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The Southern Indian Ocean Fisheries Agreement (SIOFA) 6th Meeting of the Parties
01-05 July 2019

Pearle Beach Resort & Spa conference centre, Flic en Flac, Mauritius

MoP6-Prop01_Rev1

Conservation and Management Measure for High Seas Boarding and
Inspection Procedures for the Southern Indian Ocean Fisheries Agreement
(High Seas Boarding and Inspection Procedures)

Relates to agenda item: 12

Proposal ☒ Working Paper ☐ Information Paper ☐ Other Document ☐

Delegations of Australia and the EU

Abstract

Australia and the EU welcome the opportunity to present a revised proposal for a SIOFA high seas boarding and inspection regime.

Adoption of a comprehensive, contemporary and forward-looking high seas boarding and inspection regime is an important component of effective monitoring, control and surveillance (MCS). Article 6(1)(h) of the Agreement calls on the Meeting of the Parties to develop rules and procedures for the monitoring, control and surveillance of fishing activities in order to ensure compliance with CMMs including, where appropriate, rules concerning the boarding and inspection of vessels operating in the Agreement Area. This high seas boarding and inspection proposal is intended to meet this requirements of Article 6(1)(h) and to strengthen SIOFA's regulatory regime.

This proposal has been adapted from WCPFC's high seas boarding and inspection procedures (CMM 2006-08), including in relation to how the measure would apply to Contracting Parties, CNCPs and fishing entities (paragraphs 5 and 6). It seeks to integrate relevant Articles of the Agreement in relation to Contracting Party and flag State duties in the event of an alleged serious violation in a concise and practical format (paragraph 36).

The proposed measure requires the Executive Secretary to establish and maintain a register of Authorised Inspection Vessels and Inspection Authorities (paragraph 10) and by 2021 to establish a catalogue of relevant inspections activities that have been undertaken pursuant to the measure (paragraph 47). We also note that it contains areas requiring future action by the Meeting of the Parties - in relation to the development of a SIOFA inspection flag (paragraph 16), and a questionnaire to be used by inspectors to be translated into relevant languages (paragraph 19).

Substantial progress was made on this proposal during the fifth Meeting of the Parties. Australia and the EU have continued to consult interested Contracting Parties in the intersessional period and have made a number of revisions to the proposal. Significant revisions are shown in tracked changes and explained with comment boxes. Australia and the EU look forward to further constructive engagement with Contracting Parties and are hopeful that the sixth Meeting of the Parties can agree to strengthen SIOFA's MCS framework by adopting the proposal.

Recommendations *(proposals only)*

- 1. That the Meeting of the Parties adopt the proposal by Australia and the EU**
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CMM 2019/XX

**Conservation and Management Measure for High Seas Boarding and Inspection Procedures for
the Southern Indian Ocean Fisheries Agreement (High Seas Boarding and Inspection
Procedures)**

Proposal by Australia and the EU

The Meeting of the Parties to the Southern Indian Ocean Fisheries Agreement;

RECOGNISING that effective management of fishing vessels in the SIOFA Area of Application (Agreement Area) relies upon a number of monitoring, control and surveillance activities to be undertaken by Contracting Parties, cooperating non-Contracting Parties, participating fishing entities and cooperating non-participating fishing entities (CCPs);

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

RECALLING Articles 21 and 22 of the 1995 Agreement which give direction to Regional Fisheries Management Organisations and arrangements (RFMOs) to establish procedures for boarding and inspection in the high seas areas covered by RFMOs;

RECALLING ALSO the obligations in Article 6(1)(h) of the Agreement for the Meeting of the Parties to develop rules and procedures for the monitoring, control and surveillance of fishing activities in order to ensure compliance with conservation and management measures (CMMs) including where appropriate rules concerning the boarding and inspection of vessels operating in the Agreement Area;

MINDFUL that Article 6(1)(i) requires the Meeting of the Parties to develop and monitor measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;

RECALLING the commitments to be given by Cooperating non-Contracting Parties (CNCs) to abide by CMMs in Rule 17(4)(b) of the Rules of Procedure of the Meeting of the Parties;

CERTAIN that a specific SIOFA measure relating to at sea inspection of vessels in the Agreement Area will greatly assist in furthering the objective of the Agreement;

DESIRING to ensure the optimum use of the inspection vessels and inspectors including by ensuring that boarding and inspection operations are fully integrated with the other monitoring and compliance tools available pursuant to the Agreement and CMMs, by ensuring a non-discriminatory distribution of boarding and inspections of vessels present in the Agreement Area without compromising the opportunity to investigate possible serious infringements, and by ensuring compliance by vessels flying the same flag as the inspecting authorities.

ADOPTS the following CMM in accordance with Article 6 of the Agreement:

1. The following procedures are established by the Meeting of the Parties, in accordance with Article 6(1)(h) of its Agreement, to govern high seas boarding and inspection of fishing vessels in the Agreement Area.

