

WCPFC: BOARDING AND INSPECTION NEW ZEALAND COMMENTS

Generic comments

- We would suggest that to better reflect the language of the Convention and UNFSA, use of the term “ensure” is preferable to “verify”, for example “to ensure compliance”.
- For certainty of meaning and consistency with the language of the Convention and UNFSA, we would prefer the use of “notification” as opposed to “certification”, for example “notification that the boarding and inspection vessel is clearly marked”.
- *‘Boarding and inspection’* is a term of art in this context and needs to be used as such throughout to ensure that the text consistently covers the entire process of boarding and inspection, for example “boarding and inspection vessels”, “the conduct of boarding and inspection”, and “boarding and inspection vessel” as opposed to “enforcement vessel”.

Area of application

- For consistency with defined term in Article 3 of the Convention, we would suggest paragraph 3 be redrafted as follows:

“The WCPFC Boarding and Inspection Scheme shall apply on the high seas within the Convention Area.”

General rights and obligations

- We suggest an additional paragraph 5(b) to ensure that Co-operating Non-Parties to the Convention should be considered the same as ‘Members’ with respect to responsibilities and obligations regarding the Boarding and Inspection Scheme. Therefore suggest the following paragraph 5(b):

“For the purposes of the Commission’s boarding and inspection scheme Cooperating Non-Parties to this Convention are considered synonymous with Commission Members with respect to obligations and responsibilities for action, except that they are not authorised to conduct boardings and inspections.”

General principles

- For the purposes of completeness, we would suggest adding Annex III Article 6(2) to paragraph 6. We would also suggest adding a reference to the relevant UNFSA principles in an attempt to encourage common

standards across the agreements. We would prefer for paragraph 6 to read:

“These procedures are intended to implement and give effect to Article 26, and Annex III Article 6(2) of the Convention and should be read to be consistent with those provisions, and with the principles of Article 21 and 22 of UNFSA.”

- We suggest a reformulation of the equitable/non-discrimination paragraph 7 to provide inspecting Parties with the ability to target problem vessels as well as providing flexibility to reduce interference with demonstrably compliant vessels. Suggested redraft as follows:

“The WCPFC boarding and inspection scheme shall be implemented ~~with a view to achieving equitable distribution of inspections among fishing vessels operating in the Scheme’s area of application in a non-discriminatory manner.~~”

Participation

- We do not feel that it is necessary for the Commission to be notified of the crew complement, and would suggest a redraft of paragraph 11 (a)(i) to read:

“details of the vessel (name, description, photograph, registration number, home port, international radio call signal, ~~communication capability and crew complement~~ and communication assigned to fisheries patrols);”

- Many Members, especially small island developing States, may not have the resources to dedicate a vessel solely to Government service as is required by paragraph 11(a)(ii), and may rely on charter vessels for such activities. It is not a requirement under UNFSA Article 21(4) that the vessel be solely on government service. We would therefore suggest the deletion of “solely”, and a redraft to read as follows:

“~~certification~~ notification that the boarding and inspection vessel is ~~dedicated solely to Government service and is~~ clearly marked and identifiable as being on official Government service.”

- We feel that paragraph 11(a)(iii) is unnecessary and can be deleted. The onus for ensuring that inspectors meet appropriate boarding and inspection standards lies with the Member of the Commission, not the Commission itself. If a Member of the Commission notifies the Commission that its inspectors are trained, then this should be sufficient.

- For the purposes of paragraph 12 we suggest that boarding and inspection vessels and authorised inspectors be included on the Commission register once accepted by the Commission. Once the Commission receives notification from the Members of their “authorised and trained inspectors” in accordance with paragraph 11, no further verification by the Commission should be necessary, unless there are genuine reasons to doubt the validity of the notification. It also occurs to us that in practical terms, this could mean that vessels are accepted only once a year, at Commission meetings. It would be useful to clarify whether other Members envisage that inter-sessional meetings could also accept vessels for the purpose of including them on the Commission register, or whether it would be an annual process. We suggest new wording of:

“Inspection vessels and authorised inspectors notified by [Contracting Parties] [Members of the Commission] pursuant to paragraph 11 shall be included on the Commission inspection register once ~~the Commission verifies that they meet the requirements of that paragraph~~ accepted by the Commission.”

