uniform vessel identification requirements be adopted (the international radio call sign or, in its absence, the number from the regional register).

(iv) Countries acquiring information from apprehended foreign fishing vessels concerning illegal activities in other fisheries zones pass such information on to FFA for recording and informing any FFA member or observer country whose interests may be affected.

B) The FFC recommends to Forum that the following harmonised minimum standards for foreign fishing vessel access should be adopted at this stage by Forum countries, together with other participating countries: -

(i) Foreign fishing vessels 20 gross registered tons or over be required to comply with the following minimum reporting conditions while in the fisheries zone of a country in which they are licensed to fish:

- give notice to FFA or the licensing country of entry into and departure from any zone or port;
- regularly report position and catch to FFA or the licensing country.

(ii) Foreign fishing vessels are required to complete standard regional tuna catch and effort log sheets, while in the fisheries zone of the licensing country, and to return such sheets directly to the regional agency (SPC) or the licensing country for processing within 45 days after completion of the voyage.

(iii) Flag states or, in the absence of access agreements with flag states, the appropriate national fishermen's organisations are required in

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agreements to take measures to ensure compliance by their fishing vessels with coastal state laws.

(iv) Provision be made for on-board observers and port calls when required by the licensing country.

(v) Foreign fishing vessels navigating through ("transiting") the fisheries zone be required to have all fishing equipment on board stowed or secured in such a manner that it is not readily available to use for fishing.

C) The FFC agreed that at a subsequent stage the following harmonised minimum standards for foreign fishing vessel access should be adopted by FFA member and observer countries: -

(i) Foreign fishing vessels navigating through any zone in the region be required, through harmonised provisions in access agreements, to meet specific reporting requirements, including notification of intended navigation through any zone.

(ii) As a condition of access, foreign fishing vessels be required to complete the standard regional tuna catch and effort log sheets /whenever in the fisheries zone of any FFA member or observer country/ /for the remainder of the voyage once the vessel has entered the fisheries zone of an FFA member or observer country/. The completed, unaltered logsheets would be posted directly to the regional agency (SPC) upon completion of the voyage.

D) The FFC agreed that FFA member and observer countries should take the following measures:

(i) Countries which have given licensing authority to distant water fishing organisations seek ways to remove such authority from such organisations.

(ii) Adopt uniform boarding procedures, incorporating the relevant provisions of the IMCO International Code of Signals, these procedures to be prepared by the FFA Secretariat and submitted to all FFA member and observer countries.

(iii) Employ secondary surveillance resources where suitable. These could include:

- education of coastal state citizens;
- 'production of simple hand-outs;
- a system of rewards for information leading to arrest and conviction.

(iv) Respond to the ANZCCSAT report as soon as possible.

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(v) Consider arrangements for in-depth co-operation on access fees in particular fisheries identified as being of common interest. To this end:

- FFA countries should seek to identify with assistance from the FFA Secretariat the fisheries in the region where the interests of countries could be promoted by the adoption of a common approach to the participation of distant water fishing interests;
- in order to establish the optimum level of fees, countries sharing a common interest fishery should combine where appropriate to negotiate with distant water fishing interests;
- in any common interest fishery, sharing countries should seek to agree upon uniform fees for distant water fishing vessels not otherwise contributing to the local economies (e.g. by landing catch for transshipment/processing or by supporting local service industries).

(vi) Agree upon a minimum uniform access fee to be paid or guaranteed in advance, such fee to be the value of the right to fish the resource and to be:

- calculated as a percentage of the actual or best-estimated landed catch value of the fish rather than the FOB, or any other lower value of the fish;
- paid as a basic cost of operation irrespective of the financial position of the foreign fishing vessels.

(vii) Pursue a lump sum licence fee except where circumstances related to their zones dictate otherwise.

