

Gap Analysis: Comparing CCAMLR's Port State Measures with those in the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

The Pew Environment Group conducted a gap analysis to identify specific disparities in port State measures (PSMs) adopted by 10 regional fisheries management organisations (RFMOs) as they compare to the FAO Port State Measures Agreement (PSMA). The goal of this research is to offer information that RFMOs can use to strengthen their own port State control systems and, as a result, help reduce illegal, unreported and unregulated (IUU) fishing, on both a regional and global scale. This report presents

the findings of the gap analysis conducted for the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR). Conclusions from this study indicate that although CCAMLR's port inspection scheme on toothfish (CM 10-03) is amongst the strongest set of PSMs adopted by any regional organisation, there are still several elements that could be strengthened. In relation to other fisheries, CCAMLR's PSMs are weaker and there is significant room for improvement.

Introduction: The Port State Measures Agreement and RFMOs

In November 2009, the Food and Agriculture Organization (FAO) of the United Nations adopted the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, or Agreement). This treaty provides a set of highly effective tools to be used by port States to combat IUU fishing, such as the designation of ports where foreign vessels may request entry; the prohibition of entry into port, the prohibition of landing, the prohibition of transshipping and the refusal of other port services to IUU fishing vessels; the carrying out of inspections in port; and the adoption of enforcement measures. At present, the treaty has 23 signatories,¹ along with its first ratifications and accessions, but will only enter into force after the deposit of the 25th instrument of ratification or accession.

The PSMA establishes the new international minimum standard for port State measures (PSMs) targeting IUU fishing. Given the level of threat that IUU fishing poses to sustainable fisheries globally, States

should implement these measures even prior to the Agreement's official entry into force.

PSMs will only be truly effective in combating IUU fishing if they are enforced uniformly across the world's oceans. Therefore, in addition to each State's individual efforts to ratify the Agreement, steps should be taken within the framework of individual Regional Fisheries Management Organisations (RFMOs) to ensure that PSMs adopted in the regional context are adjusted to meet the new international minimum standard.²

Through the adoption of improved and harmonised PSMs, RFMOs can play a key role in closing the net on IUU fishing operations worldwide. They can centralise and distribute relevant information on vessel movements, port visits and inspections, as well as require their Contracting Parties (CPs) to apply a minimum set of controls on fishing and support vessels, including denial of entry into port to IUU fishing vessels, which are comparable to those adopted in other RFMOs. The PSMA, if implemented by a critical number of States, can also support the effectiveness of RFMOs by improving overall compliance with RFMO conservation and management measures (CMMs).

¹ Twenty-two States and the European Union have signed the PSMA.

² For the purposes of this paper, CCAMLR is classified as an RFMO, mindful that the objective of the Convention on the Conservation of Antarctic Marine Living Resources goes beyond fisheries management.

The gap analysis: objective and methodology

The study conducted by the Pew Environment Group focuses on 10 RFMOs³ that have adopted regulations, currently in force and published, that include some form of PSM.

This report presents the findings and conclusions of the gap analysis conducted for CCAMLR. In order to compare CCAMLR's PSMs with the PSMA, we reviewed the PSMA, including its annexes, and deconstructed its provisions into more than 100 duties. Subsequently, we reviewed all potentially relevant CCAMLR Conservation Measures (CMs) and compared those that contain PSMs applicable to fishing or fishing-related activities with the duties outlined in the PSMA. In order to assess the alignment between CCAMLR measures and those contained in the PSMA, we took into account the objective pursued by the PSMA duty, the effect of each CCAMLR measure in its regulatory context, and the clarity of the CCAMLR measures analysed.

To facilitate the communication of the research results for each RFMO reviewed, we systematised our conclusions under a number of PSM categories that correspond closely to the main parts of the PSMA: scope; cooperation and information sharing; designation and capacity of ports; prior-to-entry information; denial of entry; port use; inspections; and the role of flag States. To illustrate the alignment between each RFMO's measures and the PSMA's, we allocated a score from 0 to 10, which illustrates our assessment of the degree of conformity for each measure category. (See Figure 1 in this document for a representation of the results obtained for CCAMLR.) While this is a qualitative and not quantitative scale and methodology, it does provide a useful tool for comparative analyses between RFMOs and for an independent analysis of individual RFMOs, taking into account that the study solely focuses on PSMs and not on other measures adopted by each RFMO to combat IUU fishing. Thus, our assessment of the degree of conformity between an RFMO's PSM and the PSMA does not reflect the overall performance of an RFMO in its efforts to combat IUU fishing.

