A MODEL REGIONAL SCHEME FOR UNDERTAKING AT-SEA BOARDING AND INSPECTION OFFISHING VESSELS BACKED BY HARMONISED PORT BASED PRE-LICENSING INSPECTIONS
A MODEL REGIONAL SCHEME FOR UNDERTAKING AT-SEA BOARDING AND INSPECTION OF FISHING VESSELS BACKED BY HARMONISED PORT BASED PRE-LICENSELING INSPECTIONS
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A. BACKGROUND MATTERS


The PFRS was endorsed in 2014 by that year’s Summit of African Heads of States and Governments as the authoritative blueprint to guide the sustainable development of the sector across the continent with AU Member States (AU-MS) committing themselves to operationalising the PFRS as rapidly and comprehensively as possible. It is in this context that the African Union Inter-Agency Bureau for Animal Resources (AU-IBAR) is currently implementing the PFRS through the EU funded Fisheries Governance project. A primary objective of the PFRS is to ensure the conservation and sustainable use of the fisheries resources of all African states. AU-MS are encouraged to pursue this objective as appropriate, individually, bilaterally, regionally and also at continental level. AU-IBAR proposes this Model Scheme for consideration by AU-MS as one of the implementation measures that may be undertaken collectively by AU-MS to give effect to the conservation and sustainable use objectives of the PFRS.

Effective Fisheries Monitoring Control and Surveillance as a key pillar of the PFRS – the contributions to date of AU-IBAR under FISHGOV.

The PFRS explicitly identifies the strengthening of monitoring, control and surveillance (MCS) systems in AU-MS as a key pillar for achieving the conservation and sustainable use of the continent’s fisheries resources.² In particular, the PFRS recognizes that strengthened MCS will assist coastal and island AU-MS with the difficult and complex task of combatting illegal, unreported and unregulated (IUU) fishing practices in their Exclusive Economic Zones (EEZs). The PFRS identifies the regional level of action as the most appropriate level for the collective activities that are required to combat IUU fishing in Africa’s large marine ecosystems and calls for concerted regional actions to establish effective MCS across the continent. It is to advance this objective that AU-IBAR has undertaken the following MCS focused activities at regional level:

- Review and establishment of the current status of MCS systems in the five AU regions (West, Central, Eastern, Southern and Northern Africa) including the assessment of the strengths and weaknesses of these systems.

¹ African Union Commission Policy Framework and Reform Strategy for African Fisheries and Aquaculture
² Appendix 1 to this document sets out the key provisions with respect to MCS as set out in the Policy Framework and Reform Strategy for African Fisheries and Aquaculture.
• Review and validation of draft frameworks for enhancing regional cooperation approaches to MCS in the five regions.
• Review and establishment of the status of fisheries observer programmes in the five regions.
• Manuals on the duties of at seas fisheries observers
• Guidelines and handbooks for establishing/strengthening regional fisheries observer programmes.
• Development of robust and technologically simple but highly effective harmonized vessel register databases applicable in all the regions supported by a technical implementation Manual.
• Guidelines and handbooks for establishing regional fishing vessel registers.
• Supporting finalization and validation of the SADC Charter for establishment of Regional Fisheries Monitoring Centre.
• Support for the review and realistic formulation of Regional Plans of Action for combating IUU in the West and Central African regions.
• Capacity building with respect to the court procedure aspects of the MCS and fisheries enforcement process.

This Model Scheme specifically focused on at sea boarding and inspection backed by harmonized pre-fishing licence approval inspections is a further contribution to the process of initiating and completing concerted action at regional level to create effective MCS systems across the continent.

B. FISHERIES MONITORING, CONTROL, SURVEILLANCE AND ENFORCEMENT – SOME GENERAL CONSIDERATIONS

Enforcement is the act of demanding observance of or compliance with a law, rule, or obligation. Fisheries enforcement is a specialised type of enforcement that aims to ensure the correct application of regulations regarding fisheries and to impose compliance with these rules where necessary. Enforcement in this sense includes:
• Formal inspections to verify compliance using overt and covert means.
• Investigation of suspected breaches of the law.
• Measures to enforce compliance without resorting to formal court action (for example, warning letters, directions, notices, penalty notices, Ministerial orders or a combination of these).
• The use of sanctions like seizure of fish, fishing gear, boats, trailers and vehicles; and
• Withdrawal of access to a fishery through the suspension or cancellation of licences.

However, before enforcement in this sense can be undertaken, a system for monitoring, control and surveillance over the fisheries must be in place. As defined by the UN Food and Agricultural Organisation (FAO) and as implemented by fisheries regulators all over the world, Monitoring, Control and Surveillance (MCS) is a three-part process with the following elements:

• **Monitoring** includes the collection, measurement and analysis of fishing activity including, but not limited to: catch, species composition, fishing effort, by-catch, discards, areas of operation, etc. This information is primary data that fisheries managers use to arrive at management decisions. If this information is unavailable, inaccurate or incomplete, managers will face handicaps when developing and implementing management measures;

• **Control** involves the specification of the terms and conditions under which resources can be harvested. These specifications are normally contained in national fisheries legislation and other arrangements that might be nationally, sub-regionally, or regionally agreed. The legislation provides the basis for which fisheries management arrangements, via MCS, are implemented. For maximum effect, framework legislation should clearly state the management measures being implemented and define the requirements and prohibitions that will be enforced;

• **Surveillance** involves the regulation and supervision of fishing activity to ensure that national legislation and terms, conditions of access and management measures are observed. This activity is critical to ensuring that resources are not over-exploited, poaching is minimised and management arrangements are implemented.

