

The logo for the South Pacific Regional Fisheries Management Organisation (SPRFMO) is a blue rectangular banner with a white border. Inside the banner, the text "South Pacific Regional Fisheries Management Organisation" is written in white, bold, sans-serif font. The background of the banner features a pattern of small, stylized fish swimming to the right.

South Pacific Regional Fisheries Management Organisation

**1st Meeting of the Compliance and Technical Committee,
Manta, Ecuador: 27 - 31 January 2014**

CTC-01-13

**Proposed CMM for Boarding and Inspection Procedures in the SPRMFO
Convention Area**

New Zealand

CMM XXX**Conservation and Management Measure for Boarding and Inspection Procedures in the Convention Area****The Commission of the South Pacific Regional Fisheries Management Organisation;**

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

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

NOTING the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995 which gives direction to Regional Fisheries Management Organisations to undertake the development of their own boarding and inspection procedures

ENCOURAGES Members and CNCs who have vessels flying their flag operating in the Convention Area to actively monitor these vessels through boarding and inspection

ADOPTS the following Conservation and Management Measure (CMM) to provide for boarding and inspection activities in the Convention Area

DEFINITIONS

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

- a. "Authorities of the Inspection Vessel" means the authorities of the Member or CNC under whose jurisdiction the inspection vessel is operating;
- b. "Authorities of the Fishing Vessel" means the authorities of the Member or CNC under whose jurisdiction the fishing vessel is operating;
- c. "Authorized inspection vessel" means any vessel included in the Commission register of vessels as authorized to engage in boarding and inspection activities pursuant to this CMM;
- d. "Authorized inspectors" means inspectors employed by the authorities responsible for boarding and inspection included in the Commission register and authorized to conduct boarding and inspection activities pursuant to this CMM.

- e “Fishing vessel” means any vessel used or intended for fishing, including fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in fishing operations.
- f “High Seas” means those areas defined under Article 5 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 CMMs adopted by the Commission and in force.

AREA OF APPLICATION

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

GENERAL RIGHTS AND OBLIGATIONS

- 5. Each Member or CNCP may, subject to the provisions of this CMM, carry out boarding and inspection in the Convention Area of fishing vessels engaged in or reported to have engaged in a fishery regulated pursuant to the Convention.
- 6. Each Member or CNCP of the Commission shall ensure that vessels flying its flag accept boarding and inspection by authorized inspectors in accordance with this CMM. Such authorized inspectors shall comply with this CMM in the conduct of any such activities.

GENERAL PRINCIPLES

- 7. This CMM is intended to implement and give effect to Article 27 (1)(b) of the Convention and is to be read consistently with that provision.
- 8. This CMM shall be implemented in a transparent and non-discriminatory manner, taking into account, inter alia:
 - a. such factors as the presence of observers on board a vessel and the frequency and results of past inspections; and
 - b. the full range of measures to monitor compliance with the provisions of the Convention and agreed CMMs, including inspection activities carried out by the authorities of Members or CNCPs in respect of their own flag vessels.
- 9. While not limiting efforts to ensure compliance by all vessels, priority for boarding and inspection efforts pursuant to this CMM may be given to:
 - a. fishing vessels that are not on the SPRMFO Record of Vessels authorised to fish in the Convention Area and are flagged to Members or CNCPs;
 - b. fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any CMM adopted there under;

- b bis. fishing vessels whose flag Member does not dispatch patrol vessels to the area of application to monitor its own fishing vessels;
- c. fishing vessels with a known history of violating CMMs adopted by international agreement or any country's national laws and regulations.

PARTICIPATION

- 10. The Commission shall maintain a register of all authorized inspection vessels and authorities. Only vessels and authorities listed on the Commission's register are authorised under this CMM to board and inspect foreign flagged vessels within the Convention Area. [Military vessels are exempt of being Included in this register]
- 11. Each Contracting Party that intends to carry out boarding and inspection activities pursuant to this CMM shall so notify the Commission through the Executive Secretary, and shall provide the following:
 - a. with respect to each inspection vessel it assigns to boarding and inspection activities under this CMM
 - i) details of the vessel (name, description, photograph, registrations number, port of registry (and if different from the port of registry, port marked on the vessel hull), international radio call sign and communication details such as email, radio or satellite contact);
 - ii) notification that the vessel crew that undertake boarding and inspection have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by this Commission;
 - iii) notification that the inspection vessel is clearly marked and identifiable as being on government service.
 - b. with respect to inspectors it assigns pursuant to this CMM;
 - i) the name/s of the authorities responsible for boarding and inspection;
 - ii) notification that such authorized inspectors are fully familiar with the fishing activities to be inspected and the provisions of the Convention and CMMs in force; and
 - iii) notification that such authorized inspectors have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission;
- 12. Each Member or CNCP that intends to carry out boarding and inspection activities shall notify the information required in paragraph 13 (a) and (b) by way of a prescribed template that is contained in Annex A to the Executive Secretary

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 inspectors fully trained in fisheries enforcement procedures, or duly authorised for this purpose under national laws, and that such inspectors meet the requirements established in this CMM.
- 14 bis. Authorized inspection vessels notified by Contracting Parties pursuant to paragraph 13 shall be included on the Commission register once the Executive Secretary confirms that they meet the requirements of that paragraph.
- 14 ter. 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.
15. The Executive Secretary shall ensure that the register of authorized inspection vessels and authorities is at all times available to all Members and CNCPs of the Commission and shall immediately circulate any changes therein. Updated lists shall be posted on the Commission website, specifically in the MCS section. Each Member or CNCP shall take necessary measures to ensure that these lists are circulated to each of its fishing vessels operating in the Convention Area.

