

Implementation of the 2009 FAO Agreement on Port State Measures

Capacity building workshop on IUU Fishing
Cape Town, South Africa, 24-27 July 2012



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1. OVERVIEW OF THE 2009 FAO AGREEMENT ON PORT STATE MEASURES

Introduction

- 2009 FAO Conference approved the Agreement as an Article XIV instrument under the FAO Constitution.
- The purpose of the Agreement is to prevent, deter and eliminate IUU fishing through port State measures - more simply, to prevent IUU-caught products from entering international markets, thus removing incentive to engage in IUU fishing.
- The Agreement is based on 2 voluntary international instruments:
 - 2001 IPOA-IUU, first international instrument to address IUU fishing
 - 2005 Model Scheme on Port State Measures to Combat IUU Fishing: an intermediate step towards the conclusion of the binding Port State Measures Agreement

Status of the Agreement

- The Agreement opened for signature in November 2009 and remained opened for one year (until November 2010).
- 23 FAO Members signed in that period:
Angola, Australia, Benin, Brazil, Canada, Chile, EU, France, Gabon, Ghana, Iceland, Indonesia, Kenya, Mozambique, New Zealand, Norway, Peru, Russian Federation, Samoa, Sierra Leone, Turkey, USA, Uruguay.
- To date 4 FAO Members (EU, Myanmar, Norway and Sri Lanka) have ratified, accepted, approved or acceded to the Agreement.
- At COFI 2012, 26 Members indicated that they had domestic processes in train towards ratification, acceptance, approval or accession.
- Agreement will enter into force 30 days after deposit with FAO DG of the 25th instrument of ratification, acceptance, approval or accession. Entry into force of the Agreement not anticipated before end of 2014.

Structure of the Agreement

The Agreement applies to vessels not flying the flag of the port State, seeking entry into or being in ports.

Part 1

- Interpretation and application of the Agreement
- Fundamental international law, instruments and practices

Parts 2-4

- Step-by-step requirements and procedures for vessels and port States, from the point of prior to entry into port of vessels
- Inspections and follow-up actions

Parts 5 and 6

- Considerations regarding the role of flag States and the requirements of developing States

Parts 7-10

- Dispute settlement, non-parties, monitoring, review and assessment of final provisions, including entry into force

Highlights of key provisions

- At national level, coordination and integration of port State measures into a broader system of port controls and other measures to prevent IUU fishing. Exchange of information between national agencies and coordination of implementation activities.
- Cooperation and exchange of information among Parties to the Agreement and with relevant international and regional organizations. Electronic exchange of information among States and RFMOs, coordinated by FAO.
- Provisions for entry into port: designation of ports, prior notification of port entry, port entry authorisation and inspections to determine IUU-free status, and *force majeure* provisions.

Highlights of key provisions (2)

- Conditions for use of ports for landing, transshipping, packaging and processing of fish not previously landed, and other port services.

Conditions include:

- flag State and coastal State authorizations
- compliance with coastal State and RFMO requirements
- "IUU-free" status

Special exemptions include:

- safety or health crew
- safety of vessel
- scrapping of vessel

- Parties are to determine a sufficient level of annual vessel inspections and set priorities for which vessels to inspect. Inspectors must carry out functions in accordance with the set standards and should be allowed access to and inspect all relevant evidence.
- Inspection reports are to include a standard set of information and be transmitted to relevant Parties including concerned States, RFMOs and FAO.

Highlights of key provisions (3)

- Flag States are to require their vessels to:
 - cooperate with the port State during inspection
 - request the port State to inspect IUU-suspect vessels
 - encourage vessels to use ports of Agreement-compliant States
 - investigate and take enforcement action in cases of IUU fishing
 - report on actions taken towards vessels suspected of IUU activity


- Parties are to give due regard to special requirements of developing States and provide assistance, directly or through FAO and other international entities, to enhance their capacity to comply with the terms of the Agreement and facilitate their participation in international organisations that promote port State measures. The Agreement also provides for the establishment of funding mechanisms.

The role of RFMOs

- RFMOs play a key role in the implementation of the FAO port State measures Agreement; RFMO measures against IUU fishing are effective in stemming the flow of IUU-caught product into international markets: these initiatives must be supported, strengthened and implemented.
- Achieving full implementation (policy, legal, institutional and operational aspects) of RFMO measures by Contracting Parties is challenging and developing countries need to be supported by international assistance.
- Lack of capacity and/or political will of RFMO Contracting Parties jeopardize the effective implementation of regionally agreed measures.
- RFMOs provide readily available information needed by managers in port control procedures (eg. IUU vessel lists, authorized vessel lists, conservation and management measures); the development of a one-stop-shop RFMO information system in the future would be highly beneficial.
- In regions where RFMOs are absent, common objectives for the region are usually lacking and cooperation and communication between countries is weak; in such cases the development of regional MCS networks and/or regional plans of action to combat IUU fishing would help alleviate the constraint.