As part of our methodology, we shared the preliminary results of the gap analysis for each RFMO with the Secretariats of each of the 10 RFMOs subject to our research and, through them, also with their CPs. We have taken all comments received into consideration and refined our preliminary analysis based on this information where necessary.

³ These are: Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR); Commission for the Conservation of Southern Bluefin Tuna (CCSBT); General Fisheries Commission for the Mediterranean (GFCM); Inter-American Tropical Tuna Commission (IATTC); International Commission for the Conservation of Atlantic Tunas (ICCAT); Indian Ocean Tuna Commission (IOTC); Northwest Atlantic Fisheries Organization (NAFO); North East Atlantic Fisheries Commission (NEAFC); South East Atlantic Fisheries Organisation (SEAFO); Western and Central Pacific Fisheries Commission (WCPFC).



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The study shows that RFMO measures are rarely an exact match with a PSMA provision. In fact, due to their own peculiarities, their different membership, and specific geographical and/or species scope, complete alignment with the PSMA might be difficult to achieve by some RFMOs. However, a comparison of the measures in place in the different regimes provides lessons on the current state of development of PSMs at the regional level. When studying the PSMs developed by the 10 RFMOs, we have kept our analysis as objective as possible, with our focus strictly on the degree of conformity of such rules with the PSMA.

Conclusions on CCAMLR's PSMs and their alignment to the PSMA

Structure and scope

The PSMA applies to all foreign vessels calling into or present in ports of Parties to the Agreement, with some exceptions (art. 3). CCAMLR does not exempt domestic vessels from its PSMs. However, these measures do not apply to all CCAMLR species and present some gaps that could be used to the benefit of illegal operators. For instance, the most comprehensive PSM, CM 10-03, applies to toothfish vessels only. Other PSMs apply exclusively to IUU-listed vessels or to Non-Contracting Party (NCP) vessels that have been sighted fishing in the Convention Area.⁴ CCAMLR does not provide a comprehensive definition of 'fishing vessel' (i.e. one independent of the species harvested by the vessel), so it is not clear which would be subject to the application of PSMs.⁵

CCAMLR has not developed a uniform definition of 'fishing,' 'fishing-related activities' and 'IUU fishing,' in contrast to art. 1 of the PSMA.⁶

⁴ CM 10-06 (2008) (hereinafter CM 10-06); CM 10-07 (2009) (hereinafter CM 10-07).

⁵ The only definition of 'fishing vessel' is in a footnote in CM 10-03 (2009) (hereinafter CM 10-03) and is applicable to toothfish vessels only. This definition includes vessels used for "fishing-related activities", however a definition of such activities is missing.

⁶ CMs on IUU vessel lists generally refer to "fishing activities", although the description of IUU fishing in both measures includes transshipping, support and

Information exchange/information systems and cooperation

CCAMLR requires the Executive Secretary to place CCAMLR's IUU vessel lists onto the public section of the CCAMLR website and to communicate these lists to the FAO, other RFMOs and cooperating NCPs.⁷ These duties are consistent with the PSMA provisions requiring communication mechanisms that allow for direct electronic exchange of information (art. 16 and Annex D). The Catch Documentation Scheme (CDS) for toothfish also requires direct electronic exchange of information on landings and transshipments of toothfish.⁸

The PSMA includes detailed requirements for port States to notify relevant parties of the different actions taken in implementing the Agreement. CCAMLR CMs include various obligations to notify, but this is done in a non-systematic manner. For certain CMs, it is difficult at times to determine exactly which obligation to notify applies in which case, often because there are several cross-references between provisions in the CMs. For example, requirements to notify in CM 10-07 seem to apply not only to NCP vessels that have been sighted engaging in fishing activities in the Convention Area but also to vessels that have been denied port access in accordance with CM 10-03. However, CM 10-03 also has its own notification requirements, which may overlap with those of CM 10-07. These cross-references make it difficult to understand the precise effect of each provision.⁹

Designation and capacity of ports

CCAMLR does not include any requirement for port States to designate ports for entry of vessels or to ensure that ports of CPs have the required capacity to conduct inspections. Such requirements would improve clarity for operators and help port States focus their efforts on developing the capacity to perform adequate controls in selected ports.

