



## PRELIMINARY FINDINGS FROM A GAP ANALYSIS

# A comparison of RFMO port State measures with the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

The Pew Environment Group has conducted a gap analysis to compare the port State measures established by ten Regional Fisheries Management Organizations (RFMOs) with the port State measures established by the FAO Port State Measures Agreement (PSMA). Preliminary findings of this research indicate that the port State measures of these RFMOs cannot yet compare with the PSMA standards: they are not sufficiently comprehensive to cover all IUU fishing activity; they are not effective enough in deterring the activities of IUU operators; and they do not establish adequate requirements to ensure proper transparency and information sharing among all concerned actors. The newly adopted PSMA represents an international minimum standard on port State measures and provides a unique opportunity to harmonize and strengthen port State controls across the globe. Considering the insufficient development of port State measures, all RFMOs must make it a priority to take forceful steps to align their measures with those of the PSMA.

### THE PORT STATE MEASURES AGREEMENT AND RFMOS

Last November, the Conference of the United Nations Food and Agriculture Organization (FAO) adopted the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA). This instrument provides a set of highly effective tools to be used by port States to combat illegal, unreported and unregulated (IUU) fishing: the designation of ports of landing; the prohibition of entry into port; the prohibition of landing, transshipping or accessing services in port; the carrying out of inspections in port; and the adoption of enforcement measures, such as vessel detention or seizure of catch and gear.

The Pew Environment Group hopes that the entry into force of this agreement will not be delayed and welcomes its signature, to date, by more than a dozen States and the European Union (EU). The PSMA provides the current international minimum standard on port State measures against IUU fishing and, as such, States should start preparing for its implementation prior to its entry into force. In addition to each State's individual efforts to join the agreement, States should take steps within the framework of Regional Fisheries Management Organizations (RFMOs) to ensure that port State measures adopted in the regional context are adjusted so that they will work within the new international standard. Port State measures

will only be truly effective in challenging IUU fishing if they are enforced in a uniform manner across the globe.

RFMOs are essential to the effective implementation of both the United Nations Fish Stocks Agreement (UNFSA) and the PSMA. In turn, the PSMA, if implemented by a critical number of States, can be supportive of the conservation and management measures adopted at RFMO level, and of the overall implementation of the UNFSA.

The Pew Environment Group has undertaken a gap analysis to examine the extent of development of the port State measures adopted by the principal RFMOs up until 1 May 2010, and then to compare these measures with the provisions of the PSMA. The research then assesses whether the current measures adopted by RFMOs meet the PSMA's standards, and identifies which aspects need to be developed by each RFMO in order to align their measures with the agreement.

Although this study is a work in progress and new data continue to become available, the Pew Environment Group considers it useful to present the preliminary results of this analysis at this Review Conference. In particular, research findings are relevant to item 8 (a) of the Agenda. A full report on this study, with detailed conclusions and recommendations, will be presented at a later date.

## Undertaking a gap analysis: what is missing from RFMO port State measures?

The study conducted by the Pew Environment Group focuses on ten RFMOs that have adopted some form of port State measure which is currently in force and published; they are CCAMLR, CCSBT, GFCM, IATTC, ICCAT, IOTC, NAFO, NEAFC, SEAFO, and WCPFC.

In order to compare the measures adopted by each of the reviewed RFMOs with the PSMA's measures, a review of the agreement was conducted and its obligations deconstructed into approximately 100 obligations, not including its annexes. Subsequently, all potentially relevant RFMO measures were reviewed and those that contain port State measures applicable to fishing or fishing-related activities were compared, obligation by obligation, with the obligations provided by the PSMA.

The study shows that RFMO measures rarely match exactly a provision of the PSMA. However, comparison of the measures in place in the different regimes provides both general and specific conclusions about

### RECENT DEVELOPMENTS

A number of RFMOs have recently taken steps to align their port State measures with the provisions of the PSMA.

