

**Comments and Proposals by the Republic of Korea on  
The Draft BOARDING AND INSPECTION PROCEDURES,  
The WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION**

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

**PURPOSE**

2. Boarding and inspection and related activities conducted pursuant to these procedures shall be for the purpose of ensuring ~~and verifying~~ compliance with the provisions of the Convention and conservation and management measures adopted by the Commission and in force.

We suggest that the words "and verifying" in Para.2 be deleted to make it in line with Art 26(1) of the WCPFC Convention relating to boarding and inspection. [See also our Comments on Para.20 below].

**AREA OF APPLICATION**

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

**GENERAL RIGHTS AND OBLIGATIONS**

4. Each Member of the Commission may, subject to the provisions of these procedures, carry out boarding and inspection on the high seas of fishing vessels engaged in or reported to have engaged in a fishery regulated pursuant to the Convention.

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

**GENERAL PRINCIPLES**

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

7. The WCPFC boarding and inspection ~~scheme~~ **procedures** shall be implemented in a **transparent and** non-discriminatory manner, taking into account such factors as the presence of observers aboard a vessel, the size of vessel, and frequency and results of past inspections.

8. These procedures shall be implemented so as to take into account the full range of available measures to monitor compliance with the provisions of the Convention and agreed conservation and management measures, including inspection activities carried out by the authorities of Members of the Commission in respect of their own flag vessels.

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

a) fishing vessels that are not on the WCPFC Record of Fishing Vessels and are flagged to Members of the Commission;

**b) fishing vessels reasonably believed to engage or to have been engaged in any activity contrary to the conservation and management measures**

**c)c)** fishing vessels without observers on board;

**d)b)** fishing vessels whose flag Member does not dispatch ~~patrol~~-**inspection** vessels to the **Convention** area of application to monitor its own fishing vessels;

**d)d) large-scale tuna fishing vessels.**

We also propose the insertion of a new subparagraph b) and the rearrangement of the subparagraphs. We wish in this context to draw the attention of the Commission to the potential discrimination under the existing subparagraph b) against any Member of the Commission which is unable, for economic or other reasons, to dispatch inspection vessels to the Convention area. We must also express doubt as to why large-scale tuna fishing vessels should be discriminated against "small-scale" ones.

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

## **PARTICIPATION**

11. The Commission shall maintain a register of all vessels and inspectors authorized to conduct boarding and inspection pursuant to these procedures. Only such vessels and inspectors are authorized under these procedures and in particular, subject to Paragraph 13 to board and inspect foreign flagged fishing vessels on the high seas within the Convention Area.

In our view, the meaning of "these procedures" above is not sufficiently clear. The wording need be elaborated or specified.

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

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

- i) details of the vessel (name, description, photograph, registration number, number of the crew, maximum boarding capacity, home port, international radio call sign and communication capability);
- ii) ~~notification~~-certificates that the inspection vessel is clearly marked and identifiable as being on government service, except any military activities;
- iii) ~~notification~~-certificates that the crew has received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures adopted by the Commission.

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

- i) the name and affiliation of the inspector;
- ii) ~~notification~~ **certificates** that the inspector is fully familiar with the fishing activities to be inspected and the provisions of the Convention and conservation and management measures in force; and
- iii) notification **certificates** that the inspector has received and completed **education and** training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures adopted by the Commission **in relation to the provisions of the Convention and conservation and management measures. The certificates shall also specify the place and period of such education and training, and the qualification obtained".**

We are opposed to inspection of a fishing vessel by a warship. We also wish to replace the word "notification" with "certificates".

13. Inspection vessels and inspectors notified by Members of the Commission pursuant to paragraph 12, shall be included on the Commission register once the Commission verifies that they meet the requirements of that paragraph. **The Commission shall also prepare, maintain and amend, as appropriate, a standardized checklist specifying inspection items to be complied with by inspectors after boarding.**

14. In order to make optimum use of resources assigned to activities pursuant to these procedures, Members of the Commission shall seek to identify opportunities to place authorised inspectors on inspection vessels duly authorised and notified by another Member of the Commission. Where appropriate, Members of the Commission should seek to conclude bilateral arrangements to this end or otherwise facilitate communication and coordination between them for the purpose of implementing this scheme.

15. The Executive Director shall ensure that the register of authorized vessels and inspectors is at all times available to all Members of the Commission and shall immediately circulate any changes therein. Each Member of the Commission shall ensure that the list of vessels and inspectors appearing on the register is circulated to each of its fishing vessels operating in the Convention area.