### C. THE INSPECTION ELEMENT WITHIN THE MCS PROCESS

**Inspection types in fisheries**

Given the definition of MCS in the previous section of this Guideline, it is clear fishing vessel inspection is critical to effective MCS. Looked at systematically, it can been seen that there are basically nine (9) types of inspection in marine fisheries regulatory control. To some degree these inspections types overlap. All AU-MS currently exercise these types of inspection in one form or another, either directly or indirectly as members of a Regional Fisheries Management Organisation (RFMO). The types are:
• Port based pre-licensing inspection of a fishing vessel before it is granted a license to operate in the EEZ of an island or coastal State.
• At-sea inspection of a fishing vessel before or after fishing operations in the EEZ.
• At-sea inspection of a fishing vessel when it is in transit through the EEZ.
• At-sea inspection of a fishing vessel when it is undertaking transshipment in the EEZ.
• At sea inspection of a fishing vessel in the EEZ in a non-fishing context (drugs, piracy, smuggling etc.).
• Port based inspection of a fishing vessel when it lands its catch or is in port for any other reason (port inspection).
• Port based inspection of a fishing vessel after it has been brought into port on suspicion or with proof of commission of a fisheries or related offence.
• At sea inspection of a fishing vessel on the High Seas before or after fishing operations and when that vessel is within the area of jurisdiction of a Regional Fisheries Management Organisation (RFMO) with enforcement authority for that part of the High Seas.
• At sea inspection of a fishing vessel on the High Seas in a non-fishing context (drugs, piracy, smuggling etc.).

It can be seen that there will often be overlap between fisheries and non-fisheries situations.

This Model Scheme addresses the following situations:
• Port based pre-licensing inspection of a fishing vessel before it is granted a license to operate in the EEZ of an island or coastal State.
• At-sea inspection of a fishing vessel before or after fishing operations in the EEZ.
• At-sea inspection of a fishing vessel when it is in transit through the EEZ.
• At-sea inspection of a fishing vessel when it is undertaking transshipment in the EEZ.
• At sea inspection of a fishing vessel in the EEZ in a non-fishing context (drugs, piracy, smuggling etc.).

In particular it links at sea inspection with the port based pre-licensing inspection of the fishing vessel.

**Port based pre-licensing inspection**

Pre-licensing inspections permit coastal and island States to ascertain the following:
• that the vessel they intend to license is in truth the vessel that is actually going to operate in their waters
• that it is rigged and fitted according to the application received and fulfil the required specifications for the fishing methods the application is made e.g. Shrimp trawler, Demersal fish trawler, Purse seiner, Long liner, etc
• that it is not carrying illegal gear, stowage or holding capacity on board
• that its vessel and gear markings are in good order
• that the captain has received all relevant documentation, and competency of the crew etc.

Without a pre-licensing inspection, one of the most critical elements of control for coastal States over foreign fleets is lost as without a pre-licensing inspection fisheries regulators may not even have an idea what a vessel licensed to fish in their waters looks like. A sound pre-licensing inspection procedure must be undertaken before the vessel receives a licence and such licensing inspections should ideally be repeated annually. A fishing vessel should not be issued with a fishing licence unless a pre-fishing inspection is carried out by the licensing AU Island and/or coastal Member State. International best practice requires that port based pre-licensing inspections should address the issues below. Accordingly AU-MS should strive to achieve harmonization with respect to these matters and competent authorities within AU-MS should all aim to have a competent inspection system with respect to the following matters. Ideally, inspection against these parameters to the satisfaction of the regulatory authority should be undertaken before an authorization is granted to fish in the EEZ of an AU-MS. The parameters to be inspected against are a mix of fishing and navigation matters.
Fisheries matters would include:
• Flag of vessel
• Vessel types, fishing method, and classification, year built, IMO Number, international Radio, Call-sign
• Fishing capacity: Specifications of fishing vessel; Net tonnage, Gross tonnage (GRT), Length overall(LOA)
• Vessel fishing gear characteristics
• Storage/freezer capacity,
• Vessel markings
• Qualifications and nationality of master and all crew
• Current licence permit (fishing authorization if any and validity)
• Flag state registration: vessel registration (certificate of registry), port of registry, number, historical records of registration
• Logbooks,
• Navigation and communication equipment
• Engine characteristics and power
• Logbook

Navigation matters to be inspected, depending on the size and classification of the vessel would include:
• Certificate of Registry, to verify that it is valid and that the marking of the vessel for its identification agree with the name of the Flag State given in the certificate.
• Minimum manning Certificate as issued by the Flag State, to confirm whether or not the vessel is manned accordingly.
• Safety Certificate as issued by the Flag State, in the event of a vessel being in class, the certificates issued by a classification society may be viewed in relation to any conditions of class that may have been applied;
• Navigation log;
• Garbage Record Book, with regard to compliance with Annex V of MARPOL

**Boarding and inspection at sea**

The second broad type of inspection is the at sea inspection whilst the fishing vessel is engaged in fishing operations. At sea inspections (referred to hereafter as At-Sea Boarding and Inspection) allow regulatory authorities to ascertain, whether the operations of the fishing vessel, as well as the actual fishing vessel and its crew are in compliance with existing regulations and the specific conditions of the individual fishing licence or any applicable access agreement or joint-venture terms and conditions. Access agreement terms or joint-venture operations may also implement regionally agreed minimum terms and conditions of access. AU-MS would need to establish harmonized and standardized procedures governing the following issues:
• The at-sea boarding and inspection of licensed (and unlicensed) vessels to verify compliance with the terms and conditions of licensing.
• The collection of evidence from vessels suspected of operating in contravention of the fisheries law.
• The apprehension and escort of such vessels away from the infringement area to the most appropriate port.

