

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

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The meeting of the Standing Committee on Observation and Inspection was held from 27 to 29 October 1993 under the chairmanship of Ambassador J. Arvesen (Norway). All Members of the Commission were represented at the meeting. The Observer from Bulgaria, an Acceding State to the CCAMLR Convention, was also represented at the meeting.

2. The following items of the Commission's Agenda Item 6 were referred to the Committee for consideration:

- (i) The System of Inspection;
- (ii) Compliance with Conservation Measures in Force; and
- (iii) Operation of the Scheme of International Scientific Observation.

3. The Chairman suggested that the item "Election of the Chairman of SCOI" also be included in the Committee's Agenda. Ambassador Arvesen has completed his second year as Chairman of SCOI.

4. The Agenda of the Committee, consisting of the four items listed in paragraphs 2 and 3 above, was adopted.

THE SYSTEM OF INSPECTION

5. In accordance with agreed procedure, the Secretariat prepared a summary of inspections conducted in the 1992/93 season (CCAMLR-XI, Annex 5, paragraph 11). This summary was presented as document CCAMLR-XII/12.

6. Only one inspection was reported to the Secretariat during the 1992/93 season. An inspection of the Polish vessel *Lyra*, fishing for krill in Subarea 48.1, was carried out on 3 March 1993 by CCAMLR Inspectors nominated by the USA. The report was distributed to Members together with COMM CIRC 93/33 of 14 July 1993. This report was available in its entirety for consideration by SCOI.

7. No infringements of CCAMLR Conservation Measures were found during this inspection. In presenting the report, the Delegation of the USA noted that the captain of the Polish vessel was very

cooperative and responsive to the Inspectors' questions concerning official CCAMLR business and less formal topics about the vessel's fishing practices. The Delegation of Poland advised the Committee that the crew of the Polish vessel was completely satisfied with the conduct of the inspection.

8. The Delegation of Argentina, supported by the Delegation of Australia, emphasised that the System of Inspection is the key mechanism within the CCAMLR Convention for ensuring compliance with Conservation Measures. The Delegation of Argentina suggested that CCAMLR Members should consider increasing participation in the system and, in particular, covering more extensively those areas where the majority of Conservation Measures are in force.

9. The Committee endorsed this point of view and stressed the desirability that the System of Inspection, which is available to all Members, be used more extensively in order to ensure compliance with Conservation Measures, particularly in those statistical areas where the majority of Conservation Measures are in force.

10. The Secretariat informed the Committee that during the 1992/93 season, 26 CCAMLR Inspectors were designated by six Members. Unfortunately, without additional information on the actual number of Inspectors deployed at sea, duration of their trips and statistical areas covered, it is difficult to judge the level of the inspection effort applied in the CCAMLR Convention Area. Despite the requirement that they do so, Reports of Members' Activities presently submitted to the Commission do not contain this information.

11. The Committee requested Members that, in addition to reporting inspections carried out, information be provided to SCOI about the actual number of Inspectors deployed at sea, duration of their trips and areas covered. This information is essential for assessing the level of inspection effort in the Convention Area.

12. The Delegation of Australia reported that two CCAMLR Inspectors were placed on board its research vessel *Aurora Australis*. No fishing vessels were observed during her voyages in Statistical Area 58 during the 1992/93 season and, consequently, no inspections were carried out.

13. The existing inspection reporting forms provide for the recording of much detailed information. However, the Delegation of the UK suggested that it might be useful to consider adding

details related to specific Conservation Measures applied to particular fisheries. The Delegation of the USA observed that because Conservation Measures may be changed annually, it would be better not to include in reporting forms any references to specific Conservation Measures in force.

14. The Committee decided that the revision of forms for reporting of inspections should be considered in detail at the next meeting of SCOI. The Secretariat was asked to consult with Members during the intersessional period and to prepare a draft proposal. This proposal should explore various ways of improving existing forms and, in particular, of designing forms which might be used to inspect any types of fishing operations.

15. The Committee also considered the status of the Register of Permanent Research vessels in the context of the new Scientific Exemption Provisions adopted at the last meeting of the Commission. These new Provisions consist of Resolution 9/XI and Conservation Measure 47/XI. The System of Inspection contains a specific reference to the Register and to the old 1986 Scientific Exemption Provisions (Article IV(a)).

