

South Pacific Regional Fisheries Management Organisation

COMM-03-WP-05 V4

CMM 01-XXX

Conservation and Management Measure for Boarding and Inspection Procedures in the Convention Area

The Commission of the South Pacific Regional Fisheries Management Organisation;

RECOGNISING THAT effective management of fishing vessels in the Convention Area relies upon a number of Monitoring, Control and Surveillance (MCS) activities to be undertaken by Members and Cooperating Non-Contracting Parties (CNCPS)

FURTHER RECOGNISING that the boarding and inspection of fishing vessels requires procedures to be formalised so that all boarding and inspection activities are carried out in a safe and transparent manner

RECALLING Article 22 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 of 4 December 1995 which gives direction to Regional Fisheries Management Organisations (RFMOs) to undertake the development of their own boarding and inspection procedures

FURTHER RECALLING decision 1.02 paragraph (3)(c) on rules for Cooperating Non Contracting Parties that CNCPS make an explicit commitment to accept high seas boarding and inspection in accordance with the Commission's procedures on high seas boarding and inspection

ENCOURAGES Members and CNCPS whose flagged vessels operate in the Convention Area to actively monitor vessels' compliance with conservation and management measures (CMMs) including through boarding and inspection as appropriate

ADOPTS the following CMM in accordance with Articles 8, 20, 25, 26 and 27 of the Convention to provide for boarding and inspection activities in the Convention Area

DEFINITIONS

1. For the purposes of interpreting and implementing this CMM, the following definitions shall apply:

- a. "Authorities of the Inspection Vessel" means the authorities of the ~~Member~~ Contracting Party under whose jurisdiction the inspection vessel is operating;

- b. "Authorities of the Fishing Vessel" means the authorities of the Member or CNCP under whose jurisdiction the fishing vessel is operating;
- c. "Authorized inspection vessel" means any vessel included in the Commission register of vessels as authorized to engage in boarding and inspection activities pursuant to this CMM;
- d. "Authorized inspectors" means inspectors designated by the authorities [of the Contracting Party] responsible for boarding and inspection included in the Commission register and authorized to conduct boarding and inspection activities pursuant to this CMM.
- e. "Fishing vessel" means any vessel used or intended for fishing, including fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in fishing operations.
- f. "Convention" means the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

PURPOSE

- 2. Boarding and inspection and related activities conducted pursuant to this CMM shall be for the purpose of monitoring compliance with the provisions of the Convention and CMMs adopted by the Commission and in force.

AREA OF APPLICATION

- 3. These procedures shall apply within the Convention Area, according to Article 5 of the Convention.

GENERAL RIGHTS AND OBLIGATIONS

- 4. Each [Member-Contracting Party] may, subject to the provisions of this CMM and acting in accordance with international law, carry out boarding and inspection in the Convention Area of fishing vessels [of other Contracting Parties], engaged in or reported to have engaged in a fishery regulated pursuant to the Convention.
- 5. [Unless otherwise decided by the Commission, these procedures shall also apply in their entirety as between a Contracting Party and a Fishing Entity, subject to a notification to that effect to the Commission from the Member concerned]
- 6. No [Contracting Party Member] shall authorize a vessel entitled to fly its flag to conduct inspection activities pursuant to this CMM unless it is able to exercise effectively its flag State duties in respect of such vessels.
- 7. Each Member or CNCP shall notify the Executive Secretary, no later than 30 days following the entry into force of this CMM, their points of contact¹ for the Authorities of the Inspection vessel and Authorities of the Fishing Vessel, for purpose of receiving notifications, inspection reports and immediate notification of violations pursuant to this CMM.
- 8. Each Member or CNCP of the Commission shall ensure that vessels flying its flag accept boarding and inspection by authorized inspectors in accordance with this

¹ This will be placed on the yet to be developed HSB&I section of the SPRMFO website

CMM. Such authorized inspectors shall comply with this CMM in the conduct of any such activities.

