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ABSTRACT

High Seas Boarding and inspection (HSBI) procedures are governed by international law which mainly on the Agreement for Implementation of UNCLOS related to the Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) and Regional Fisheries Management Organizations (RFMO) agreements. This study focuses on the procedure HSBI of the Southern Indian Ocean Fisheries Agreement (SIOFA).

Article 21-22 of the UNFSA provides specific provisions regarding the boarding and inspection of

is not a member of an RFMO, the inspector must check whether the vessel is a member of UNFSA. If the vessel is a member of UNFSA, the inspector can board and inspect according to Article 21-22. Furthermore, if the vessel is neither a member of an SIOFA/RFMO nor a member of UNFSA, the inspector must request consent from the flag State of the vessel for boarding and inspection.

LIST OF FIGURES

Thailand has been a Contracting Party to SIOFA since 21st May 2017.[7] In 2023, three vessels flagged to Thailand are authorized to fish in the SIOFA Convention Area.[8] Thailand has an obligation to implement SIOFA CMMs and ensure compliance by its vessels, including the HSBI regime. Thailand is also a member of IOTC[9], but since it doesnôt have an HSBI procedure, this is the first time Thailand has implemented an RFMO HSBI procedureô.

Accordingly, it is important for Thailand to clearly understand how the requirements of the HSBI regime apply to fishing vessels and ensure that they are adequately implemented in Thailandôs national law and practice, and that fishing vessels are able and obliged to comply with them. Therefore, this study will focus on the requirements of the SIOFA HSBI regime and how Thailand can give effect to them as a flag State.

This study will be divided into two main parts, together with an introduction and conclusion. This introduction provides an overview of the legal framework for fisheries in the high seas and gives an overview of Thailandôs fishing in SIOFA. Part One focuses in more detail on the legal framewo

1. Maritime zones and fisheries regime

The 1982 United Nations Convention on the Law of the Sea (LOSC) provides a legal framework to govern all actors and activities in the ocean space.[11] The maritime zones available under the LOSC radiate outwards from a coastal State's land territory, as illustrated in Figure 1. The jurisdiction of the coastal State increases as one approaches the coast. The coastal State holds sovereignty over two innermost zones: internal waters and the territorial sea, which means that no other states can enforce their jurisdiction in these areas. (Article 27 of the LOSC). Further seaward, the power of the coastal State's jurisdiction is limited, which permits the exercise of other enforcement jurisdictions.[12] This study categorizes the maritime zones for fisheries activities into three areas: territorial sea, EEZ, and high seas, each of which has different rights and interests.

however, boarding does not result in the arrest of a vessel and its cr

ôConservation and management of the living resources of the high seasõ (Section 2, Articles 116-120).

The freedoms of the high seas must be exercised with due regard for the interests of other States in their respective exercise of the freedom of the high seas (Article 87), therefore, the high seas are reserved for peaceful purposes (Article 88). The high seas freedoms must be exercised with due regard for the rights and interests of coastal States, including with respect to their sovereign rights over the continental shelf (Article 77-78). In accordance with Article 87 of the LOSC, all States whether coastal States or landlocked States. enjoy freedom of fishing on the high seas, subject to the conditions set out in Section 2 of the LOSC, including general obligations relating to conservation and management (Articles 117 and 119), and the duty to cooperate with other States (Article 118).

2. The UN Fish Stock Agreement (UNFSA) Framework for Fisheries

The UN Fish Stocks Agreement (UNFSA)[19] was adopted on 4 August 1995 and entered into force on 11 November 2001. The UNFSA sets out principles for the conservation and management of straddling fish stocks and highly migratory fish stocks (Article 63-64 of the LOSC)[20] in the high seas and elaborates on the fundamental principle, established in the

fishing vessels flying the flag of another State Party in the Convention Area of an RFMO (provided the boarding State is a Party to the RFMO) in order to verify compliance with the conservation and management measures of the RFMO (Article 21 of the UNFSA). Specific procedures for boarding and inspection are detailed in Article 22 of UNFSA.

3. Regional Fisheries Management Organizations (RFMOs)

Article 87 of the LOSC provides freedom of the high seas, including the freedom of fishing. However, due to the exhaustible nature of fishery resources, this freedom is not absolute; instead, it is subject to the requirements outlined in Section 2 of Part VII, which pertains to the conservation and management of the living resources of the high seas. In other words, ñthe freedom is conditionalò.[22] Article 116 of the LOSC subjects the right to engage in fishing on the high seas to obligations under other treaties, to the rights, duties and interests of coastal States as provided for in the articles applicable in the EEZ (and in particular, Article 63(2) and 64 to 67 of the LOSC) and to Articles 117

ñresources of fish, mollusks, crustaceans and other sedentary species within the Area, but excluding sedentary species subject to the fishery jurisdiction of coastal States pursuant to Article 77(4) of the LOSC and highly migratory species listed in Annex I of the LOSCò.

4. Fisheries Enforcement on the High Seas

Ships navigating the high seas exclusively fall under the jurisdiction of a single ags o state. Generally, changing a shipôs flag during a voyage or while docked is not permitted, except in cases of a legitimate transfer of ownership or a change in registry. According to Article 92, a ship using the flags of multiple states without a genuine link to any cannot claim nationality when dealing with other states. BT.0.000008871 0 595.32 84110 595.32 841.92 reW* nBrt4(ei

Global fisheries confront declining fish sto

been developed through treaties (such as UNFSA and RFMO HSBI schemes) to provide for non-flag State enforcement of fisheries conservation and management measures, within carefully specified limits.

Part One outlines the legal framework for the management of high seas fisheries which are divided into two chapters. Chapter One examines the key provisions of the legal frameworks for fisheries on the high seas. Section A examines the framework of the LOSC on regulation and enforcement of high seas fisheries. Section B provides an overview of fisheries regulation and enforcement under the UNFSA. Chapter Two provides an overview of FAO legal framework on fisheries management on the high seas. Section A and Section B provide the provision of FAO legal framework related to the high seas fisheries which mainly focus on four instruments: 1) the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement); 2) the Code of Conduct for Responsible Fishing; 3) the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU); and 4) Agreement on Port State Measures to prevent, deter and eliminate illegal, unreported and unregulated fishing (PSMA).

SECTION A Fisheries Regulation and Enforcement under the LOSC

The LOSC entered into force on November 16, 1994.[44] There are 169 States parties of LOSC in 2023.[45] It sets out the duty for States to cooperate in the management of specific types of stocks, which are present both in EEZs and on the high seas. These Stocks include straddling fish stocks and highly migratory fish stocks. Additionally, it requires States to collaborate with other nations in adopting measures to conserve and manage marine living resources in the high seas. The LOSCôs overarching goal is to resolve all maritime legal disputes, with a focus on establishing a legal framework for the seas and oceans. This framework promotes international cooperation, encourages peaceful uses of the seas and oceans, ensures equitable and efficient resource utilization, supports the conservation of living resources, and facilitates the study, protection, and preservation of the marine environment.[46,47]

SUBSECTION A.1 Fisheries Regulation under the LOSC

This subsection provides the regulation of the LOSC on the high seas fisheries and describes the duty to cooperate in respect of high seas fisheries resources and the context of the rule on the freedom of fishing.

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[44] United Nations, ôThe United Nations Convention on the Law of the Sea.ô (n 14). *open for signature 10 December 1982, UNTS 1833 (entered into force 16 November 1994)*.

[45] ôUnited Nations Treaty Collectionô, *United Nations Convention on the Law of the Sea* (United Nations, 10 December 1982) <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en>.

[46] Robin R Churchill, ôChapter 2: The 1982 United Nation Convention on the Lawof the Sea.ô in *The Oxford Handbook of the Law of the Sea* (Oxford University Press, First edition., 2015) 24to45.

[47] United Nations, ôThe United Nations Convention on the Law of the Sea.ô (n 14). (Preamble)

LOSC. The EEZ is closely linked to the high seas due to the presence of fish stocks within the EEZs of two or more coastal states, within the EEZ and adjacent areas, or even extending into the high seas, as specified in Article 63.

The enforcement on fisheries regulations in the EEZ is provided for in Article 73 of the LOSC, which serves as the primary provision for enforcing fisheries regulations on foreign fishing vessels, ensuring effective implementation.[58] As part of exercising its sovereign rights to explore, exploit, conserve, and manage the living resources of the EEZ, the coastal State may take measures, including boarding, inspection, arrest, and judicial proceedings to enforce its laws and regulations adopted in accordance with the LOSC (-] TJET0 gAeow q0.000008871 0 593 reW* nBT1/F1 121/F41.92 Gseas

Unregulated (IUU) fishing has given rise to enforcement measures that permit non-flag State authorities to conduct boarding and inspections on the high seas.[65]

All States have the freedom to navigate and fish with vessels flying their flag, which grants them jurisdiction over those vessels on the high seas (Article 92). A vessel may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry (Article 92 **(1))**.[66]

sanction. Control involves using various measures to compel individuals

maintain a balance in the shared ocean spaces, preventing conflicts in the exploitation of fishing resources and IUU fishing on the high seas.[78]

Non-flag States have an indirect connection to high seas fishing, where every country can en

still in the high seas. The LOSC has further expanded the use of the right of hot pursuit to include archipelagic waters, EEZ, and the continental shelf.[84,85] Consequently, a coastal State possesses the right of hot pursuit, enabling it to chase and apprehend a vessel on the high seas if that ship has breached the coastal Stateôs laws, including those related to the conservation and management of fishery resources.[86]

[84] Churchill and Lowe (n 80). Page 218-219.
[85] Lowell, Warner and Kaye (n 59). Page 64-65.
[86] Mary Ann Palma, óChapter 6 Coastal State Measuresô in *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010). Page 148.

regulation and management of high seas fisheries through regional fisheries management organizations. Subsection B.2pertains to the enforcement of measures adopted for the management of high seas fisheries through regional fisheries management organizations.