16. The objective of the Register was to identify permanent research vessels which were exempt from the requirement to report their research plans in accordance with the 1986 Provisions, and to enable CCAMLR Inspectors to be informed of the fact that these vessels are exempt from Conservation Measures regulating commercial fisheries.

17. Having adopted the new Provisions, the Commission decided that at the 1993 Meeting it would be necessary to review the status of the Register of Permanent Research Vessels (CCAMLR-XI, paragraph 9.12). The Committee was asked to advise the Commission on the matter.

18. The Secretariat has prepared a paper reviewing the Status of the Register (CCAMLR-XII/13). The paper suggests that the new Provisions should be revised in order to include an explicit statement about any exemption applicable to permanent research vessels and definitions of all categories of vessels. Three options were identified. The future of the register of Permanent Research Vessels would depend on which option was chosen. Article IV(a) of the System of Inspection should be also amended accordingly.

19. The Scientific Committee had considered this paper and advised the Commission that Option III from CCAMLR-XII/13 would provide the Scientific Committee with the necessary means and sufficient time to consider any proposed fishing for research purposes. Under this Option, the Provisions should not make any distinction between different categories of vessels, and any plans for

research should be notified and provided in the prescribed detail when the estimated catch may exceed 50 tonnes. In this case there is no need to maintain the Register because listing vessels in the Register does not constitute an exemption from Conservation Measures.

20. In discussing the matter, the Committee felt that any suggested changes to the Provisions and related status of the Register should not disadvantage in any way conducting of fish assessment surveys in the Convention Area. The Delegation of Spain pointed out that Option III does not specify what exemptions are applied to those research vessels which intended to catch less than 50 tonnes and how to identify these vessels for inspection purposes.

21. The Committee decided that the Commission should consider adopting a revised version of Option III. According to this revised version, Article IV(a) of the System of Inspection should be amended by deleting a reference to the Register and the 1986 Scientific Exemption Provisions, and by requesting that Members submit a list of vessels intending to conduct fishing for research purposes in addition to the list of vessels intending to undertake harvesting activities. The Committee recommended that the Commission consider amending Conservation Measure 47/XI to specify the exemptions applied to those research vessels intending to catch less than 50 tonnes.

22. In order to provide greater flexibility to the CCAMLR System of Inspection it was considered that the deadline for the designation of Inspectors be changed from the existing date of 1 May to a date which corresponds to the last day of the Commission meeting. The Committee recommended that Article I(f) of the System of Inspection be amended accordingly, and that designations should remain valid until the last day of the Commission meeting in the following year.

COMPLIANCE WITH CONSERVATION MEASURES IN FORCE

23. All Conservation Measures were notified to Members on 10 November 1992. There were no objections to any Conservation Measures adopted at the Eleventh Meeting of the Commission and, in accordance with Article IX.6(b) of the Convention, those measures became binding to all Members on 9 May 1993.

24. The Secretariat presented a paper describing the implementation of Conservation Measures in the 1992/93 season (CCAMLR-XII/10). In particular, the paper recommended that in order to improve the accuracy in predicting closure dates of fisheries, Members participating in any fishery

should be requested to submit catch reports for the entire duration of the fishery including periods when no catches were taken, i.e., to report so-called “zero” catches. The Committee approved this recommendation.

25. The Committee considered the requirement of Article XX.3 of the Convention that “Members of the Commission shall provide to the Commission at such intervals as may be prescribed, information on steps taken to implement the Conservation Measures adopted by the Commission”.

26. The Committee recommended to the Commission that the above requirement be brought to the attention of Members. Reports on steps taken to implement Conservation Measures could be presented to SCOI at its annual meetings. The report of the Committee to the Commission will contain a summary of Members’ reports.

27. The Delegation of Chile informed the Committee that on 23 February 1993 the vessel *Frio Sur V*, which carried two Scientific Observers to Subarea 48.4 (see paragraph 37 below) reported possible infringements in Subarea 48.3 by three longline ships (one Russian and two Chilean). Such reports were duly passed on to the Secretariat by the Chilean Department of Foreign Affairs. On this matter, the Delegation of the UK confirmed that the UK had approached the Chilean authorities and the Russian State Committee on Fisheries for explanation. The response from the latter indicated that from the logbook of the sighted Russian vessel, the vessel on 19 March 1993 was outside of the Convention Area. This response did not accord with the evidence of the Scientific Observer which placed the Russian vessel (call sign MN 0309) at position 53°35.8’S and 43°32.7’W, well inside Subarea 48.3.