Regrettably, despite the importance of at sea inspection, AU-MS capacity to undertake effective boarding and procedures is mostly weak. Additionally, the lack of a coherent
approach amongst AU-MS is a serious difficulty that weakens MCS operations. The lack of proper training in boarding and inspection of fishing vessels (and the poor application of the right procedures) has often resulted in grave consequences. These include: unsuccessful prosecution of vessels; conflicts between governments and vessel owners and masters; loss of information and data on fishing activity. The recent reviews of MCS arrangements undertaken by AU-IBAR show that AU-MS will benefit considerably from acquiring effective capacity in the area of at-sea boarding and inspection. This includes establishing standard boarding and inspection procedures among member states at regional or sub-regional levels thereby generating coherence in fisheries management and strengthening the implementation of harmonized minimum conditions of access into fisheries, especially with respect to the many types of fisheries for shared resources.

**Port based inspections**

Although this type of inspection is not the specific focus of this Model Scheme, it is nevertheless critical and should also be undertaken by AU-MS to the highest possible standard to ensure that there are no gaps in the regulatory system. The Forum Fisheries Agency (FFA) in the Pacific Region is a world leader in this respect. As set out below, its harmonised Minimum Terms and Conditions of Access implemented by all States that are party to the FFA treaty specify the following procedures for port-based inspections:

- All fishing and support vessels must provide a port entry notice (including their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements in accordance with national laws) to the port authority and the national fisheries authority at least 24 hours before entering port.
- No fishing vessel or support vessel may enter port to carry out any functions without prior clearance from the port authority and the national fisheries authority.
- Where required, any fishing vessel that enters the ports of an FFA State will be subjected to a full inspection of the vessel, documents, fishing gear, catch and fish in storage prior to it being permitted to conduct any activities in the ports, to ensure that: (i) all fishing within national jurisdiction is within the terms and conditions of an approved licence and/or agreements; and (ii) the full investigation of all relevant documents, fishing gear, catch and fish in stowage demonstrate compliance with national and international fisheries legislation and agreements, and meet the port State’s international fisheries obligations.
Treatment of the Right of Hot pursuit by this Model Scheme

The right of hot pursuit of a foreign ship is a principle designed to ensure that a vessel which has infringed the rules of a coastal state cannot escape punishment by fleeing to the high seas. In reality it means that in certain defined circumstances a coastal state may extend its jurisdiction onto the high seas in order to pursue and seize a ship which is suspected of infringing its laws. The right, which has been developing in one form or another since the nineteenth century, was comprehensively elaborated in article 111 of the 1982 Convention, building upon Article 23 of the High Seas Convention, 1958. It notes that such pursuit may commence when the authorities of the coastal state have good reason to believe that the foreign ship has violated its laws. The pursuit must start while the ship, or one of its boats, is within the internal waters, territorial sea or contiguous zone of the coastal state and may only continue outside the territorial sea or contiguous zone if it is uninterrupted. However, if the pursuit commences while the foreign ship is in the contiguous zone, then it may only be undertaken if there has been a violation of the rights for the protection of which the zone was established. The right may similarly commence from the archipelagic waters. In addition, the right will apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf (including safety zones around continental shelf installations) of the relevant rules and regulations applicable to such areas.

Hot pursuit only begins when the pursuing ship has satisfied itself that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, in the contiguous zone or economic zone or on the continental shelf. It is essential that prior to the chase a visual or auditory signal to stop has been given at a distance enabling it to be seen or heard by the foreign ship and pursuit may only be exercised by warships or military aircraft or by specially authorised government ships or planes. The right of hot pursuit ceases as soon as the ship pursued has entered the territorial waters of its own or a third state. The International Tribunal for the Law of the Sea has emphasized that the conditions laid down in article 111 are cumulative, each one of them having to be satisfied in order for the pursuit to be lawful. In stopping and arresting a ship in such circumstances, the use of force must be avoided if at all possible and, where it is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances.

The right of hot pursuit provides fundamental support to the right to board and inspect a fishing vessel whilst it is in the EEZ of an AU-MS. However, given its elaborate nature in international law, this Model Scheme does not at this stage provide draft text addressing the issue.
D. BASIC ELEMENTS OF THE PROPOSED SCHEME

Section 1 – Preamble
This Model Boarding and Inspection Scheme (hence forth called the Scheme) is designed to provide guidelines to African Union member states with respect to joint/harmonized implementation of fishing vessel boarding and inspection procedures within their Exclusive Economic Zones. It will ensure that AU-MS have a structured framework and set of standards for undertaking boarding and inspection against all fishing vessels operating in their EEZs. The Scheme systematically isolates the key aspects of at sea boarding and inspection procedures and provides a set of best practice recommendations with respect to boarding a vessel where the Master consents for the vessel to be boarded and/or the vessel is forcibly boarded by an inspection crew. It is provided as an instrument for operationalizing the provisions for improved and integrated MCS set out in the African Union’s Policy Framework and Reform Strategy for African Fisheries and Aquaculture of 2014. Parallel adoption of this Scheme by interested individual AU-MS at regional level will ensure harmonized use of a standard approach to inspection as a component of MCS within the EEZs of these States. It should be noted that the Scheme does not cover High Seas Boarding and Enforcement as provided for under current international law. It is however designed to match the generalized and increasingly convergent approach to High Seas Boarding and Enforcement in use by the tuna-only Regional Fisheries Management Organisations (RFMOS) on the High Seas. In the African context, the relevant RFMOs are the Indian Ocean Tuna Commission (IOTC) and the International Commission for the Conservation of Atlantic Tunas (ICCAT). This assists with providing a framework for effective utilization of resources such that scarce resources can be properly directed against IUU fishing by AU-MS.

