

IOTC High-sea Boarding and Inspection Scheme

Part 1

General Provisions

1. Each Contracting Party shall take such measures as may be necessary to ensure that vessels entitled to fly its flag, their Masters, the inspection vessels and inspectors it has assigned to this Scheme fulfil their respective duties and requirements under this Scheme.
2. Boarding and inspections shall be carried out by inspectors and inspection vessels assigned to this Scheme by a Contracting Party.
3. CPCs shall ensure that the Masters of their vessels are informed of these procedures and of their obligations under this Scheme.

Use of terms

4. For the purposes of this Scheme, the following definitions apply:
 - a) "CMMs" means Conservation and Management Measures adopted by the Indian Ocean Tuna Commission;
 - b) "Fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
 - c) "Fishing related activities" means any operation in support of, or in preparation for, fishing, including deploying FAD's, landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
 - d) "High Sea" means the IOTC Area of Competence lying outside of the EEZ's of the surrounding coastal states;
 - e) "Inspection vessel" means any vessel authorised by a Contracting Party and assigned to the IOTC record of inspection vessels under the Scheme;
 - f) "Inspector" means an official authorised by a Contracting Party assigned to the IOTC Regional High Seas Boarding and Inspection Scheme;
 - g) "Agreement" means the Agreement for the establishment of the Indian Ocean Tuna Commission;
 - h) "Scheme" means IOTC High Seas Boarding and Inspection Scheme for the Indian Ocean, as adopted by the Commission; and
 - i) "Vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Purpose and area of application

5. Boarding, inspection and related activities conducted pursuant to this Scheme shall be for the purpose of ensuring compliance with the provisions of the Agreement and CCMs which have been adopted and remain in force.
6. This Scheme applies in the High Sea of the IOTC Area of Competence in accordance with Article II of the Agreement.

Part 2

Authorisations and Duties

Contracting Party Duties

Notification requirements

7. Each Contracting Party shall notify the Executive Secretary of a contact point within its national fisheries authority (including name, telephone, fax numbers and e-mail address) for the purposes of receiving, inspection reports and immediate notification of infringements pursuant to this Scheme;
8. A Contracting Party that intends to conduct boarding and inspection under this Scheme, including by deploying inspectors on board the inspection vessel of another Contracting Party pursuant to an agreement under paragraph 10, shall notify the Executive Secretary:
 - a) its national authority responsible for at-sea inspection, as well as contact details (including name, telephone and fax numbers and e-mail address) for a point of contact within that authority ;
 - b) for each inspection vessel designated under this Scheme, its name, description, starboard and stern photographs, registration number, port of registry, and, if different from the port of registry, the name of the port as marked on the hull, international radio call sign and particulars of any other communication capabilities; and
 - c) the templates of the credential issued to its inspectors designated to participate in this Scheme
 - d) any changes to the information which has been provided pursuant to sub-paragraph a to c before any new inspection vessel or national authority participates in this Scheme.

a)

Identification of inspection vessels and inspectors

9. Contracting Parties shall ensure that:
 - a) each inspection vessel it authorizes to participate in this Scheme is clearly marked as being on government service by displaying the IOTC inspection pennant depicted in Annex II;
 - b) Inspectors are issued with credentials accorded to the templates referred to in paragraph 8c and have them available for presentation to the Master on boarding and, when requested, at all times under this Scheme.

Exchange of inspectors

10. Contracting Parties are encouraged to identify opportunities to place inspectors on an inspection vessel of another Contracting Party. To this end, where appropriate, Contracting Parties should seek to conclude bilateral or multilateral arrangements, or otherwise facilitate communication and coordination between them for the purpose of implementing this Scheme.
11. Contracting Parties shall notify the Executive Secretary of any arrangement reached under paragraph 9.
12. Contracting Parties deploying inspection vessels should, subject to having an agreement as outlined in paragraph 10, embark inspectors from another Contracting Party if available. Foreign inspectors may participate in all inspections conducted by the inspection vessel under this Scheme as agreed upon by Contracting Parties prior to deployment.

