

7th Annual Meeting of the Commission

23-27 January, The Hague, The Netherlands

COMM7-Prop06

<input checked="" type="checkbox"/> Amend	CMM 07-2017 on Minimum Standards of Inspection in Port
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Submitted by: EUROPEAN UNION

Summary of the proposal:

The revision of CMM 07-2017 proposed by the EU seeks to improve the coherence between the SPRFMO applicable PSM provisions and the FAO Port State Measures Agreement (PSMA) by:

- amending paragraphs 11 to cover any purpose for which port access is requested;
- adding new paragraphs 16 to 16ter to include some new provisions on situations where entry to port can be denied and the port services to which vessels have access in cases where access to port is granted;
- amending paragraph 22 to notify the authorities of the vessels of the findings of a port inspection;
- amending Annexes I and III to include missing text consistent with the PSMA.

The proposal also amends paragraphs 1 to reinforce the fight against IUU fishing and 33 to provide for additional mechanisms of cooperation amongst port States, including joint inspections.

Objective of the proposal:

To improve the SPRFMO PSM CMM by improving its consistency with the FAO PSMA, reinforce the fight against IUU fishing and provide further mechanisms of cooperation amongst port States, including joint inspections.

Ref: **COMM7-PROP06**

Received on: 4 December 2018

EU DRAFT PROPOSAL TO AMEND CMM 07-2017¹

Conservation and Management Measure on Minimum Standards of Inspection in Port

The Commission of the South Pacific Regional Fisheries Management Organisation;

DEEPLY CONCERNED about illegal, unreported and unregulated fishing in the SPRFMO Area and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers in particular in developing States;

CONSCIOUS of the role of the port State in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources;

RECOGNISING that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing;

RECOGNISING that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing;

AWARE OF the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures;

BEARING IN MIND that, in the exercise of their sovereignty over ports located in their territory, Member and Cooperating Non-Contracting Parties (CNCs) may adopt more stringent measures, in accordance with international law;

RECALLING the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982;

RECALLING 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, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries;

RECALLING Article 27 of the SPRFMO Convention, which calls on Members to address IUU fishing activities and to establish appropriate cooperative procedures for effective monitoring, control and surveillance of fishing and to ensure compliance with the Convention;

BEARING IN MIND Article 12 of the FAO Agreement on Port States Measure and the need to take into account the specifics of the fleets operating in the SPRFMO Convention, the number of catches, the frequency and mode of port landings, and the status of the stocks, amongst others, in order to determine the level of port inspections sufficient to achieve the objective of preventing, deterring and eliminating IUU fishing;

ADOPTS the following Conservation and Management Measure (CMM) in accordance with Articles 8 and 20 of the Convention:

¹ CMM 07-2017 (Port Inspection) supersedes CMM 2.07 (Port Inspection; 2014).

SCOPE

1. With a view to monitor compliance with SPRFMO CMMs, each Member and Cooperating non-Contracting Party (CNCP), in its capacity as a port State, shall apply this CMM for an effective scheme of port inspections in respect of foreign fishing vessels carrying SPRFMO-managed species caught in the SPRFMO Convention Area and/or fish products originating from such species that have not been previously landed or transhipped at port hereinafter referred to as "foreign fishing vessels".
2. Without prejudice to specifically applicable provisions of other SPRFMO CMMs, and except as otherwise provided in this CMM, this CMM shall apply to all foreign fishing vessels.
3. Each Member and CNCP may, in its capacity as a port State, decide not to apply this CMM to:
 - a) foreign fishing vessels chartered by its nationals operating under its authority. Chartered fishing vessels shall be subject to measures by the port State which are as effective as measures applied in relation to vessels entitled to fly its flag.
 - b) vessels of a neighboring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing.
 - c) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.
4. Members and CNCPs shall take necessary action to inform fishing vessels entitled to fly their flag of this and other relevant SPRFMO CMMs.