Prior-to-entry information

According to the PSMA, the port State shall require vessels to provide a minimum set of information (described in Annex A) prior to entry, allowing sufficient time for the port State to examine the information. For toothfish vessels, CCAMLR requires prior-to-entry information, including most elements of Annex A of the PSMA and some additional elements. These are not required for other vessels.¹⁰

Denial of entry

One of the central provisions of the PSMA is the requirement to deny entry into port to IUU vessels except for the purposes of inspecting and taking effective action against these vessels. CCAMLR meets the PSMA

standard with regard to vessels included on CCAMLR's NCP and CP IUU vessel lists.¹¹ Comparable measures apply to toothfish vessels, which must confirm that they have complied with CCAMLR CMs before entry into port is authorised.¹² CCAMLR requires that the port State shall carry out mandatory inspections of all toothfish vessels once in port and prohibit landing and transshipment when inspection reveals that IUU fishing has occurred.¹³ In addition, CPs may also confiscate toothfish catches that do not comply with the requirements of the CDS.¹⁴

With regards to NCP vessels sighted fishing in the CCAMLR Area, CPs are required to inspect them but there is no requirement to deny port entry to these vessels or take other enforcement action.¹⁵

Port use

CCAMLR requires CPs to deny support to IUU-listed vessels that have been allowed entry into port, although only "where possible." This allowed exception significantly weakens the requirement to deny port services, especially when compared with the PSMA. CPs are also required to refuse landings or transshipments from these vessels but only if "the origin of the catch cannot be adequately verified." This represents a less stringent standard than the PSMA's, which considers that inclusion on an IUU vessel list is sufficient proof of IUU fishing and simply prohibits any kind of port use to such vessels.¹⁶

Regarding non-IUU listed vessels, CCAMLR only prohibits landing and transshipment from toothfish vessels that have fished in contravention of CCAMLR CMs and from NCP vessels that have been sighted engaging in fishing activities in the Convention Area. Neither of these measures requires denial of port services other than landing and transshipment, thus setting a weaker standard than the PSMA.¹⁷

Inspections

CCAMLR CMs establish a number of duties to inspect vessels that are consistent with the PSMA's priorities for inspection.¹⁸ In addition, it is mandatory that CPs inspect all vessels carrying toothfish that enter their ports.

Regarding standards for inspections, the PSMA contains very specific requirements for inspection procedures and the inspection report. The only CCAMLR CM to include requirements for both procedures and reporting applies to toothfish vessels. However, there is a specific provision for NCP vessels sighted fishing in the CCAMLR Area, which indicates that these vessels shall be inspected following the same procedures as inspections of toothfish vessels.¹⁹

resupply. CM 10-06:5 (v); CM 10-07:9 (iii).

7 CM 10-06:19 and 20; CM 10-07:23 and 24.

8 CM 10-05 (2009) (hereinafter CM 10-05), Annex 10-05/A.

9 See also CM 10-07: 4-7; CM 10-03:3 and 4. It is unclear whether these obligations apply to actions taken in respect of vessels on CCAMLR's IUU vessel lists, especially those on the CP IUU vessel list that are not toothfish vessels.

10 Additional elements included in CM 10-03: Vessel operator; ships agent while in port; beneficial owner; fishing gear used; and declarations of IUU fishing and compliance. CM 10-03: Annex A.

11 CM 10-06:18 (iv); CM 10-07:22 (iii).

12 CM 10-03:2.

13 CM 10-05:19 and 20.

14 CM 10-03:1,2 and 3; CM 10-05: 18 and 20.

15 CM 10-07:5.

16 CMs 10-06:18 (v) b; CM 10-07: 22 (iv) b; art. 9.6 of the PSMA.

17 CM 10-03:3; CM 10-07:4 and 5.

18 See arts. 12.2 and 12.3 PSMA; CM 10-03:1; CM 10-07: 4, 5 and 22 (iii); CM 10-06: 18 (iv).

19 CM 10-07:5.

With regard to IUU-listed vessels, CCAMLR CMs establish that inspections of these vessels shall be conducted “in accordance with relevant CMs.”²⁰ It is not completely clear whether this refers to the inspection procedures of CM 10-03 for toothfish.

CCAMLR has a System of Inspection designed for inspections at sea that develops inspection procedures, among other things. Port inspections of toothfish vessels should be guided by “relevant provisions” of the System of Inspection.²¹ However, it is not clear precisely which aspects of the System of Inspection apply to inspections in port.

