

Obstruction of BIOT Fisheries Officers in Execution of their Duty

10th IOTC Compliance Committee Meeting, 2013

1. Introduction

During the past twelve months the increase of anti-piracy personnel deployed on tuna fishing vessels in the Indian Ocean has allowed some of these vessels to return to previously fished grounds in the northwest Indian Ocean.

This report details three encounters with fishing vessels that resulted in BIOT fisheries officers being obstructed during a boarding and inspection. This is a serious offence, and under current BIOT legislation obstructing an officer can lead to a fine of up to £100,000 and would result in inclusion on the IOTC IUU list. The names of individuals, dates of occurrence, vessels and flags have been removed for legal reasons.

We draw these incidents to the attention of the Compliance Committee and propose a potential best practice protocol for vessels in transit with armed guards on board; we raise the question of whether a formal and binding management measure is required to achieve a common standard amongst CPCs.

2. Incidences of obstruction

Event 1

In the first event a tuna fishing vessel was encountered 20 miles inside the BIOT MPA. Numerous requests were made to the skipper to halt his vessel for an inspection to be undertaken. The Captain of this fishing vessel refused to halt his vessel for 40 miles, until under threat of arrest. Boarding and inspection then took place. As this vessel had weapons and security personnel on board, the Captain was warned that if any weapons were pointed in the direction of the boarding party, the holder would be arrested.

Subsequently the BIOT Authorities contacted the relevant fishing agents and requested they notify all Captains of Fishing Vessels passing through BIOT waters that they must comply with the instructions of the BIOT Patrol Vessel, Pacific Marlin; that all weapons must be stowed, and that if any weapons were pointed in the direction of a boarding party, the holder would be arrested.

Event 2

This event (Annex 1) also involved a long line tuna fishing vessel with armed security guards on board. In this serious case, despite communicating with the armed guards in their own language, the vessel refused to halt and the guards did not obey instructions to stow their weapons which were trained upon the boarding party. The Senior Fisheries Protection Officer (SFPO) reported 'At 18:05 hrs the persons holding weapons were still present on the starboard deck and therefore the SFPO

aborted the boarding. Making a call on channel 16 to the fishing vessel that due to the presence of weapons openly trained on the boarding party, the boarding would not proceed and that a complaint would be made. At 18:12 hrs FRC1 was secured’.

Event 3

This event (Annex 2) involved another long line tuna fishing vessel with armed security guards on board which in the first instance refused to stop. In this case, after communicating with the armed guards in their own language, the vessel eventually stopped and a boarding and inspection took place.

3. Commentary

The SFPO and BIOT Patrol Vessel undertake a number of inspections of fishing vessels in transit through BIOT waters. All BIOT boarding parties will be flying the standard fisheries inspection pennant (blue and yellow) both on the BPV and the FRCs to make them clearly identifiable.

Particularly over the past twelve months an increase in the presence of armed security personnel on board long line vessels has been noted, as has been the case for purse seine vessels for some years. This paper has highlighted three instances of obstruction. It should be noted that in the majority of cases the anti-piracy personnel on board were fully compliant with all instructions and made no attempt to inhibit or obstruct the inspection. However, it has been noted during inspections that the vessels have not in all cases displayed the normal signage indicating the presence of armed sea marshals.

The security personnel encountered during inspections have been asked about their knowledge of the British Indian Ocean Territory waters within the Indian Ocean and the possibility of being boarded while in them. All indicated that this information is included in a briefing given pre-deployment and they were issued with instructions to comply. They stated this had been a long term arrangement and was not a recent development.

4. For the attention of the Compliance Committee

Noting that the majority of vessels and security guards comply with BIOT requirements, to date the BIOT Authorities have only taken the issue up with fishing vessel agents. However the three incidents reported highlight the seriousness of the problem which we raise for discussion by the Compliance Committee. The incidents are an unfortunate and unintentional adverse effect of piracy.

In future similar incidents in BIOT will not be tolerated and the BIOT Authorities will seek to have those vessels arrested and IUU listed. The BIOT Authorities will implement a specific protocol for all vessels transiting its waters with armed guards on board.

