



TECHNICAL AND COMPLIANCE COMMITTEE
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SUMMARY OF PORT STATE MEASURES ADOPTED BY RFMOS

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Paper by Secretariat

Purpose

1. The purpose of this paper is to table for the consideration and noting of TCC12 the status of related port states measures adopted by various RFMOs.

Bankground

2. The Work Plan of the Technical and Compliance Committee includes provision for the Secretariat to prepare a paper for consideration at TCC12 on a summary of port state measures adopted by RFMOs. This paper responds to that request.

3. The following RFMOs were considered in this paper: IATTC, ICCAT, CCSBT, IOTC, SEAFO, NAFO, NEAFC, and CCAMLR. In summary, the port State measures adopted by RFMOs can be divided into two main groups:

- a. Those RFMOs (IOTC, SEAFO, NEAFC, CCAMLR) which aim specifically to prevent, deter and eliminate IUU fishing through the development of effective port State measures. The measures of IOTC and SEAFO are based closely on the FAO Agreement on Port State Measures (PSM). NEAFC adopts the provisions of the PSM *mutatis mutandi*. CCAMLR has a range of measures to deal with IUU fishing including port inspections, a catch documentation scheme, and IUU listing.
- b. Those RFMOs (ICCAT, CCSBT) that establish a set of minimum standards for inspections of landings and transshipments in port. The emphasis is on the proper conduct of inspections, rather than on taking action in respect of IUU vessels, although there is also reference to this. There are no rules around the denial of port access to IUU vessels, or provisions on denying port services to vessels that have engaged in IUU fishing, as in the PSM Agreement.

4. To these can be added those RFMOs which have developed a scheme of inspection and enforcement and include port state controls as part of the scheme (NAFO) or which have not explicitly developed port state control measures but prohibit landings and transshipment from IUU-listed vessels (IATTC).

5. Annex I to this paper provides a more detailed summary of the port state measures adopted by each RFMO and the treatment of various key issues. This paper compares the measures adopted by different RFMOs and the PSM in light of the following issues: the measures' scope, designation of ports, requirements for advance port entry, authorisation or denial of entry, use of ports, port inspections,

inspection procedures, procedures in the case of an apparent infringement, requirements of developing countries, information sharing and cooperation, and general provisions.

6. There are a number of provisions which are common to most of the RFMOs, including the designation of ports; requirements for advance notice of port entry; authorisation of port entry by the port State; general procedures for carrying out port inspections; requirements relating to follow up action if an infringement is found; and provisions relation to cooperation, including the designation of contact points. Those RFMOs which base their measures on the PSM go further in encouraging port state controls to prevent IUU fishing. This includes the possibility of denying port access and access to port services including landing and transshipment to those vessels suspected of IUU fishing, or specifically targeting suspected IUU vessels for inspection.

Recommendation

7. TCC is invited to:

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| <p>a. note the summary in this paper of port state measures adopted by RFMOs.</p> |
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Summary of Port State Measures by Issue

Scope of measures

- Measures either have a broad scope and apply to foreign fishing vessels (FFVs) wishing to enter ports of Contracting Parties (CPs) (IOTC, SEAFO, NEAFC, PSM);
- Or they cover FFVs seeking to enter port with catch covered by the RFMO (ICCAT, CCSBT, CCAMLR);
- Or they cover CP vessels seeking entry for landing and transshipment and non-CP vessels seeking entry to port (NAFO).
- A CP may exclude its chartered vessels returning to its ports from the application of the measure (ICCAT, CCSBT, PSM).
- The measure applies to FFVs over 12 metres in length (ICCAT, CCSBT).

Designation of ports

- CPs designate ports for entry of fishing vessels (ICCAT, CCSBT, IOTC, SEAFO, NEAFC, CCAMLR, PSM);
- Or CPs designate ports for landings and transshipment (NAFO).
- A list of ports is provided to Secretariat; the Secretariat publishes the list (ICCAT, CCSBT, IOTC, SEAFO, NAFO, NEAFC, CCAMLR).
- CPs ensure designated ports have sufficient capacity to conduct inspections (ICCAT, CCSBT), to the (greatest) extent possible (IOTC, SEAFO, PSM).