SUBSECTION B.1 The Regulation of the UNFSA on the high sea fisheries through the RFMOs

The UNFSA is an agreement designed to implement the provisions of the LOSC related to the conservation and management of Straddling Fish Stocks and Highly Migratory Fish Stocks. It establishes international standards aimed at ensuring the effective compliance and enforcement of these measures on the high seas (Article 3 (1) of the UNFSA), as well as fostering compatibility measures between EEZs and the high seas (Article 5 of the FAO Compliance Agreement).

The UNFSA is a legally binding agreement applicable to all State Parties, with the primary goal of facilitating the implementation of LOSC provisions concerning straddling and highly migratory fish stocks (as detailed in Articles 63-64 of the LOSC) (Figure 3.)[96] and promoting cooperation among flag States in the conservation and management of living resources (as provided in Article 118 of the LOSC). As of August 2023, ninety-three States

Figure 3. Straddling fish stocks and highly migratory fish stock in the high seas and EEZ.[101]

The fundamental principles of the UNFSA encompass requirements for states to implement measures aimed at safeguarding non-target species and preserving marine biodiversity (Article 5). These duties are intended to alleviate the impacts

cannot be obligated by that agreement unless it explicitly agrees to it.[111] Nonetheless, if a State not affiliated with an RFMO is a party

conservation and management measures, the inspecting State must gather evidence and promptly inform the flag State of the alleged violation (Article 21(5)).

The flag State should respond within three working days and either (a) fulfill its obligations to investigate and take enforcement action, promptly informing the inspecting State of the results; or (b) authorize the inspecting State to investigate (Article 21(6). If the flag State allows the inspecting State to investigate, the inspecting State should promptly share the investigation results. The flag State, if evidence supports it, should enforce actions. Alternatively, the flag State may authorize the inspecting State to take specified enforcement actions in line with the flag Stateôs rights and obligations under the UNFSA (Article 21(7).

If the inspector found the grounds to believe a vessel committed a serious violation and the flag State fails to respond or act, inspectors can stay on board, gather evidence, and may require the vessel to go to a specified port. The inspecting State must immediately inform the flag State of the designated port. All involved states must ensure the well

Non-flag State vessels that have engaged in activities contrary to CMMs in the RFMOôs competence area are categorized based on the serious violation (Article 21(16)). If there are reasonable grounds to suspect that the fishing vessel is without nationality, the inspecting State may board and inspect the vessel, taking action in accordance with international law (Article 21(17)).

States have to pay for damage or loss arising from HSBI action when such action is unlawful or exceeds that reasonably required (Article 21(18)).

The same obligation extends to vessels belonging to non-member States and non-parties to the UNFSA that are fishing in regulated stocks, in accordance with Articles 17(4) and 33(2).[133] The exclusive jurisdiction of the flag state limits the options available to other States for preventing vessels from actively engaging in fishing. Nevertheless, this obligation

2. During the inspection, duly authorized inspectors from the inspecting State have the authority to inspect the vessel, its license, gear, equipment, records, facilities, fish, and fish products, as well as any relevant documents necessary to verify compliance with the relevant CMMs.

3. The duties of the vessel masters of flag State when request for HSBI show as follow:

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are mandated to establish laws enabling the prosecuting authority of the flag state to obtain evidence regarding alleged violations from non-flag states, which may also include testimonies (Article 20(5)). Additionally, the flag state is required to inform the concerned states about the findings of the investigation and any legal actions taken (Article 20(3)). If one of its fishing vessels engages in unauthorized fishing, the flag State must collaborate with the coast

programs, citing the recent adoption of an enforcement framework by the South Pacific Regional Fisheries Management Organization.[145]

Port State Measures

This provision outlines the rights and responsibilities of port States in promoting the effectiveness of conservation and management measures at subregional, regional, and global levels. Port States are granted the authority, in accordance with international law, to take measures that include non-discriminatory inspections of documents, fishing gear, and catch on board fishing vessels in their ports or offshore terminals (Article 22(1-2)). Additionally, States have the option to adopt regulations allowing authorities to prohibit landings and transshipments if it is determined that the catch undermines CMMs on the high seas (Article 22(3)). Importantly, the article emphasizes that these measures do not interfere with Statesô exercise of sovereignty over their ports in accordance with international law (Article 22(4)).

CHAPTER TWO FAO Legal Framework on Fisheries Management on the High Seas

This chapter is divided into two main parts: Section A and Section B. Section A focuses on instruments for fisheries management - one binding (the 1993 FAO Compliance Agreement) and one non-binding (the Code of Conduct for Responsible). Section B focuses on instruments that address illegal, unreported and unregulated fishing - one non-binding (the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing; the IPOA-

vessels less than 24 meters in length, entitled to fly their flag (Article I(f))[157], from the provisions of the Comp less doing ould ement's

does not absolve the flag State from its fundamental responsibility to ensure t such vessels do not undermine the conservation a in place on the high seas. The Compl4fnce A ement is designed to encourage compliance with international conservation

specific obligations of flag States in this regard.[160]

Flag State responsibility

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the primary duties of the flag State. In summary, it imposes a responsibility on the flag State to u

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Moreover, if any Party possesses valid reasons to suspect that a fishing vessel, n

Article IX, which deals with the Settlement of Disputes, allows any Party to initiate discussions with other Parties when there's a dispute related to the interpretation or application of this Agreement. The objective is to find a mutually agreeable solution as quickly as possible. Negotiations, inquiries, mediation, conciliation, arbitration, legal procedures, or other peaceful means can be employed to resolve the dispute among the Parties. If the issue remains unresolved, it may be referred to the International Court of Justice, the International Tribunal for the Law of the Sea (once the 1982 United Nations Convention on the Law of the Sea comes into effect), or arbitration [illegible]

SUBSECTION A.2 Code of Conduct for Responsible Fisheries

FAO Code of Conduct for Responsible Fisheries (the Code) was initiated in 1991 by the FAO Committee on Fisheries.[174] The code was unanimously adopted on 31 October 1995 by the over 170 member Governments of the FAO Conference.[175]

The Code is a voluntary tool that outlines principles and global norms for responsible conduct, aimed at guaranteeing the efficient conservation, management and development of aquatic life resources while respecting the ecosystem and biodiversity. It acknowledges the significance of fisheries in terms of nutrition, economics, society, environment, and culture, taking into consideration the biological traits of resources and their surroundings, as well as the concerns of consumers and other stakeholders. States and all participants in fisheries are urged to adopt and implement the Codeôs provisions.[176]

The Code serves as a guide for the responsible and effective management of fisheries both at the national and international levels. It is comprised of a set of principles, objectives, and actionable items. This code offers direction on eight main areas, which include: 1) Fisheries management 2) Flag countries 3) Port countries 4) Aquaculture development 5) Integration of fisheries into coastal area management 6) Post-harvest practices and trade responsibilities 7) Fisheries research and 8) Regional and international cooperation. This study will focus on the fisheries management Flag countries and Port countries which are describes in the Articles 1, 4 and 6-8.

The Code is a universal tool that covers all fishing activities, regardless of their location (as stated in Articles 1.1, 1.2, and 1.3). It is aimed at a wide range of stakeholders, including FAO members and non-members, fishing organizations, subregional, regional, and global entities, as well as anyone involved in the conservation of fishery resources and the management and development of fisheries (Article 1.2).[177]

The Code recommends that States that are n

Similarly, Article 1.1 of the Code indicates that it includes rules that could become legally binding through other obligatory agreements among the Parties. For instance, it mentions the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993, which is considered an integral component of the Co

regional fisheries management organizations or arrangements (RFMOs) for this purpose (Article 7.1.3). A State with a genuine interest in a fishery where a subregional or regional RFMO possesses the authority to establish conservation and management measures should engage in cooperation by either becoming a member of the RFMO (Article 7.1.4), or at the very least, by complying with the conservation and management measures adopted by that RFMO (Article 7.1.5).[187,188]

The Code stipulates that States should collaborate in setting up systems for monitoring, control, surveillance and enforcement measures related to fishing operations and associated activities in waters beyond their national jurisdiction. This cooperation should occur within the structure of subregional or regional fisheries management organizations (RFMOs) (Article 8.1.4 and Article 7.7.3).[189,190] Furthermore, States that are members of or involved in subregional or regional RFMOs should put into practice internationally agreed-upon measures established within these organizations or arrangements, and these measures should be in line with international law. These measures aim to discourage the activities of vessels that are non-members with these organizations or are non-participants but are engaging in actions that undermine the effectiveness of the conservation and management measures established by these organizations or arrangements (Article 7.7.5).

The Code contains various regulations concerning legal frameworks that are applicable to all States in their roles as flag States, coastal States, port States, and market States. States and all stakeholders engaged in fishing activities should establish conservation and management measures for fisheries resources by implementing suitable policies, legal structures, and institutional frameworks (Article 7.1.1). States must establish a robust legal and administrative framework for the conservation and management of fisheries resources, both at the local and national levels (Article 7.7.1)

related to its legal impact. Voluntary instruments like the Code are seen as valuable complements to formal treaties and established international legal practices. They establish practical and regulatory standards that, with the agreement of states, can subsequently become binding measures in formal treaties. The widespread acceptance and implementation of the Code may serve as evidence of the emergence of new norms or principles in international law applicable to the sustainable management of fisheries.[191]

The primary goal of Section A, which pertains to the Compliance Agreement, is to enhance the oversight of fishing vessels operating on th

Illegal, Unreported, and Unregulated (IUU) fishing. The Code provides a comprehensive foundation for responsible fisheries management. It establishes guiding principles and inte

SECTION B FAO Instruments to address Illegal, Unreported and Unregulated (IUU) fishing

Section B is divided into two subsections. Subsection B.1 provides the overview of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated (IPOA-IUU) Fishing

disregarding international commitments, including those outlined by regional fisheries manage

The implementation of the IPOA should be conducted openly and with transparency, as specified in Article 6.13 of the Code of Conduct Paragraph 9.5).