- In March 2010, IOTC adopted a new port State measures Resolution modeled on the PSMA. Although this measure has not yet been published, the initial measure proposed by the EU to IOTC closely followed the text of the PSMA.<sup>i</sup>
- At the most recent regular meeting of WCPFC in December 2009, the EU submitted a similar proposal, also based on the PSMA. Discussion of this was deferred to the next meeting in December 2010.<sup>ii</sup>
- ICCAT will consider for adoption a proposal for a Draft Recommendation on port State measures based on the PSMA at its annual meeting in November 2010.<sup>iii</sup>
- With a much more limited scope, at its most recent meeting in November 2009, CCAMLR adopted an amendment to its Conservation Measure on port inspections of vessels carrying toothfish whereby two pro formas were adopted which incorporate all the requirements of Annexes A and C of the PSMA.<sup>iv</sup>

<sup>i</sup> See the proposal submitted by the EU, document IOTC-2010-S14-PropH-Rev1 [E], at: [www.iotc.org/English/meetings/comm/history/doc\\_meeting\\_S14.php](http://www.iotc.org/English/meetings/comm/history/doc_meeting_S14.php)

<sup>ii</sup> See in particular the EU Proposal for a Conservation and Management Measure on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, WCPFC6-2009/DP19, 6 December 2009, available at: [www.wcpfc.int/doc/wcpfc6-2009dp19/eu-proposal-cmm-port-state-measures](http://www.wcpfc.int/doc/wcpfc6-2009dp19/eu-proposal-cmm-port-state-measures)

<sup>iii</sup> Report of the 6th Meeting of the Working Group on Integrated Monitoring Measures, Madrid, Spain – February 22–23, 2010, section 5 and Annex 3, available at: [www.iccat.int/en/meetingscurrent.htm](http://www.iccat.int/en/meetingscurrent.htm)

<sup>iv</sup> See Conservation Measure 10-03 (2009), including annexes 10-03/A and 10-03/B, Schedule of Conservation Measures in force, 2009/10 Season, as adopted by the Commission at the Twenty-eighth Meeting, 26 October to 6 November 2009

the current state of development of RFMO port State measures. In addition, the comparison provides an indication of the principal steps that RFMOs should be taking if they are to reach the international minimum standard provided by the PSMA.

At this stage of the research, the Pew Environment Group offers general conclusions and recommendations drawn from this analysis. This brief highlights some specific findings relating to the port State measures developed by each RFMO in respect of IUU fishing vessels included on its IUU vessel list. These have been the subject of closer analysis, considering in particular the conclusions of the Pew Environment Group's Port State Performance report<sup>i</sup>. In the second phase of our study we shall develop a comprehensive and detailed analysis of each RFMO and endeavor to collaborate with each of these organizations in reviewing our findings, which are not always easy to extract given the highly diverse nature of port State measures in some RFMOs.

## PRELIMINARY FINDINGS

### No two port State control systems are alike

- Most RFMOs have some type of port State measure, but characteristics vary considerably between RFMOs. Some have only a single measure which establishes a degree of prohibition of landing and transshipping for IUU-listed vessels, while others have a comprehensive set of provisions that are not only directed at controlling IUU-listed vessels but at vessels engaged in IUU fishing more broadly, even at those with no apparent engagement in IUU fishing.
- For example, this study found that WCPFC and CCSBT have very limited port State control regulations. WCPFC has one regulation dealing with IUU-listed vessels, which includes port access restrictions and controls, but has not enacted any port State control scheme applicable to non-listed vessels<sup>ii</sup>. The only port State measure adopted by CCSBT so far is in the 'IUU fishing and authorized vessels resolution', which requires Members and cooperating Non-Members to take steps to prohibit the landing of Southern bluefin tuna by fishing vessels not included on its record of authorized vessels.
- No set of port State measures matches the PSMA's standards. Different regimes emphasize different types of port State measures (i.e. inspection vs access restrictions) but none are as comprehensive as the PSMA. Of all the measures currently in force and published, the regulation closest to the intent and substance of the PSMA is the one provided by GFCM<sup>iii</sup>.

