

7th Annual Meeting of the Commission

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COMM7-Prop09

<input checked="" type="checkbox"/> Amend	CMM 11-2015 Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area
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Submitted by: UNITED STATES OF AMERICA

Summary of the proposal:

The United States proposes to implement specific measures to govern high seas boarding and inspection of fishing vessels in the Convention Area, in accordance with Article 27 of the Convention. The proposal sets forth general obligations, provisions regarding interpretation and implementation, provisions regarding participation, specific boarding and inspection procedures, provisions regarding the use of force, provisions for inspection reports, provisions for serious violations, provisions for enforcement, provisions regarding annual reporting to the Commission, provisions regarding Commission coordination and oversight, and provisions regarding settlement of disagreements. We note that the *Report of the South Pacific Regional Fisheries Management Organisation Performance Review Panel* recommends that Commission work towards the adoption of its own high seas boarding and inspection regime that is tailored to the Convention, Commission Members and CNCs, and SPRFMO fisheries.

Objective of the proposal:

The objective of the proposal is to establish specific boarding and inspection procedures in the Convention Area to ensure compliance with the provisions of the Convention and the conservation and management measures adopted by the Commission and in force.

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CMM X-2019

Conservation and Management Measure for High Seas Boarding and Inspection Procedures for the South Pacific Regional Fisheries Management Organisation

[The Commission of the South Pacific Regional Fisheries Management Organisation;

MINDFUL of Article 27 of the Convention and the obligations therein to establish appropriate cooperative procedures to ensure compliance with the Convention and the Conservation and Management Measures (CMMs) adopted under the Convention;

CERTAIN that a specific SPRFMO at sea inspection measure for inspection of vessels in the Convention Area will greatly assist in furthering the objective of the Convention;

RECALLING the explicit commitments given by Cooperating non-Contracting Parties (CNCs) in accordance with the “Rules for Cooperating non-Contracting Parties” (Decision 2-2016) paragraph 3(c);

ADOPTS the following CMM in accordance with Articles 8 and 27 of the Convention:]

1. The following procedures are established by the Commission of the South Pacific Regional Fisheries Management Organisation, in accordance with Article 27 of its Convention, to govern high seas boarding and inspection of fishing vessels in the Convention Area.

DEFINITIONS

2. For the purposes of interpreting and implementing these procedures, the following definitions shall apply:

a. “Convention” means the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean;

b. “Commission” means the South Pacific Regional Fisheries Management Organisation established under Article 6 of the Convention;

c. “Authorities of the Inspection Vessel” means the authorities of the [Member][Contracting Party] under whose jurisdiction the inspection vessel is operating;

d. “Authorities of the Fishing Vessel” means the authorities of the [Member][Contracting Party] under whose jurisdiction the fishing vessel is operating;

e. “Authorised Inspection Vessel” means any vessel included in the Commission’s register of vessels established under paragraph [14] and authorised to engage in boarding and inspection activities pursuant to these procedures;

f. “Authorised Inspector” means inspectors designated by the authorities responsible for boarding and inspection included in the Commission register and authorised to conduct boarding and inspection activities pursuant to these procedures;

g. “Fishing activity” means the activities established under Article 1 (g) of the Convention;

h. “Fishing vessels” means any vessel described under Article 1 (h) of the Convention.

PURPOSE

3. Boarding and inspection and related activities conducted pursuant to this CMM shall be for the purpose of ensuring compliance with the provisions of the Convention and the conservation and management measures adopted by the Commission and in force.

AREA OF APPLICATION

4. These procedures shall apply throughout the Convention Area, which consists of the high seas areas of the South Pacific Ocean as specified in Article 5 of the Convention.

GENERAL OBLIGATIONS

5. Each Contracting Party may, subject to these procedures, carry out boarding and inspection in the Convention Area of fishing vessels, flying the flag of a Contracting Party, [when there is reason to believe they are engaged in or have engaged in fishing for fisheries resources] regulated pursuant to the Convention.

[5bis. Each Contracting Party may, subject to these procedures, carry out boarding and inspection in the Convention Area of fishing vessels of Cooperating non-Contracting Parties (CNCs) when there is reason to believe they are engaged in or have engaged in fishing for fisheries resources regulated pursuant to the Convention, consistent with the commitments of CNCs related to Decision 2-2016 (Rules for Cooperating non-Contracting Parties).]

