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Closing the gap: Comparing tuna RFMO port State measures with the FAO Agreement on Port State Measures

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The Pew Environment Group is the conservation arm of The Pew Charitable Trusts, a non-governmental organization that works globally to establish pragmatic, science-based policies that protect our oceans, preserve our wildlands and promote clean energy.

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Executive summary

The Pew Environment Group has conducted a gap analysis comparing the port State measures (PSMs) established by 10 Regional Fisheries Management Organisations (RFMOs) with those established by the United Nations Food and Agriculture Organization (FAO) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, or Agreement). The research assessed the extent to which measures adopted by these RFMOs meet the PSMA standards, and identified those aspects that need to be further developed by each RFMO in order for its measures to become aligned with the Agreement's. The newly adopted PSMA sets an international minimum standard on PSMs and provides a unique opportunity to harmonise and strengthen port State controls globally. RFMOs have a special role to play in this process, specifically in helping to combat illegal, unreported and unregulated (IUU) fishing on the high seas.

This report presents the final results of the gap analysis research conducted for the five tuna RFMOs based on information that was publicly available up to 30 April 2011.

As part of our methodology, we shared the preliminary results of each RFMO gap analysis with the Secretariats of all 10 RFMOs and, through them, also with their Contracting Parties (CPs). We would like to thank those RFMO Secretariats and CPs that provided us with comments, many of which were extensive. We have taken all the comments received into consideration and revised our preliminary analyses where necessary.

The analysis focused on a single set of tools available to combat IUU fishing, namely PSMs adopted by RFMOs, and did not examine other measures adopted by governments or any of the reviewed RFMOs, such as flag State controls or market measures not taken at port. Our assessment of the degree of conformity between each RFMO's PSMs and the PSMA does not reflect the overall performance of that RFMO in its efforts to combat IUU fishing.

Through the adoption of improved and harmonised PSMs, RFMOs can play a key role in closing the net on IUU fishing operations worldwide

The aim of this exercise was to identify specific gaps in PSMs adopted by these RFMOs as they compare to the PSMA, and to make clear recommendations on how they could be strengthened. The goal of this research is to offer information that RFMOs could use to strengthen their own port State control systems and, as a result, contribute to enhanced harmonisation of PSMs across tuna fisheries around the world, with the aim of helping to further combat IUU fishing.

With the exception of the Indian Ocean Tuna Commission (IOTC), which has adopted a resolution that includes most of the substantive duties of the PSMA, overall the tuna RFMOs do not meet the new international minimum standard set by the PSMA. In particular, they do not have strong PSMs in place and the PSMs that they have adopted are quite fragmented. Our analysis shows the following gaps:

- few requirements to share information between States and RFMOs;
- inadequate designation of ports for entry of foreign vessels;
- poor prior-to-entry information requirements for vessels approaching ports;
- insufficient restrictive measures for IUU fishing vessels, e.g. denial of port services, landing or transshipping;
- generally weak inspection systems;
- limited duties for flag States to cooperate with port State actions.

We recognise that IUU fishing on the high seas is a common challenge for all RFMOs and that IUU fishing vessels are not limited to one ocean or RFMO Convention Area. Thus, the more that RFMOs apply a common standard on PSMs, the better able they will be to address this challenge. The comparative analyses undertaken here point to clear steps that RFMOs can take if they want to reach the new international standard provided by the PSMA, and thus make significant progress in combating IUU fishing.

I. 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, along with its first ratifications and accessions¹, 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 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

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

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 the RFMOs' 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 other 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.



PAUL HOBSON / FLPA

2. The gap analysis: Objective and methodology

The Pew Environment Group conducted a gap analysis to identify specific disparities in PSMs adopted by 10 RFMOs², as they compare to the PSMA, and then to make clear recommendations on how these could be strengthened. 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, contribute to enhanced harmonisation of PSMs around the world. Such harmonisation would help reduce IUU fishing, on both a regional and global scale.

This report presents the findings and conclusions of the gap analysis conducted for the five tuna RFMOs, which manage an area larger than all of the other RFMOs together. Under the purview of tuna RFMOs, over 4 million metric tons of tuna are taken annually by tens of thousands of vessels, many of which move from ocean to ocean over the course of a year. All have adopted regulations, currently in force and published, which include some form of PSMs.

In order to compare the measures adopted by each of the tuna RFMOs 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 RFMO 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 RFMO 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 have 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 have allocated a score from 0 to 10, which illustrates our assessment of the degree of conformity for each measure category. (See Figure 1 opposite for a representation of the results obtained for the five tuna RFMOs). 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, as with all of the RFMO gap analyses, we have tried to keep our analysis as objective as possible, with our focus strictly on the degree of conformity of such rules with the PSMA.