<sup>i</sup> See Kistowski, K., Flothmann, S., Album, G., Dolan, E., Fabra, A., Lee, E., Marrero, M., Meere, F., and Sack, K. (2010) "Port State Performance: Putting Illegal, Unreported and Unregulated Fishing on the Radar"

<sup>ii</sup> See Box 1 on recent developments

<sup>iii</sup> See Box 1 on recent developments

The marked variation among RFMOs' port State measures creates an extra burden on vessel operators and facilitates the exploitation of gaps or weaker measures by IUU fishing vessels. It is particularly challenging for port or flag States that are members of several RFMOs, each with differing requirements.

### A few measures for a few vessels: RFMO port State measures are far from comprehensive

- Port State controls at RFMO level generally follow a piecemeal approach whereby only certain port State measures apply to certain types of vessels:
  - most RFMOs apply stricter port restrictions and control measures to IUU-listed vessels than to IUU vessels not included on IUU vessel lists;
  - some RFMOs have a specific port scheme for vessels that target high-priority species for the RFMO, such as toothfish in the case of CCAMLR or Southern bluefin tuna in the case of ICCAT (but this doesn't apply for other species);
  - some RFMOs distinguish between the treatment of Contracting Parties and of other States in that their Contracting Parties are at times excluded from the application of port State measures;
  - some RFMOs that establish a record of authorized vessels foresee the implementation of some port State restrictions to the non-authorized vessels.

While this piecemeal approach attempts to respond to the priority needs of each RFMO in addressing its IUU fishing problems, it does in fact result in multiple gaps in the regime. Moreover, this approach limits the ability of port State authorities to exert effective control over all vessels operating in the area, given that they must factor in the need to implement different measures depending on, for example, the cargo or the nationality of the vessel. This issue becomes particularly relevant when the need for a harmonized global system of port State controls is considered.

### The missing pieces

- RFMOs generally limit port restrictions to the landing, transshipment and processing of fish; only a minority of RFMOs prohibit access to all port services to vessels – even to those on an IUU vessel list.
- Only a minority of RFMOs prohibit entry into port by IUU vessels, as established by the PSMA. Indeed, when this obligation is present in an RFMO, it is generally established for IUU-listed vessels only.
- Only a few RFMOs require the designation and publication of ports for foreign vessel control, as provided in the PSMA. An even smaller number of RFMOs are specific about the need to ensure that ports have sufficient capacity to conduct inspections in accordance with port State measures.
- Only a few RFMOs have established the need for a minimum level of mandatory inspections.

Several aspects of port State controls are under-regulated at an RFMO level, such as denial of port entry, refusal of port services, and a minimum level of inspections.

### Limited information sharing

- Most RFMOs have only established a limited obligation for port States to share information relating to the application of port State measures with other Contracting Parties (and Cooperating Non-Contracting Parties) and the flag State. It is rare that there is the obligation to share relevant data with other States, RFMOs, or international organizations.

There is no culture within RFMOs of officially sharing information among all those who play a role in ensuring that an IUU-listed vessel does not get access to port.

### Flagrant IUU vessels are not under control

- Most RFMOs are not categorical about the need to ban port entry of IUU-listed vessels, unless for inspection and effective enforcement action, as required by the PSMA.
- Only a few RFMOs prohibit access to any kind of port services to IUU-listed vessels, as required by the agreement.
- Some RFMOs only include Non-Contracting Party vessels in their IUU vessel lists. Although there is a rationale behind this, a system whereby IUU vessel lists are equally applicable to both Contracting Party and Non-Contracting Party vessels will be more transparent and non-discriminatory in nature.

Even though IUU-listed vessels are generally the object of the most comprehensive IUU-fishing regulations across RFMOs, the port State controls on these vessels have still not been harmonized and generally fall short of the PSMA standard.