[6. These procedures shall also apply in their entirety, mutatis mutandis, as between a Contracting Party and a Fishing Entity, subject to a notification to that effect to the Commission from the Contracting Party concerned.]

7. Each [Member][Contracting Party] shall provide to vessels flying its flag a copy of the text of the relevant measures in force pursuant to the Convention and ensure that vessels flying its flag accept boarding and inspection by Authorised Inspectors in accordance with these procedures. Such Authorised Inspectors shall comply with these procedures in the conduct of any such activities.

INTERPRETATION AND IMPLEMENTATION

8. These procedures are intended to implement and give effect to, and are to be read consistently with, Article 27(1)(b) of the Convention.

9. These procedures shall be implemented in a transparent and non-discriminatory manner, taking into account such factors as, *inter alia*: a. 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 the Commission’s conservation and management measures, including inspection activities carried out by the authorities of Members and CNCs of the Commission in respect of their own flag vessels.

[10. While not limiting efforts to ensure compliance by all vessels engaged in or reported to have engaged in fishing regulated pursuant to the Convention, priority for boarding and inspection efforts pursuant to these procedures may be given to any fishing vessels:

a. that are not on the SPRFMO Record of Fishing Vessels but are flagged to [Members] [a Contracting Party or a CNCP];

b. that are reasonably believed to be engaged in or to have been engaged in any activity in contravention of the Convention or any conservation and management measure adopted thereunder;

[c. that are without observers on board if so required by the Commission;]

d. that have a known history of violating conservation and management measures adopted by international agreement or relevant domestic laws and regulations[, or are operated by companies with a known history of engaging in, or benefiting from, illegal, unreported, or unregulated fishing].]

PARTICIPATION

13. Each Contracting Party that intends to carry out boarding and inspection activities pursuant to these procedures shall so notify the Commission, through the Executive Secretary, and shall provide the following:

[a. with respect to each Authorised Inspection Vessel under these procedures: i) details of the vessel (name, description, photograph, registration number, port of registry (and, if different from the port of registry, port marked on the vessel hull), international radio call sign)[, except where not applicable for military vessels]; ii) An example of the credentials issued to its Authorised Inspectors; iii) notification that the inspection vessel is clearly marked and identifiable as being on government service;

b. with respect to Authorised Inspectors it designates pursuant to these procedures: i) the name(s) of the authorities responsible for boarding and inspection; ii) notification that such Authorised Inspectors are fully familiar with the fishing activities to be inspected and the provisions of the Convention and conservation and management measures in force; and iii) notification that the Authorised Inspectors have received and completed training in carrying out boarding and inspection activities at sea, including in accordance with any standards and procedures as may be adopted by the Commission.

[14. The Commission shall establish and the Secretariat shall maintain a register of all Authorised Inspection Vessels and Authorised Inspectors. Only vessels and inspectors listed on the Commission's register are authorised under these procedures to board and inspect foreign-flagged fishing vessels within the Convention Area.]

[15. 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 and duly authorised for this purpose under national laws, and that boardings from such military vessels by Authorised Inspectors conform to the procedures contained within these Boarding and Inspection Procedures.]

16. Authorised Inspection Vessels and Authorised Inspectors notified by Contracting Parties pursuant to paragraph 14 shall be included on the Commission register established in paragraph 14 once the Executive Secretary confirms that the notification meets the requirements of paragraph 13.

17. To enhance the effectiveness of the Commission's boarding and inspection procedures, and to maximize the use of trained Authorised Inspectors, Contracting Parties may identify opportunities to place Authorised Inspectors on inspection vessels of another Contracting Party. Where appropriate, Contracting Parties should seek to conclude bilateral or multilateral arrangements to this end or otherwise facilitate communication and coordination between them for the purpose of implementing these procedures.

18. The Executive Secretary shall ensure that the register of Authorised Inspection Vessels and Authorised Inspectors is at all times available to all Members and CNCPs of the Commission and shall circulate any changes therein without delay. Updated lists shall be posted on the Commission website. Each Member and CNCP of the Commission shall take necessary measures to ensure that these lists are circulated in a timely manner to all fishing vessels flying its flag that are engaged in or are reported to have engaged in fishing in the Convention Area.