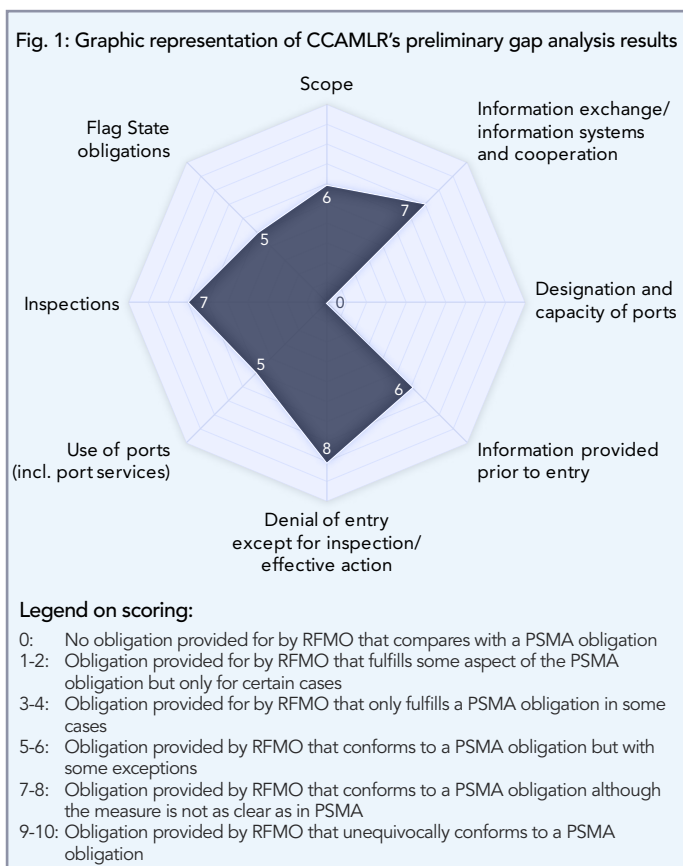
CCAMLR’s *pro forma* for port inspection reports for toothfish vessels is quite comprehensive. However, as explained above, it is not clear whether this *pro forma* is required for all inspections at port of vessels fishing in the CCAMLR area or just for toothfish vessels. With regard to the training of port inspectors, which is required by the PSMA, CCAMLR has not developed any guidelines on the matter.

Flag States

Art. 20 of the PSMA includes a set of flag State duties to facilitate the implementation of PSMs, including follow-up actions after an inspection report revealing IUU fishing. CCAMLR has developed some provisions requiring cooperation between flag States and port States in relation to toothfish vessels, but these fall short

²⁰ CM 10-06: 18 (iv); CM 10-07: 22 (iii).

²¹ CM 10-03:2.



of the PSMA standard.²² In addition, there is no clear requirement that the flag State investigate and take enforcement action in all cases where a port inspection report reveals a violation of CCAMLR CMs. While CM 10-07, on NCP IUU-listed vessels, establishes clear requirements for the flag State to take action against a NCP vessel that has been sighted fishing in the CCAMLR Area (and has not been IUU-listed), it is not clear whether this provision also applies to other cases, such as NCP IUU-listed vessels.²³

Recommendations to strengthen CCAMLR’s PSMs

In order to strengthen its PSMs and bring them closer to the PSMA standard, CCAMLR should take the following steps:

- Establish a minimum set of PSMs, aligned with those in the PSMA, that are applicable to all vessels entering or in CCAMLR CP ports.
- Adopt uniform definitions of ‘vessel,’ ‘fishing’ and ‘fishing-related activities’ that are applicable to all CCAMLR CMs related to compliance. These definitions should be at least as comprehensive as the PSMA’s.
- Establish clear rules to notify relevant parties of all actions taken by port States with respect to vessels, as required by the PSMA. Systematise these rules so that they are easy to identify.
- Adopt a measure requiring CCAMLR CPs to designate and publicise ports of entry, and ensure that these ports have the capacity to conduct inspections.
- Adopt a measure requiring that all vessels provide advance information before calling into a port (as established by CM 10-03), not just vessels carrying toothfish.
- Require CCAMLR CPs to deny port entry to non-IUU-listed vessels carrying any species covered by CCAMLR if there is sufficient proof of IUU fishing, as required by arts. 9.4 and 9.5 of the PSMA. Clearly establish that such vessels should only be allowed port entry for the purposes of inspection and effective action.
- Establish a general and unconditional prohibition of landings or transshipments for all vessels included in CCAMLR’s IUU vessel lists. Make sure that for other cases of IUU fishing all kinds of non-emergency port services are denied to IUU fishing vessels.
- Establish a uniform scheme for port inspection procedures that applies to all inspections at CP ports, following the requirements of the PSMA. Develop guidelines for the training of port inspectors in accordance with arts. 17 and Annex E of the PSMA.
- Establish clear duties for flag States to cooperate in the implementation of port State controls and act upon cases of IUU fishing identified at port inspections, as required by the PSMA.

²² i.e. CM 10-03:3, which requires the port State to cooperate with the flag State “in taking such appropriate action as is required to investigate the alleged infringement”.

²³ CM 10-07:7 requires CCAMLR’s Executive Secretary to request the flag State to take measures to ensure that the vessel desists from any activities that undermine the effectiveness of CCAMLR CMs.