Advance port entry requirements

- The measure provides for prior notification of port entry (IOTC, SEAFO, NEAFC, CCAMLR, PSM);
- Or prior notification of port entry for landings or transshipment (ICCAT, CCSBT, NAFO).
- Certain specified information must be provided prior to entry for landings or transshipment (CCSBT, IOTC, SEAFO, NAFO, NEAFC, CCAMLR, PSM);
- Or the Secretariat is to develop a format for prior notification reports (ICCAT).
- CPs may require a longer or shorter notification period (ICCAT, CCSBT, NEAFC); or the measure establishes a minimum notification period (SEAFO, NAFO, CCAMLR).

Authorisation or denial of port entry

- The port State decides on the basis of information whether to authorise or deny entry (ICCAT, CCSBT, IOTC, SEAFO, NAFO, NEAFC, PSM).
- Landings and transshipment from CP vessels follow confirmation from flag State (NAFO, NEAFC).
- Non CP vessels must be inspected if they enter port (NAFO, NEAFC).
- If there is sufficient proof of IUU fishing (eg if a vessel is on an IUU list) the port State must deny entry, or may permit entry for inspection, but the port State must deny the use of its port for landing, transshipment, or port services (IOTC, SEAFO, CCAMLR, PSM), subject to a *force majeure* exception (IOTC, CCAMLR, PSM).
- Any denial of entry must be conveyed to the flag State and Secretariat (IOTC, SEAFO).

Use of Ports

- If a vessel is in port, the port State must deny the use of its ports for landings, transshipment, and port services where there are reasonable grounds for believing the vessel is engaged in IUU fishing; and if so, must notify flag State and relevant coastal State (IOTC, SEAFO, NEAFC, CCAMLR, PSM).
- A port State may act against listed IUU vessels including by prohibiting entry into port, including for supply (NAFO, NEAFC, CCAMLR).

Port inspections

- Inspections are carried out by the competent authority of the port State (ICCAT, CCSBT); or by authorised inspectors (IOTC, SEAFO, NAFO, NEAFC).
- Port States are required to inspect at least a certain percentage of landing and transshipment operations (CCSBT – 5%; ICCAT – 5%; IOTC – 5%; NAFO – 15%; NEAFC -5% of fresh fish, 7.5% of frozen fish; CCAMLR – 100% *dissostichus spp*; 50% other); or conduct annual inspections sufficient to achieve the objectives of the Agreement (PSM).
- In determining which FFV to inspect, the port State shall take into account certain factors including a request to inspect supported by evidence of IUU fishing, or where there are clear grounds for suspecting IUU fishing (ICCAT, CCSBT, CCAMLR, PSM).

Inspection procedures

- Inspectors shall carry a document of identity (ICCAT, CCSBT, NAFO) and present it to the Master (IOTC, SEAFO, NEAFC, PSM).
- Provisions specify what may be inspected (ICCAT, CCSBT, NAFO); or minimum standards for inspections are set out in an Annex (IOTC, SEAFO, PSM).
- The measure sets out what is to be included in inspection report (CCSBT, IOTC, NAFO, CCAMLR, PSM); or the Secretariat develops a model format (ICCAT).
- A copy of the inspection report is provided to Master (ICCAT, CCSBT, NAFO, NEAFC); the Master has an opportunity to add comment (NAFO, NEAFC) and signs report as confirmation of receipt (ICCAT, CCSBT).
- The port State sends a copy to the Secretariat (ICCAT, CCSBT, CCAMLR), or to the flag State (NAFO, IOTC, NEAFC) and Secretariat (IOTC, NEAFC).
- The flag state is to ensure that the Master facilitates an inspection (ICCAT, CCSBT); or is to require its vessels to cooperate with the port State on inspection (IOTC, SEAFO, PSM); or ensures the Master complies with its obligations (NAFO).
- Inspections are carried out so the fishing vessel suffers minimum interference and inconvenience (ICCAT, CCSBT, IOTC, SEAFO, NAFO, NEAFC); and avoid undue delay (IOTC, SEAFO, NAFO, NEAFC); or impose no undue burdens (CCAMLR).
- The measure includes training guidelines for inspectors (IOTC, SEAFO, PSM).

Procedures in the case of apparent infringements

- The infringement is recorded in the inspection report (ICCAT, CCSBT, NEAFC).
- It is transmitted to the flag State and any relevant coastal State (ICCAT, CCSBT, IOTC, SEAFO, NEAFC, CCAMLR).
- If there are clear grounds that there has been IUU fishing, the flag State and State of the Master are notified (IOTC) and port use is denied (IOTC, SEAFO, PSM).

