

## EC Comments on Convenors Draft – 7 September 2006

### WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION BOARDING AND INSPECTION PROCEDURES

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.

Definitions [to facilitate reading and avoid repetition of complicated phrases]

2.a For the purpose of these procedures, the following definitions shall apply:

a) "Authorities of the inspection vessel" mean the authorities of the Member of the Commission under whose jurisdiction the inspection vessel is operating.

b) "Authorities of the fishing vessel" mean the authorities of the Member of the Commission under whose jurisdiction the fishing vessel is operating.

c) "Inspection vessel" means any vessel included in the Commission register of vessels as authorized to engage in boarding and inspection pursuant to these procedures.

d) "Inspector" means inspectors included in the Commission Register as authorized to conduct boarding and inspection pursuant to these procedures.

#### AREA OF APPLICATION

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

#### GENERAL RIGHTS AND OBLIGATIONS

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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 authorized inspectors in accordance with these procedures. Such 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.

7. The WCPFC boarding and inspection scheme shall be implemented in a non-discriminatory manner, taking into account such factors as the presence of observers aboard a vessel, the size of a 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;

~~;~~ [no reason to inspect these vessels more than others]

c) fishing vessels without observers on board;

d) large-scale tuna fishing vessels.

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

**PARTICIPATION**

11. The Secretariat, shall maintain a register of all inspection vessels and inspectors authorized to conduct boarding and inspection pursuant to these procedures. Only such vessels and inspectors are authorized to board and inspect [why only 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 information at least 21 [working/calendar?] days prior to commencing boarding and inspection activities:

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

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- i) details of the vessel (name, description, photograph, registration number, home port, international radio call sign and communication capability);
- 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 adopted by the Commission.

b) with respect to each inspector it assigns, pursuant to these procedures:

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- i) the name and affiliation [what does affiliation mean] of the inspector;
- 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

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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.

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 ? [executive director -one should rather mandate the executive director than having a Commission decision on this] verifies that they meet the requirements of that paragraph.

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, 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 this scheme.

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15. The Executive Director shall ensure that the registers of inspection vessels and inspectors are, at all times available to all Members of the Commission and shall immediately circulate any changes therein. Up-dated lists shall be available on the WCPFC website. Each Member of the Commission shall ensure that the lists of inspection vessels and inspectors, are circulated to each of its fishing vessels operating in the Convention area.

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**PROCEDURES**

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

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17. inspectors, shall carry approved credentials issued by the designating Member of the Commission in the format agreed by the Commission.

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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

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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 to board to the master of the fishing vessel; and

d) initiate notice, through its authorities, [what does this mean, that the inspection vessel have to inform the flag state in advance of the boarding? If this is the case, it does not seem practical] 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 verify compliance with the conservation and management measures in force pursuant to the Convention.

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

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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] is this necessary? flag state already has the obligation to do this.. 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 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] [also provided for in paragraph 28], 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 in any way obstruct, [no sense in making a long list of possibilities- go back to original text] intimidate or interfere with the inspectors in the performance of their duties;

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d) allow the inspectors to communicate with the crew of the inspection vessel, the authorities of the inspection

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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

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f) facilitate safe disembarkation by the inspectors.

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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 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 takes 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. [see no reason whatsoever to empower the inspectors to use force in these situations, there is already a remedy for that situation in paragraph 25]. The degree of force used shall not exceed that reasonably required in the circumstances.

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27. Any incident involving the use of force shall be immediately reported to the authorities of the fishing vessel involved, as well as to the Commission.

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**INSPECTION REPORTS**

28. Authorized inspectors shall prepare a complete report on each boarding and inspection they carry out pursuant to

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these procedures in accordance with the format specified by the Commission. The authorities of the inspection vessel shall transmit a copy of the boarding and inspection report to the authorities of the fishing vessel inspected, 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 or conservation and management measures in force [one could also instead of repeating this throughout the text refer to the purpose of the BI which is stated in para 2] 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 [redundant, see paragraph 22e].

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**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 vessel shall immediately 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 vessel 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 inspectors to the authorities of the fishing vessel.

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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 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 [what does this mean and how would it work]), the authorities of the fishing vessel has failed to respond to the notification, the Secretariat shall request the flag state to take action in conformity with Article 25 paragraph 10 of the Convention to withdraw the authorization to fish and other Members of the Commission to take action in conformity with Article 27 of the Convention, [by who, the executive director?]

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36. For the purposes of this scheme, 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;
- 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) intentional taking or retention of 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; and

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l) in any way obstruct, intimidate or interfere with an authorised inspector or observer.

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[already covered by l) (intimidation)].

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**ENFORCEMENT**

37. Any evidence obtained with respect to violation by a fishing vessel of the Convention, or a measure in force pursuant to it [see above], as a result of the operation of these procedures 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. Interference by a fishing vessel with an inspection vessel or an inspector shall be treated by the authorities of the fishing vessel, as if the [consistency] inspection vessel or authorized inspector were operating under the jurisdiction of those authorities.

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#### ANNUAL REPORTS

39. The Authorities of inspection vessels, shall report annually to the Commission on the boarding and inspections carried out by its, 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. inspection vessels, while assigned to this scheme, shall engage in surveillance aimed at identifying fishing vessels of non-Members, undertaking fishing activities on the high seas in the Convention area. Any such vessels identified shall be immediately reported to the Commission.

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41bis the inspection vessel shall attempt to inform fishing vessels referred to in paragraph 42 that it has been sighted or identified as engaging in fishing activities that are undermining the Convention and conservation and management measures in force, and that this information will be distributed to the Members of the Commission and to the flag state of the vessel.

41 quarter inspectors shall, if appropriate, request permission to board the fishing vessel referred to in paragraph 41. If the vessel consents to be boarded, the findings of the authorized inspectors shall be transmitted to the Secretariat. The Secretariat shall distribute this information to all Commission Members as well as the flag state of the vessel.

42. Members of the Commission shall be liable for damage or loss attributable to them arising from action taken

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pursuant to these procedures when such action is unlawful or exceeds that reasonably required in the light of available information to implement these procedures.

### 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 [members?] 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 [member] 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 [member?] 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 [what is an 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.

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47. For this purpose, the Secretariat, shall establish a means to facilitate 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

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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 same provisions as NAFO, has never been used there so we have doubts on its utility]

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.]

