
**FIRST MEETING
OF THE
TECHNICAL AND COMPLIANCE COMMITTEE
OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF
HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL
PACIFIC OCEAN, POHNPEI, FEDERATED STATES OF MICRONESIA,
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BOARDING AND INSPECTION PROCEDURES

Paper prepared by the Secretariat

Introduction

1. Article 26(1) of the WCPF Convention requires the Commission to establish procedures for boarding and inspection of fishing vessels on the High Seas in the Convention Area. Substantial progress was made during the Preparatory Conferences (PrepCon) on developing such procedures for the Commission. Whilst agreement was reached on a number of issues, several substantive issues were left unresolved.

2. This paper has been prepared by the Secretariat to facilitate discussion of on Provisional Agenda Item 4.3. The paper is composed of three parts. The first part contains a summary of the discussions on boarding and inspection procedures during the various PrepCon meetings of Working Group III (WG.III). The second part identifies the outstanding issues that require resolution. The third part provides recommendations for the Technical and Compliance Committee to consider on how to advance discussion on the outstanding issues, with a view to reaching agreement on a Boarding and Inspection Scheme for the Commission.

Summary of progress achieved on the boarding and inspection procedures during PrepCon

3. The development of a Scheme for the Boarding and Inspection procedures for the Commission was the subject of extensive discussion in WG.III, which was established at the second session of the Preparatory Conference in February 2002. Among the Terms of Reference for WG.III adopted by PrepCon II was to “develop procedures for practical implementation of a boarding and inspection scheme consistent with the provisions of Article 26 of the Convention¹.”

4. At PrepCon III, WG.III discussed the development of procedures for practical implementation of a boarding and inspection scheme, consistent with Article 26 of the Convention, and adopted principal elements for a boarding and inspection scheme (WCPFC/PrepCon/21) on the basis of an informal working paper prepared by the Chairman of WG.III (WCPFC/PrepCon/WP.6).

¹ WCPFC/PreCon/46*, 7 December 2004, p.1

5. At PrepCon IV, WG.III considered draft procedures² for boarding and inspection pursuant to the Convention, which were prepared by the Chairman of WG.III (WCPFC/PrepCon/WP.14). The draft Scheme is attached to this paper as **Annex A**. In addition to the comments and views expressed by participants to the Chairman of WG.III in advance of PrepCon IV, and during the meetings of WG.III during PrepCon IV, Chinese Taipei, the European Community, Japan, Korea, and the Forum Fisheries Agency tabled documents containing suggestions for improvements to the draft Scheme and alternative formulations of a boarding and inspection scheme.

6. On the basis of the discussions and proposals during PreCon IV, WP.14 was revised and considered at PrepCon V (WCPFC/PrepCon/WP.14.Rev.1). The key area of significant difference in WG.III during PrepCon V related to the provisions of paragraph 17 of the draft Scheme regarding the conditions under which boarding and inspection will be authorized.

7. During PrepCon VI and PrepCon VII, WG.III focussed its attention on what it considered to be the most urgent MCS needs (i.e., the Commission's Record of Fishing Vessels, Authorization to Fish and Vessel and Gear Marking). Consequently, the draft Boarding and Inspection Scheme was not discussed any further by WG.III.

Outstanding issues

8. As far as can be ascertained, the key outstanding issues with regard to the Boarding and Inspection Scheme which require resolution are:

- Who may board and inspect under the scheme?
 - The critical question here is whether the authority to board and inspect on the High Seas should be available to all Members of the Commission or limited only to Contracting Parties³.
- The circumstances under which boarding and inspection on the High Seas may be exercised.
 - The central issue here is whether boarding and inspection on the High Seas may be conducted any time an enforcement vessel encounters a fishing vessel on the High Seas, or whether there must be reasonable grounds to believe the

² Western and Central Pacific Fisheries Commission Draft Revised Boarding and Inspection Scheme

³ The significance of this issue lies in the fact that, in a few cases, the Convention draws a subtle distinction between "Contracting Parties" and "Members of the Commission". "Contracting Parties" are States or entities entitled to ratify or accede to the Convention. "Members of the Commission" include all "Contracting Parties" and others entitled to membership of the Commission. Members may therefore include States, Regional Integration Organizations and Fishing Entities. With a few exceptions, most of the provisions of the Convention apply to "Members of the Commission". The provisions of the Convention which specifically apply to "Contracting Parties" include the following: (i) the Chairman and Vice Chairman of the Commission are to be elected from "Contracting Parties" (Art.9(4)); (ii) the "Contracting Parties" are to determine the location of the Headquarters of the Commission (Art. 9(7)); (iii) only Contracting Parties, may by consensus, invite other States and regional economic integration organizations to accede to the Convention (Art.35); and (iv) the power of withdrawal is specifically given to "Contracting Parties" (Article 42). Significantly, Article 26 of the Convention dealing with boarding and inspection powers comes under Part VI of the Convention entitled "Compliance and Enforcement". It is worth noting that all the substantive provisions under Part VI apply to "Members of the Commission." Thus, it can be concluded that the boarding and inspection powers envisaged under Article 26 of the Convention are applicable to all Members of the Commission.

vessel has committed a violation of applicable conservation and management measures before it can be boarded and inspected.