- We feel paragraph 13 could be further clarified to read:

“In order to make optimum use of resources assigned to the Scheme, ~~inspectors~~ [Contracting Parties] [Members of the Commission] shall seek to identify opportunities to place authorised inspectors ~~assigned by one [Contracting Party] [Members of the Commission] on the~~ boarding and inspection vessels assigned duly authorised and notified by another [Contracting Party] [Members of the Commission] ...”

- We would suggest that adding “Secretariat” after “Commission” in paragraph 14 makes it clearer who will be carrying out the relevant tasks. We would also request clarification of the term “immediately” and also how the changes to the register would be circulated. We feel the second sentence of paragraph 14 is unnecessary as it is already a flag State responsibility and should not require reiteration in the Boarding and Inspection Scheme.

Procedures

- For consistency with the UNFSA and Convention, we would prefer that the opening sentence of paragraph 17 be redrafted as follows:

“An authorised ~~enforcement~~ boarding and 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~~ ensure compliance with the Convention shall, prior to initiating the boarding and inspection:”

- We would prefer “establish” changed to “make a reasonable effort” in paragraph 17(a), to reflect that no response from a fishing vessel to an attempt to contact it by the boarding and inspection vessel should not result in no boarding being conducted if reasonable efforts were made to communicate with the vessel in question.
- We would suggest the drafting of paragraph 17(b) could be improved to read:

“~~provide the information~~ so as to identify itself as an authorised enforcement boarding and inspection vessel...”
- We would note that paragraph 17(d) is open to variable interpretations. We would interpret “initiate notice” to mean that the boarding and inspection vessel would make some contact to start the process of notice being given to the “competent authorities of the Member of the Commission of the vessel”. This may be satisfied by the boarding and inspection vessel simply contacting their own authorities, who would then continue the process of giving notice to the Commission and to the Member of the Commission of the vessel which had been subject to a boarding and inspection. However, we are aware that others may interpret “initiate notice” as placing the responsibility for contacting the appropriate authorities of the Member of the Commission of the vessel being boarded and inspected, with the boarding and inspection vessel. We would not support this interpretation, and request further clarification on this point.
- We would prefer to substitute “best” for “reasonable” in paragraph 18.
- In paragraph 20(b) we would suggest that the text could better reflect the language used in Annex III Article 6(2) of the Convention as follows:

~~“limit interference with fishing operations to the greatest extent practicable and feasible be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the fishing vessel;”~~
- For the same reason, we would suggest that “take reasonable care to” be inserted at the beginning of paragraph 20(c).
- We would suggest bringing the timeframe of paragraph 21(c) more in line with other similar international schemes. It is unreasonable to place a mandatory time limit on the boarding and inspection given the variation of potential situations. We would suggest redrafting it to read:

“complete the inspection of the vessel ~~within 4 (four) hours~~ as soon as practicable unless evidence of a serious violation is found;”

- To better reflect Annex III Article 6(2) language, and to note that assault, refusal, resistance and delay of an authorised inspector should be considered serious offences, we would suggest the following change to paragraph 22(c):
 - (c) not obstruct, assault, obstruct, resist, delay, refuse boarding, intimidate or interfere with an authorised inspector in the performance of his or her duty”
- It is a core element of the boarding and inspection scheme that fishing vessels of Members of the Commission submit to the scheme’s boarding and inspection processes. For that reason it is our view that the master of a fishing vessel does not have the right to deny boarding. We would therefore prefer the first sentence of paragraph 23 to read:

“If the master of a fishing vessel refuses to abide by boarding and inspection procedures ~~denies permission for authorised inspectors to carry out a boarding~~ in accordance with this scheme, such master shall offer an explanation of the reason for the refusal ~~denial~~.”

