

JAPAN'S COMMENTS ON DRAFT PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO THE WCPFC CONVENTION

1. There is hereby established, pursuant to Article 26 of the Convention, the Western and Central Pacific Fisheries Convention (WCPFC) Procedures for Boarding and Inspection of Fishing Vessels on the High Seas,

(*Avoid duplication with Article 26/1 of the Convention)

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GENERAL RIGHTS AND OBLIGATIONS

4. Each [Contracting Party] [Member of the Commission] is entitled to participate in this procedures and, subject to the provisions of this procedures, to 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.

(*Avoid duplication with Article 26/3 of the Convention)

GENERAL PRINCIPLES

6. This procedures are intended to implement and give effect to Article 26 of the Convention and are to be read consistently with those provisions.

7. This procedures shall be implemented with a view to achieving equitable distribution of inspections of among fishing vessels operating in this procedures' area of application, taking into account of observer boarding, size of the vessel and frequency of past inspection.

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

PRIORITY

9.(bis) Low priorities of Boarding and Inspection should be given to vessels other than listed

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Deleted: 2. Boarding and inspection and related activities, conducted pursuant to the WCPFC Boarding and Inspection Scheme, 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. ... [1]

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Deleted: 3. The WCPFC Boarding and Inspection Scheme shall operate on the high seas within the Convention area. ... [2]

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5. Each Member of the Commission shall ensure that its vessels fishing on the high seas within the ... [3]

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a. fishing vessels whose flag Member of the Commission does not dispatch their patrol vessels to the area of application to control its own fishing vessels.

b. fishing vessels observers do not onboard, and

c. large-scale tuna vessels.

PARTICIPATION

10. The Commission shall maintain a register of all vessels and inspectors authorized to conduct boarding and inspection pursuant to this procedures.

11. Each [Contracting Party] [Member of the Commission] that intends to carry out boarding and inspection activities pursuant to this procedures shall so notify the Commission, through the Executive Director, and shall provide the following:

a. with respect to each vessel it proposes to assign to this procedures:

i) details of the vessel (name, description, photograph, registration number, home port, international radio call sign, communication capability and crew complement);

ii) certification that the vessel is dedicated solely to government service and is clearly marked and identifiable as being on government service; and

iii) certification 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 assign to this procedures:

i) the name and affiliation of the inspector;

ii) certification 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) certification 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.

12. Inspection vessels and inspectors notified by [Contracting Parties] [Members of the Commission] pursuant to paragraph 11, shall be included on the Commission register once the Commission verifies that they meet the requirements of that paragraph.

13. In order to make optimum use of resources assigned to the procedures and share such inspectors of skill, each [Contracting Party] [Member of the Commission] shall seek to identify opportunities to train inspectors assigned by one [Contracting Party] [Member] on the vessel assigned by another. 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 procedures.

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

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PROCEDURES

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

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16. Any inspector authorized to engage in boarding and inspection pursuant to this procedures (authorized inspector) shall carry approved credentials issued by the designating [Contracting Party] [Member of the Commission] in the format agreed by the Commission.

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17. 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:

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a) 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;

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c) provide notice of intent to board to the master of the fishing vessel; and

d) initiate notice of the boarding and inspection to the competent authorities of the Member of the Commission of the vessel.

18. In carrying out boarding and inspection pursuant to this 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.

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19. 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 the conservation and management measures in force pursuant to the Convention.

20. Boarding and inspection pursuant to this procedures shall:

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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) limit interference with fishing operations to the greatest extent practicable and feasible;

- c) avoid action that would adversely affect the quality of the catch on board; and
- d) not be conducted in such manner as to constitute harassment of a fishing vessel.

21. 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 within ~~3 (three*)~~ hours unless evidence of a serious violation is found;

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(*The conservation and enforcement measures of NAFO provides that the duration of an inspection shall not be exceeded tree hours. [Article 29/8])

- 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.

22. 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, intimidate or interfere with the inspectors in the performance of their duties;
- d) allow the inspectors to communicate their own authorities, as well as with the competent authorities of the Member of the Commission under whose jurisdiction the fishing vessel is operating;

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

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(*same as Article 22/38(e) of UNFSA)

f) facilitate safe disembarkation by the inspectors.