### A step ahead

- The analysis identified some port State obligations adopted by RFMOs that are not covered by the PSMA but which contribute to the strengthening of port State measures nonetheless, such as catch documentation schemes and other trade-related measures.
- Mutual recognition by some RFMOs of their IUU vessel lists is an important step and can only enhance the effectiveness of international measures against IUU fishing. The PSMA does not incorporate such formal mutual recognition, but sees the listing of a vessel on any RFMO IUU vessel list as sufficient proof of the vessel being engaged in IUU fishing or IUU fishing-related activities. Most RFMOs have an obligation to share their IUU vessel lists with other RFMOs, and a smaller number formally incorporate IUU vessels listed by other RFMOs into their own IUU vessel lists.

Many RFMOs offer specific measures that are not covered by the PSMA but which help combat IUU fishing.

# RFMOs must take forceful steps to align their measures with those of the Port State Measures Agreement and cover existing gaps



FLPA / MARK NEWMAN

## RECOMMENDATIONS

### ADOPT THE PSMA AS THE MINIMUM STANDARD

RFMOs must align their measures with those of the PSMA and encourage their members to expeditiously sign and ratify the agreement, in order to address difficulties of comparability of current port schemes, and avoid unnecessary difficulties for complying operators and prevent gaps at the global level<sup>iv</sup>. We recognize the recent efforts made by some RFMOs, such as CCAMLR, to follow the PSMA on some specific aspects, and particularly welcome IOTC's 2010 Resolution which is entirely based on the PSMA. It is also a positive step that ICCAT and WCPFC are to consider similar proposals at their upcoming meetings, which may be followed by other RFMOs soon thereafter.

### CLOSE THE GAPS

An effective port State regime needs to be as comprehensive as possible in order to avoid gaps that can be easily exploited by IUU fishing operators. RFMOs need to adapt their port State measures so that they do not exclude from their controls any vessels, fishing and fishing-related activities, nor any fish species, in accordance with the PSMA.

### TAKE EFFECTIVE MEASURES

The PSMA provides a set of measures that when combined can discourage illegal operators from continuing their activities. Anything less than that will not be as effective. As a priority, access to port services should be prohibited to any IUU fishing vessel but especially to vessels on an IUU list. Even when IUU fishing vessels are denied landing or transshipping, if they are provided with basic port services they will continue their activities and attempt to access the next port. Provisions that allow voluntary entry of any vessel, including those on IUU vessel lists, into port should be

urgently amended so as to only allow strict port controls that either result in denial of entry to or mandatory inspection of the vessel and subsequent effective enforcement actions.

### BE TRANSPARENT

RFMOs need to establish as mandatory the obligation for their members to make all information relevant to the control of IUU fishing vessels available to the international community. Giving publicity to administrative or judicial decisions taken with regard to an IUU vessel, or sharing appropriate data gathered as a result of implementing port State measures, is paramount in making any port State measures regime work. Information should, at a minimum and in accordance with the PSMA, be provided to all relevant States and international organizations and not limited to being shared among Contracting Parties and Cooperating Non-Contracting Parties only.

### MAINTAIN HIGH REGIONAL STANDARDS

On a few occasions, our study has found that some RFMOs have adopted port State measures that are more stringent or comprehensive than the provisions of the PSMA. The PSMA sets the international minimum standards on this issue but States, individually and collectively through RFMOs, can adopt stricter controls on IUU fishing vessels. Under no circumstances should current RFMO measures be weakened in order to adjust to the PSMA.

### HELP EACH OTHER

RFMOs should increase support for each others' efforts to fight IUU fishing. The sharing of information on IUU vessels among RFMOs and other relevant organizations, and the mutual recognition of IUU vessel lists in particular, are key to the success of these measures.

<sup>iv</sup> See The Pew Environment Group (2010) "Finding Sustainability, Recommendations to the U.N. Fish Stocks Review Conference"