

COMMENTARY ON THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION BOARDING AND INSPECTION PROCEDURES

The WCPFC Secretariat issued a draft Western and Central Pacific Fisheries Convention on Boarding and Inspection Procedures. The draft Procedures contains 52 articles. It is divided into 8 Parts. These are: Purpose, Area of Application, General Rights and Obligations, General Principles, Participation, Procedures, Use of Force, and Inspection Reports. The draft Procedure is a revised version of the Procedures developed by Working Group III *WCPFC/PrepCon/WP.14/Rev.1* and further revised at the first meeting of the Technical and Compliance Committee (*WCPFC/TCC1/15(Rev.1)*).

The issues which required resolution by the time the TTC met were:

- 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 made available to all members of the Commission or Limited only to Contracting Parties
- 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 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.

At the first meeting of the TCC in Pohnpei in December 2005, the:

Committee recognised that Article 26(2) provides that the Commission may decide on additional procedures necessary for the implementation of Articles 21 and 22 of the Agreement, noting that the characteristics of the fisheries in the WCPO and the experiences of other regional fisheries management organisations are important considerations. The Committee agreed to proceed with developing a specific boarding and inspection scheme for the WCPFC with a focus on additional procedures to implement Articles 21 and 22.

It is important to bear in mind that the basis of high seas boarding and inspection is the UN Fish Stocks Agreement. The language in Article 26(1) of the Convention makes it quite clear that the purpose of a boarding and inspection scheme is to ensure compliance with conservation and management measures. Thus, the high seas boarding and inspection scheme must provide the basis to enable members of the Commission to inspect and board vessels on the high seas. A fundamental principle which should underpin any boarding and inspection scheme is that the scheme should enable members of the Commission to effectively discharge their obligations under the UN Fish Stocks Agreement and the Convention to ensure compliance with conservation and management measures established by the Commission. Article 26(2) of the Convention states as follows:

If within two years of the entry into force of this Convention, the Commission is not able to agree on such procedures, or on an alternative mechanism which effectively discharges the obligations of members of the Commission under the Agreement and this Convention to ensure compliance with the conservation and management measures established by the Commission, articles 21 and 22 of the Agreement shall be applied subject to paragraph 3, as if they were part of this Convention and boarding and inspection of fishing vessels in

the Convention Area, as well as any subsequent enforcement action shall be conducted in accordance with the procedures set out therein and such additional practical procedures as the Commission may decide are necessary for the implementation of Articles 21 and 22.

It is clear from both Articles 26(1) and (2), that Articles 21 and 22 of the UN Fish Stocks provides at least at the very minimum, the basis for any high seas boarding and inspection scheme. In this regard, it is argued that Articles 21 and 22 of the UN Fish Stocks Agreement establishes a delicate balance between the rights of fishing operators and inspecting States. The balance however is clearly tilted towards ensuring members of the Commission are able to ensure vessels fishing on the high seas comply with conservation and management measures. The procedures therefore should facilitate, rather than constrain high seas boarding and inspection.

FFA Members position at PrepCon V as agreed to by FFC54 in Rarotonga in September 2003 is:

- a. where clauses from either the WCPF Convention or the U.N. Fish Stocks Agreement already address issues in the Boarding and Inspection Scheme, that the language of the Convention or the U.N. Fish Stocks Agreement should be used to promote legal consistency in language; and
- b. Cooperating Non-Parties to the Convention should be considered the same as Members with respect to responsibilities and obligations regarding the Boarding and Inspection Scheme.

The draft Procedures circulated by the WCPF Secretariat is not consistent with many of the provisions of the UN Fish Stocks Agreement, are *ultra vires* the UN Fish Stocks in ways that actually impede boarding and inspections. Furthermore from an operational point of view, some of the proposals in the draft Procedures are impractical, not operational and actually constrain rather than enhance effective compliance of agreed conservation and management measures by members of the Commission. It is submitted that this would not be consistent with the spirit of the UN Fish Stocks Agreement and the Convention.

