



FFA POLICY ON INFORMATION GOVERNANCE AND INTELLECTUAL PROPERTY

Approved by FFC122 (24 - 27 May 2022).

1. Purpose

- 1.1 The Pacific Islands Forum Fisheries Agency (FFA) holds a wide range of information and has a duty to protect and manage access to and use of such information. Information includes confidential and personal information on private individuals, employees, partners and suppliers, information relating to its own operation, as well as information provided by Members pursuant to regional undertakings and treaty obligations.
- 1.2 The FFA also has Intellectual Property that is capable of legal protection or is the subject of legal rights under national laws and international treaties.
- 1.3 The purpose of this policy is to provide and describe an overarching policy for the governance of information and intellectual property, for the benefit of the FFA. The policy also provides the rules relating to intellectual property that is attached to a document or other product developed by the FFA.

2. Scope

- 2.1 This policy provides the overarching framework for the governance of information and intellectual property, the ownership of information and intellectual property, the management of intellectual property created, used and shared by FFA, and the specification of principles for the use, management and protection of intellectual property.

3. Definitions

In this policy:

Copyright means the rights that creators have over their original works, and such works protected by copyright include books, music, works of art, films, computer programs, software, databases, advertisements, maps, and technical drawings.

Data has the same meaning as *information*.

Data owner refers to a Member, Members, the FFA, or person that is the source of the data.

Data user includes any person that is authorised to access FFA information.

Document means any information or record or database and includes electronically stored records or information.

Forum Fisheries Agency or *FFA* means the Agency established under Article I of the *South Pacific Forum Fisheries Agency Convention* and consists of the Forum Fisheries Committee and the Secretariat;

Forum Fisheries Committee or *FFC* refers to the governing body of the Agency whose functions are set out under the *South Pacific Forum Fisheries Agency Convention*;

FFA Member or *Member* refers to an individual member of the FFA;

Information means all forms of information including but not limited to: (i) hard copy data printed or written on a document, (ii) information stored in manual filing systems, (iii) communications sent by post/courier, facsimile, electronic mail, or any other messaging service (iv) data stored and processed via servers, PCs. Laptops, mobile phones, tablets; and (v) data stored on any type of removable media including but not limited to CDs, DVDs, tape, USB memory sticks, hard drives, or cameras.

Intellectual property (IP) means information, ideas, inventions, innovations, art work, designs, literary text and any other matter or thing whatsoever that as a creation of human intervention, that may be capable of legal protection or the subject of legal rights, as granted by national laws.

Intellectual property right (IPR) means the right or rights conferred by the law, which protect innovations or creativity from being appropriated by others.

Intellectual property right owner refers to a Member, Members, the FFA, or person that owns the right or rights conferred by law.

Patent refers to an intellectual property that gives its owner the legal right to exclude others from making, using, or selling an invention for a limited period of years in exchange for publishing an enabling disclosure of the invention.

Secretariat refers to the secretariat of the Forum Fisheries Agency appointed in accordance with the *South Pacific Forum Fisheries Agency Convention*.

Trademark refers to an intellectual property that provides for the recognition of a sign, design or expression which identifies products or services of a particular source.

Transfer, in relation to intellectual property, refers to the transfer under an agreement of such property from the FFA, a group of Members or a Member to another party.

4. Application

- 4.1 This policy applies to all information that is held by the FFA as well as all intellectual property that is generated by a document or other product developed by the FFA.
- 4.2 This policy applies to all staff and employees of FFA and contractual third parties and agents of FFA who have access to FFA's information systems or information.

- 4.3 In addition, this policy also applies to third parties that have access to or use FFA Intellectual Property Rights that are vested in the FFA or a legal entity created with the approval of the Forum Fisheries Committee for vesting of such rights.