Definitions

2. For the purposes of interpreting and implementing these procedures, the following definitions shall apply:

- a. 'Authorities of the Inspection Vessel' means the authorities of the Contracting Party under whose flag the inspection vessel is operating;
- b. 'Authorities of the Fishing Vessel' means the authorities of the CCP under whose flag the fishing vessel is operating;
- c. 'Authorised Inspection Vessel' means any vessel included in the SIOFA register of Authorised Inspection Vessels and ~~Authorised Inspectors~~ Inspection Authorities established under paragraph 10 and authorised to engage in boarding and inspection activities pursuant to these procedures; ~~and~~

d. 'Authorised Inspector' means an inspector designated by the authorities of a Contracting Party responsible for boarding and inspection, ~~included in the SIOFA register~~ and assigned to conduct boarding and inspection activities pursuant to this CCM; ~~and-~~

~~d.e.~~ 'Inspection Authorities' means the authorities responsible for boarding and inspection notified under paragraph 9(b)(i);

Purpose

3. Boarding and inspection conducted pursuant to this CMM shall be for the purpose of ensuring compliance with the provisions of the Agreement and the CMMs adopted by the Meeting of the Parties and in force.

Area of application

4. This measure shall apply throughout the Agreement Area.

General provisions

5. Each Contracting Party may, subject to these procedures, carry out boarding and inspection in the Agreement Area of fishing vessels flying the flag of a Contracting Party or CNCP that is engaged in or suspected to have engaged in fishing as defined in Article 1(g) of the Agreement ~~for fishery resources~~.

5bis. Each CCP shall ensure that fishing vessels flying their flag accept and facilitate boarding and inspection carried out pursuant to this measure;

5.6. This measure shall also apply ~~mutatis mutandis~~ in their entirety as between a Contracting Party and a participating fishing entity, subject to a notification to that effect to the Meeting of the Parties from the ~~Contracting Party~~ parties concerned;

6.7. Each CCP shall provide this measure or a translation of it to vessels flying its flag ~~a copy of this measure~~ and ensure that vessels flying its flag accept boarding and inspection by Authorised Inspectors in accordance with these procedures.

7.8. Contracting Parties shall ensure that Authorised Inspectors comply with this measure in the conduct of any boarding and inspection activities undertaken under these procedures.

Commented [GS1]: The changes to this paragraph, and the next paragraph, have been made to avoid the suggestion that the names of individual inspectors should be listed on the register. The intention is for 'Inspection Authorities' to be listed on the register, not individual inspectors (see paragraph 9(b)(i))

Commented [GS2]: As above.

Commented [GS3]: It is proposed that this term be defined here, instead of in paragraph 9(b)(i).

Commented [GS4R3]: REV1 – This has created some confusion about the difference between 'Authorities of the Inspection Vessel' and 'Inspection Authorities'.

'Inspection Authorities' is a term that is intended to cover the authorities nominated under paragraph 9(b)(i) as the authorities responsible for boarding and inspection. They are the authorities that are listed on the register of Authorised Inspection Vessels and Inspection Authorities. It is important that the register includes the names of Inspection Authorities, so that fishing vessels know which authorities are authorised to conduct boarding and inspection operations.

'Authorities of the Inspection Vessel' is different. It is the term used to describe the authority within a CP that sends/receives the various notifications contemplated in the CMM and is generally responsible for the CP's compliance with the CMM. This authority may be a different authority from the one that actually authorises inspectors.

The CMM does not create any obligations for 'Inspection Authorities' as such – the term just appears in the phrase 'register of Authorised Inspection Vessels and Inspection Authorities'. Suggest that it is not necessary to define the term.

Commented [GS5]: REV1 – Suggestion to make it clear that the measure is directed at the boarding of vessels fishing or suspected of fishing for SIOFA species – i.e. 'fishery resources'.

Commented [GS6]: REV1 – While there are already provisions requiring CCPs to do specific things to ensure that their vessels accept boarding and inspection (see para 24(b) and para 26), it is suggested that it would assist readers if paragraph 5 – indicating that CPs can conduct boarding and inspection – be accompanied by a clear statement that CCPs must accept such boarding and inspection.

Commented [GS7]: REV1 – These changes have been suggested by Chinese Taipei:

- deleting 'mutatis mutandis' and replacing it with 'in their entirety'
- Replacing 'subject to a notification to that effect to the Meeting of the Parties from the Contracting Party concerned' with 'subject to a notification to that effect to the Meeting of the Parties from the parties concerned'

Commented [GS8]: REV1 – Clarification that it is permissible to provide a translation of the measure

Notification requirements

8bis. Each CCP shall, by [DATE], notify the Executive Secretary of two contact points within its national fisheries authority (including name, telephone, fax number and e-mail address) for the purposes of receiving and sending notifications, inspection reports and reports of alleged infringements to and from its Authorities of the Fishing Vessel pursuant to this CMM. Each Contracting Party intending to carry out boarding and inspection pursuant to this measure shall provide the same information for the purposes of receiving and sending notifications and reports to its Authorities of the Inspection Vessel pursuant to this CMM. The Executive Secretary shall include this information on the SIOFA website so that it is available to CCPs. Each CCP shall notify the Secretariat promptly of any changes to their contact points.

Commented [GS9]: REV1 – Suggest inclusion of a date by which these contact points must be supplied.

Commented [GS10]: REV1 – Suggest that the contact points need not be from within a CCP's national fisheries authority.

Commented [GS11]: REV1 – This paragraph was intended to be the means by which CCPs nominate contact points for their Authorities of the Fishing Vessel and (if applicable) Authorities of the Inspection Vessel. The changes suggested are intended to make this clearer.

Commented [GS12]: REV1 – Change suggested to ensure that these points of contact are kept up to date.