The following comments are provided on the various provisions of the draft Procedures.

**WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION
BOARDING AND INSPECTION PROCEDURES**

1. There are hereby adopted, pursuant to Article 26 of the Convention, the following Western and Central Pacific Fisheries Convention (WCPFC) boarding and inspection procedures.

No comments on the proposed formula for the adoption of the procedures. It should be made clear that the High Seas Boarding and Inspection Procedures are for the High Seas within the Convention Area.

PURPOSE

2. Boarding and inspection and related activities conducted pursuant to these procedures 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.

This provision makes it clear that the boarding and inspection procedures are for the purpose of ensuring and verifying compliance with the provisions of the Convention and conservation and management measures adopted by the Commission. The general approach however taken in the draft does not do that. In fact it makes boarding and inspection difficult, and subject to too many caveats. The Procedures should enable boarding and inspections to be conducted in a way that will facilitate compliance with conservation and management measures.

AREA OF APPLICATION

3. These procedures shall apply on the high seas within the Convention Area.

No comment required here as the procedures only apply to the high seas areas within the Convention Area.

GENERAL RIGHTS AND OBLIGATIONS

4. Each Member of the Commission may, subject to the provisions of these procedures, 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

The general obligation created in this Rule is to subject members of the Commission boarding and inspection rights to the Procedures. As a matter of general international law, the underlying principles for high seas boarding and inspection is the UN Fish Stocks

Convention.

Agreement and the WCPF Convention. It is suggested that a more palatable approach would be to ensure that the procedures are without prejudice to the rights and obligations of members of the Commission under the UN Fish Stocks Agreement and other existing regional instruments such as the Niue Treaty. It should be noted that already within the FFA membership, there are a number of bilateral and regional instruments that could allow for boarding and inspection of vessels that fly the flag of FFA Members on the high seas. Rule 4 also provides that “each member of the Commission may, subject to the provisions of these procedures, carry out boarding and inspection on the high seas of fishing vessels...”. Fishing vessels is defined in the WCPF Convention as meaning “any vessel used or intended to be used for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations”. It would seem that the scope of Commission is broadly defined. Would it be necessary to also state that the Procedures should also allow for the boarding of IUU vessels, as well those belonging to co-operating non-members (CNMs).

5. Each Member of the Commission shall ensure that vessels flying its flag accept boarding and inspection by duly authorized inspectors in accordance with these procedures. Such duly authorized inspectors shall comply with these procedures in the conduct of any such activities.

This provision should be broadened so that CNMs also accept boarding and inspection by duly appointed inspectors. It might also be useful for operational purposes to require “Each Member of the Commission and Cooperating Non-Member shall ensure that vessels that fly its flag are [registered/included/displayed] on the Commissions Record of Fishing Vessels prior to commencing fishing operations”.

GENERAL PRINCIPLES

6. These procedures are intended to implement and give effect to Article 26 and Annex III, Article 6(2), of the Convention and are to be read consistently with those provisions.

No commentary required here as this is self explanatory. It should also be borne in mind that ultimately the premise for Article is Articles 21 and 22 of the UN Fish Stocks Agreement.

7. The WCPFC boarding and inspection scheme shall be implemented in a non-

This provision is not clear, at least from an operational perspective. What does it mean,

discriminatory manner, taking into account such factors as the presence of observers aboard a vessel, the size of a vessel, and frequency and results of past inspections.

8. These procedures 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.

9. While not limiting efforts to ensure compliance by all vessels, priority for boarding and inspection efforts pursuant to these procedures may be given to:

- a) fishing vessels that are not on the WCPFC Record of Fishing Vessels and are flagged to Members of the Commission;
- b) fishing vessels whose flag Member does not dispatch patrol vessels to the area of application to monitor its own fishing vessels;
- c) fishing vessels without observers on board;
- d) large-scale tuna fishing vessels.