Thus, the UK(OT) wishes to inform the Compliance Committee and Flag States that if a vessel refuses a legitimate request for boarding and inspection either through refusing to halt the vessel or through the presence of weapons on deck prior to or during an inspection, that from now on, the BIOT Authority shall seek, through the relevant Port Authorities, to have the vessel arrested for the obstruction of a fisheries officer in pursuit of his duty the next time it enters port. The assistance of

other coastal and port States will be requested to implement this action. The BIOT Authorities will also seek IUU listing for the vessel and report it to the IOTC Secretariat.

The Independent review of IOTC recommended that IOTC develops a comprehensive **MCS System** that includes procedures for at-sea boardings and inspection¹. Implementation of MCS measures is the responsibility of CPCs. Given the recent proliferation of security requirements in the Indian Ocean, the scope of any proposed System should include procedures for managing this situation and include best practices that are aligned with and draw on those standard systems currently in operation by other RFMOs such as NAFO², NEAFC³, FFA⁴ and presented in FAO Technical Paper 415⁵ on MCS. This could include:

1. All vessels that have armed / security guards onboard should be identifiable from the list of authorised vessels or upon entry of coastal waters/EEZ. Such vessels on innocent passage should inform the coastal State authorities / Patrol Vessel of their intention to pass through coastal State waters.
 - A reporting template will be developed
2. The language of the master of the vessel and the senior/ranking officer of the armed guard contingent should also be provided in the reported details. (It is critical that security personnel and the vessel's master and crew can communicate effectively, both onboard the vessel and also between the security personnel on the vessel, and with fisheries officers performing inspections and also back to their employers for clarification if need be (i.e. access to the vessel's communication equipment)).
 - Guard provider (company) details to be made available?
3. Patrol vessels and auxiliary FRC or RIBs used for boarding should be clearly identifiable using standard inspection pennants.
4. Vessels equipped with AIS transponders should have these switched on.
5. Communications between vessels should be conducted on Channel 16 prior to boarding.
6. The master of the fishing vessel should be responsible for communications with the patrol vessel.
7. Communications should confirm the identity and purpose of the respective vessels.
8. Clear agreement should be sought from the fishing vessel to comply with the boarding.

¹ IOTC–2012–CoC09–R. Appendix IV. 51. IOTC should develop a comprehensive monitoring, control and surveillance (MCS) system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible on-board regional observers' scheme, a possible catch documentation scheme **as well as a possible system on boarding and inspection.**

² NAFO: Conservation and Enforcement Measures. Chapter VI: Joint Inspection and Surveillance Scheme.

³ NEAFC Scheme of Control and Enforcement. Chapter IV. Inspections At-sea.

⁴ FFA Boarding Manual.

⁵ FAO Fisheries Technical Paper 415. Recent Trends in MCS for Capture Fisheries. Chapter 7: Patrols, Boardings, Inspections and Prosecutions & Annex G: Core components of a Fisheries Officer Operations Manual

9. Prior to boarding confirmation of the situation regarding the number of armed guards should be provided to the patrol vessel.
10. Confirmation that weapons will be stowed should also be provided by the master of the fishing vessel.
11. The patrol vessel should advise the fishing vessel that an FRC will be launched, with the number of boarding [fisheries] officers and crew to facilitate the boarding, and this should include the distances and approach strategies:
 - FRC to be launched 1nm from the fishing vessel;
 - FRC will circle 2 times before coming alongside.
12. The fisheries officers should deal directly with the master of the vessel and not armed guards on boarding.
13. Fisheries officers should produce their identification cards and authority immediately upon boarding to the master of the fishing vessel
14. Guards should not intervene with inspection procedure.
15. However, guards are permitted to accompany an inspection routine upon request of the master and with the agreement of the inspecting officers

Whilst CPCs like BIOT can introduce such a protocol, it also requires the full cooperation of those Flag States whose vessels are in transit through a particular EEZ. It would assist Flag States and fishing vessels and agents if the systems adopted by Coastal States were coordinated and standardised. CoC should consider if a formal management measure is required to achieve this.

In the absence of a specific IOTC Resolution to date, in future, subject to any feedback of members of the Compliance Committee, the BIOT Authorities would plan to notify all vessels requesting transit through BIOT of the above protocol.

