

INTER-AMERICAN TROPICAL TUNA COMMISSION**90TH MEETING**

La Jolla (USA)
27 June – 1 July 2016

PROPOSAL IATTC-90 H-1 Rev.1**SUBMITTED BY THE UNITED STATES****RESOLUTION ON BOARDING AND INSPECTION PROCEDURES****EXPLANATORY MEMORANDUM**

Rationale: The Commission relies upon a number of monitoring, control, and surveillance activities to effectively manage fishing vessels in the Convention Area. High Seas Boarding and Inspection (HSBI) schemes are recognized as playing a critical role in ensuring effective enforcement of RFMO resolutions, a level playing field for participants, and sustainable fishing practices. Ensuring compliance with IATTC resolutions and recommendations is essential for the effective functioning of the Commission. The Commission has the opportunity to build upon the precedents and best practices set by other RFMOs that have established HSBI schemes.

The Inter-American Tropical Tuna Commission (IATTC):

Recalling that Article VIII of the Antigua Convention provides that the Commission shall promote the application of any relevant provision of the Code of Conduct and of other relevant international instruments including, *inter alia*, the International Plans of Action (IPOAs) adopted by the FAO in the framework of the Code of Conduct;

Recognizing that paragraph 28.7, among others, of the FAO IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing provides that States should cooperate in monitoring, control and surveillance, including through international agreements;

Further Recognizing paragraph 80.8 in the FAO IPOA IUU, described above, pertains to Regional Fisheries Management Organizations (RFMOs) and recommends that States consider the development within an RFMO, where appropriate, of boarding and inspection regimes consistent with international law, recognizing the rights and obligations of masters and inspection officers;

Taking into account that IUU fishing activities in the Convention Area undermine the effectiveness of IATTC resolutions, and high seas boarding and inspection programs have been recognized by the international community as an important tool for combating IUU fishing;

Committed to a level playing field for IATTC Members and Cooperating Non-Members and sustainable fishing practices in the eastern Pacific Ocean;

Considering that other regional tuna fisheries organizations and other regional fisheries management organizations in the Pacific have adopted High Seas Boarding and Inspection schemes, the Commission has the opportunity to build on these efforts;

Further considering that two RFMOs that have overlapping Convention Areas with IATTC, the Western and Central Pacific Fisheries Commission (WCPFC) and South Pacific Regional Fisheries Management Organization (SPRFMO), have High Seas Boarding and Inspection schemes;

Understanding that consistency between the WCPFC and the IATTC is useful for measures such as High Seas Boarding and Inspection, and that this Resolution strives for consistency with the WCPFC Conservation and Management Measure 2006-08;

Agrees that:

DEFINITIONS

1. For the purposes of interpreting and implementing these procedures, the following definitions shall apply:
 - a. “Convention” means the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission, and the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention).
 - b. “Commission” means the Commission established by the Convention, commonly known as the Inter-American Tropical Tuna Commission (IATTC);
 - c. “Member” means a member of the Commission as defined in Articles I (para. 7) and XXXI (para. 5). With regard to fishing entities that are Members of the Commission, paragraph 5 of this resolution shall apply.
 - d. “Party” means High Contracting Party to the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission, and Party to the Antigua Convention.
 - e. “Authorities of the Inspection Vessel” means the authorities of the Member of the Commission under whose jurisdiction the inspection vessel is operating;
 - f. “Authorities of the Fishing Vessel” means the authorities of the Member of the Commission under whose jurisdiction the fishing vessel is operating;
 - g. “Authorized inspection vessel” means any vessel included in the Commission

Register as authorized to engage in boarding and inspection activities pursuant to these procedures;

- h. “Authorized inspector” means inspectors employed by the authorities responsible for boarding and inspection included in the Commission Register and authorized to conduct boarding and inspection activities pursuant to these procedures.

PURPOSE

2. Boarding and inspection and related activities conducted pursuant to these procedures shall be for the purpose of ensuring compliance with the provisions of the Convention and any resolution adopted by the Commission and in force.

AREA OF APPLICATION

3. These procedures shall apply on the high seas within the Convention Area.

GENERAL RIGHTS AND OBLIGATIONS

4. Each Member of the Commission may, subject to the provisions of these procedures, carry out boarding and inspection on the high seas of fishing vessels engaged in or reported to have engaged in a fishery regulated pursuant to the Convention.
5. Unless otherwise decided by the Commission, these procedures shall also apply in their entirety as between a Party and a Fishing Entity that is a Member of the Commission, subject to a notification to that effect to the Commission from the Party concerned.
6. Each Member of the Commission shall ensure that vessels flying its flag accept boarding and inspection by authorized inspectors in accordance with these procedures. Such authorized inspectors shall comply with these procedures in the conduct of any such activities.

