

9TH MEETING OF THE SPRFMO COMMISSION

Held virtually, 25 January – 3 February 2021

COMM 9 – Prop 09_rev3

PROPOSAL TO:

<input checked="" type="checkbox"/> Amend <input type="checkbox"/> Create	CMM 11-2015, “Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area”
Submitted by: United States of America	
Summary of the proposal: <p>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. The proposal takes into account comments received on previous proposals submitted at COMM6, COMM7, and COMM8 to amend CMM 11-2015. Brackets highlight certain areas where there are still divergent views or conflicting edits and further work is required to reach consensus. We note that several delegations have provided input during the intersessional period and we are reviewing that input and welcome the input of other delegations in advance of the meeting as well. This rev2 incorporates edits in response to additional comments received from other delegations.</p>	
Objective of the proposal: <p>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.</p>	
Has the proposal financial impacts or influence on the Secretariat work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

To be filled out by the Secretariat:

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This document is intended to be one page long only.

CMM 11-2021

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

Proposal by the United States of America

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 (CNCPs) 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 to establish boarding and inspection procedures in the Convention Area:

DEFINITIONS

1. 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 Contracting Party under whose flag the Inspection Vessel is flying;
 - d. “Authorities of the Fishing Vessel” means the authorities of the Contracting Party or CNCP 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 11 and authorised to engage in boarding and inspection activities pursuant to these procedures;
 - f. “Authorised Inspector” means an inspector trained and 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 described under Article 1 (g) of the Convention;
 - h. “Fishing Vessels” means any vessel described under Article 1 (h) of the Convention.

PURPOSE

2. 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

3. 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

4. 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, engaged in or reported to have engaged in fishing for fisheries resources regulated pursuant to the Convention.

5. 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) engaged in or presumed to have engaged in fishing for fisheries resources regulated pursuant to the Convention, consistent with the commitments of CNCs related to Decision 2-2018 (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 Contracting Party shall ensure that Fishing 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 the Convention, Article 27(1)(b).

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 authorities of Contracting Parties in respect of their own flag vessels.

PARTICIPATION

10. 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), vessel flag, IMO number (if issued), international radio call sign, except where not applicable for military vessels);

ii) 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 the 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;

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;

iv) an example of the credentials issued to its Authorised Inspectors.

11. The Commission shall establish and the Secretariat shall maintain a register of all Authorised Inspection Vessels and Authorities of the Inspection Vessel. The register shall be posted on the Commission website. The Secretariat shall circulate without delay changes to the lists of Authorised Inspection Vessels and Authorities of the Inspection Vessel and update the registry upon receiving notifications consistent with paragraph 10.

12. Only vessels and inspectors from authorities listed on the Commission's register are authorised under these procedures to board and inspect fishing vessels flagged to Contracting Parties or Cooperating non-Contracting Parties fishing for fisheries resources regulated pursuant to the Convention. Each Member and CNCP of the Commission shall take necessary measures to ensure that these lists are circulated in a timely manner to each of its fishing vessels operating in the Convention Area.

13. 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 Authorized 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 this CMM.

14. 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 Authorized 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.

PROCEDURES

15. The Commission shall develop a SPRFMO inspection flag and boarding and inspection form template in the intersessional period following the 9th 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.

16. Authorised Inspectors shall carry an 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. The identity card shall be in the same form as the example of credentials provided by the relevant Contracting Party under paragraph 10(b)(iv) of this CMM.

17. 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, vessel flag, IMO number (if issued), 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, making 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; and
- d. initiate notice through the Authorities of the Inspection Vessel of the boarding and inspection to the Authorities of the Fishing Vessel.

18. 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 Fishing Vessel, the Secretariat shall develop a standardized questionnaire, which once adopted shall be translated into multiple languages and circulated to all Contracting Parties with Authorised Inspection Vessels.

19. Authorised Inspectors shall have the authority to inspect the Fishing 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 pursuant to the Convention.