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

when the scheme will be implemented in a non-discriminatory manner, taking into account factors such as the presence of observers on board the vessel, the size of the vessel and results of past inspections. It seems to imply more infractions, more inspections, and then no inspections and then inspections. It is not clear what is intended by this provision.

No commentary required here.

Is it really necessary to prioritise what vessels should be boarded. Article 26(1) clearly states that “.. the Commission shall establish procedures for boarding and inspection of fishing vessels on the high seas.”

No commentary required here.

PARTICIPATION

11. The Commission shall maintain a register of all vessels and inspectors authorized to conduct boarding and inspection pursuant to these procedures.

This provision is limiting. Article 21(4) of the UN Fish Stocks Agreement states that “... The vessels used for boarding and inspections shall be clearly marked and identifiable as

Only such vessels and inspectors are authorized under these procedures to board and inspect foreign flagged fishing vessels on the high seas within the Convention Area

being on government service.” It is therefore not necessary to then limit this provision by requiring that the Commission shall maintain a register of all vessels and inspectors to conduct boarding and inspection. It is not consistent with the requirements of the UN Fish Stocks Agreement. It is suggested that this provision either be deleted, or the words in the UN Fish Stocks Agreement be applied as a general principle of participation. Alternative wording may include the following: -

Members of the Commission and CNMs that wish to carry out high seas boarding and inspections shall ensure that their vessels are clearly marked and identifiable as being on government service. Duly authorised high seas inspectors shall carry with them at all times during the inspection their authorisation to carry out such boardings.

12. Each Member of the Commission that intends to carry out boarding and inspection activities pursuant to these procedures shall so notify the Commission, through the Executive Director, and shall provide the following at least 21 days prior to commencing boarding and inspection activities:

a) with respect to each vessel it proposes to assign to boarding and inspection activities under these procedures:

- i) details of the vessel (name, description, photograph, registration number, home port, international radio call sign and communication capability);
- ii) notification that the inspection vessel is clearly marked and identifiable as being on government service;
- iii) notification 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.

b) with respect to each inspector it proposes to authorize pursuant to these procedures:

- i) the name and affiliation of the inspector;
- ii) notification 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) notification 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.

The principles in Rule 12 actually constrain rather than facilitate the ability of Members and CNMs to conduct high seas boarding and inspection, and adds an unnecessary administrative burden on the Executive Director. The right to conduct boarding and inspections on the high seas is not conditional upon converal of approval by the Executive Director. It is right granted under the UN Fish Stocks Agreement and the WCPF Convention.

It is not necessary for Members and CNMs to advise the Commission each time they intend to carry out high seas boarding and inspection activities. Members and CNMs should only have to inform the Commission/Executive Director once a year that its vessels and officers have fulfilled the criteria for undertaking high seas boarding and inspections, and that it intends to undertake boarding and inspections in the next year. It is only necessary to inform the Commission/Executive Director once that it will be taking part in high seas boarding and inspections, not every time it intends to carry out such activities. For operational reasons, Members and CNMs may not wish to let everyone know that they are leaving the EEZ to conduct inspections on the high seas only to find that vessels have fished in the EEZ while they have been inspecting the high seas!.

Article 21(4) of the UN Fish Stocks Agreement, only states that "... inform all States of the form of identifications issued to their duly authorised inspectors" and that the "vessel shall be clearly marked and identified as being on government duty". The UN Fish Stocks Agreement does not require that they inform the world as to who will be doing what.

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

14. In order to make optimum use of resources assigned to activities pursuant to these procedures, Members of the Commission shall seek to identify opportunities to place authorised inspectors on inspection vessels duly authorised and notified by another Member of the Commission. 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.

15. The Executive Director shall ensure that the register of authorized vessels and inspectors is at all times available to all Members of the Commission and shall immediately circulate any changes therein. Each Member of the Commission 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.

