

**REPORT OF THE STANDING COMMITTEE
ON OBSERVATION AND INSPECTION
(SCOI)**

THE REPORT OF THE STANDING COMMITTEE ON OBSERVATION AND INSPECTION

In accordance with the recommendation of the Sixth Meeting of the Commission (paragraph 99), the Commission established a Standing Committee on Observation and Inspection. It met under the Chairmanship of the United States (Mr R. Arnaudo).

Observation and Inspection

2. The Committee, taking into account paragraphs 94 to 98 of the Report of the Sixth Meeting of the Commission, elaborated on these paragraphs and recommended that the Commission adopt the following provisions pursuant to Article XXIV of the Convention to verify compliance with measures in effect under the Convention:

3. Observation and Inspection System

I. Each Member of the Commission may designate observers and inspectors referred to in Article XXIV of the Convention.

- (a) Designated observers and inspectors shall be familiar with the fishing and scientific research activities to be observed and inspected and the provisions of the Convention and measures adopted under it.
- (b) Members shall certify the qualifications of each observer and inspector they designate.
- (c) Observers and inspectors shall be nationals of the Contracting Party which designates them and, while carrying out observation and inspection activities, shall be subject solely to the jurisdiction of that Contracting Party.
- (d) Observers and inspectors shall be able to communicate in the language of the Flag State of the vessels on which they carry out their activities.
- (e) Observers and inspectors shall be accorded the status of ship's officer while on board such vessels.

- (f) Names of designated observers and inspectors shall be communicated to the Commission by 1 May each year. Designations shall remain valid until July 1 of the following year.
- II. The Commission shall maintain a register of certified observers and inspectors designated by Members.
- (a) The Commission shall communicate the register of observers and inspectors to each Contracting Party by 31 May each year.
- III. In order to verify compliance with measures adopted under the Convention, observers and inspectors designated by Members shall be entitled to carry out observation and inspection activities on board vessels engaged in scientific research or harvesting of marine living resources in the area to which the Convention applies.
- (a) Observation and inspection may be carried out by designated observers and inspectors from vessels of the designating states.
- (b) Ships carrying observers or inspectors shall carry a special flag or pennant approved by the Commission to indicate that the observers or inspectors on board are carrying out observation and inspection duties in accordance with this system.
- (c) Such observers and inspectors may also be placed on board vessels, with the schedule of embarkation and disembarkation of observers and inspectors subject to arrangements to be concluded between the designating State and the Flag State.
- IV. Each Contracting Party shall provide to the Commission by 1 May each year a list of all of its flag vessels intending to harvest marine living resources in the Convention Area during the year beginning 1 July. Such list shall include:
- name of vessel;
 - call sign of the vessel registered by appropriate authorities of the flag state;
 - home port and nationality of vessel;

- owner or charterer of vessel;
 - notification that the master of the vessel has been informed of the measures in force for the area or areas where the vessel will be harvesting marine living resources in the Convention Area.
- (a) The Commission shall communicate to all Parties by 31 May each year a consolidated list of all such vessels. The list shall also include the names of research vessels contained in the Register of Permanent Research Vessels compiled in accordance with paragraph 60 of the Report of the Fifth Meeting of the Commission.
 - (b) Each Contracting Party shall also notify the Commission as soon as possible of any of its flag vessels added to or deleted from the list during an ongoing fishing season. The Commission shall promptly communicate this information to the other Contracting Parties.

V.

- (a) Any vessel present in the Convention Area for the purpose of harvesting or conducting scientific research on marine living resources shall, when given the appropriate signal in the International Code of Signals by a ship carrying an observer or inspector (as signified by flying the flag or pennant referred above), stop or take such other actions as necessary to facilitate the safe and prompt transfer of the observer or inspector to the vessel, unless the vessel is actively engaged in harvesting operations, in which case it shall do so as soon as practicable.
- (b) The master of the vessel shall permit the observer or inspector, who may be accompanied by appropriate assistants, to board the vessel.

VI. Observers and inspectors shall have the authority to observe and inspect catch, nets and other fishing gear as well as harvesting and scientific research activities, and shall have access to records and reports of catch and location data insofar as necessary to carry out their functions.

- (a) Each observer and inspector shall carry an identity document issued by the designating State in a form approved or provided by the Commission stating that the observer or inspector has been designated to carry out observation and inspection in accordance with this system.