5. Governance

- 5.1 The Forum Fisheries Committee is responsible for and has oversight of the implementation of this policy.
- 5.2 The Forum Fisheries Committee shall consider and decide upon any information governance and intellectual property matter that falls within the scope of this policy. Accordingly, the Committee may deliberate on issues of ownership (including joint ownership) of data or intellectual property.
- 5.3 Where the Forum Fisheries Committee approves of the registration of intellectual property, the Committee shall also stipulate whether such property should be vested in the FFA or such other legal entity created with the approval of the Committee for the vesting of such rights.
- 5.4 Where intellectual property is jointly created, the Forum Fisheries Committee shall consider and approve the legal entity to which the FFA proportion of such joint ownership is vested.
- 5.5 The Secretariat shall put in place the necessary arrangements to ensure that this policy is complied with by all including but not limited to staff, consultants, contractors, and any person that has access to data or IP that is owned by FFA, a group of Members, or a Member.

6. Ownership

- 6.1 Data that is held by the FFA consists of different types of data provided by various sources. Such data sources are considered to be the 'owners' of the data provided and they can authorise, or revoke authorisation, regarding the use of their data. For the most part, the ownership of data vests with the FFA Member that provided it.
- 6.2 Any data that is generated in or in relation to waters under the jurisdiction of an FFA Member is owned by and is the property of that FFA Member and cannot be accessed, used, shared, or transferred by another FFA Member or the Secretariat without prior approval from the respective FFA Member.
- 6.3 Ownership of Intellectual Property Rights may vest with (i) a Member; (ii) a group of Members; (iii) FFA Members as a whole, and vested in the Agency or vested in a specific legal entity created by the Forum Fisheries Committee for that purpose.
- 6.4 The Secretariat will ensure that all memorandums, contracts and consultancies are aligned with this policy.

7. Information Security

- 7.1 The FFA Information Security Management System (ISMS) approved at FFC110, as amended, sets out the framework for the protection of the organisation's information assets including but not limited to the controls required to protect information.
- 7.2 Protections assigned to shared data held within FFA information systems apply to the use, storage and protection of that data even when held at the national level. Members are required to implement nationally-developed Information Security frameworks similar in scope to the FFA ISMS.

8. Information Management

- 8.1 The Secretariat shall ensure that appropriate information management systems are in place to safeguard and protect all data that is held by the FFA.
- 8.2 The Secretariat shall ensure that staff are properly trained in the Agency's relevant information management systems and information security.
- 8.3 The Secretariat shall take an integrated approach to information management to ensure compatibility with regards to PNA, SPC, WCPFC and FFA Information Management Systems, as well as with national level Information Management Systems, and report to the Forum Fisheries Committee.

9. Intellectual Property

Vesting

- 9.1 Ownership of Intellectual Property Rights is vested in a Member, Members, the FFA, or specific legal entity. In the case of patents, and trademarks, ownership arises through registration; in the case of Intellectual Property embodied in know-how, data and training methods, ownership arises through the assembly or creation of that Intellectual Property.
- 9.2 Where Intellectual Property Rights are jointly owned between the FFA on the one hand and a person or legal entity on the other, the percentage of IPR ownership, terms of joint ownership and the distribution of benefits are to be clearly stipulated.
- 9.3 Where Intellectual Property is vested in a Member, Members or the FFA, such property cannot be used, shared, or transferred without prior explicit approval of the owner. Accordingly, where there are multiple owners, explicit approval is required from all owners.

Management of Intellectual Property

- 9.4 The Secretariat shall maintain a register of FFA Intellectual Property. Such register shall also include any contract, agreement or licence relating to the IPR.

- 9.5 The register of FFA Intellectual Property shall include: (i) a description of the intellectual property; (ii) where such property is registered (in the case of patents or trademarks); (iii) a description of the entity in which the property is vested; (iv) in the case of joint ownership, the proportion of ownership; (v) references to decisions of the Forum Fisheries Committee in relation to the property; and (vi) references to any contract, agreement or licence relating to the property.
- 9.6 All Intellectual Property Rights accruing from work of a staff member at the FFA or from the work of an FFA contractor or consultant, shall be vested in the FFA (see *Attachment A* for contractual provisions). Intellectual property created in the course of work at FFA is owned by the FFA and is governed by this policy.
- 9.7 Staff should report the creation of Intellectual Property or intellectual assets that may be protected by Intellectual Property. Staff who believe that intellectual property protection should be sought by FFA in relation to aspects of their work, should discuss this with the Director-General.
- 9.8 All FFA Intellectual Property shall also be duly recorded in the FFA Asset Register.