28. The Delegation of the UK also informed the Committee of an apparent infringement of Conservation Measure 44/XI by the Chilean vessel *Elqui* on 2 March, 1993. The vessel was seen hauling longlines in Subarea 48.3 at position 54°06.7’S and 39°43.7’W. The vessel claimed it was not aware of the closure of the toothfish fishery on 5 February, and that it had a permit to longline in the subarea until April 1993. The Delegation of the UK indicated that it had provided detailed information on this apparent infringement to the Chilean authorities to assist them in taking appropriate actions.

29. The Committee considered the case of the Bulgarian vessel fishing contrary to Conservation Measure 44/XI (as notified to Members in COMM CIRC 93/4). The Committee expressed its disapproval and disappointment that Bulgaria, as an Acceding State, had not complied voluntarily

with this Conservation Measure. The Committee urged that all Acceding States should voluntarily comply with Conservation Measures adopted by the Commission and further urged that any other nations which undertake fishing in the CCAMLR Convention Area, such as Ukraine, be persuaded to accede to the Convention and to apply to become Members of the Commission.

30. The Delegation of Poland noted that, according to information provided in CCAMLR-XII/10, only Japan and Poland reported krill catches from Statistical Area 48 and Division 48.4.2 by month, in compliance with Conservation Measures 32/X, 45/XI and 46/XI. The Delegation of Chile recalled that it had reported its catches of krill taken from 3 to 8 April on 7 May 1993. The Committee confirmed that all Members fishing for krill are required to report catches on a monthly basis in accordance with the Conservation Measures listed above.

31. The Delegation of Chile made a further statement on matters related to the enforcement of Conservation Measures in the Convention Area for longline vessels operating under the flag of Chile. The full text of this statement is appended.

32. The Committee accepted the statement with appreciation and commended the Delegation of Chile for a very candid and sincere approach in considering current problems of enforcing Conservation Measures for the Chilean vessels, in the same way as was done last year (CCAMLR-XI, Annex 5, paragraph 25). The Committee also expressed its hope that Chile would report results of its effort on ensuring full compliance of Chilean vessels with CCAMLR Conservation Measures at the next meeting of SCOI.

33. Some delegations suggested that the following ways of improving enforcement of Conservation Measures be considered by the Committee:

- the reinforcement of the Observation and Inspection Systems considering, among other possibilities, giving in special circumstances the status of Inspectors to Scientific Observers, thus giving legal value to their testimony; and
- the use of automatic positioning systems to better meet the objective of the Convention and improve the reliability of fine-scale data which underlie management decisions.

34. However, the Committee strongly reiterated its previous decisions that the System of Inspection and the Scheme of International Scientific Observation are to be considered as inherently different.

35. The Committee asked the Secretariat to explore during the intersessional period the feasibility of using transponders linked to vessels' Global Positioning System (GPS) which transmit regular identification, date and position of a vessel's location, and prepare a paper, with proposals, including costs and issues of confidentiality of data for the next meeting of SCOI. The Committee recommended that this question be included as a sub-item on the Provisional Agenda of the next meeting of the Commission.

36. The Delegation of Germany informed the Committee on a pilot project on the use of satellite observation methods conducted within the EEC. The Committee noted Chile's decision to place transponders on its vessels and asked that a report of the results of these projects and any other material on the use of transponders by other Members, be made available to the Secretariat.

OPERATION OF THE SCHEME OF INTERNATIONAL SCIENTIFIC OBSERVATION

37. The Scheme of International Scientific Observation was adopted last year by the Commission. The first observation under this Scheme was conducted in accordance with an agreement between Chile and the UK. In accordance with this agreement, a Scientific Observer nominated by the UK together with a Scientific Observer nominated by Chile undertook scientific observations on board the Chilean longliner, *Frio Sur V*, fishing for Patagonian toothfish in Subarea 48.4 (South Sandwich Islands). The report of this observation was presented to the Scientific Committee as SC-CAMLR-XII/BG/4.

