

**3rd Meeting of the Compliance and Technical Committee
Valdivia, Chile, 21-23 January 2016**

CTC-03-08

Communications related to CMM 3.04 (Boarding and inspection procedures)

In 2015, noting that it has not yet been possible for the Commission to adopt an at-sea inspection measure specifically for the SPRFMO Convention Area, the Commission adopted an interim conservation and management measure (CMM 3.04) in accordance with Article 27(3) of the Convention.

This paper compiles intersessional communications related to CMM 3.04 received from:

1. United States,
2. China,
3. Australia, and
4. New Zealand



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

Dr. Johanne Fischer
Executive Secretary
SPRFMO Secretariat
P.O. Box 3797
Wellington 6140, New Zealand

Re: CMM 3.04, "Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area"

Dear Dr. Fischer:

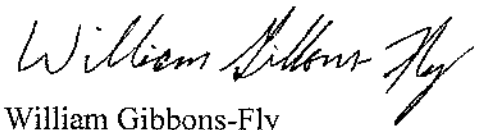
I am writing regarding CMM 3.04, "Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area," which enters into effect on August 24, 2015. As you know, the United States currently has no fishing vessels operating in the SPRFMO Convention Area fishing for SPRFMO managed species. However, the United States does have fishing vessels operating in the SPRFMO Convention Area that target tunas and tuna-like species and that operate in accordance with the Western and Central Pacific Fisheries Commission (WCPFC) and/or the Inter-American Tropical Tuna Commission (IATTC) Conventions.

The U.S.-flagged fishing vessels that target tunas and tuna-like species are subject to the WCPFC's high seas boarding and inspection procedures, as set forth in the WCPFC's CMM 2006-08, "Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures," while operating in the WCPFC Convention Area, or to specific management measures adopted by the IATTC, while operating in the IATTC Convention Area. As such, and considering that these U.S. vessels are not participating in fisheries under SPRFMO jurisdiction, it is our view that these U.S. vessels will not be subject to at-sea inspections by SPRFMO inspection vessels.

As we have indicated in discussions during the 2014 and 2015 meetings of the Commission, the United States strongly believes that it is necessary for SPRFMO to adopt specific at-sea boarding and inspection procedures that are consistent with the procedures already being utilized by the WCPFC. We look forward to future discussions to progress the development of a SPRFMO high seas boarding and inspection program.

Please circulate this letter to all SPRFMO members and Cooperating non-Contracting Parties.

Sincerely,

A handwritten signature in black ink, reading "William Gibbons-Fly". The signature is written in a cursive style with a large, sweeping initial "W".

William Gibbons-Fly
Director
Office of Marine Conservation

cc: Feleti Teo, Executive Director, WCPFC
Guillermo Compeán, Director, IATTC
Michael Tosatto, NOAA Fisheries, Pacific Islands Regional Office

中华人民共和国农业部渔业局

BUREAU OF FISHERIES, MINISTRY OF AGRICULTURE, THE PEOPLE'S REPUBLIC OF CHINA

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To : Ms Johanne Fischer

Executive Secretary of SPRFMO

August 24, 2015

SUBJECT: China's statements on the potential boarding and inspection to Chinese fishing vessels in accordance with CMM 3.04 Conservation and Management Measure relating to boarding and inspection procedures in the SPRFMO Convention Area

Dear Ms Johanne Fischer:

I am writing in relation to CMM 3.04 Conservation and Management Measure relating to boarding and inspection procedures in the SPRFMO Convention Area. Despite of the hard work and constructive discussion, the Commission couldn't manage to adopt the high seas boarding and inspection measure (herein after as "HSBI") specifically for the SPRFMO Convention Area on its last meeting. In accordance with Article 27(3) of the Convention, Articles 21 and 22 of the 1995 Agreement shall be applied from 24 August 2015 as transitional arrangement until such time as the Commission adopting its own HSBI measures. I would like to draw your attention to the fact that China is not yet a contracting party to the 1995 Agreement, and we would like to reiterate the Statement made by the Government of the People's Republic of China upon signing the Agreement in accordance with article 43 of the Agreement as follows:

Statement:

"It is the belief of the Government of the People's Republic of China that the [said Agreement] is an important development of the United Nations Convention on the Law of the Sea. This Agreement will have a significant impact on the conservation and management of living marine resources, especially fish resources in the high seas as well as on the international cooperation in fishery. Upon signing the Agreement, the Government of the People's Republic of China wish to make the following statement in accordance with article 43 of the Agreement:

1. About the understanding of paragraph 7 of article 21 of the Agreement: The Government of China is of the view that the enforcement action taken by the inspecting State with the authorization of the flag State involves state sovereignty and national legislation of the States concerned. The authorized enforcement action

should be limited to the mode and scope as specified in the authorization by the flag State. Enforcement action by the inspecting State under such circumstances should only be that of executing the authorization of the flag state.

2, About the understanding of subparagraph (f), paragraph 1 of article 22 of the Agreement: This subparagraph provides that the inspecting State shall ensure that its duly authorized inspectors `avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances'. The understanding of the Chinese Government on this provision is that only when the personal safety of the authorized inspectors whose authorization has been duly verified is endangered and their normal inspecting activities are obstructed by violence committed by crew members of fishermen of the fishing vessel under inspection, may the inspectors take appropriate compulsory measures necessary to stop such violence. It should be emphasized that the action of force by the inspectors shall only be taken against those crew members or fishermen committing the violence and must never be taken against the vessel as a whole or other crew members or fishermen."