10. Disclosure and use of FFA Intellectual Property

- 10.1 FFA will make its Intellectual Property available to all FFA Members.
- 10.2 FFA Intellectual Property must not be transferred to a third party except with the explicit approval of the Forum Fisheries Committee and in accordance with an appropriate Intellectual Property transfer agreement.
- 10.3 Where intellectual property is jointly owned between the FFA on the one hand, and a person or legal entity on the other, such intellectual property may only be used by third parties in accordance with the conditions of use agreed to between FFA and the joint owner.
- 10.4 FFA shall ensure that any financial benefits arising from use of FFA Intellectual Property Rights are shared equitably with Members. Decision-making on principles for the distribution of any financial benefits shall be made by Ministers of the Forum Fisheries Committee, or Leaders, as appropriate.

11. Compliance

- 11.1 FFA will abide with all relevant national and international laws and treaties concerning intellectual property rights, and will respect the intellectual property rights of third parties.
- 11.2 Non-compliance with this policy by a contractor, consultant or supplier may result in the termination of their contract and relevant legal action.
- 11.3 A breach of the policy by a data user or IPR user (other than an FFA employee, contractor, consultant or supplier) may result in the suspension of data access privileges

as determined by the relevant data owner, as well as the suspension of privileges for the use of FFA Intellectual Property.

- 11.4 FFA Staff are required to comply with this policy and non-compliance will lead to disciplinary and remedial action. The FFA Staff Regulations provide the basis for such disciplinary action.

12. Approval, review and compliance monitoring

- 12.1 The Forum Fisheries Committee is responsible for approving this policy, reviewing, and making amendments from time to time.
- 12.2 The Secretariat shall ensure that effective monitoring and control measures are in place and promote transparency and accountability in processes and in decision-making.
- 12.3 The Secretariat shall report on the implementation of this policy to the Forum Fisheries Committee at each annual session. Where a provision of this policy has not been complied with, the Secretariat shall report such non-compliance and actions taken to the Forum Fisheries Committee. The Forum Fisheries Committee in considering such report may direct the Secretariat to take more stringent measures or alternative actions as it deems appropriate.

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**ATTACHMENT A
CONTRACTS**

INTELLECTUAL PROPERTY PROVISIONS FOR FFA

Intellectual Property

1.1 Ownership of Deliverables

- (a) The Consultant agrees that all Deliverables shall vest in and remain the property of the FFA.
- (b) The Consultant warrants to FFA that FFA's lawful use of those Deliverables will not breach the Intellectual Property rights of any third party.
- (c) The Consultant must, when requested by FFA, do all things necessary to vest ownership and title of Deliverables in the FFA.
- (d) If ownership of or title in Deliverables is not capable of being vested in the FFA under clause 1.1 because the Consultant does not own those Deliverables, the Consultant must at its cost ensure that the FFA is suitably and irrevocably licensed to use those Deliverables.
- (e) The Consultant acknowledges that the FFA may use the Deliverables in any way notwithstanding that such use might breach the Consultant's moral rights, but does not include false attribution of authorship.

1.2 Licence of Deliverables to Consultant

Subject to clause 1.1 and the confidentiality provisions under this agreement, the FFA grants to the Consultant a royalty-free licence to reproduce the Deliverables only for the purposes of inclusion in the Consultant's professional portfolio.

1.3 Background Intellectual Property

- (a) Neither Party assigns any of its background intellectual property to the other Party if that background intellectual property is used under this agreement.
- (b) Where background intellectual property is incorporated into the Deliverables by the Consultant, the Consultant must at its own cost obtain a licence for the FFA to use that background intellectual property in conjunction with the Deliverables.