Specifically, RFMOs are connected with the Agreement in the following contexts:

- Parties reserve their right to apply more stringent port State measures including those adopted, in conformity with international law, by the respective RFMOs of which they are a member.
- The Agreement calls on Parties to cooperate through RFMOs (where appropriate) in the effective implementation of the Agreement's objectives, as well as to exchange related information.
- The inclusion of a vessel in the IUU vessel lists of RFMOs features in the criteria used to deny entry into a port.
- If catches have not been taken in accordance with applicable requirements of relevant RFMOs, port access is denied.
- Agreement on the minimum levels for inspection of vessels is to be sought by Parties, including through RFMOs.

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- Priority for inspection is to be given to vessels identified by RFMOs, among others, especially where evidence of IUU fishing is provided.
 - Parties are to deliver information related to denial of port entry, inspection results and actions taken against IUU fishing vessels also to RFMOs.
 - RFMOs are requested to report, through an information-sharing mechanism, on measures or decisions they have adopted and implemented in relation to the Agreement.
 - Parties are encouraged to develop, including through RFMOs, procedures for identifying States that may not be acting in accordance with, or in a manner consistent with, the Agreement.
 - RFMOs are to play a role in providing assistance to developing States Parties in the implementation of port State measures.
 - VMS data held by RFMOs are to be consulted during inspections.

Several RFMOs have formally adopted measures in line with many of the provisions of the Agreement. For example.....

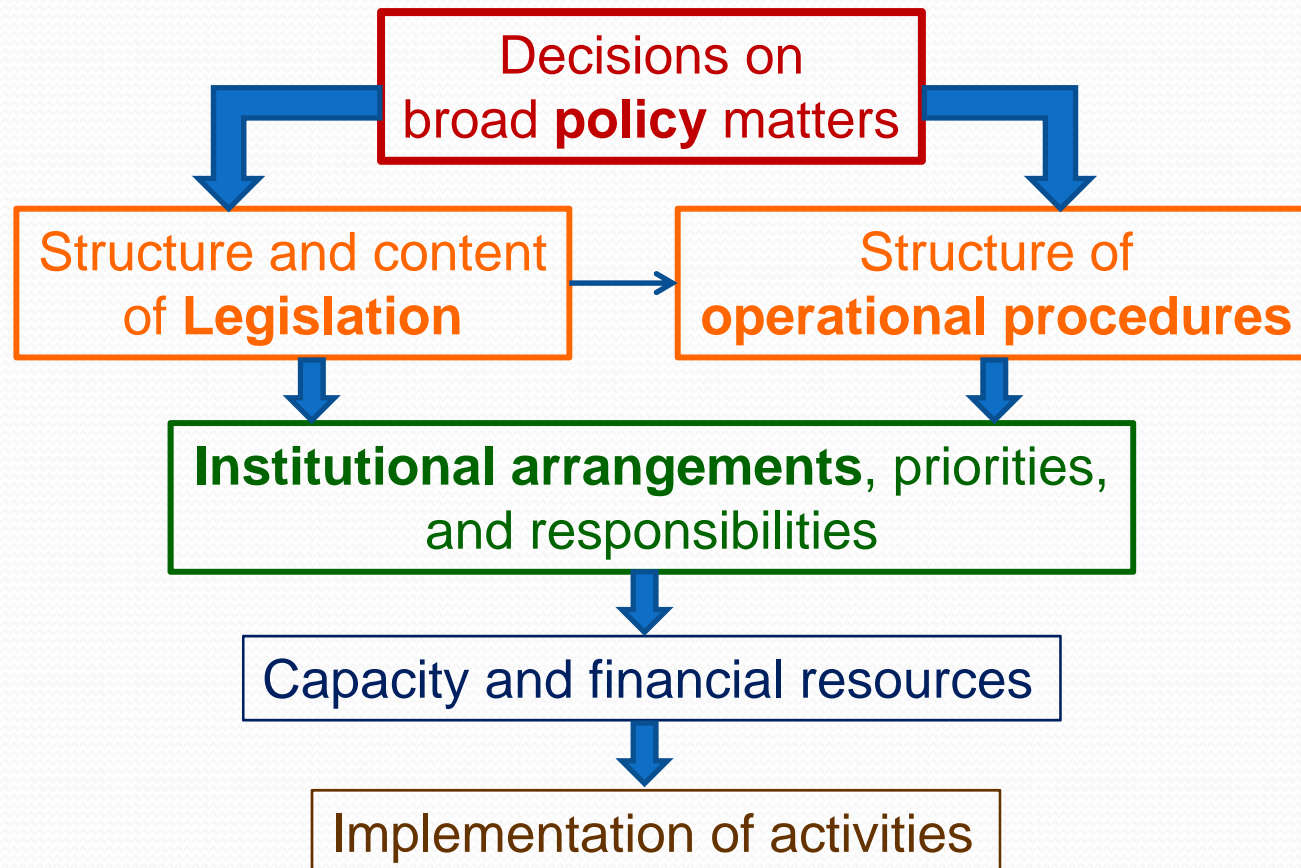
Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)



- Inspections for all fishing vessels carrying toothfish which enter Contracting party ports and inspection results are submitted in the CCAMLR pro forma.
- Catch Documentation Scheme and requirement for landings and in-port transshipments authorisation.
- Advance notice for entry into port and “IUU-free” declaration by vessels.
- Landings and transshipments by presumed IUU vessels and those having fished in contravention of CCAMLR conservation measures are prohibited; the catch cannot be traded in the territories of contracting Parties.
- Denial of port entry is communicated to flag State for investigation and sanctions, as well as all contracting and cooperating non-contracting Parties.