Priorities of Boarding

8ter The inspecting Contracting Party should give priority to inspecting a vessel flying the flag of a CCP that is engaged in or suspected to have engaged in fishing as defined in Article 1(g) of the Agreement for fishery resources:

Commented [GS13]: REV1 – suggestion to make it clear that the measure is directed at the boarding of vessels fishing or suspected of fishing for SIOFA species – i.e. 'fishery resources'.

Commented [GS14]: REV1 – This language is taken from paragraph 5 and is intended to make it clear that the categories in the subparagraphs do not expand the scope of the measure.

Commented [GS15]: REV1 – CMM 2017/07 does not include 'eligibility' criteria as such. The intent is that Contracting Parties should prioritise the inspection of fishing vessels that are not on the Register of Authorised Vessels but that are fishing/suspected of fishing in the Agreement Area.

Commented [GS16]: REV1 – Suggestion from Seychelles. Suggest that it may be useful to refer to the paragraph of the IUU CMM that lists activities giving rise to a presumption of IUU fishing.

Commented [GS17]: REV1 – Japan indicated that it is difficult for them to send patrol vessels to the SIOFA Area. Japan affirmed that inspections should be equal and fair.

a. flying the flag of a CCP that is eligible for inclusion in the not included on the SIOFA Record of Authorised Vessels, but is not included;

b. where there are reasonable grounds to suspect the vessel is, or has been, engaged in IUU fishing activities (noting paragraph 5 of CMM 2018/06) or in any activity in contravention of the Agreement and CMMs;

c. included in the list of vessels that have engaged in IUU fishing activities adopted by a regional or sub-regional fisheries management organisation;

d. pursuant to a request by a CCP or a regional or sub-regional fisheries management organisation, supported by evidence of possible IUU fishing activities by the vessel in question;

e. flying the flag of a CCP which does not dispatch patrol vessels to the SIOFA Area to monitor its own vessels;

f. that does not have an observer on board; or

g. that has a known history of violating conservation and management measures adopted by a regional or sub-regional fisheries management organisation or national laws and regulations.

Participation

8.9. Each Contracting Party that intends to carry out boarding and inspection activities under this measure shall notify the Executive Secretary of this intention, 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), 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 and by clearly flying a SIOFA inspection flag once established by the Meeting

of the Parties;

- b. with respect to Authorised Inspectors it designates pursuant to these procedures:
- (i) the name(s) of the authorities responsible for boarding and inspection ~~(the Inspection Authorities)~~;
 - (ii) an example of the credentials issued to its Authorised Inspectors;
 - (iii) notification that such Authorised Inspectors are fully familiar with the species and fishing activities to be inspected and the relevant provisions of the Agreement and CMMs in force; ~~and~~
 - (iv) notification that the Authorised Inspectors have received and completed training to safely carry out boarding and inspection activities at sea. Such training should include instruction on overcoming communication barriers and on de-escalation techniques; and
 - ~~(iv)~~(v) notification that any Authorised Inspectors carrying arms have received and completed appropriate levels of training on the use of those arms.

9bis. Contracting Parties shall promptly notify the Executive Secretary of any changes to the information provided under paragraph 9.

9-10. The Executive Secretary shall forward any notification provided in paragraph 9 to CCPs and establish and maintain a register of all Authorised Inspection Vessels and Inspection Authorities on the SIOFA website. The Executive Secretary shall circulate to CCPs any changes notified under paragraph 9bis without delay. Each CCP shall take necessary measures to ensure that the information on the register is circulated to each of its fishing vessels operating in the Agreement Area. Only vessels and inspectors from authorities listed on this SIOFA register are authorised under this measure to board and inspect fishing vessels within the Agreement Area [unless for vessels flying the flag of the CCP undertaking the inspection, with the exception that a CP may use vessels and inspectors from authorities not listed on the SIOFA register when boarding and inspecting a fishing vessel flying its flag.]

10-11.

11-12. Where military vessels are used for conducting boarding and inspection under this measure, the Authorities of the Inspection Vessel shall ensure that the boarding and inspection is safely carried out by [unarmed] 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 measure.

12-13.

Cooperative activities

13-14. Contracting Parties are encouraged to identify opportunities to place Authorised Inspectors on the Authorised Inspection Vessels of another Contracting Party. To this end, where appropriate, Contracting Parties should seek to conclude bilateral or multilateral arrangements, to develop joint training and information sharing mechanisms and otherwise facilitate communication and coordination between them for the purpose of implementing this measure.

14bis Contracting Parties deploying Authorised Inspection Vessels in the Agreement Area are encouraged to enter into arrangements as outlined in paragraph 14 and to embark Authorised Inspectors from another

Commented [GS18]: We recognize the concerns of some CPs about the potential for misunderstandings to occur between inspectors and fishers.

These suggested additions are directed at reducing the likelihood and consequences of any misunderstandings.

Commented [GS19]: It is important that the SIOFA register be kept up to date.

CPs are already incentivized to ensure that they keep the register up to date – because only vessels and inspection authorities on the register are authorized to board and inspect vessels (see para 10).

However, the text here has been suggested to make explicit the fact that CPs are obliged to notify the Executive Secretary of any changes to the information provided under paragraph 9.

Commented [GS20]: See new paragraph 9bis.