POINTS OF CONTACT

5. Each Member and CNCP shall designate a point of contact for the purposes of receiving notifications pursuant to paragraph 11. Each Member and CNCP shall designate a point of contact for the purpose of receiving inspection reports pursuant to paragraph 24(b) of this CMM. It shall transmit the name and contact information for its points of contact to the SPRFMO Executive Secretary no later than 30 days following the entry into force of this CMM. Any subsequent changes shall be notified to the SPRFMO Executive Secretary at least 14 days before such changes take effect. The SPRFMO Executive Secretary shall promptly notify Members and CNCPs of any such change.
6. The SPRFMO Executive Secretary shall establish and maintain a register of points of contact based on the lists submitted by the Members and CNCPs. The register and any subsequent changes shall be published promptly on the SPRFMO website.

DESIGNATED PORTS

7. Each Member and CNCP shall designate its ports to which foreign fishing vessels may request entry pursuant to this CMM.
8. Each Member and CNCP shall, to the greatest extent possible, ensure that it has sufficient capacity to conduct inspections in every designated port pursuant to this CMM.
9. Each Member and CNCP shall provide to the SPRFMO Executive Secretary within 30 days from the date of entry into force of this CMM list of designated ports. Any subsequent changes to this list shall be notified to the SPRFMO Executive Secretary at least 30 days before the change takes effect.
10. The SPRFMO Executive Secretary shall establish and maintain a register of designated ports based on the lists submitted by the port Members and CNCPs. The register and any subsequent change shall be published promptly on the SPRFMO website.

PRIOR NOTIFICATION

11. Each Member and CNCP, in its capacity as a port State shall, except as provided for under paragraph 12 of this CMM, require foreign fishing vessels seeking to use its ports for any purposes to submit the information in the Port Call Request Template located in Annex I to its point of contact identified in paragraph 5, at least 48

hours before the estimated time of arrival at the port. Each Member and CNCP, in its capacity as a port State may also request additional information as it may require to determine whether the vessel has engaged in IUU fishing, or related activities.

12. Each Member and CNCP, in its capacity as a port State may prescribe a longer or shorter notification period than specified in paragraph 11, taking into account, *inter alia*, the type of fishery product, the distance between the fishing grounds and its ports. In such a case, the port State shall inform the SPRFMO Executive Secretary, who shall publish the information promptly on the SPRFMO website.
13. After receiving the relevant information pursuant to paragraph 11, as well as such other information as it may require to determine whether the foreign fishing vessel requesting entry into its port has engaged in IUU fishing, the Member or CNCP, in its capacity as a port State shall decide whether to authorise or deny the entry of the vessel into its port. In case the port State decides to authorise the entry of the vessel into its port, the following provisions on port inspection shall apply. Where a vessel has been denied entry, the port State shall report this to the Members and CNCPs.

PORT INSPECTIONS

14. Inspections shall be carried out by the competent authority of the port Members and CNCPs.
15. Each year Members and CNCPs shall inspect at least 5% of landing and transshipment operations in their designated ports as are made by foreign fishing vessels.
16. Port Members and CNCPs shall, in accordance with their domestic law, inspect foreign fishing when:
 - a) there is a request from other Members and CNCPs or relevant regional fisheries management organisations that a particular vessel be inspected, particularly where such requests are supported by evidence of IUU fishing by the vessel in question, and there are clear grounds for suspecting that a vessel has engaged in IUU fishing ;
 - b) a vessel has failed to provide complete information as required in paragraph 11;
 - c) the vessel has been denied entry or use of a port in accordance with this or other RFMO's provisions.

16bis. Without prejudice to paragraph 16, when a Member or CNCP has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the Member or CNCP shall deny that vessel entry into its ports.

16ter. Notwithstanding paragraph 16bis a Member or CNCP may allow entry into its ports of a vessel referred to in that paragraph exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

17. Where a vessel referred to in paragraphs 16bis or ter is in port for any reason, a Member or CNCP shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refueling and resupplying, maintenance and dry-docking. Denial of such use of ports shall be in conformity with international law.