The International Plan of Action (IPOA) should be created and enforced in a manner that does not show discrimination, either in appearance or in practice, toward any specific State or its fishing vessels (as described in Paragraph 9.6).

The IPOA-IUU fishing mandates that States should adopt a comprehensive approach to prevent, deter and eliminate IUU fishing. This approach should be grounded in

The IPOA on IUU fishing outlines several responsibilities of flag States regarding the registration of fishing vessels, the maintenance of vessel records, and authorization for fishing. States must ensure that vessels authorized to fly their flag do not participate in or support IUU fishing activities (Paragraph 34). Before registering a fishing vessel, a f

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IUU fishing emphasizes that a flag State should ensure that each fishing vessel entitled to fly its flag and operating in waters beyond the jurisdiction of the flag State possesses a valid authorization to fish issued by that flag State (Paragraph 45).[217,218]

The IPOA-IUU fishing outlines the essential information that should be included in the authorization (Paragraph 46).[219,220] These authorizations may come with conditions, such as compliance with applicable international conventions, national laws and regulations, as well as conservation and management measures adopted at various levels (Paragraph 47).[221,222] States must ensure that their fishing, transportation, and support vessels do not assist or participate in IUU fishing activities (Paragraph 48).

Flag States should also make efforts to ensure that fishing, transportation, and support vessels eligible to fly their flag and engaged in at-sea transshipment have prior authorization for transshipment issued by the flag State to the greatest extent possible (Paragraph 49).[223,224] Furthermore, the flag States should share information from catch and transshipment reports with relevant national, regional, and international organizations, including the FAO (Paragraph 50).[225,226]

The IPOA-IUU fishing presents a set of measures that coastal States should contemplate, in alignment with their national laws and international regulations, to the extent that it is feasible and suitable (Paragraph 51). Establishing effective monitoring, control, and surveillance of fishing activities within their exclusive economic zone (Paragraph 51.1). Engaging in cooperation and information exchange (Paragraph 51.2). Requiring all fishing activities within their national jurisdiction to obtain authorization from the coastal State (Paragraph 51.3). Granting authorizations solely to fishing vessels listed in a record of fishing vessels (Paragraph 51.4). Ensuring that vessels in national waters maintain logbooks (Paragraph 51.5). Regulating at-sea transshipment by either requiring authorization or

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[217] Intl. Tribunal For The Law Of The S (n 152). Page 1020-1035.
[218] FAO, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (n 196). 24 pages. *(Paragraph 45 IPOA-IUU provides that Coastal States should ensure that no fishing authorization for fishing in coastal waters be issued to vessels without an authorization to fish issued by the flag State of the vessel.).*
[219] Intl. Tribunal For The Law Of The S (n 152). Page 1020-1035.
[220] FAO, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (n 196). 24 pages. *(Paragraph 46 refers to, inter alia: name8 10892 572.14 Tm0 g0 G[(the)-2ti8Qqagr*

compliance with regulations (Paragraph 51.6). Managing access to their national waters (Paragraph 51.7). Avoiding the licensing of vessels with a history of IUU fishing (Paragraph 51.8).

In the section concerning the responsibilities of port States, the IPOA-IUU also discusses the responsibilities of the flag State. When the port State possesses indisputable evidence that a vessel, which has been given permission to enter its ports (Paragraph 53)[227,228], has been involved in illegal, unreported, or unregulated (IUU) fishing activities, the port State should prevent the vessel from unloading or transferring fish in its ports and must inform the flag State (Paragraph 56). During the process of conducting inspections in its ports, the port State should gather information about the vessel and share it with the flag State and, if applicable, with the relevant regional fisheries management organization (RFMO) (Paragraph 58).[229,230] If, following

consistency among them. Article 6 calls for cooperation and the exchange of information among Parties and between Parties and relevant organizations.[241,242]

Article 7 emphasizes the importance of designating specific ports, aiming to exert stricter control over the ports accessible to foreign vessels. This is done with the aim of creating a more comprehensive regulatory framework that compels IUU fishers to adhere to established channels overseen by the relevant port authorities. According to the article, Parties are required to specify the ports where ves

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information exchanges. Meanwhile, Article 17 mandates Parties to ensure that inspectors receive adequate training, considering the minimum training standards outlined in Annex E.

The PSMA primarily outlines obligations for States in their role as port States. However, the PSMA also outlines responsibilities for flag States, with Article 20 being particularly dedicated to the ñRole of flag Statesò. Additionally, the role of the flag State is addressed in several provisions that necessitate the port State to share information about actions taken with the flag State.[244] It also includes the requirement t

Article 21 acknowledges that some Parties may lack the necessary resources or capabilities to ensure the Agreementôs effective implementation. Consequently, it mandates the provision of assistance to developing States to strengthen their capacity to meet the Agreementôs requirements.

The PSMA mandates Parties to promote non-Parties to join as Parties and to adopt legislation and measures that align with the Agreementôs provisions (Article 23(1)). Additionally, Parties are obligated to adopt fair, non-discriminatory, and transparent measures to discourage actions by non-Parties that undermine the effective-implementation of the Agreement (Article 23(2)).[248,249]

Article 24 acknowledges that there may be obstacles and changes that impact the effective implementation of the PSMA, and adjustments may need to be made to certain provisions of the Agreement. This article specifies that Parties must engage in monitoring and reviews of the Agreementôs implementation to evaluate progress toward achieving the Agreementôs objectives outlined in Article 3.[250]

There are several key points that summarize the strategies employed by the PSMA. First, it affirms the authority of port States to take action against fishing and related activities in areas beyond their national jurisdiction through effective exercise of port State sovereignty. This is significant because port States have traditionally held a strategic position in combating IUU fishing by controlling foreign vessels in their ports, even though they may not have always acted upon this authority. Second, the PSMA establishes legally binding minimum standards that must be enforced, ensuring that no port can be considered a ñport of convenienceò. While States can choose to impose t.68 5[60 0 1 481.8 439.18 Tm0 G[( )] TJETQq0.0000088

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In summary, the Port State Measures Agreement (PSMA) is an efficient tool in high seas fisheries management and combatting Illegal, Unreported, and Unregulated (IUU) fishing. It serves multiple key functions, including preventing illegal fishing by blocking IUU vessels from using ports, enhancing enforcement through inspections, and reducing incentives for IUU fishing. The PSMA establishes universal standards to prevent vessels from evading detection by switching between ports and applies globally to ensure consistent inspection. Furthermore, it promotes information sharing and cooperation among Parties, supports capacity building in developing States, and encourages non-Parties to align with the agreement, fostering broader global cooperation against IUU fishing. In essence, the PSMA offers a comprehensive framework to both manage high seas fisheries effectively and combat IUU fishing worldwide.

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is necessary to install responsibility in port States to employ PSMs and empower them to do so, just as the international community sought to empo gs of conve).

PART TWO Southern Indian Ocean Fisheries Agreement (SIOFA) framework for fisheries enforcement on the high sea

High seas boarding inspection (HSBI) is necessary to

CHAPTER ONE Regional Fisheries Management Organizations (RFMOs) and High Sea Boarding and Inspection (HSBI)

SECTION A The role of region fisheries management organization on high seas fisheries management

SUBSECTION A.1 Regional Fisheries Management Organizations (RFMOs) and Monitoring Control and Surveillance (MCS) Measures

Monitoring Control and Surveillance (MCS) is crucial for promoting sustainable fisheries in the RFMOsô convention areas[256], specifically for managing high sea fish stocks (straddling and highly migratory). [257] Various types of conservation and management measures (CMMs) related to MCS are used to prevent IUU fishing within RFMOsô competence areas.[258] High Sea Boarding and Inspection (HSBI) is one such effective CMM tool to support MCS for inspecting and enforcing regulations on the high seas.

Effective MCS implementation is vital for RFMOsô long-term fish stock conservation and sustainable use objectives. RFMO members and their fishing vessels must implement and comply with agreed-upon measures.[259] MCS measures, specified within each RFMO, impact flag Statesô obligations, including vessel monitoring systems (VMS) and high seas boarding and inspection schemes. Procedures for addressing infringements within RFMOsô convention areas must be agreed upon by their members and followed up and reported.[260]

The MCS is also important to ensure compliance by vessels if the flag State is not exercising responsibility. Besides conventional, costly MCS methods like surveillance aircraft and patrol vessels, commonly used MCS tools include vessel registers, VMS, observer programs, and inspections. These are tools that States use to ensure that their flagged vessels comply with obligations that the State has accepted under relevant legal instruments. This helps to ensure that States are in compliance with RFMO-adopted conservation and management measures. Each element of an MCS system is an integral part of the overall system.[261]

The FAO developed the term Monitoring, Control, and Surveillance (MCS) in 1981. Today, it is widely accepted as a key principle in sustainable fisheries management and

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[256] Fujii et al (n 252). Page 1-11.
[257] Hickey Gordon M. et al, ó On Inter-Organizational Trust, Control and Risk in Transboundary Fisheries Governanceô (2021) 134(104772) *Marine Policy* Page 1-11.
[258] Fujii et al (n 252). (The measures of the CMMs relate 2elatUQq0.000017744 0 5cfI>ETQ2(ro0000 G[(he)-116(me)6(asur)-4

is identified as the ñbest hopeò in preventing, deterring, and eliminating IUU fishing.[262,263] The definition of the MCS was developed by an FAO Expert Consultation in 1981 (FAO, 1981)[264]:

ñMonitoring is the continuous requirement for the measurement of fishing effort characteristics and resource yields.ò This process entails gathering, measuring, and analyzing fisheries data such as species composition, fishing effort, bycatch, and operational areas.

