



**SPRFMO**

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**COMM 6 – PROP 07**

Proposal for a new CMM on Boarding and Inspection  
*United States of America*

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## **CMM X-2018**

### **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**

1. The following procedures are established by 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 under whose jurisdiction the inspection vessel is operating;
  - d. “Authorities of the Fishing Vessel” means the authorities of the Member of the Commission under whose jurisdiction the fishing vessel is operating;
  - e. “Authorized inspection vessel” means any vessel included in the Commission’s register of vessels as authorized to engage in boarding and inspection activities pursuant to these procedures;
  - f. “Authorized inspector” means inspectors employed by the authorities responsible for boarding and inspection included in the Commission register and authorized 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 these procedures shall be for the purpose of ensuring compliance with the provisions of the Convention and 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 of Contracting Parties engaged in or reported to have engaged in a fishery regulated pursuant to the Convention.

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 of the Commission shall provide to vessels flying its flag a copy of the text of the relevant measures in force pursuant to the Convention in the relevant area of the Convention Area and ensure that vessels flying its flag accept boarding and inspection by authorized inspectors in accordance with these procedures. Such authorized 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 agreed conservation and management measures, including inspection activities carried out by the authorities of Members 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 a fishery regulated pursuant to the Convention, priority for boarding and inspection efforts pursuant to these procedures may be given to any such fishing vessels:

- a. that are not on the SPRFMO Record of Fishing Vessels and are flagged to Members of the Commission;
- b. that are reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any conservation and management measure adopted thereunder;
- c. that are flagged to a Member of the Commission that does not dispatch patrol vessels to the area of application to monitor its own fishing vessels;
- d. that are without observers on board if so required by the Commission;

e. that have a known history of violating conservation and management measures adopted by international agreement or relevant domestic laws and regulations.

11. The Commission shall keep the implementation of these procedures under review.

## **PARTICIPATION**

13. The Commission shall maintain a register of all authorized inspection vessels and authorities or inspectors. Only vessels and authorities or inspectors listed on the Commission's register are authorized under these procedures to board and inspect foreign-flagged fishing vessels within the Convention Area.

14. 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 inspection vessel it assigns to boarding and inspection activities 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 and communication capability); ii) An example of the credentials issued to the inspectors by its authorities; iii) notification that the inspection vessel is clearly marked and identifiable as being on government service; iv) notification that the 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.

b. with respect to inspectors it assigns pursuant to these procedures: i) the names of the authorities responsible for boarding and inspection; ii) notification that such authorities' 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 such authorities' 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.

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 authorized for this purpose under national laws, and that boardings from such military vessels and inspectors conform to the procedures contained within these Boarding and Inspection Procedures.

16. Authorized inspection vessels and inspectors notified by Contracting Parties pursuant to paragraph 14 shall be included on the Commission register once the Executive Secretary confirms that they meet the requirements of that paragraph.

17. 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 Contracting Party. 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.

18. The Executive Secretary shall ensure that the register of authorized inspection vessels and authorities or inspectors is at all times available to all Members of the Commission and shall immediately circulate any changes therein. Updated lists shall be posted on the Commission website. Each Member 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.

## **PROCEDURES**

19. The Commission shall develop a SPRFMO inspection flag, which shall be flown by authorized inspection vessels, in clearly visible fashion.

20. Authorized inspectors shall carry an approved identity card identifying the inspector as authorized to carry out boarding and inspection procedures under the auspices of the Commission and in accordance with these procedures.

21. An authorized inspection vessel that intends to board and inspect a fishing vessel on the high seas that is engaged in or reported to have engaged in a fishery 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 authorized inspection vessel - name, registration number, international radio call sign 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 authorized inspection vessel and authorized inspectors shall make their best efforts to communicate with the master of the fishing vessels in a language that the master can understand. In order to facilitate communications between the inspectors and the master of the vessel, the Commission shall develop a standardized multi-language questionnaire, which shall be circulated to all Contracting Parties with authorized inspection vessels.

23. Authorized inspectors shall have the authority to inspect 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 pursuant to the Convention.

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, its officers or crew.

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 report;
- f. promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; 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 statement.

26. During the conduct of a boarding and inspection, the master of the fishing vessel shall:

- a. avoid risks to the safety of authorized inspection vessels and inspectors;
- b. accept and facilitate prompt and safe boarding by the authorized 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 inspectors in the performance of their duties;

- e. 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;
- f. provide the inspectors onboard with reasonable facilities, including, where appropriate, food and accommodation; and
- g. facilitate safe disembarkation by the inspectors.

27. If the master of a fishing vessel refuses to allow an authorized 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.

28. The authorities of the fishing vessel, unless 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 Member shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The Member 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. Authorized inspectors shall 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. 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 being inspected, as well as the Commission, within 3 (three) full working days of the completion of the boarding and inspection. Where it is not 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. Such report shall include the names and authority of the inspectors and clearly identify any observed activity or condition that the authorized 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 during which the authorized inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 38, the authorities of the inspection vessels shall immediately notify the authorities of the fishing vessel, directly as well as through the Commission.

34. Upon receipt of a notification under paragraph 33, the authorities of the fishing vessels shall without undue 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 Commission; or
- b. authorize the authorities of the inspection vessel to complete investigation of the possible violation and so notify the Commission.

35. In the case of 34(a) above, the authorities of the inspection vessel shall provide, as soon as practicable, the specific evidence collected by the authorized inspectors to the authorities of the fishing vessel.

36. In the case of 34(b) above, the authorities of the inspection vessel 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.

37. Upon receipt of a notification pursuant to paragraph 33, the authorities of the fishing vessel shall make best effort to respond without delay and in any case no later than within 3 (three) full working days.

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 Member whose flag the fishing vessel is entitled to fly, 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 pursuant to the Convention;
- 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 paragraphs 27 and 28;
- l. assault, resist, intimidate, sexually harass, interfere with, or unduly obstruct or delay an authorized 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.

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 authorized inspector or an authorized inspection vessel in the same manner as any such interference occurring within its exclusive jurisdiction.

## **ANNUAL REPORTS**

41. Contracting Parties that authorize inspection vessels to operate under these procedures shall report annually to the Commission on the boarding and inspections carried out by its authorized inspection vessels, as well as upon possible violations observed.

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

## **OTHER PROVISIONS**

43. Authorized inspection vessels, while carrying out activities to implement these procedures, shall aim to identify fishing vessels of non-Members undertaking fishing activities on the high seas in the Convention Area. Any such vessels identified shall be immediately reported to the Executive Secretary for notification to the Commission.

44. The authorized 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 Members of the Commission, as well as to the authorities of the non-Member to which the fishing vessel is flagged.

45. If warranted, the authorized inspectors may request permission from the fishing vessel and/or the authorities of the non-Member to which the vessel is flagged to board a vessel identified pursuant to paragraph 43. If the vessel master or the authorities of the non-Member 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 all Commission Members as well as to the authorities of the non-Member.

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 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.

## **COMMISSION COORDINATION AND OVERSIGHT**

47. 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 these procedures.

48. The Commission shall develop an electronic capability to catalog and share with authorized 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. In applying these procedures, 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 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 on the high seas among fishing vessels of Members of the Commission without compromising the opportunity of Contracting Parties to investigate possible serious violations; and
- d. taking into account high seas 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.

## **SETTLEMENT OF DISAGREEMENTS**

50. In the event of a disagreement concerning the application or implementation of these procedures, 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 case 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 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.