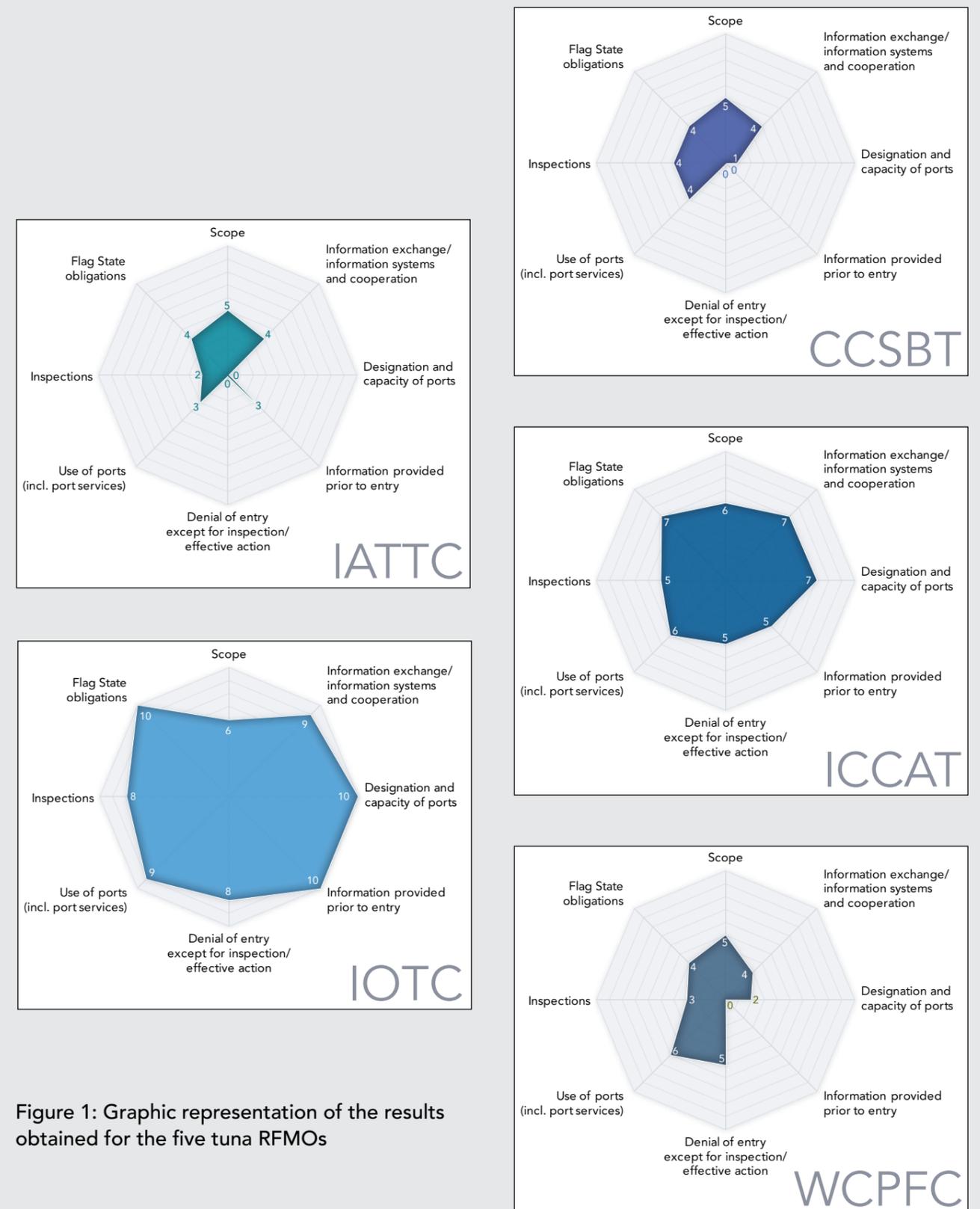


Figure 1: Graphic representation of the results obtained for the five tuna RFMOs

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

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).

3. Overarching conclusions and recommendations for all tuna RFMOs

3.1 CONCLUSIONS

There are large differences in the scope of the PSMs adopted by each RFMO. When looking at all the PSMs adopted by the five tuna RFMOs, we can see that the Indian Ocean Tuna Commission (IOTC) has the PSMs closest to the PSMA standard. This is due to its recent adoption of a resolution that includes most of the substantive duties of the PSMA; however, this resolution only applies to ports within the IOTC Convention Area, which limits its effectiveness. The International Commission for the Conservation of Atlantic Tunas (ICCAT) has a number of PSMs in place that are in line with the PSMA, but they suffer from ICCAT's unsystematic approach and there is some room for improvement, especially regarding port inspections and prohibitions applicable to vessels involved in IUU fishing. The Inter-American Tropical Tuna Commission (IATTC) and Western and Central Pacific Fisheries Commission (WCPFC) have several gaps in their PSMs; most specifically, they have yet to adopt rules on denial of entry or to develop a port inspection system. Finally, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) has very few PSMs in place, other than a CDS to control southern bluefin tuna (SBT) catches and landings. Although the CDS is a key measure with which to control IUU fishing, especially for a single-species RFMO such as CCSBT, improved PSMs would significantly enhance the effectiveness of its regulatory system.

In Part 4 we provide a detailed description of the main findings of the gap analysis conducted for each RFMO; these highlight each RFMO's strengths and weaknesses in comparison with the PSMA and identify clear steps that each RFMO could take to enhance its PSMs.

Below, we provide some general conclusions from the gap analyses, which provide an indication of the current state of the development of PSMs across the five tuna RFMOs. Our research findings show that most of these tuna RFMOs do not meet the international minimum standard set by the PSMA. In particular, they do not have strong port State controls in place, and the PSMs that they have adopted are quite fragmented. Because of this, the gaps are open to exploitation by IUU operators.

3.1.1 Weak PSMs

Overall, the five tuna RFMOs need to undertake reforms in order to strengthen their port State controls. Some of the main gaps in their PSMs include the following areas.

- **Limited information sharing** Information sharing is one of the pillars of the PSMA and is key to the effectiveness of PSMs in general. The sharing and receiving of information on vessels with other port State officials, RFMOs, and other relevant actors, is vital to the identification of vessels involved in IUU fishing. This information can be the difference between timely action and a missed opportunity to stop a IUU fishing operation. The PSMA establishes very specific requirements to notify relevant States, international organisations and interested parties of actions taken at port³. With the exception of IOTC⁴ (and to a lesser extent ICCAT), the tuna RFMOs fall short of the PSMA standard in this respect. The tuna RFMOs are doing better in relation to establishing mechanisms for the electronic exchange of information, such as publishing authorised and IUU vessel lists and other relevant information on their website and using electronic means to transmit information relevant to the implementation of CDS and statistical programmes.
- **Inadequate designation of ports** With the exception of IOTC and ICCAT (the latter for bluefin tuna [BFT] vessels only), the tuna RFMOs do not require port States to designate ports where foreign vessels can enter, nor to ensure that such ports have the capacity to perform inspections, as established by the PSMA⁵. These provisions are important as they provide clarity for operators and help port States focus their efforts to develop the capacity to perform adequate controls in selected ports only.
- **Poor prior-to-entry information requirements** The PSMA requires vessels to request port entry in advance of arriving in port. It also allows port State officials to examine relevant information in relation to such vessels, in order to decide whether any concrete action is required prior to entry into port. This may include communicating with other officials in order to verify whether the vessel has been involved in IUU fishing⁶. Only IOTC has entirely adopted the PSMA standard on this matter. IATTC and ICCAT require that vessels wishing to enter their CP ports provide information in enough time for the port State to examine the information, however, this requirement applies only to vessels that intend to participate in transshipments at port in the case of IATTC, and to