9. Each Member and CNCP has a responsibility for the conservation and management of fisheries resources including through the provision of effective MCS and enforcement. Members and CNCPs shall take measures and cooperate to share information and investigate any alleged violation of the CMMs adopted by the Commission.

GENERAL PRINCIPLES

10. This CMM is intended to implement and give effect to Article 27 (1) (b) of the Convention and is to be read consistently with that provision.
11. This CMM shall be implemented in a transparent and non-discriminatory manner, taking into account, inter alia:
 - a. such factors as the presence of observers on board a vessel and the frequency and results of past inspections; and
 - b. the full range of measures to monitor compliance with the provisions of the Convention and agreed CMMs, including inspection activities carried out by the authorities of Members or CNCPs in respect of their own flagged vessels.
12. While not limiting efforts to ensure compliance by all vessels Contracting Parties are encouraged to give priority for boarding and inspection efforts pursuant to this CMM;
 - a. noting paragraph 4 of this measure, fishing vessels that are not on the SPRFMO Record of Vessels authorised to fish in the Convention Area and are flagged to Members or CNCPs;
 - b. fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any CMM adopted there under;
 - c. fishing vessels it has reasonable grounds to believe have engaged, or is engaging, in illegal, unreported or unregulated (IUU) fishing , in particular when the vessel is included on a list of vessels having engaged in IUU fishing adopted by another regional or sub-regional fisheries management organization;
 - d. requests from another Member, CNCP or Contracting Party for a vessel to be inspected, where such requests are supported by evidence of IUU fishing by the vessel in question.

PARTICIPATION

13. The Commission shall maintain a register of all authorized inspection vessels and authorities. Only vessels and authorities listed on the Commission's register are authorised under this CMM to board and inspect foreign flagged vessels within the Convention Area.

14. Each ~~[Member Contracting Party]~~ that intends to carry out boarding and inspection activities pursuant to this CMM shall so notify the Commission through the Executive Secretary, and shall provide the following;

a. with respect to each authorised inspection vessel it assigns to boarding and inspection activities under this CMM

- i) details of the vessel (name, description, photograph, registrations number, port of registry (and if different from the port of registry, port marked on the vessel hull), international radio call sign and communication details such as email, radio or satellite contact) In the situation where military vessels are used as a platform for boarding and inspection, only the name and identification number of the vessel is required
- ii) notification that the vessel crew that undertake boarding and inspection have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by this Commission.
- iii) notification that the inspection vessel is clearly marked and identifiable as being on government service.

b. with respect to inspectors it assigns pursuant to this CMM;

- i) the name/s of the authorities responsible for boarding and inspection;
- ii) notification that such authorized inspectors are fully familiar with the fishing activities to be inspected and the provisions of the Convention and CMMs in force; and
- iii) notification that such authorized inspectors have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission;

c. the point of contact as provided in paragraph 7;

d. the form of national identification² issued to its duly authorized inspectors.

15. Each ~~[Member Contracting Party]~~ that intends to carry out boarding and inspection activities shall notify the information required in paragraph 14 (a)-(d) by way of the template in Annex A³ to the Executive Secretary.

16. Where military vessels are used as a platform for the conduct of boarding and inspection, the authorities of the inspection vessel shall ensure that the boarding and inspection is carried out by inspectors fully trained in fisheries enforcement procedures, or duly authorised for this purpose under national laws, and that such inspectors meet the requirements established in this CMM.

² This can take the form of a warrant or any other nationally recognised identification which the Member uses as long as it has; (1) name (2) photo (3) position (4) expiry date – if applicable

³ To be developed by Members inter-sessionally

17. Authorized inspection vessels notified by Contracting Parties pursuant to paragraph 14 shall be included on the Commission register.
18. To enhance the effectiveness of the Commission's boarding and inspection procedures, and to maximize the use of trained inspectors, Contracting Parties may identify opportunities to place authorized inspectors on inspection vessels of another Member. Where appropriate, Contracting Parties should seek to conclude bilateral arrangements to this end or otherwise facilitate communication and coordination between them for the purpose of implementing these procedures.
19. The Executive Secretary shall ensure that the register of authorized inspection vessels and authorities is at all times available to all Members and CNCPs of the Commission. ~~and shall immediately circulate any changes therein~~ Changes to the register shall be applicable upon Contracting Parties and CNCPs being duly notified by the Secretariat. Updated lists shall be posted on the Commission website, specifically in the MCS section. Each Member or CNCP shall take necessary measures to ensure that these lists are circulated to each of its fishing vessels operating in the Convention Area.