Section 2 – Statement of Purpose of the Scheme
Recognizing that some elements of the fishing enterprise can only be verified at sea where the take of resources is occurring and recognizing that certain management measures are spatial (closed areas/marine reserves) and temporal (closed seasons) in nature, this Scheme provides a structured framework and set of standards for undertaking Boarding and Inspection against all fishing vessels operating in the EEZs of Scheme Member States. In particular, in Section 17 and at Appendix 3, the Model Scheme introduces the innovative concept of inspection stations, corridors and areas. A key part of this Scheme is also to

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3 This Model Scheme adapts the concepts, discussion and models to be found in EUGENE PROULX, HIGH SEAS BOARDING AND INSPECTION OF FISHING VESSELS: A DISCUSSION OF GOALS, COMPARISON OF EXISTING SCHEMES AND DRAFT LANGUAGE (2003) FAO LEGAL PAPERS ONLINE #33 to the African context.
ensure vessel compliance with pre-licensing requirements and obligations. This requires that Scheme Member States harmonise their pre-licensing requirements and provide a framework for effective exchange and verification of information by vessels engaged in at sea boarding. The requirements for harmonization of pre-licensing procedures by Scheme Member States are not however addressed by this document as it is a separate process.

**Section 3 – Area of Scheme Operations (ASO) and Definition of Scheme Member State**
The Scheme will operate within the following areas under the sovereignty, sovereign rights, authority and jurisdiction of each individual state within the group of AU-MS that jointly decide to adopt this scheme, namely the Territorial Sea; Exclusive Economic Zone and Continental Shelf of each Member state. This area of may be called the Area of Scheme Operations (ASO). The Scheme does not however cover High Seas Boarding and Enforcement as provided for under current international law. Each AU-MS that decides to become a member of a Scheme is referred to hereafter as a Scheme Member State.

**Section 4 - Boarding and Inspection Obligations and Responsibilities of Scheme Member States under other States under this Scheme**
Responsibility for the Scheme shall lie with the relevant group of AU-MS within whose EEZs the Scheme operates. Flag States whose vessels fish in the EEZ of one or more Scheme Member State (and operating under access agreements, free-standing licences, joint venture licences or any other form of fishing licence, arrangement or authorization) shall ensure that their flagged fishing vessels are at all times in compliance with all laws, regulations promulgated by each Scheme AU-MS and also that when called upon, they will assist with enforcement of the Scheme by its members as required under international law. Port States may also be called upon to exercise supporting responsibility in accordance with international law.

**Section 5 - The use of targeted but non-discriminatory approaches within an ASO**
While not limiting efforts to ensure compliance by all vessels, priority for boarding and inspection efforts under this Scheme may/shall be given to:
- fishing vessels that are not on the relevant RFMO Record of Fishing Vessels and that are known to operate in the region (authorized vessels)
- fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the legislation or regulations of Scheme Member State and/or any applicable conservation and management measure adopted by relevant RFMOs
• fishing vessels whose Flag State does not co-operate with Scheme Member States and/or the relevant RFMOs.
• fishing vessels without observers on board;
• large-scale tuna fishing vessels that traverse EEZs;
• fishing vessels with a known history of violating conservation and management measures adopted by international agreement or any country’s national laws and regulations.

All infractions detected, both minor and major, will be actionable jointly or individually by Scheme Member States, the Flag State of the vessel concerned as well as by any relevant or associated Port State upon request by Scheme Member States or the Flag State of the vessel concerned. Priority will be given however to action with respect to major infractions.

Section 6 – Ensuring an effective Rate of boarding/level of contact between Patrol Vessels and Fishing Vessels and Fleets whilst in the ASO - Principles and Guiding Criteria
Boarding activity authorized by Scheme Member States will be guided by an effective level of patrol boat to fishing vessel contact. The level of contact (or rate of boarding) between patrol vessels and fishing vessels in any given area subject to enforcement is the most critical of the factors driving the effectiveness of B & I (Boarding and Inspection). Accordingly B & I to be effective, there must be the highest possible rate of boarding/level of contact between patrol vessels and fishing vessels and fleets. The appropriate level of contact must be determined on a case by case basis and after appropriate study and evaluation. Fleet and vessel targets must then be set and applied. The rate of boarding/level of contact required to achieve compliance will be under continual review by Scheme Member States. It will be informed by the following criteria:
• establishment and maintenance of a level of contact sufficient to deter IUU fishing activity from FONC (Flags of Non Compliance) vessels active within the EEZ and adjacent areas;
• a focus on rules that can only be enforced at-sea;
• a focus on critical laws and regulations as well as conservation and management measures promulgated by relevant and associated RFMOs;
• overall balance and equity among the population of fishing vessels with a licence to fish in the EEZ.

Section 7 - Inspectors authorized to enforce rules under this Scheme
Scheme Member States shall establish a corps of Inspectors specifically dedicated to the Scheme who shall be provided with accredited qualifications so as to generate an espirit des
corps. The list of qualifications for members of the corps of Inspectors is as follows;
• The inspector should have continuing training in all aspects MCS with respect to fishing;
• The inspector should be proficient in fisheries related electronics use;
• The inspector should be capable of making an at sea boarding safely.

To ensure access of Scheme Inspectors to the highest standards of best practice in the area of inspections and other aspects of MCS, Scheme Member States will establish an accreditation committee to review the qualifications of all Inspectors to ensure consistency of training, ongoing professional development, and periodic review of inspector issues. This accreditation committee will include membership from internationally recognized government MCS agencies from outside the African continent. The accreditation committee will also facilitate training of Inspectors within the framework of: (a) relevant linkages with and assistance from the most highly recognized government MCS agencies globally; (b) relevant linkages with and assistance from globally recognized private and NGO networks.