## **PROCEDURES**

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

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

18. An authorized inspection vessel that intends to board and inspect a fishing vessel on the high seas that is engaged in or reported to have engaged in a fishery regulated pursuant to the Convention shall, prior to initiating the boarding and inspection:

- a) seek to establish contact with the fishing vessel by radio and/or by the appropriate International Code of Signals;

- b) provide the information to identify itself as an authorized inspection vessel - name, registration number, international radio call sign and contact frequency;

- c) provide notice of intent, the number of inspectors, and the grounds to board to the master of the fishing vessel; and

- d) initiate notice, through its flag Member, of the boarding and inspection to the competent authorities of the Member of the Commission of the vessel.

19. In carrying out boarding and inspection pursuant to these procedures, the authorized inspection vessel and authorized inspectors shall make their best efforts to communicate with the master of the fishing vessels in a language that the master can understand.

If, nevertheless, communication difficulties are not resolved entirely, then the inspector or the master shall use the relevant part of the questionnaire under the standardized checklist to be prepared, maintained and amended, as appropriate, by the Commission in accordance with Paragraph 13.

20. Authorized inspectors shall have the authority to inspect the vessel, its license, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to ~~verify compliance with~~ obtain the evidence on a suspected violation of the conservation and management measures made in force pursuant to the Convention.

We believe that authorized inspectors should be empowered only to conduct a mandated inspection of, and to gather proper evidence on suspected violations by a fishing vessel operating in the Convention area.

21. Boarding and inspection pursuant to these procedures shall:

a) be carried out in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of fishing vessels and crews;

b) be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the fishing vessel;

c) take reasonable care to avoid action that would adversely affect the quality of the catch; and

d) not be conducted in such manner as to constitute harassment of a fishing vessel.

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

a) present a copy of their credentials to the master of the vessel and a copy of the text of the relevant measures in force pursuant to the Convention in the relevant area of the high seas;

b) not interfere with the master's ability to communicate with the authorities of the Member of the Commission under whose jurisdiction the fishing vessel is operating;

c) complete the inspection of the vessel **as soon as possible** within **4-(four)-3(three) hours at the latest**, unless **justified by the** evidence of a serious violation ~~is found~~ **found**;

d) acquire and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention;

e) provide a copy of a report on the boarding and inspection to the master and to the competent authorities of the Member of the Commission under whose jurisdiction the vessel is operating, noting therein any objection or statement which the master wishes to include in the report; and

f) promptly leave the vessel following completion of the inspection.

If the inspection is conducted efficiently according to the standardized checklist as proposed in Para.13 above, the maximum duration of inspection can be reduced to three hours following the NAFO example. This will guarantee an efficient conduct of inspection and a minimization of any unnecessary losses in fishing operations.

23. During the conduct of a boarding and inspection, the master of the fishing vessel shall:

a) accept and facilitate prompt and safe boarding by the authorized inspectors;

b) cooperate with and assist in the inspection of the vessel pursuant to these procedures;

c) not obstruct, assault, resist, delay, refuse boarding, intimidate or interfere with the inspectors in the performance of their duties;

d) allow the inspectors to communicate with the crew of the inspection vessel, the authorities of the flag Member under whose jurisdiction the inspection vessel is operating, as well as with the competent authorities of the flag Member of vessel being inspected;

e) provide them with reasonable facilities, including, where appropriate, food and accommodation; and

f) facilitate safe disembarkation by the inspectors.

24. If the master of a fishing vessel denies permission for authorized inspectors to carry out a boarding and inspection, as provided in these procedures, such master shall offer an explanation of the reason for the denial. The Member of the Commission of the authorized inspection vessel shall immediately notify the Member of the Commission under whose jurisdiction the fishing vessel is operating, as well as the Commission, of the master's refusal and any explanation.

25. The Member of the Commission under whose jurisdiction the fishing vessel is operating, unless generally accepted international regulations, procedures and practices relating to safety at sea make it necessary to delay the boarding and inspection, shall direct the master to accept the boarding and inspection. If the master does not comply with such direction, the Member shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The Member shall immediately notify the Member of the Commission of **dispatching** the authorized inspection vessel and the Commission of the action it takes in these circumstances.

#### **USE OF FORCE**



26. The use of force shall be avoided except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

We are deeply concerned that this provision has been worded too vaguely to indicate, in a specific boarding and inspection situation, any useful guide to the lawful exercise of the use of force. Thus, it is not at all clear whether inspectors are authorized to carry and use firearms during boarding and inspection. The problem is that any use of force on the high seas may result in the death or injury of crew members of a fishing vessel or of inspectors themselves.