Commented [GS21]: This sentence (which is adapted from paragraph 17 of the equivalent WCPFC measure) has been included to ensure that fishing vessels are provided with the information on the register.

Commented [GS22]: The text proposed better reflects the intention of the bracketed text, which is to permit CPs to use vessels and inspectors from authorities not included on the SIOFA register when inspecting their own vessels.

Commented [GS23]: Note that blank paragraphs have been retained so as not to disrupt paragraph numbering, and to enable easier cross referencing with the version discussed at MoP5.

Commented [GS24]: The word unarmed was suggested by Cook Islands. We cannot accept this suggestion as it would be unworkable in practice for the only CP currently with the capacity to conduct inspections under this measure, and would be a significant departure from the existing legal framework under UNFSA. See paragraph 28bis for regulation of the carriage of arms.

Contracting Party if available. Such foreign Authorised Inspectors may participate in all inspections conducted by the Authorised Inspection Vessel under this measure as arranged between the relevant Contracting Parties prior to deployment.

14ter Where a bilateral or multilateral arrangement referred to in paragraph 14 has been concluded, it shall be notified to the Executive Secretary and referred to in the SIOFA register of paragraph 10. The Executive Secretary shall develop a template with the minimum information to be included on such a notification.

~~14.15.~~

Procedures

~~15.16.~~ The Meeting of the Parties shall develop a SIOFA inspection flag in the intersessional period following the ~~5th-6th~~ Meeting of the Parties. Once the Meeting of the Parties has decided on the SIOFA inspection flag for use in accordance with this CMM, this flag shall be flown by Authorised Inspection Vessels, in clearly visible fashion, when carrying out activities under this CMM.

~~16.17.~~ Authorised Inspectors shall carry an official and valid identity card identifying the inspector as authorised to carry out boarding and inspection in accordance with these procedures.

~~17.18.~~ An Authorised Inspection Vessel that intends to board and inspect a fishing vessel in the Agreement Area that is engaged in or suspected to have engaged in fishing as defined in Article 1(g) of the Agreement shall, prior to initiating the boarding and inspection:

- a. ~~initiate notice to notify~~ the Authorities of the Fishing Vessel, where known;
- b. 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;
- c. provide the following information to identify itself as an Authorised Inspection Vessel - name, registration number, international radio call sign, Authority of the Inspection Vessel, and contact frequency; and
- d. communicate to the master of the vessel its intention to board and inspect the vessel pursuant to this measure.

~~18.19.~~ In carrying out boarding and inspection pursuant to this measure, Authorised Inspectors shall make their best efforts to communicate with the master of the fishing vessel(s) in a manner that the master can understand. In order to facilitate communications between the Authorised Inspectors and the master of the vessel wherever possible, the Meeting of the Parties shall develop a standardised questionnaire during the intersessional period following the 6th Meeting of the Parties, which once adopted shall be translated into multiple languages and circulated to all ~~Contracting Parties with Authorised Inspection Vessels~~ CCPs and published on the SIOFA website. Contracting Parties are encouraged to take communication needs into account when planning operations under this measure.

~~19.20.~~ Authorised Inspectors shall have the authority to inspect, take evidence and samples, and record information on the fishing vessel, its license, gear, equipment, catch and production records, facilities, fishery resources and any other documents which may be relevant to verifying compliance with the CMMs in force and the Agreement.

~~20.21.~~ Contracting Parties shall seek to ensure that a maximum of 4 (four) Authorised Inspectors are

Commented [GS25]: The language proposed here is consistent with that used in article 22(1)(b) of UNFSA.

The change is intended to make it clear that the Authorised Inspectors do not need to wait for an acknowledgement of receipt of such a notification before boarding. The notification required here is not about obtaining consent for boarding (which will have already been provided through the adoption of this CMM). Rather, it is about keeping the relevant flag State informed.

Commented [GS26]: This change has been made in recognition that it would be useful for fishing vessels to have copies of the questionnaire too, to enable them to know in advance what questions they are likely to be asked.

assigned as part of a boarding team from an Authorised Inspection Vessel unless the commanding officer of the Authorised Inspection Vessel decides additional Authorised Inspectors are required due to the anticipated complexity of the inspection. In all instances, the boarding team shall only contain the number of Authorised Inspectors necessary to conduct an effective inspection safely and securely.

~~21.22.~~ Boarding and inspection under this measure shall be conducted in a manner:

- a. that avoids risks to the safety of fishing vessels and crew, including by ensuring that the Authorised Inspection Vessel maintains a safe distance from the fishing vessel during the inspection;
- b. that does not unduly interfere with the lawful operation of the fishing vessel;
- c. that avoids actions that will adversely affect the quality of the catch; and
- d. that does not harass the officers, crew, or observers of the fishing vessel.

~~22.23.~~ In the conduct of a boarding and inspection, each Authorised Inspector 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. collect and clearly document any evidence they believe indicates a violation of CMMs or the Agreement;
- d. provide to the master prior to leaving the vessel a copy of an interim report¹ on the boarding and inspection including any objection or statement² which the master wishes to include in the interim report; and
- e. complete the inspection within four hours of boarding unless evidence of a serious violation is found, or where a longer time period is required to obtain related documentation issued by the master. However, in special circumstances related to the size of the fishing vessel, and the quantities of fish retained onboard, the duration of the inspection may exceed the limit stipulated above. In such a situation the boarding team shall in no case stay on board the fishing vessel longer than the time required to complete the inspection.