³ Arts. 6.1, 9.3 and 15 b) of the PSMA.

⁴ IOTC has adopted all the information sharing duties in the PSMA, except for the need to designate a contact point for information sharing.

⁵ Other RFMOs, such as WCPFC, have some requirements for the designation of ports for specific purposes, such as transshipment, but their impact, in comparison with the PSMA provisions on port designation, is quite small. See requirements in art. 7 of the PSMA.

⁶ Art. 8 PSMA.



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vessels carrying BFT in the case of ICCAT. WCPFC and CCSBT have no provisions in this regard.

- **Few restrictive measures against IUU fishing and support vessels** Only IOTC and ICCAT (the latter in relation to IUU-listed vessels only), deny entry into port to vessels involved in IUU fishing. The PSMA contemplates the possibility that port States can allow vessels into port for the purpose of taking other action to deter IUU fishing⁷, and this must include denial of access to any port services such as repairing, refuelling or drydocking. Denial of services is an effective way to hinder vessel operations and thus acts as a strong disincentive to IUU fishing. In practice, however, most tuna RFMOs do not require enforcement actions other than prohibition of landing and transshipment. The IOTC prohibits access to all port services for IUU vessels, while ICCAT and WCPFC apply restrictions to accessing other port services, but solely to IUU-listed vessels⁸.
- **Weak inspection systems** CCBST, IATTC and WCPFC have yet to develop a system of port inspections. WCPFC has developed obligations to inspect IUU-listed vessels, but has not developed minimum standards for inspections or guidelines for the training of inspectors. ICCAT has developed a port inspection scheme, but there is room for improvement, especially in relation to requiring inspection of all vessels

⁷ Arts 9.4 and 9.5 of the PSMA.

⁸ WCPFC requires its Members to prohibit IUU-listed vessels from landing, transshipping, refueling or resupplying, but does not prohibit other port services such as repairing and drydocking.

suspected of IUU fishing, minimum standards for conducting inspections, and guidelines for the training of inspectors. A clear procedure for carrying out inspections would not only provide the right incentives for vessels to comply with applicable CMMs, but would also help improve the effectiveness of existing control systems such as CDS and statistical programmes, enabling port States officials to verify the accuracy of relevant documentation and thus reduce fraud.

- **Few duties for flag States** Close cooperation between flag States and port States can make the implementation of PSMs much more effective, especially because of the clear jurisdictional rights and duties that flag States should exercise regarding their flagged fishing and support vessels. The PSMA contains some provisions targeted at flag States, mainly requiring that they cooperate as necessary in port inspections and take effective action in the event that the port State finds evidence of IUU fishing⁹. Our research found that IOTC and ICCAT are the closest to the PSMA standard on this matter. The three other tuna RFMOs have provisions requiring flag States to follow up and report on identified violations; most of these provisions, however, do not specifically refer to reports stemming from port State inspections. In addition, we have not found any provision in these latter RFMOs requiring flag States to cooperate in port inspections. This is probably due to the fact that none of them have adopted minimum standards for port inspections.

⁹ Art. 20 of the PSMA.

4. Individual conclusions and recommendations for each tuna RFMO

3.1.2 Ad hoc and patchy port State measures

A common feature of the five tuna RFMOs is that their regulation of PSMs is quite fragmented. Only IOTC has a comprehensive CMM for port State controls. The others have adopted several CMMs aimed at controlling IUU fishing, some of which contain PSMs. This results in an unsystematic and ad hoc coverage of port State controls. However, this case-by-case approach can be justified by the peculiarities of each RFMO, which may place greater emphasis on the regulation of species in high demand, certain activities (such as transshipment), or a particular class of vessel (such as super seiners). The lack of a systematic approach to port State control of fishing and support vessels may also stem from the prior development of other regulatory tools, such as CDS.

However, this patchiness often results in a lack of clarity as to which rules apply to each vessel entering a port. It also hampers the eventual harmonisation of port State controls across the tuna RFMOs, which is a shared objective of the five tuna RFMOs, and pursued by the PSMA in its goal of setting an international minimum standard¹⁰.

3.2 OVERARCHING RECOMMENDATIONS FOR ALL TUNA RFMOS

While recognising that each of the five tuna RFMOs has its own specific objectives and noticeable differences in its scope, membership and history, they all share an interest in combating IUU fishing, an activity that undermines sustainable fisheries and places legitimate operators at a comparative disadvantage. It is timely to address the contribution of PSMs to current efforts in combating IUU fishing, not just because of the recent adoption of the PSMA but also because experience shows that a combination of measures is necessary to reduce and eliminate IUU fishing. IUU fishing operations are highly mobile and need the logistical support of ports worldwide, not only to land their products but also to sustain their operations. It is well known that IUU fishing operators look for less stringent ports in which to land, transship, refuel, resupply and maintain

¹⁰ The joint tuna RFMOs Workshop on Improvement, Harmonization and Compatibility of MCS Measures encouraged RFMOs “to adopt PSMs that are consistent with the PSMA, taking into account the specific characteristics and circumstances of each RFMO on PSMs”. Report of the International Workshop on Improvement, Harmonization and Compatibility of Monitoring, Control and Surveillance Measures, Including Monitoring Catches from Catching Vessels to Markets (Barcelona, Spain, May-June 2010), Doc. No. TRFMO2-W2-012A/2010. See also Preamble of the PSMA.

their vessels. In addition, some vessels fish in areas under different RFMOs during the same season. By applying a strong and consistent standard of port State controls, tuna RFMOs can significantly disincentivise IUU fishing by making it more expensive for IUU vessels to evade the rules either through the use of ‘ports of convenience’, or by making sure that vessels that are IUU listed by one RFMO cannot simply move into the area of competence of another RFMO and keep on fishing.

