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Port State Control:
FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2009)

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Ex-Chair of FAO Technical Consultation to draft an Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
The Background of Port State Measures

  - Article 218 - Enforcement by port States
    - When a vessel is voluntarily within a port or at an offshore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.

- 1992 The International Conference on Responsible Fishing (Cancun)
  - The Declaration of Cancún

  - Agenda 21 - Chapter 17 - Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources
    - Sustainable use and conservation of marine living resources of the high seas;
    - Sustainable use and conservation of marine resources under national jurisdiction;
    - Strengthening regional and international cooperation and coordination;

- UNGA Resolution 47/192, December 22, 1992
- United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks
The Background of Port State Measures

✓ 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

Article V - *International Cooperation*

2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.


- Article 23 - Measures taken by a port State

✓ 1995 FAO Code of Conduct for Responsible Fisheries

- 8.3 Port State duties
The Background of Port State Measures

- 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU).
- Port State Measures (13 articles, Arts. 52 to 64).
- 2004 FAO Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing.
- 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing.
- 2008 FAO Technical Consultation to draft a legally binding Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (4 sessions).
- 2009 FAO AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING.

Approved by FAO Conference on November 22, 2009, in accordance with Article XIV, paragraph 1, of the Constitution of FAO.

Phase I
- 2002-
- 2004-
- 2005-
- 2007-
- 2008-

Phase II
- 2009-
Structure of the FAO PSMA

Preamble
Part 1- General provisions
Part 2- Entry into port
Part 3- Use of ports
Part 4- Inspections and follow-up actions
Part 5- Role of flag States
Part 6- Requirements of developing States
Part 7- Dispute settlement
Part 8- Non-Parties
Part 9- Monitoring, review and assessment
Part 10- Final provisions

Annex A Information to be provided in advance by vessels requesting port entry
Annex B Port State inspection procedures
Annex C Report of the results of the inspection
Annex D Information systems on port State measures
Annex E Guidelines for the training of inspectors
FAO PSMA Main Provisions

Preamble

- Primary responsibility of flag States
- Port State measures provide a “powerful and cost-effective means” of combating IUU fishing
- Cost-effectiveness
- Efficiency
- Safety
- Need for increasing coordination at regional and interregional levels

Part 1 - General provisions

Article 1 - Use of Terms

(c) “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;

(d) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the 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;

(j) “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.
FAO PSMA Main Provisions

**Part 1 - General provisions**

- **Article 2 - Objective**
- **Article 3 - Application**
  - *foreign fishing vessels*
  
  1. Each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports.

- **Article 4 - Relationship with international law and other instruments**
  - **Recognition of the coastal State sovereign right to deny entry to its ports by foreign fishing vessel, except for reasons of force majeure**
  
  1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law. In particular, nothing in this Agreement shall be construed to affect:
    
    (b) the exercise by Parties of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in this Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization.
FAO PSMA Main Provisions

**Part 1 - General provisions**

- Article 5 - Integration and coordination at the national level
- Article 6 - Cooperation and exchange of information
  (Potential for interaction with the Global Record of Fishing Vessels)

**Part 2 - Entry into Port**

- for States who wish to allow foreign fishing vessels to enter their ports
  - Article 7 - Designation of ports
    1. Each Party shall designate and publicize the ports to which vessels may request entry pursuant to this Agreement. Each Party shall provide a list of its designated ports to FAO, which shall give it due publicity.
  - Article 8 - Advance request for port entry (Annex A) (sufficiently in advance)
  - Article 9 - Port entry, authorization or denial
    1. Upon relevant info decide: YES or NO
    2. YES ⇒ Authorization for entry shall be presented by vessel
    3. NO ⇒ Port State shall inform the flag State and relevant RFMOs
    4. If vessel has engaged in IUU fishing/ fishing related activities: NO
    5. Maybe YES, but to inspect, and 6. use of port shall be denied

**Part 2 - Entry into port** ⇒ **Part 3 - Use of Ports** ⇒ **Part 4 - Inspections and Follow-up**
FAO PSMA Main Provisions

Part 2 - Entry into port

Article 10 - Force majeure or distress

Part 3 - Use of ports

Article 11 - Use of ports
  Conditions for denying the use of Ports
    for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking

Part 4 - Inspections and follow-up actions

Article 12 - Levels and priorities for inspection

Article 13 - Conduct of inspections
  Annex B: minimum standard for inspections

Article 14 - Results of inspections
  Annex C: minimum standard for reporting the results of an inspection

Article 15 - Transmittal of inspection results
  Relevant parties, RFMOs, FAO and other relevant international organizations
Part 4- Inspections and follow-up actions

- **Article 16- Electronic exchange of information**
  - Annex D: mechanism for communication
    (Potential for interaction with the Global Record of Fishing Vessels)

- **Article 17- Training of inspectors**
  - Annex E: minimum standard for the training of inspectors

- **Article 18- Port State actions following inspection**
  - In case of IUU: notify the relevant States and RFMOs, deny the use of its port

- **Article 19- Information on recourse in the port State**

Part 5- Role of Flag States

- **Article 20- Role of Flag States**

Part 6- Requirements of Developing States

- **Article 21- Requirements of developing States**
  1. Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of PSM. To this end, Parties shall, either directly or through FAO, other specialized agencies of the United Nations or other appropriate international organizations and bodies, including RFMOs, provide assistance to developing States Parties, in order to:
Part 6- Requirements of Developing States

Article 21- Requirements of developing States

(a) enhance their ability, in particular the least-developed among them and small island developing States, to develop a legal basis and capacity for the implementation of effective port State measures;

(b) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and

(c) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

4. Parties shall cooperate to establish appropriate funding mechanisms to assist developing States in the implementation of this Agreement

6. Parties shall establish an ad hoc working group to periodically report and make recommendations to the Parties on the establishment of funding mechanisms including a scheme for contributions, identification and mobilization of funds, the development of criteria and procedures to guide implementation, and progress in the implementation of the funding mechanisms.
Part 7 - Dispute settlement

Article 22 - Peaceful settlement of disputes

Part 8 - Non-parties

Article 23 - Non-Parties to this Agreement

Part 9 - Monitoring, Review and assessment

Article 24 - Monitoring, review and assessment

2. Four years after the entry into force of this Agreement, FAO shall convene a meeting of the Parties to review and assess the effectiveness of this Agreement in achieving its objective

Part 10 - Final provisions

Article 25 - Signature

Article 26 - Ratification, acceptance or approval

Article 27 - Accession

Article 28 - Participation by Regional Economic Integration Organizations

Article 29 - Entry into force

thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance, approval or accession

Presently = 9: Chile, Gabon, Myanmar, Norway, Oman, Seychelles, Sri Lanka, Uruguay, EU
FAO PSMA Main Provisions

Part 10- Final provisions

- Article 30- Reservations and exceptions
- Article 31- Declarations and statements
- Article 32- Provisional application
- Article 33- Amendments
- Article 34- Annexes
- Article 35- Withdrawal
- Article 36- The Depositary
- Article 37- Authentic texts

PSMs have been already adopted by several RFMOs, including all tuna RFMOs (ICCAT, IATTC, WCPFC, IOTC and CCSBT)
Regional workshops which aim to:
(e.g. Bangkok, Thailand, April 2012, in collaboration with APFIC; Fiji; T&T)

✓ Provide essential information about the Agreement focusing on the role, responsibilities and obligations of the port State;
✓ Heighten awareness about the benefits of implementing the Agreement;
✓ Facilitate knowledge building and skills development for managers and inspectors in relation to the Agreement, in preparation of its coming into force;
✓ Review stakeholders’ perspective on port State measures and good governance;
✓ Facilitate exchange of national experiences in combating IUU fishing;
✓ Highlight the importance of developing concerted actions between port States and flag States in implementing port State measures effectively;
✓ Promote the strengthening and harmonization of port State measures regionally;
✓ Highlight the role of regional fisheries management organizations and arrangements (RFMOs) in the implementation of the Agreement;
✓ Encourage the reinforcement of the implementation of existing Regional Plans of Action to combat IUU fishing and the development of new ones;
✓ Draw up related national and regional action plans and recommendations in general, legal and policy, institutional, capacity development and operations terms
✓ Identify opportunities for regional cooperation to implement port State measures
Muchas Gracias !
Thank You !