


FFA

FORUM FISHERIES COMMITTEE
ONE HUNDRED AND EIGHTEENTH MEETING

25 - 28 May 2021

Agenda Item:	14
Paper Number:	FFC118-WP24
Title:	Aerial Surveillance Program Update and Ownership of Information

Summary:

2020 was a challenging year for the PMSP-FFA Regional Aerial Surveillance Program (ASP) due to the COVID19 pandemic disrupting operations. Although the program was temporarily suspended between March and June 2020, 106 surveillance missions were still undertaken providing crucial maritime domain awareness to the region. The program continued to progress a number of management activities including finalising Memorandums of Understanding (MoUs) with Australia and Pacific Island Countries (PICs) and engagement with the Pacific Aviation Safety Office on clarifying aircraft regulation requirements.

A key area of focus in the discussions on the MoU with Australia was the IP ownership of the surveillance product which is being considered in the paper.

Recommendations:

The Committee is invited to note and discuss:

- i. the update on the ASP from 2020 and priorities moving forward;
- ii. the mutual agreement of Australia Department of Defence and the FFA to transfer the Intellectual Property (IP) ownership of the surveillance product to members, via FFA, which will be reflected in the Australia-FFA MoU currently being finalised and the MoUs between individual members and FFA;
- iii. the need for members that have not finalised their respective MoUs to do so; and
- iv. the pending resolution of the civil aviation request by the Pacific Aviation Safety Office (PASO) membership; and
- v. the aircraft availability for tasking to meet members' essential maritime security needs.

Introduction

2020 was a challenging year for the ASP due to the COVID-19 pandemic which disrupted planned surveillance missions as nations closed their borders and implemented travel restrictions resulting in the ASP being temporarily suspended for three months. Despite this, a total of 106 surveillance missions were flown in 9 nations in 2020 compared to 195 missions in 14 nations in 2019.

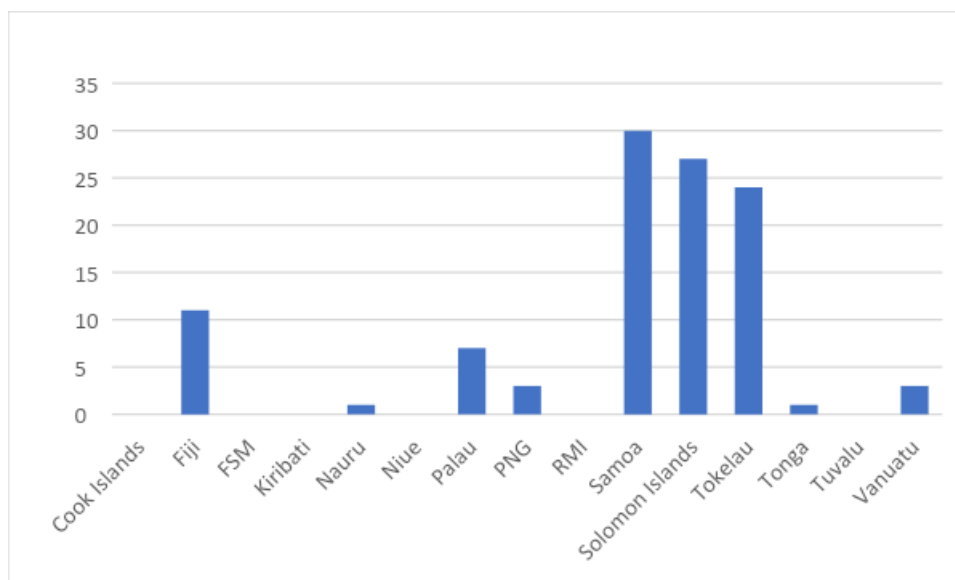
A number of activities continued to be progressed, including the finalisation of MoUs with Australia and PICs and ongoing engagement with PASO on aircraft regulation.

2020 Aerial Surveillance Operations

106 surveillance missions were flown in nine nations which was considerably less than what was carried out in 2019 due to border closures because of the COVID19 pandemic.