PROCEDURES

16. Authorized inspection vessels shall fly, in clearly visible fashion, the SPRMFO inspection flag as adopted by the Commission.
17. Inspection authorities shall require that their inspectors 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 this CMM.
18. An authorized inspection vessel that intends to board and inspect a fishing vessel that is engaged in or reported that have engaged in a fishery regulated pursuant to the Convention shall, prior to initiating the boarding and inspection:
 - 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 including vessel name, authority, 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 of the boarding and inspection through the authorities of the inspectors to the authorities of the fishing vessel using the prescribed template in Annex B
19. In carrying out the inspection pursuant to this CMM, the authorized inspectors shall make their best efforts to communicate with the master of the fishing vessel in a language that the master can understand. If necessary to facilitate communications between the inspectors and the master of the vessel, the inspectors shall use the standardized multi-language questionnaire to be prepared by the Secretariat and circulated to all Members and CNCPs with authorized inspection vessels.
 20. Authorized inspectors shall have the authority to inspect the vessel, its license, gear, equipment, records, facilities, fish and fish products and relevant documents necessary to verify compliance with the CMMs in force pursuant to the Convention.
 21. Boarding and inspection pursuant to this CMM shall;
 - a. be carried out in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of fishing vessels and crews;
 - b. be conducted as much as possible in a manner so as to not interfere unduly with the lawful operation of the fishing vessel;
 - c. take reasonable care to avoid action that would adversely affect the quality of the catch while carrying out the responsibilities described in paragraph 21
 - d. not be conducted in such a manner as to constitute harassment of a fishing vessel, its officers or crew.
 22. In the conduct of a boarding and inspection, the authorized inspectors shall;
 - a. present their identity card to the master of the fishing vessel [and a copy of the text of the relevant CMMs in force pursuant to the Convention
 - b. not interfere with the master's ability to communicate with the authorities of the fishing vessel;
 - c. complete the inspection of the vessel within four (4) hours unless evidence of a serious violation is found;
 - d. collect and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention;
 - e. provide to the master of the fishing vessel prior to leaving the vessel a copy of the interim report, as prescribed in Annex C, on the boarding and inspection including any objection or statement which the master wishes to include in the report;
 - f. promptly leave the fishing vessel following completion of the inspection;
and

- g. provide a full report on the boarding and inspection to the authorities of the fishing vessel, pursuant to paragraph 29, which shall also include any master's statement.
23. During the conduct of a boarding and inspection, the master of the fishing vessel shall;
- a. follow internationally accepted principles of good seamanship so as to 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 fishing vessel pursuant to this CMM;
 - 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. in the case of force majeure circumstances, the fishing vessel shall provide inspectors with reasonable facilities, including where appropriate food, water and accommodation; and
 - g. facilitate safe disembarkation by the inspectors.
24. If the master of a fishing vessel refuses to allow an authorized inspector to carry out a boarding and inspection in accordance with this CMM, the master shall offer an explanation of the reason for such refusal. The authorities of the inspection vessel shall immediately notify the authorities of the fishing vessel, as well as the Commission, of the master's refusal and any explanations.
25. The authorities of the fishing vessel shall direct the master to accept the boarding and inspection, unless generally accepted international regulations, procedures and practices relating to safety at sea make it necessary to delay the boarding and inspection. If the master does not comply with such direction, the 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

26. Except to the degree necessary to ensure their safety, inspectors shall avoid the use of force. The degree of force used shall not exceed that reasonably required in the circumstances.
27. Any incident involving the use of force shall be immediately reported to the authorities of the fishing vessel, the authorities of the inspection vessel and the Commission.

INSPECTION REPORTS

28. Authorized inspectors shall prepare a full report on each boarding and inspection they carry out pursuant to this CMM in accordance with the template laid out in Annex D. The authorities of the inspectors that undertook the inspection shall transmit a copy of the boarding and inspection report to the authorities of the fishing vessel being inspected, as well as to the Commission, within 5 working days of the completion of the boarding and inspection, and if possible, at the earliest possible opportunity
29. Where it is not possible for technical reasons for the authorities of the inspector to provide such report to the authorities of the fishing vessel within this timeframe, the authorities of the inspector shall inform the authorities of the fishing vessel and shall specify the time period within which the report will be provided.

