High Seas Boarding and Inspection Schemes



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Introduction

Regional fisheries management organisations (RFMOs) are responsible for overseeing many commercial fisheries in more than 95% of the world's ocean. Managers must be able to track data on catch and vessel activity to ensure that fishing is sustainable and compliant with applicable rules. But such monitoring is difficult when vessels operate far from shore, beyond the jurisdiction of national authorities. High Seas Boarding and Inspection (HSBI) schemes play a critical role in ensuring effective enforcement of RFMO measures, promoting a level playing field for all those operating on the high seas, and reducing threats to sustainability.

Because of the nature of boarding on the high seas, there is a risk that only certain countries may have the platforms to deliver these inspections, and it is thus important that such schemes are collectively discussed, designed, agreed, and deployed through a formalised procedure rather than on an ad hoc basis.

The first section of this brief provides an introduction to HSBI schemes also in relation to international law and summarises key benefits of such schemes. The second section, building upon the precedents and best practices set by other RFMOs, presents an indicative step-by-step guide on how HSBI schemes work.

Benefits of RFMO HSBI schemes

1. Enhanced compliance: Enabling and facilitating the deployment of authorised inspectors to board and inspect vessels on the high seas, these schemes enhance monitoring and enforcement, helping to ensure that fishing activities adhere to agreed-upon rules. They provide an effective mechanism and platform for real-time monitoring of fishing activities. This deters IUU fishing, promotes accountability, encourages transparency, and fosters cooperation among CPCs, decisively contributing to the long-term goals of the RFMO.

2. Inclusively designed tailored framework: By jointly setting the rules, operational guidelines and capacity-building opportunities, RFMO HSBI schemes can be specifically designed for the Convention Area and the RFMO's needs. This way, they can focus on addressing the unique challenges and requirements of the region and the specific relevant measures agreed to at the RFMOs.

3. Pooling of resources: This enhances the optimal use of what are often scarce and expensive resources, enabling more effective enforcement and deployments, particularly for States who currently lack the technical means to undertake such operations on the high seas. This leads to a broader coverage of the Convention area, accurate data collection, and increased compliance with conservation and management measures.

4. Strengthened cooperation: RFMO HSBI schemes can build cooperative procedures among members, including the placement of authorised inspectors on vessels from other member States through shiprider[1] agreements. This brings a precious added value to States who might currently have more limited means by allowing them to project their enforcement jurisdiction much further and in a cost-effective manner.

5. Comprehensive training: The scheme can include detailed provisions for the training and designation of authorised inspectors, ensuring that inspections are conducted by well-trained personnel and in accordance with jointly agreed standards. These training sessions should be inclusive by design, ensuring that they are made available to and facilitate the participation of interested CPCs, particularly those in need of capacity development.

6. Clearer guidelines: RFMO HSBI measures can provide more specific, detailed and jointly agreed guidelines for boarding and inspection activities, reducing ambiguities and ensuring consistent application across the Convention Area.

7. Regular updates: RFMO HSBI schemes can be subject to regular review and updates, allowing them to adapt to emerging challenges and incorporate best practices. This ensures that the boarding and inspection regime remains effective, relevant and tailored to the evolving needs of the CPCs.

Compatibility with international law and other instruments

1. HSBIs are codified in international law including within the UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (FSA). The latter explicitly directs in Article 21 that "*States shall establish, through RFMOs, procedures for boarding and inspection*" in any high seas area covered by an RFMO.

2. Notably, in the absence of a regional boarding and inspection scheme, Parties to the UN Fish Stocks Agreement are authorised under Article 21 to conduct boarding and inspection operations in the high seas on vessels whether or not such State Party is also a member of the RFMO in question or a participant in the HSBI arrangement, provided the State Party is a signatory to the UNFSA. In other words, in RFMOs without an established HSBI scheme, CPCs are allowed by international law to conduct such operations on their own, as a last resort after all efforts to establish a scheme have been exhausted. But such actions shall be limited to other Parties to the UNFSA.

3. More recent instruments, such as the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), provide that States should cooperate in monitoring, control and surveillance, including through international agreements and call on CPCs to develop boarding and inspection regimes to apply in RFMO convention areas.

1. An agreement where a maritime law enforcement official of one Party is authorised to embark ("ride") on a law enforcement vessel of another Party in order to facilitate the first Party to enforce its laws within its waters and/or onboard its flagged vessels.



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4. Similarly, the FAO Compliance Agreement calls for Parties to enter into cooperative agreements or arrangements, including at regional level, to promote the objectives of the Agreement.

5. Restrictions on the use of force

- The strictly limited use of force is a standard operating procedure in boarding and inspection schemes and a legal obligation for the protection of inspectors, when needed. As such, most RFMOs include relevant provisions in their HSBI schemes.

- The UN Fish Stocks Agreement in Article 22 on the Basic Procedure for Boarding and Inspection specifies in paragraph (f) that [The inspecting State shall ensure that its duly authorised 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 language in the proposed ICCAT HSBI recommendation is taken directly from the UN FSA. Identical text is also found in WCPFC, SIOFA and NPFC.

- In practice, these clauses are rarely invoked and, when they are, it is usually post-boarding and defensive in nature, to ensure the health and safety of already-boarded inspectors when facing highly aggressive situations. Some RFMOs mandate immediate reporting of such instances, when they occur.