- Assigning responsibility for a boarding and inspection that is found to be inconsistent with the Scheme and/or which resulted in unreasonable delays; and
- The degree of force that may be used in High Seas boarding and inspections.

Suggested approach to resolving outstanding issues

9. The resolution of the issues outlined above and any additional issues that have not been identified in this paper, require careful consideration and cannot be resolved at the first meeting of the Technical and Compliance Committee.

10. To progress the finalization of the Boarding and Inspection Scheme for the Commission, the Technical and Compliance Committee may wish to consider the following approach:

- Establish a small Working Group to propose amendments to the current draft of the Scheme aimed at resolving the remaining issues. In developing its proposals, the Working Group would take into account the views identified in this paper and by any Commission Member or Cooperating Non-member, as well as the experiences of other RFMOs on the subject and the provisions of the UN Fish Stocks Agreement. This Small Working Group (SWG) will work inter-sessionally, through electronic means as much as practicable, and submit its recommended amendments to the Scheme to TCC2.
- To convene the Second Regular Session of the Technical and Compliance Committee (TCC2) well in advance of the Third Session of the Commission. The TCC2 will consider the proposals on the Scheme prepared by the SWG and develop a revised draft of the Commission High Seas Boarding and Inspection Scheme. The TCC will circulate this revised draft to all Members and Cooperating and Non-members in advance of the next Session of the Commission (WCPFC3), where the revised draft of the Scheme will be considered.

Additional consideration

11. Article 26(2) of the WCPF Convention provides that if, within two years of the entry into force of the Convention (i.e. 19th June 2006), the Commission is not able to agree to boarding and inspection procedures, or an alternative mechanism, Articles 21 and 22 of the UN Fish Stocks Agreement, and any such additional procedures as the Commission may decide as necessary for the implementation of Articles 21 and 22, shall be applied.

12. One option open to the Technical and Compliance Committee is to allow the default scheme under the UN Fish Stocks Agreement to come into effect for the Commission from the second anniversary of the entry into force of the WCPF Convention.

13. Should the Technical and Compliance Committee wish to proceed with the finalization of a separate Boarding and Inspection scheme for the Commission, it would be necessary for Committee to make a recommendation to the Commission to extend the 19th **June 2006** dead-line to such other date the Committee may deem feasible.

14. There are no legal impediments to such a decision by the Commission. Under international law, the parties to a Convention have the power to collectively agree to interpret the provisions of the Convention in order to facilitate the fulfilment of their obligations under the Convention⁴. The Committee may wish to recommend this approach based on the substantial progress made during PrepCon on the draft Scheme and with the consensus agreement among Members to work to finalize an alternative mechanism for High Seas boarding and inspection, in accordance with Article 26, as a matter of priority.

⁴ Article 31 of the Vienna Convention on the Law of Treaties provides that the context for the purpose of the interpretation of a treaty shall comprise, among other things, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; and any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. The latest international legal precedence for this approach was the decision by the parties to the UN Convention on the Law of the Sea in relation to claims to a continental shelf beyond 200 nautical miles. Article 4 of Annex II to the UN Law of the Sea Convention requires where a State party wishes to claim a continental shelf beyond 200 miles, it must submit such a claim to the Commission on the Limits of the Continental Shelf within 10 years of the entry into force of the Convention for that State. In May 2001, the State parties to the Law of the Sea Convention collectively agreed to extend that deadline to 2009 for States which ratified the Convention before its entry into Force on 16 November 1994.

**WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION
DRAFT REVISED BOARDING AND INSPECTION SCHEME⁵**

1. There is hereby established, pursuant to Article 26 of the Convention, the Western and Central Pacific Fisheries Convention (WCPFC) Boarding and Inspection Scheme.

PURPOSE

2. Boarding and inspection and related activities, conducted pursuant to the WCPFC Boarding and Inspection Scheme, shall be for the purpose of ensuring and verifying compliance with the provisions of the Convention and conservation and management measures adopted by the Commission and in force.