Secretariat Duties

13. The Executive Secretary shall:

- a) establish, maintain and post to the secure part of the IOTC website the information notified by the Contracting Parties under subparagraph 8, including a register of inspection vessels under this Scheme, and the arrangements referred to in paragraph 10;
- b) issue the IOTC inspection pennants depicted in Annex II to Contracting Parties deploying inspection vessels pursuant to this Scheme; and
- c) maintain and post to the secure part of the IOTC website a standardised, multi-language questionnaire developed in collaboration with Contracting Parties for use in contacting vessels and conducting boarding and inspection activities pursuant to this Scheme.

Coordination of inspection vessels

14. Contracting Parties are encouraged to participate in this Scheme.

15. Inspection vessels in the same operational area should seek to establish regular contact for the purpose of sharing information relevant to their activities under this Scheme.

Priorities for inspections

16. While not limiting efforts so to ensure compliance by all vessels, the inspecting Contracting Party should give priority to inspecting a vessel:

- a) entitled to fly the flag of a Contracting Party that is eligible for inclusion in the IOTC Record of Authorised Vessels, but is not included;
- b) where there are reasonable grounds to suspect the vessel is, or has been, engaged in IUU fishing activities or in any activity in contravention of the Agreement and CMMs;
- c) included in the list of vessels that have engaged in IUU fishing activities adopted by a regional or sub-regional fisheries management organization; or
- d) pursuant to a request by a Contracting Party or a regional or sub-regional fisheries management organization, supported by evidence of possible IUU fishing activities by the vessel in question.

Optimal use of inspection resources

17. In applying this Scheme, Contracting Parties may seek to promote optimum use of the inspection vessels and inspectors by:

- a) ensuring that boarding and inspection operations are fully integrated with the other monitoring, compliance tools available pursuant to the Agreement and CMMs;
- b) ensuring non-discriminatory distribution of boarding and inspections of Contracting Parties vessels, without compromising the opportunity to investigate possible serious infringements; and
- c) ensuring compliance by their own vessels.

Part 3

Conduct of Boarding and Inspections under this Scheme

18. Vessels of Contracting Parties may only be inspected by inspection vessels included on the register referred to in paragraph 13.a.

19. Inspections shall be conducted in a transparent, non-discriminatory manner taking into account inter alia, the vessels' fishing patterns and compliance record, the frequency and the results of prior inspections.
20. When undertaking inspections of vessels, inspectors shall use the checklist provided at Annex VII. The Executive Secretary shall ensure the checklist is amended as necessary to incorporate the adoption of new CMMs, and made available in the IOTC website.
21. Any inspection vessel that intends to undertake boarding and inspection of a vessel of a Contracting Party shall:
 - a) make best efforts to establish contact with the vessel by radio, using the appropriate International Code of Signals or other internationally accepted means of alerting the vessel;
 - b) identify itself as an inspection vessel, including by displaying in a clearly visible position, the IOTC inspection pennant depicted in Annex II;
 - c) communicate to the vessel its intention to board and inspect the vessel; and
 - d) initiate notice through its authorities to the contact point of the flag Contracting Party of the vessel.
22. The inspection vessel and the inspectors shall make best efforts to communicate with the Master of the vessel in English, using the standardized multi-language questionnaires referred to in paragraph 13.c.
23. The number of inspectors assigned to a boarding party shall be determined by the commanding officer of the inspection vessel taking into account present circumstances. The boarding party should be as small as possible to conduct an effective inspection safely and securely.
24. Boarding and inspection shall be conducted:
 - a) in accordance with generally accepted international standards, regulations, procedures and practices relating to the safety of the vessel and its crew; and
 - b) in a manner that avoids:
 - i. undue interference with the lawful activity of the vessel;
 - ii. actions that would adversely affect the quality of the catch; and
 - iii. any kind of harassment of the vessel's officers or crew.
25. In conducting an inspection, the inspectors shall:
 - a) upon boarding, present their credentials to the Master;
 - b) make best efforts to communicate with the Master of the vessel in English, where appropriate by using the standardized multi-language questionnaires referred to in paragraph 13.c;
 - c) avoid interfering with the Master's ability to communicate with the operator and the authorities of the flag Contracting Party of the vessel;
 - d) inspect and record such images of the vessel's license, gear, equipment, facilities, fish and fish products on board, and logbooks, records and documents as may be necessary to verify compliance with, or establish any suspected infringements of the Agreement and CMMs;
 - e) collect, and clearly document in the inspection report, any evidence of an infringement of the Agreement and CMMs;
 - f) record the inspection and any suspected infringement in the appropriate vessel's logbook or, where the vessel's logbook is electronic provide a written record of the inspection and any suspected infringement;
 - g) provide the Master with a copy of the inspection report;
 - h) complete the inspection within four hours unless evidence of a serious infringement is found, or where a longer time period is required to monitor ongoing fishing operations and obtain related documentation issued by the Master; and

- i) except where they have reasonable grounds to believe a serious infringement has been committed, promptly leave the vessel following completion of the inspection.