INSPECTION PROCEDURE

18. Each Member and CNCP shall ensure that as a minimum standard its inspectors carry out the functions set forth in the Port State Inspection Standards in Annex II.
19. Each inspector shall carry a document of identity issued by Members and CNCPs, in their quality of port States. In accordance with domestic laws, port States inspectors may examine all relevant areas, decks and rooms of the fishing vessel, catches processed or otherwise, nets or other fishing gears, equipment both technical and electronic, records of transmissions and any relevant documents, including fishing logbooks, cargo manifests and mate's receipts and landing declarations in case of transshipment, which they deem necessary to ensure compliance with the SPRFMO CMMs. They may take copies of any documents considered relevant, and they

may also question the master and any other person on the vessel being inspected.

20. Inspections shall involve the monitoring of the landing or transshipment and include a cross-check between the quantities by species notified in the prior notification message in paragraph 11 above and held on board. Inspections shall be carried out in such a way that the fishing vessel suffers the minimum interference and inconvenience, and that degradation of the quality of the catch is avoided to the extent practicable.
21. On completion of the inspection, the port State inspector shall provide the master of the foreign fishing vessel with the inspection report containing the findings of the inspection, to be signed by the inspector and the master. The master's signature shall serve only as acknowledgement of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and to contact the competent authority of the flag Member or CNCP. A copy of the report shall be provided to the master.
22. The port Member or CNCP, in its capacity as a port State shall transmit a copy of the inspection report to the SPRFMO Executive Secretary no later than 15² working days following the date of completion of the inspection using the Format for Port Inspection Reports in Annex III. If the inspection report cannot be transmitted within 15 working days, the port State shall notify the SPRFMO Executive Secretary within the 15 working day time period the reasons for the delay and when the report will be submitted. The Executive Secretary shall promptly convey the report to the authorities of the inspected vessel.
23. Members and CNCPs shall take necessary action to ensure that masters facilitate safe access to the fishing vessel, cooperate with the competent authority of the port State, facilitate the inspection and communication and not obstruct, intimidate or interfere, or cause other persons to obstruct, intimidate or interfere with port State inspectors in the execution of their duties.

PROCEDURE IN THE EVENT OF INFRINGEMENTS

24. If the information collected during the inspection provides evidence that a foreign fishing vessel has committed a breach of the SPRFMO CMMs, the inspector shall:
 - a) record the breach in the inspection report;
 - b) transmit the inspection report, including possible subsequent measures that could be taken by the port State competent authority, to the port State competent authorities, which shall forward a copy to the SPRFMO Executive Secretary and to the flag Member or CNCP point of contact as soon as possible and no later than 5 working days;
 - c) to the extent practicable, ensure safekeeping of the evidence pertaining to such alleged breach.
25. If the breach falls within the legal jurisdiction of the Member or CNCP, in its capacity as a port State, the port State may take action in accordance with its domestic laws. The port State shall promptly notify the action taken to the competent authority of the flag Member or CNCP and to the SPRFMO Executive Secretary, which shall promptly publish this information in a secured part of the SPRFMO website.
26. Other infringements shall be referred to the flag Member or CNCP. Upon receiving the copy of the inspection report, the flag Member or CNCP shall promptly investigate the alleged infringement and notify the SPRFMO Executive Secretary of the status of the investigation and of any enforcement action that may have been taken within 90 days of such receipt. If the flag Member or CNCP cannot provide the SPRFMO Executive Secretary this status report within 90 days of such receipt, the flag Member or CNCP should notify the SPRFMO Executive Secretary within the 90-day time period the reasons for the delay and when the status report will be submitted. The SPRFMO Executive Secretary shall promptly publish this information in a secured part of the SPRFMO website.
27. Should the inspection provide evidence that the inspected vessel has engaged in IUU activities as referred to in CMM 04-2017 (IUU List) the Member or CNCP, in its capacity as a port State shall promptly report the case to the flag Member or CNCP and notify as soon as possible the SPRFMO Executive Secretary, along with its supporting evidence, for the purpose of inclusion of the vessel in the draft IUU list.

