

**Comments of the United States on the WCPFC's Draft Boarding and Inspection
Procedures (version June 2006)
8 September 2006**

1. Paragraph 9 should be amended to include: "e) fishing vessels with a history of violations of internationally agreed conservation and management measures;"
2. With respect to paragraph 12 and the information that Members are to provide for their authorized inspectors, it is recommended that instead of including on the register the names of particular inspectors, only information about a Members' authorized inspectors as a group be included, specifically their affiliations. The references in sub-paragraph 12(b) to "each inspector" would be changed to "inspectors" generally.
3. It is recommended that paragraph 12 be reworded such the training standards of both the Member and the Commission (if established) must be met. Sub-paragraphs 12(a)(iii) and 12(b)(iii) could be reworded to say "...training in boarding and inspection activities at sea in accordance with standards and procedures established by the Member." Then a new sub-paragraph (c) could be written to say that "Members shall ensure that their training standards and procedures for high seas boarding and inspection activities for vessel crew and inspectors meet any minimum standards developed by the Commission." The United States is particularly concerned that crew and inspectors receive thorough training in the use and safety requirements of any firearms, other weapons, or equipment carried and used by the crew and inspector. This could be added as a minimum standard in these procedures, or it could be addressed in training standards to be developed by the Commission.
4. In paragraph 12(a)(i), "home port" should be replaced with "port of registry or, if different from the port of registry, the name of the port marked on the vessel hull."
5. In paragraph 12(a)(ii), consideration should be given to adding "... and a description of such markings, in accordance with the scheme adopted by the Commission." (See paper WCPFC/PrepCon/47).
6. In paragraph 13, instead of making the inclusion of inspection vessels and inspectors on the register contingent on the Commission "verifying" fulfillment of the requirements of paragraph 12 (which would require further detail on the exact steps such verification would entail), it should be made contingent merely on receipt of the required information; for example: "... shall be included on the Commission register once the Secretariat has determined that all the information required under paragraph 12 has been provided by the Member."
7. In paragraph 17, instead of having the Commission developing a format for credentials, consideration should be given to letting the Members use their own formats: "The format of the approved credentials issued by the designating Member of the Commission shall be provided to the Secretariat, which shall promptly circulate it to all Members."
8. Paragraph 20 states that authorized inspectors shall have the authority to inspect "records." With the increasing use of electronic logbooks, it might be necessary to

address in more detail what inspectors may or may not do with electronically stored records, specifically whether they should have the authority to access such records. If they are given such authority consideration should be given to crafting safeguards to minimize the possibility of accidental or intentional modification by inspectors of such records (e.g., by requiring that such inspection be witnessed by the vessel master).

9. Paragraph 21(d) should be revised to say “(d) not be conducted in such manner as to constitute harassment of a fishing vessel, its officers or crew.”
10. It is suggested that paragraph 22(e) be reworded to clarify how the inspectors are to provide a copy of the report to the inspected vessel’s flag State: “... and, through the appropriate authorities of the inspecting Member, to the competent authorities of the Member of the Commission under whose jurisdiction the vessel is operating,”
11. Paragraph 36(h) should be qualified to say “falsifying or intentionally concealing the markings....”
12. In paragraph 41, “non-Parties” should be changed to “non-Members” and the language should be qualified so as to apply only to fishing for HMS: “... identifying fishing vessels of non-Members undertaking fishing for highly migratory fish stocks or for other such species of fish as decided by the Commission on the high seas in the Convention Area.”
13. Consideration should be given to expanding on paragraph 41 in terms of the process of identifying HMS fishing by vessels flagged to non-Members that are not party to the UN Fish Stocks Agreement and following up on such identification. Some possible language, based largely from NAFO follows:
 - 41.1. A non-Member vessel that has been sighted or by other means identified by a Member of the Commission as engaging in fishing for highly migratory fish stocks in the Convention Area is presumed to be undermining the effectiveness of the conservation and management measures adopted for the Convention Area. In the case of any transshipment activities involving a sighted non-Member vessel, the presumption of undermining conservation and management measures applies to any other vessel that has engaged in such activities with that vessel.
 - 41.2. The Member of the Commission shall attempt to inform the vessel that it has been sighted or identified engaging in fishing for highly migratory fish stocks, and is accordingly presumed to be undermining the conservation and management measures, and that this information will be distributed to all Members of the Commission, other regional fisheries management organizations and to the competent authorities of the vessel concerned.
 - 41.3. If a vessel sighted engaging in fishing for highly migratory fish stocks in the Convention Area is flagged to a State that is not a Member of the Commission and not a Party to the Agreement, the authorized inspection vessel, if appropriate and in accordance with international law, should request permission to board the vessel. If the vessel master consents to be boarded, the inspectors’ findings shall be transmitted to the Commission without delay. The Commission shall transmit this information to all Members of the Commission and other relevant regional fisheries management

organizations within one business day of receiving this information, and to the competent authorities of the vessel concerned as soon as possible.

[Editorial suggestions ** To give to the Conveyor separately.**

1. Reference in the title and paragraph 1 to “Convention” boarding and inspection procedures suggests that the Convention is being renegotiated. Instead, the term “Commission” should be used in these two instances to indicate that these are Commission procedures, established pursuant to the Convention. The acronym “WCPFC” would then refer, appropriately in most or all subsequent references, to the Commission.
2. There is inconsistent use of “Member” and “Member of the Commission”; one term or the other should be used throughout.
3. There is inconsistent use of “conservation and management measure” and “measure” – the former is preferred (see paragraphs 22.d and 37).
4. There are still several uses of the term “scheme”, some or all of which should be changed to “procedures” (see paragraphs 7, 14, 36, 41).
5. In several instances, for clarity’s sake, references to “the Commission” should probably be changed to “the Secretariat” (see paragraphs 24 and 25).
6. In paragraph 9, “d) large-scale tuna fishing vessels” could be reworded as “d) larger fishing vessels.”
7. In paragraph 11, the order of the two sentences should be reversed.
8. In paragraph 13, the comma should be removed.
9. In paragraph 15, “Convention area” should be changed to “Convention Area.”
10. The last sentence of paragraph 25 should be revised to read “... of the action it has taken in these circumstances.”
11. To improve the readability of paragraph 22(e), insert “upon disembarkation” after “provide” and insert “(see paragraph 28)” after “is operating”.
12. To improve the readability of paragraph 23(d), revise the language to read, “...inspection vessel, with the authorities of the flag Member under whose jurisdiction the inspection vessel is operating, and with the competent”
13. For consistency with previous language, paragraph 29 should be revised to read “... violation of the provisions of the Convention or conservation and management measures and indicate”
14. Paragraph 31 should be revised by inserting “the” between “in paragraph 36,” and “Member”.

15. Paragraph 34 should be revised by inserting “of the authorized inspection vessel” after “Commission”.
16. In paragraph 36, delete the “and” at the end of sub-paragraph (j) and insert a semicolon at the end of sub-paragraph (k).
17. Paragraph 37 could be clarified by revising it to read: “Any evidence obtained as a result of a boarding and inspection undertaken pursuant to these procedures with respect to a violation of the provisions of the Convention or conservation and management measures adopted by the Commission and in force 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.”
18. Paragraph 39 should be revised to read: “Members of the Commission that authorize their vessels to operate....”
19. Paragraph 43 should be revised to read: “Except as specified in paragraph 44 below, fishing”]