Commented [GS27]: REV1 – Japan expressed a concern that it should be open to the master of the vessel to provide such a statement in their own language. A footnote has been suggested to make this clear.

~~23.24.~~ During the conduct of a boarding and inspection, each CCP shall require that the master and crew of any fishing vessel flying its flag shall:

- a. avoid risks to the safety of Authorised Inspection Vessels and Authorised Inspectors;
- b. accept and facilitate prompt and safe boarding by the Authorised Inspectors when directed or when intention to board and inspect has been communicated;
- c. cooperate with and assist in the safe inspection of the vessel pursuant to these procedures;
- d. not assault, resist, intimidate, interfere with, or obstruct or delay the Authorised Inspectors in the performance of their duties;

¹ An interim report can be an electronic report.

² The objection or statement of the fishing vessel master may be in a language other than English.

Formatted: English (Australia)

- e. allow the Authorised Inspectors to promptly communicate with the crew of the Authorised Inspection Vessel, the Authorities of the Inspection Vessel, any observers on the fishing vessel, as well as with the crew and Authorities of the Fishing Vessel when directed;
- f. take such action as may be necessary to preserve the integrity of any seal affixed by the inspectors and of any evidence remaining on board, until otherwise directed by the flag CCP;
- g. to secure the continuity of evidence, where seals have been affixed and/or evidence has been secured, sign³ the appropriate section of the inspection report acknowledging the placement of seals;
- h. cease fishing when requested, and not resume fishing until:
 - i. the Authorised Inspectors have completed the inspection and secured any evidence, and
 - ii. the master has signed the appropriate section of the inspection report as referred to in Annex 1);
- i. provide the Authorised Inspectors onboard with reasonable facilities; and
- j. facilitate safe and prompt disembarkation by the Authorised Inspectors when directed.

~~24-25.~~ If the master or crew of a fishing vessel refuses to allow an Authorised Inspector to carry out a boarding and inspection in accordance with this measure, this person and the Master or officer on watch shall offer an explanation of the reason for refusing. Contracting Parties shall ensure that Authorities of the Inspection Vessel immediately notify the Authorities of the Fishing Vessel, as well as the Executive Secretary, of the refusal and the explanation offered.

~~25-26.~~ Except where generally accepted international regulations, procedures and practices relating to safety at sea make it necessary to delay the boarding and inspection, CCPs shall require the master of a fishing vessel flying its flag to accept the boarding and inspection. If the master does not comply with such direction, the relevant CCP shall suspend the vessel's authorisation to fish and order the vessel to return immediately to port. The CCP shall immediately notify the Authorities of the Inspection Vessel and the Executive Secretary of the action it has taken in these circumstances.

Restrictions on the Use of force

~~26-27.~~ The use of force shall be avoided except when and to the degree necessary to ensure the safety of the Authorised Inspectors ~~or and~~ where the Authorised Inspectors are ~~assaulted or~~ obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required ~~under in~~ the circumstances.

~~27-28.~~ Contracting Parties shall ensure that any incident involving the use of force in relation to boarding and inspection under this measure shall be immediately reported to the Authorities of the Fishing Vessel, the Authorities of the Inspection Vessel, as well as to the Executive Secretary for circulation to ~~the Meeting of the Parties~~ all CCPs.

Restrictions on the carriage ~~and use~~ of arms

28bis Any arms carried by members of the boarding team shall be carried in a non-aggressive posture throughout the boarding and inspection unless otherwise required for the purpose of ensuring the safety and

Commented [GS28]: These changes have been suggested to make the text relevantly identical to the wording of UNFSA article 22 and paragraph 28 of the WCPFC measure.

Commented [GS29]: See below comment

³ In this measure a signature includes an electronic signature.

security of the boarding team or the fishing vessel. ~~The use of any arms carried by members of the boarding team is subject to the restrictions on the use of force set out in paragraph 27.~~

Inspection reports

~~28-29.~~ Authorised Inspectors shall be required to prepare a full report on each boarding and inspection they carry out under this measure, including any supporting information, using the ~~data fields in the~~ Boarding and Inspection Reporting Form at Annex 1. The Authorities of the Inspection Vessel from which the boarding and inspection was carried out shall transmit an electronic copy of the boarding and inspection report to the Authorities of the Fishing Vessel of the inspected vessel, as well as the Executive Secretary, within 3 (three) 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 this 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.

~~29-30.~~ The report shall include the name(s) and authority of the Authorised Inspector(s) and clearly identify any observed activity or condition that the Authorised Inspectors believe to be a violation of the Agreement or CMMs in force and indicate specific factual evidence relating to each alleged violation.

Serious violations

~~30-31.~~ Where Authorised Inspectors observe an activity or condition of a fishing vessel that may constitute a serious violation within the meaning of paragraph 37 (alleged serious violation), Contracting Parties shall ensure that the Authorities of the Inspection Vessel immediately notify the Authorities of the Fishing Vessel, directly and through the Executive Secretary.

~~31-32.~~ Upon receipt of a notification of an alleged serious violation in accordance with paragraph 31, CCPs shall ensure that the Authorities of the Fishing Vessel provide ~~without delay and in any case no later than within 3 (three) full working days~~ an initial response to the Authorities of the Inspection Vessel and Executive Secretary for circulation to ~~the Meeting of Parties~~ all CCPs ~~without delay and in any case no later than within 3 (three) full working days~~:

- a. notifying that the Authorities of the Fishing Vessels will investigate the alleged serious violation; or
- b. authorising the Authorities of the Inspection Vessel to undertake the investigation of the alleged serious violation.