PROCEDURES

19. [The Commission shall develop a SPRFMO inspection flag in the intersessional period following the 6th Meeting of the Commission. Once adopted by the Commission, the SPRFMO inspection flag shall be flown by Authorised Inspection Vessels, in clearly visible fashion, when carrying out activities under this CMM.]

20. 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 these procedures.

21. An Authorised Inspection Vessel that intends to board and inspect a fishing vessel in the Convention Area that is engaged in or reported to have engaged in fishing regulated pursuant to the Convention shall, prior to initiating the boarding and inspection:

- a. 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;
- b. provide the information to identify itself as an Authorised Inspection Vessel - name, registration number, international radio call sign, Authority of the Inspection Vessel, and contact frequency;
- c. 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; and
- d. initiate notice through the Authorities of the Inspection Vessel of the boarding and inspection to the Authorities of the Fishing Vessel.

22. In carrying out boarding and inspection pursuant to these procedures, the Authorised Inspection Vessel and Authorised Inspectors shall make their best efforts, using any available means, to communicate with the master of the fishing vessel(s) in a language that the master can understand. In order to facilitate communications between the Authorised Inspectors and the master of the vessel, the Commission shall develop a standardized questionnaire during the intersessional period following the 6th Meeting of the Commission, which once adopted shall be translated into multiple languages and circulated to all Contracting Parties with Authorised Inspection Vessels.

23. Authorised Inspectors shall have the authority to inspect [and record information on] the vessel, its license, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and management measures in force and the Convention.

[23bis. The number of inspectors assigned to an inspection party by the inspecting Contracting Party may be determined by the commanding officer of the inspection vessel taking into account relevant circumstances. The inspection party should be as small as possible to conduct an effective inspection safely and securely.]

24. Boarding and inspection pursuant to these procedures shall:

- a. be carried out 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 not to interfere unduly with the lawful operation of the fishing vessel;
- c. take reasonable care to avoid action that would adversely affect the quality of the catch; and
- d. not be conducted in such manner as to constitute harassment of a fishing vessel's officers, crew, or observers.

25. In the conduct of a boarding and inspection, the Authorized Inspectors shall:

- a. present their identity card to the master of the vessel;
- b. not interfere with the master's ability to communicate with the Authorities of the Fishing Vessel;
- c. complete the inspection of the vessel within 4 (four) 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 prior to leaving the vessel a copy of an interim report on the boarding and inspection including any objection or statement which the master wishes to include in the interim report;
- f. [complete the inspection within four hours unless evidence of a serious infringement is found, or where a longer time period is required to monitor ongoing fishing operations and obtain related documentation issued by the master]; and
- g. provide a full report on the boarding and inspection to the Authorities of the Fishing Vessel, pursuant to paragraph 31, which shall also include any master's objection or statement.

26. During the conduct of a boarding and inspection, Contracting Parties shall ensure that the master of the fishing vessel flying their flag shall:

- a. avoid risks to the safety of Authorised Inspection Vessels and Authorised Inspectors;
- b. accept and facilitate prompt and safe boarding by the Authorised Inspectors, who may be accompanied by appropriate assistants;
 - c. cooperate with and assist in the inspection of the vessel pursuant to these procedures;
- d. not assault, resist, intimidate, interfere with, or unduly obstruct or delay the Authorised Inspectors in the performance of their duties;

- e. allow the inspectors to communicate with the crew of the Authorised Inspection Vessel, the Authorities of the Inspection Vessel, any embarked observers, as well as with the crew and authorities of the fishing vessel being inspected;
- f. provide the inspectors onboard with reasonable facilities, including, where appropriate, food, water, medical assistance, and accommodation; and
- g. facilitate safe disembarkation by the inspectors.

27. If the master of a fishing vessel refuses to allow an Authorised Inspector to carry out a boarding and inspection in accordance with these procedures, the master shall offer an explanation of the reason for such refusal. The Authorities of the Inspection Vessel shall be required to immediately notify the Authorities of the Fishing Vessel, as well as the Commission, of the master's refusal and the explanation offered.

[28. The Authorities of the Fishing Vessel, except where generally accepted international regulations], procedures and practices relating to safety at sea make it necessary to delay the boarding and inspection, shall be required to direct the master to accept the boarding and inspection. If the master does not comply with such direction, the relevant Member or CNCP shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The Member or CNCP shall immediately notify the Authorities of the Inspection Vessel and the Commission of the action it has taken in these circumstances.