Annex 1: Summary of SFPO Boarding report of 5 September 2012 (Event 2)

The second event occurred on the 5th September at 16:43 hrs when a vessel was detected by radar on the BPV Pacific Marlin inside the BIOT MPA. Radio contact was made with the vessel at 17:42hrs on VHF channel 16, the recognised international channel for shipping, to ascertain the identity of the contact and establish our identity to her and our intentions. A radio call was received from the vessel and she identified herself.

The BIOT Senior fisheries Protection Officer (SFPO) attempted to identify the BIOT Patrol vessel but the other party appeared to have difficulty understanding. The SFPO clearly stated that they were the BIOT Patrol Vessel Pacific Marlin and "Chagos Authorities". "Chagos Authorities" is a phrase often used with [REDACTED] fishing.

The SFPO stated to the other party on the radio that it has his intention to make a boarding and inspection and that as we were aware that weapons were being carried aboard that no weapons should be pointed at the boarding officer or crew. The response returned that the fishing vessel would have to speak to their office to get permission to stop. The SFPO responded that he would ask our [REDACTED] crew to repeat the message in [REDACTED] and confirm that this was **not** an informal request.

A [REDACTED] fisheries officer (one of the Pacific Marlin crew) then took up the radio as translator and repeated the request for all weapons to be stowed in [REDACTED] and that we would make a boarding and inspection to which the caller replied that they would need to seek permission from their office. The SFPO then requested that [REDACTED] repeated the instruction for the fishing vessel to halt and that the master of the fishing vessel should comply with our instructions. The caller responded by agreeing to halt.

The SFPO asked [REDACTED] to radio back that we would halt our vessel 1nm away from his position, once he came to a halt, we would then launch our small speed boat and proceed towards him. He was asked to inform the caller that no weapons should be on display or pointed towards the boarding officer or assisting crew. FRC1 was launched at a distance of approximately 1.3nmls from the fishing vessel with boarding party consisting of the BIOT SFPO, [REDACTED], a [REDACTED] FPO (also acting as an interpreter) and one boatswain.

At 17:56 hrs the SFPO was informed by [REDACTED] that he could see weapons on the port side of the vessel, the side from which the FRC was approaching, being held by 2 persons. The SFPO upon closer inspection noted the same. The FRC boatswain was directed to alter course to the starboard side of the vessel, which he then did. While the FRC manoeuvred the SFPO made a call to the fishing vessel on channel 16 and requested that all weapons be removed from the decks, the response returned was "OK, OK". The boatswain was requested to hold his position until the SFPO could see that the persons holding weapons had left the decks.

At 18:00 hrs the SFPO could no longer see any persons holding weapons and therefore directed the Boson to proceed towards the fishing vessel, from our position now astern, to her starboard side and the boarding point. As we closed in on the fishing vessel the 3 persons holding weapons, which could now be seen to be, 1 x belt fed machine gun, 1 x automatic rifle and 1 x RPG/Rocket Launcher, appeared at the stern section of the vessel and were seen moving, as we moved, towards the

starboard side clearly holding weapons aloft. A further radio call was made by the SFPO to the vessel on channel 16 to request that the weapons be stood down, the reply came "OK, OK".

The SFPO again asked the boatswain to hold his position.

At 18:05 hrs the persons holding weapons were still present on the starboard deck and therefore the SFPO aborted the boarding. Making a call on channel 16 to the fishing vessel that due to the presence of weapons openly trained on the boarding party, the boarding would not proceed and that a complaint would be made. At 18:12 hrs FRC1 was secured.

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Annex 2: BOARDING REPORT (Event 3)

DATE: 07th September 2012
VESSEL: [REDACTED]
CALL SIGN: [REDACTED]
IMO N°: NA
IMUL N°: N/A
MASTER: [REDACTED]
SFPO: [REDACTED]
BOARDING PURPOSE: UNDER PASSAGE IN OUTER SECTOR 1, INNOCENT PASSAGE REPORTED.

1. Introduction

On the 07TH September 2012 the BIOT patrol vessel "Pacific Marlin" (BPV) conducting a routine fisheries patrol, (BIOT 378) in Outer Sector 1. The BPV had departed Diego Garcia at 15:00hrs on the 3rd September 2012.

