

**DRAFT PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO THE
CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGHLY
MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN**

Prepared by the Chairman of Working Group III

1. The second meeting of WG.III will take place during the fourth session of the Preparatory Conference (PrepCon IV) from 5 – 9 May 2003 in Nadi, Fiji. Following the working procedure established prior to the first meeting of the Working Group, the annex to the present document contains a draft paper on boarding and inspection procedures for the consideration of participants.
2. In reviewing the paper, please keep in mind that the text provided here is not intended as a definitive set of procedures for boarding and inspection under the WCPFC. It is intended as a starting point for discussions on some of the more sensitive issues. In many cases, it will be necessary or desirable to further elaborate such procedures at the policy and/or technical level. Some cases where this might be appropriate are identified in italics in the text. However, there may be other such cases not identified, but this does not preclude further elaboration of any issue considered relevant by the participants in the discussion.
3. A draft of the paper was circulated informally to those delegations that expressed an interest in contributing to the elaboration of the text. A number of delegations provided substantive and thoughtful comments or suggestions for incorporation. The comments received on all sides of this issue highlight the complex and critical nature of boarding and inspection procedures to the work of the future Commission and all comments received warrant serious consideration. In particular, some comments cited the importance of ensuring greater consistency between boarding and inspection procedures of the Commission with those under article 22 of the UN Fish Stocks Agreement. Other comments suggested a greater role should be afforded to the flag state in carrying out boarding and inspection.
4. After reviewing all of the comments, I believe a thorough discussion in the Working Group of the issues raised is important before continuing efforts to further elaborate these procedures. As a result, only minor changes have been made to the previous text, most of which are technical or editorial in nature. I expect that those delegations that provided comments on the previous draft, or other input to the process, will come to the Working Group prepared to present those comments and suggestions. Of course, delegations that have not previously commented on the text will be free to do so at that time.
5. The tentative work programme adopted by the Working Group includes other items recommended for discussion at PrepCon II and it will be important to spend some time on these

issues as well. In this regard, I hope we will be able to begin a discussion on observers, in particular the parameters and guidelines for the observer programme with respect to MCS functions.

6. Other items on the tentative work programme include such issues as the Commission's vessel record; authorization to fish; vessel and gear markings and VMS. Some of the issues (such as the vessel record, vessel and gear markings, and perhaps others) may be considered more technical issues that may not require a great deal of discussion at the policy level in the Working Group. As a result, I would ask that participants consider whether it would be appropriate to delegate work on certain of these issues to a smaller technical subgroup or groups. These technical subgroups could work intersessionally and present the results of their work for the consideration of the Working Group at its next session (during PrepCon V).

7. Let me thank all participants in advance for the constructive and cooperative spirit I know you will bring to the second session of the Working Group. I look forward to our discussions.

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Annex

DRAFT PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO THE WCPF CONVENTION

PURPOSE

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

AREA OF APPLICATION

2. The scheme established in these guidelines shall apply on the high seas within the Convention Area where conservation and management measures adopted by the Commission are in force.

PARTICIPATION

3. High seas boarding and inspection in accordance with the Convention shall be conducted only by vessels previously identified by the Commission as duly authorized for this purpose by the competent authority of the [Contracting Party][member of the Commission] under whose jurisdiction the vessel operates.

4. The Commission shall maintain a register of such vessels authorized to conduct high seas boarding and inspection activities in the Convention Area.

5. The Commission shall establish criteria for listing such vessels on the Commission's register. Such criteria shall include, inter alia, a requirement that all authorized enforcement vessels be dedicated solely to government service, clearly marked and identifiable as being on official government service and manned by personnel trained in accordance with standards approved by the Commission. *{Further elaboration will be required.}*

6. Any [Contracting Party][member of the Commission] may propose one or more of its vessels for inclusion on the Commission register. Such vessel or vessels shall be included on the register once the Commission, based on a recommendation of the Executive Director, has verified that the vessel and crew satisfy the approved criteria.

7. The list of authorized vessels shall be circulated annually to all members who, in turn, shall circulate the list to all vessels operating under their jurisdiction in the Convention Area. Any changes to the list shall be circulated to all members as soon as practicable. *{Information included on the list circulated will require further elaboration: e.g., name and description of vessel, radio call sign, frequency monitored, etc.}*

PROCEDURES

8. Any authorized enforcement vessel that encounters a fishing vessel operating on the high seas and engaged or reported to have engaged in a fishery regulated by the Commission shall,

prior to conducting any boarding and inspection, contact the fishing vessel by radio and identify itself as a vessel authorized to conduct enforcement activities under the Convention. *{Procedures for making such contact can be further elaborated.}*

9. The enforcement vessel shall then request permission to board from the master of the fishing vessel.

10. It is expected that the master of the vessel shall accommodate the request, in which case the boarding and inspection shall proceed on a consensual basis in accordance with the rules set forth in these procedures.

11. If the master of the vessel denies permission for such consensual boarding, he or she shall offer an explanation as to the reason for denying the request. The master's refusal and explanation for it shall be communicated without delay to the competent authorities under whose jurisdiction the fishing vessel is operating.

12. If the master of the vessel denies permission to the enforcement authorities for such consensual boarding, the enforcement authorities shall nonetheless be authorized to board the vessel in cases where:

(a) There is reason to believe that the vessel is or has been operating in violation of a conservation and management measure adopted by the Commission, and

(b) Such boarding and inspection is necessary to obtain or verify evidence documenting such a possible violation different from evidence that can be obtained without such boarding.

13. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and crew, minimize interference with fishing operations and, to the extent practicable, avoid action that would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

14. Boarding and inspection shall be carried out in accordance with the guidelines on use of force set forth in paragraphs 19 and 20 of these procedures and any further procedures adopted by the Commission. *{Procedures for the conduct of such inspections can be further elaborated.}*

15. Once on board the vessel, enforcement authorities shall be authorized to collect such information as may be necessary to substantiate a claim that the vessel operated in violation of a conservation and management measure adopted by the Commission.

16. Once the enforcement authorities have obtained all relevant evidence, they shall leave the fishing vessel at the earliest opportunity.

17. Any evidence obtained with respect to a fishing vessel operating in violation of a conservation and management measure adopted by the Commission, including any evidence of illegal fishing and any evidence obtained from inspections, shall be referred for legal action to the member under whose jurisdiction the vessel is operating, and shall be handled by that member in accordance with Article 25 of the Convention.

18. All incidents of boarding and inspection shall be reported promptly to the Executive Director, which shall circulate the information to all Commission members.

USE OF FORCE

19. Except as provided in paragraph 20, use of force shall not be authorized during high sea enforcement activities including for the purpose of stopping, slowing or boarding a vessel or, once aboard the vessel, carrying out routine inspection activities or for gaining access to any portion of the vessel, its gear, equipment, facilities, fish or fish products, or its records.

20. Use of force shall be authorized only when the conduct of the fishing vessel or its crew presents a real and imminent threat to the safety of the enforcement vessel, its crew or the boarding party. In such cases, application of force shall be limited to the minimum level determined necessary to counter the threat in question.

21. Any incident involving the use of force shall be communicated without delay to the Executive Director and to the competent authorities of the [Contracting Party][member of the Commission] under whose jurisdiction the fishing vessel involved is operating.

OTHER PROVISIONS

22. States 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 reasonable required in the light of available information to implement the provisions of these procedures.