- (b) On boarding a vessel, an observer or inspector shall present the document described in VI (a) above.
- (c) The observation and inspection shall be carried out so that the vessel is subject to the minimum interference and inconvenience. Inquiries shall be limited to the ascertainment of facts in relation to compliance with the Commission measures in effect for the Flag State concerned.
- (d) Observers and inspectors may take photographs as necessary to document any alleged violation of Commission measures in effect. Duplicate photographs shall be taken, one of which shall be attached to the notice of alleged violations provided to the vessel master in accordance with paragraph VIII below.
- (e) Observers and inspectors shall affix an identification mark approved by the Commission to any net or other fishing gear which appears to have been used in contravention to conservation measures in effect and shall record this fact in the reports and notification referenced in paragraph VIII below.
- (f) Observers and inspectors shall be provided appropriate assistance by the master of the vessel in carrying out their duties, including access as necessary to communications equipment.

VII. If a vessel refuses to stop or otherwise facilitate transfer of an observer or inspector, or if the master or crew of a vessel interferes with the authorised activities of an observer or inspector, the observer or inspector involved shall prepare a detailed report, including a full description of all the circumstances and provide the report to the designating State to be transmitted in accordance with the relevant provisions of paragraphs VIII and IX.

- (a) Interference with an observer or inspector or failure to comply with reasonable requests made by an observer or inspector in the performance of his duties shall be treated by the Flag State as if the observer or inspector were an observer or inspector of that State.
- (b) The Flag State shall report on actions taken under this paragraph in accordance with paragraph X below.

VIII. Observers and inspectors shall prepare detailed reports on their observation and inspection activities. These reports shall be provided to the designating Member which shall in turn report to the Commission.

(a) Before leaving vessels that have been observed and inspected, the observer or inspector shall give the master of the vessel a Certification of Inspection and a written notification of any alleged violations of Commission measures in effect and shall afford the master opportunity to comment in writing on any such notification;

(b) The ship's master shall sign the notification to acknowledge receipt and the opportunity to comment on it.

IX. Reports referred to in paragraph VIII shall be provided to the Flag State and the Flag State shall be afforded the opportunity to comment on them prior to their consideration by the Commission.

X. If, as a result of observation and inspection activities carried out in accordance with these provisions, there is evidence of violation of measures adopted under the Convention, the Flag State shall take steps to prosecute and, if necessary, impose sanctions. The Flag State shall report any such prosecutions and sanctions to the Commission.

4. The Committee noted that failure to comply with conservation measures adopted under the Convention might also be observed by scientists, fishermen and others who have not been designated observers or inspectors in accordance with the system of observation and inspection described above. Such observations could raise matters pertaining to Article X as well as Article XXIV of the Convention. It was therefore agreed that Contracting Parties should be requested to transmit information concerning such observations to the Commission for consideration.

5. The Committee recalled, as had been pointed out in paragraph 98 of the Report of the Sixth Meeting of the Commission, that the terms 'inspector' and 'observer' are used interchangeably in Article XXIV of the Convention. In this context, the Committee also recalled, as has been noted earlier, that the purpose of the system of observation and inspection elaborated in paragraph 3 above is to verify compliance with measures adopted under the Convention. In future discussions, it was agreed that the distinction, if any, between the terms 'observer' and 'inspector' should be clarified.

6. Several delegations noted that steps should be taken at the next meeting of this Committee to begin elaborating a system of scientific observation to facilitate acquisition of information needed to better understand and to more effectively model and manage harvesting of marine living resources in the Convention Area.

7. With regard to the previous point, the Japanese delegation expressed the view that inspectors designated for the purpose of compliance monitoring should be suitably qualified fishery control or law enforcement agents of the designating party and that scientific observation should be carried out by scientific personnel on board research vessels. Other delegations took the view that it would be inappropriate both to require that compliance monitoring be done exclusively by fishery control or law enforcement agents and that scientific observation should be carried out only on board scientific research vessels. These delegations expressed the view that it should be the right of the designating party to designate any person familiar with the harvesting or scientific research activities to be observed and inspected, in accordance with paragraph I (b) of the system, and that effective implementation of the Convention may well require placement of scientific observers on harvesting as well as research vessels.

8. The delegation from Japan also noted that the term ‘assistant’ in paragraph V (b) of the system presumably refers to interpreters and witnesses which accompany designated observers and inspectors and that the size of such ‘inspection teams’ could pose a burden to the boarded vessel. It was agreed that the need to define this term should be reviewed at a future meeting of this Committee.