- If it is within the jurisdiction of the port State, that State may take action and notify flag State (ICCAT, CCSBT);
- Or the matter is referred to flag State for investigation, which must promptly investigate (ICCAT, CCSBT, IOTC).
- The flag State notifies the Secretariat of the status of the investigation within 6 months (ICCAT, CCSBT); or it reports on the action it has taken (IOTC, SEAFO, NEAFC, PSM).
- If there is evidence of IUU fishing, the Secretariat is notified for the purpose of IUU listing (ICCAT, CCSBT, SEAFO);
- Or provisions relating to infringements apply, which include flag State investigation follow-up and reporting (NAFO).

Requirements of Developing Countries

- Full recognition is to be given to the special requirements of developing CPs including technical assistance (ICCAT, IOTC, PSM).
- CPs must ensure that a disproportionate burden is not unnecessarily transferred to developing States (ICCAT, IOTC, PSM).
- The Secretariat is to assess the special requirements of developing countries concerning implementation (IOTC);
- Or CPs are encouraged to assess special requirements of developing countries (CCSBT).

Exchange of information and cooperation

- A State wishing to grant access to its port must designate points of contact (ICCAT, CCSBT, NEAFC).
- States designate points of contact for receipt of inspection reports (ICCAT, CCSBT), or flag State notifications (NAFO, NEAFC).
- Contact points are notified to the Secretariat, which publishes them on the website (ICCAT, CCSBT, IOTC, SEAFO, NAFO, NEAFC).
- Bilateral cooperative arrangements, including for exchange of port inspectors, are encouraged (ICCAT, CCSBT).
- There is a possibility of observing inspections (ICCAT, CCSBT, IOTC, SEAFO, NAFO, NEAFC).
- There is provision for cooperation in judicial proceedings (ICCAT, CCSBT).
- The Secretariat puts inspection information in an electronic database (CCSBT).

General Provisions

- The measure includes a without prejudice clause (ICCAT, CCSBT, NAFO, NEAFC, PSM).
- There is to be no abuse of rights (ICCAT, CCSBT, PSM).

Summary of Port State Measures adopted by RFMOs

Indian Ocean Tuna Commission (IOTC)

Measure: Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate IUU Fishing (2011)

Summary: Resolution 10/11 is a comprehensive port State measures resolution which is closely aligned to the FAO Agreement on Port State Measures. Its objective is to prevent, deter, and eliminate IUU fishing through the establishment of port State measures. It provides for designation of ports for entry of fishing vessels, advance request for port entry, and the ability to authorise or deny port entry. Where there is sufficient proof that a vessel seeking port entry has engaged in IUU fishing (for example if it is on an IUU list), the port State must deny entry to the vessel. However, it may authorise entry for the purpose of inspection, in which case the vessel must not be permitted to land or tranship catch and must be denied other port services. Where a vessel is voluntarily in port and there is evidence that it has taken fish in contravention of coastal State requirements or there are reasonable grounds to believe that it has engaged in IUU fishing, the vessel must be denied access to port services. The Resolution sets out requirements for port inspections, including the conduct of port inspections, the format for inspection reports, and guidelines for the training of inspectors. It also sets out the follow-up actions to be taken by the port State and by the flag State. CPCs are to give full recognition to the special requirements of developing CPCs, including to ensure that a disproportionate burden is not unnecessarily transferred to them, and to cooperate in the establishment of appropriate funding mechanisms to assist in the implementation of the Resolution.

Southeast Atlantic Fisheries Organisation (SEAFO)

Measure: System of Observation, Inspection, Compliance and Enforcement, Articles 19-26 (adopted December 2015, entry into force 15 February 2016).

Summary: This measure is very similar to the IOTC measure. However, it does not refer to the special requirements of developing countries.

North East Atlantic Fisheries Commission (NEAFC)

Measure: NEAFC Scheme of Control and Enforcement, 2016, Chapter 5 (Articles 20-27) and Articles 39-46 of Chapter VII

Summary: NEAFC updated its 2015 Scheme of Control and Enforcement to specifically adopt the provisions of the FAO Port State Measures Agreement. In the past its Scheme was similar to that of NAFO (see below), but this has now been updated so that it follows closely the PSM Agreement.