~~32-33.~~ In the case of paragraph 32(a) above, Contracting Parties shall ensure that the Authorities of the Inspection Vessel provide, as soon as practicable, the specific evidence collected by the Authorised Inspectors to the Authorities of the Fishing Vessel.

~~33-34.~~ The Authorities of the Fishing Vessel shall provide a report of the investigation to the Executive Secretary and Authorities of the Inspection Vessel within 2 (two) months of the notification in paragraph 31, and if the evidence warrants, take enforcement action against the fishing vessel in question and notify the Authorities of the Inspection Vessel, as well as the Executive Secretary of any such enforcement action within 6 (six) months of the date of notification at paragraph 31. The Executive Secretary shall circulate ~~without delay~~ any report of an investigation by the Authorities of the Fishing Vessel and any notification of enforcement action against the fishing vessel to ~~all CCPs~~ the Meeting of the Parties.

~~34-35.~~ In the case of paragraph 32(b) above, if the Authorities of the Inspection Vessel decide to undertake

Commented [GS30]: We recognize that the use of force and the carriage of arms are sensitive issues. One CP has queried whether it might be appropriate to include guidance in the measure on the circumstances in which it is appropriate to use different types of arms – for example, by stipulating that the use of pepper spray should be considered before a firearm is used.

While we agree with the idea behind this suggestion, in our view it is already a feature of the proposal. The restrictions on the use of force in paragraph 27 limit the degree of force that may be used to the degree of force that is reasonably required in the circumstances. Accordingly, if pepper spray is all that is 'reasonably required in the circumstances', then the use of a firearm would not be permitted.

The suggested sentence would make it especially clear that these restrictions on the use of force apply to the use of arms.

Commented [GS31]: This change has been suggested so as to not impose undue restrictions on the format in which the relevant data is collected and presented.

Commented [GS32]: This clause has been moved to make it clear that the 3 day time limit applies to the initial response from the Authorities of the Fishing Vessel, rather than being a timeframe within which the ES must circulate such response.

an investigation, Contracting Parties shall ensure that the specific evidence collected by the Authorised Inspectors, along with the results of any investigation, is provided to the Authorities of the Fishing Vessel and the Executive Secretary immediately upon completion of the investigation and in any case no later than 6 (six) months after the date of the inspection. The Executive Secretary shall circulate without delay the results of any investigation to all CCPs ~~the Meeting of the Parties~~.

~~35.36.~~ Notwithstanding paragraphs 32-35, any Contracting Party may request that the relevant authorities of a CCP investigate an alleged serious violation within the meaning of paragraph 37. Consistent with obligations in Articles 10(4) and 11(3) of the Agreement, the Contracting Party making such a request shall provide the relevant authorities of the nationals or fishing vessel concerned with ~~include~~ all relevant information in relation to the alleged serious violation ~~to the relevant authorities of the fishing vessel or nationals in the request~~. When such a request is made, CCPs shall provide a reply, including details of any action taken or proposed to be taken in relation to the alleged serious violation, to all Contracting Parties as soon as practicable and in any case within two (2) months of such a request. When the investigation is completed, the relevant CCP shall also provide a report on the outcome of the investigation to the Executive Secretary for circulation to all CCPs for consideration at the next ~~the~~ Meeting of the Parties.

~~36.37.~~ For the purposes of this measure, a serious violation includes the following violations of the provisions of the Agreement or CMMs:

~~e.a.~~ fishing without a valid license, permit or authorisation issued by the Authorities of the Fishing Vessel, in accordance with Article 11(2) of the Agreement, or failure to produce a valid license, permit or authorisation when requested by an Authorised Inspector;

~~f.b.~~ failure to maintain records of effort, catch and catch-related data in accordance with SIOFA's reporting requirements or significant misreporting of such effort, catch and/or catch-related data;

~~g.c.~~ fishing in a closed area, if established by the Meeting of the Parties;

~~h.d.~~ fishing during a closed season, if established by the Meeting of the Parties;

~~i.e.~~ intentionally taking or retaining a species in contravention of any applicable CMM;

~~j.f.~~ significant violation of effort and/or catch limits or quotas in force

~~k.g.~~ using prohibited fishing gear;

~~l.h.~~ falsifying, intentionally concealing or intentionally removing the markings, identity and/or registration of a fishing vessel;

~~m.i.~~ concealing, tampering with or disposing of evidence relating to an investigation being carried out under this measure, including the intentional breaking of seals or intentionally gaining access to sealed areas;

~~n.j.~~ failing to carry, or intentionally tampering with or disabling ~~interfering with the operation of~~, the satellite monitoring system (VMS);

~~o.k.~~ presentation of falsified documents or intentionally providing false information to an Authorised Inspector that would prevent a serious infringement from being detected;

~~p.l.~~ multiple violations which taken together constitute a serious disregard of CMMs;

Commented [GS33]: REV1 – changes made to avoid the use of the term 'authorities of the fishing vessel', when the reference here is intended to be broader, encompassing authorities of nationals and fishing vessels.