ñControl is characterized as the regulatory framework that governs the exploitation of resources.ò This includes the terms and conditions stipulated in national fisheries legislation and regional agreements, outlining how resources can be harvested.

ñSurveillance refers to the extent and nature of observations necessary to ensure adherence to the regulatory controls imposed on fishing activities.ò

The MCS comprise two facets: preventive MCS and deterrent MCS. These aspects supply data to facilitate the creation and execution of fisheries management plans on both national and regional scales, and also play a role in enforcing such plans.[265] The spatial components of MCS encompass land, sea, and air.[266]

The land component of MCS serves as the central hub for all activities and resource deployment[267, 268], encompassing port inspections, dockside monitoring, and overseeing transshipments and fish product trade for rule compliance. Governments, particularly as flag States, conduct various land-based activities to fulfill responsibilities in remote areas, aided by technology linking their land components regionally or subregionally for enhanced coordinated management.[269]

The sea component of MCS involves activities in both national jurisdiction and high seas areas, utilizing technologies like radar, sonar, and vessel platforms. At-sea patrols, while fundamental for apprehending violators, incur high costs, leading many states to adopt ñno forceò surveillance methods, such as independent observers on fishing vessels, vessel registers, and VMS requirements. While at-sea patrols remain essential for enforcing

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[262] Mary Ann Palma-Robles, Robin Warner and Stuart Kaye, óChapter 10 Fisheries Enforcement and the Concepts of Compliance and Monitoring, Control and Surveillanceô in *Routledge Handbook of Maritime Regulation and Enforcement* (Routledge Taylor & Francis Group) Page 153-154.

[263] FAO (ed), *Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (Food and Agriculture Organization of the United Nations, 2002).

FAO (ed), Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Food and Agriculture Organization of the United Nations, 2002).

management measures[270], VMS requirements and vessel identification are integral to control in the MCS regulatory framework for fisheries management.[271]

The air component involves air and satellite surveillance, utilizing technology to identify potential fisheries violations.[272] These systems are popular in fisheries management due to their flexibility, speed, and deterrent effect. The air component enables rapid collection and dissemination of information, including fishing vessel identification and reported fisheries data. Air, satellite, or VMS surveillance can serve as initial indicators of fishing activity and potential illegal actions, triggering further MCS actions. The cost of the air component is linked to the sophistication of technology, allowing governments to use advanced tools such as satellite, video, and digital photographic technology.[273]

The combination of land, sea, and air components in MCS depends on a Stateôs

rapid collection

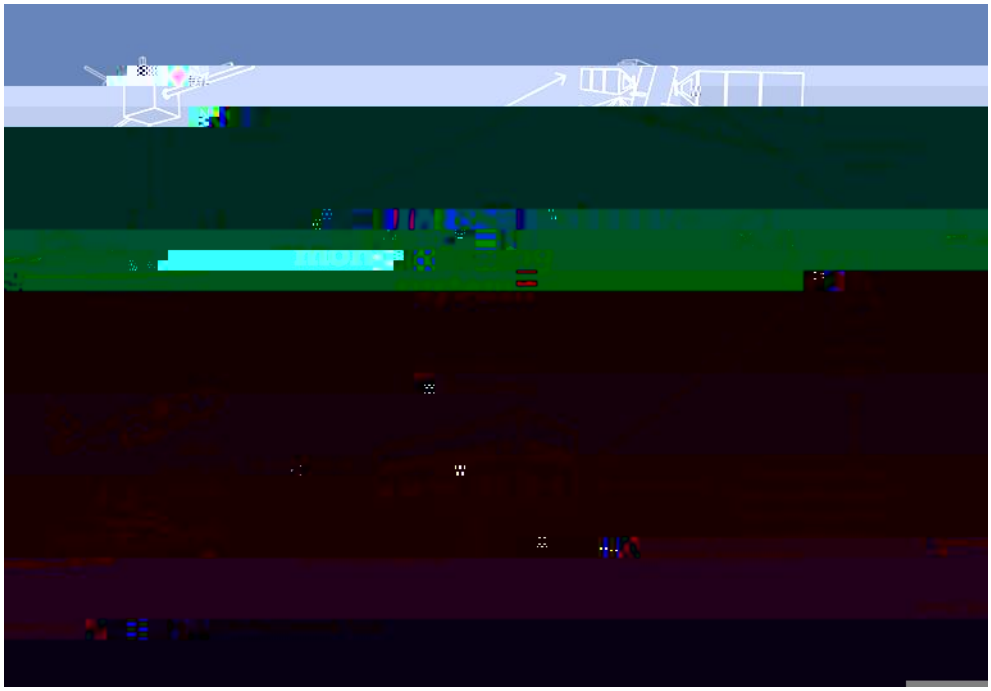

Figure 4. Vessel Monitoring System (VMS) for tracking fishing vessels on the sea.

VMS is a device that requires the fishing vessel to carry it on board. This requirement is mentioned in various international laws including the IPOA-IUU (Paragraph 24.3)[278], LOSC (Article 62 (4)(e))[279], UNFSA (Article 18 (3)(g)(iii)[280], Article 5(j)[281] and Article 18 (3)(e)[282]) and the Code (Article 7.7.3)[283].[284] The advantage of implementing VMS is for tracking the fishing vessel behavior on their compliance with fisheries regulations. The

[278] FAO, *Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (n 263). Page 105 (*To implementing a vessel monitoring system (VMS) in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS on board*.).

[279] ôThe Law of the Sea United Nation Convention on the Law of the Seaô (n 29). Page 47 (*Specifying information required of fishing vessels, including catch and effort statistics and vessel position reports*.).

[280] óAgreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Convention and Management of Straddling Fish Stocks and Highly Migratory Fish Stocksô (n 10). Page 17 (*The development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned*.).

[281] Ibid. Page 6 (*Collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes.*).

[282] Ibid. Page 17 (R*equirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data*).

[283] FAO, ôFAO Code of Conduct for Responsible Fisheriesô Page 15. (*States, in conformity with their national laws, should implement effective fisheries monitoring, control, surveillance and law enforcement measures including, where appropriate, observer programmes, inspection schemes and vessel monitoring systems. Such measures should be promoted and, where appropriate, implemented by subregional or regional fisheries management organizations and arrangements in accordance with procedures agreed by such organizations or arrangements.*)

[284] Palma, óChapter 6 Coastal State Measuresô (n 265). Page 143-145 (Vessel Monitoring Systems).

VMS can observe IUU fishing, for example, fishing in the prohibition area, however, it does not provide other information of IUU fishing activities that are not directly associated with the location of a vessel in the fisheries management area. The other information of IUU fishing activities such as fishing beyond allowable quota or other catch allocation, use of an illegal method, or restriction of fishing activities on the basis of nationality or licence status,

SUBSECTION A.2 Regional Fisheries Management Organizations (RFMOs) and High Sea Boarding and Inspection (HSBI)

The High Sea Boarding and Inspection (HSBI) procedure, introduced under the UNFSA, involves inspections at sea. This procedure poses a challenge to RFMO parties, urging them to permit non-flag States to board and inspect their vessels. Article 21 of the UNFSA provides that in the high seas area occupied by the RFMO, the member of the UNFSA which is a member of the RFMO can board and inspect the RFMOs partiesô fishing vessels and can board the fishing vessel of UNFSA member, whether, or not the member of the RFMO.[290] The basic procedure for boarding and inspection is provided in Article 22.

other items to verify compliance of the vessel with the conservation and management measures (CMMs) of the RFMO.

3. After-boarding includes activities done subsequent to disembarking from the fishing vessel, including the preparation of an HSBI report, submission and transmission of the full report of HSBI and any recommendations for further action for investigation by the flag State in cases where a serious violation has been found.[291] has been found

After disembarking from the fishing vessel	
Flag State of fishing vessel	

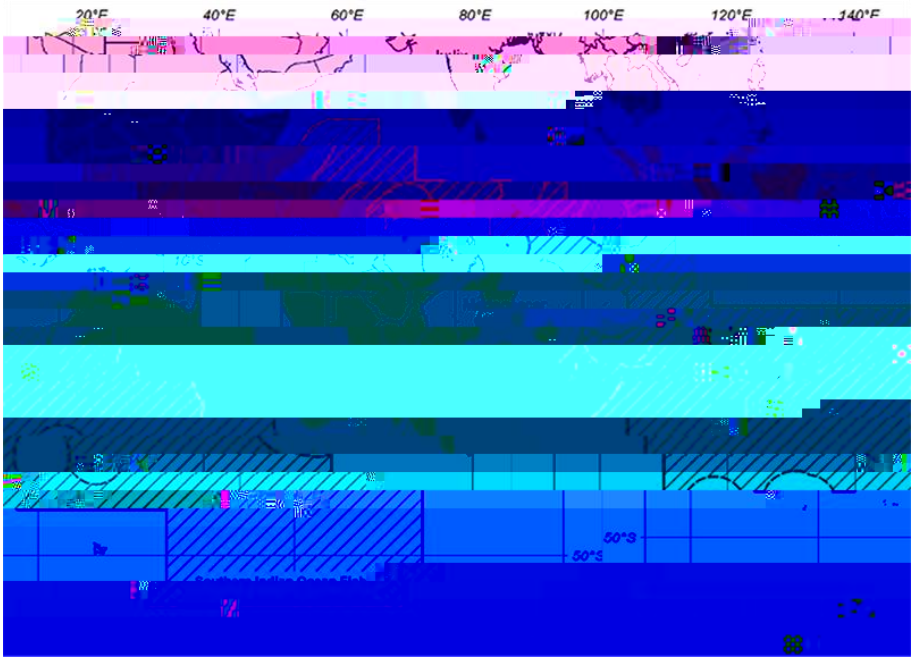

Figure 5. Southern Indian Ocean Fisheries Agreement area of competence

Objectives

The objectives of this Agreement are to ensure the long-term conservation and sustainable use of the fishery resources in the Area through cooperation among the Contracting Parties, and to promote the sustainable development of fisheries in the Area, taking into account the needs of developing States bordering the Areas that are Contracting Parties to this Agreement, and in particular the least developed among them and small-island developing States.[300]