2. POLICY, LEGAL AND OPERATIONAL FRAMEWORKS FOR THE IMPLEMENTATION OF THE AGREEMENT

Implementation of the PSM Agreement requires an approach that includes policy decisions, legal revision and new operational procedures.



Policy considerations

- Implement minimum standard / incorporate provisions of the Agreement into national law and practice.
- Extent of application, including over certain classes of national vessels.
- RFMO decisions and measures should form part of national policy.
- Integration / coordination of fisheries-related port State measures with broader system of port State controls (eg. VMS, observer programmes, other port controls).
- Determination of sufficient level of inspections and supported by directed training and institutional strengthening.
- Coverage of State's obligations under the Agreement for inspections and follow-up actions, including additional measures in conformity with international law.
- Role of flag States to take specified measures to perform effective control over their vessels.
- Deterrence of activities of non-Parties that undermine the implementation of the Agreement.

Legislative considerations

- Broad and deep review of national laws, regulations and practices relating to IUU fishing and fishing related activities:
 - to rationalize and strengthen legal regime in relation to the Agreement and other tools to combat IUU
 - to ensure consistency and completeness of terminology
 - to ensure consistency with objectives of the Agreement
- Legislation – laws, regulations or other instruments – should include strong provisions and deterrent fines and penalties (foreign and national vessels).
- Foundation for actions, measures, strengthening of institutional setup and coordination, duties and powers of authorities, and enforcement responsibilities and power of officers / inspectors.
- Evidentiary standards and admissibility, including the use of electronic evidence and IT tools, and presumptions.

Legislative considerations (2)

- Provisions in national legislation must also cover areas beyond national jurisdiction – control of flag State’s vessels, import and trade of IUU fishery products, non-Party cooperation with RFMOs to implement measures and decisions.
- Requirements for advance requests for port entry, information transfer, decision-making processes for authorization / denial, and *force majeure* provisions.
- Circumstances for denial of use of ports (with / without inspection) – landing, transshipping, packaging, processing and other services - must be clearly defined.

Legislative considerations (3)

- Inclusion of levels, priorities and procedures for the conduct of inspections, as well as minimum standards for inspection reports and transmittal rules.
- Flag State responsibilities with provisions for cooperation with port State authorities; measures are to be applied to flag State vessels and foreign vessels in a non-discriminatory manner.
- Provisions may be considered to deter the activities of non-Parties that undermine the implementation of the Agreement.

Operational considerations

- Operational considerations are country-specific and should be based on legislation and on an officially approved and publicized strategy (eg. training, technical support, qualifications and operating guidelines) and standard operating procedures.
- Decisions taken at policy and legal levels on the application of the Agreement are to be reflected in the operational procedures.
- Procedures for cooperation and exchange of information, with other States and through RFMOs, need to be established / strengthened.
- Procedures must be in place for receiving information from a vessel requesting port entry, reporting information to flag State, collection of authorization and dealing with *force majeure* entries.

Operational considerations (2)

- Procedures and sufficient capacity to implement port entry control, conduct inspections, pursue follow up actions, draw up reports and engage in information exchange; minimum standards for inspections in Annex B, inspector duties in Article 13(2), training for inspectors in Annex E.
- Procedures should be clear and capacity should be sufficient to conduct a thorough assessment on the eligibility of vessels to make use of ports, and to execute any related follow up action.
- Capacity to undertake responsibilities as a flag State to ensure effective control of its vessels and the establishment of supportive procedures including: request for inspection by port State, use of Agreement-compliant ports, timely investigation of port inspection reports, timely reporting on action taken to Parties, RFMOs and others.
- In line with related legal and policy measures, set up procedures to address and deter the activities of non-Parties that undermine the implementation of the Agreement.

General concluding remarks

- Entry into force of the Agreement is a critical step towards strengthening port State measures around the world.
- Effective national and regional implementation is imperative for the success of the instrument: capacity-development is required to eliminate weak regional links.
- FAO has engaged in a number of activities to support implementation, including the convening of an informal open-ended meeting for Article 21 of the Agreement, maintenance of the FAO port State measures web page, dispatch of circular State letters to Members, and the initiation of a series of capacity development regional workshops.

For more information consult <http://www.fao.org/fishery/psm/en>

Thank you for
your attention