AREA OF APPLICATION

3. The WCPFC Boarding and Inspection Scheme shall operate on the high seas within the Convention area.

GENERAL RIGHTS AND OBLIGATIONS

4. Each [Contracting Party] [Member of the Commission] is entitled to participate in the WCPFC Boarding and Inspection Scheme and, subject to the provisions of the Scheme, to carry out boarding and inspection on the high seas of fishing vessels engaged in or reported to have engaged in a fishery regulated pursuant to the Convention.

5. Each Member of the Commission shall ensure that its vessels fishing on the high seas within the Convention area cooperate in the implementation of the WCPFC Boarding and Inspection Scheme.

GENERAL PRINCIPLES

6. The procedures of the WCPFC Boarding and Inspection Scheme are intended to implement and give effect to Article 26 of the Convention and are to be read consistently with those provisions.

7. The WCPFC Boarding and Inspection Scheme shall be implemented with a view to achieving equitable distribution of inspections of among fishing vessels operating in the Scheme's area of application.

8. The WCPFC Boarding and Inspection Scheme shall be implemented so as to take into account the full range of available measures to monitor compliance with the provisions of the Convention and agreed conservation and management measures, including inspection activities carried out by the authorities of Members of the commission in respect of their own flag vessels.

⁵ as developed by Working Group III up to and including PrepCon V (WCPFC/PrepCon/WP.14.Rev.1)

9. The Commission shall keep the implementation of these principles under review.

PARTICIPATION

10. The Commission shall maintain a register of all vessels and inspectors authorized to conduct boarding and inspection pursuant to the WCPFC Boarding and Inspection Scheme.

11. Each [Contracting Party] [Member of the Commission] that intends to carry out boarding and inspection activities pursuant to this scheme shall so notify the Commission, through the Executive Director, and shall provide the following:

- with respect to each vessel it proposes to assign to the Scheme:
 - i) details of the vessel (name, description, photograph, registration number, home port, international radio call sign, communication capability and crew complement);
 - ii) certification that the vessel is dedicated solely to Government service and is clearly marked and identifiable as being on official Government service; and
 - iii) certification that the crew has received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures adopted by the Commission.
- with respect to each inspector it proposes to assign to the Scheme:
 - i) the name and affiliation of the inspector;
 - ii) certification that the inspector is fully familiar with the fishing activities to be inspected and the provisions of the Convention and conservation and management measures in force; and
 - iii) certification that the inspector has received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures adopted by the Commission.

12. Inspection vessels and inspectors notified by [Contracting Parties] [Members of the Commission] pursuant to paragraph 11, shall be included on the Commission register once the Commission verifies that they meet the requirements of that paragraph.

13. In order to make optimum use of resources assigned to the Scheme, inspectors [Contracting Parties] [Members of the Commission] shall seek identify opportunities to place inspectors assigned by one [Contracting Party] [Member} on the vessel assigned by another. Where appropriate, Members of the Commission should seek to conclude bilateral arrangements to this end or otherwise facilitate communication and coordination between them for the purpose of implementing this Scheme.

14. The Commission shall ensure that the register of authorized vessels and inspectors is at all times available to all Contracting Parties and shall immediately circulate any changes therein. Each Contracting Party shall ensure that the list of vessels and inspectors appearing on the register is circulated to each of its fishing vessels operating in the Convention Area.

PROCEDURES

15. Any vessel authorized to engage in boarding and inspection pursuant to this Scheme (authorized enforcement vessel) shall fly, in clearly visible fashion, the WCPFC inspection flag as designed by the Commission.

16. Any inspector authorized to engage in boarding and inspection pursuant to this Scheme (authorized inspector) shall carry approved credentials from issued by the designating [Contracting Party] [Member of the Commission] in the format agreed by the Commission.

17. An authorized enforcement vessel that intends to board and inspect a fishing vessel on the high seas that is engaged in or reported to have engaged in a fishery regulated pursuant to the Convention shall, prior to initiating the boarding and inspection:

- a) establish contact with the vessel by radio and/or by the appropriate International Code of Signals;
- b) provide the information to identify itself as an authorized enforcement vessel - name, registration number, international radio call sign and contact frequency;
- c) provide notice of intent to board to the master of the fishing vessel; and
- d) initiate notice of the boarding and inspection to the competent authorities of the Member of the Commission of the vessel.

18. In carrying out boarding and inspection pursuant to this Scheme, the authorized inspection vessel and authorized inspectors shall make their best efforts to communicate with the master of the fishing vessels in a language that the master can understand.

