

Closing the gap: Comparing IATTC's port State measures with the FAO Agreement on Port State Measures

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 Inter-American Tropical Tuna Commission (IATTC). Conclusions from this study indicate that IATTC has an underdeveloped system of

port State controls when compared with the PSMA and other RFMOs, including other tuna RFMOs. Many of the key provisions of the PSMA aimed at controlling IUU fishing are either missing or only applicable to specific situations. We recommend that IATTC work to improve its port State measures by, among others: requiring its Parties to notify other international actors about their actions against IUU fishing vessels; designating ports for entry of foreign vessels; requiring prior-to-entry information from vessels; denying entry into port to IUU fishing vessels or taking equally effective port State measures against them; and denying IUU fishing vessels any access to port services.

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 signatories¹, 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.

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. 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).

A number of RFMOs have other important measures in place to combat IUU fishing, such as those related to the implementation of vessel monitoring systems (VMS), catch documentation schemes (CDS), or both authorised and IUU vessel lists, to name but a few. PSMs complement these measures and provide a necessary element of control. Together, these measures can greatly contribute to closing the avenues open to IUU fishing operators, especially if port States collaborate and share information.

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



THE GAP ANALYSIS: OBJECTIVE AND METHODOLOGY

The study conducted by the Pew Environment Group focuses on 10 RFMOs² 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 IATTC. In order to compare this RFMO's PSMs with the PSMA measures, we reviewed the PSMA, including its annexes, and deconstructed its provisions into more than 100 duties. Subsequently, we reviewed all potentially relevant IATTC measures 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 IATTC measures and those contained in the PSMA, we took into account the objective pursued by the PSMA duty, the effect of each RFMO measure in its regulatory context, and the clarity of the RFMO measures analysed.

To facilitate the communication of the research results, 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 IATTC.) 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 PSMs 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 would like to thank a number of RFMO Secretariats and CPs for the responses we received. We have taken all their comments into consideration and refined our preliminary analysis based on this information where necessary.

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 limited 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 IATTC'S PSMs AND THEIR ALIGNMENT TO THE PSMA

Structure and scope

Instead of a port State scheme that is systematically applicable to a broad category of vessels operating in the IATTC Area, IATTC has developed various resolutions related to compliance, some of which have a PSM component aimed at regulating different types of

² 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).

situations³. The result is that IATTC PSMs have a narrower scope than those contained in the PSMA.

The PSMA contains a very broad definition of fishing and fishing-related activities⁴. However, the Antigua Convention, which entered into force on 27 August 2010, has introduced a definition that includes fishing activities but does not include fishing-related activities⁵. It thus sets a weaker standard than the PSMA.

Cooperation and information sharing

IATTC maintains a list of authorised large-scale tuna longline fishing vessels (LSTLFVs), which is available online at the IATTC's website⁶. The list of carrier vessels authorised to receive at-sea transshipments in the Convention Area and the IUU vessel list are also available online⁷. Making these lists public is consistent with the PSMA provisions which require communication mechanisms that allow for direct electronic exchange of information⁸. Noteworthy is also the requirement, in relation to IATTC's authorised list of LSTLFVs, that the Commission and the States concerned⁹ communicate with each other, and make the best effort with the FAO and RFMOs "to develop and implement appropriate measures, where feasible, including the establishment of records of a similar nature so as to avoid adverse effects upon tuna resources in other oceans". This is consistent with the PSMA's mandate for Parties to cooperate and exchange information with relevant States, the FAO and other international organisations in relation to the Agreement's objectives¹⁰.

Notwithstanding the measures mentioned above, IATTC falls short of conforming to the PSMA provisions that require States to communicate their decisions or results of various actions (i.e. denial/authorisation of port access and use) to other States and international organisations. IATTC does not include these notification obligations because in most cases there is no required action that would be subject to the associated obligation to notify.

Designation and capacity of ports

The PSMA requires CPs to designate and publicise ports to which foreign vessels may request entry, and to ensure that ports have sufficient capacity to conduct inspections¹¹. IATTC does not include any obligation for port States to designate ports for entry of vessels that are potentially subject to PSMs, nor to ensure that CP ports have the required capacity to conduct inspections. The latter is not surprising given the fact that IATTC has not developed specific duties to conduct port inspections.

3 Vessels involved in transshipments, vessels not included in the authorised list of LSTLFVs, IUU-listed vessels, or vessels carrying illegally caught shark fins.