23. If the master of a fishing vessel denies permission for authorized inspectors to carry out a boarding in accordance with this ~~procedures, such master shall offer an explanation of the reason for the denial.~~ The [Contracting Party] [Member of the Commission] of the authorized

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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.

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24. The Member of the Commission under whose jurisdiction the fishing vessel is operating, unless generally accepted international regulations, procedures and practices relating to *force majeure*, make it necessary to delay the boarding and inspection, shall direct the master to accept the boarding and inspection.

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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 [Contracting Party] [Member of the Commission] of the authorized inspection vessel and the Commission of the action it takes in these circumstances.

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Deleted: 25. Authorized inspectors are not authorized to carry firearms during the conduct of inspection activities pursuant to this Scheme and force shall not be used for the purpose of stopping, slowing or boarding a vessel or once on board a vessel for carrying out inspection activities or for gaining access to any portion of the vessel, its gear, equipment, facilities, fish or fish products or its records.

USE OF FORCE

25. 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. (*same as Article 22/1(f) of UNFSA)
(*When para 25. is revised as above, para 26 is not necessary.)

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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.]

Deleted: 26. The master of the authorized enforcement vessel may authorize the use of force only in circumstances when the conduct of the fishing vessel or its crew presents real and imminent threat to the safety of the enforcement vessel, its crew or to the boarding party. In such cases, application of force shall be limited to the minimum necessary to counter the threat in question.¶

INSPECTION REPORTS

28. Authorized inspectors shall prepare a complete report on each inspection they carry out pursuant to this procedures in accordance with the format specified by the Commission. The [Contracting Party] [Member of the Commission] of the authorized inspection vessel from which the boarding and inspection was carried out shall transmit a copy of the 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 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 and indicate the nature of specific factual evidence of such violation.

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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 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 Contracting Party] [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, directly as well as through the Commission.

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32. Upon receipt of a notification under Paragraph 28, the Member of the Commission under whose jurisdiction the fishing vessel is operating shall:

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

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b) authorize the [Contracting Party] [Member of the Commission] of the authorized 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 [Contracting Party] [Member of the Commission] of 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 [Contracting Party] [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 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 Commission shall request the Member of the Commission to delete the fishing vessel in question from the Commission's Record of Vessels authorized to fish in the Convention Area (Article 24(4)).

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

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a) fishing without a license, permit or authorization issued by the flag State 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 serious misreporting of such catch and/or catch-related data;

c) fishing in a closed area;

d) fishing during a closed season;

e) directed fishing for prohibited species;

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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 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

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 this 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.

(*The meaning of this paragraph is not clear. Fishing vessels on the high seas are exclusively under the jurisdiction of their flag states (or members of the commission).)

ANNUAL REPORTS

39. [Members of the Commission][Contracting Parties] that assign vessels to this 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 Compliance Reports 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 procedures, 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 action taken pursuant to these procedures when such action is unlawful or exceeds that reasonably required in the light of available information to implement these procedures. (←

Article 21/18 of UNFSA)

COMMISSION COORDINATION AND OVERSIGHT

43. Authorized inspection vessels shall establish regular contact for the purpose of sharing

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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 this [procedures](#).

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44. For this purpose, the Commission shall establish, within the Secretariat, a means to facilitate secure communication among authorized [inspection](#) vessels.

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45. The Commission shall keep under continuous review the implementation and operation of [this procedures](#), including review of Annual Reports relating to the [procedures](#) provided by Members. In particular, it shall seek to promote optimum use of the authorized [inspection](#) vessels and authorized inspectors assigned to the [procedures](#) by:

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a) identifying priorities by area and/or by fishery for boarding and inspections pursuant to this [procedures](#);

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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;

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c) ensuring generally equitable distribution of boarding and inspections on the high seas among fishing vessels of Members of the Commission; 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.

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2. Boarding and inspection and related activities, conducted pursuant to the WCPFC Boarding and Inspection Scheme, 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.

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3. The WCPFC Boarding and Inspection Scheme shall operate on the high seas within the Convention area.

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5. Each Member of the Commission shall ensure that its vessels fishing on the high seas within the Convention area cooperate in the implementation of the WCPFC Boarding and Inspection Scheme.