

**WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION
BOARDING AND INSPECTION PROCEDURES**

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

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DEFINITIONS

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1 (bis). For the purposes of interpreting and implementing these procedures, the following definitions shall apply:

- a. "Convention" means the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, adopted September 5, 2000 in Honolulu, Hawaii;
- b. "Commission" means the Commission established by Article 9 of the Convention, commonly known as the Western and Central Pacific Fisheries Commission (WCPFC);
- c. "Authorities of the Inspection Vessel" mean the authorities of the Member of the Commission under whose jurisdiction the inspection vessel is operating;
- d. "Authorities of the Fishing Vessel" mean the authorities of the Member of the Commission under whose jurisdiction the fishing vessel is operating;

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- e. "Authorized inspection vessel" means any vessel included in the Commission register or vessels as authorized to engage in boarding and inspection activities pursuant to these procedures;
- f. "Authorized inspector" means inspectors included in the Commission Register as authorized to conduct boarding and inspection activities pursuant to these procedures.

PURPOSE

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

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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.

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

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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 and with the provisions of Articles 21 and 22 of the United Nations Fish Stocks Agreement.

7. These procedures shall be implemented in a transparent and non-discriminatory manner, taking into account the full range of 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.

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8. These procedures shall be implemented so as to take into account

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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;

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a. (bis) fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any conservation and management measure adopted thereunder;

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b) fishing vessels whose flag Member does not dispatch patrol vessels to the area of application to monitor its own fishing vessels;

c) fishing vessels without observers on board;

d) large-scale tuna fishing vessels;

e) fishing vessels with a known history of violating conservation and management measures adopted by international agreement or any country's national laws and regulations.

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

PARTICIPATION

11. The Executive Director 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 to board and inspect foreign flagged fishing vessels on the high seas within the Convention Area.

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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:

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a) with respect to each inspection vessel assigns to boarding and inspection activities under these procedures:

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i) details of the vessel (name, description, photograph, registration number, port of registry, (and, if different from the port of registry, port marked on the vessel hull), international radio call sign and communication capability);

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ii) notification that the inspection vessel is clearly marked and identifiable as being on government service;

iii) notification that the crew has received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures established by that Member and as may be adopted by the Commission.

b) with respect to inspectors it assigns pursuant to these procedures:

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i) the name of the inspector and the organization to which the inspector is assigned;

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ii) notification 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 that the inspector 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. Any such notification shall also specify the place and period of such training and the qualification obtained.

13. Authorized inspection vessels and inspectors notified by Members of the Commission pursuant to paragraph 12, shall be included on the Commission register once the Executive Director confirms that they meet the requirements of that paragraph.

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14. To enhance the effectiveness of the Commission's boarding and inspection procedures, and to maximize the use of trained inspectors, Members of the Commission may identify opportunities to place authorised inspectors on inspection vessels of 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 these procedures.

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15. The Executive Director shall ensure that the register of authorized inspection vessels and authorized inspectors is at all times available to all Members of the Commission and shall immediately circulate any changes therein.

Update lists shall be posted on the Commission website.

Each Member of the Commission shall take necessary measures to ensure that the lists of authorized inspection vessels and authorized inspectors appearing on the register are circulated to each of its fishing vessels operating in the Convention Area.

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PROCEDURES

16. Authorized inspection vessels, shall fly, in clearly visible fashion, the WCPFC inspection flag as designed by the Commission.

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17. Authorized inspectors, shall carry approved credentials issued by the designating Member of the Commission in a format provided to the Commission and circulated to all Members.

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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, by the appropriate International Code of Signals or by other accepted means of alerting the vessel;

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

c) state its intention to board the vessel, to the master of the fishing vessel; and

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d) initiate notice, through through the authorities of the inspection vessel, of the boarding and inspection to the authorities of the fishing vessel.

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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.

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 obtain evidence of a suspected violation of the conservation and management measures in force pursuant to the Convention.

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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, its officers or crew.

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

a) present 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;

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b) not interfere with the master's ability to communicate with the authorities of the fishing vessel;

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c) complete the inspection of the vessel within 4 (four) hours unless evidence of a serious violation is 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, pursuant to paragraph 28, to the master and to

the authorities of the fishing vessel, noting therein any objection or statement which the master wishes to include in the report; and

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

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 inspection vessel, as well as with the authorities of the fishing vessel being inspected;

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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 refuses to allow an authorized inspector to carry out a boarding and inspection in accordance with these procedures, such master shall offer an explanation of the reason for such refusal. The authorities of the inspection vessel shall immediately notify the authorities of the fishing vessel, as well as the Commission, of the master's refusal and any explanation.