Northwest Atlantic Fisheries Organisation (NAFO)

Measure: Conservation and Enforcement Measures 2015, Chapter VII (Articles 42-47) for Contracting Parties and Chapter VIII (Articles 48-55) for non-Contracting Parties

Summary: NAFO adopts a different approach depending on whether the vessel concerned is a flag vessel of a Contracting Party, or a Non-Contracting Party. In the case of the former, vessels wishing to enter port for landing or transhipment must request port entry authorisation, which is sent to the flag State to confirm authorisation to land or tranship. The port State may authorise port entry without flag State confirmation, subject to certain conditions. Port States are required to inspect 15% of landing and transhipment operations. There are separate provisions regarding port entry of flag vessels of non-Contracting Parties which emphasise the prevention, deterrence and elimination of IUU fishing. These provide that non-CP vessels must seek authorisation for port entry, which may be denied. No non-CP vessel is permitted to land

or tranship in port without first having undergone inspection. Vessels on the IUU list must be denied port entry and are not to be supplied with provisions, fuel or other services.

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

Measure 1: Conservation Measure 10-03 (2015) on Port inspections of vessels carrying Antarctic marine living resources:

Summary: CPs are required to inspect all vessels carrying *dissostichus spp* (toothfish) which enter their ports. At least 50% of vessels carrying other fish harvested in the CCAMLR Area are to be inspected. In determining whether to inspect, clear grounds of IUU fishing may be taken into account. The CP may designate ports for entry; advance notification of port entry is required, and certain information must be provided for port entry. Inspections are carried out within 48 hours of port entry, and must be conducted expeditiously. Port entry is denied to vessels on the IUU list, but entry may be permitted for inspection or *force majeure*. If there is evidence of IUU fishing, in particular if the vessel is on a IUU list, landing and transshipment must be denied. The outcome of port inspections which raise compliance issues must be conveyed to the Secretariat, which conveys this to the flag State. A template is provided for inspection reports.

Measure 2: Conservation Measure 10-06 (2008): Scheme to promote compliance by Contracting Party vessels with CCAMLR conservation measures; and Conservation Measure 10-07 (2009): Scheme to promote compliance by non-Contracting Party vessels with CCAMLR conservation measures.

Summary: Vessels on the IUU list (CP list or non-CP list) are to be denied port entry unless for the purposes of enforcement action, or where *force majeure* applies. Vessels allowed entry must be inspected. For vessels on either the CP IUU list or the Non-CP IUU list: if port entry is granted, all support to such vessels, include non-emergency refuelling, resupplying and repairs, is prohibited.

International Commission for the Conservation of Atlantic Tuna (ICCAT)

Measure 1: Recommendation 12-07 on an ICCAT scheme for minimum standards for inspection in port (2012).

Summary: This recommendation establishes minimum standards for the conduct of inspections in ports. Port states wishing to permit entry to their ports by foreign fishing vessels which fish for species covered by ICCAT designate ports for this purpose. The Secretariat keeps the list of designated ports and port State contact points. Advance port notification is required from vessels wishing to land or tranship their catch in designated ports. Contracting Parties and Cooperating Non-Contracting Parties (CPCs) are required to inspect at least 5% of all landing and transshipment operations of foreign fishing vessels. Where an alleged infringement is found and the CPC has jurisdiction, it may take action under its domestic laws and advise the flag State and Secretariat. Otherwise the infringement is referred to the flag State and, if relevant, the coastal State. The flag State must promptly investigate and notify the Secretariat within 6 months of receipt of inspection report of the status of the investigation. CPCs are to give full recognition to the special requirements of developing CPCs, including to ensure that a disproportionate burden is not unnecessarily transferred to them. CPCs are encouraged to enter into cooperative arrangements for exchange of port inspectors, or observation of inspections.

Measure 2: Recommendation 14-08 builds on Recommendation 12-07 by establishing a Monitoring, Control and Surveillance Fund to support and strengthen the development and implementation of effective systems of port inspection to exceed the minimum standards in Recommendation 12-07.

CCSBT

Measure: Resolution for a CCSBT Scheme for Minimum Standards for Port Inspection (adopted October 2015, entry into force 1 January 2017).

Summary: This measure is virtually identical to the ICCAT Recommendation 12-07, with the exception that it does not have a fully formed provision on the special requirements of developing countries. Neither does it refer to the FAO Port State Measures Agreement in the Preamble.

Inter-American Tropical Tuna Commission (IATTC)

Measure: Resolution C-05-07 which established an IATTC List of IUU Vessels requires members in whose ports vessels on the list were voluntarily in port to prohibit landings and transshipments from those vessels.

EU proposed a draft Resolution on Port State Measures in 2015 and 2016. However, this has not been agreed to date. The issue is to be taken up again at the resumed 90th IATTC session in October 2016.