SERIOUS VIOLATIONS

30. In the case of any boarding and inspection of a fishing vessel which the authorized inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 37, the authorities of the inspector shall immediately notify the authorities of the fishing vessel, directly as well as through the Commission.
31. Upon receipt of a notification under paragraph 32, the authorities of the fishing vessels shall without delay:
 - a. assume their obligations to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the authorities of the inspectors, as well as the Commission; or
 - b. authorize the authorities of the inspectors to complete the investigation of the possible violation and so notify the Commission.
32. In the case of 33(a) above, the authorities of the inspectors shall provide, as soon as practicable, the specific evidence collected by the authorized inspectors to the authorities of the fishing vessel
33. In the case of 33(b) above, the authorities of the inspectors shall provide the specific evidence collected by the authorized inspectors, along with the results of their investigation, to the authorities of the fishing vessel immediately upon completion of the investigation.
34. Upon receipt of a notification pursuant to paragraph 32, the authorities of the fishing vessel shall make best effort to respond without delay and in any case no later than within 5 full working days.
35. For the purposes of this CMM, a serious violation means the following violations of the provisions of the Convention or CMMs adopted by the Commission:
 - a. fishing without a license, nationality, permit or authorization issued by the flag Member or CNCP, in accordance with Article 25 of the Convention;
 - b. failure to maintain sufficient records of catch and catch-related data in accordance with the Commission's reporting requirements that are

described in CMM1.03 or significant misreporting of such catch and/or catch-related data;

- c. fishing in a closed area;
- d. fishing in a closed season;
- e. intentional taking or retention of species in contravention of any applicable CMMs adopted by the Commission
- f. 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 of the SPRMFO Conservation and Management Measures have been detected 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 25 and 26
- l. the assault, resistance, intimidation, sexually harassment, interference with, undue obstruction or delay an authorized inspector;
- m. an absence of a vessel monitoring system is detected or records indicate that manual reports as required under CMM XXX are not being submitted
- n. knowingly operate in conjunction with a fishing vessel listed on any RMFO¹ IUU list; and
- o. such other violation as may be determined by the Commission, once this is included and circulated in a revised version of this CMM

ENFORCEMENT

- 36. Any evidence obtained as a result of a boarding and inspection pursuant to this CMM regarding a violation by a fishing vessel of the Convention or CMMs adopted by the Commission and in force shall be referred to the authorities of the fishing vessel for action in accordance with Article 25 of the Convention.
- 37. For the purposes of this CMM, the authorities of the fishing vessel shall regard interference by their fishing vessels, captains or crew with an authorized inspector or an authorized inspection vessel in the same manner as any such interference occurring within its waters.

¹ Including CCAMLR CP-IUU and NCP-IUU Lists

ANNUAL REPORTS

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

OTHER PROVISIONS

40. Authorized inspection vessels, while carrying out activities to implement these procedures, shall engage in surveillance aimed at identifying fishing vessels of non-Members or CNCPs undertaking fishing activities in the Convention Area. Any such vessels identified shall be immediately reported to the Commission.
41. The authorized inspection vessel shall attempt to inform any fishing vessel identified pursuant to paragraph 42 that has been sighted or identified as engaging in fishing activities that are undermining the effectiveness of the Convention and that this information will be distributed to the Members and the flag state of the vessel in question.
42. If warranted, the authorized inspectors may request permission from the fishing vessel and/or the flag state of the vessel to board a vessel identified pursuant to paragraph 42. If the vessel master or the vessel's flag state consents to a boarding, the findings of any subsequent inspection shall be transmitted to the Executive Secretary. The Executive Secretary shall distribute this information to all Members well as to the flag state of the fishing vessel.
43. Members and CNCPs shall be liable for damage or loss attributable to their action in implementing this CMM when such action is unlawful or exceeds that reasonably required in the light of available information.

COMMISSION COORDINATION AND OVERSIGHT

44. Authorized inspection vessels in the same operational area should seek to establish regular contact for the purpose of sharing information on areas in which they are patrolling, on sightings and on boarding and inspections they have carried out, as well as other operational information relevant to carrying out their responsibilities under this CMM.
45. The Commission shall keep under continuous review the implementation and operation of this CMM, including review of annual reports relating to these procedures provided by Members and CNCPs. In applying this CMM, Members may seek to promote optimum use of the authorized inspection vessels and authorized inspectors by;
 - a. identifying priorities by area and/or by fishery for boarding and inspections pursuant to this CMM;

- b. ensuring that boarding and inspection on the high seas is fully integrated with the other monitoring, control and surveillance tools available pursuant to the Convention and to this end, the Secretariat shall maintain a list of vessels that have been inspected pursuant to these procedures
- c. ensuring non-discriminatory distribution of boarding and inspections 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

- 46. In the event of a disagreement concerning the interpretation, application or implementation of this CMM, the Members and CNCPs concerned shall consult in an attempt to resolve the disagreement.
- 47. If the disagreement remains unresolved following the consultations, the Executive Secretary of the Commission 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 Members and CNCPs involved, to consider the matter.
- 48. A report on the disagreement shall be drawn up by the panel and forwarded through the CTC Chair to the Commission within two months of the Commission meeting at which the case 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 concerned.
- 50. Application of these provisions for the settlement of disagreements shall be non-binding. These provisions shall not prejudice the rights of any Member to use the dispute settlement procedures provided in the Commission.