Managing Species

This Agreement covers fishery resources including fish, molluscs, crustaceans and other sedentary species within the area, but excluding highly migratory species (Annex I of UNCLOS) and sedentary species subject to the fishery jurisdiction of coastal states (Article 77(4) of UNCLOS).[301] SIOFA has conservation and management measures in place to protect species and ecosystems. These measures include applying restrictions and closing off areas for species and ecosystem protection. Some of the main fish targeted in the SIOFA area include Sauries (*Scomberesocidae*), Scads (*Decapterus*), Patagonian toothfish (*Dissostichus eleginoides*), Orange roughy (*Hoplostethus atlanticus*), Alfonsino (*Beryx splendens*) and Oilfish (*Ruvettus pretiosus*).

[300] Southern Indian Fisheries Agreement. The Food and Agriculture Organisation of the United Nations, in its capacity as future Depositary, convened the Conference for the Adoption of the Southern Indian Fisheries Agreement on 7th July 2006 at the Headquarters of the Food and Agriculture Organisation of the United Nations

The generalprinciple of SIOFA parties

The CCP of the SIOFA, in accordance with UNCLOS and the UNFSA, is obligated to cooperate by adopting the best available scientific evidence, ensuring sustainable fishing levels, applying the precautionary approach, utilizing adequate scientific information for timely conservation and management measures, maintaining fish stocks for maximum sustainable yield, minimizing adverse environmental effects, and recognizing the special needs of developing States, least-developed countries, and small island developing States in the agreement area (Article 4 of the SIOFA agreement).

The meeting of the parties onthe related aspects to the HSBI procedure

The Meeting of the Parties serves as SIOFAôs governing body, consisting of all Contracting Parties. It convenes at least once a year to discuss and address major issues,

Duties of Contracting Party[303]

1.

SIOFA, including CMM 2021/14, which outlines high seas boarding and inspection procedures prescribed in various provisions. For example, these provisions cover cooperative activities, procedures for boarding and inspection, and inspection reports.

The flag State duties in the SIOFA agreement align with the UNFSA, particularly in Part V, Article 18, outlining flag State responsibilities. This alignment extends to compliance and enforcement detailed in Part VI, i19] TJETQq0.000008871 0 595.32 841.92 reW* nBT

State parties (Article 21(1) of the UNFSA). Chinese Taipei has three authorized inspection vessels, last updated on August 20, 2020.[307]

Non-Contracting Parties[308]

Non-Contracting Parties should not undermine the Conservation and Management Measures (CMMs). Contracting Parties must notify non-Contracting Parties of actions by their flagged vessels that may undermine conservation measures or impede Agreement goals (Article 17(3) of the SIOFA Agreement). This implies that non-Contracting Parties are required to respect the implementation of the HSBI measure (CMM 2021/14) of the SIOFA. Contracting Parties can board and inspect suspected fishing vessels of non-Contracting Parties in accordance with Article 17(1) of the SIOFA Agreement. Furthermore, if non-Contracting Parties fully cooperate and implement CMMs of the SIOFA, they are entitled to board and inspect the fishing vessels of Contracting Parties (Article 17(4) of the SIOFA Agreement). Participating non

The Monitoring, Control, and Surveillance (MCS) system for fishing vessel operations in the SIOFA

The SIOFA, as outlined in Article 6(1)(h) of its Agreement, mandates Parties to establish rules for monitoring, control, and ties to

SUBSECTION B.2 Conservation and Management Measures for High Sea Boarding and

Agreement Area, allow investigations of serious violations. Additionally, compliance by vessels under the same flag as the inspecting authorities should be ensured.

The objective of HSBI in the SIOFA Agreement area

The HSBI governs boarding and inspection of fishing vessels in the Agreement Area of the SIOFA. Pursuant to CMM 2021/14, these actions ensure compliance with Agreement provisions and CMMs across the entire area. Each Contracting Party must conduct boarding and inspection on fishing vessels flying the flag of a CCP engaging in or suspected of engaging in fishing as defined in Article 1(g) of the SIOFA Agreement. CCPs must ensure their vessels accept and facilitate these measures and provide them, or translations, to vessels, requiring compliance with Authorised Inspectors during boarding and inspection activities.[317]

Definitions of inspection and inspector on high sea boarding and inspection procedures

To interpret and implement the HSBI procedure in the SIOFA area, the Contracting Party and CCP should adhere to the following definition. Paragraph 2 of the CMM 2021/14 provides the definition of the authorise inspection and inspector which is important to all CCP to understand the definition and guiding to the duty of inspector during their operation HSBI.

a. ñAuthorities of the Inspection Vesselò means the authorities of the Contracting Party under whose flag the inspection vessel is operating;

b. ñAuthorities of the Fishing Vesselò means the authorities of the CCP under whose flag the fishing vessel is operating;

c. ñAuthorised Inspection Vesselò means any vessel included in the SIOFA register of Authorised Inspection Vessels and Inspection Authorities established under paragraph 14 and authorised to engage in boarding and inspection activities pursuant to these procedures; and

d. ñAuthorised Inspectorò means an inspector designated by the authorities of a Contracting Party responsible for boarding and inspection and assigned to conduct boarding and inspection activities pursuant to this

1. ñEach Contracting Partyò (CCP) [318] may carry out HSBI in relation to the vessels of ñCCPsò. The term ñContracting Partyò does not include fishing entities so this means that Contracting Parties can board the vessels flagged to fishing entities, but fishing entities cannot board vessels flagged to contracting parties (Paragraph 5).

2. However, Paragraph 7 says that ñthis measure shall also apply in its entirety

(c) Vessel is included in the IUU fishing record of a regional or sub-regional fisheries management organization;

(d) In response to a request from a CCP or a regional/sub-regional fisheries management organization, supported by evidence indicating potential IUU fishing activities by the specified vessel;

(e) Vessel does not have an observer on board; or

(f) Vessel has recorded

CHAPTER TWO High Sea Boarding and Inspection (HSBI) in the Southern Indian Ocean Fisheries Agreement (SIOFA) and Thailand High Seas fisheries management and enforcement

SECTION A High Sea Boarding and Inspections (HSBI) Procedures in the SIOFA and

The obligations of each stakeholder in the HSBI procedure of SIOFA in comparison to the UNFSA show in the Table 2.

Table 2. The specification of the process before conducting the HSBI in SIOFA is compared to that in the

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
		vessel is sent out (Paragraph 17). - Bilateral or multilateral cooperation must include the detail inparagraph 16 and inform the Executive Secretary (Paragraph 18). - All CPPs are required to translate the questionnaire into multiple languages [323] which is then circulated to all CPPs and published on the SIOFA website (Paragraph 22).
Non-flag States	- Cooperate and participate with the RFMO and comply with the CMMs of the RFMO (Article 21(2) of tFMO and comply with t	

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
	inspector from the State Parties (Article 21(4) of the UNFSA). - Published the details and photographs of vessels for HSBI missions on the RFMOsô websites (Article 21 (4) of the UNFSA). - Establish an effective mechanism for HSBI to ensure compliance with the CMMs of RFMO (Article 21(15) of the UNFSA).	- The Executive Secretary circulates the information to CCPs (Paragraph 18). - The Executive Secretary develops a template that includes the essential information for HSBI cooperation. This template will enhance communication between the CCP and the Secretariat, as well as within the CCP (Paragraph 18). - Published the translated questionnaire theat received from the CCPs on the SIOFA website (Paragraph 22).
Authorise inspector	- Before initiating HSBI, the inspecting States must inform all other States through the RFMO about the identification credentials of inspectors (Article 21 (4) of the UNFSA).	- Authorised Inspection Vessels fly the flag of SIOFA (Figure 6-7) during conducting HSBI activities in the competence area (Paragraph 19). - Try to notice or contact Vessel by using the radio signal to the master/the Authorities of the Fishing Vessel of suspected fishing vessel in SIOFA Area. Inform and asking the master for boarding and inspection the vessel (Paragraph 21(a)). - The refusion of the master to boarding and inspection the fishing vessel. - In case of relating to the international regulations, procedures and practices of safety at sea are necessary to delay the boarding and inspection. - CCPs can require the master of a fishing vessel flying its flag to accept the boarding and inspection. If the master did not comply with the HSBI measures, the CCP can temporally stop to fish and request the vessel to return to port

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
Master of the vessel of flag State and non-flag State	- Accept the communication for the boarding and inspection according to the procedures established by the RFMO (Article 22(3) of the UNFSA.	- Allow the authorized inspector of the CCP to boarding and inspection the fishing vessel in the competence area of the SIOFA (Paragraph 6). - The refusion of the master to boarding and inspection the fishing vessel. - The master has to give the reason and explanation. The CCP must guarantee that the authorise inspect

During conduct boarding and inspection in the SIOFA

The procedures during the boarding and inspection of each stakeholder under the HSBI procedure of SIOFA are compared to the UNFSA show in the Table 3. There are five relevant stakeholders in HSBI, as follows:

1. Flag States are referred to as CCPs in SIOFA, encompassing Contracting Parties, Cooperating non-Contracting Parties, and participating fishing entities.