Use of force

- We would prefer paragraph 25 to be rearranged to have the broad prohibition on use of force set out initially. It is our view that it is the authorised inspector – not necessarily the master of the boarding and inspection vessel – who may authorise the use of force. We would prefer the limit on the application of force when necessary, to be brought into line with UNFSA Article 22(1)(f). We would suggest a redrafting of paragraph 25 and 26 as follows:

“25 ~~Authorised inspectors are not authorised to carry firearms during the conduct of inspection activities pursuant to this Scheme and force shall not be used for~~ The use of force 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 shall be prohibited.”
- Whilst New Zealand does not advocate the use of firearms during boarding and inspections, we understand it is standard operating practice for many vessels which are involved in boarding and inspection, among other things, to carry firearms during their operations. We would also note that there is not a specific stipulation concerning firearms in either the CCAMLR or UNFSA boarding and inspection regimes. We would suggest that for pragmatic purposes, and consistency, the reference to firearms be deleted

26 ~~The master of the authorised enforcement vessel~~ authorised inspector in charge of a boarding and inspection party may authorise 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~~ boarding and inspection 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~~ not exceed that reasonably required in the circumstances."

Inspection reports

- We would suggest making the time limitation in paragraph 28 of three (3) days run from the completion of the boarding and inspection patrol, not three days from the completion of the inspection itself as the patrol vessel may still be at sea after 3 days.

Serious violations

- We would suggest adding "without delay" after "shall" at the end of the opening sentence of paragraph 32 so that the Member commences its investigation as soon as possible after receipt of notification.
- We would suggest the inclusion of a serious violation dealing with the assault etc of authorised inspectors, to reflect the suggestions made under paragraph 22(c) (reflecting the language of Annex III Article 6(2)), and we would also suggest a serious violation dealing with sexual harassment. Suggested wording of these sub-paragraphs to read as follows:

"assault, obstruct, resist, delay, intimidate or interfere with an authorised inspector or observer;

sexual harassment of any authorised inspector or observer."

- We would suggest the definition of serious violation in paragraph 36 be reworded to more closely reflect the UNFSA language of Article 21, paragraph 11 (a) to (h). This will ensure certainty and consistency with the UNFSA text. We would note, however, that as the Convention allows for the definition of further serious violations, the definition "refusal to accept a boarding and inspection in accordance with this scheme" should remain.

Enforcement

- In our view paragraph 38 requires further clarification. We would suggest:

“Interference by a fishing vessel with an authorised boarding and inspection vessel or an authorised 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 authorised boarding and inspection vessel or authorised inspector were operating under ~~its~~ the jurisdiction of that Member.”

Annual reports

For consistency with the language in Article 25(8) of the Convention we would suggest replacing “Annual Compliance Reports” with “annual statement of compliance within their Annual Report to the Commission” in paragraph 40.

Commission coordination and oversight

- It is not clear in paragraph 43 whether the “contact” being referred to applies to contact between boarding and inspection vessels or contact between the vessels and the Commission. We assume it is intended to apply to the contact between vessels, and would suggest rewording below, however further clarification would be useful.

“Authorised boarding and inspection vessels in the same operational area shall establish regular contact for the purpose of sharing information on areas in which they are patrolling...”

- We are unsure of whether the “Annual Reports” referred to in paragraph 45 are the same annual compliance statements required under Article 25(8). We would seek further clarification on this point, and would suggest a redraft to avoid possible duplication.
- We are also unsure of whether the “equitable distribution” referred to in paragraph 45(c) is the distribution of boarding and inspection vessels, or the distribution of the fishing vessels that are chosen to board. We would prefer, as noted previously under paragraph 7, to use “non-discriminatory” as opposed to “equitable”.

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