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25. The authorities of the fishing vessel, 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 authorities of the inspection vessel and the Commission of the action it has taken in these circumstances.

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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.

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 authorities of the inspection vessel from which the boarding and inspection was carried out shall transmit a copy of the boarding and inspection report to the authorities of the fishing vessel being inspected, as well as the Commission, within 3 (three) working days of the completion of the boarding and inspection.

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

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, the authorities of the inspection vessels, shall immediately

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notify the authorities of the fishing vessel, directly as well as through the Commission.

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32. Upon receipt of a notification under Paragraph 31, the authorities of the fishing vessels, shall without delay:

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a) assume their obligation to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the authorities of the inspection vessel, as well as the Commission; or

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b) authorize the authorities of the inspection vessel to complete investigation of the possible violation and so notify the Commission.

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33. In the case of 32(a) above, the authorities of the inspection vessel, shall provide, as soon as practicable, the specific evidence collected by the authorized inspectors to the authorities of the fishing vessel.

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34. In the case of 32(b) above, the authorities of the inspection vessel shall provide the specific evidence collected by the authorized inspectors, along with the results of its investigation, to the authorities of the fishing vessel, immediately upon completion of the investigation.

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35. If, after three full working days of receipt of a notification pursuant to Paragraph 31 (as confirmed by the Commission), the authorities of the fishing vessel has

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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 these procedures, a serious violation means:

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

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b) failure to maintain records of catch and catch-related data in accordance the Commission's reporting requirements or significant reporting of such catch and/or catch-related data in a manner contrary to the catch reporting requirements of the Commission;

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c) fishing in a closed area;

d) fishing during a closed season;

e) intentional taking or retention of species in contravention of any applicable conservation and management measure adopted by the Commission;

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

g) using prohibited fishing gear;

h) falsifying or intentionally 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;

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

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

m) sexual harassment of any authorised inspector or observer.

ENFORCEMENT

37. Any evidence obtained as a result of a boarding and inspection pursuant to these procedures with respect to violation by a fishing vessel of the Convention or conservation and management measures adopted by the Commission and in force, shall be referred to the authorities of the fishing vessel for action in accordance with Article 25 of the Convention.

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38. For the purposes of these procedures, the flag Member of the Commission under whose jurisdiction a fishing vessel in operating shall regard interference by its fishing vessels, captains or crew with an authorized inspector or an authorized inspection vessel in the same manner as any such violation occurring within its exclusive jurisdiction.

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ANNUAL REPORTS

39. Members of the Commission that authorize inspection vessels to 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.

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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 alleged violations, including any proceedings instituted and sanctions applied.

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OTHER PROVISIONS

41. Authorized inspection vessels, while carrying out activities to implement these procedures, shall engage in surveillance aimed at identifying fishing vessels of non-Members undertaking fishing activities on the high seas in

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the Convention area. Any such vessels identified shall be immediately reported to the Commission.

41. (bis.) The authorized inspection vessel shall attempt to inform any fishing vessel identified pursuant to paragraph 41 that is has been sighted or identified as engaging in fishing activities that are undermining the effectiveness of Convention and that this information will be distributed to the Members of the Commission and the flag state of the vessel in question.

41. (tr.) If warranted, the authorized inspectors may request permission from the fishing vessel and/or the flag state of the vessel to board a vessel identified pursuant to paragraph 41. If the vessel master or the vessel's flag state consents to a boarding, the findings of any subsequent inspection shall be transmitted to the Executive Director. The Executive Director shall distribute this information to all Commission Members as well as to the flag State of the fishing vessel.

42. Members of the Commission shall be liable for damage or loss attributable to their action to implement these procedures when such action is unlawful or exceeds that reasonably required in the light of available information regarding the relevant circumstances.

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APPLICATION TO FISHING ENTITIES

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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.

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44. Notwithstanding paragraph 43, these procedures shall not apply as between a Fishing Entity and any Contracting Party when such Contracting Party notifies the Commission at its annual meeting that it disputes 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.

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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 Commission.

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COMMISSION COORDINATION AND OVERSIGHT

46. Authorized inspection vessels in the same operational area should seek to 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.

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

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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 ~~opportunity~~ of Members of the Commission to investigate possible ~~serious~~ violations; and

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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 consent of Commission, refer the disagreement to the Technical and Compliance Committee (TCC).

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51. A report on the disagreement shall be drawn up by the TCC and forwarded to the Commission within two months of the TCC meeting at which the case is reviewed.

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52. Upon receipt of the TCC report, the Commission may provide appropriate advice with respect to any such disagreement for the consideration of the Members concerned.

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