4 Art. 1 c) and d) of the PSMA.

5 Art. I, paragraph 2 of the Antigua Convention.

6 Pursuant to Res. C-03-07:3.

7 Pursuant to Res. C-08-02:9 and Res. C-05-07:10, respectively.

8 Art. 16 and Annex D of the PSMA.

9 Referring to IATTC Parties and Cooperating Non-Parties collectively. Art. 9 of Res. C-03-07.

10 Art. 6.1 of the PSMA.

11 Art. 7 of the PSMA.

Prior-to-entry information

According to art. 8 of the PSMA, the port State shall require vessels to provide a minimum set of information (described in Annex A) prior to entry with sufficient time to allow for the port State to examine the information. IATTC only requires prior information from vessels that intend to participate in transshipments at port. For those types of vessels, IATTC requires similar information to Annex A of the PSMA, although the IATTC Resolution omits some important elements present in the PSMA¹².

Denial of entry

One of the central provisions of the PSMA is the requirement of denying entry into port to IUU fishing and fishing support vessels, except for the purposes of inspecting and taking effective action against these vessels¹³. IATTC does not include denial of entry into port as one of the possible measures against IUU vessels. CPs are not even required to deny entry to or inspect IATTC IUU-listed vessels.

Port use

The PSMA requires port States to deny use of ports, including access to port services of any kind, to vessels engaged in IUU fishing. IATTC prohibits landing from and transshipment to/from IUU fishing vessels, but it does not deny other services such as refueling, resupplying, maintenance or drydocking, as the PSMA does. In addition, landing and transshipment prohibitions apply only to vessels included in the IUU vessel list; vessels carrying shark fins caught in contravention of IATTC's Shark Resolution; and LSTLFVs not included in the authorised record of vessels¹⁴. With regard to authorised LSTLFVs, there is no mechanism foreseen by IATTC that allows the port State to determine whether such vessels may have committed an infringement of IATTC's conservation measures, nor consequently to deny landing or transshipment to these vessels. This limits the ability of IATTC to control the activities of authorised vessels.

Finally, under IATTC's Bigeye Tuna Statistical Document Program, CPs should be able to prevent landings of illegally caught frozen bigeye tuna meat at their ports¹⁵. However, the measure seems to be aimed mainly at customs officials and does not specify the role of port State officials in ensuring that no landings or transshipments of illegal bigeye tuna catches occur¹⁶.

Inspections

IATTC has not developed any specific rules on inspections (not even a requirement to inspect IUU-listed vessels that happen to be in port, a common measure in most RFMOs). This study found only two IATTC measures

12 Res. C-08-02, Annex 1. Some of the missing elements are port and date of last port call, type of vessel, vessel owner(s), vessel dimensions, vessel master nationality, and VMS information.

13 Arts. 9.4 and 9.5 of the PSMA.

14 Arts. 9.6 and 11 of the PSMA. Res. C-05-07:9 b); C-05-03:6; C-03-07:1 and C-03-07:6.

15 Tuna shipments shall be accompanied by valid documentation in order to be allowed to enter the territory of CPs. The import of fish parts other than the meat may be allowed without the document. Res. C-03-01: Annex 1: 3-5.

16 For example, art. 2 refers to "customs or other appropriate government officials".

that may provide a legal basis for port inspections: IATTC's Bigeye Statistical Document Program¹⁷ and the Resolution on transshipments. However, the Bigeye Statistical Program rule is not clearly directed at port inspectors and does not establish a clear obligation to inspect the vessel. The transshipment resolution's requirement to verify the information included in the transshipment declaration may lead to an inspection of the carrier vessel, but this is not explicitly required¹⁸. In addition, IATTC has not developed standards for inspection, procedures for fulfilling inspection reports nor guidelines for the training of inspectors.