Secondly, Articles 21 and 22 of the 1995 Agreement is the guiding principles of HSBI for regional and sub regional fisheries management organizations and arrangements. Article 27(3) of the Convention requires "additional practical procedures as the Commission may decide are necessary for the implementation" of Articles 21 and 22 of the 1995 Agreement. Since the Commission hasn't adopted its formal HSBI measures, lack of procedures for notification and registration of inspection vessels; criteria of marking inspection vessel to be identifiable; measures of solving language barrier between inspector and crew, etc., would cause practical problems. With aim to avoid unnecessary troubles, we put forward the following requirements for those contracting Parties whose inspection vessel will board Chinese fishing vessels:

1. In accordance with Article 27, paragraph 1 subtitle (b) of the Convention, inspection vessels that may participate in the inspection program shall be notified by the inspecting states to the Secretariat. The Secretariat shall maintain a register of all authorized inspection vessels and made this information publicly available on the website. Only inspection vessel listed in the register could board and inspect conduct HSBI, for those not in the register, fishing vessels could reject HSBI for sake of security.

2. Paragraph 4 Article 21 of the 1995 Agreement stipulates inspection vessels shall be clearly marked and identifiable as being government service. Due to absence of criteria of marking in this commission, As a transitional method, flag state would play its role to discriminate whether the inspection vessel duly authorized. Any inspection vessel intend to board Chinese fishing vessel, should notify Chinese fisheries authority as least 24 hours in advance, for Chinese authority to verify whether the

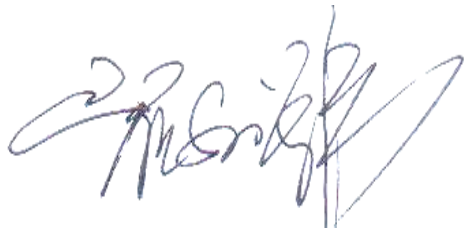
inspection vessel is duly authorized, and inform the fishing vessels to cooperate and accept HSBI accordingly.

3. Language barrier may be serious problem lead to unnecessary misunderstanding or even evolving to serious antagonism on the high seas endangering life security of inspectors and fishermen. Because of lacking standardized multi-language questionnaire, inspectors intend to board Chinese fishing vessels are recommended to have the capability to communicate with vessel master in Chinese, or have a questionnaire in Chinese.

In conclusion, with some operational elements and practical procedures for the implementation of HSBI not in place, extra care should be taken in the application of Articles 21 and 22 of the 1995 Agreement. China is willing to work with other Members of the Commission for the HSBI measure which can address the concerns of all the Members in the coming Commission meetings.

Please kindly circulate this letter to all other Contracting Parties to the Convention.

With warm regards,

A handwritten signature in blue ink, appearing to be 'Cui Lifeng', written in a cursive style.

Cui Lifeng

Deputy Director General
Bureau of Fisheries, Ministry of Agriculture
People's Republic of China



Australian Government
Department of Agriculture

Dr Johanne Fischer
Executive Secretary
SPRFMO Secretariat
PO Box 3797
Wellington 6140
New Zealand

Dear Dr Fischer

Australia acknowledges recently circulated correspondence from the United States of America regarding CMM 3.04, 'Conservation and Management Measure relating to Boarding and Inspection Procedures in the SPRFMO Convention Area'.

Australia agrees that there would be value in adopting a high seas boarding and inspection regime specific to SPRFMO.

In the interim, I note that in accordance with CMM 3.04, from 24 August 2015 the Commission's procedures on at sea inspections in the Convention Area will be those contained in articles 21 and 22 of the United Nations Agreement for the Implementation of the Provisions of the United National 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 (UN Fish Stocks Agreement).

Paragraph 2 of CMM 3.04 provides that SPRFMO Contracting Parties are able to conduct at sea inspections of vessels flagged to Cooperating Non-Contracting Parties under this regime while such vessels are in the SPRFMO Convention area, regardless of which species those vessels are fishing for.

I would ask that you circulate this letter to all Members and Cooperating Non-Contracting Parties.

Yours sincerely

A handwritten signature in black ink that reads "Erin Tomkinson".

Erin Tomkinson
Acting Director
Regional Fisheries and Treaties

27 August 2015



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



New Zealand Ministry of
Foreign Affairs and Trade
Manuatu Aorere

18 September 2015

Dr Johanne Fischer
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Dear Dr Fischer

New Zealand acknowledges the recently circulated letters from the United States of America and the People's Republic of China regarding Conservation and Management Measure (CMM) 3.04 relating to boarding and inspection procedures in the SPRFMO Convention Area.

New Zealand, like others, agrees that a SPRFMO-specific boarding and inspection regime, compatible with relevant neighbouring and overlapping RFMOs, is highly desirable and should be adopted at the earliest opportunity. It was disappointing that agreement on a SPRFMO-specific regime was not possible at this year's Commission meeting but New Zealand remains hopeful that this will be possible in the future.

In the meantime, however, the boarding and inspection procedures in force for the SPRFMO Convention Area are those contained in Articles 21 and 22 of the United Nations Fish Stocks Agreement, as provided for in the Convention and in CMM 3.04. New Zealand is committed to fully applying all Conservation and Management Measures adopted by the SPRFMO Commission, including CMM 3.04.

I would be grateful if you would circulate this letter to all Members and Cooperating Non-Contracting Parties.

Yours sincerely

John Adank
for Secretary of Foreign Affairs and Trade