07:05 the Senior Fishery Protection Officer (SFPO) was requested to attend the bridge by the Officer of the Watch (OOW) The SFPO upon arriving on the bridge was advised of a possible target vessel that had been acquired on Radar with the following details;

07:10hrs

Position 04° 05.0S 072° 38.0E

Course 089°

Range 14.2nmls

Speed 9.9kts

07:25 The SFPO made a visual verification of a white vessel to the general shape and description of a Large Scale, Tuna, Longline Vessel (LSTLV) Therefore, as the SFPO was aware of two LSTLVs flagged to the [REDACTED] and to be on innocent passage with armed guards the BPV was requested to maintain a constant speed and course until radio contact could be made, The being the new standard operating procedure (SOP) for such vessels. This stance was to be maintained until radio contact and identity verification made to both parties.

07:30 The SFPO attempted to make radio with the FV but no response received.

07:45 at a distance of 4nmls from the FV Radio contact was made and the caller identified the FV as, [REDACTED] and asked "who are you"? The SFPO replied, "we are BIOT Patrol Vessel, Pacific Marlin, Chagos Authorities we intend to make an inspection of your vessel, do you agree to this inspection"?

07:46 The caller now identifying themselves to be of [REDACTED] national and a member of the security team responded "the captain does not want to stop", "we do not stop".

All communications after this point were translated from English to [REDACTED] and [REDACTED] to English by [REDACTED].

07:47 The SFPO requested FPO, [REDACTED] to translate a message into [REDACTED] saying; "we are the BIOT Patrol Vessel and we are ordering your vessel to stop, If you have weapons on board these weapons must be stowed away and not be

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openly carried on the decks of your vessel, any person who points a weapon at our vessel, officers or crew will be arrested”.

07:49 The FV responded to [REDACTED] “captain says OK, no weapons outside all away”.

07:50 The SFPO asked [REDACTED] to translate and communicate the following message “we will stop our vessel 1nm from your position, launch our small boat and proceed towards you, no weapons should be pointed at the officers of crew making the boarding.” The response was received in English “OK, OK”

Translation by [REDACTED] halted at this point.

08:02 FRC1 launched with SFPO [REDACTED] and FPO [REDACTED] ([REDACTED] interpreter) at a distance of 1.2nmls from the FV.

2. Boarding Details

08:03 The FRC arrived at the FV and circled the vessel two times. During these passes it was noted that the vessel had the name [REDACTED] painted to her stern and port and starboard to her bows. She also had her call sign painted to port and starboard funnels reading [REDACTED]. Draped beneath the funnel and partially obscuring her call sign were two large banners saying “Armed Guards Onboard Keep Safety Distance”.

08:05 The FRC made its final approach to the starboard side of the vessel one man began speaking in Signalise to [REDACTED], he was later identified as a Sri Lankan national and a member of the on board security team.

[REDACTED] translated the following conversation.

The [REDACTED] security guard asked “what do you want?”

The SFPO replied “You should stop asking questions, I am the officer boarding this vessel and the lawful authority in these waters, I will ask the questions and I wish to only speak with the person legally responsible for this vessel, the Captain.”

The [REDACTED] security guard did not make a reply.

[REDACTED] ended translation at this point.

08:06 Boarding party on decks at position **04° 05.730S 072° 44.409E** and were met by a number of fishermen of [REDACTED] appearance. The SFPO enquired by saying “Captain”, all made hand gestures towards the bridge/wheelhouse of the vessel.

The SFPO thereafter proceeded upwards to the wheelhouse where the door was closed, upon opening the door the SFPO was met by a man saying “me captain”.

The SFPO and [REDACTED] were followed into the wheelhouse by the [REDACTED] security guard and two other men that were later identified as the other members of the 3 man [REDACTED] security team.

The SFPO asked the FV Captain for his passport, immediately the [REDACTED] guards started to speak on his behalf. In English the SFPO informed them that he was speaking

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to the Captain of the vessel and not them. One responded that they were on the vessel and that the Captain could not speak much English.

The SFPO asked "do you speak [REDACTED]", the security guard replied "no". The SFPO asked "then how will you help me"? The [REDACTED] security guard did not reply.

The SFPO asked the guards to leave the wheelhouse while the inspection was carried out. They refused this instruction.

The SFPO asked "do you work for [REDACTED]", all replied "yes". Then you are not belonging to this vessel, you do not work for this fishing company and I am asking you to leave this inspection and wheelhouse or you will be arrested for obstructing an officer in the execution of his duties. All left the wheelhouse at that point.