Commented [w1]: New words suggested from Faroes

PROCEDURES

20. Authorized inspection vessels shall fly during the inspection, in clearly visible fashion, the SPRFMO inspection flag when it is adopted by the Commission.
21. Authorised inspectors shall carry an approved identity card identifying the inspector as authorised to carry out boarding and inspection procedures under the auspices of the Commission and in accordance with this CMM.
22. An authorized inspection vessel that intends to board and inspect a fishing vessel that is engaged in or reported that have engaged in a fishery regulated pursuant to the Convention shall, prior to initiating the boarding and inspection:
- make best efforts to establish contact with the fishing vessel by radio, by the appropriate International Code of Signals or by other accepted means of alerting the vessel;
 - provide the information to identify itself as an authorized inspection vessel including vessel name, authority, registration number, international radio call sign and contact frequency;
 - communicate to the master of the vessel its intention to board and inspect the vessel under the authority of the Commission and pursuant to these procedures
 - initiate notice of the boarding and inspection through the authorities of the inspectors to the authorities of the fishing vessel through the point of contact provided in paragraph 7, using the prescribed template in Annex B⁴

⁴ To be developed by Members inter-sessionally

23. In carrying out the inspection pursuant to this CMM, the authorized inspectors shall make their best efforts to communicate with the master of the fishing vessel in . If necessary to facilitate communications between the inspectors and the master of the vessel, the inspectors shall use the standardized multi-language questionnaire to be prepared by the Secretariat and circulated to all Members Contracting Parties and CNCPs with authorized inspection vessels⁵.
24. Authorized inspectors shall have the authority to inspect the vessel, its license, gear, equipment, records, facilities, fish and fish products and relevant documents necessary to verify compliance with the CMMs in force pursuant to the Convention. Inspectors shall be permitted to photograph or otherwise record the vessel's gear, equipment, documentation, catch and any other information necessary to complete the inspection. Inspectors shall have access to all areas nessasary to carry out their functions and use all appropriate measures nessasary to document the inspection.
25. Boarding and inspection pursuant to this CMM shall:
- a. be carried out in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of fishing vessels and crews;
 - b. be conducted [~~as much as possible in a manner~~]-so as to not interfere unduly with the lawful operation of the fishing vessel [~~but also realising that operational factors will often dictate how a boarding and inspection is carried out~~];
 - c. be carried out taking reasonable care to avoid action that would adversely affect the quality of the catch while carrying out the responsibilities described in paragraph 24
 - d. not be conducted in such a manner as to constitute harassment of a fishing vessel, its officers or crew.
26. In the conduct of a boarding and inspection, the authorized inspectors shall;
- a. present their identity card to the master of the fishing vessel and a copy of the text of the relevant CMMs in force pursuant to the Convention
 - b. not interfere with the master's ability to communicate with the authorities of the fishing vessel;
 - c. promptly complete the inspection of the vessel [~~taking no more than 4 hours~~] unless evidence of a serious violation is found;
 - d. collect and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention;
 - e. provide to the master of the fishing vessel prior to leaving the vessel a copy of the completed inspection form, as prescribed in Annex C⁶, on the boarding and inspection including any objection or statement which the master wishes to include in the report;

Commented [w2]: New words from NZ to try and come to a compromise between Faroes and Chile

⁵ To be developed by Members inter-sessionally and submitted to the Secretariat and CTC for approval

⁶ To be developed by Members inter-sessionally and approved by the Secretariat and the CTC