Commented [GS34]: REV1 – correction to paragraph numbering

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Commented [GS35]: REV1 – Several changes to this paragraph have been suggested to clarify that it is intentional acts that constitute a serious violation

Commented [GS36]: REV1 – See comment on para 37(h).

Commented [GS37]: REV1 – It has been suggested that 'interfering with the operation of' was not sufficiently clear.

Commented [GS38]: REV1 – See comment on para 37(h). Suggest that it is not necessary to similarly qualify 'presentation of falsified documents' with 'intentional' because the term 'falsified' already indicates a deliberate intent.

~~4.m.~~ refusal to accept or facilitate a safe and prompt boarding and inspection when directed by an Authorised Inspector, other than as provided in accordance with paragraph 26;

~~4.n.~~ assaulting, resisting, intimidating, sexually harassing, interfering with, or unduly obstructing or delaying an Authorised Inspector;

~~4.o.~~ breaching observer safety requirements after such requirements have been formally adopted by the Meeting of the Parties; and

~~4.p.~~ such other violations as may be determined by the Meeting of the Parties, once these are included and circulated in a revised version of this measure, or specified as a serious violation in any measure adopted by the Meeting of the Parties.

Enforcement

~~37-38.~~ Any evidence obtained as a result of a boarding and inspection under this measure with respect to a violation of the Agreement or CMMs by a fishing vessel shall be referred to the Authorities of the Fishing Vessel for action consistent with the provisions of Article 11 of the Agreement.

~~38-39.~~ For the purposes of this measure, each CCP shall ensure that it can effectively respond to any interference by a fishing vessel flying its flag, or its master or crew, with an Authorised Inspector, or an Authorised Inspection Vessel.

Annual reports

~~39-40.~~ Contracting Parties that authorise inspection vessels to operate under this measure shall report annually to the Meeting of the Parties through its implementation report required under Article 10(2) [or under CMM 2019/XX (the new CMS measure)] on the boarding and inspections carried out by its Authorised Inspection Vessels, as well as upon possible violations observed.

~~40-41.~~ Consistent with the obligation in Article 10(2), CCPs shall include in their implementation reports actions that they have taken in response to boarding and inspections that resulted in observation of alleged violations in relation to fishing vessels flying their flag or their nationals, including any proceedings instituted and sanctions applied.

Provisions relating to non-CCPs

~~41-42.~~ Authorised Inspection Vessels, while carrying out activities in accordance with this measure, shall aim to identify unauthorised or unidentified vessels of non-CCPs that are fishing in the Agreement Area. Contracting Parties shall report any such vessels to the Executive Secretary for notification to the Meeting of the Parties.

~~42-43.~~ Contracting Parties shall ensure that an Authorised Inspection Vessel attempts to inform any fishing vessel identified pursuant to paragraph 42 that it has been seen or identified as potentially engaging in fishing that undermines the effectiveness of the Agreement or CMMs. Contracting Parties shall ensure that this information is sent to the Executive Secretary for distribution to the Meeting of the Parties, as well as to the authorities of ~~the fishing vessel of~~ the relevant non-CCP.

~~43-44.~~ The Authorised Inspectors may request permission from the fishing vessel to board a vessel identified pursuant to paragraph 42. If the vessel master or the authorities 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 the Meeting of the Parties, as well as to the authorities of the relevant non-CCP.

Commented [GS39]: REV1 – Change suggested to avoid any confusion arising from a reference to the 'authorities of the fishing vessel' which is defined to mean the authorities of a vessel flying the flag of a CCP but which here, was intended to refer specifically to the authorities of non-CCPs.

Claims for damage

~~44-45.~~ To the extent permissible under international law, any claim submitted for damage, injury, death or loss resulting from an operation carried out under this measure shall be considered by the Contracting Party 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 Contracting Party.

Commented [GS40]: This is a claims provision the effect of which would be to provide that claims for loss/damage associated with a HSBI operation should be considered by the respondent in accordance with the respondent's domestic laws.

Meeting of the Parties coordination, oversight and review

~~45-46.~~ Contracting Parties shall 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 activities and/or information relevant to carrying out their responsibilities under these procedures.

~~46-47.~~ The Executive Secretary shall by 2021 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, inspection vessel, gear type, species, the CMM related to any potential violations found during the boarding, and the penalty or sanction imposed as the result of any investigation, where applicable.

~~47-48.~~ The Meeting of the Parties shall keep under continuous review the implementation and operation of this measure, including review of implementation reports relating to this measure provided by CCPs and the implementation of paragraphs 27-28bis.

Settlement of disagreements

~~48-49.~~ In the event of a disagreement concerning the application or implementation of this measure between two or more CCPs (the CCPs), the CCPs concerned shall consult in an attempt to resolve the disagreement.

~~49-50.~~ If the disagreement remains unresolved following the consultations, the Executive Secretary shall, at the joint request of the CCPs, refer the disagreement to the next meeting of the Compliance Committee. The Compliance Committee shall establish a panel of five representatives, acceptable to the CCPs, to consider the matter.

~~50-51.~~ A report on the disagreement, including recommendations for the resolution of the disagreement, shall be drawn up by the panel, provided to the CCPs, and forwarded through the Chairperson of the Compliance Committee to the Executive Secretary for distribution to the Meeting of the Parties within two months of the Compliance Committee meeting at which the matter is reviewed.