2. Non-flag States specifically pertain to participating fishing entities.

3. The RFMO is SIOFA.

4. Authorized inspectors.

5. The Master of the vessel in SIOFA includes both the master of the flag State and the non-flag State.

During the HSBI process, the Authorized Inspector must use a questionnaire as a tool to interview the master of the vessel and collect information on fishing activities. According to paragraph 22 and Annex 3, the questionnaire consists of three main parts:

Part 1: Prior to boarding, composed of two questions, including 1) establishing radio contact and 2) notifying intent to board.

Part 2: Conduct of the inspection, composed of seven questions: 1) introduction of the inspection, 2) identification of the fishing vessel, 3) activity of the fishing vessel, 4) fishing permit/license/authorization, 5) catch retained on board, 6) transshipment, and 7) records of effort, catch, and catch-related data.

Part 3: Conclusion of the inspection, composed of one question regarding suggestions for concluding statements.

Table 3. The specification of the process during conducting the HSBI in SIOFA is compared to that in the UNFSA.

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
	flag State fails to respond or take action, inspectors may stay on board, secure evidence, and require the master to assist in further investigation. - Asking to bring the vessel to the nearest port or a port specified in established procedures. - The inspecting State must immediately inform the flag State of the port name. - The inspecting, flag, and port States must take necessary steps to ensure the well-being of the crew regardless of nationality (Article 21(8) of the UNFSA). <u>Deny to conduct HSBI by master of a fishing vessel (flag State)</u> - If the master of a vessel refuses boarding and inspection outline in Article 21(4) of the UNFSA. The flag State shall, except in circumstances where safety at sea requires a delay, direct the master to submit immediately to boarding and inspection. - If the master fails to comply, the flag State shall: (1) suspend the vesselôs authorization to fish or (2) order the vessel to return immediately to port. The flag State must inform the inspecting State promptly of the actions taken when these circumstances arise.	
Non-flag States	- Allow and facilitate to the inspector to boarding and inspection which comply to the UNFSA Article 21 and 22 and the RFMO.	- N/A
RFMO	- Receive the results of further investigation of a serious violation from the inspecting State (Article 21(9)	

Obligation of the

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
	- Simultaneously, the Flag State authorizes the inspecting State to investigate alleged violations, requiring prompt communication of results. - The flag State enforces action on the vessel, or it may authorize specific actions consistent with its rights and obligations under Article 21(7) of the UNFSA. <u>The inspector requested the master to bring the vessel to the port</u> - If there are grounds to believe that a vessel committed a serious violation. -	

Obligation of the stakeholders	UNFSA

Serious violationsof the HSBI in the SIOFA Agreement

UNFSA (Article 21(11))	SIOFA (Paragraph 41)

UNFSA
(Arti cle

UNFSA (Article 21(11))	SIOFA (Paragraph 41)
to which the vessel is to proceed. The inspecting State, the flag State and, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality (Paragraph 8 of Article 21 of the UNFSA).	
- The flag State should take action on serious violations; investigate immediately the alleged violation of the vessel in line with Article 19 of the UNFSA (Paragraph 12 of Article 21 of the UNFSA).	- N/A
- The flag State can request the inspecting State to release the vessel including the outcome of its investigation (Paragraph 12 of Article 21 of the UNFSA).	- N/A
- N/A	- The report of HSBI must include the name(s) and authority of the Authorised Inspector(s) and clearly identify observed activities or conditions believed to violate the Agreement or applicable CMMs. It should provide specific factual evidence for each alleged violation (Paragraph 34).

The process after conducting the HSBI in SIOFA compared to the UNFSA show in Table 6.

Table 6. The specification of the process after conducting the HSBI in SIOFA is compared to that in the UNFSA.

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
		of Contracting Parties, Authorised Inspection Vessel, and inspecting vessel. - The Executive Secretary published the details of Contracting Parties, Authorised Inspection Vessels, and inspecting vessels on the SIOFA website. - The Executive Secretary develop a template with the minimum information for bilateral or multilateral arrangement for training and information sharing mechanisms (Paragraph (16), (18)). - The Executive Secretary received and circulate all report of the HSBI (Paragraph (31)) to CCPs. - Report the HSBI in the annual meeting of the parties. - The Executive Secretary is required to establish an electronic system for cataloging and sharing a record of HSBI activities with Authorized Inspectors (Paragraph 51). - The Executive Secretary participates in the next meeting on the unresolved disagreement, along with the Compliance Committee, and distributes a report to the CCPs (Paragraph 54-55). - The Executive Secretary received the notification about the absence of cooperation (Part 2 of the ANNEX 3).
Authorised	- The inspector informs the results of	- In case of the request to stop

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
inspector	investigation on alleged violation to the flag State of the vessel (Article 21(7) of the UNFSA). - The inspecting State inform the results of any further investigation on alleged violation to the flag State and the relevant organization or the participants in the relevant arrangement (Article 21(9) of the UNFSA). - In case of the alleged violation, the inspector notifies immediately to the authorities of the fishing vessel as well as through the RFMO, any evidence obtained from the result of boarding and inspection will be referred to the authorise of the fishing vessel for further action which is in accord with Article 21(5) of the UNFSA, inspecting State inform the flag State, RFMO and their member of the results of further investigation (Article 21(9) of the UNFSA).	fishing (Paragraph 27(h)), the inspector has to Completed the inspection and secured any evidence by the authorised inspectors. - Inspection reports 1) The fully report and all supporting information of the Boarding and Inspection have to prepared by the Authorised Inspectors by using the report form at Annex 1 of the CMM 2021/14 (Paragraph 33). 2) The report of HSBI includes the name and authority of the Authorised Inspectors, along with clear identification of any observed activity or

Obligation of the stakeholders	UNFSA	SIOFA (CMM 2021/14)
		Vessels must identify and report unauthorized or unidentified non-CCP vessels engaged in fishing within the Agreement Area to the Executive Secretary for notification to the Meeting of the Parties (Paragraph 46). - Authorized Inspectors have the right to seek permission from a fishing vessel to board a vessel identified in accordance with non-CCP (Paragraph 46). If the vessel master or authorities agree to the boarding, any inspection results will be sent to the

1. The violations of the SIOFA Agreement or CMM will inform the Authorities of the Fishing Vessel. The Authorities of the Fishing Vessel have to take further action that establish on Article 11 of SIOFA Agreement.

2. All CCPs must take effective measures to respond to violated vessels, masters, and crews in the SIOFA Agreement area.

Annual reports

1. The parties involved in the HSBI measure are required to report any observed violations during inspections on an annual basis to the Meeting of the Parties, as shown in Art

However, there are differing opinions on whether the consent of the authorized flag State is needed for boarding and inspecting unauthorized or unidentified vessels by the CCP.

SUBSECTION A.2 Thailand fishing framework in the SIOFA area

Thailand fishing characteristics in the SIOFA area

Thailand became a party to SIOFA on April 21, 2017. Thai fishing vessels operate in the fishing grounds located on the Saya de Malha Bank in the western Indian Ocean. These grounds fall within the latitude range of 9.50° to 11.00° S and the longitude range of 60.50° to 62.00° E, within the SIOFA area (Figure 9).[332] This fishing ground is categorized under subarea 8 of SIOFA.[333]

Figure 8. the Saya de Malha Bank in SIOFA competence area

The ratio of Thailandôs total fish catch in the SIOFA region from 2015 to 2021 is illustrated in the Figure 9.[334] In 2015-2016, Thailand showed a robust production, exceeding 10,000 tonnes annually. However, from the year 2017 onwards, the annual-34(fr)n9.50° to 11.00° S and the

Since 2016, Thai fishing vessels have employed two types of fishing gear: the single boat otter board trawl and handline (hook and line), with the latter serving as an alternative gear. Despite the SIOFA area suitable for deep-sea fishing operations, Thai vessels use these two types of gear. This choice is influenced by the technology and knowledge passed down through generations, expertise in utilizing these fishing gears, and the investment compounded by a lack of funds that hinders the adaptation of fishing vessels to high-technology deep-sea fishing gear.

Before Thailand became a party to SIOFA, Thai fishing vessels occupied more than 50 percent of the SIOFA fishing vessels, as indicated in Table 7. Since Thailandôs become a party to SIOFA in 2017, the number of fishing fleets has decreased. Currently, Thai vessels constitute less than five percent of the total. This reduction in the number of fishing fleets is attributed to amendments made to Thailandôs fisheries law, which has made it more comprehensive and aligned with international laws and regulations, meeting the requirements

Thailand fishing operation in the SIOFA

Since 2018, Thailandôs fishing fleets in the SIOFA have consisted of 2 to 4 vessels. The fishing effort of otter board trawls between 2018 ï 2022 has varied between 176 and 1,003 hauls, resulting in catches ranging from 358.12 to 2,922.31 tonnage/trip (Table 8). The handline catches between 2018 ï 2022 is not of high volume, varying between 38.34 and 379.39 kg/trip, but it comprises high-value fish, as reported in the Annual National Report: Thailand Reports to the SIOFA Scientific Committee in 2023.[338]

Table 8. Thai fishing fleet and fishing effort between 2018 ï 2022 at the Saya de Malha Bank, subarea 8 of SIOFA.

Year	Number of Thai fishing vessel	Otter board trawl effort (hauls)	Catches (tonnes)	Handline effort	Handline catches (tonnes)
2018	-	-	-	-	-

(tonnes) caught by otter board trawl
cludes incidental bycatch.