Flag States

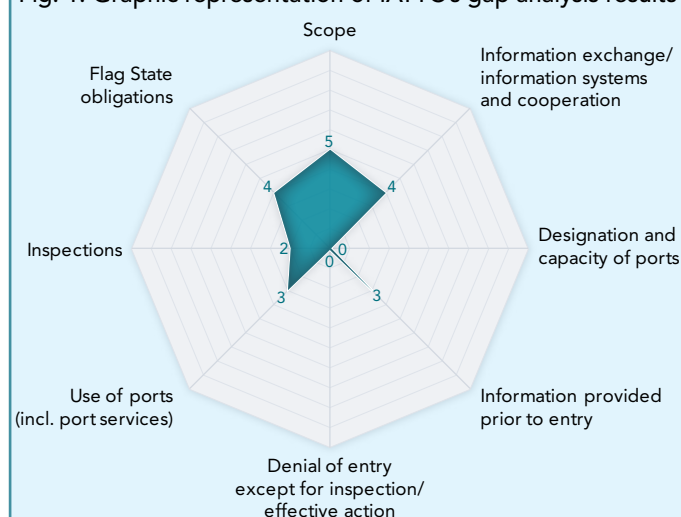
There is no specific reference in IATTC rules to the role of flag State cooperation in the implementation of PSMs, as in art. 20 of the PSMA. This study found two references to flag State action in IATTC Resolutions. One is related to flag State actions following an IUU vessel-sighting report, with no relationship to actions taken at port; the other is related to Non-Parties seeking to attain the status of Cooperating Non-Parties, which contains a general requirement for Non-Parties to respond to alleged violations of IATTC measures and communicate to IATTC the actions taken against the vessels involved in such violations. These alleged violations, "as determined by the appropriate bodies", could be the result of port officials' reports, but this is not specified¹⁹.

17 Res. C-03-01: Annex 1:2. This measure requires customs or other appropriate government officials to request and inspect all import documentation for all bigeye tuna in the shipment, adding that officials "may also inspect the content of each shipment to verify the information on the document".

18 Res. C-08-02: Annex 1:5. For transshipments at port, the port State (where the transshipment takes place) and the landing State need to verify the accuracy of the information provided in the transshipment declaration by the master of the receiving carrier. Both States shall also cooperate with the flag State of the fishing vessel to ensure that landings are consistent with reported catches.

19 Res. C-04-03:3, and Res. C-07-02:3 b), iv.

Fig. 1: Graphic representation of IATTC's gap analysis results



Legend on scoring:

- 0: No obligation provided for by RFMO that compares with a PSMA obligation
- 1-2: Obligation provided for by RFMO that fulfills some aspect of the PSMA obligation but only for certain cases
- 3-4: Obligation provided for by RFMO that only fulfills a PSMA obligation in some cases
- 5-6: Obligation provided by RFMO that conforms to a PSMA obligation but with some exceptions
- 7-8: Obligation provided by RFMO that conforms to a PSMA obligation although the measure is not as clear as in PSMA
- 9-10: Obligation provided by RFMO that unequivocally conforms to a PSMA obligation

In addition, under the Antigua Convention, when an IATTC Party has "reasonable grounds" to believe that a vessel flying the flag of another State has engaged in IUU fishing in the Convention Area, it shall draw this to the attention of the flag State concerned, together with supporting evidence²⁰. Parties are required to promptly inform Committee for the Review of Implementation of Measures Adopted by the Commission of actions taken to ensure compliance with IATTC's CMMs, "including, if appropriate, an analysis of individual cases and the final decision taken"²¹.

Recommendations to strengthen IATTC's PSMs

In order to bring its PSMs closer to the PSMA standard, IATTC should:

- Adopt a systematic and comprehensive scheme of PSMs, which applies to the same categories of vessels that are subject to the PSMA.
- Incorporate the PSMA's definition of fishing and fishing-related activities.
- Establish clear obligations to notify relevant States, RFMOs and international organisations about the different measures and decisions taken, as required by the PSMA.
- Adopt a measure requiring port States to designate and publicise ports of entry and, consistent with the need to develop port inspection requirements, ensure that these ports have the capacity to conduct such inspections.
- Adopt a measure requiring that all vessels provide advance information before calling into a port, regardless of their purpose for calling into port. Make sure that, at minimum, vessels are required to submit the information in Annex A of the PSMA.
- Adopt a measure requiring denial of entry into port to any vessels for which there is sufficient proof of IUU fishing or fishing-related activities, as stipulated in art. 9 of the PSMA. Clearly establish that such vessels should only be allowed port entry for the purposes of inspection and effective action.
- Adopt a measure requiring that where a port State has reasonable grounds to believe that a vessel has been engaged in IUU fishing (including the specific situations of IUU fishing indicated in art. 11 of the PSMA), it shall deny any kind of port use to that vessel, and not just landing and transshipment.
- Develop a system of port inspections. Such a system should include: a minimum number of vessels that should be inspected annually at ports; priorities for inspections; minimum standards for inspection procedures and inspection reports; and guidelines for training of inspectors.
- 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 art. 20 of the PSMA.

20 Art. XVIII, paragraph 6 of the Antigua Convention.

21 Art. XVIII, paragraph 3, and particularly 3.b) of the Antigua Convention.

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