19. Authorized inspectors shall have the authority to inspect the vessel, its license, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and management measures in force pursuant to the Convention.

20. Boarding and inspection pursuant to this Scheme shall:

- a) be carried out in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of vessels and crews;
- b) limit interference with fishing operations to the greatest extent practicable and feasible;
- c) avoid action that would adversely affect the quality of the catch on board; and
- d) not be conducted in such manner as to constitute harassment of a fishing vessel.

21. In the conduct of a boarding and inspection, the authorized inspectors shall:

- a) present a copy of their credentials to the master of the vessel and a copy of the text of the relevant measures in force pursuant to the Convention in the relevant area of the high seas;
- b) not interfere with the master's ability to communicate with the authorities of the Member of the Commission under whose jurisdiction the vessel is operating;
- c) complete the inspection of the vessel within 4 (four) hours unless evidence of a serious violation is found;
- d) acquire and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention;

- e) provide a copy of a report on the boarding and inspection to the master and to the competent authorities of the Member of the Commission under whose jurisdiction the vessel is operating, noting therein any objection or statement which the master wishes to include in the report; and
- f) promptly leave the vessel following completion of the inspection.

22. During the conduct of a boarding and inspection, the master of the fishing vessel shall:
- a) accept and facilitate prompt and safe boarding by the authorized inspectors;
 - b) cooperate with and assist in the inspection of the vessel pursuant to these procedures;
 - c) not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
 - d) allow the inspectors to communicate their own authorities, as well as with the competent authorities of the Member of the Commission under whose jurisdiction the vessel is operating;
 - e) accord the inspectors the status of officers on board and provide them with reasonable facilities, including, where appropriate, food and accommodation; and
 - f) facilitate safe disembarkation by the inspectors.

23. If the master of a fishing vessel denies permission for authorized inspectors to carry out a boarding in accordance with this Scheme, such master shall offer an explanation of the reason for the denial. The [Contracting Party] [Member of the Commission] of the authorized enforcement vessel shall immediately notify the Member of the Commission under whose jurisdiction the fishing vessel is operating, as well as the Commission, of the master's refusal and any explanation.

24. The Member of the Commission under whose jurisdiction the fishing vessel is operating, unless generally accepted international regulations, procedures and practices relating to safety at sea make it necessary to delay the boarding and inspection, shall direct the master to accept the boarding and inspection. If the master does not comply with such direction, the Member shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The Member shall immediately notify the [Contracting Party] [Member of the Commission] of the authorized enforcement vessel and the Commission of the action it takes in these circumstances.

[USE OF FORCE]

25. Authorized inspectors are not authorized to carry firearms during the conduct of inspection activities pursuant to this Scheme and force shall not be used for the purpose of stopping, slowing or boarding a vessel or once on board a vessel for carrying out inspection activities or for gaining access to any portion of the vessel, its gear, equipment, facilities, fish or fish products or its records.

26. The master of the authorized enforcement vessel may authorize the use of force only in circumstances when the conduct of the fishing vessel or its crew presents real and imminent threat to the safety of the enforcement vessel, its crew or to the boarding party. In such cases, application of force shall be limited to the minimum necessary to counter the threat in question.

27. Any incident involving the use of force shall be immediately reported to the competent authorities of the Member of the Commission under whose jurisdiction the fishing vessel involved is operating, as well as to the Commission.]

INSPECTION REPORTS

28. Authorized inspectors shall prepare a complete report on each inspection they carry out pursuant to this Scheme in accordance with the format specified by the Commission. The [Contracting Party] [Member of the Commission] of the authorized enforcement vessel from which the boarding and inspection was carried out shall transmit a copy of the inspection report to the Member of the Commission under whose jurisdiction the fishing vessel inspected is operating, as well as the Commission, within 3 (three) days of the inspection.

29. Such report shall clearly identify any observed activity or condition that the authorized inspectors believe to be a violation of the Convention and indicate the nature of specific factual evidence of such violation.

30. Each inspection report shall include any statement or objection that the master of the inspected vessel wishes to make.

SERIOUS VIOLATIONS

31. In the case of any inspection of a fishing vessel during which the authorized inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 36, [the Contracting Party] [Member of the Commission] of the authorized enforcement vessel shall immediately notify the Member of the Commission under whose jurisdiction the fishing vessel is operating, directly as well as through the Commission.

32. Upon receipt of a notification under Paragraph 28, the Member of the Commission under whose jurisdiction the fishing vessel is operating shall:

- a) assume its obligation to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the [Contracting Party] [Member of the Commission] of the authorized enforcement vessel, as well as the Commission; or
- b) authorize the [Contracting Party] [Member of the Commission] of the authorized enforcement vessel to complete investigation of the possible violation and so notify the Commission.