Fig 1 below provides the number of missions flown in 2020. Samoa, Solomon Islands and Tokelau received the most surveillance flights as their respective governments provided the necessary clearance for the aircraft and crew (including mandatory quarantine requirements).

Fig 1.



2020 can be broken into three distinct periods.

Jan – Mar: Prior to the declaration of the Pandemic: The ASP commenced in 2020 with 33 missions completed in Palau, Nauru, Samoa, Tokelau, Fiji, Solomon Island and Vanuatu (the latter two being part of a subregional Operation SOLVAN). As COVID19 was declared a global pandemic, nations started closing their borders. These travel restrictions which occurred during Operation Rai Balang resulted in QUAD assets being recalled and the ASP aircraft were relocated to Cairns, Australia.

Mar – Jun: Temporary Suspension: In March 2020 the FFA and Australian Department of Defence (ADoD) determined the need to temporarily suspend the ASP applying caution and to minimise the potential risk of COVID19 transmission. The ASP was therefore suspended from March – June 2020 and the aircraft relocated to Cairns, Australia. Despite advice that the aircraft were available for urgent and/or high priority national surveillance, there were no requests received as PICs turned their focus to managing COVID-19.

Jul – Dec: Lifting of the suspension: 72 missions were completed in five countries (PNG, Solomon Is, Samoa, Tokelau and Tonga) where clearances were received. These missions were a direct result of successful dialogues and creative solutions between the nations, FFA, ADoD and the aircraft contractors to meet the aerial surveillance requests of nations.

Activities and Priorities Moving Forward

- **2021 Operations**

With the ongoing travel restrictions in PICs, operations commenced following the suspension with longer term (forward basing) deployments in countries that were able to provide the clearances for the aircraft and crew.

The safety of the region from COVID-19 remains our priority. At all times, the aircraft crew have adhered to safe COVID-19 practices. Specific protocols have been created to minimise the health and safety risks associated with operating in PICs. These protocols include the crew undertaking COVID tests and any quarantine periods as required by relevant nations, the use of protective equipment and reducing physical interactions where possible, such as no air riders.

The aircraft remain available and ready for tasking to meet Members' essential maritime security needs. Members are encouraged to request the aircraft. The FFA will work creatively with members to design missions that can continue to build national maritime domain awareness within a restricted COVID19 environment.

- **Outstanding MOUs with members**

Progressing MOUs is an ongoing priority with several MoUs outstanding including some that will be renewed in 2021 (refer to the attachment on status of MoUs).

- **Information Ownership**

On the Australia-FFA MoU, members will recall that a key area of focus during ongoing discussions related to the IP ownership of the data gathered within members' EEZs. In accordance with Australian federal contracting policy, IP rights are currently vested with the Australian Government (the purpose being to ensure proper contract management to ensure the Operator fulfils its contracting deliverables). This is reflected in the 2018 Exchange of Letters which also includes provisions committing the ADoD to comply with the FFA Information Security Management System (ISMS) Policy, and will not access or use the Surveillance Product without the express consent of the member from which the data in the Report was gathered. This arrangement has been in effect and successfully operating since 2018.

Notwithstanding these arrangements, some members continued to raise the IP ownership concern based on the view that information and data generated by a Monitoring Control and Surveillance (MCS) activity in the Exclusive Economic Zone (EEZ) (or waters regarded as territory) of a coastal State is considered to be owned by that coastal State. Where the coastal State is assisted in the conduct of an MCS activity covering its waters, information and data generated is considered to be owned by that State (rather than the agency/authority/State or contractors assisting).

To resolve the IP ownership concern, ADoD and the FFA have now agreed that the most efficient option will be for the IP ownership of the Surveillance Product to be transferred to the FFA Secretariat. The FFA Secretariat would then transfer this ownership to the members through their respective MoUs.

With the IP ownership concern resolved the Australia-FFA MoU will be finalised in the coming weeks.