GENERAL PRINCIPLES

7. These procedures 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 resolutions, including inspection activities carried out by the authorities of Members of the Commission in respect of their own flag vessels.

8. While not limiting efforts to ensure compliance by all vessels, priority for boarding and inspection efforts pursuant to these procedures may be given to:
 - a. fishing vessels that are not on the IATTC Regional Vessel Register;
 - b. fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any IATTC resolution adopted thereunder;
 - c. fishing vessels whose flag Member does not dispatch patrol vessels to the area of application to monitor its own fishing vessels;
 - d. fishing vessels without observers on board;
 - e. large-scale tuna fishing vessels;
 - f. fishing vessels with a known history of violating any conservation and management measure adopted by international agreement or any country's national laws and regulations.
9. The Commission shall keep the implementation of these procedures under review.

PARTICIPATION

10. The Commission shall maintain a register of all authorized inspection vessels and authorities or inspectors. Only vessels and authorities or inspectors listed on the Commission's register are authorized under these procedures to board and inspect foreign-flagged fishing vessels on the high seas within the Convention Area.
11. Each Member that intends to carry out boarding and inspection activities pursuant to these procedures shall so notify the Commission, through the Executive Director, and shall provide the following:
 - a. with respect to each inspection vessel it assigns to boarding and inspection activities under these procedures:
 - i. details of the vessel (name, description, photograph, registration number, port of registry (and, if different from the port of registry, port marked on the vessel hull), international radio call sign and communication capability);
 - ii. notification that the inspection vessel is clearly marked and identifiable as being on government service;
 - iii. notification that the crew has received and completed training in carrying

out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission.

- b. with respect to inspectors it assigns pursuant to these procedures:
 - i. the names of the authorities responsible for boarding and inspection;
 - ii. notification that such authorities' inspectors are fully familiar with the fishing activities to be inspected and the provisions of the Convention and resolutions in force; and
 - iii. notification that such authorities' inspectors have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission.
- 12. 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 authorized for this purpose under national laws, and that such inspectors meet the requirements established in these procedures.
- 13. Authorized inspection vessels and inspectors notified by Members of the Commission pursuant to paragraph 11 shall be included on the Commission Register once the Executive Director confirms that they meet the requirements of that paragraph.
- 14. To enhance the effectiveness of the Commission's boarding and inspection procedures, and to maximize the use of trained inspectors, Members of the Commission may identify opportunities to place authorized inspectors on inspection vessels of another Member of the Commission. Where appropriate, Members of the Commission 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 Director shall ensure that the register of authorized inspection vessels and authorities or inspectors is at all times available to all Members of the Commission and shall immediately circulate any changes therein. Updated lists shall be posted on the Commission website. Each Member of the Commission shall take necessary measures to ensure that these lists are circulated to each of its fishing vessels operating in the Convention Area.

PROCEDURES

- 16. Authorized inspection vessels shall fly, in clearly visible fashion, the IATTC inspection flag as designed by the Commission.
- 17. Authorized inspectors shall carry an identity card approved by appropriate authorities of the

inspection vessel identifying the inspector as authorized to carry out boarding and inspection procedures under the auspices of the Commission and in accordance with these procedures.

18. An authorized inspection vessel that intends to board and inspect a fishing vessel on the high seas that is engaged in or reported to have engaged in a fishery regulated pursuant to the Convention shall, prior to initiating the boarding and inspection:
 - a. make best efforts to establish contact with the fishing vessel by radio, by the appropriate International Code of Signals or by other accepted means of alerting the vessel;
 - b. provide the information to identify itself as an authorized inspection vessel - name, registration number, international radio call sign and contact frequency;
 - c. communicate to the master of the vessel its intention to board and inspect the vessel under the authority of the Commission and pursuant to these procedures; and
 - d. initiate notice through the authorities of the inspection vessel of the boarding and inspection to the authorities of the fishing vessel.
19. In carrying out boarding and inspection pursuant to these procedures, the authorized inspection vessel and authorized inspectors shall make their best efforts to communicate with the master of the fishing vessels in a language that the master can understand. If necessary to facilitate communications between the inspectors and the master of the vessel, the inspectors shall use the relevant part of the standardized multi-language questionnaire to be prepared by the Secretariat and circulated to all Members of the Commission 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 any relevant documents necessary to verify compliance with the resolutions in force pursuant to the Convention.
21. Boarding and inspection pursuant to these procedures 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 not to interfere unduly with the lawful operation of the fishing vessel;
 - c. take reasonable care to avoid action that would adversely affect the quality of the catch; and

- d. not be conducted in such manner as to constitute harassment of a fishing vessel, its officers or crew.