- f. promptly leave the fishing vessel following completion of the inspection; and
 - g. provide a full report on the boarding and inspection to the authorities of the fishing vessel, pursuant to paragraph 33, which shall also include any master's statement.
27. During the conduct of a boarding and inspection, the master of the fishing vessel shall;
- a. manoeuvre the fishing vessel when given the appropriate signal either through the International Code of Signals or by radio contact by an inspection vessel flying the SPRFMO inspection flag, unless the vessel is carrying out fishing operations, in which case it shall manoeuvre into position once it has finished such operations;
 - b. follow internationally accepted principles of good seamanship so as to avoid risks to the safety of authorized inspection vessels and inspectors;
 - c. accept and facilitate prompt and safe boarding by the authorized inspectors and have safety measures in place in case of any accident during boarding;
 - d. cooperate with and assist in the inspection of the fishing vessel pursuant to this CMM;
 - e. not assault, resist, intimidate, interfere with, or unduly obstruct or delay the inspectors in the performance of their duties;
 - f. allow the inspectors to communicate with the crew of the inspection vessel, the authorities of the inspection vessel, any embarked observers, as well as with the authorities of the fishing vessel being inspected;
 - g. in the case of force majeure circumstances provide inspectors with reasonable facilities, including where appropriate food, water and accommodation;
 - h. take such action as may be necessary to preserve the integrity of any seal affixed by an inspector and of any evidence remaining on board;
 - i. where the inspector has made any entries in the log, provide the inspector with a copy of each page where such entry appears and, at the request of the inspector, sign each page to confirm that it is a true copy;
 - j. refrain from resuming fishing activity until the inspectors have completed the inspection and, in the case of a serious infringement, secured evidence; and
 - k. facilitate safe disembarkation by the inspectors.
28. If the master of a fishing vessel refuses to allow an authorized inspector to carry out a boarding and inspection in accordance with this CMM, the master shall offer an explanation of the reason for such refusal. The authorities of the inspection vessel shall immediately notify the authorities of the fishing vessel, as well as the Commission, of the master's refusal and any explanations.

29. Upon receiving notification of paragraph 28, the flag State of the fishing vessel shall:
- a) without delay direct the master to accept the inspection, except where generally accepted international regulations, procedures and practices relating to safety at sea make it necessary to delay the inspection;
 - b) where the Master does not comply with such direction:
 - i. suspend the vessel authorization to fish and order the vessel to return immediately to a port designated by the flag State Member or CNCP;
 - ii. promptly notify the Executive Secretary and the authorities of the inspection vessel of the action it has taken.

USE OF FORCE

30. The use of force shall be avoided except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.
31. Any incident involving the use of force shall be immediately reported to the authorities of the fishing vessel, the authorities of the inspection vessel and the Commission.

INSPECTION REPORTS

32. The Authorities of the inspection vessel shall complete the adopted SPRFMO inspection form⁷ during the course of the inspection and before leaving the vessel, inspectors shall provide a copy of the report to the Master, duly noting in the inspection report any refusal by the Master to acknowledge receipt.
33. Authorized inspectors shall prepare a full report including any supporting information⁸ on each boarding and inspection they carry out pursuant to this CMM in accordance with the template laid out in Annex D⁹. The authorities of the inspectors that undertook the inspection shall transmit a copy of the boarding and inspection report to the point of contact of the fishing vessel being inspected, as well as to the Commission, within 15 working days of the completion of the boarding and inspection, and if possible, at the earliest possible opportunity.
34. Where it is not possible for technical reasons for the authorities of the inspector to provide such report to the authorities of the fishing vessel within this timeframe, the authorities of the inspection vessel shall inform the authorities of the fishing vessel and the Commission Secretariat and shall specify the time period within which the report will be provided.

