



39th ANNUAL MEETING OF NAFO - SEPTEMBER 2017

Amendment to the NAFO CEM Chapter VII - Port State Control

Background

Following the discussions at the 2016 annual meeting in Varadero (Cuba), measures should be considered by NAFO to address the repeat non-compliance of serious infringements in the NAFO Regulatory Area. Such measures should also seek to enhance the efficiency and follow-up of port inspections by the flag and port state Contracting Parties.

It is proposed to modify Chapter VII of the NAFO CEM in order to clarify and/or reinforce NAFO rules related to the following items:

- cross reference between the infringements detected at sea, when confirmed in port
- clarity on procedures to follow in case of infringement
- access rights to inspection reports within the NAFO MCS website

The proposal attached highlights the new provisions suggested to address the issues above. The text also proposes a new editorial flow to enhance clarity and efficiency of the provisions concerned.

This proposal was first considered at the STACTIC intersession meeting held in Boston on May 2017. The intersessional version has subsequently been amended to address Contracting Parties comments. Remaining comments have been responded by the EU in this enclosed version.



Proposal

CHAPTER VII PORT STATE CONTROL

Article 42 - Scope

Subject to the right of the port State Contracting Party to impose requirements of its own under domestic laws and regulations for entry or denial to its ports, the provisions in this Chapter apply to landings, transshipments or use of ports of Contracting Parties by fishing vessels entitled to fly the flag of another Contracting Party, conducting fishing activities in the Regulatory Area. The provisions apply to fish caught in the Regulatory Area, or fish products originating from such fish, that have not been previously landed or transhipped at a port.

This Chapter also sets out the respective duties of the flag State Contracting Party and obligations of the master of fishing vessels requesting entry to a port of a Contracting Party.

This Chapter shall be:

- (a) interpreted in a manner consistent with international law, including the right of port access in case of force majeure; and
- (b) applied in a fair and transparent manner.

All inspection and investigation reports and associated images or evidence, and forms referred to in this Chapter shall be treated as confidential, [in accordance with Annex II.B]

Article 43 - Duties of the Port State Contracting Party

Designated ports, prior request periods and contact points

1. The port State Contracting Party shall post to the NAFO MCS Website, in PDF format, a list of designated ports to which fishing vessels may be permitted entry for the purpose of landing, transshipment and/or provision of port services, and shall to the greatest extent possible ensure that each designated port has sufficient capacity to conduct inspections pursuant to this Chapter. Any subsequent changes to the list shall be posted in replacement of the previous one no less than fifteen days before the change comes into effect.
2. The port State Contracting Party shall establish a minimum prior request period. The prior request period should be 3 working days before the estimated time of arrival. However, the port State Contracting Party may make provisions for another prior request period, taking into account, inter alia, catch product type or the distance between fishing grounds and its ports. The port State Contracting Party shall post the prior request period to the NAFO MCS Website, in PDF format.
3. The port State Contracting Party shall designate the competent authority which shall act as the contact point for the purposes of receiving requests in accordance with Article 45 (1, 2 and/or 3), receiving confirmations in accordance with Article 44.2 and issuing authorizations in accordance with paragraph 6. The port State Contracting Party shall post to the NAFO MCS Website, in PDF format, the competent authority name and its contact information.

4. The requirements contained in paragraphs 1, 2 and 3 do not apply to a Contracting Party that does not permit landings, transhipments, or use of ports by vessels entitled to fly the flag of another Contracting Party.

