

Commission Implementing Regulation (EU) No 404/2011 of 8 April
2011 laying down detailed rules for the implementation of Council
Regulation (EC) No 1224/2009 establishing a Community control system
for ensuring compliance with the rules of the Common Fisheries Policy

TITLE VI

INSPECTION

CHAPTER I

Conduct of inspections

Section 1

General provisions

Article 97

Officials authorised to conduct inspections at sea or on land

1 Officials responsible for carrying out inspections, as referred to in Article 74 of the Control Regulation shall be authorised by the competent authorities of the Member States. To this end, Member States shall provide their officials with a service card stating their identity and the capacity under which they operate. Each official on duty shall carry that service card and present it during an inspection at the earliest opportunity.

2 Member States shall confer adequate powers on their officials as necessary for the fulfilment of control, inspection and enforcement in accordance with this Regulation, and to ensure compliance with the rules of the Common Fisheries Policy.

Article 98

General principles

1 Without prejudice to provisions contained in multi-annual plans, competent authorities of Member States shall adopt a risk based approach for the selection of targets for inspection, using all available information. In accordance with this approach, officials shall carry out inspections in accordance with rules laid down in this Chapter.

2 Without prejudice to provisions contained in multi-annual plans, Member States shall coordinate their control, inspection and enforcement activities. To this end, they shall adopt and execute national control action programmes as referred to in Article 46 of the Control Regulation and common control programmes as referred to in Article 94 of the Control Regulation covering both activities at sea and on land as necessary to ensure compliance with the rules of the Common Fisheries Policy.

3 Subject to a risk based control and enforcement strategy each Member State shall carry out the necessary inspection activities in an objective way in order to prevent the retention on board, transshipment, landing, transfer to cages and farms, processing, transport, storage, marketing and stocking of fishery products originating from activities that are not in compliance with the rules of the Common Fisheries Policy.

4 Inspections shall be carried out in a manner as to prevent to the extent possible any negative impact on the hygiene and quality of the fisheries products inspected.

5 Member States shall ensure that national fisheries related information systems allow for the direct electronic exchange of information on port state inspections between themselves, other Member States, the Commission and the body designated by it as appropriate, in accordance with Article 111 of the Control Regulation.

Article 99

Duties of officials during the pre-inspection phase

During the pre-inspection phase officials shall, where possible, collect all appropriate information, including:

- (a) fishing licences and fishing authorisations;
- (b) VMS information corresponding to the current fishing trip;
- (c) aerial surveillance, and other sightings;
- (d) previous inspection records and available information on the secure part of the website of the flag Member State on the EU fishing vessel concerned.

Article 100

Duties of officials authorised to conduct inspections

1 Officials authorised to conduct inspections shall verify and note the relevant items defined in the appropriate inspection module of the inspection report in Annex XXVII. For this purpose they may take pictures, video and audio recordings in accordance with national law, and, where appropriate, samples.

2 Officials shall not interfere with the right of any operator to communicate with the competent flag state authorities during inspection operations.

3 Officials shall take into account any information provided in accordance with Article 95(2) of this Regulation by a control observer on board the fishing vessel to be inspected.

4 On completion of an inspection officials shall debrief operators as appropriate on fisheries regulations relevant to the prevailing circumstances.

5 Officials shall leave as soon as possible the fishing vessel or the inspected premise following the completion of the inspection if no evidence of an apparent infringement is detected.

Article 101

Obligations of Member States, the Commission and European Fisheries Control Agency

1 The competent authorities of Member States, and, where appropriate, the Commission and the European Fisheries Control Agency, shall ensure that their officials, whilst being courteous and sensitive, conduct inspections professionally and to a high standard.

2 The competent authorities of each Member State shall establish procedures to ensure that any complaint made by operators regarding the conduct of inspections carried out by their officials is investigated in a fair and thorough manner in accordance with national law.

3 Coastal Member States may, subject to appropriate arrangements with the flag Member State of a fishing vessel, invite officials of the competent authorities of that Member State to participate in inspections of fishing vessels of that Member State, whilst those vessels are operating in waters of the coastal Member State or landing in its ports.

Section 2

Inspections at sea

Article 102

General provisions on inspections at sea

1 Any vessel used for control purposes including surveillance shall display so as to be clearly visible, a pennant or a symbol as shown in Annex XXVIII.

2 A boarding craft used to facilitate the transfer of officials carrying out inspections shall fly a similar flag or pennant of a size appropriate to that of the boarding craft to indicate that it is engaged in fishery inspection duties.

3 Persons in charge of inspection vessels shall have due regard to the rules of seamanship and manoeuvre at a safe distance from the fishing vessel in accordance with the international rules for the prevention of collisions at sea.

Article 103

Boarding fishing vessels at sea

1 Officials responsible for the conduct of the inspection shall ensure that no action is taken that may compromise the safety of the fishing vessel and its crew.

2 Officials shall not require the master of a fishing vessel that is being boarded or disembarked to stop or manoeuvre during fishing, or to stop the shooting or hauling of fishing gear. Officials may, however, require the interruption or delay of the shooting of gear to permit safe boarding or disembarkation until they have boarded or disembarked the fishing vessel. In the case of boarding this delay shall not exceed 30 minutes after officials have boarded the fishing vessel unless an infringement has been detected. This provision does not affect the possibility of officials to require the gear to be hauled for inspection.

