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Consistent Approach to Address Serious Infringements Detected At Sea and In Port

Introduction:

At the May 2014 STACTIC Intersessional Meeting, the Secretariat presented a summary of serious and non-serious infringements recorded during 2013, including those detected during at-sea and in-port inspections. The Secretariat noted that there was not a clear distinction between serious and non-serious infringements, and that some apparent infringements were not adequately covered in Article 47. Further, the Secretariat indicated that the process for how to record apparent infringements detected by port inspectors, especially non-serious infringements, is not clear in the current NAFO Conservation and Enforcement Measures (CEM).

The United States recognizes that differentiating serious and non-serious infringements in the CEM can be an effective deterrent to non-compliance, especially the follow-up procedures and implications for further inspection associated with the detection of a serious infringement. The United States also believes that detecting, recording, and disseminating infringements are critical components of the control regime established by NAFO.

To address the concerns noted by the Secretariat, the United States proposes several revisions to Articles 38 and 47 of the CEM. These revisions are intended to consolidate all serious infringements under Article 38, and to clarify in Article 47 that serious infringements detected during in-port inspections should be handled consistent with the process for addressing serious infringements detected at sea.

The United States is not proposing any additional changes to improve the process by which infringements detected in port are recorded and submitted, noting that Article 43.14 and the associated Port State Control Inspection Report (PSC-3 form) specified in Annex IV.C provide adequate opportunity to record both serious and non-serious infringements detected in port.

Proposed Changes to Existing CEMs:

1. Move the serious infringements outlined in Article 47(b)¹ – (d) to Article 38.1(p) – (r) as follows:

List of Serious Infringements

1. Each of the following violations constitutes a serious infringement::
 - (a) fishing an “Others” quota without prior notification to the Executive Secretary contrary to Article 5;
 - (b) fishing an “Others” quota more than seven working days following closure by the Executive Secretary contrary to Article 5;
 - (c) directed fishing for a stock which is subject to a moratorium, or for which fishing is otherwise prohibited, contrary to Article 6;
 - (d) directed fishing for stocks or species after the date of closure by the flag State Contracting Party notified to the Executive Secretary contrary to Article 5;
 - (e) fishing in a closed area, contrary to Article 9.6 and Article 11;
 - (f) fishing with a bottom fishing gear in an area closed to bottom fishing activities, contrary to Chapter II;
 - (g) using an unauthorized mesh size contrary to Article 13;
 - (h) fishing without a valid authorization issued by the flag State Contracting Party contrary to Article 25;
 - (i) mis-recording of catches contrary to Article 28;
 - (j) failing to carry or interfering with the operation of the satellite monitoring system contrary to Article 29;
 - (k) failure to communicate messages related to catch contrary to Article 10.6 or Article 28;
 - (l) obstructing, intimidating, interfering with or otherwise preventing inspectors or observers from performing their duties;
 - (m) committing an infringement where there is no observer on board;
 - (n) concealing, tampering with or disposing of evidence related to an investigation, including the breaking or tampering of seals or gaining access to sealed areas;
 - (o) presentation of falsified documents or providing false information to an inspector that would prevent a serious infringement from being detected;
 - (p) landing or transshipping in a port not designated in accordance with the provisions of Article 43.1;
 - (q) failure to comply with the provisions of Article 45.1; and
 - (r) landing or transshipping without authorization of the port State as referred to in Article 43.6.

2. Revise the title of Article 47 to read:

“Serious Infringements Detected During In-Port Inspections”

¹ The type of infringement identified in Article 47(a) is already included in the list of serious infringements under Article 38.1(l).

3. Reorder, revise, and number the paragraphs under Article 47 to read:

1. The provisions in Articles 39 and 40 shall apply to any serious infringements listed in Article 38 detected during in-port inspections.
2. Serious infringements detected during in-port inspections shall be followed up in accordance with domestic law.