- The above is highlighted in the HSBI measures of several RFMOs. As an example, SPRFMO mandates that "Only when the personal safety of the Authorised Inspectors whose authorisation has been duly verified is endangered or their normal inspecting activities are obstructed by the threat of violence by masters or crew members of the fishing vessel under inspection, may the inspectors take appropriate compulsory measures necessary to stop such threat of violence. Any force by the Authorised Inspectors will be only the force necessary to stop the threat of violence that was raised."

Existing HSBI schemes in other RFMOs

HSBI schemes are not new in the RFMO context, and, in many cases, there is a clear overlap between the membership of RFMOs with such schemes and ICCAT's membership.

- **1987** - CCAMLR adopted a System of Inspection in accordance with the Convention Chapter XXIV
- **1998** - NAFO adopted Chapter VI on joint international inspection schemes with Article 34 since 2012 including Boarding and Inspection Procedures
- **2006** - WCPFC adopted CMM 2006-08 on boarding and inspection procedures
- NPFC has had a High Seas Boarding and Inspection Implementation Plan since 2017 (latest CMM 2024-09)
- **2019** - SIOFA established a high seas scheme (latest version is CMM 2021/14)
- **2019** - NEAFC adopted a Scheme of Control and Enforcement (Chapter IV, Inspections at Sea)
- **2023** - SPRFMO adopted High Seas Boarding and Inspection Procedures in 2023 (CMM 11-2023)

Prior to this, the procedures were explicitly based on articles 21 and 22 of the UN FSA (CMM 11-2015)

ICCAT's boarding and inspection initiatives

ICCAT allows for two regional HSBI schemes, for Eastern Atlantic and Mediterranean bluefin tuna (Rec 21-08) and for Mediterranean swordfish (Rec. 16-05). Through these and other pilot projects, ICCAT CPCs have experience in data analysis, hosting port calls, exchanging observers and deploying shipriders – using their sovereign authorities while on patrol vessels of other countries (e.g. through Res. 19-17). However, this patchwork approach creates inconsistencies and enforcement gaps in the ICCAT area, further highlighting the need for a convention-wide HSBI scheme.

Indicative step-by-step guide on how HSBI schemes work

Preliminary tasks to be completed at the RFMO level:

1. Develop a prioritisation list of high seas boarding and inspection operations. These should include at a minimum:

- Vessels not in the authorised vessels list but which are flagged to a CPC
- Vessels reasonably believed to have engaged in activity in contravention of CMMs
- Vessels without observers
- Vessels with a history of non-compliance
- Vessels on an IUU vessel list
- Stateless vessels
- Specific fleet segments/gears based on a risk analysis

2. CPC Cooperation Agreements: CPCs to identify opportunities to place authorised inspectors on inspection vessels of another CPC. Where appropriate, bilateral or multilateral arrangements to this effect should be prioritised. Increased collaboration helps build enforcement capacity through information sharing, workshops, field exercises, training, joint patrols and cooperation at operational level. These procedures are implemented in a transparent, inclusive, uniform and non-discriminatory manner, taking into account observers onboard vessels, results of past inspections and inspection activities carried out by CPCs on their own flagged vessels.

3. Establish a register of all authorised inspection vessels and authorities or inspectors which is kept up to date and made available to CPCs at all times.

4. Secretariat tasked to receive pre-boarding notifications and post-inspection reporting.

5. Annual reporting of implementation of the high seas boarding and inspection schemes, including cases that may be forwarded to compliance committee reviews.

Step-by-step approach to an HSBI event

Step 1: CPCs provide advance notification to the Commission of their intent to conduct boarding and inspection operations in the Convention area and submit a list of authorised inspection vessels and agencies to the Commission. The Commission will maintain a registry of authorised inspection vessels and authorities provided by CPCs. Boarding and inspection operations can begin after the Commission circulates the updated registry to CPCs. The registry will include the following information:

- Vessel: details (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, vessel status with clear marking that the vessel is in government service.
- Crew: confirmation that the crew has received relevant training in accordance with adopted standards and procedures.
- Inspecting authority: the authorised agency/authority responsible for boarding and inspection, and confirmation by said authority that the deployed inspectors have received proper training and are familiar with applicable active CMMs.
- In case of military vessels: boarding and inspection is carried out by inspectors fully trained in fisheries enforcement procedures, and duly authorised for this purpose under national laws, and that such inspectors meet the requirements established in these procedures.

Step 2: Vessels and inspectors carry clear identification, including an inspection flag, pennant, badges, vests etc.

Step 3: Inspecting party to make best effort to establish contact with vessel to be inspected, fully identify themselves, communicate their intentions to the vessel's master and issue a notice through the national authority of the inspection vessel to the authorities of the fishing vessel.

Step 4: Communicate during the inspection in a language the vessel master understands. Otherwise, use the relevant part of the RFMO-endorsed standardised multi-language questionnaire.

Step 5: Inspection of vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance.

Step 6: Inspectors prepare a full report on each boarding and inspection carried out and submit it to the authorities of the inspected vessel and to the Secretariat within the agreed period. These reports can then be discussed at preparatory bodies, ahead of the Compliance Committee meeting, to enable CPCs to express their views on the findings. A vessel refusing to accept an authorised inspection is usually considered a serious infringement with potential consequences. These vary depending on the RFMO and may include suspension of the vessel's authorisation to fish, the immediate return to port and/or other sanctions.