Duties of Contracting Parties

26. Contracting Parties shall ensure that all inspectors:

- a. are properly trained in applicable boarding and inspection operations at sea taking into account the guidelines in Annex IV;
- b. remain under its operational control, are fully familiar with the fishing activities being inspected and have been issued their credentials ;
- c. apply the provisions of this Scheme; and
- d. limit inspections to the verifying of compliance with the Agreement and CMMs.

Use of force

27. 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.
28. The inspectors shall promptly report any incident involving the use of force to their national authorities responsible for at-sea inspection, who shall advise the contact point of the flag Contracting Party of the vessel, and the Executive Secretary.

Duties of Vessel Masters

29. Each Contracting Party shall require that the Master of any vessel entitled to fly its flag:

- a) follows internationally accepted principles and normal practices of good seamanship to avoid risks to the safety of inspection vessels and inspectors undertaking boarding of the vessel;
- b) facilitates prompt and safe embarkation and disembarkation of the inspectors by manoeuvring the vessel according to the prevailing conditions, and by providing a boarding ladder to the specification prescribed at Annex IX;
- c) cooperates with the inspectors and assist in the inspection of the vessel pursuant to these procedures;
- d) not assault, resist, intimidate, interfere with, or unduly obstruct or delay the inspectors in the performance of their duties;
- e) makes available the use of the vessel's communication equipment and operator, to the extent required by the inspectors in the performance of their duties, so to contact its authorities;
- f) allows the inspectors to communicate with the crew of the vessel;
- g) provides the inspectors with reasonable facilities, including, where appropriate, food and accommodation;
- h) takes such action as may be necessary to preserve the integrity of any seal or identification mark affixed by an inspector and of any evidence remaining on board;
- i) ensures that holds that have been sealed are not entered, except for reasons of the crews' safety;
- j) where the inspectors have made an entry in the logbooks, provides the inspectors with a copy of each page where such entry appears and, at the request of the inspector, signs each page to confirm that it is a true copy; and
- k) refrains from resuming fishing activity until the inspectors have completed the inspection, and in the case of serious infringements, until the evidence have been secured.

Refusal of boarding and inspection

30. If the Master of a vessel refuses to allow an inspector to carry out a boarding and inspection in accordance with this Scheme, such Master shall offer an explanation of the reason for such refusal. The authorities of the inspection vessel shall immediately notify the contact point of the flag Contracting Party of the vessel and the Executive Secretary of the Master's refusal and any explanation.
31. The authorities of the flag Contracting Party of the 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 Contracting Party shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The Contracting Party shall immediately notify the authorities of the inspection vessel and the Executive Secretary of the action it has taken in these circumstances.

Part 4

Inspections Report

Inspectors Duties

32. Each Contracting Party shall require that its inspectors:
 - a) upon completion of an inspection, complete an inspection report in the form set out in Annex V;
 - b) identify in the inspection report any observed activity or condition that the inspectors believe to be an infringement of the Agreement and CMMs in force and indicate the nature of the specific factual evidence of such infringement;
 - c) sign the inspection report in the presence of the Master, who shall be given the opportunity to add or have added to the report any observations in their national language;
 - d) submit a copy of the inspection report to their national authority as soon as possible, by electronic transmission, after the completion of the inspection, or at the latest within 3 working days of the first port call;
 - e) request the Master to sign the report only as an acknowledgement of receipt; and
 - f) before disembarking, provide a copy of the report to the Master, duly noting any refusal by the Master to acknowledge receipt.