Section 8 - Issues relating to Patrol Vessels
In accordance with established and publicly announced procedures, Scheme Member States shall maintain a register of patrol vessels authorized to fly an identifying enforcement flag whilst working under the Scheme. States wishing to participate in the Scheme may do so by registering one or more patrol vessels and before doing so, shall:
• ensure that the vessel submitted for registry is in continuous government service under the flag of the submitting State and is not utilized for any purpose outside of the patrol function;
• ensure that the vessel submitted for registry is capable in all aspects to operate for extended periods of time at sea including the ability to follow an intercepted target vessel at full speed for up to three days;
• ensure that the vessel submitted for registry has sufficient communications capability to conduct real time simultaneous satellite transmitted voice communications with the AU-Member State, its parent state, the Flag State of the vessel being boarded and any relevant or associated RFMOs;
• ensure that the vessel submitted for registry is in all ways painted and marked as a Coast Guard or Naval patrol vessel and should not, by any reasonable person, be mistaken for any other type of vessel;
• ensure that the vessel submitted for registry is capable of being monitored by satellite for position and speed(VMS) and that this information can be transmitted in real time to
the relevant authorities;

- ensure that the vessel submitted for registry is capable of satellite transmission of data received as a result of boarding activity in real time to the relevant authorities
- ensure that the vessel submitted for registry has completed all sea trials and has been in government service for a period of not less than six months;
- Ensure that the vessel submitted for registry is equipped with video recording equipment for the documentation of all fishing vessel intercepts.

Vessels on government service from non-Member States of the Scheme may also register their patrol vessels subject to relevant protocols and agreements.

**Section 9 – Flags to support the Scheme**

In order to promote the integrity of the Scheme, Scheme Members will design a flag which will be flown from the mast of all registered patrol vessels engaged in patrol activities under the Scheme. This flag shall be flown without prejudice to the right of a Member State to utilize its own national flag.

**Section 10 - Use of Force**

During the conduct of their duties, Inspectors and the Captains of patrol vessels will limit their use of force to situations where jeopardy to the personal safety of the Inspectors or the safety of the patrol vessel is present. In such extreme circumstances, the use of force is authorized to ensure the safety of the Inspectors and the patrol vessel. The use of force incident must then be reported to Scheme Member States and the authorities of the Flag State of the vessel involved in the incident where such Flag State is known.

Inspectors conducting routine boarding duties in the EEZ will as a rule not be armed with firearms.

Inspectors conducting boarding duties with respect to stateless fishing vessels; flag of convenience fishing vessels or flag of non-compliance fishing vessels may be armed with firearms to ensure personal safety.

Where Inspectors are armed, the use of these arms will be managed through publicly advertised protocols. All incidents involving the use of arms will be promptly investigated and upon request investigative bodies shall include one representative of the Flag State.
Section 11 - The intercept of a Fishing Vessel by a Patrol Vessel

Any registered patrol vessel operating under this Scheme shall announce its presence to fishing vessels of interest at the earliest convenience whilst in the vicinity of fishing operations. In addition the patrol vessel will announce its intention to conduct compliance boarding inspections of fishing vessels in accordance with the objectives of the Scheme. The obligation of the target fishing vessel upon approach of a patrol vessel is to

• acknowledge the presence of the patrol vessel and establish voice communications;
• advise the patrol vessel of the fishing activity ongoing at the time of the contact including any onboard processing;
• advise the patrol vessel of the number fishing days the fishing vessel has been active in the EEZ and in the High Seas areas adjacent to the EEZ;
• advise the patrol vessel of the inspection history of the vessel within the previous 30 days;
• announce without delay its readiness to accept the inspection team should the inspection team decide to board and inspect.

The patrol vessel will evaluate all database information on the intercepted fishing vessel, including registry, flag state authorization to fish, VMS transmitted data with respect to the vessel, boarding history with respect to the particular fishing vessel, and the number of days the fishing vessel has been active in the EEZ and areas of the High Seas adjacent to the EEZ. Providing that this analysis continues to meet the rate of boarding/level of contact targets set under the Scheme, the patrol vessel will renew its request to conduct a boarding and inspection procedure.

Section 12 - The conduct of authorized Inspectors during the boarding

The obligations of authorized Inspectors conducting boarding on a fishing vessel subject to the Scheme shall be as follows. Inspectors shall

• be physically fit enough to conduct a fishing vessel boarding without endangering themselves or others;
• once safely onboard introduce themselves to the fishing vessel master using their official credential and present a small duplicate card to the master;
• be properly equipped to conduct the boarding in the most efficient manner possible
• discuss with the Master the inspection routine;
• proceed with an efficient inspection without interrupting ongoing fishing, processing or hold packing operations;
• observe professional and ethical standards at all times accepting nothing but non-alcoholic refreshments when necessary for civil interaction;
• provide electronic or physical paper copies of the inspection record;
• provide the master of the fishing vessel with opportunity to make official comment on the inspection record of any matter;
• provide the master of the fishing vessel a blank standard “complaint of conduct form” against the actions of the Inspectors that can if he so chooses be filed at a later date;
• depart the vessel without delay at the conclusion of the inspection.