38. The Delegations of the UK and Chile described this observation as successful although the amount of fish caught was very small and scientific data collected were relatively sparse. The Government of Chile and, in particular, the fishing company Frioaysen S.A., were commended for their excellent legal and practical arrangements. The Memorandum of Understanding between Chile and the UK on the conduct of this observation was compiled in conformity with the requirements of the Scheme. Copies of this Memorandum were circulated to Members in COMM CIRC 93/17 on 15 April 1993.

39. The Committee suggested that this Memorandum might be used, as appropriate, as a useful example for Members negotiating bilateral agreements for scientific observations.

40. The Delegation of the USA informed the Committee about plans to conduct scientific observation in cooperation with Japan. The Delegation of Japan welcomed the US interest in

such cooperation, however was not certain at this time that it would be possible to finalise a bilateral arrangement in time for the coming fishing season. The implementing arrangement between the USA and Japan, once concluded, will also be provided to the Secretariat.

41. The Committee welcomed the first scientific observation conducted in cooperation between Chile and the UK. The Delegation of New Zealand observed that in order to obtain reliable assessment of incidental mortality of marine birds during longline fishing, the full coverage of ships which participate in this type of fishing, was required and more intensive use of the Scheme recommended. The Delegation of Japan stated that while recognising the merit of using the Scheme more intensively and by covering more statistical areas, it should not be understood as a prerequisite in planning and conducting Members' fishery operations. Furthermore, the delegation recalled the requirement of the Scheme that placing of observers should be implemented only through bilateral arrangements between Members concerned.

42. The Committee stressed the desirability that the Scheme of International Scientific Observation which is available to all Members, should be more extensively used by Members, particularly in statistical areas where most Conservation Measures are in force, with the view of achieving the objectives of the Convention.

43. The pilot version of the *Scientific Observers Manual* was published and distributed to Members. The Scientific Committee decided last year that upon implementation of the Scheme the manual should be tested in the field and be reviewed or updated whenever necessary.

44. In response to a question from the Delegation of New Zealand, the Secretariat confirmed that after the period covered by the pilot edition presently in circulation, the *Scientific Observers Manual* would be published in a ring-bound format so that it can be easily updated.

45. So far only limited experience has been acquired in using the manual in the field. The Working Group on Fish Stock Assessment (WG-FSA) provided some comments on the manual in the light of the scientific observation conducted on board the Chilean longliner (see paragraph 37 above). The Scientific Committee recommended that a new edition of the manual should be considered only after more information about its use becomes available.

46. The Committee was advised by the Chair of SCAF that the Draft Budget for 1994 contained a provision of \$5 200 for the next edition of the *Scientific Observers Manual*, including versions in languages other than English. The Committee decided that in view of the comments in paragraph 45 above, there is no need to retain this item of expenditure in the 1994 Budget.

47. Several delegations recalled the ongoing need to review the Scheme of International Scientific Observation as experience was gained in its operation.

ELECTION OF THE CHAIRMAN OF SCOI

48. In discussing this item, the Committee commended the present Chairman for a very effective way of guiding negotiations and conducting business of the Committee. During the last two years the work of the Committee has resulted in many improvements of the System of Inspection and in the adoption of the Scheme of International Scientific Observation. In this context the Delegation of France asked the Chairman, if he could agree to continue to chair the Committee for some time. This request was seconded by the Delegations of Argentina, Poland and Japan.

49. The Chairman agreed to continue for one more year.

50. The Chairman suggested to the Committee that it might be also useful to consider electing one Vice-Chairman to assist the Chairman. The Committee agreed with this suggestion. Dr W. Figaj (Poland) was nominated by the Delegation of Argentina and seconded by the Delegation of Sweden. The Committee unanimously elected Dr Figaj as Vice-Chairman for the period from the end of this meeting to the end of the Committee meeting in 1995. The Chairman congratulated the new Vice-Chairman on his election.

ADOPTION OF THE REPORT

51. The report of the meeting was adopted.

52. The Chairman thanked Delegates for their cooperation and support during the meeting. The Delegate of the UK, on behalf of the Committee, thanked the Chairman for his careful and skilful guidance throughout the meeting and looked forward to an equally successful meeting of the Committee in 1994.