Considering the lessons learned from this study, it is recommended that tuna RFMOs, through decisions of their CPs, take the following steps.

- Strengthen their PSMs. The recommendations at the end of each gap analysis in Part 4 of this report provide information on the clear steps that each RFMO could take to ensure that their PSMs are closer to the PSMA standard.
- Strive, while strengthening their PSMs, to make them more coherent internally, overcoming patchiness of obligations and increasing the extent to which they complement other measures adopted to combat IUU fishing.
- Work towards the harmonisation of port State control systems across tuna RFMOs, and also across other RFMOs as far as possible.
- Reach out to other RFMOs and enhance cooperation and information sharing. Tuna RFMOs are in a unique position to do this, particularly through the mutual recognition of their IUU vessel lists.



COREY ARNOLD / OCEANPOST

4.1 CCSBT

CCSBT has an underdeveloped system of port State controls when compared with the PSMA and other RFMOs. Unlike other RFMOs, CCSBT has not adopted provisions to establish an IUU vessel list and has a very small number of PSMs in place. CCSBT rules would require substantial reforms in order to reach the PSMA standard on port State controls.

Structure and scope

CCSBT has adopted the following resolutions on IUU fishing: a 2008 Resolution on the establishment of a record of authorised farms; a 2008 Resolution on establishing the CCSBT Vessel Monitoring System; a 2008 Resolution on establishing a programme for transshipment by large-scale fishing vessels; a 2008 Resolution on IUU fishing and the establishment of a CCSBT record of vessels authorised to fish for southern bluefin tuna (SBT); 2000 and 2009 Resolutions on action plans to ensure compliance with Conservation and Management Measures; and a 2010 Resolution on the implementation of a CCSBT CDS.

CCSBT is a single-species RFMO; its principal tool to control its SBT fishery is its CDS. The CDS operates as a PSM insofar as it forbids landings and transshipments of illegally caught SBT. However, it focuses on the product and does not cover other aspects of port State controls aimed at controlling vessels, such as denial of entry and denial of port services other than landings and transshipments¹¹.

In addition, the Resolution on action plans to ensure compliance with CMMs makes few references to PSMs. This resolution fails to create clear, directly applicable obligations for port States. Unlike other RFMOs, CCSBT has not adopted any provisions to establish an IUU vessel list. According to the PSMA, the inclusion of a vessel on an IUU vessel list acts as irrefutable evidence of its involvement in IUU fishing.

A positive aspect of CCSBT's rules on compliance is that they do not exclude certain vessels, such as domestic vessels or chartered vessels, from their scope of application, which the PSMA does. In practice, however, given the limited number of PSMs, the impact of this broader scope is small.

The definition of fishing in the CCSBT Convention includes ‘operations at sea in support of fishing’.

¹¹ See arts 3.1 and 3.2 of the PSMA; see also CCSBT's CDS resolution, which includes landings of domestic product and landings of SBT by chartered vessels (see in particular paragraph 5.1.1).



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However, it is not as detailed as the PSMA definition of fishing-related activities and omits elements such as packaging, processing and transporting of fish¹².

Cooperation and information sharing

The PSMA has created very specific duties for the port State to notify other States, RFMOs and the FAO of actions taken at port. Such obligations to notify are absent from CCSBT rules. There are, however, some requirements to share information, such as the obligation to forward copies of CDS documents to the Executive Secretary on a quarterly basis. The Executive Secretary will forward this information to the Extended Commission¹³ and circulate this information to all Members and Cooperating Non-Members on an annual basis¹⁴. The Resolution on action plans to ensure compliance contains some general requirements to report on progress made on issues such as port State inspection of transshipment of SBT, but these are not comparable with the PSMA's very detailed obligations to notify actions taken at port.

The PSMA favours electronic exchange of information on matters relevant to the implementation of the Agreement¹⁵. CCSBT requires States to use electronic means to transmit information relevant to the implementation of the CDS and to the CCSBT's record of vessels authorised to fish for SBT, which is available online at CCSBT's website¹⁶. The Resolution on the CCSBT record of vessels also contains a general call to the Extended Commission, Members and Cooperating non-Members to communicate with each other, and to make their best efforts with FAO and other relevant regional fishery management bodies to develop and implement appropriate measures so as to avoid adverse

¹² See art. 1 d) of the PSMA; see also art. 2 b) of the Convention for the Conservation of Southern Bluefin Tuna, signed on 10 May 1993.

¹³ The Extended Commission was created in 2001. Its tasks are the same as the Commission's, but in addition to including Parties to the Convention its Members can include an entity or fishing entity. See Resolution to establish an Extended Commission and an Extended Scientific Committee: 1 and 2.

¹⁴ Resolution on implementation of a CDS: 6.1 and 6.3.

¹⁵ Art. 16 and Annex D of the PSMA.

¹⁶ Art. 16 and Annex D of the PSMA.

CCSBT

effects upon tuna resources in other oceans¹⁷. 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 objectives¹⁸.