9. Lastly, the delegation from Japan expressed the need for the observer or inspector, when requesting access to communications equipment as necessary to carry out observation and inspection duties as provided under paragraph VI (f) of the system, to appreciate the need for sensitivity with regard to the location of the vessel and the proprietary nature of this information.

10. The delegation from Poland noted that it might be difficult for Contracting Parties to provide a complete and accurate list of all of its flag vessels intending to harvest marine living resources in the Convention Area during the year by 1 May, as required by paragraph 4 of the system, although information could be provided on the number of vessels and the statistical area(s) where they intend to fish. The Committee agreed that under the provisions of paragraph IV of the system, Contracting Parties could notify the Commission of additions or deletions to the list during an ongoing fishing season.

11. In further discussion of paragraph IV of the system, the delegation of the Federal Republic of Germany noted that it would be desirable for vessels intending to engage in harvesting of marine

living resources in the Convention Area to notify the Commission of their dates of arrival in and departure from the Convention Area, and to specify the statistical area(s) in which they plan to conduct and have conducted these harvesting activities.

12. It was agreed that with regard to paragraph VII (a) of the system, it would be useful if Contracting Parties would provide the Commission with applicable domestic laws and regulations governing the performance and requirements of their observers and inspectors.

Costs

13. The Committee discussed the question of costs in carrying out observation and inspection activities, drawing upon paragraphs 100 to 103 of the Report of the Sixth Meeting. Several delegations re-emphasised that the full cost of carrying out the resulting observation and inspection activities should be covered by the designating states, in accordance with certain existing international fisheries agreements. There was general agreement that in the initial stages of implementing this system of observation and inspection, costs of providing for observers and inspectors were likely to be borne by designating states. However, several delegations noted the possible need to consider alternative means of cost-sharing in the future to ensure adequate and representative coverage of all harvesting in the Convention Area as the system evolves. It was noted that the question of costs needed further study.

14. There was a brief discussion of liability for injury, death and compensation for unanticipated economic loss in connection with observation and inspection. Due to lack of time, the Committee did not enter into an in-depth consideration of the matter. It was noted, however, that in the absence of specific arrangements, the matter would need to be dealt with in accordance with existing international practice. It was further noted that in the case of observers and inspectors placed on board vessels for longer periods of time, this matter could be arranged between the designating state and the Flag State of the vessel.

Future Steps

15. Since the provisions of the system of observation and inspection elaborated in paragraph 3 above could be implemented as early as the 1989/90 fishing season, the Committee recommends that the Executive Secretary be asked to review existing international systems of observation and inspection and, based upon this review, prepare and distribute the following to Contracting Parties in advance of the Eighth Meeting of the Commission:

- a proposed design for a flag or pennant to be flown by vessels to indicate that they are carrying observers or inspectors designated by Contracting Parties pursuant to paragraph III (b) above;
- a draft of the Certificate of Inspection and identity documents, and a proposed mark for identifying fishing gear, as provided for in paragraph VI of the system;
- a list of the Commission measures currently in effect;
- a list of observers and inspectors that have been designated by Parties pursuant to paragraph I (f) of the system;
- a list of the vessels which Contracting Parties, in respect to paragraph IV of the system, have advised the Commission are intending to harvest marine living resources in the Convention Area during the 1989/90 season; and
- a description of costs and funding of other international fishery inspection schemes.

16. Recognising that it would be desirable to work towards the standardisation of reporting by observers and inspectors, the Committee also recommends that the Executive Secretary be asked to prepare and distribute in advance of the next Commission meeting, taking into account existing international practice, drafts of:

- (i) a check list that could be used by observers and inspectors to facilitate compliance monitoring;
- (ii) a format for reporting the results of observation and inspection for compliance monitoring;
- (iii) a dictionary of questions and terms, in the languages of Contracting Parties conducting harvesting activities, to assist observers and inspectors in carrying out their duties; and
- (iv) such other information as may be deemed necessary or useful.

Compliance With Conservation Measures in Force Under Article X

17. The delegation of the United Kingdom pointed out that in so far as paragraph 104 of the Report of the Sixth Meeting of the Commission referred to Article X (2) of the Convention, the provisions of that paragraph of the Report ought to be included in the System of Observation and Inspection. Since there was not time to consider this question in detail, it was agreed to defer it for consideration at the next meeting of the Commission. The Committee confirmed its understanding that, pending the outcome of such consideration, the provisions of paragraph 104 will continue to apply.

18. The delegation of the United Kingdom also brought to the attention of the Standing Committee, its report on activities covered by Article X, distributed to Contracting Parties as CCAMLR-VII/BG/8.