⁷ To be developed by Members inter-sessionally during the 2015 calendar year

⁸ This may take the form as video footage, photos, or other such recording devices

⁹ To be developed by Members inter-sessionally during the 2015 calendar year

SERIOUS VIOLATIONS

35. In the case of any boarding and inspection of a fishing vessel which the authorized inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 41, the authorities of the inspector shall immediately notify the authorities of the fishing vessel, directly as well as through the Commission¹⁰.
36. Upon receipt of a notification under paragraph 35, the authorities of the fishing vessel shall without delay:
 - a. assume their obligations to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the authorities of the inspectors, as well as the Commission; or
 - b. authorize the authorities of the inspectors to complete the investigation of the possible violation and so notify the Commission.
37. In the case of 36(a) above, the authorities of the inspectors shall, as soon as practicable, transmit the specific evidence collected by the authorized inspectors to the authorities of the fishing vessel.
38. A Member or CNCP that has been notified of a violation committed by a fishing vessel flying its flag shall:
 - a) investigate immediately and fully, including as appropriate, by physically inspecting the fishing vessel at the earliest opportunity, or authorizing the inspecting ~~Member Contracting Party~~ to take such investigative action as it may specify with respect to the vessel, consistent with its rights and obligations under the SPRFMO Convention and applicable international law;
 - b) cooperate with the inspecting ~~Member Contracting Party~~ to preserve the evidence in a form that will facilitate proceedings in accordance with its laws;
 - c) if the evidence so warrants, take judicial or administrative action in conformity with its national legislation; and
 - d) ensure that any sanctions applied are adequate in severity to be effective in securing compliance, deterring further infringements and, to the extent possible, depriving the offenders of the benefits accruing from the violation. Such sanctions may include the following, depending on the gravity of the offence and in accordance with domestic law:
 - (i) fines;
 - (ii) seizure of the vessel, illegal fishing gear and/or catches;
 - (iii) suspension or withdrawal of authorization to fish; and
 - (iv) reduction or cancellation of any fishing allocations.

¹⁰ Via the Commission Secretariat who shall then distribute this information to Commission Members and CNCPs

39. In the case of 36 (b) above, the authorities of the inspectors shall provide the specific evidence collected by the authorized inspectors, along with the results of their investigation, to the authorities of the fishing vessel immediately upon completion of the investigation. The authorities of the fishing vessel shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the authorities of the fishing vessel may authorise the authorities of the inspection vessel to take such enforcement action as the authorities of the fishing vessel may specify with respect to the vessel, consistent with the rights and obligations of the authorities of the fishing vessel under this CMM.

39bis Where, following the boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the authorities of the fishing vessel has either failed to respond or failed to take action as required under paragraph 38, the authorised inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port to which the vessel is to proceed. The authorities of the inspection vessel and the authorities of the fishing vessel and, as appropriate, the port State shall take all necessary steps to ensure the well being of the crew regardless of their nationality

40. Upon receipt of a notification pursuant to paragraph 35, the authorities of the fishing vessel shall make best effort to respond without delay and in any case no later than within 5 working days.

41. For the purposes of this CMM, a serious violation means the following violations of the provisions of the Convention or CMMs adopted by the Commission:

- a. fishing without a licence, nationality, permit or authorization issued by the flag Member or CNCP, in accordance with Article 25 of the Convention;
- b. failure to maintain records of catch and catch-related data in accordance with the Commission's reporting requirements that are adopted by the Commission or misreporting of such catch and/or catch-related data;
- c. fishing in a closed area;
- d. fishing in a closed season;
- e. intentional taking or retention of species in contravention of any applicable CMMs adopted by the Commission
- f. violation of catch limits or quotas in force pursuant to the Convention;
- g. using prohibited fishing gear;
- h. falsifying or intentionally concealing the markings, identity, or registration of a fishing vessel;

Commented [w3]: This is new text proposed by Cile which is taken from UNFSA art 21 (7)

- i. concealing, tampering with or disposing of evidence relating to investigation of a violation;
- j. refusal to accept a boarding and inspection, other than as provided in paragraphs 28 and 29
- k. the assault, resistance, intimidation, sexual harassment, interference with, undue obstruction or delay an authorized inspector;
- l. an absence of a vessel monitoring system is detected, or records indicate that manual reports as required under any standards or procedures as may be adopted by the Commission have not been submitted;
- m. presentation of falsified documents or providing false information to an inspector that would prevent serious infringements from being detected;
- n. knowingly operating in conjunction with a fishing vessel listed on any RMFO¹¹ IUU list;
- o. transshipment at sea, where prohibited; and
- p. such other violation as may be determined by the Commission.