Why would the Commission want/need to establish a register of inspectors. This provisions requires the Commission to verify that the inspection vessels and inspectors meet the requirements under paragraph 12. This is another bureaucratic and administrative layer that constrains, rather than make operations easy. How will the Commission verify that a vessel or inspector meet the requirements given that it meets only one a year. How long will this process take. This provision has real potential to delay rather than expedite inspections.

The wording of the first sentence of this Rule should be amended as it is clumsy. The idea of having bilateral agreements between Members is cumbersome and too rigid. Some alternative mechanisms must be developed other than achieving this through bilateral agreements. From experience within the FFA region, bilateral agreements take too long to negotiate. This will require having the appropriate authority to exercise powers while on board another Members/CNMs vessel in domestic legislation. Not all countries have such provisions. There are also issues pertaining to evidentiary provisions in particular, if the flag State wishes to prosecute the vessel, it is not clear how this can be done.

It is not clear why such a provision is necessary. What purpose does this provision seek to address. It is suggested that it is much simpler for the provision to just state that “all vessels on government duty are authorised by their flag States to undertake high seas boarding and inspections”. From an operational perspective, it is a waste of time and effort for all this administrative requirements which serves no purpose at all. With respect to the second part of Rule 15, it is submitted that such information is operational data. It is submitted that a fleet officer will not want to have this information lying about and made available to anyone as this might constitute a breach of security. The UN Fish Stocks Agreement stipulates that the Parties shall be informed but it is saying a bit too much if they also have to be informed of the types and names of boats and inspectors. It is sufficient that these vessels are inspectors are duly authorised and are on government

duty. It is submitted that generally surveillance activities is not supposed to be clear and transparent. It is therefore suggested that if the Commission wants to specify or require that this information be disseminated it is suffice that be done annually, rather than each time there is a change.

PROCEDURES

16. Any vessel authorized to engage in boarding and inspection pursuant to these procedures (authorized inspection vessel) shall fly, in clearly visible fashion, the WCPFC inspection flag as designed by the Commission.

Has any thought been given to the WCPFC Flag yet?

17. Any inspector authorized to engage in boarding and inspection pursuant to these procedures (authorized inspector) shall carry approved credentials issued by the designating Member of the Commission in the format agreed by the Commission.

Has the format been agreed to yet?

18. An authorized inspection 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) seek to establish contact with the fishing vessel by radio and/or by the appropriate International Code of Signals;
- b) provide the information to identify itself as an authorized inspection 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, through its flag Member, of the boarding and inspection to the competent authorities of the Member of the Commission of the vessel.

19. In carrying out boarding and inspection pursuant to these procedures, 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.

It is suggested that subparagraph (a) be amended as follows: -

“a) seek to establish contact with the fishing vessel by radio and/or by the appropriate International Code of Signals or such other means of alerting the vessel”;

With regards to subparagraph © is not clear whether such notice is to be given in writing, by radio, by email, fax. The subparagraph would be more operational if the subparagraph requires the Inspecting States to

“State its intention to board the vessel”

Subparagraph (d) is more problematic in operational terms. What does t actually mean? Who has to give notice to whom? Does the notice have to be acknowledged? What if it is a weekend/public holiday or after hours. This provision is unrealistic and will present logistical problems for operators. It should be noted that Article 21(4) of the UN Fish Stocks Agreement states that “At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this Article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organisation or arrangement”. Perhaps the principle in Article 21(4) should be incorporated in the text of the draft Procedures.

This provision does not address the problem whereby a vessel master or none of the crew can speak the language used by the Inspecting State. This raises the question, if he does not understand English, Japanese or Chinese unless there are there are such language speakers onboard the inspection vessel what would the Inspecting State do. What if the Captain is in fact Ukrainian and cannot understand a word of English, Japanese or Chinese, what would the Inspecting State do? What steps should the Inspecting State take if the vessel does not stop because of language and communication difficulties. The

obligation should be on the flag State to ensure that there is a officer onboard the fishing vessel, conversant in the business language of the commission.

