

**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.

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.

5. (bis) For the purposes of the Commission's Boarding and Inspection procedures, Co-operating Non-Members to this Convention are considered synonymous with Commission Members with respects to obligations and responsibilities for action, except that they are not authorised to conduct boarding and inspections.

5. (bis) In accordance with Article 21(1) of the Agreement, a State Party which is a member of the Commission may, subject to the provisions of these procedures, board and inspect fishing vessels flying the flag of another State

Comment [JL1]: There is ambiguity over whether the boarding and inspection scheme currently applies to Co-operating non-Parties. Suggest amending Article 2 of the Cooperating non-Members Conservation Measure of 2004 to require Cooperating non-Members to commit to implement all Commission decisions and operational procedures, thereby gaining their consent to abide by the Boarding and Inspection Procedures (see end of this document). Then insert suggested NZ Article to legitimately expand the Procedures to also include Cooperating non-Members to a limited degree.

Comment [JL2]: China requested clarification of the applicability of the scheme to Parties to the United Nations Fish Stocks Agreement (UNFSA). Australia agrees and suggests the a new Article, largely sourced from Article 21.1 of UNFSA, into the 'General Rights and Obligations' of the Boarding and Inspection Procedures.

party to the Agreement, whether or not such State Party is also a member of the Commission.

5. (bis) In order to facilitate such boarding and inspections, the Commission Secretariat shall advise the Technical and Compliance Committee of State Parties to the Agreement that are not Members of the Commission.

Comment [JL3]: Australia supports China's request for the Executive Secretary to regularly inform Members on the status of State Parties to UNFSA who are not Members of the Commission.

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 and/or State Parties to the Agreement;

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.

Comment [JL4]: Procedures priorities need to address vessels flagged to Parties to UNFSA that are not on the WCPFC Record of Fishing Vessels, and are therefore in breach of UNFSA requirements to cooperate with relevant RFMOs.

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 to board and inspect foreign flagged fishing vessels **flagged to a Member of the Commission or a State Party of the Agreement** on the high seas within the Convention Area.

Comment [JL5]: Consistent with international law.

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, 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 proposes to authorize pursuant to these procedures:

- i) the name and affiliation 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
- 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 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 an inspector authorized to engage in boarding and inspection pursuant to these procedures (authorized inspector), on vessels authorized to engage in boarding and inspection pursuant to these procedures (authorized inspection vessel), 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.

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

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17. Any authorized inspector, 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 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 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.

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

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 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 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.

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 refuses to abide by these boarding and inspection procedures, such master shall offer an explanation of the reason for such refusal. 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.

Comment [JL6]: Australia supports NZ NZ suggested clarification of Article 24 to require fishing vessel masters to abide by 'these Boarding and Inspection Procedures', rather than granting 'permission for authorised inspectors to carry out a Boarding and Inspection, as provided in these Procedures'

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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 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.

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 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 the authorized inspection vessel, as well as the Commission; or

b) authorize the Member of the Commission of 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 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 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 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.
- l) assault, obstruct, resist, delay, intimidate or interfere with an authorised inspector or observer; and
- m) sexual harrassment of any authorised inspector or observer.

n) failure to fully implement WCPFC Conservation and Management Measures relating to by-catch and non-target species.

Comment [JL7]: List is incomplete as it does not directly support Article 10(1c) of the WCPFC which requires the Commission to adopt Conservation and Management Measures and recommendations for non-target species and species dependent upon, or associated with the target stocks. Rather than amend the list of serious violations every time a new Conservation and Management Measure is negotiated, it may be more practicable to insert a serious violation that supports all subsequent Conservation and Management Measures that apply to non-target species and species dependent upon, or associated with the target stocks.

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o) failure to operate a near real-time satellite position-fixing transmitter in accordance with the WCPFC Vessel Monitoring System procedures.

Comment [JL8]: List is incomplete as it does not directly support Article 10(i) of the WCPFC which requires the Commission to establish a Satellite-Based Vessel Monitoring System (VMS). Given the explicit mention and importance applied to the Satellite-Based Vessel Monitoring System by the WCPFC, it is arguable that offences against the VMS Scheme (i.e not operating a VMS while fishing for tuna on the high seas within the Convention Area) should be considered serious violations.

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.

ANNUAL REPORTS

39. Members of the Commission that authorize 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 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 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.

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 Commission in writing at its annual meeting 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.

Comment [JL9]: Australia suggests increasing the transparency of objections through the following amendment.

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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.

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- Conservation and Management Measure 2004-02 - Co-operating non-Members
Article 2(b). a commitment to cooperate fully in the implementation of **all decisions, resolutions and operational procedures** adopted by the Commission ...

Comment [JL10]: Refers to 5 (Bis).

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