ENFORCEMENT

- 42. Any evidence obtained as a result of a boarding and inspection pursuant to this CMM regarding a violation by a fishing vessel of the Convention or CMMs adopted by the Commission and in force shall be referred to the authorities of the fishing vessel for action in accordance with Article 24(4) of the Convention.
- 43. For the purposes of this CMM, the authorities of the fishing vessel shall regard interference by their fishing vessels, captains or crew with an authorized inspector or an authorized inspection vessel in the same manner as any such interference occurring within its waters.

ANNUAL REPORTS

- 44. Contracting Parties that authorize inspectors to operate under this CMM shall report annually to the Commission on the boarding and inspections carried out under this CMM by its authorized inspectors as well as any possible violations observed.
- 45. Members and CNCPs shall include in their annual reports to the Commission action that they have taken in response to boarding and inspections of their fishing vessels under this CMM that resulted in observation of alleged violations, including any proceedings instituted and sanctions applied.

OTHER PROVISIONS

- 46. Authorized inspection vessels, while carrying out activities to implement these procedures, shall engage in surveillance aimed at identifying fishing vessels under the jurisdiction of non-Members and non-CNCPs undertaking fishing activities in the

¹¹ Including CCAMLR CP-IUU and NCP-IUU Lists

Convention Area. Any such vessels identified shall be immediately reported to the Commission and the authorities of the fishing vessel

47. The authorized inspection vessel shall attempt to inform any fishing vessel identified pursuant to paragraph 46 that has been sighted or identified as engaging in fishing activities that are undermining the effectiveness of the Convention and that this information will be distributed to the Members, CNCPs and the flag state of the vessel in question.
48. If warranted, the authorized inspectors may request permission from the fishing vessel and/or the flag state of the vessel to board a vessel identified pursuant to paragraph 46. If the vessel master or the vessel's flag state consents to a boarding, the findings of any subsequent inspection shall be transmitted to the Executive Secretary. The Executive Secretary shall distribute this information to all Members and CNCPs as well as to the flag state of the fishing vessel.
49. Contracting Parties shall be liable for damage or loss attributable to their action in implementing this CMM when such action is unlawful or exceeds that reasonably required in the light of available information.

COMMISSION COORDINATION AND OVERSIGHT

50. Authorized inspection vessels in the same operational area should seek to establish regular contact for the purpose of sharing information on areas in which they are patrolling, on sightings and on boarding and inspections they have carried out, as well as other operational information relevant to carrying out their responsibilities under this CMM.
51. The Commission shall keep under continuous review the implementation and operation of this CMM, including review of annual reports relating to these procedures provided by Members and CNCPs. In applying this CMM, Contracting Parties may seek to promote optimum use of the authorized inspection vessels and authorized inspectors by:
 - a. identifying priorities by area and/or by fishery for boarding and inspections pursuant to this CMM;
 - b. ensuring that boarding and inspection in the Convention Area is fully integrated with the other MCS tools available pursuant to the Convention and to this end, the Secretariat shall maintain a list of vessels that have been inspected pursuant to these procedures
 - c. ensuring non-discriminatory distribution of boarding and inspections in the Convention Area among fishing vessels of Members and CNCPs of the Commission without compromising the opportunity of ~~[Members and CNCPs]~~Contracting Parties to investigate possible serious violations by their vessels; and
 - d. taking into account enforcement resources assigned by Members of the Commission to monitor and ensure compliance by their own fishing vessels,

particularly for small boat fisheries whose operations extend onto the high seas in areas adjacent to waters under their jurisdiction.