22. In the conduct of a boarding and inspection, the authorized inspectors shall:

- a. present their identity card to the master of the vessel and a copy of the text of the relevant measures in force pursuant to the Convention in the relevant area of the high seas;
- b. not interfere with the master's ability to communicate with the authorities of the fishing vessel;
- c. complete the inspection of the vessel within 4 (four) hours unless evidence of a serious violation, as defined in paragraph 35 below, is found;
- d. collect and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention;
- e. provide to the master prior to leaving the vessel a copy of an interim report on the boarding and inspection including any objection or statement which the master wishes to include in the report;
- f. promptly leave the vessel following completion of the inspection; and
- g. provide a full report on the boarding and inspection to the authorities of the fishing vessel, pursuant to paragraph 28, 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 vessel pursuant to these procedures;
- d. not assault, resist, intimidate, interfere with, or unduly obstruct or delay the inspectors in the performance of their duties;
- e. allow the inspectors to communicate with the crew of the inspection vessel, the authorities of the inspection vessel, as well as with the authorities of the fishing vessel being inspected;

- f. provide them with reasonable facilities, including, where appropriate, food 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 these procedures, such master shall offer an explanation of the reason for such refusal. The authorities of the inspection vessel shall immediately notify the authorities of the fishing vessel, as well as the Commission, of the master's refusal and any explanation.
25. The authorities of the fishing vessel, unless generally accepted international regulations, procedures and practices relating to safety at sea make it necessary to delay the boarding and inspection, shall direct the master to accept the boarding and inspection. If the master does not comply with such direction, the Member shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The Member shall immediately notify the authorities of the inspection vessel and the Commission of the action it has taken in these circumstances.

USE OF FORCE

26. The use of force shall be avoided 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.
27. Any incident involving the use of force shall be immediately reported to the authorities of the fishing vessel, as well as to the Commission.

INSPECTION REPORTS

28. Authorized inspectors shall prepare a full report on each boarding and inspection they carry out pursuant to these procedures in accordance with a format that may be specified by the Commission. The authorities of the inspection vessel from which the boarding and inspection was carried out shall transmit a copy of the boarding and inspection report to the authorities of the fishing vessel being inspected, as well as the Commission, within 3 (three) full working days of the completion of the boarding and inspection. Where it is not possible for the authorities of the inspection vessel to provide such report to the authorities of the fishing vessel within this timeframe, the authorities of the inspection vessel shall inform the authorities of the fishing vessel and shall specify the time period within which the report will be provided.
29. Such report shall include the names and authority of the inspectors and clearly identify any observed activity or condition that the authorized inspectors believe to be a violation

of the Convention or resolutions in force and indicate the nature of specific factual evidence of such violation.

SERIOUS VIOLATIONS

30. In the case of any boarding and inspection of a fishing vessel during which the authorized inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 35, the authorities of the inspection vessels shall immediately notify the authorities of the fishing vessel, directly as well as through the Commission.
31. Upon receipt of a notification under paragraph 30, the authorities of the fishing vessels shall without delay:
 - a. assume their obligation to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the authorities of the inspection vessel, as well as the Commission; or
 - b. authorize the authorities of the inspection vessel to complete investigation of the possible violation and so notify the Commission.
32. In the case of 31(a) above, the authorities of the inspection vessel shall provide, as soon as practicable, the specific evidence collected by the authorized inspectors to the authorities of the fishing vessel.
33. In the case of 31(b) above, the authorities of the inspection vessel shall provide the specific evidence collected by the authorized inspectors, along with the results of their investigation, to the authorities of the fishing vessel immediately upon completion of the investigation.
34. Upon receipt of a notification pursuant to paragraph 30, the authorities of the fishing vessel shall make a best effort to respond without delay and in any case no later than within 3 (three) full working days.
35. For the purposes of these procedures, a serious violation means the following violations of the provisions of the Convention or resolutions adopted by the Commission:
 - a. fishing without a license, permit or authorization issued by the flag Member, in accordance with Resolution C-14-01;
 - b. failure to maintain sufficient records of catch and catch-related data in accordance with the Commission's reporting requirements or significant misreporting of such catch and/or catch-related data;