33. In the case of 32(a) above, the [Contracting Party] [Member of the Commission] of the authorized inspection vessel shall provide, as soon as practicable, the specific evidence collected by the authorized inspectors to the Member of the Commission under whose jurisdiction the fishing vessel is operating.

34. In the case of 32(b) above, the [Contracting Party] [Member of the Commission] shall provide the specific evidence collected by the authorized inspectors, along with the results of its investigation, to the Member of the Commission under whose jurisdiction the fishing vessel is operating immediately upon completion of the investigation.

35. If, after three full working days of receipt of a notification pursuant to Paragraph 31 (as confirmed by the Commission), the Member of the Commission under whose jurisdiction the fishing vessel is operating has failed to respond to the notification, the fishing vessel in question shall as of that date be deleted from the Commission's Record of Vessels authorized to fish in the Convention Area (Article 24(4)).

36. For the purposes of this Scheme, a serious violation means:

- a) fishing without a license, permit or authorization issued by the flag State in accordance with Article 24 of the Convention;
- b) failure to maintain records of catch and catch-related data in accordance the Commission's reporting requirements or serious misreporting of such catch and/or catch-related data;
- c) fishing in a closed area;
- d) fishing during a closed season;
- e) taking of prohibited species;
- f) significant violation of catch limits or quotas in force pursuant to the Convention;
- g) using prohibited fishing gear;
- h) falsifying or concealing the markings, identity or registration of a fishing vessel;
- i) concealing, tampering with or disposing of evidence relating to investigation of a serious violation;
- j) multiple violations which taken together constitute a serious disregard of measures in force pursuant to the Commission; and
- k) refusal to accept a boarding and inspection in accordance with this scheme.

ENFORCEMENT

37. Any evidence obtained with respect to violation by a fishing vessel of the Convention, or a measure in force pursuant to it, as a result of the operation of this Scheme shall be referred to the competent authorities of the Member of the Commission under whose jurisdiction the vessel is operating for action in accordance with Article 25 of the Convention.

38. Interference by a fishing vessel with an authorized inspection vessel or an authorized inspector acting in accordance with this Scheme shall be treated by the Member of the Commission under whose jurisdiction the fishing vessel is operating as if the authorized inspection vessel or authorized inspector were operating under its jurisdiction.

ANNUAL REPORTS

39. [Members of the Commission][Contracting Parties] that assign vessels to this Scheme shall report annually to the Commission on the boarding and inspections carried out by its authorized enforcement vessels, as well as upon possible violations observed.

40. Members of the Commission shall include in their Annual Compliance Reports to the Commission under Article 25(8) of the Convention action that they have taken in response to boarding and inspections of their fishing vessels that resulted in observation of possible violations, including any proceedings instituted and sanctions applied.

OTHER PROVISIONS

41. Authorized enforcement vessels, while assigned to this Scheme, shall engage in surveillance aimed at identifying fishing vessels of non-Parties undertaking fishing activities on the high seas in the Convention Area. Any such vessels identified shall be immediately reported to the Commission.

42. Members of the Commission shall be liable for damage or loss attributable to them from action in violation of these procedures.

COMMISSION COORDINATION AND OVERSIGHT

43. Authorized inspection vessels shall establish regular contact for the purpose of sharing information on areas in which they are patrolling, on sightings and on boarding and inspections they have carried out, as well as other operational information relevant to carrying out their responsibilities under this Scheme.

44. For this purpose, the Commission shall establish, within the Secretariat, a means to facilitate secure communication among authorized enforcement vessels.

45. The Commission shall keep under continuous review the implementation and operation of the WCPFC Boarding and Inspection Scheme, including review of Annual Reports relating to the scheme provided by Members. In particular, it shall seek to promote optimum use of the authorized enforcement vessels and authorized inspectors assigned to the Scheme by:

- a) identifying priorities by area and/or by fishery for boarding and inspections pursuant to this Scheme;
- b) ensuring that boarding and inspection on the high seas is fully integrated with the other monitoring, compliance and surveillance tools available pursuant to the Convention;
- c) ensuring generally equitable distribution of boarding and inspections on the high seas among fishing vessels of Members of the Commission; and
- d) taking into account high seas enforcement resources assigned by Members of the Commission to monitor and ensure compliance by their own fishing vessels, particularly for small boat fisheries whose operations extend onto the high seas in areas adjacent to waters under their jurisdiction.