USE OF FORCE

[29. The use of force shall be avoided except when and to the degree necessary (a) to ensure the safety of the inspectors; and (b) where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required under the circumstances.]

30. Any incident involving the use of force shall be immediately reported to the Authorities of the Fishing Vessel, as well as to the Executive Secretary for distribution to the Commission.

INSPECTION REPORTS

31. Authorised Inspectors shall be required to prepare a full report on each boarding and inspection they carry out pursuant to these procedures, including any supporting information. [The Commission shall develop a format for boarding and inspection reports in the intersessional period following the 6th Meeting of the Commission.] The Authorities of the Inspection Vessel from which the boarding and inspection was carried out shall transmit a copy of the boarding and inspection report to the Authorities of the Fishing Vessel subject to the inspection, as well as the Commission, within 3 (three) full working days of the completion of the boarding and inspection. Where it is not technically possible for the Authorities of the Inspection Vessel 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 shall specify the time period within which the report will be provided.

32. The report shall include the name(s) and authority of the inspector(s) and clearly identify any observed activity or condition that the Authorised Inspectors believe to be a violation of the Convention or conservation and management measures in force and indicate the nature of specific factual evidence of such violation.

SERIOUS VIOLATIONS

33. In the case of any boarding and inspection of a fishing vessel in which the Authorised Inspectors note an activity or condition that would constitute a serious violation, as defined in Article 1(n) of the Convention and paragraph 38 of this measure, the Authorities of the Inspection Vessels shall be required to immediately notify the Authorities of the Fishing Vessel, directly as well as through the Secretariat.

33bis. Upon receipt of a notification pursuant to paragraph 33, the Authorities of the Fishing Vessel shall make best efforts to respond without delay and in any case no later than within 3 (three) full working days.

34. Upon receipt of a notification under paragraph 33, the Authorities of the Fishing Vessels shall as soon as possible:

a. investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the Authorities of the Inspection Vessel, as well as the Commission; or

b. authorise the Authorities of the Inspection Vessel to undertake the investigation of the alleged serious violation and so notify the Commission.

35. In the case of 34(a) above, the Authorities of the Inspection Vessel shall be required to provide, as soon as practicable, the specific evidence collected by the Authorised Inspectors to the Authorities of the Fishing Vessel.

36. In the case of 34(b) above, the Authorities of the Inspection Vessel shall be required to provide the specific evidence collected by the Authorised Inspectors, along with the results of their investigation, to the authorities of the fishing vessel immediately upon completion of the investigation.

38. For the purposes of these procedures, a serious violation means the following violations of the provisions of the Convention or conservation and management measures adopted by the Commission:

a. fishing without a valid license, permit or authorization issued by the Authorities of the Fishing Vessel, 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 or significant misreporting of such catch and/or catch-related data;

c. fishing in a closed area;

d. fishing during a closed season;

e. intentional taking or retention of species in contravention of any applicable conservation and management measure adopted by the Commission;

f. significant violation of catch limits or quotas in force;

g. using prohibited fishing gear;

h. falsifying or intentionally concealing the markings, identity or registration of a fishing vessel;

i. concealing, tampering with or disposing of evidence relating to investigation of a violation;

- j. multiple violations which taken together constitute a serious disregard of measures in force pursuant to the Commission;
- k. refusal to accept a boarding and inspection, other than as provided in accordance with paragraphs 27 and 28;
- l. assault, resist, intimidate, sexually harass, interfere with, or unduly obstruct or delay an Authorised Inspector; and
 - m. intentionally tampering with or disabling the vessel monitoring system;
- n. such other violations as may be determined by the Commission, once these are included and circulated in a revised version of these procedures, or as specified as a serious violation in any subsequent measure adopted by the Commission.

ENFORCEMENT

39. Any evidence obtained as a result of a boarding and inspection pursuant to these procedures with respect to violation by a fishing vessel of the Convention or conservation and management measures adopted by the Commission and in force shall be referred to the Authorities of the Fishing Vessel for action in accordance with the provisions of Article 25(3)(c)-(e) of the Convention.