Procedure to allow port entrance

5. The port State Contracting Party shall forward a copy of the form as referred to in Article 45 (1 and 2) without delay to the flag State Contracting Party of the vessel and to the flag State Contracting Party of donor vessels where the vessel has engaged in transhipment operations.
6. Fishing vessels may not enter port without prior authorization by the competent authorities of the port State Contracting Party. Authorization to land or tranship shall only be given if the confirmation from the flag State Contracting Party as referred to in Article 44.2 has been received.
7. By way of derogation from paragraph 6 the port State Contracting Party may authorize all or part of a landing in the absence of the confirmation referred to in paragraph 6. In such cases the fish concerned shall be kept in storage under the control of the competent authorities. The fish shall only be released to be sold, taken over, produced or transported once the confirmation referred to in paragraph 6 has been received. If the confirmation has not been received within 14 days of the landing the port State Contracting Party may confiscate and dispose of the fish in accordance with national rules.
8. The port State Contracting Party shall without delay notify the master of the fishing vessel of its decision on whether to authorize or deny the port entry, or if the vessel is in port, the landing, transhipment and other use of port. If the vessel entry is authorized the port State returns to the master a copy of the form PSC 1 or 2 with Part C duly completed. This copy shall also be posted to the NAFO MCS Website, in PDF format, without delay. In case of a denial the port state shall also notify the flag State Contracting Party.
9. In case of cancellation of the prior request referred to in Article 45, paragraph 2, the port State Contracting Party shall post a copy of the cancelled PSC 1 or 2 to the NAFO MCS Website, in PDF format, for automatic transmission to the flag State Contracting Party.

Inspection of vessels in port

10. Unless otherwise required in a recovery plan, the port State Contracting Party shall carry out inspections of at least 15 % of all such landing or transhipments during each reporting year.
In determining which vessels to inspect, port state Contracting Parties shall give priority to:
 - (a) vessels that have been denied entry or use of a port in accordance with this Chapter or any other provision of the CEM; and
 - (b) requests from other Contracting Parties, States or RFMOs that a particular vessel be inspected.
11. Inspections shall be conducted in accordance with the procedures set out in Annex IV.H by authorized Contracting Party inspectors who shall present documents of identity to the master of the vessel prior to the inspection.

12. The port State Contracting Party may invite inspectors of other Contracting Parties to accompany their own inspectors and observe the inspection.
13. An inspection of a landing or transshipment in port shall involve the monitoring of the entire landing or transshipment of fishery resources in that port, as applicable. During any such inspection, the port State Contracting Party shall, at a minimum:
 - (a) cross-check against the quantities of each species landed or transhipped,
 - (i) the quantities by species recorded in the logbook;
 - (ii) catch and activity reports; and
 - (iii) all information on catches provided in the prior notification (PSC 1 or 2);
 - (b) verify and record the quantities by species of catch remaining on board upon completion of landing or transshipment;
 - (c) verify any information from inspections carried out in accordance with Chapter VI;
 - (d) verify all nets on board and record mesh size measurements
 - (e) verify fish size for compliance with minimum size requirements;
14. The port State Contracting Party shall make all possible effort to communicate with the master or the senior crew members of the vessel, as well as with the observer, including where possible and where needed, that the inspector is accompanied by an interpreter.
15. The port State Contracting Party shall make all possible efforts to avoid unduly delaying the fishing vessel and ensure that the vessel suffers the minimum interference and inconvenience and that unnecessary degradation of the quality of the fish is avoided.
16. Each inspection shall be documented by completing form PSC 3 (port State Control inspection form) as set out in Annex IV.C. The process for completion and handling of the PSC3 report shall include the following:
 - (a) the inspectors shall identify and provide details of any infringement to the CEM detected during the port inspection. Details shall include all relevant information available in reference to infringements detected at sea during the current trip of the inspected fishing vessel;
 - (b) the inspectors may insert any comments they consider relevant;
 - (c) the master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag State in particular where the master has serious difficulties in understanding the content of the report;
 - (d) the inspectors shall sign the report and request that the Master sign the report. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report;
 - (e) the master of the vessel shall be provided with a copy of the report containing the result of the inspection, including possible measures that could be taken.
17. The port State Contracting Party shall without delay post a copy of each port State Control inspection report to the NAFO MCS Website, in PDF format, for automatic transmission to the flag

State Contracting Party and to the flag State of any vessel that transhipped catch to the inspected fishing vessel.