**Section 13 - The conduct of the Master of the Fishing Vessel accepting boarding**

The obligations of the fishing vessel master accepting boarding under the Scheme shall be as follows. The master shall:

• direct the approaching small boat transferring the Inspectors to the safest quarter for boarding;
• when possible, without interrupting ongoing fishing activity, maneuver the vessel to provide a lee for the approaching small boat;
• facilitate the transfer of the Inspectors by providing an accommodation ladder of the type used to embark harbor pilots;
• examine the credentials of the Inspectors, and provide the Inspectors with the master’s identity;
• advise the Inspectors they will be accorded the status of officers on board the fishing vessel for the duration of the boarding;
• introduce to the Inspectors the principal officers necessary to support the boarding routine;
• facilitate the conduct of the boarding routine which will include access to logbooks, electronic gear and processing logs;
• allow the Inspectors access to communications gear as necessary to facilitate the boarding routine;
• note any complaint concerning the conduct of the Inspectors or the inspection procedure as provided in the Scheme;
• facilitate the safe departure of the Inspectors.

**Section 14 - Inspection under the Scheme**

A key objective of the inspection procedure will be to verify compliance with the pre-licensing requirements of the relevant Scheme Member State.
During the conduct of a boarding procedure under the Scheme the Inspectors will follow the following inspection routine.

With regard to the identity of the vessel, the master, and fishing authorizations, standard documentation will be accepted and inspected and details of these documents shall be recorded.

With regard to the inspection of logbook data and recording of information:
- date of entry into the EEZ will be recorded;
- positions of all fishing activity within the EEZ will be provided and will be recorded;
- daily and total fishing effort within the EEZ area will be provided and will be recorded;
- daily and total catch will be provided and will be recorded;
- daily and total by-catch and discard will be provided and will be recorded;
- records of interactions with seabirds will be inspected and recorded;
- recorded interactions with marine mammals and marine reptiles will be inspected and recorded.

With regard to the inspection of electronic gear aboard the fishing vessel, the inspection team shall undertake:
- identification of the function of each piece of electronic gear;
- standard download or data review with respect to that piece and/or all pieces of electronic gear which records the position of the fishing vessel during the period in which it has been/is active within the EEZ and the adjacent High Seas area.

With regard to the inspection of fish the inspection team shall be provided with:
- a copy of the hold plan for the vessel;
- a description of the amount of fish processed or otherwise in each hold;
- the catch conversions factor used for the processing of fish on board;
- the opportunity to examine the contents of each hold in use;
- the opportunity to undertake nondestructive examination of a sampling of packed, packaged or processed fish held in these holds.

With regard to the inspection of fishing gear onboard the fishing vessel the inspection team shall be allowed to undertake:
- physical examination of the gear in use on the vessel with an emphasis on examination of
gear in use at time of boarding;

• examination and assessment of gear or practices used to reduce fishing impact on sea birds, marine mammals or marine reptiles.

Section 15 - Documentation of violations of Scheme Member State rules

Violations of the rules of Scheme Member States shall be divided into three broad categories:

1. Minor violations that are technical and administrative in nature (faded vessel or gear markings, brief delays in required reporting) and are best referred to as infractions;
2. Major violations that constitute evidence of falsified reporting (fraud), violations of closed areas/closed seasons, undeclared transshipments and other such matters that seriously undermine the laws and regulations of Scheme Member States;
3. Violations that involve the safety of Inspectors, observers, and patrol vessels and are aggravated in nature such as assaults, attempted assaults or threats of assault

Should an inspector discover an apparent and alleged violation or contravention of the laws and regulations of Scheme Member State rules during the conduct of boarding, the obligation of the inspector is to investigate and document the matter as fully as possible on-scene.

In order to best accomplish this task the inspector will conduct an initial investigation of the alleged violation by the following means:

• where possible download electronic evidence;
• if download is not possible photograph the data displays;
• where possible photograph log entries;
• place Scheme evidence tags on questionable documents or logs;
• place Scheme evidence tags on fishing gear which is prohibited;
• place Scheme evidence tags on prohibited species found within holds;
• photograph the placement of all evidence tags;
• write a narrative description of the alleged violation;
• where possible immediately transmit the narrative description, relevant photos, and an inventory of all evidence tags to the command post of the relevant and most appropriate Scheme Member State;
• provide copies of the same material to the master of the fishing vessel and conclude the boarding activity;
• no electronic gear or logbooks should be removed from the fishing vessels as evidence. Such evidence can be fully embodied in the media without jeopardizing the operation of
the fishing vessel

A determination should be made by the Inspectors documenting the violation if the condition causing the violation can be corrected on scene. If the condition causing the violation can be corrected, the Inspectors should specifically request the master of the fishing vessel to make that correction.

Following the completion of the boarding in which a violation was detected and, following a review of the evidence supporting the allegation the inspector should file a final report within 7 days and forward that report to all parties.

**Section 16 - The Report of Inspection**

Concerning the report of boarding under the Scheme

- Authorized officers will collect boarding data in the form and manner prescribed under the Scheme;
- One copy of the boarding report will be left with the master of the fishing vessel boarded;
- The boarding report will be transmitted to the command Centre for the Scheme within 12 hours of the completion of the boarding;
- Upon review, supplementary reports may be filed to amend the original report up to 72 hours after the boarding if an error or omission is discovered;
- The Master of fishing vessel boarded may also file a comment report or a rebuttal report up to 72 hours after the completion of the boarding.

**Section 17 – Inspection Stations, Areas or Corridors**

AU-MS involved in implementing this Scheme shall actively consider establishing one or more Fisheries Inspection Stations, Areas or Corridors within their EEZs.

A Fisheries Inspection Station could be an area of the ocean two nautical miles square in which targeted or pre-identified authorized fishing vessels might report after a qualifying number of fishing days in the EEZ for an inventory of the catch on board, a review of fishing positions while in the regulatory area, and also the remainder of the inspection process. The inspection would provide the vessel with a certification that the fishery products removed from the EEZ or the regulatory area were harvested in accordance with all applicable management measures.