Sphyraena spp.		Others		Total	
R	D	R	D	R	D
19.61 (5.48)	0	50.02 (13.97)	19.75 (98.01)	358.12	20.15
67.29 (7.28)	0	281.33 (30.43)	24.19 (79.21)	924.51	30.54

SUBSECTION B The obligation of the flag State on the high seas for HSBI procedure

SUBSECTION B.1 Reform and Responsibilitiesas a Flag State in the RFMO

Thailand collaborates with fisheries management organizations regionally and internationally, participating in RFMOs such as IOTC and SIOFA. Adhering diligently to their provisions for resource conservation and measures, Thailand demonstrates its commitment through responsible fishing within designated RFMO areas and actively sharing information on fishing activities, including combat IUU efforts, in response to requests from FAO and RFMOs. Additionally, Thailand engages in cooperation as a non-Party State by sending representatives to meetings of RFMOs where it is not a Party, participating in discussions related to IUU vessel listing or delisting.[341]

FisheriesReformed

As a Flag State, Thailand aligns with RFMO obligations by revising fisheries laws since 2015, transitioning from the Fisheries Act (1947) to the Royal Ordinance on Fisheries (ROF) B.E. 2558 (2015) and its amendment, B.E. 2560 (2017). The new legal framework limits fishery exploitation from an open-access to a limited-access fishery, enhances controls on IUU fishing, and aligns with international standards by ratifying FAO treaties, including the Port State Measures Agreement (PSMA) in 2016 and the United Nations Fish Stock Agreement (UNFSA) in 2017. Thailand also became a party to RFMOs like SIOFA in 2017 and IOTC in 1997.[342]

The reformed legal framework governs the entire fishery supply chain, implementing measures such as appropriate fishing license issuance, gear limitations, fleet control, catch management, and mechanisms to dete7 Tf0c3oeW*n0 g0 G[(the)8.0000000008871 0 595

Regulation of Fishing Operations Outside Thai Waters

Agency Control for Fishing Vessel Registration

The Marine Department (MD) oversees the responsible registration of fishing vessels, implementing measures for systematic inspection of historical records and qualifications to prevent IUU fishing. An electronic registration system has been developed, recording all commercial vessels with collaboration between the Department of Fisheries (DoF) and the MD. The Fishing Info network serves as a database for Thai fishing vessels, providing accessible information for various inspections, both at ports (by port in-port out centres) and at sea.[345]

The fishing vessel database, integrated through an electronic system, includes information on legitimate vessels and an IUU vessel list for both Thai and foreign vessels. Registration details are publicized on the MDôs website, covering vessels operating within and outside Thai waters, with information on physical characteristics, vessel history, and fishing operations.[346]

The MD has enhanced legislation for Thai vessels, specifying criteria and procedures for registration, changes in vessel type, details, engine, and ownership transfer. Certification from the DoF is required, ensuring compliance with the Royal Ordinance on Fisheries B.E. 2558 (2015) and its 2017 amendment. Vessels seeking registration must have a clean h

systems such as VMS and ERS/EM (Section 81 of the ROF). Additionally, the vessel must have an observer on board during the trip (Section 50 of the ROF).[348]

Registration of Fishing Licenses for Thai Fishing Vessels to Fish Outside Thai Waters (Section 48 of the ROF)

Chapter four of the ROF outlines details about fishing operations outside Thai waters, aiming to fulfill Thailandôs obligations for the conservation and management of aquatic resources as well as coo

activities of the Thai MCS comprise port inspections, sea inspections, air surveillance, and remote surveillance via the Fisheries Monitoring Centre (FMC), established in 2016 (Figure 10). Together, these elements constitute a unified MCS system that empowers us to uphold our legal standards and regulations.[357] The FMC utilizes a database and an information technology (IT) system to monitor fishing vessels, making it available 24/7 to all integrated inspection and control parties.[358]

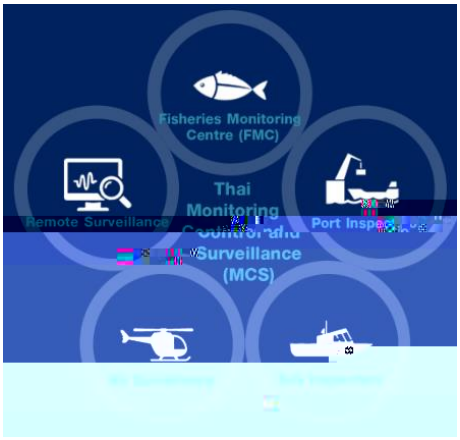

Figure 10. Thai Monitoring, Control and Surveillance (MCS)[359]

Thailand Monitoring , Control and Surveillance System for Oversea Fishing Vessel

Under section 81 of the ROF, Thai vessels for fishing purposes have to registered and must unde

SUBSECTION B.2 Thailand as a flag State compliance with the SIOFA

To comply with the RFMO especially the SIOFA, Thailand as a flag State provides mandatory for the Thai fishing vessels to align with the RFMO/SIOFA and also the law and regulations for supporting the RFMO/SIOFA agreement.

Thailand as a Flag State of overseas fishing vessel in the FRMO

As a Flag State, Thailand is obligated to implement measures that ensure fishing vessels intending to operate beyond Thai waters or in international waters comply with the laws and regulations governing fishing operations and transshipment. They must cooperate to enable effective MCS by reporting their activities, including fishing operations and transshipments to the DoF.[365] Thai fishing vessels are required to adhere to laws and regulations, which include:

1) Recording the port in-port out date from the fishing port, the category of gear used for fishing operations, fishing grounds, and the vessel's position when the fish was caught.

2) Documenting the category and quantity of fish caught or discarded.

3) Providing information about the name, registration number, and nationality of the fishing vessel and transshipment vessel.

4) Specifying the fishing port for transshipping fish or other related activities.

Fishing days per trip

Thailand allows Thai-flagged fishing vessels to operate outside Thai waters for a maximum of 365 days per trip. The limited number of fishing days at sea per trip aims to ensure the compliance of fishing vessels and the welfare of fishing crews.[366,367]

Notify of port entry -exit:

The fishing vessel have to notify entry to or exit from SIOFA agreement area in the format of Requirement through an e-mail for vessel entry and exit notifications within 24 hours. This notifies by the owner of fishing vessel.[368]

Port-

vessels (commercial vessel) greater than or equal to 30 GT (Article 81 of the ROF).[369],[370] PIPO control of Thai flagged vessels show in the Article 82 of the ROF, the owner or the master of a fishing vessel shall submit documents related to vessel registration, the vessel use per

in designated ports as listed by SIOFA, prohibitions on using gillnets longer than 2,500 meters and entangling nets, declaration forms for transferring fuel, fishing gear, crew, and food supply, improved practices for marking fishing gear, retrieving fishing gear through crew training, forms for reporting abandoned, lost, or otherwise discarded fishing gear, incidental catch log sheets of SIOFA (covering sponges and sharks), and reporting forms for vessels presumed to engage in IUU fishing. Clause 24of the Notification of the DoF on Requirement and Regulations of Overseas Fishing Vessels which are Operating in the Area u

SIOFA requires Parties to establish rules for the Monitoring, Control, and Surveillance (MCS) of fishing activities to ensure compliance with conservation measures (Article 6(1)(h) of the SIOFA Agreement). Some of the MCS frameworks in SIOFA relevant to this study include the Vessel Monitoring System (CMM 16(2023)), Monitoring (CMM 10(2023)), Control (CMM 09(2022)), and Port Inspection (CMM 08(2020)).

According to CMM 08(2020), SIOFA mandates that all Contracting Parties, Cooperating Non-Contracting Parties (CNCPs), and Participating Fishing Entities (PFEs) must inform the SIOFA Secretariat of designated ports to which foreign vessels may request entry. Changes to designated ports must be communicated to the SIOFA Secretariat at least 30 days before the change (paragraph 2 of CMM (08)2020).[379] Thailand has designated nine provinces as ports for foreign vessels of SIOFA, including CCPs, CNCPs, and PFEs, namely Bangkok, Samutsakhon, Phuket, Songkhla, Satun, Ranong, Trat, Narathiwat, and Pattani.[380]

Port-in Inspection practices in Thailand

Port-

Contracting Parties, cooperating non-Contracting Parties, or participating fishing entities (CCPs) in the Agreement Area. VMS implementation mandates authorized vessels to adhere to minimum ALC standards (Annex 1 of the CMM16(2023)), with CCP-flagged fishing vessels transmitting reports every 15 minutes (Paragraph 6 of the CMM16(2023)). In cases of ALC and satellite unavailability, data is collected and transmitted upon satellite reconnection (Paragraph 8 of the CMM16(2023)).[384]

Observer Program and Regulations for Thai oversea Fishing Vessels

An observer on board the fishing vessel is a mandatory for all fishing vessel to engage in fishing outside Thai waters. An observer on board is a qualified person, registered and designated by the Director-General (Section 50). The observer on board will responsible for: (1) observe the catching, record data and other activities concerned, (2) for the purposes of traceability, the observer will collect and record biological information and collect specimen of the aquatic animals caught and any other useful data, (3) prepare a summary report which include the information of (1) and (2) and submitted to the competent official at port in accordance with the procedures and timeframe (Section 51).[385]

Thailand traceability system for both marine catch from Thai-flagged vessels and imported fish and fisheries products to ensure that their origin and movements (from vessels, landing, and transport, entry into factories, processing and export) are accurately tracked, monitored and inspected has been developed. [386]