Designation and capacity of ports

According to CCSBT's Resolution on action plans to ensure compliance, Members and Cooperating non-Members should designate foreign ports for transshipment of SBT for their vessels. As drafted, this provision is addressed to flag States rather than port States, as required by the PSMA¹⁹. Furthermore, there is no regulation on designation of ports for uses other than transshipment, nor one to ensure that CCSBT ports have the required capacity to conduct inspections.

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, with sufficient time to allow for the port State to examine the information. CCSBT does not have any requirements to provide information prior to entry.

Denial of entry

One of the central provisions of the PSMA is the requirement to deny entry into port to IUU fishing and support vessels, except for the purposes of inspecting and taking other effective actions against these vessels. CCSBT resolutions do not require Parties to deny entry to IUU fishing vessels. The Resolution establishing a CCSBT record of vessels forbids non-authorized vessels to land or transship SBT, but does not mention denial of entry. There is no other measure, such as one establishing an IUU vessel list that would forbid entry to IUU vessels.

Port use

The PSMA requires port States to deny use of ports to vessels engaged in IUU fishing. CCSBT is far from the PSMA standard on this aspect. It has only two measures that restrict landings and transshipments to fishing vessels: (1) vessels not entered on the CCSBT record of vessels authorized to fish for SBT are not allowed to transship or land SBT; and (2) under CCSBT's CDS, Members, Cooperating Non-Members, or States cooperating with the CDS specifically, shall not accept any landings or transshipments of SBT unless accompanied by complete and validated documentation. However, CCSBT has not adopted an IUU vessel list, nor has it adopted any measures requiring port States to

refuse other port services (such as refueling, resupplying, maintenance or drydocking) to IUU fishing vessels²⁰.

Inspections

CCSBT has not adopted any specific measures requiring port inspection of fishing and support vessels. Its Resolution on action plans to ensure compliance required Members and Cooperating non-Members to report, by April 2010, on progress made on "port state inspection of transshipment of SBT". However, this provision does not detail in which circumstances vessels should be inspected, as the PSMA does, and was addressed to "flag Members and Cooperating Non-Members of pelagic longline vessels" and not specifically to port States²¹.

Under CCSBT, there is only one other reference to port inspections and that is in the Resolution on implementing a CDS. This provision requires Members and Cooperating non-Members "to undertake an appropriate level of audit, including inspections of vessels, landings, and where possible markets, to the extent necessary to validate the information contained in the CDS documentation"²². However, CCSBT has not developed standards for inspection, procedures for fulfilling inspection reports or guidelines for the training of inspectors. The establishment of minimum standards for port inspections and a minimum inspection coverage of vessels would be an important tool to ensure compliance with CCSBT's CDS.

Flag States

Art. 20 of the PSMA includes a set of flag State duties to facilitate the implementation of PSMs. The Agreement also requires flag States to take action against vessels if an inspection report indicates that the vessel was involved in IUU fishing. There are a few provisions in CCSBT resolutions aimed at encouraging compliance by flag States. Two of these provisions relate to port State controls. According to the Resolution on action plans to ensure compliance with CMMs, flag States should allow transshipments of SBT at designated foreign ports only; prohibit such transshipment at other foreign ports; and communicate with those designated port States to share relevant information required for effective inspection. The provision has some similarities with some of the requirements in art. 20 of the PSMA, however, it is neither as inclusive nor as detailed as the PSMA requirements, for example, it only applies to transshipment²³. The

20 See art. 11 of the PSMA; Resolution on CCSBT record of vessels: 2; Resolution on the implementation of a CCSBT Catch Documentation Scheme: 5.6.

21 Resolution on action plans to ensure compliance with CMMs: 1 & 2. See also art. 12 of the PSMA.

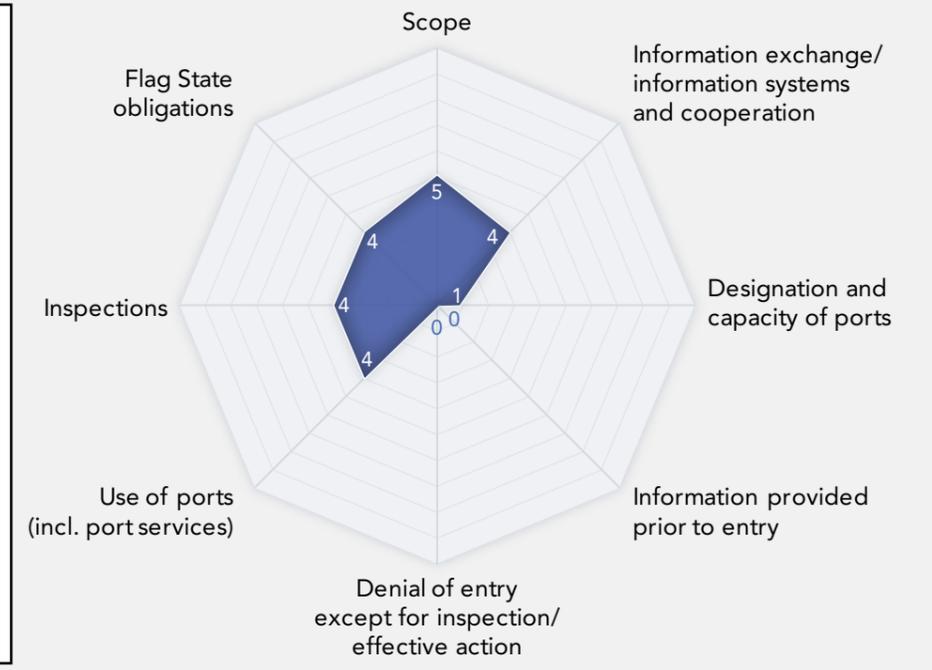
22 Resolution on implementation of a CDS: 5.8.