40. For the purposes of these procedures, the Authorities of the Fishing Vessels shall regard interference by their fishing vessels, captains or crew with an Authorised Inspector or an Authorised Inspection Vessel in the same manner as any such interference occurring within its exclusive jurisdiction.

ANNUAL REPORTS

41. [Contracting Parties] that authorise inspection vessels to operate under these procedures shall report annually to the Commission [along with its Implementation Report] on the boarding and inspections carried out by its Authorised Inspection Vessels, as well as upon possible violations observed.

42. [Contracting Parties][Members and CNCPs] shall include in their annual statement of compliance within their Annual Report to the Commission under Article 24(2) of the Convention action that they have taken in response to boarding and inspections of fishing vessels flying their flag that resulted in observation of alleged violations, including any proceedings instituted and sanctions applied.

OTHER PROVISIONS

43. Authorised Inspection Vessels, while carrying out activities in accordance with these procedures, shall aim to identify fishing vessels of [non-Members, non-CNCPs, or vessels without nationality] undertaking fishing activities in the Convention Area. Any such vessels identified shall be immediately reported to the Executive Secretary for notification to the Commission.

44. The Authorised Inspection Vessel shall attempt to inform any fishing vessel identified pursuant to paragraph 43 that has been sighted or identified as engaging in fishing activities that are undermining the effectiveness of Convention that this information will be sent to the Executive Secretary for distribution to the Commission, as well as to the authorities of the fishing vessel.

45. If warranted, the Authorised Inspectors may request permission from the fishing vessel and/or the authorities of the fishing vessel to board a vessel identified pursuant to paragraph 43. If the vessel master or the authorities consent to a boarding, the findings of any subsequent inspection shall be transmitted to the Executive Secretary. The Executive Secretary shall distribute this information to the Commission, as well as to the authorities of the non-Member where practicable.

46. Any claim submitted for damage, injury, death or loss resulting from an operation carried out under these procedures shall be processed and considered by the [Contracting Party][Member] whose official(s) are asserted by the claimant to be responsible for the acts or omissions out of which the claim arises, in accordance with the domestic laws of that [Member][Contracting Party].

COMMISSION COORDINATION AND OVERSIGHT

47. Authorised 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 these procedures.

48. The Commission shall develop an electronic capability to catalogue and share with Authorised Inspectors a list of prior high seas boarding and inspection activities. This list shall include information on the date of the inspection, fishing vessel, inspection vessel, and the conservation and management measure related to any potential violations found during the boarding.

49. The Commission shall keep under continuous review the implementation and operation of these procedures, including review of Annual Reports relating to these procedures provided by Members and CNCs.

49bis. In applying these procedures, Contracting Parties may seek to promote optimum use of the Authorised Inspection Vessels and Authorised Inspectors by:

- a. identifying priorities by area and/or by fishery for boarding and inspections pursuant to these procedures;
- b. ensuring that boarding and inspection on the high seas is fully integrated with the other monitoring, compliance and surveillance tools available pursuant to the Convention;
- c. seeking to ensure non-discriminatory distribution of boarding and inspections in the Convention Area among fishing vessels of Members and CNCs without compromising the opportunity of Contracting Parties to investigate possible serious violations; and
- d. taking into account high seas enforcement resources assigned by Members and CNCs 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.

[SETTLEMENT OF DISAGREEMENTS

50. In the event of a disagreement concerning the application or implementation of these procedures two or more members and/or CNCs ("the parties"), the parties concerned shall consult in an attempt to resolve the disagreement.

51. If the disagreement remains unresolved following the consultations, the Executive Secretary of the Commission shall, at the joint request of the parties concerned, refer the disagreement to the Compliance and Technical Committee (CTC). The CTC shall establish a panel of five representatives, acceptable to the parties to the disagreement, to consider the matter.

52. A report on the disagreement shall be drawn up by the panel, provided to the concerned parties, and forwarded through the CTC Chair to the Executive Secretary for distribution to the Commission within two months of the CTC meeting at which the matter is reviewed.

53. Upon receipt of such report, the Commission may provide appropriate advice with respect to any such disagreement for the consideration of the Members or CNCPs concerned.

54. Application of these provisions for the settlement of disagreements, including with respect to the CTC panel reports and any advice provided by the Commission, shall be non-binding. These provisions shall not prejudice the rights of any Member to use the dispute settlement procedures provided in the Convention.]