- **Civil Aviation Issue - Pacific Aviation Safety Office (PASO)**

Members may also recall that concerns were raised in 2020 by the PASO membership relating to the way in which the ASP aircraft are regulated in the Pacific. Under US Federal Aviation Authority (FAA) regulations, under which the aircraft operate, the ASP is classified as a 'private carriage' (non-commercial) operation. However, under the NZ regulations (largely adopted by PASO members) the definition of air operations would classify TSC's operations as a commercial operation. This different classification suggests that the ASP aircraft would likely require additional regulatory oversight as to the safety and maintenance of the aircraft, including an Air Operator Certificate (AOC). To date, this has not affected the ASP operations whilst PASO, FFA and ADoD continue to work on reaching a solution.

At a recent meeting between FFA, ADoD and the PASO membership, the PASO members agreed with the proposal to have TSC apply for a FAA AOC which would resolve this concern and meet regulatory requirements. The FFA is awaiting formal advice from PASO on this agreement. Once received ADoD will assist TSC in their application for the FAA AOC. The operation of the aircraft during this transition will remain unchanged.

- **Other relevant developments:**

- **Aerial Surveillance Program Standard Operating Procedures (SoPs):**

The ASP SoPs were updated and distributed to members in November 2020. The updates were mainly focused on streamlining processes including more clarity on Search and Rescue (SAR) procedures. These are accessible to Air Tasking Officers (ATOs) on <https://rimf.ffa.int/ops/article/reference/> and will be reviewed at the planned ATOs Workshop in 2021.

- **Rollout of RIMF-ASP information system:**

With the recent rollout of the ASP information system, members are now able to submit Air Task Requests (ATRs) on the Regional Information Management Facility (RIMF) Air Request Module where they can access the record of requests made and can see the status of their requests. This has been trialled with Samoa, Tokelau, Solomon Islands and Palau whilst the aircraft operated there. The system is in further development, including to have surveillance products directly uploaded to this portal and linked to the RSP so that members are able to access this through the RSP.

- **Air Tasking Officers Workshop**

An ATOs workshop is expected to be held online in the second quarter of 2021. The aim of the workshop is to provide a common understanding of the Program across ATOs in the Pacific. The objective is to draw out creative ways the aircraft can be utilised in the current environment and how collectively nations can improve the uptake and efficiencies of flight paths. Holding this online will provide greater opportunity for participation from officials in other related agencies (such as from Police, Customs etc).

Attachment**MOU Status: April 2021**

Country	Finalised	Status	Plan
Australia	No	Options regarding IP ownership issue being considered	Aim to be finalised by end of May 2021
Cook Is	No	Ministry of Marine Resources finalizing draft MoU	Aim to be finalised by May 2021
Fiji	No	Fiji raised their concern about IP ownership	To resume discussions following finalization of ADoD MoU incorporating IP transfer.
FSM	No		FFA to follow up on further stakeholder meetings
Kiribati	Yes	MoU to expire in 19 Jun 2021	Commence discussions on renewal
Marshall Is	Yes	Expired on 8 Feb 2021	Extension letter being considered by RMI government
Nauru	No	Drafting in progress with NMRA	Aim to finalise in 2021
Niue	Yes	MoU to expire in 29 Aug 2021	FFA to commence discussions on renewal
Palau	Yes	Extension signed	
Papua New Guinea	No	PNG raised their concern about IP ownership	To resume discussions following finalization of ADoD MoU incorporating IP transfer.
Samoa	Yes	Expired on 25 Feb 2021	Extension MoU being considered by Samoa government
Solomon Is	No	Followup on stakeholder meeting discussions	Awaiting advice from Solomon Is government of stakeholder meetings.

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Tokelau	No	Final draft with NZ MFAT for consideration	Aim to be finalised and signed by end of Apr 2021
Tonga	Yes	To expire on 7 Oct 2022	
Tuvalu	Yes	To expire in Aug 2021	FFA to commence discussions on renewal
Vanuatu	No	MoU being considered by the Vanuatu government.	Follow up with new leadership with aim to resume stakeholder meeting discussions