² The time frames in paragraph 22 were amended at COMM-03 as recommended by CTC-02.

REQUIREMENTS OF DEVELOPING MEMBERS AND CNCPS

28. Members and CNCPs shall give full recognition to the special requirements of developing Members and CNCPs in relation to a port inspection scheme consistent with this CMM. Members and CNCPs shall, either directly or through the SPRFMO, provide assistance to developing Members and CNCPs in order to, *inter alia*:
- a) Develop their capacity including by providing technical assistance and establishing an appropriate funding mechanism to support and strengthen the development and implementation of an effective system of port inspection at national, regional or international levels and to ensure that a disproportionate burden resulting from the implementation of this CMM is not unnecessarily transferred to them;
 - b) Facilitate their participation in meetings and/or training programmes of relevant regional and international organisations that promote the effective development and implementation of a system of port inspection, including monitoring, control and surveillance, enforcement and legal proceedings for infractions and dispute settlements pursuant to this CMM; and
 - c) Either directly or through the SPRFMO, assess the special requirements of developing Members and CNCPs concerning the implementation of this CMM.

GENERAL PROVISIONS

29. Nothing in this CMM affects the entry of vessels to port in accordance with international law for reasons of *force majeure* or distress or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.
30. Nothing in this CMM shall prejudice the rights, jurisdiction and duties of Members and CNCPs under international law. In particular, nothing in this CMM shall be construed to affect the exercise by Members and CNCPs of their authority over their ports in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent measures than those provided for in this CMM.
31. This CMM shall be interpreted and applied in conformity with international law, taking into account applicable international rules and standards, including those established through the International Maritime Organization, as well as other international instruments.
32. Members and CNCPs shall fulfill in good faith the obligations assumed pursuant to this CMM and shall exercise the rights recognised herein in a manner that would not constitute an abuse of right.
33. Members and CNCPs, in their capacity as port States, are encouraged to enter into bilateral agreements/arrangements that allow for joint inspections and an inspector exchange programme designed to promote cooperation, share information, and educate each party's inspectors on inspection strategies and methodologies which promote compliance with SPRFMO CMMs. A description of such programmes should be provided to the SPRFMO Executive Secretary who should publish it on the SPRFMO website.
34. Each Member or CNCP, in its capacity as a port State may, in accordance with its domestic laws and regulations, invite officials from the flag Member or CNCP to observe or take part in the inspection of a vessel of that flag based on appropriate agreements or arrangements. Flag Members and CNCPs shall consider and act on reports of infringements from inspectors of a port State on a similar basis as the reports from their own inspectors, in accordance with their domestic laws. Members and CNCPs shall collaborate, in accordance with their domestic laws, in order to facilitate judicial or other proceedings arising from inspection reports as set out in this CMM.
35. The SPRFMO Commission shall review this CMM no later than 2019 and consider revisions to improve its effectiveness and take into account developments in other RFMOs and the FAO Port State Measures Agreement. The Secretariat will report annually on the implementation of this CMM.

Annex I - PORT CALL REQUEST TEMPLATE

Vessel Identification:

Vessel Name	Vessel flag	IMO ship number	Call sign	External Identification
Type of vessel	Vessel contact information	Vessel owner (s)		Certificate of registry ID

RFMO ID, if applicable

VMS No Yes: National Yes: RFMO(s) Type:

Vessel dimensions

Length

Beam

Draft

Vessel master name and nationality

Relevant transshipment authorization(s)

Identifier

Issued by

Validity

Transshipment information concerning donor vessels

Date Location Name Flag

State

ID

number

Species Product

form

Catch

area

Quantity

Port Call Details:

Intended port of call ¹	Port State	Purpose ² of port call	Estimated arrival date	Estimated arrival time	Current date

¹Should be a designated port as listed on the SPRFMO port register

²e.g. landing, transshipment, refuelling

SPRFMO managed species held on-board:

Species	FAO area of capture	Product state	Total kilograms held on board	Amount to be transhipped /landed	Recipient of transhipped /landed amount

If no SPRFMO species and/or fish products originating from such species are held on board, then enter "nil"

Relevant fishing authorisation details:

Identifier	Issued by	Validity	Fishing area(s)	Species	Gear ²

³*If the authorisation is for transhipments enter "tranship" as the gear*

☐ Is a copy of the crew list attached?

