

South Pacific Regional Fisheries Management Organisation

2nd Meeting of the Compliance and Technical Committee,
Auckland, New Zealand: 30 - 31 January 2015

CTC-02-27

Proposal to amend CMM 2.07 – the Conservation and Management Measure on minimum standards of in section in Port

Chile

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;

Recognizing 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;

Recognizing 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 (CNPCs) 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;

The Commission *Adopts* the following conservation and management measure (CMM) in accordance with Articles 8 and 20 of the Convention:

Scope

1. With a view to monitor compliance with SPRFMO Conservation and Management Measures (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, or at sea following the applicable SPRFMO procedures, hereinafter referred to as "foreign fishing vessels".
2. Without prejudice to specifically applicable provisions of other SPRFMO Conservation and Management Measures, 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 22(b) of this conservation and management measure. 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 conservation and management measure. 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 conservation and management measure.
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 conservation and management measure.
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 conservation and management measure, require foreign fishing vessels seeking to use its ports for the purpose of landing and/or transshipment to provide, by means of minimum standard of information to be developed by the SPRFMO Executive Secretary pursuant to paragraph 33, at least 48 hours before the estimated time of arrival at the port, the following information:
 - a) Vessel identification (External identification, Name, Flag, IMO No, if any, and IRCS);
 - b) Name of the designated port, as referred to in the SPRFMO register, to which it seeks entry and the purpose of the port call (landing and/or transshipment);
 - c) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on SPRFMO species and/or fish products originating from such species, or to tranship related fishery products;
 - d) Estimated date and time of arrival in port;
 - e) The estimated quantities in kilograms of each SPRFMO species and/or fish products originating from such species held on board, with associated catch areas. If no SPRFMO species and/or fish products originating from such species are held on board, a 'nil' report shall be transmitted;
 - f) The estimated quantities for each SPRFMO species and/or fish products originating from such species in kilograms to be landed or transhipped, with associated catch areas;
 - g) The crew list of the vessel.

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 States shall decide whether to authorize or deny the entry of the vessel into its port. In case the port State decides to authorize 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 organizations 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.
- 16 bis. Consistent with CMM 1.04, except for the purposes of inspection, enforcement action or emergency, port Members and CNCPs shall take all necessary measures, subject to, and in accordance with, their applicable laws and regulations and international law, to deny port access to fishing vessels included in the list of SPRFMO IUU vessels.

Inspection procedure

17. 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 mates receipts and landing declarations in case of transshipment, which they deem necessary to ensure compliance with the SPRFMO conservation and management measures. 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.
18. 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.
19. 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 Members or CNCP. A copy of the report shall be provided to the Master.
20. 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 7-15 working days following the date of completion of the inspection. If the inspection report cannot be transmitted within 7 working days, the port State shall notify the SPRFMO Executive Secretary within the 7 working day time period the reasons for the delay and when the report will be submitted.
21. 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

22. If the information collected during the inspection provides evidence that a foreign fishing vessel has committed a breach of the SPRFMO conservation and management measures, 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 Members 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.
23. 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.
24. 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 3 months of such receipt. If the flag Member or CNCP cannot provide the SPRFMO Executive Secretary this status report within 3 months of such receipt, the flag Member or CNCP should notify the SPRFMO within the 3 month 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.
25. Should the inspection provide evidence that the inspected vessel has engaged in IUU activities as referred to in CMM 1.04 (Establishing a List of Vessels presumed to have carried out Illegal, Unreported and Unregulated fishing activities in the SPRFMO Convention Area) 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.

Requirements of developing Members and CNCPs

26. 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 conservation and management measure. 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 organizations 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 conservation and management measure; and
 - c) Either directly or through the SPRFMO, assess the special requirements of developing Members and CNCPs concerning the implementation of this conservation and management measure.

General provisions

27. 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.
28. 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 conservation and management measure.
29. 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.
30. Members and CNCPs shall fulfill in good faith the obligations assumed pursuant to this CMM and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.
31. Members and CNCPs are encouraged to enter into bilateral agreements/arrangements that allow for an inspector exchange program designed to promote cooperation, share information, and educate each party's inspectors on inspection strategies and methodologies which promote compliance with SPRFMO conservation and management measures. A description of such programs should be provided to the SPRFMO Executive Secretary who should publish it on the SPRFMO website.
32. 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 conservation and management measure.
33. The SPRFMO Executive Secretary shall develop minimum standards of information for prior notification and inspection reports required under this CMM, taking into account forms adopted in other relevant instruments, such as the FAO Port State Measures Agreement and other RFMOs, for consideration at the 2015 Annual Meeting of the Commission.
34. The SPRFMO Commission shall review this CMM no later than 2017 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 measure.
35. This CMM shall enter into force on January 1, 2015.