Such a situation may not simply be pushed aside as hypothetical. And it may well trigger the issue of criminal jurisdiction of the crime on the high seas. Therefore, the circumstances justifying a use of force, and the exact scope and degree of force that may be used by inspectors need be more clearly defined, specified and delimited. In this respect, Paragraphs 49-52 are also too insufficient to deal with the consequences of such an extreme situation.

27. Any incident involving the use of force shall be immediately reported to the competent authorities of the Member of the Commission under whose jurisdiction the fishing vessel involved is operating, as well as to the Commission.

## **INSPECTION REPORTS**

28. Authorized inspectors shall prepare a complete report on each boarding and inspection they carry out pursuant to these procedures in accordance with the format specified by the Commission. The Member of the Commission of the authorized inspection vessel from which the boarding and inspection was carried out shall transmit a copy of the boarding and inspection report to the Member of the Commission under whose jurisdiction the fishing vessel inspected is operating, as well as the Commission, within 3 (three) days of the completion of the boarding and inspection patrol.

29. Such report shall clearly identify any observed activity or condition that the authorized inspectors believe to be a violation of the Convention and indicate the nature of specific factual evidence of such violation.

30. Each inspection report shall include any statement or objection that the master of the inspected vessel wishes to make.

## SERIOUS VIOLATIONS

31. In the case of any boarding and inspection of a fishing vessel during which the authorized inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 36, Member of the Commission ~~of~~ **dispatching** the authorized inspection vessel shall immediately notify the Member of the Commission under whose jurisdiction the fishing vessel is operating, directly as well as through the Commission.

32. Upon receipt of a notification under Paragraph 31, the Member of the Commission under whose jurisdiction the fishing vessel is operating shall without delay:

a) assume its obligation to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the Member of the Commission ~~of~~ **dispatching** the authorized inspection vessel, as well as the Commission; or

b) authorize the Member of the Commission ~~of~~ **dispatching** the authorized inspection vessel to complete investigation of the possible violation and so notify the Commission.

33. In the case of 32(a) above, the Member of the Commission ~~of~~ **dispatching** the authorized inspection vessel shall provide, as soon as practicable, the specific evidence collected by the authorized inspectors to the Member of the Commission under whose jurisdiction the fishing vessel is operating.

34. In the case of 32(b) above, the Member of the Commission shall provide the specific evidence collected by the authorized inspectors, along with the results of its investigation, to the Member of the Commission under whose jurisdiction the fishing vessel is operating immediately upon completion of the investigation.

35. If, after ~~three~~ **five** full working days of receipt of a notification pursuant to Paragraph 31 (as confirmed by the Commission), the Member of the Commission under whose jurisdiction the fishing vessel is operating has failed to

respond to the notification, the fishing vessel in question shall as of that date be deleted from the Commission's record of vessels authorized to fish in the Convention area (Article 24(4)).

36. For the purposes of this scheme, a serious violation means:

a) fishing without a license, permit or authorization issued by the flag State in accordance with Article 24 of the Convention;

b) failure to maintain records of catch and catch-related data in accordance the Commission's reporting requirements or ~~serious~~ **repeated** misreporting of such catch and/or catch-related data **contrary to the catch reporting requirements of the Commission;**

c) fishing in a closed area;

d) fishing during a closed season;

e) ~~intentional taking or retention of~~ **directed fishing for** prohibited species;

f) significant violation of catch limits or quotas in force pursuant to the Convention;

g) using prohibited fishing gear;

h) falsifying or concealing the markings, identity or registration of a fishing vessel;

i) concealing, tampering with or disposing of evidence relating to investigation of a serious violation;

j) multiple violations which taken together constitute a serious disregard of measures in force pursuant to the Commission; and

~~k) refusal to accept a boarding and inspection in accordance with these procedures.~~

l) assault, obstruct, resist, ~~delay~~, intimidate or interfere with an authorised inspector or observer; and

m) sexual harrassment of any authorised inspector or observer.

In general, the term "a serious violation", "serious" or "significant" itself is a generic term not subject to a clear-cut definition and is thus liable to arbitrary interpretation in case of an event not specifically envisaged in the above. In relation to subparagraph e) above, for example, certain incidental by-catch of sharks or other species on which catch quota or prohibition has been in force may well occur. It would, in this case, be quite difficult to determine whether such catch was 'intentional' or not. Again, in subparagraph f), what constitutes a "significant violation"? Thus, in line with the language of the UNFSA, it would be necessary and justified in subparagraph e) to replace "intentional taking or retention of prohibited species" with "directed fishing for prohibited species".