Yes	No

This form should be transmitted to the appropriate Point of Contact at least 48 hours prior to the estimated time of arrival at the port. Contact information can be found on the SPRFMO website: (<http://www.sprfmo.int/points-of-contact/>)

Annex II - PORT STATE INSPECTION STANDARDS

Inspectors shall:

- a) verify, to the extent possible, that the vessel identification documentation onboard and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag State or international records of vessels if necessary;
- b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organization (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
- c) verify, to the extent possible, that the authorisations for fishing and fishing related activities are true, complete, correct and consistent with the information provided in the port call request;
- d) review all other relevant documentation and records held onboard, including, to the extent possible, those in electronic format and vessel monitoring system (VMS) data from the flag State or SPRFMO Secretariat or other relevant regional fisheries management organisations (RFMOs). Relevant documentation may include logbooks, catch, transshipment and trade documents, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- e) examine, to the extent possible, all relevant fishing gear on-board, including any gear stowed out of sight as well as related devices, and to the extent possible, verify that they are in conformity with the conditions of the authorisations. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorised for the vessel;
- f) determine, to the extent possible, whether the fish on board was harvested in accordance with the applicable authorisations;
- g) examine the fish, including by sampling, to determine its quantity and composition. In doing so, inspectors may open containers where the fish has been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;
- h) evaluate whether there is clear evidence for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing;
- i) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag State in particular where the master has serious difficulties in understanding the content of the report. A copy of the report shall be provided to the master; and
- j) arrange, where necessary and possible, for translation of relevant documentation.

Annex III – FORMAT FOR PORT INSPECTION REPORTS

Inspection details:

Inspection report number		Principal Inspector's name	
Port State		Inspecting authority	
Port of inspection		Purpose of call	
Inspection start date		Inspection start time	
Inspection end date		Inspection end time	
Prior notification received?		Prior notification details consistent with inspection?	

Vessel details:

Vessel name		Vessel Flag	
Vessel type		IRCS	
External identification		IMO number	
Vessel owner			
Vessel beneficial owner(s), if known and different from vessel owner			
Vessel operator			
Vessel master (and nationality)			
Vessel agent			
VMS present?		VMS type	

Relevant fishing authorisations:

Authorisation identifier		Issued by	
Validity		Fishing areas	
Species		Gear ¹	
Is vessel on the SPRFMO		Currently	

¹ If the authorisation is for transshipment enter "tranship" as the gear.

SPRFMO managed species off loaded (during this port call):

Species	FAO area of capture	Product	Declared quantity off loaded	Quantity off loaded

SPRFMO managed species retained on-board:

Species	FAO area of capture	Product	Declared quantity held on board	Quantity held on board

SPRFMO managed species received from transhipment (during this port call):

Species	FAO area of capture	Product	Declared quantity received	Quantity received

Examinations and Findings:

Section	Comments
Examination of Logbooks and other documentation	
Compliance with applicable catch documentation scheme(s)	
Compliance with applicable trade information scheme(s)	
Type of gear on board	
Findings by inspector	
Apparent infringements (include reference to relevant legal instruments)	
Master's comments	
Actions taken	
Master's signature	
Inspector's signature	

Upon completion, a copy of this form shall be provided to the vessel master. Subsequently, a copy should also be transmitted to the SPRFMO Executive Secretary within 15 days. If this cannot be achieved, then the reasons for the delay and an estimated submission date shall be transmitted to the SPRFMO Executive Secretary within 15 days of the completion of the inspection.

If the information collected provides evidence that a breach of any SPRFMO CMM has occurred, then this form should be transmitted to the competent Port State authorities (who shall forward a copy to the SPRFMO Executive Secretary and to the relevant point of contact as soon as possible and no later than 5 working days).