20. 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.

No commentary necessary here.

21. Boarding and inspection pursuant to these procedures shall:

The commentary provided with respect to Rule 18 above applies to this Rule.

- a) be carried out in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of fishing vessels and crews;
- b) be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the fishing vessel;
- c) take reasonable care to avoid action that would adversely affect the quality of the catch; and
- d) not be conducted in such manner as to constitute harassment of a fishing vessel.

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

In respect to paragraph (a) where it states that the authorised inspectors shall “*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;*” It is not clear whether it should read their “credentials” or “authorisations”. Furthermore, the fishing vessels should already have a copy of the relevant measures on board their vessels if they have been authorised to fish on the high seas by their flag State.

- 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 fishing vessel is operating;
- c) complete the inspection of the vessel within 4 (four) hours unless evidence of a serious violation is found;

With respect to paragraph (b) which states that “*not interfere with the master’s ability to communicate with the authorities of the Member of the Commission under whose*

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- 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.

jurisdiction the fishing vessel is operating” It is not clear how the officer on board will know that he is not warning every vessel within 100nm of the presence of the patrol boat. In other words, this allows the vessel to communicate with other vessels to report the presence of the patrol vessel and give them time to move out of the area. It is operationally absurd.

With respect to paragraph (d) which states “*acquire and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention*”, the correct term to use is “seize”. Enforcement officers do not acquire documents that they obtain from fishing vessels. Operationally, document evidence is not something that can be proven in court. Evidence such as logs, catch records are seized and kept as evidence. This is what can be use in court as evidence. Does document evidence mean that an enforcement officer can keep such material as evidence? Does document evidence mean, photocopy and if so how feasible is that on a vessel on the high seas? The provision raises issues pertaining to evidentiary procedures. Generally the prosecution of fisheries offences is undertaken under the general laws pertaining to the criminal laws of a States, the Procedures should probably contain acceptable standards for evidence gathering that might be admissible as prima facie evidence in court proceedings arising from the arrest of vessels on the high seas.

23. 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, assault, resist, delay, refuse boarding, intimidate or interfere with the inspectors in the performance of their duties;
- d) allow the inspectors to communicate with the crew of the inspection vessel, the authorities of the flag Member under whose jurisdiction the inspection vessel is operating, as well as with the competent authorities of the flag Member of vessel being inspected;
- e) provide them with reasonable facilities, including, where appropriate, food and accommodation; and
- f) facilitate safe disembarkation by the inspectors.

24. If the master of a fishing vessel denies permission for authorized inspectors to carry out a boarding and inspection, as provided in these procedures, such master shall offer an explanation of the reason for the denial. The Member of the Commission of the authorized inspection 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.

25. 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

With respect to paragraph (a) does that mean that the Master shall have on board a pilots ladder to facilitate this?

This provision states that if the Master of the fishing vessel denies permission for authorised inspectors to carry out a boarding and inspection, the inspecting State shall immediately notify the flag State of the Masters refusal. However, the provision does not state how and to whom shall this be communicated. Is there going to be a 24 hour operations room in each of the commission Members, and at the Commission Headquarters in Pohnpei to deal with this. See comments in also in Rule 18(d) above. In the meantime, what does the patrol boat do, just steam along until they receive an answer?

The provision does not state which port the vessel is to be taken to, whether it is the port of the flag State, the port of the inspecting State of the nearest port. Articles 21(7) and (8) of the UN Fish Stocks Agreement should be the basis for any subsequent action. Articles

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 Member of the Commission of the authorized inspection vessel and the Commission of the action it takes in these circumstances.

21(7) and (8) states as follows:

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

USE OF FORCE

26. The use of force shall be avoided except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are

This provision requires more work. It implies that if a vessel does not stop, or is instructed to stop by a member and it does not, it is hindering the officers in carrying out

obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

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.

their task. It must be made more specific. For instance, no opposed or hostile boarding may be undertaken; or only once onboard the vessel, and in a situation where the officers and or the patrol vessel is in imminent danger of loss of life, or unless authorized by the flag state of the fishing vessel, may the use of force be authorized. For such matters as the use of force, the Procedures cannot have very general principles that are not specific.