Thai Fishing Vessel Observer Program Training

Thai fishing vessels in the SIOFA are equipped with onboard observers. Thailand provides comprehensive training for onboard observers, which comprises 11 modules covering essential fisheries observer principles based on the FAO Guidelines for Developing an At-Sea Fisheries Observer Program. These modules include basic seaman training, fisheries management, legal and policy frameworks, health and safety, the Code of Conduct for observers, fishing vessels and gear, data collection, recording forms and documents, navigation, radio communication, and shipboard training.[387] The main duties of the onboard observer are to observe fishing activities, collect scientific data and specimens, and submit data and a summary report to the Department of Fisheries (DoF). Additionally, in terms of compliance, the observer will record and report practices of compliance or non-compliance on board. In December 2017, the DoF of Thailand authorized 22 onboard observers.[388]

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[384] SIOFA, óConservation and Management Measure for the Establishment of a SIOFA Vessel Monitoring System (Vessel Monitoring System) (CMM 16(2023))ô (n 311).
[385] Department of Fisheries, Thailand, óMarine Fisheries Management Plan of Thailand 2020-2022ô (n 337). page 95-96.
[386] ITQq0.000008871 0 595.32 841.92 reW* nBT/F1 12 Tf1 eQq0.000008871 0 595.32 841.92 reW* nBT/F1 10.02 Tf1 0 0 1 121.

have to comply with the laws,

The owner of a Thai fishing vessel or a non-Thai fishing vessel violates the laws of a foreign State during fishing operations outside Thai waters have to pay for advance

CONCLUSION

Conclusion of the Study

The HSBI (High Seas Boarding and Inspection) is one of the Monitoring, Control, and Surveillance (MCS) measures aimed at promoting Conservation and Management Measures (CMMs) on the high seas. Typically, the high seas are monitored through Vessel Monitoring Systems (VMS) and the Automatic Identification System (AIS), which allow for the remote observation of vesselsô activities, behavior, and routes. However, in some cases, remote control may not provide clear and sufficient information for the analysis of vessel activities, behavior, and routes. The HSBI method offers an alternative approach, involving on-site patrols and control, which enhances the efficiency of monitoring, control, and surveillance of vessels in the high seas. Furthermore, HSBI represents a combination of practices that complement and synergize remote control methods for fishing vessels in the high seas.

The HSBI was first mentioned in the UNFSA, specifically in Article 21-22. It represents a significant development in the legal framework, marking the first time that importance was placed on HSBI and the definition of serious violations by fishing vessels. These serious violations on the high seas are related to IUU fishing activities. Suspicious vessels on the high els on the high els on the hight development a signitic

7. The authorized inspector is required to write an interim report, and the master must sign the report (Paragraph 27 (g-h)) give a copy of an interim report to the master, and submit it to the SIOFA.

8. If the authorized inspector finds clear grounds for an alleged violation[398]:

a) The authorized inspector must contact the

boarding and inspection of non-CCPs through the vesselôs master or the authorities of the flag State country (Paragraphs 46 and 48).

The duty of a State Party is to ensure compliance with the SIOFAôs HSBI measure (CMM 2021/14). However, Thailand lacks both vessels and authorized inspectors to participate in the SIOFA patrols. Consequently, Thailand must ensure that its fishing vessels comply with SIOFAôs HSBI measure. As a flag State, Thailand has revised fisheries laws related to the ROF since 2015 to align them with international laws and regulations. These include agreements with RFMOs, such as SIOFA, of which Thailand is a member. These agreements outline various requirements that Thail

Legal items	SIOFA requirements	Thailand as a flag State Party
	management measures (Article 11(a); Flag State Duties)	prepare fishing report (Section 51 of the ROF). - Establish a precautionary approach for the purposes of conservation and management (Section 55 of the ROF).
CMM 10(2023); Monitoring	- CCPs have a mandate to inform the Secretariat about the entry to or exit of their fishing vessels from the Agreement Area by email or other means of communication within 24 hours (Paragraph 15).	- Thai vessels intending to engage in fishing in the SIOFA agreement area must submit the required forms for vessel entry and exit notifications to the SIOFA agreement area through email: mcs@siofa.org and thaifoc@fisheries.go.th. (Clause 6 of the Notification of the DoF on SIOFA 2023). -

Legal items	SIOFA requirements	Thailand as a flag State Party
	- Establish rules regarding the boarding and inspection of vessels operating in the SIOFA Area.	- Notification of the DoF on SIOFA 2023 outlines on Clause 24 that a master of the fishing vessel has to give consent and facilitate the authorized inspector to board and inspect the vessel.

Legal items	SIOFA requirements	Thailand as a flag State Party
		and facilitate for boarding and inspection at the high seas.[405]
	- Fishing license	- Thai vessel purposes to

Legal items	SIOFA requirements	Thailand as a flag State Party
		ROF. - A fishing vessel without installed VMS and not maintaining the VMS will be fined four million baht for vessels with a size higher than 150 gross tonnages onwards (section 151 of the ROF).
CMM 16(2023); Vessel Monitoring System	- All CCPs automatically report VMS positions to the Secretariat via their FMC not later than one hour or simultaneously to both the Secretariat via their FMC (	

information in the Notification of the Department of Fisheries on Requirements and Regulations of Overseas Fishing Vessels Operating in the Area under the Southern Indian Ocean Fisheries Agreement (SIOFA) B.E. 2566 (2023). The DoF then notifies fishermen who intend to fish in the SIOFA competence area.

The HSBI management in the South Indian Ocean and the overlapping area of RFMO

There are two RFMOs in the South Indian Ocean: SIOFA and IOTC. SIOFA has adopted the HSBI procedure, which entered into force in its competence area in October 2019. In contrast, the IOTC does not have the HSBI procedure in its competence area, leading to confusion when conducting boarding and inspection activities in the South Indian Ocean. One meeting report from the 27th Session of which entered into force in1 0 0nJETQq0.0000088

In the high seas area covered by the RFMO applying

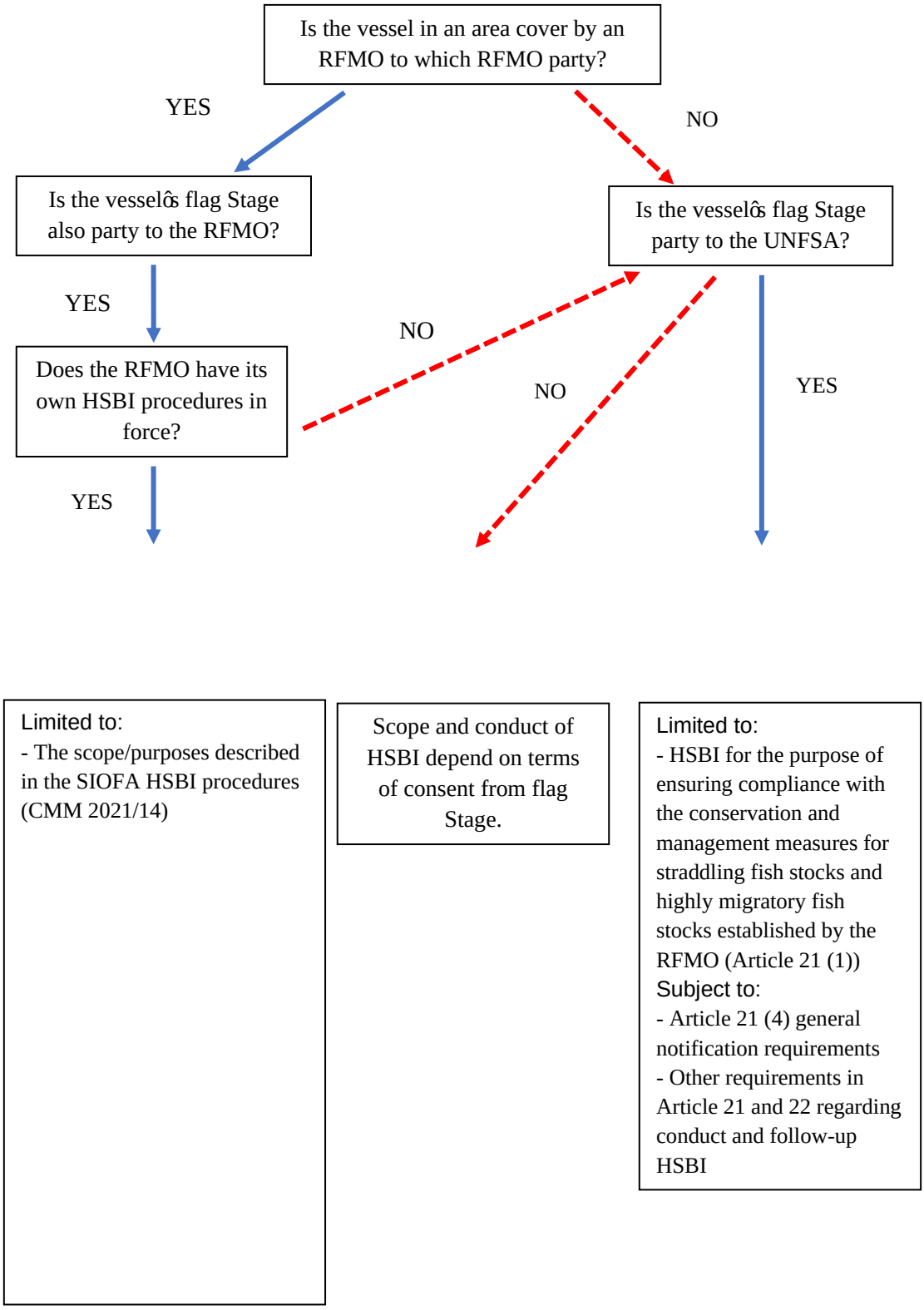

Figure 13. Procedure for High Seas Boarding Inspection in the High Seas[409]

[409] Camille Goodman, ôProcedure for High Seas Boarding Inspection in the High Seasô (August 2023).

óAgreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Convention and Management of

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