23 Resolution on action plans to ensure compliance with CMMs: 2.

Fig.2. CCSBT

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



second of these provisions is in the CDS Resolution, and requires Members and cooperating non-Members to cooperate and review, investigate and resolve any concerns identified in relation to discrepancies or irregularities in relation to CDS reports. This provision does not clearly establish the role of flag States and port States in sorting out these discrepancies and, in this sense, it is less clear and prescriptive than the PSMA's rules on cooperation between flag and port States²⁴.

There is another provision in the CCSBT VMS Resolution that requires Members and cooperating non-Members to "investigate and provide details of the investigation" in relation to incidents concerning specific vessel(s) flagged to such States when the vessel(s) are suspected to have operated in contravention of CCSBT's CMMs. While this provision creates similar obligations to those contained in the PSMA, it does not have a direct link to port State reports, and is referred to only in cases where VMS data is requested. Thus, the correspondence with PSMA obligations is weak²⁵.

Finally, the Resolution on the CCSBT record of vessels mandates CCSBT's Extended Commission to request flag States to take further action, when necessary, to enhance compliance with CMMs by vessels on the record. This is a rather general provision, which does not establish an immediate requirement for flag States to investigate and follow up on specifically reported violations by its vessels, as the PSMA does²⁶.

Recommendations to strengthen CCSBT's PSMs

In order to bring its PSMs closer to the PSMA standard, CCSBT should take the following steps.

24 Resolution on implementation of a CDS: 7.4, in relation to 7.1 and 7.2.

25 Resolution on establishing the CCSBT Vessel Monitoring System: 3 b). See also art. 20.4 of the PSMA.

26 Resolution on CCSBT record of vessels: 7.

- Adopt a systematic and comprehensive scheme of PSMs.
- Adopt a resolution establishing an IUU vessel list for CCSBT.
- Incorporate in a CCSBT resolution the PSMA's definition of fishing and fishing-related activities.
- Establish clear duties to notify relevant States, RFMOs and relevant international organisations about the different measures and decisions taken, as required by the PSMA.
- Adopt a measure requiring Parties as port States to designate and publicise ports to which vessels may request entry, and to 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, in line with art. 8 and 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, it shall deny any kind of port use to that vessel.
- Adopt a comprehensive and effective 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.

4.2 IATTC

IATTC has an underdeveloped system of port State controls when compared with the PSMA and other RFMOs. Many of the key provisions of the PSMA aimed at controlling IUU fishing are either missing or only applicable to specific situations.

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 situations²⁷. 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 activities²⁸. 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 activities²⁹. 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 website³⁰. The list of carrier

vessels authorised to receive at-sea transshipments in the Convention Area and the IUU vessel list are also available online³¹. Making these lists public is consistent with the PSMA provisions which require communication mechanisms that allow for direct electronic exchange of information³². Noteworthy is also the requirement, in relation to IATTC's authorised list of LSTLFVs, that the Commission and the States concerned³³ 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 objectives³⁴.

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 requirements because in most cases there is no required action that would be subject to the associated duty to notify.

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

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

29 Art. I.2 of the Antigua Convention.

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

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

32 Art. 16 and Annex D of the PSMA.

33 Referring to IATTC Parties and Cooperating Non-Parties collectively. Res. C-03-07: 9.

34 Art. 6.1 of the PSMA.

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 inspections³⁵. 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 that IATTC has not developed specific requirements to conduct port inspections.

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, allowing sufficient time 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 PSMA³⁶.

Denial of entry

One of the central provisions of the PSMA is the requirement to deny entry into port to IUU fishing and fishing support vessels, except for the purposes of inspecting and taking effective action against these vessels³⁷. 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 on the IUU vessel list; vessels carrying shark fins caught in contravention of IATTC's Shark resolution; and LSTLFVs not included on the authorised record of vessels³⁸. With regard to authorised LSTLFVs, there is no mechanism foreseen by IATTC that allows the port State to

35 Art. 7 of the PSMA.

36 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.

37 Arts. 9.4 and 9.5 of the PSMA.

38 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.

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 ports³⁹. 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 occur⁴⁰.

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 that may provide a legal basis for port inspections: IATTC's Bigeye Tuna Statistical Document Program and the Resolution on transshipments. However, the Bigeye Tuna Statistical Document Program rule is not clearly directed at port inspectors and does not establish a clear obligation to inspect the vessel⁴¹. 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 required⁴². 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

39 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.

40 For example, Res. C-03-01: 2 refers to "customs or other appropriate government officials".

41 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".

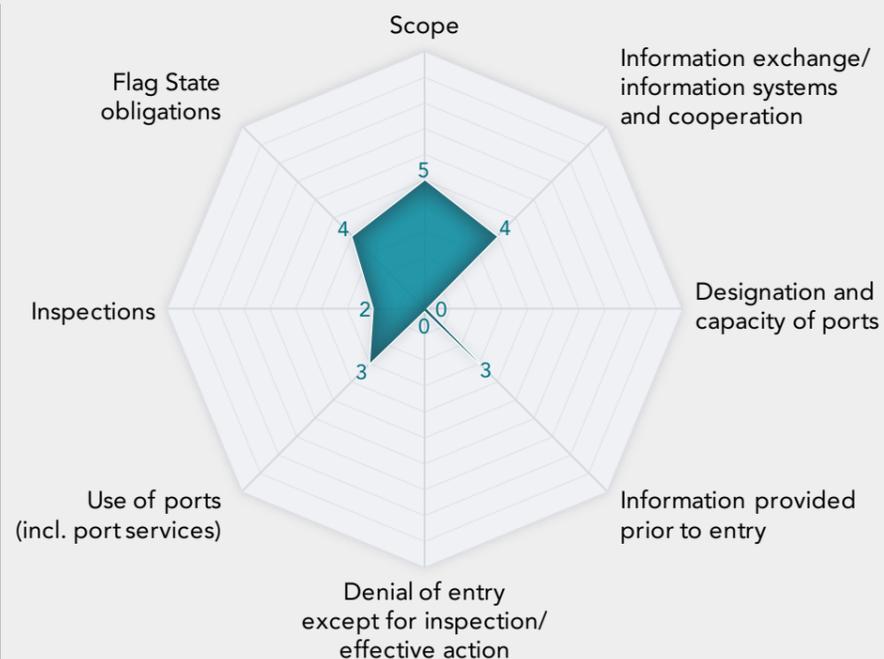
42 Res. C-08-02: Annex 1:5. For transshipments at port, the port State (where the transshipment takes place) and the landing State need to verify the accuracy of the information provided in the transshipment declaration by the master of the receiving carrier. Both States shall also cooperate with the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



Fig.3. IATTC

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



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 specified⁴³.