Duties of the Contracting Party

33. The inspecting Contracting Party shall transmit an electronic copy of the inspection report to the contact point of the flag Contracting party of the vessel being inspected, as well as to the Executive Secretary, within 3 full working days following the reception of the inspection report, pursuant to paragraph 31.d.
34. Where inspectors have noted a serious infringement in the inspection report, the inspecting Contracting Party shall transmit without delay a copy of the inspection report and all supporting documents, images or audio recordings, to the contact point of the flag Contracting Party of the vessel and to the Executive Secretary.

Duties of the Executive Secretary

35. The Executive Secretary shall:

- a) ensure the form of the inspection report is amended as necessary to incorporate the adoption of new CMMs, and made available in the IOTC website; and
- b) place a copy of the inspection report received from Contracting Parties on the secure part of the IOTC website.

Part 5

Infringements and Serious Infringements

Infringements

36. In the event of inspectors finding evidence pursuant to this Scheme with respect to an infringement by a vessel of the Agreement and CMMs, they shall note the infringement in the inspection report referring to the CMM infringed.

Serious Infringements

Definitions

37. In addition to the definitions provided in paragraph 1 of Resolution 11/03 *establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence*, each of the following shall constitute a serious infringement:

- a) falsifying or intentionally concealing the markings, identity or registration of a vessel or its gear, or failing to mark fishing gear, falsify or intentionally conceal its markings, identity or registration;
- b) concealing, tampering with or disposing of evidence related to an inspection or investigation of an infringement, including the breaking or tampering of marks or seals;
- c) accessing sealed areas, except for reasons of safety of the crew;
- d) committing multiple infringements which, taken together, constitute a serious disregard of the Agreements and CMMs;
- e) assaulting, resisting, intimidating, interfering with, obstructing or unduly delaying inspectors in the performance of their duties, and any form of harassment;
- f) in the absence of any justifiable reason based on generally accepted international regulations, procedures and practices relating to safety at sea, refusal to accept a boarding and inspection by inspectors;
- g) interference with the vessel monitoring system and/or operate without a VMS system in contravention of the Agreement and CMMs; and
- h) presenting falsified documents or providing false information to an inspector so as to prevent a serious infringement from being detected.

Duties of the Inspectors

38. Where the inspectors have reasonable grounds to believe that a vessel has committed a serious infringement of the Agreement and CMMs, they shall:

- a) immediately notify the serious infringement to their national authority;
- b) seek to advise, without delay, any inspection vessel of the flag Contracting Party of the vessel that are present in the vicinity;

- c) take all necessary measures to ensure security and continuity of the evidence for subsequent port inspection, and
- d) affix securely an official IOTC seal, as depicted in Annex X, to any part of the fishing gear which appears to the inspector to have been in contravention of applicable measures.

Duties of the inspecting Contracting Party

39. Where notified by its inspectors of a serious infringement, the inspecting Contracting Party shall immediately transmit written notification of the serious infringement and a description of the supporting evidence to the contact point of the flag Contracting Party of the vessel and to the Executive Secretary.

Duties of the flag Contracting Party of the vessel

40. A flag Contracting Party that has been notified of a serious infringement pursuant to paragraph 39, shall:

- a) acknowledge receipt of the notification without delay;
- b) require that the Master of the vessel concerned:
 - i. to cease all fishing activity until it is satisfied that the infringement will not continue or be repeated and has so notified the Master; and
 - ii. where appropriate to the conduct of a full and thorough investigation, to proceed immediately to a port it designates for investigation under its authority;
- c) investigate immediately and fully, including as appropriate by physically inspecting the vessel, at the earliest opportunity, or authorize the inspecting Contracting Party to take enforcement action as appropriate under the circumstances;
- d) take prompt action to receive and consider the evidence of the infringement and conduct any further investigation necessary for the follow up to the infringement;
- e) report to the Executive Secretary the progress of the investigation, including details of any actions it has taken or has initiated in relation to the infringement;
- f) cooperate with the inspecting Contracting Party to preserve the evidence in a form that will facilitate proceedings in accordance with its laws;
- g) where the evidence so warrants, take immediate judicial or administrative action in conformity with its national legislation against the persons responsible for the vessel flying its flag; and
- h) ensure that in proceedings it has instituted, it treats a notice of an infringement issued pursuant to this Scheme as if the infringement was reported by its own inspector.