20. Boarding and inspection pursuant to these procedures 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 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.

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

- a. present their identity card to the master of the Fishing 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 and disembark within 4 (four) hours of embarking 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 Fishing Vessel a copy of an interim report on the boarding and inspection including any objection or statement which the master wishes to include;
- f. provide a full report on the boarding and inspection to the Authorities of the Fishing Vessel and the Secretariat, pursuant to paragraph 27, which shall also include any master's objection or statement;
- g. promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation.

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

- a. accept and facilitate prompt and safe boarding by the Authorised Inspectors;
- b. follow internationally accepted principles of good seamanship so as to avoid risks to the safety of Authorised Inspection Vessels and Authorised Inspectors;
- 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 Authorized 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 Authorized Inspectors onboard with reasonable facilities, including, where appropriate, food and accommodation; and
- g. facilitate safe disembarkation by the Authorized Inspectors.

23. 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, such 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 explanation.

24. The Authorities of the Fishing Vessel, except where relevant international measures, procedures, and practices relating to safety at sea make it necessary to delay the boarding and inspection, shall 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

25. The use of force shall be avoided except when and to the degree necessary to ensure the safety of the Authorized Inspectors. The degree of force used shall not exceed that reasonably required under the circumstances.

26. Any incident involving the use of force shall be immediately reported to the Authorities of the Fishing Vessel by the Authorized Inspector as well as to the Executive Secretary for distribution to the Commission.

INSPECTION REPORTS

27. Authorised Inspectors shall be required to prepare a full report on each boarding and inspection they carry out pursuant to these procedures in accordance with a format specified by the Commission,

including any supporting information and any statement from the master of the fishing vessel. 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 Secretariat, within 7 (seven) 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.

28. 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

29. 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 33 of this measure, the Authorities of the Inspection Vessels shall be required to without delay notify the Authorities of the Fishing Vessel, directly as well as through the Secretariat.

30. Upon receipt of a notification under paragraph 29, the Authorities of the Fishing Vessels shall without delay:

- 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 Secretariat; or
- b. authorise the Authorities of the Inspection Vessel to undertake the investigation of the alleged serious violation and so notify the Secretariat.

31. In the case of 30(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.

32. In the case of 30(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.

33. 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. significant 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 23 and 24;
- 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

34. 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.

35. 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

36. Contracting Parties that authorise inspection vessels to operate under these procedures shall report annually to the Commission on the boarding and inspections carried out by its Authorised Inspection Vessels, as well as upon alleged violations observed.

37. Members and CNCs 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

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

39. The Authorised Inspection Vessel shall attempt to inform any fishing vessel identified pursuant to paragraph 38 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 and the flag state of the vessel in question.

40. If warranted, the Authorised Inspectors may request permission from the master of the fishing vessel and/or the relevant flag state authorities to board a fishing vessel identified pursuant to paragraph 38. If the fishing vessel master or flag state authorities consent to a boarding, the findings of any subsequent inspection shall be transmitted to the Secretariat. The Secretariat shall distribute this information to the Commission Members, as well as to the fishing vessel's flag state authorities where practicable.

41. Contracting Parties shall be liable for damage or loss attributable to their action in implementing these procedures when such action is unlawful or exceeds that reasonably required in the light of available information.

COMMISSION COORDINATION AND OVERSIGHT

42. 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.

[43. 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, Authorized Inspection Vessel, and the conservation and management measure related to any potential violations found during the boarding.]

44. 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 CNCPs.

45. 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. ensuring non-discriminatory distribution of boarding and inspections in the Convention Area among Fishing Vessels of Members and CNCPs 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 CNCPs 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

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

47. If the disagreement remains unresolved following the consultations, the Executive Secretary shall, at the request of the parties concerned, and with the consent of the Commission, 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.

48. 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.

49. 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.

50. 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 Contracting Party to use the dispute settlement procedures provided in the Convention.