Article 104

On board activities

1 When carrying out their inspection, officials shall verify and note all appropriate items provided for in the appropriate inspection report module set out in Annex XXVII to this Regulation.

2 Officials may require the master to haul a fishing gear for inspection.

3 Inspection teams shall normally be comprised of two officials. Additional officials may supplement inspections teams when necessary.

4 The duration of an inspection shall not exceed 4 hours, or until the net is hauled in, and the net and catches are inspected, whichever is longer. It shall not apply in the case that an apparent infringement is detected or where the officials need further information.

5 In the case of an apparent infringement being detected, identification marks and seals may be affixed securely to any part of the fishing gear or the fishing vessel, including containers of fisheries products and the compartment(s) in which they may be stowed, and the official(s) may remain on board for the time necessary for the completion of appropriate measures to ensure security and continuity of all the evidence of the apparent infringement.

Section 3

Inspections in port

Article 105

Preparation of inspection

1 Without prejudice to benchmarks defined in specific control and inspection programmes and in Article 9 of Regulation (EC) No 1005/2008, an inspection of a fishing vessel shall take place in port or on landing, on the following occasions:

- a routinely subject to a sampling methodology based on a risk-based management; or
- b where it is suspected of failing to comply with the rules of the Common Fisheries Policy.

2 In cases referred to in paragraph 1(b) and without prejudice to the last sentence of Article 106(2) of this Regulation the competent authorities of the Member States shall ensure that the fishing vessel to be inspected in port is met by their officials on arrival.

3 Paragraph 1 does not exclude the possibility for Member States to undertake random inspections.

Article 106

Inspections in port

1 When carrying out inspections officials shall verify and note all appropriate items listed in the corresponding inspection report module set out in Annex XXVII to this Regulation.

Officials shall have due regard to any specific requirements which apply to the inspected fishing vessel, in particular to relevant provisions in multi-annual plans.

2 When carrying out an inspection of a landing officials shall monitor the whole landing process from the beginning to the end of the respective operation. A cross-check shall be carried out between the quantities by species recorded in the prior notification of arrival to land fishery products, the quantities by species recorded in the fishing logbook and the quantities by species landed or transhipped whichever is applicable. This provision shall not exclude the possibility of an inspection taking place after the start of the landing.

3 Member States shall ensure the effective inspection and control of premises used in connection with fishing activities and subsequent processing of fisheries products.

Article 107

Inspection of certain pelagic landings

For landings of herring, mackerel and horse mackerel as referred to in Title IV, Chapter II, Section 2 of this Regulation the competent authorities of a Member State shall ensure that at least 15 % of the quantities of this fish landed and at least 10 % of the landings of this fish are inspected.

Section 4

Transport inspections

Article 108

General principles

1 Without prejudice to provisions contained in multi-annual plans, transport inspections may take place anywhere and at anytime from the point of landing to the arrival of the fisheries products at the place of sale or processing. In carrying out inspections, the necessary measures shall be taken as to ensure the maintenance of the cold chain of the fisheries products inspected.

2 Without prejudice to provisions contained in multi-annual plans and national control programmes or specific control and inspection programmes, transport inspections shall include, wherever possible, a physical examination of the products transported.

3 The physical examination of the transported fishery products shall involve the taking of a sample representative of the different sections of the lot or lots transported.

4 When carrying out a transport, inspection officials shall verify and note all items referred to in Article 68(5) of the Control Regulation and all appropriate items in the report module set out in Annex XXVII to this Regulation. This shall include verification that the quantities of fisheries products transported correspond to the details entered on the transport document.

Article 109

Transport vehicles sealed

1 When a vehicle or a container has been sealed to avoid manipulation of the cargo, competent authorities of Member States shall ensure that serial numbers of seals are noted on the transport document. Officials shall inspect that the seals are intact and that the serial numbers correspond with the details on the transport document.

2 Where seals are removed to facilitate inspection of the cargo before the cargo arrives at the final destination, officials shall replace the original seal with a fresh seal, recording the seal details in the transport document and the reasons for the removal of the original seal.

Section 5

Market inspections

Article 110

General principles

Officials shall verify and note all appropriate items listed in the corresponding inspection module in Annex XXVII to this Regulation when visiting cold stores, gross and retail markets, restaurants or any other premises where fish is stored and/or sold after landing has taken place.

Article 111

Additional methodologies and technologies

In addition to the items listed in Annex XXVII, Member States may make use of available methodologies and technologies for the identification and validation of fisheries products, their source or origin and the suppliers and catching vessels or production units.

Article 112

Control of fisheries products withdrawn from the market

Officials shall verify that fisheries products withdrawn from sale in accordance with Article 17 of Council Regulation (EC) No 104/2000⁽¹⁾ are disposed of in accordance with the provisions of Commission Regulation (EC) No 2493/2001⁽²⁾.

- (1) OJ L 17, 21.1.2000, p. 22.
- (2) OJ L 337, 20.12.2001, p. 20.