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 evidence⁴⁴. Parties are required to promptly inform the Committee for the Review of Implementation of Measures Adopted by the Commission of actions taken to ensure compliance with IATTC CMMs, “including, if appropriate, an analysis of individual cases and the final decision taken”⁴⁵.

Recommendations to strengthen IATTC’s PSMs

In order to bring its PSMs closer to the PSMA standard, IATTC should take the following steps.

- 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 duties to notify relevant States, RFMOs parties 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 a 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.

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

44 Art. XVIII.6 of the Antigua Convention.

45 Art. XVIII.3 and specifically 3 b), of the Antigua Convention.

ICCAT

4.3 ICCAT

Although ICCAT has developed a considerable number of PSMs, it lacks a systematic and comprehensive approach to port State controls. ICCAT should establish a minimum standard of PSMs applicable to all vessels entering ICCAT ports that is consistent with the PSMA standard.

Structure and scope

Several ICCAT recommendations contain PSMs, each of them addressing specific situations, such as vessels carrying certain species, large vessels, or Non-Contracting Party (NCP) vessels. There are no uniform definitions of fishing, fishing-related activities, vessels or IUU fishing⁴⁶. As a result, ICCAT port State controls are unsystematic and unclear.

However, some specific aspects of ICCAT’s PSMs are more inclusive than the PSMA’s. The PSMA does not apply to certain types of vessels, such as foreign vessels, chartered vessels and artisanal vessels under certain conditions. It also does not apply to container vessels that are not carrying fish or are carrying fish that have not been previously landed. Most of ICCAT’s PSMs apply to both domestic and chartered vessels⁴⁷. Artisanal vessels as such are not exempted from ICCAT’s PSMs, although some of them apply only to vessels that are 20 metres in length or greater⁴⁸. Although container vessels are covered by ICCAT’s general port inspection scheme, they are explicitly exempted from the PSMs applicable to BFT in the eastern Atlantic and Mediterranean Sea. On other aspects though, BFT measures are more complete than the rest of ICCAT’s PSMs. This makes it difficult to identify a minimum standard applicable to all vessels operating in the ICCAT Convention Area⁴⁹.

Cooperation and information sharing

The PSMA requires port States to establish communication mechanisms that allow for direct electronic exchange of information. ICCAT maintains a series of records of authorised vessels and traps, which are available on its website, as well as ICCAT’s IUU vessel list and the list of designated ports for BFT⁵⁰. ICCAT

46 The only definition of vessel by ICCAT is in a recommendation that applies only to BFT in the eastern Atlantic and Mediterranean Sea (Rec. 08-05: 2 a). ICCAT’s definition of IUU fishing seems to be only applicable for the purposes of IUU vessel listing. Rec. 09-10: 1.

47 Rec. 02-21: 4 and 11 on chartered vessels.

48 Recommendation on an ICCAT IUU vessel list (09-10: 12) and Recommendation on an ICCAT record of vessels 20 metres in length or greater that are authorised to operate in the Convention Area (09-08: 1).

49 Rec. 08-05: 2 a).

50 Art. 16 and Annex D of the PSMA; Rec. 09-10:10 (IUU vessel list); Rec. 08-05: 66 (designated BFT ports); Rec. 06-11: 8 (list of the carrier vessels that are authorised to receive transshipments from its LSTVs [large-scale tuna vessels] in the Con-



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has also taken steps to establish electronic means of exchanging information on issues such as statistical programmes or communicating lists of authorised vessels to the Executive Secretary⁵¹. In addition, ICCAT has provisions in place to include on its IUU list all vessels listed by the other tuna RFMOs⁵²; this is consistent with the PSMA’s mandate to “take measures in support of conservation and management measures” adopted by other States and relevant international organisations⁵³.

The PSMA includes very specific duties for port States to notify relevant States and international organisations of each action taken at port. ICCAT has developed some notification obligations, such as transmitting inspection reports to flag States in the case of apparent violation, as well as to the Commission in all cases of inspection of NCP vessels⁵⁴. However, these requirements do not apply to all key decisions or actions taken by port authorities, which the PSMA’s do, and they are not as inclusive as the PSMA’s measures regarding the countries and international organisations that need to be notified⁵⁵.

Designation and capacity of ports

The PSMA requires CPs to designate and publicise ports to which foreign vessels may request entry. ICCAT has developed this requirement but only for BFT vessels⁵⁶. The PSMA also requires CPs to ensure that designated ports have sufficient capacity to conduct inspections pursuant to the Agreement. ICCAT contains a similar provision in relation to BFT vessels, since CPs and Cooperating non-Contracting Parties (CPCs), as port States, shall ensure full inspection coverage of landing and transshipping operations⁵⁷.

tion Area); Rec. 09-08: 4 (record of vessels over 20 metres); Rec. 06-07: 10 d) (record of authorised farming facilities). Moreover, ICCAT regulates the publication on the protected section of its website of certain aspects of the BFT catch document (Rec. 09-11: 19, 28, and 34).