After some difficult patches of communication the Captain was able to produce his passport and identified himself as [REDACTED] national.

All safety certificates and ships documents were checked.

The certificate of safety was compared to the crew list as well as the certificate of service for the life rafts.

The certificate of safety stated that the vessel was licenced to carry 25 persons, the crew list showed 25 person but not the 3 security guards. The certificate of safety was also out of date and had expired in 2010.

The life raft certificate showed a maximum carrying capacity of 25 persons, again the Captain was shown that he had 28 persons on board. This certificate had also expired on the 24th August 2012.

The Captain was asked for his fishing logbook, he did not understand this request and therefore it was not produced.

The SFPO asked [REDACTED] to invite the 3 security guards into the Wheelhouse, which he did.

The SFPO asked all 3 if they could swim, as the safety certificate and serviceability of life raft were both out of date and therefore may not be reliable in an emergency situation, no response was received. The 3 men were handed the documents and shown the expiry dates after looking at the documents they looked at each other but did not make any comments.

The SFPO then asked the Captain and one [REDACTED] security guard to accompany him around the decks

All fishing holds and decks were examined and only well frozen areas and fish were found in the holds, all decks were clean and free from any recent signs of fishing activity.

3 radio beacons were counted to the starboard side of the vessel, and had the numbers 2, 3, 8 on plastic plaques attached to them. The SFPO asked the Captain, "where are your other beacons"? He gestured towards the stern of the vessel. It was also noted that none of the beacons had any details or plaques attached to them that would identify the owner or vessel. The Captain was advised that he was being warned that his fishing

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gear was potentially illegal and if he was found again in BIOT waters, without first putting the details of his vessel call sign onto his radio beacons, he may be arrested. The skipper indicated that he understood this instruction and said "thank you" in [REDACTED].

The SFPO then proceeded to the stern of the vessel where a 4th radio beacon was found adorned with the number 4. The SFPO, with the use of his enforcement notebook showed the Captain that he had beacons 2,3,8 and 4 aboard his vessel and was asked where are beacons 1, 5, 6 and 7? He appeared to not understand this question and therefore the SFPO wrote the missing numbers on his notebook and gestured with his hands while saying "where". The Captain replied by lifting his arms in a gesture that the SFPO understood to mean "don't know"

All other fishing gear was inspected, all Snoods were noted to be of nylon and were packed away, consistent with a fishing vessel making passage. Some plastic floats were on the after decks and noted to be in the process of being cleaned by the crew.

The SFPO then returned to the wheelhouse and attempted to ask for the fishing licence and last transfer/transshipment details. The Captain did not understand these questions and therefore none were seen.

All navigation equipment was examined but no suspicious or irregular points were noted.

Before departing the vessel the SFPO engaged the [REDACTED] security guards in conversation, explaining the events of the previous day where weapons had been pointed towards the SFPO and the crew of the Marlin.

The [REDACTED] guard that had originally greeted our FRC and asked questions attempted to explain that they do not know who we are so they get out weapons.

The SFPO explained that we had made a radio call on Channel 16, The guard replied that they do not have radio until the Captain of the vessel gives it to them.

The SFPO asked, "are there any Pirates here", the guard replied "no".
The SFPO asked, "is this international water or national territory", he replied "national".
The SFPO asked, "if you sailed into US waters and pointed a weapon at a police officer, what do you think would happen to you?" he replied "jail".
The SFPO advised that pointing a weapon at the SFPO, in BIOT waters was no different. The guard replied, "but we have licence". The SFPO advised him that the permit to carry weapons does not give him or any other person permission to use that weapon and neither does it give him permission to use it in a threatening manner. Threatening, an enforcement officer with a weapon is still a crime whether you have a weapon permit or not, do you agree? He said "yes". The SFPO then requested that he advise his company of this conversation and that he should communicate this to his colleagues at every opportunity.

08:45 The SFPO thanked the Captain for his time and concluded the inspection.

3. Recovery

08:47 Boarding party disembark.

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08:52 FRC1 recovered to BPV and placed on stand-by as a second target vessel had been spotted heading towards our location.

[REDACTED]
BIOT Senior Fisheries Protection Officer
07th September 2012