Commented [GS41]: This change has been suggested to make it clear that the panel is to recommend ways of resolving the disagreement.

~~51-52.~~ Upon receipt of such report, the Meeting of the Parties may provide appropriate advice with respect to any such disagreement for the consideration of the CCPs.

~~52-53.~~ Application of these provisions for the settlement of disagreements, including with respect to the Compliance Committee panel reports and any advice provided by the Meeting of the Parties, shall be non-binding. These provisions shall not prejudice the rights of any Contracting Party or participating fishing entity to use the dispute settlement procedures provided in Article 20 of the Agreement.

ANNEX 1 - Boarding and Inspection Reporting Form

**REPORT OF HIGH SEAS BOARDING
AND INSPECTION**

(Inspector: Please use BLOCK CAPITAL LETTERS)

Note to master of the vessel to be inspected

In accordance with paragraphs 5-8 of CMM 2019/xx High Seas Boarding and Inspection Procedures in the Southern Indian Ocean Fisheries Agreement (SIOFA), the Authorised Inspectors have the authority to inspect, collect and record information on a fishing vessel in the Agreement Area, its license, gear, equipment, catch and production records, facilities, fishery resources and any relevant documents and samples necessary to verify compliance with SIOFA Conservation and Management Measures (CMMs) and the Agreement. The inspection will be to check your compliance with SIOFA's CMMs. The Authorised Inspector is authorised to examine, sample, measure and photograph the vessel's gear, catch, logbook or other relevant documents. The information provided during the course of this inspection will be made available to the SIOFA Executive Secretary and your flag State. Should an alleged infringement be detected contents from this report may be circulated to SIOFA Contracting Parties, cooperating non-Contracting Parties, participating fishing entities and/or cooperating nonparticipating fishing entities. All information, data and samples contained in this report will be handled in accordance with the SIOFA policy and procedures on confidentiality of data of CMM 2016/03 (Data Confidentiality).

1. AUTHORISED INSPECTOR(S)

Name

Nationality

1.		
2.		
3.		

2. INFORMATION ON VESSEL INSPECTED

Vessel's name and registration number	
Country and port of registration	
International radio call sign	
Type of vessel (fishing, research)	

Tonnage (GRT or GT)	
Number of Crew	
Master's name	
Owner's name and address	

3. DESCRIPTION OF ACTIVITY IN WHICH THE FISHING VESSEL WAS ENGAGED

Vessel Activity When Sighted:	Vessel Activity When Boarded:

Vessel Activity - (Steaming, setting gear, hauling gear, towing gear, stationary, transshipping, other (specify))

4. DETAILS OF INSPECTION

4. a Observations of the master and Authorised Inspector regarding the position of the vessel at time of boarding:

	Date (DD /MM/ YYYY)	Time UTC	Latitude		Longitude		Equipment used in determining position, <i>e.g.</i> GPS
			Deg.	Min.	Deg.	Min.	
Master							
Inspector							

4. b Type of fishing gear in current or recent use (e.g. bottom trawl, midwater travel, longlining, traps)	
4. c Target species	

5. CATCHES RETAINED ON BOARD FROM LOGBOOK

5. a Quantities recorded by the master

MoP6-PropXX

SPECIES (common name/scientific name/FAO 3-Alpha code)	DECLARED LIVE WEIGHT ON BOARD (kgs)	Where available, DECLARED PROCESSED WEIGHT ONBOARD (kgs)	PROCESSING Type	CONVERSION FACTOR (live weight / processed weight)
TOTAL				

⁵ Difference between the quantities on board as determined by the Authorised Inspector and the total quantities on board as compared by the master.

Delegations are asked to complete the fields highlighted in **YELLOW**

6. COMPLIANCE WITH CURRENT CMMs

6.a Current CMMs applicable, in the opinion of the Authorised Inspector, to this fishery:

Reference CMM /Paragraph	Summary Title
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11	
12	

6. b Authorised Inspector's opinion on whether or not the CMMs outlined in paragraph 6.a above were complied with.

NB: An entry of NO must be followed by a statement by the Authorised Inspector. The master may also make a statement but is not obliged to do so.

Delegations are asked to complete the fields highlighted in **YELLOW**

Reference CMM /Paragraph	Compliant (Yes/No)	Seals affixed (serial number)	Comments
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Delegations are asked to complete the fields highlighted in **YELLOW**

8.			
9.			
10.			

Evidence and/or samples collected from vessel

Evidence / Sample Type	Purpose	Number	Comments
<i>(example) - muscle tissue</i>	<i>DNA - species identification</i>	<i>20</i>	<i>Master claims species is alfonsino</i>

6.c Authorised Inspector's Statement

7. COMPLETION OF INSPECTION

Date

Time of departure (UTC)

6.d Master's Statement

Delegations are asked to complete the fields highlighted in **YELLOW**

Name of Authorised Inspector in charge	Signature of Authorised Inspector in charge

Name of second Authorised Inspector	Signature of second Authorised Inspector

Acknowledgment and receipt of report:

I, the undersigned, Master of the vessel....., hereby confirm that a copy of this report has been delivered to me on this date. I acknowledge being informed about any alleged infringements and any seals to secure evidence that are listed in the table set out in paragraph 6.b above. My signature does not otherwise necessarily constitute acceptance of any part of the contents of this report.

Date and Time

Name of Master

Signature of Master