No commentary required.

INSPECTION REPORTS

28. Authorized inspectors shall prepare a complete report on each boarding and inspection they carry out pursuant to these procedures in accordance with the format specified by the Commission. The Member of the Commission of the authorized inspection vessel from which the boarding and inspection was carried out shall transmit a copy of the boarding and 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 completion of the boarding and inspection patrol.

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.

Has the format been decided yet? With respect to the reporting of the inspection, it must be made clear how this report is to be filed. Is it in writing, by radio or what. What is the vessel does not have satellite communications on board?

No commentary on the remaining provisions

SERIOUS VIOLATIONS

31. In the case of any boarding and 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, Member of the Commission of the authorized inspection 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 31, the Member of the Commission under whose jurisdiction the fishing vessel is operating shall without delay:

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

33. In the case of 32(a) above, the 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 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) intentional taking or retention 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 these procedures.
- l) assault, obstruct, resist, delay, intimidate or interfere with an authorised inspector or observer; and
- m) sexual harrassment of any authorised inspector or observer.

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 these procedures shall be referred to the competent authorities of the Member of the Commission under whose jurisdiction the fishing 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 shall be treated by the Member of the Commission under whose jurisdiction the fishing vessel is operating as if the authorized boarding and inspection vessel or authorized inspector were operating under the jurisdiction of that member.

ANNUAL REPORTS

39. Members of the Commission that authorizes vessels operate under these procedures shall report annually to the Commission on the boarding and inspections carried out by its authorized inspection vessels, as well as upon possible violations observed.

40. Members of the Commission shall include in their annual statement of compliance within their Annual Report 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 inspection 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 arising from action taken pursuant to these procedures when such action is unlawful or exceeds that reasonably required in the light of available information to implement these procedures.

APPLICATION TO FISHING ENTITIES

43. Except as specified in paragraph 44, below Fishing Entities that are members of the Commission shall have all the same rights and obligations as Contracting Parties with respect to the implementation and application of these procedures.

44. Paragraph 43 notwithstanding, these procedures shall not apply as between a Fishing Entity and any Contracting Party when such Contracting Party notifies the Executive Director in writing that it does not recognize the right of such Fishing Entity to engage in boarding and inspection on the high seas in respect of the flag vessels of such Contracting Party.

45. In such cases, the Contracting Party shall not have the authority under these procedures to board and inspect vessels of the Fishing Entity identified by the Contracting Party in such notification to the Executive Director.

COMMISSION COORDINATION AND OVERSIGHT

46. Authorized inspection vessels in the same operational area 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 these procedures.

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

48. The Commission shall keep under continuous review the implementation and operation of these procedures, including review of annual reports relating to these procedures provided by Members. In particular, it shall seek to promote optimum use of the authorized inspection vessels and authorized inspectors by:

- a) identifying priorities by area and/or by fishery for boarding and inspections pursuant to these procedures;
- 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 non-discriminatory distribution of boarding and inspections on the high seas among fishing vessels of Members of the Commission without compromising the ability of Members of the Commission to investigate possible severe violations; 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.

DISPUTE RESOLUTION

49. In the event of a disagreement concerning the interpretation or application of the provisions of these procedures, the parties concerned shall consult in an attempt to resolve the disagreement.

50. If the disagreement remains unresolved following the consultations, the Executive Director of the Commission shall, at the request of one of the parties concerned, and with the approval of Commission members, refer the disagreement to a special meeting of the Technical and Compliance Committee (TCC).

51. A report on the disagreement shall be drawn up by the TCC and forwarded to the Commission within two months of the TCC special meeting.

52. Upon receipt of the TCC report, the Commission shall take appropriate action respecting the disagreement in its regular or special session.