41. The flag Contracting Party shall ensure:

- a) that any of its vessels which have been found to have contravened an the Agreement and CMMs do not carry out fishing operations within the IOTC Area of Competence, as defined in Article II of the Agreement, until they have complied with the sanctions imposed; and
- b) the proceedings initiated shall, in accordance with the relevant provisions of its national law, be capable of effectively depriving those responsible of the economic benefit of the infringements or of providing sanctions proportionate to the seriousness of such infringements, thus effectively discouraging future infringements.

Duties of the Executive Secretary

42. The Executive Secretary shall maintain a record of actions reported by the flag Contracting Party pursuant to paragraph 40.e, post such record to the secure part of the IOTC website and refer the information to the Commission for its consideration.

Part 6

Follow-up enforcement action

Follow-up enforcement action

43. For the purpose of this Scheme, the authorities of the vessel shall regard any interference by their vessels, Masters or crews with an inspector or an inspection vessel of another Contracting Party in the same manner as any such interference occurring within its exclusive economic zone.
44. Contracting Parties shall cooperate to facilitate judicial or other proceedings initiated as follow-up to a report submitted by an inspector pursuant to this Scheme.
45. Each Contracting Party shall:
 - a) without prejudice to their national legislation, treat notices of alleged infringement by its vessels, their Masters or crews with an inspector or an inspection vessel of another Contracting Party in the same manner as interference with its own inspectors ; and
 - b) treat reports of inspections conducted by inspectors of another Contracting Party, and in particular an equivalent evidentiary status for establishing facts, as inspection reports of its own inspectors.

Part 7

Annual report

Annual report

46. Each Contracting Party shall, for the preceding year, include in its annual report, a summary of:
 - a) the boarding and inspection activities it has conducted pursuant to this Scheme;
 - b) the actions it has taken in response to reported serious infringements by its vessels, including any enforcement procedures and the sanctions it may have applied. The Contracting Party shall continue to list such actions on each subsequent report until it reports the final disposition of the infringements; and
 - c) an explanation regarding every reported infringement which it has taken no action.

Part 8

Non-Contracting Party Vessels and Vessels of Undetermined Flag

47. An inspecting Contracting Party that sights a vessel that may be fishing contrary to IOTC Agreement and CMMs shall report the sighting immediately to the Executive Secretary.
48. A vessel reported pursuant to paragraph 47 is presumed to be undermining the effectiveness of the IOTC Agreement and CMMs. The inspection vessel shall, where practicable, so advise the Master of the sighted vessel indicating that this information will be reported to the Commission.
49. Where practicable, the inspection vessel may request permission from the Master to board and inspect the vessel. A report of the encounter and of any ensuing inspection shall be transmitted to the Executive Secretary.

50. The Executive Secretary shall distribute this information to all Contracting Parties as well as to the flag State of the vessel.

Part 9

Report to the Compliance Committee

51. The Executive Secretary shall submit to the Compliance Committee a report setting out:

- a) the ratio of serious infringements from the total number of inspections reported by the Contracting Parties under this Scheme;
- b) with due consideration to confidentiality, the details of serious infringements;
- c) the follow-up actions taken, as reported by each Contracting Party;
- d) any instances where boarding and inspection were refused by a vessel, and any follow-up action taken by that flag State in respect of such vessel;
- e) any case of encounter with a non-Contracting Party vessels and vessels of undetermined flag as reported under paragraph 47; and
- f) any cases where force was used including the reported circumstances thereof.

Part 10

Dispute Resolution

52. In the event of a disagreement concerning the interpretation, application or implementation of this Scheme, the Contracting Parties concerned shall consult in an attempt to resolve the disagreement.

53. If the disagreement remains unresolved following the consultations, the Executive Secretary shall, at the request of the Contracting Parties concerned and with the consent of the Commission, refer the disagreement to the Compliance Committee (CoC). The CoC shall establish a panel of [five] representatives, acceptable to the Contracting Parties to the disagreement, to consider the matter.

54. A report on the disagreement shall be drawn up by the panel and forwarded through the CoC Chair to the Commission within two months of the CoC meeting at which the case is reviewed.

55. Upon receipt of such report, the Commission may provide appropriate advice with respect to any such disagreement for the consideration of the Contracting Parties concerned.

56. Application of these provisions for the settlement of disagreements shall be nonbinding. These provisions shall not prejudice the rights of any Contracting Party to use the dispute settlement procedure in the Agreement.