- c. fishing in a closed area;
- d. fishing during a closed season;
- e. intentional taking or retention of species in contravention of any applicable resolution adopted by the Commission;
- f. significant violation of catch limits or quotas in force pursuant to the Convention;
- g. using prohibited fishing gear;
- h. falsifying or intentionally concealing the markings, identity or registration of a fishing vessel;
- i. concealing, tampering with or disposing of evidence relating to investigation of a violation;
- j. multiple violations which taken together constitute a serious disregard of measures in force pursuant to the Commission;
- k. refusal to accept a boarding and inspection, other than as provided in paragraphs 24 and 25;
- l. assaulting, resisting, intimidating, sexually harassing, interfering with, or unduly obstructing or delaying an authorized inspector;
- m. intentionally tampering with or disabling the vessel monitoring system; or
- n. such other violations as may be determined by the Commission, once these are included and circulated in a revised version of these procedures.

ENFORCEMENT

36. Any evidence obtained as a result of a boarding and inspection pursuant to these procedures with respect to violation by a fishing vessel of the Convention or resolution adopted by the Commission and in force shall be referred to the authorities of the fishing vessel for action in accordance with Article XVIII and Article XIX of the Antigua Convention as well as Resolution C-11-07.
37. For the purposes of these procedures, the authorities of the fishing vessels shall regard interference by their fishing vessels, captains or crew with an authorized inspector or an authorized inspection vessel in the same manner as any such interference occurring within its exclusive jurisdiction.

ANNUAL REPORTS

38. Members of the Commission that authorize inspection vessels to operate under these procedures shall report annually to the Commission on the boarding and inspections carried out by its authorized inspection vessels, as well as upon possible violations observed. The reports shall be provided to the Commission at least 30 days prior to the IATTC Annual Meeting.
39. Members of the Commission shall include in their annual statement of compliance within their Annual Report to the Commission under Resolution C-11-07 of the Convention action that they have taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations, including any proceedings instituted and sanctions applied.

OTHER PROVISIONS

40. Authorized inspection vessels, while carrying out activities to implement these procedures, shall engage in surveillance aimed at identifying fishing vessels of non-Members undertaking fishing activities on the high seas in the Convention area. Any such vessels identified shall be immediately reported to the Commission.
41. The authorized inspection vessel shall attempt to inform any fishing vessel identified pursuant to paragraph 40 that it has been sighted or identified as engaging in fishing activities that are undermining the effectiveness of Convention and that this information will be distributed to the Members of the Commission 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 40. 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 Director. The Executive Director shall distribute this information to all Commission Members as well as to the flag State of the fishing vessel.
43. Any claim submitted for damage, injury, death or loss resulting from an operation carried out under these procedures shall be processed and considered by the Member whose official(s) are asserted by the claimant to be responsible for the acts or omissions out of which the claim arises, in accordance with the domestic laws of that Member.

COMMISSION COORDINATION AND OVERSIGHT

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 these procedures.

45. The Commission shall keep under continuous review the implementation and operation of these procedures, including review of annual reports relating to these procedures provided by Members. In applying these procedures, Members of the Commission may seek to promote optimum use of the authorized inspection vessels and authorized inspectors by:
- a. identifying priorities by area and/or by fishery for boarding and inspections pursuant to these procedures;
 - b. ensuring that boarding and inspection on the high seas is fully integrated with the other monitoring, compliance and surveillance tools available pursuant to the Convention;
 - c. 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 Members of the Commission 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 these procedures, the parties concerned shall consult in an attempt to resolve the disagreement.
47. If the disagreement remains unresolved following the consultations, the Executive Director of the Commission shall, at the request of the parties concerned, and with the consent of Commission, refer the disagreement to the Committee for the Review of Implementation of Measures Adopted by the Commission (Compliance Committee). The Compliance Committee shall establish a panel of five representatives, acceptable to the parties to the disagreement, to consider the matter.
48. A report on the disagreement shall be drawn up by the panel and forwarded through the Compliance Committee Chair to the Commission within two months of the Compliance Committee 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 Convention.

51. This Resolution shall enter into force 1 January 2018.