Attachment 2**Timeline for the adoption and amendments to the HMTCs**

Year	Notes
1979	The establishment of FFA
1982	The adoption of Harmonised Minimum Standards for Foreign Fishing Vessels and establishment of a Regional Register of Foreign Fishing Vessel
1984	Adoption of provisions relating to: • completion of catch and effort log sheets • Preliminary report within 14 days of completing of a trip; • Final report within 45days of the completion of trip
1990	Adoption of provisions relating to: • 72hours notice for transshipment • Vessel reporting requirements (each Wednesday, reasonable time of entry into and departure from the zone and port of licensing country) • List of specific duties of observer and obligation of the operator to the observer (including costs) • Annex 1 – Common Regional Fisheries Licence Form (including Summary of selected licence terms and conditions. • Annex 2 – Reporting details under paragraph 5 (Vessel Reporting Requirements) • Annex 3 – Summary of FFA Standard Specifications for Marking and Identification of Fishing Vessels.
1997	Adoption of provisions relating to: • Provisions relating to Vessel Monitoring System; • Register of Foreign Fishing Vessel and (Annex 4)
2004	Adoption of provisions relating to: • Requirement of good standing on regional register of foreign fishing vessel and VMS Register of Foreign Fishing Vessel • Observer Coverage of 20% • Application of HMTCs in Port • Identification of FAD • Pre-fishing inspections
2008	Adoption of provisions relating to:

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	• Requirement and maintenance of ALC/MTU • Requirements for FFA Vessel Registration Period to coincide with financial year.
2011	Adoption of provisions relating to: • New data fields for application of registration on the FFA Vessel Register • Requirement for reporting of observe details
2014	Adoption of provisions relating to: • Fisheries Management related measures • Acceptable International pre-fishing practices (Annex 5)
2016	Adoption of provisions relating to: • Observer safety; • Requirement for e-monitoring and e-reporting (paragraph 6(c)(iv) of current HMT);
2018	Adoption of provisions relating to: • require a copy of the flag State certificate of registration to be submitted as part of the minimum requirements for licensing (para.3 and Annex 1) • clarify the IUU Lists to be cross-checked for vessels applying for registration on the FFA Vessel Register • (vii) require each vessel to be registered to include its UVI
2019	Adoption of provisions relating to: • Crew Employment Conditions (Annex 6)

Attachment 3**PROPOSED AMENDMENTS TO HMTCS**

Meeting	Proposal	Proposed Amendments to HMTCS 2019	Implication on Members
HMTCS Virtual Meeting, March 2021	The papers from the meeting noted that the majority of the paragraphs are still relevant and applicable to the current practices and system with the fishery. The general changes include: 1. Standardising the use of certain defined terms throughout the document; and 2. Editorial and format changes to the paragraphs and Annexes of the HMTCS document.	To standardise any reference of “fisheries waters”, “exclusive economic zone” or “EEZ” to “zone”, To standardise any reference of “issuing authority”, “appropriate authority” or “relevant authority” to “licencing member”. To standardise any reference of “tranship” or “transshipping” to “transshipment”.	This proposed amendment does not have any implication on Members, as the terms used are existing definitions within the paragraph 1 of the current HMTCS.
	Part I and II 3. To amend the introduction paragraph to provide clarity on the legal status of the HMTCS.	To amend the introduction paragraph so that it now reads as follows: <i>The Harmonised Minimum Terms and Conditions for Access by Fishing Vessels (HMTCS) constitute one of the FFA Members key strategic tools to regulate access to their waters. They are a fundamental mechanism to strengthen regional solidarity and¹for setting leading standards for FFA Members to effectively manage and protect, as well as maximise their benefits from, their fisheries resources.</i>	This proposed amendment does not have any implication on Members as the proposed amendments simply strengthen the objective and provides clarity on the legal status of HMTCS.

¹Note: Red ink text are the proposed new language.