CONTROL IN CCAMLR AREAS: LONGLINE FLEET WITH CHILEAN FLAG

Statement of the Delegation of Chile

During the Eleventh Meeting of CCAMLR, the Delegation of Chile informed SCOI, and thereby, the Commission, about four infringements of Conservation Measure 35/X which limited the TAC of *Dissostichus eleginoides* at 3 350 tonnes.

The cases involving Chilean vessels have been the subject of legal proceedings, initiated by the Office of the Public Prosecutor of the National Fishing Services (Servicio Nacional de Pesca - SERNAP). However, several legal appeals have hindered such proceedings, thus delaying their outcome. Nevertheless, the Chilean authorities have persisted in their legal action. At the same time, they have approached the legislative branch in order to introduce precise provisions in the Fisheries Law, aimed at facilitating their application to possible legal actions in the future. This illustrates our determination to demand compliance with the international treaties ratified by our country.

CURRENT INFORMATION ON THE SITUATION OF LEGAL PROCEEDINGS
DUE TO INFRINGEMENTS OF CCAMLR'S CONSERVATION MEASURES

Infringements of Conservation Measure 35/X

During the fishing season 1992/1993, the National Fishing Service (SERNAP) initiated three legal proceedings before the courts in Punta Arenas, involving four vessels. To date there have been first instance rulings by the courts in favour of the Chilean authorities, in the cases of the vessels *Antonio Lorenzo*, *María Tamara* and *Elqui*. However, the affected fishing companies have lodged appeals before the Supreme Court, claiming that courts are unqualified to deal with infringements committed in areas outside our exclusive economic zone. Similarly, in one of the cases, SERNAP appealed before the Supreme Court, claiming that one of the courts had declared itself unfit during the first instance ruling.

The following are the details of each of the cases:

- (a) CONCAR Fishing Company, infringement by the FS *Antonio Lorenzo* and *María Tamara*.

The first instance ruling rejected the unfitness plea, confirmed by the Court of Appeal of Punta Arenas. There is an appeal by writ of error before the Appeals Court of Punta Arenas.

- (b) Punta Arenas Fishing Company, infringement by the FS *Chaval*.

The first instance ruling accepted the unfitness plea, SERNAP appealed against this ruling before First Court of Appeal of Punta Arenas.

- (c) Los Andes Fishing Company, infringement by the FS *Elqui*.

In September 1992, the First Court of Appeals of Punta Arenas rejected the protection plea lodged by Los Andes Fishing Company against the National Fishing Service and the Port Authority of Punta Arenas, on the basis that they had acted within the order of reference established by law.

The first instance ruling rejected the unfitness plea, confirmed by the Court of Appeals of Punta Arenas. At present there is an appeal by writ of error before the Supreme Court lodged by the company in question.

It should be pointed out that in every case, all the catch from these vessels was confiscated at the time of their reaching land at Punta Arenas; such catch is awaiting a final ruling from the Court.

On 28 October, oral pleadings were heard by the Supreme Court regarding these cases; after that, the last instance ruling, which will allow the closing of these proceedings, will be made.

Infringements of Conservation Measure 55/XI

The irregular situations which have arisen after the closing of the fishing season 1992/1993 involve four vessels (*Antonio Lorenzo*, *Marazul XI*, *Elqui* and *Mar del Sur II*). In one instance, the incident has been reported to the justice tribunals of Punta Arenas because it was possible to demonstrate that the vessel had been operating outside CCAMLR regulations. In the other cases, there is currently a report being prepared by the Chilean Navy due to the difficulty in preparing a clear statement of facts. Once this report is finished, it will be referred to the courts for the appropriate judicial process.

Similarly, Chile has received requests from the US to investigate situations which refer to sightings of vessels with Chilean flags in the waters of Subarea 48.3. However, it has not been possible to gather clear evidence that such vessels were in fact infringing CCAMLR's Conservation Measures. In all the cases mentioned, inspections were performed with the participation of staff from SERNAP and the Chilean Navy. In the course of these inspections, all fishing and navigation records were confiscated in order to start the relevant reports and legal proceedings.