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4 Readers should consult Appendix 3 for more detail.
An inspection performed on an authorized vessel could be triggered by a minimum number of operational days within the EEZ or regulatory area, or the departure from the EEZ or regulatory area to return to port and offload. Just as there are weigh stations that require large trucks to have their tonnage, cargo and safety equipment periodically checked while on major overland highways, AU-MS could set up locations for inspections that would be minimally disruptive for both vessels and patrol craft.
**APPENDIXES**

**APPENDIX 1 – KEY PROVISIONS OF THE AFRICAN UNION’S POLICY FRAMEWORK AND REFORM STRATEGY FOR AFRICAN FISHERIES AND AQUACULTURE**

The key provisions of the PRFS that underpin the framework set out in this Model Scheme are as follows:

<table>
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<tr>
<th>Relevant paragraph or provision within the PRFS</th>
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<tr>
<td>Paragraph 4.1.3</td>
<td>4.1.3 (f) - Expected Outcomes: Effective and sustainable regional Monitoring, Control and Surveillance (MCS) systems are operating in all regions.</td>
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</tbody>
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| Paragraph 4.1.4.3 | The PFRS requires that AU-MS should conduct fisheries within enforceable regulatory frameworks and states that ensuring conservation and sustainable use requires an appropriate statutory/regulatory framework that is clearly understood, enforceable and supported by resource users and others. 

The PRFS states that this can be achieved by:

a. developing and strengthening the institutional framework for MCS for both marine and inland fisheries for combating IUU fishing. This should be underlined by evaluation of national and regional needs for MCS in AU MS and Regions

b. improving regional cooperation and collaboration for sustainable fisheries management

c. developing and sharing registers of authorized fishing and illegal fishing vessels

d. enhancing capacities and establishing mechanisms including cost-effective and sustainable financial arrangements for efficient and effective regional cooperation in MCS and enforcement

e. developing and agreeing on minimum terms and conditions of fisheries access and adopting a common harmonized and coordinated approach with regards to granting access to resources to third parties and national fleet within the region.

| Paragraph 4.6.4.3: | Fishing management: Some priority areas for capacity building include user rights-based fisheries management tools, vessel licensing and registration, developing alternative livelihoods, strengthening MCS through building mid-level MCS skills and MCS information systems and port state measures. |
| Paragraph 4.6.4.4: | Regional cooperation: The main areas where capacity building will be required are in the complementary management of trans-boundary stocks, in joint stock assessments, in cooperative MCS, and capacity to better engage in debates on international fisheries issues, including the development and, in particular, the implementation of instruments. |
| Paragraph 4.5.4.3 | Establish and reinforce the role of RECs and RFBs and such other arrangements as positive forces in regional economic integration. ... This could be achieved in the following ways: b. develop and implement, as appropriate, coherent policy on international fisheries such as for promoting regional fish trade, common MCS systems, and minimum conditions of access |
**APPENDIX 2 – THE CONCEPT OF RATE OF BOARDING/LEVEL OF CONTACT BETWEEN PATROL VESSELS AND FISHING VESSELS AND FLEETS**

**Rate of boarding/level of contact**

A patrol vessel is almost invariably a small warship in most parts of the globe. Patrol vessels are by nature expensive to operate and their utility has always been the subject of great debate. This paper has no intention of entering into that debate other than to discuss the efficiency of patrol tactics in reference to the intercept of fishing vessels on the high seas and the subsequent compliance boarding that furthers the goal of fisheries management by curtailing or eliminating IUU fishing. An efficient high seas B&I scheme will achieve a very high rate of boarding/level of contact with the population of fishing vessels active within the convention area. The accepted rate of boarding/level of contact must be pre-established much the same as the International Maritime Organization’s set goal that 25% of all merchant vessels should be inspected for safety in Port States. Parties to a Convention managing pelagic species of fish must work to construct a high seas B&I scheme with a goal of patrol vessel to fishing vessel contact that will ensure success of the management regime. The rate of boarding/level of contact between patrol vessels and fishing vessels in any given convention area is the most critical B&I factor to evaluate. No high seas B&I scheme merits consideration if the expected rate of boarding/level of contact between patrol vessels and fishing vessels is rare or nonexistent.

Let us look at two different examples. In the early 1970s prior to the declaration of many of the 200 nautical mile exclusive economic zones around the globe, an inspection scheme was in place in the Northwest Atlantic Ocean under the guise of ICNAF, the International Commission on Northwest Atlantic Fisheries, later to become NAFO, the Northwest Atlantic Fisheries Organization. The fisheries being regulated were principally bottom trawl fisheries and the Convention area, while very large, had specific fishing grounds that were suitable for very profitable bottom trawling. There was a concentrated trawling effort on the continental shelf area known as Georges Banks and further to the northwest, on the Grand Banks. Patrol vessels from several nations cooperated to conduct inspections within this area. It was not uncommon for four to six rigorous inspections to be completed in a single day by the crew of one patrol vessel. The rate of boarding/level of contact often approached 90 to 100 per cent within the convention area. That translates into 9 out of every 10 fishing vessels inspected while they were engaged in operations within the convention area. In addition, at-sea

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5 Source: EUGENE PROULX, HIGH SEAS BOARDING AND INSPECTION OF FISHING VESSELS: A DISCUSSION OF GOALS, COMPARISON OF EXISTING SCHEMES AND DRAFT LANGUAGE (2003) FAO LEGAL PAPERS ONLINE #33, pp. 3-4
transshipments were monitored and transport vessels inventoried before they departed the grounds. The high seas B&I program in effect was efficient in maintaining a reasonable rate of boarding/level of contact with the fishing vessels in that fishery and therefore was able to achieve a reasonable level of compliance with existing regulations governing the fishery. The question as to whether the fishery needed more or different regulations to sustain the resource is entirely separate.