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		<i>The Forum Fisheries Committee has the responsibility for adopting and amending HMTCs as they see fit. These HMTCs are adopted as minimum standards of access and do not preclude any member from adopting more stringent standards.</i> <i>The HMTCs are to be given national legal effect at the national level through vessel licensing conditions or by incorporation into national laws, as appropriate.</i>	
	4. Updating the paragraph 1-Definitons to include POI related definitions and to amend the definition for “operator” and “zone”.	To insert new definitions in paragraph 1 for the following terms: <i>“De facto director” means those who have not been validly appointed but act in the position of a director;</i> <i>“Directors” means those persons appointed in the normal way in accordance with the rules of the company in question;</i> <i>“Shadow directors” means those whose instructions or wishes are customarily followed by the validly appointed directors;</i> <i>“Operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer, master, fishing master, navigator, beneficial owner, directors, de facto directors, and shadow directors.</i> <i>“Zone” means the exclusive economic zone, the fishery waters, or fisheries waters. And does not include the territorial sea,</i>	The proposed amendments to the terms within the Definition, provides clarity on the use of the terms with the HMTC. Members may choose to adopt these new proposed definitions into their national fisheries law/regulation.

		<i>archipelagic waters or internal waters.</i>	
	Part III 5. Noting the proposal from Tuvalu in MCSWG23 for the notice period for transshipment request, it was proposed that 48 hours be the new minimum in paragraph 6. This will not affect Members that have legislated this requirement in their laws and license conditions, as Members who have 72 hours' notice, will be the more stringent measure.	To amend reference to "72 hours' notice" for transshipment in paragraph 6(b)(ii) and Annex 1, Summary of selected licence terms and conditions, sub-paragraph 7 as follows: <i>6(b) (ii) provide 48 hours' notice to the licensing member of a request to carry out transshipment of any or all of the fish on board and shall provide the name of the vessel, its international radio call sign, its position, the catch on board by species, the time and port where such transshipment is requested to occur, and an undertaking to pay all fees required under the laws of the licensing member;</i> Annex 1, Summary of selected licence terms and conditions <i>7. The Master shall provide 48 hours' notice of a request to carry out transshipment fish or re-provision the vessel. The vessel may only carry out transshipment in an approved port and at a time and shall operate under such conditions as are specified by the licensing member, including the provision of a report of the transshipment activity.</i>	This proposed amendment does not have any implication on Members, as Members with legislative requirement, or licence condition of 72hours or more will not be required to change such requirement as those requirements may be considered as more stringent. The change to 48hours notice would mean that this would become the new minimum standard for the operator to provide notice of their intention to carry out transshipment. PSMA, CMM2017-02 and FFA PSM Framework does not provide for specified time for notice to carry out transshipment. PSMA makes reference "to be provided sufficiently in advance to allow adequate time for the port State to examine such information"

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			(Art8(2)) for entry into port. Which all transshipment in Members waters must take place in port unless authorised by the licencing member.
	6. Noting the developments in e-reporting platforms and systems, it was proposed to update the days required for the completion of a preliminary report within 3 days and final report within 14 days of the completion of a trip in paragraph 7(c).	To amend the paragraph 7(c) so that it reads as follows: <i>7(c) provide to the licensing member on the prescribed form:</i> (i) <i>a preliminary report within 3 days of the completion of a trip; and</i> (ii) <i>a final report within 14 days of the completion of a trip.</i>	This proposed amendment does have implications on Members. Members may change their requirement for when an operator is required to provide a preliminary and final report from the completion of a trip. Majority of the provisions in existing national laws provide authority for the Minister/Director to impose such additional conditions into their licence.
	7. There is a need to rearrange the provisions relating to the requirement for observer, observer safety and observer coverage (paragraph 9, 9A and 10) and to change title of paragraph 9 to "Duties to Observer".	To rearrange Paragraph 9, 9A and 10, and to change title to paragraph 9 to "Duties to Observer" as follows: <i>9. Observer Coverage;</i> <i>10. Observer Safety; and</i> <i>11. Duties to Observer.</i>	These proposed amendments do not have any implication on Members, as the changes made were editorial and format changes.
	8. The footnote in paragraph 9A(c) is removed and inserted as a new paragraph 10(d).	To insert a new subparagraph 10 (d) as follows: <i>10 (d) The operator shall consult with the observer service provider, and the replacement and transfer of the observer shall only take</i>	This proposed amendment does have any implication on Members, as the changes now