Article 44 - Duties of the Flag State Contracting Party

1. The flag State Contracting Party shall ensure that the master of any fishing vessel entitled to fly its flag complies with the obligations relating to masters set out in Article 45.
2. The flag State Contracting Party of a fishing vessel intending to land or tranship, or where the vessel has engaged in transshipment operations outside a port, the flag State Contracting Party or parties, shall confirm by returning a copy of the form, PSC 1 or 2, transmitted in accordance with Article 43.5 with part B duly completed, stating that:
 - (a) the fishing vessel declared to have caught the fish had sufficient quota for the species declared;
 - (b) the declared quantity of fish on board has been duly reported by species and taken into account for the calculation of any catch or effort limitations that may be applicable;
 - (c) the fishing vessel declared to have caught the fish had authorization to fish in the areas declared; and
 - (d) the presence of the vessel in the area in which it has declared to have taken its catch has been verified by VMS data.
3. The flag State Contracting Party shall post on the NAFO MCS website in PDF format the contact information of the competent authority, which shall act as the contact point for the purposes of receiving requests in accordance with Article 43.5 and providing confirmation in accordance with Article 43.6.

Article 45 - Obligations of the Master of a Fishing Vessel

1. The master or the agent of any fishing vessel intending to enter port shall forward the request for entry to the competent authorities of the port State Contracting Party within the request period referred to in Article 43.2. Such request shall be accompanied by the form provided for in Annex II.L with Part A duly completed as follows:
 - (a) Form PSC 1, as referred to in Annex II.L.A shall be used where the vessel is carrying, landing or transshipping its own catch; and
 - (b) Form PSC 2, as referred to in Annex II.L.B, shall be used where the vessel has engaged in transshipment operations. A separate form shall be used for each donor vessel.
 - (c) Both forms PSC 1 and PSC 2 shall be completed in cases where a vessel carries, lands or transships its own catch and catch that was received through transshipment.
2. A master or Agent may cancel a prior request by notifying the competent authorities of the port they intended to use. The request shall be accompanied by a copy of the original PSC 1 or 2 with the word "cancelled" written across it.

3. The master of a fishing vessel shall:
 - (a) co-operate with and assist in the inspection of the fishing vessel conducted in accordance with these procedures and shall not obstruct, intimidate or interfere with the port State inspectors in the performance of their duties;
 - (b) provide access to any areas, decks, rooms, catch, nets or other gear or equipment, and provide any relevant information which the port State inspectors request including copies of any relevant documents.

Article 46 - Duties of the Executive Secretary

1. The Executive Secretary ensures that the following information is automatically made available to all Contracting Parties:
 - (a) the list of designated ports and any changes thereto;
 - (b) the prior request periods established by each port State Contracting Party;
 - (c) the information about the designated competent authorities in each flag State Contracting Party; and
 - (d) copies of all PSC 1 and 2 forms transmitted by port State Contracting Parties.
2. The Executive Secretary ensures that the port inspection reports referred to in Article 43.16 (PSC 3 form) are automatically made available
 - (a) To the flag State Contracting Party of the inspected vessel;
 - (b) to any other Contracting Party; and
 - (c) to the flag State of any vessel that transhipped catch to the inspected fishing vessel.
3. All forms related to a specific landing or transhipment shall be posted together.

Article 47 - Infringements Detected During In-Port Inspections

1. Where an infringement is detected during an inspection of a vessel in port, the relevant provisions of Articles 37 to 40 shall apply

Annex IV.H

Principles for Inspections

Inspectors shall:

- (a) verify, to the extent possible, that the vessel identification documentation on board and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag State or international records of vessels if necessary;
- (b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organization (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
- (c) review all other relevant documentation and records held onboard, including, to the extent possible, those in electronic format and vessel monitoring system (VMS) data from the flag State or RFMOs. Relevant documentation may include logbooks, catch, transshipment and trade documents, data collected by the observer on board, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- (d) verify, to the extent possible, that the authorizations for fishing activities are true, complete, correct and consistent with the information provided in accordance with the CEM provisions including, but not limited to, Articles 25, 44, 45 and 51;
- (e) determine, to the extent possible, whether any fishery resources on board were harvested in accordance with applicable authorizations for the vessel;
- (f) examine any fishery resources on board the vessel, including by sampling, to determine its quantity and composition. In doing so, inspectors may open containers where the fishery resources have been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;
- (g) examine, to the extent possible, all relevant fishing gear onboard, including any gear stowed out of sight as well as related devices, and to the extent possible, verify that they are in conformity with the conditions of the authorizations. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorized for the vessel;
- (h) evaluate whether there is clear evidence for believing that a non-Contracting Party vessel has engaged in IUU fishing activities; and
- (i) arrange, where necessary and possible, for translation of relevant documentation.

Additionally, inspections shall be conducted in a fair, transparent and non-discriminatory manner and shall not constitute harassment of any vessel. Inspectors shall not interfere with the Master's ability to communicate with the authorities of the flag State Contracting Party.

Article 10 – Greenland Halibut

Control Measures

5. The following measures apply to vessels 24 meters or greater in overall length engaged in the Greenland halibut fishery in Subarea 2 and Divisions 3KLMNO:
 - (a) Each Contracting Party shall allocate its quota for Greenland halibut among its authorized vessels.
 - (b) An authorized vessel shall land its Greenland halibut catch only in a designated port. To this end, each Contracting Party shall designate one or more ports in its territory where authorized vessels may land Greenland halibut.
 - (c) Each Contracting Party shall post to the NAFO MCS Website, in PDF format, the name of every port it has so designated. Any subsequent changes to the list shall be posted in replacement of the previous one no less than fifteen days before the change comes into effect;
 - (d) At least 48 hours before its estimated time of arrival in port, an authorized vessel or its representative on its behalf, shall advise the competent port authority of its estimated time of arrival, the estimated quantity of Greenland halibut retained onboard, and information on the division or divisions where the catches were taken.
 - (e) Each Contracting Party shall inspect each landing of Greenland halibut in its ports and prepare an inspection report in the format prescribed in Annex IV.C, which it posts to the NAFO MCS Website, in PDF format, within 14 working days from the date on which the inspection was completed. The PSC3 report shall identify and provide details of any infringement to the CEM detected during the port inspection. It shall include all relevant information available in reference to infringements detected at sea during the current trip of the inspected fishing vessel.

6. The following procedures apply with respect to authorized vessels with more than 50 tonnes live weight total catch on board taken outside the Regulatory Area entering the Regulatory Area to fish for Greenland halibut:
 - (a) the master shall notify the Executive Secretary by e-mail or fax, at the latest 72 hours prior to the vessel's entry into the Regulatory Area, of the amount of catch on board, the position by latitude and longitude where the master intends to commence fishing, the estimated time of arrival at the position, and contact information for the fishing vessel (e.g., radio, satellite phone or email).
 - (b) An inspection vessel that intends to inspect a fishing vessel before it begins fishing for Greenland halibut shall notify that fishing vessel and the Executive Secretary of the coordinates of a designated inspection point that is no more than 60 nautical miles from the position where the master estimates that the vessel will commence fishing and shall inform other inspection vessels that may be operating in the Regulatory Area accordingly.
 - (c) A fishing vessel notified in accordance with paragraph (b) shall proceed to the designated inspection point.
 - (d) Until inspected in accordance with this Article, a fishing vessel may not begin fishing unless
 - (i) it receives no notification within 72 hours of the notification it has transmitted in accordance with subparagraph 6(a), or

- (ii) within 3 hours of its arrival at the designated inspection point, the inspection vessel has not begun the intended inspection
- 7. The Contracting Parties shall prohibit landings of Greenland halibut from non-Contracting Party vessels that have engaged in fishing activities in the Regulatory Area.