As a contrast, examine the worldwide high seas pelagic long line tuna fishery. Within this fishery, there is a very low rate of boarding/level of contact between patrol vessels and fishing vessels. On the high seas, that rate of boarding/level of contact approaches zero. This fishery is spread over the entire globe between roughly 45 degrees North latitude and 45 degrees South Latitude. It is very difficult for patrol vessels of one Flag State to achieve any rate of boarding/level of contact with the individual fishing vessels of a different flag. The fishing grounds are enormous and fishing is governed not by ocean bottom structure but by the temperature-critical presence or absence of a food chain within the water column. If you examine the rate of boarding/level of contact on the high seas in the Atlantic, the Pacific, or the Indian Oceans within the tuna fishery, you are hard pressed to find any boarding enforcement data. Some Flag States field their own patrol vessels to sail with the fleets and inspect their activities around the globe. The utility of this approach guarantees a reasonable rate of boarding/level of contact with a single nation’s vessels.

The question then presents itself in this fashion; what rate of boarding/level of contact needs to be achieved between patrol vessels and fishing vessels to gain compliance with the regulatory measures enacted by the RFMOs managing tuna resources within these vast expanses of tropical and temperate oceans? There are those that argue that no high seas inspections are necessary. They insist that if the cargo is inspected at offload points, all management objectives can be achieved. This viewpoint allows every fishing master to go to sea with a guarantee that there will be after the fact reports but there will be no transparent window into their operations at sea. The masters of high seas tuna long line fishing vessels must go to sea with the understanding that there is a realistic chance that there activities will undergo a level of inspection scrutiny appropriate to the fishing activity in which they are engaged. This understanding will temper their fishing activities and allow effective management. Establishing what the realistic chance of boarding must be is the mandate of the MCS authority within the member states of the RFMOs. The issue of establishing a rate of boarding/level of contact target is critical to the B&I scheme. If this issue is ignored
the program will much less effective in curtailing IUU fishing. If the rate of boarding/level of contact issue is shunted aside in favor of building individual alleged IUU fishing cases circumstantially, the B&I scheme will be of little value to the management of the fishery. It is a question of the reasonable expectation of a compliance boarding. If a pelagic tuna fishery has a population of 1000 active fishing vessels working within the convention area, the rate of boarding/level of contact established must make a determination of the need to board any one vessel at random for a regulatory compliance check of all fishing operations. A starting point of 10% in a new regulatory program is reasonable. For a population of 100 vessels, that would set a goal of 100 compliance boarding within a twelve month period. If after a period of time the regulatory boarding results in a very high level of compliance, the rate of boarding/level of contact can be reduced.
APPENDIX 3 – HIGH SEAS INSPECTION STATIONS, AREAS & CORRIDORS

High Seas Inspections Stations

In order to maximize the utilization of available patrol hours from patrol vessels of member States to a convention, a Boarding and Inspection Scheme needs to be constructed that provides for a constant background rate of boarding/level of contact with fishing vessels with valid authorizations to fish. Properly constructed, this scheme will allow adequate time to target the true IUU fishing vessels. Thought needs to be given to defining when an authorized vessel is required to be inspected. How can the boarding be accomplished with minimum interference to the schedules of the fishing vessel and the patrol vessel? If a RFMO defines its area of competence as a vast portion of one of the worlds’ oceans and a number of distant water fishing member States send their fleets into that area, how can the compliance inspections proceed most efficiently? One method to consider is the concept of establishing High Seas Inspection Stations along corridors of egress from the RFMO regulatory area. A High Seas Inspection Station could be an area of the ocean two nautical miles square in which distant water fishing vessels might report after a qualifying number of fishing days in the regulatory area for an inventory of the catch on board, a review of fishing positions while in the regulatory area, and the remainder of the inspection process. The inspection would provide the vessel with a certification that the fishery products removed from the regulatory area were harvested in accordance with all applicable management measures.

An inspection performed on an authorized vessel could be triggered by a minimum number of operational days within the regulatory area, or the departure from the regulatory area to return to port and offload. Just as there are weigh stations that require large trucks to have their tonnage, cargo and safety equipment periodically checked while on major overland highways, a RFMO could set up mutually agreed upon locations for inspections that would be minimally disruptive for both vessels and patrol craft. Each geographic area has its own challenges but a RFMO covering an area such as the central and western Pacific Ocean, and hosting distant water fleets that number in the hundreds of vessels, a large portion of which do not utilize port facilities within the region, might be well served to set up High Seas Inspection Stations. The responsibility for inspections conducted within those designated areas could be divided amongst all of the member states fielding authorized officers. There would be an additional advantage to such a scheme in that the inspection stations could serve as a valuable training ground for authorized officers to harmonize and standardize

The overwhelming theme of an effective high seas B&I scheme has to focus on efficiently inspecting authorized fishing vessels and leaving as many patrol hours as possible to focus on the larger threat of IUU fishing by FONC fishing vessels. The establishment of High Seas Inspection Stations may at first seem radical but if the parties to a convention agree to a rate of boarding/level of contact, then they must necessarily agree to measures that will ensure that the rate of boarding/level of contact goal is met. Fishing vessels follow relatively regular routes to and from the fishing grounds. Geographically efficient locations could be located for High Seas Inspection Stations just as locations for transshipment are agreed upon by the parties involved in that transshipment. The addition of a vessel monitoring system would further aid the goal of efficiently bringing the patrol vessel and the fishing vessel together.