With regard to Paragraphs 24-25 and subparagraph k) above, it is our understanding that the refusal to accept a boarding and inspection itself does not constitute a serious violation. And subparagraph k) is considered redundant anyway, since the flag Member of the Commission is entitled to take appropriate action against any refusal on the part of a fishing vessel. Again, in relation to subparagraph l) above, circumstances may require the master of a fishing vessel to delay a boarding and inspection(Paragraph 25 above), the term 'delay' is not accepted as appropriate. Furthermore, since Paragraph 23 above already prescribes the duty of a fishing vessel to cooperate with inspection, any violation of such a duty would rather be regarded simply as that of boarding and inspection procedures and as not constituting a serious violation of conservation and management measures.

## **ENFORCEMENT**

37. Any evidence obtained with respect to violation by a fishing vessel of the Convention, or a measure in force pursuant to it, as a result of the operation of these procedures shall be referred to the competent authorities of the Member of the Commission under whose jurisdiction the

fishing vessel is operating for action in accordance with Article 25 of the Convention.

38. Interference by a fishing vessel with an authorized inspection vessel or an authorized inspector shall be treated by the Member of the Commission under whose jurisdiction the fishing vessel is operating as if the authorized boarding and inspection vessel or authorized inspector were operating under the jurisdiction of that member.

The exact meaning of this Paragraph is not quite clear, although it is understood that it is intended to avoid any legal problems of the exercise of jurisdiction by the flag Member of the fishing vessel in case of an interference on the high seas. It would rather be rephrased. For example, it may be suggested:

"For the purposes of these Procedures and of the exercise of jurisdiction, the flag Member of the Commission under whose jurisdiction a fishing vessel is operating shall regard interference by its fishing vessel with an authorized inspection vessel or an authorized inspector as occurring within its own jurisdiction".

## **ANNUAL REPORTS**

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

40. Members of the Commission shall include in their annual statement of compliance within their Annual Report to the Commission under Article 25(8) of the Convention action that they have taken in response to boarding and inspections of their fishing vessels that resulted in observation of possible violations, including any proceedings instituted and sanctions applied.

## **OTHER PROVISIONS**

41. Authorized inspection vessels, while assigned to this scheme, shall engage in surveillance aimed at identifying

fishing vessels of non-Parties undertaking fishing activities on the high seas in the Convention area. Any such vessels identified shall be immediately reported to the Commission.

42. Members of the Commission shall be liable for damage or loss attributable to ~~them arising from~~ **their** action taken ~~pursuant to~~ **to implement** these procedures when such action is unlawful or exceeds that reasonably required in the light of available information **and the relevant circumstances**. ~~to implement these procedures.~~

This Paragraph also needs some elaboration. It seems prima facie that this Paragraph is intended to apply to vicarious civil liability of Member of the Commission for damage caused by the unlawful or ultra vires exercise of inspection powers by its inspection vessel and inspectors. But then, which state is competent to exercise jurisdiction and determine the damages over such an incident? See also our comments on Paragraph 49-52 below in relation to this Paragraph.

#### **APPLICATION TO FISHING ENTITIES**

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

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

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

## **COMMISSION COORDINATION AND OVERSIGHT**

46. Authorized inspection vessels in the same operational area shall establish regular contact for the purpose of sharing information on areas in which they are patrolling, on sightings and on boarding and inspections they have carried out, as well as other operational information relevant to carrying out their responsibilities under these procedures.

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

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

- a) identifying priorities by area and/or by fishery for boarding and inspections pursuant to these procedures;
- b) ensuring that boarding and inspection on the high seas is fully integrated with the other monitoring, compliance and surveillance tools available pursuant to the Convention;
- c) ensuring non-discriminatory distribution of boarding and inspections on the high seas among fishing vessels of Members of the Commission without compromising the ability of Members of the Commission to investigate possible severe violations; and
- d) taking into account high seas enforcement resources assigned by Members of the Commission to monitor and ensure compliance by their own fishing vessels, particularly for small boat fisheries whose operations extend onto the high seas in areas adjacent to waters under their jurisdiction.

## **DISPUTE RESOLUTION**



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

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

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

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

As already mentioned in relation to Paragraph 26 above relating to use of force, Paragraphs 49-52 are generally not quite satisfactory from the legal point of view. For one thing, use of force may well cause the death or injury on the part of inspectors or fishermen. In this extreme situation, any document of a legal nature like these procedures should be able to define clearly the subject of criminal and civil jurisdiction. This is especially so in view of Paragraph 42 above which recognizes civil liability of Members of the Commission for damage or loss caused by their vessels or nationals and attributable to their action.