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		<i>place with the consent of the observer service provider. At the direction of the observer service provider or licensing authority, the vessel may be ordered back to port.</i>	require the inclusion of licensing authority for these provisions. It may require changes to national fisheries law or licence conditions.
	9. Propose changes to paragraph 15(a) to reflect that the VMS is implemented in accordance with the procedure for the FFA Vessel Register in Annex 4.	To amend paragraph 15(a) (now paragraph 16(a)) as follows: <i>16 (a) The vessel monitoring system shall be implemented in accordance with the procedures for the FFA Vessel Register as set out in Annex 4.</i>	This proposed amendment does not have any implication on Members, as the changes made are editorial changes.
	10. Noting the discussion in the POI meeting last year, there is a proposal to include the collection of POI related information at the vessel registry stage and to include requirement in paragraph 15 and related provisions in the Annexes.	To insert a new subparagraph as a new 16(b) , new data fields in Annex 1 and new subparagraph 2.2 in Annex 4 as follows: <i>16(b) The operator shall provide full details and appropriate documentation of ownership (including beneficial ownership; directors; and where applicable de facto and shadow directors) of a fishing company and fishing vessel.</i> Annex 1: <i>23. Name of owner (if a company, name of directors, and where applicable, de facto directors and shadow directors)</i> <i>24. Name of beneficial owner</i>	These proposed amendments to 16(b) and subparagraph 2.2 in Annex 4 do not have direct implications on Members, as the proposed changes are required for the FFA Vessel Register that is managed by the Secretariat. However, this proposed amendment to Annex 1, does pose some implication on Members. It requires Members to attain the two additional minimum vessel data fields from an operator.

		Annex 4: <i>2.2. All applications for registrations shall include full details and appropriate documentation of owners (including beneficial ownership, directors; and where applicable de facto and shadow directors) of a fishing company and fishing vessel.</i>	This may mean that Members would have to amend their licence application requirements to include the name of directors and beneficial owners.
	Additional amendments from POI and MCSWG23 in 2020 11. Moving “CCAMLR IUU List” before “Any other RFMO IUU List” in subparagraph 2.5 of Annex 4.	To amend new subparagraph 2.6 in Annex 4 as follows: <i>2.6. The Director-General shall review IUU Vessel Lists as a background check on each vessel that is the subject of an application for registration. An application for registrations from any fishing vessel which is listed in any of the following IUU lists shall be rejected:</i> (a) WCPFC IUU list (www.wcpfc.int) (b) IATTC IUU list (www.iattc.org); (c) IOTC IUU list (www.iotc.org); (d) ICCAT IUU list (www.iccat.int); (e) SPRFMO IUU list (https://www.sprfmo.int/); (f) CCSBT IUU List (https://www.ccsbt.org/); (g) <i>CCAMLR IUU List</i> (https://www.ccamlr.org/); and (h) <i>Any other RFMO IUU list.</i>	This proposed amendment does not have any implication on Members, as the changes made are editorial and format changes.

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	12. To provide clarity on the use of the term “serious offence” in paragraph 5.2 of Annex 4 to include “serious violation” in Article 21.11 of UN Fish Stock Agreement.	To add a new ending paragraph at the end of subparagraph 5.2 in Annex 4 as follow: <i>In this paragraph, the reference to “serious offence” includes reference to “serious violation” in article 21.11 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.</i>	This proposed amendment does not have any implication on Members, as the changes made provides clarity on the use of the term “serious offence” in paragraph 5 of Annex 4.
2nd Observer Insurance Workshop, March 2021	13. The meeting identified a need to define the term “full insurance coverage” in paragraph 1- Definition, to include the minimum standard for the best practices for an observer insurance policy as discussed in the meeting.	To insert a new definition in paragraph 1 for the term “full insurance”, as follows: <i>“full insurance coverage” means insurance that covers door to door protection (based on 5 years of average Observer wages for i, ii and iii) for the following risks:</i> <i>i. Injury;</i> <i>ii. Illness;</i> <i>iii. Death;</i> <i>iv. Loss of belongings; and</i> <i>v. Damage or injury caused by the observer.</i>	This proposed amendment will have implications on members. It will require some form of legislative change to national fisheries law or licence conditions to incorporate a definition for “full insurance coverage”.