51 See, for example, Rec. 06-16, on an Electronic Statistical Document Pilot Program.

52 Rec. 09-10: 11.

53 Art. 6.2 of the PSMA.

54 Rec. 97-10: 2 and Rec. 98-11: 4.

55 Rec. 97-10: 2 and Rec. 98-11: 4.

56 This requirement applies to vessels intending to land or transship BFT, excluding container vessels but including foreign vessels.

57 Art. 7 of the PSMA and Rec. 08-05: 62 and 66.

ICCAT

Prior-to-entry information

According to art. 8 of the PSMA, CPs shall require vessels to provide a minimum set of information prior to entry into port, with sufficient time given for the port State to examine the information. ICCAT has only developed requirements to provide information prior to entry into a CP port exclusively for vessels carrying BFT⁵⁸. Prior-to-entry information requirements for BFT vessels intending to land are less detailed than those for BFT vessels involved in transshipment. In addition, there are information requirements that apply to in-port transshipments by large-scale tuna vessels (LSTVs)⁵⁹, which are slightly more complete than those that apply to BFT vessels. Given that it is likely that many BFT vessels may also be LSTVs, there is an overlap between these recommendations, making the rules unclear. For all these recommendations, the content of the information to be provided in advance falls short of the PSMA's Annex A.

Denial of entry

One of the central provisions of the PSMA is the requirement to deny entry into port to IUU fishing and support vessels, except for the purposes of inspecting and taking other actions against these vessels; the other actions need to deter IUU fishing as effectively as denial of entry⁶⁰. ICCAT only prohibits entry into port to IUU-listed vessels, and not to other, non-listed, IUU vessels⁶¹. Inspection of such vessels, if they happen to be in port, is not required.

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 fishing⁶². ICCAT has developed a set of obligations to deny port use on a case-by-case basis, resulting in a considerably fragmented regulation. An analysis of all relevant recommendations reveals that landing and transshipment are prohibited in a number of cases where IUU fishing is likely to have occurred. These are cases involving IUU-listed vessels; NCP vessels that have been sighted fishing in contravention of ICCAT measures, once an inspection confirms that IUU fishing for ICCAT species has occurred; and fishing vessels of 20 metres or more that are not on the ICCAT list of authorized large-scale fishing vessels (LSFVs). More generally, landings and transshipments are also prohibited for tunas or tuna-like species caught as a

result of IUU fishing activities⁶³. ICCAT also prohibits landing and transshipment of some species in certain circumstances; these provisions apply to BFT, swordfish, bigeye tuna, and bigeye thresher sharks. In very few cases, these provisions include processing restrictions⁶⁴. ICCAT only prohibits other kinds of port use to IUU-listed vessels. ICCAT's CPCs are to take measures to ensure that such vessels are not authorised to "re-fuel, re-supply, or engage in other commercial transactions"⁶⁵. Although this provision is more inclusive, it still falls short of the PSMA standard, which explicitly excludes other services such as maintenance and drydocking.

Inspections

ICCAT requires CPCs to inspect all vessels landing and/or transshipping BFT, as well as NCP vessels that have been sighted fishing in contravention of ICCAT measures⁶⁶. There are also provisions that require customs or other officials to inspect statistical documents regarding bigeye and swordfish imports; these provisions include the ability to inspect the content of each shipment to verify the information. Finally, ICCAT's port inspection scheme requires port authorities of CPs to monitor compliance with ICCAT conservation measures for all ICCAT species "without discrimination"⁶⁷. However, ICCAT has not developed requirements to inspect CP vessels, other than for BFT vessels, even if the CP vessels are suspected of IUU fishing. In addition, as stated above, ICCAT does not require inspection of IUU-listed vessels if they happen to be in port. For these reasons, ICCAT does not achieve the PSMA standard in relation to inspection coverage⁶⁸.

The PSMA contains very specific standards for conducting inspections and for drafting inspection reports. ICCAT's provisions on inspection standards are less comprehensive and prescriptive than the PSMA's⁶⁹. Rec. 97-10 on ICCAT's inspection scheme requires that, in the case of apparent violation by a foreign vessel, inspection reports be written "on a form standardized by the Commission", but the only pro forma that is available on ICCAT's website is apparently designed for inspections at sea⁷⁰. In addition, ICCAT has not developed guidelines for the training of inspectors⁷¹.

⁶³ Rec. 09-10: 9; Rec. 98-11: 3; Rec. 09-08: 1; Rec. 03-16.

⁶⁴ For a detailed indication of when these prohibitions apply, see: Rec. 09-07: 1 on bigeye thresher sharks; Rec. 09-04: 1.4 and Rec. 01-22: 1 on swordfish; Rec. 01-21: 1 on bigeye tuna; Rec. 08-05: 27, 32, 54, 57, 63 and 94 and Rec. 09-11: 3 on BFT in the eastern Atlantic and Mediterranean Sea.

⁶⁵ Rec. 09-10: 9

⁶⁶ Rec. 08-05: 62 and 66; Rec. 98-11: 2.

⁶⁷ Rec. 01-21: Annex 1: 2; Rec. 01-22: Attachment 1: 2; Rec. 97-10: 1.

⁶⁸ Art. 12 of the PSMA, establishing specific priorities for inspection.

⁶⁹ Art. 13.1 and Annex B of the PSMA. Rec. 97-10, and Rec. 98-11: 2.

⁷⁰ Rec. 09-13 on ICCAT Inspection Reports.

⁷¹ Art. 17 and Annex E of the PSMA

⁵⁸ Art. 8 and Annex A of the PSMA; Rec. 08-05: 63 and 67.

⁵⁹ ICCAT does not define the term LSTVs. However, a similar term also used by ICCAT, 'large-scale fishing vessels' (LSFVs), is defined in Rec. 09-08:1 as vessels that are 20 metres in length overall or greater.

⁶⁰ Arts. 9.4 and 9.5 of the PSMA.

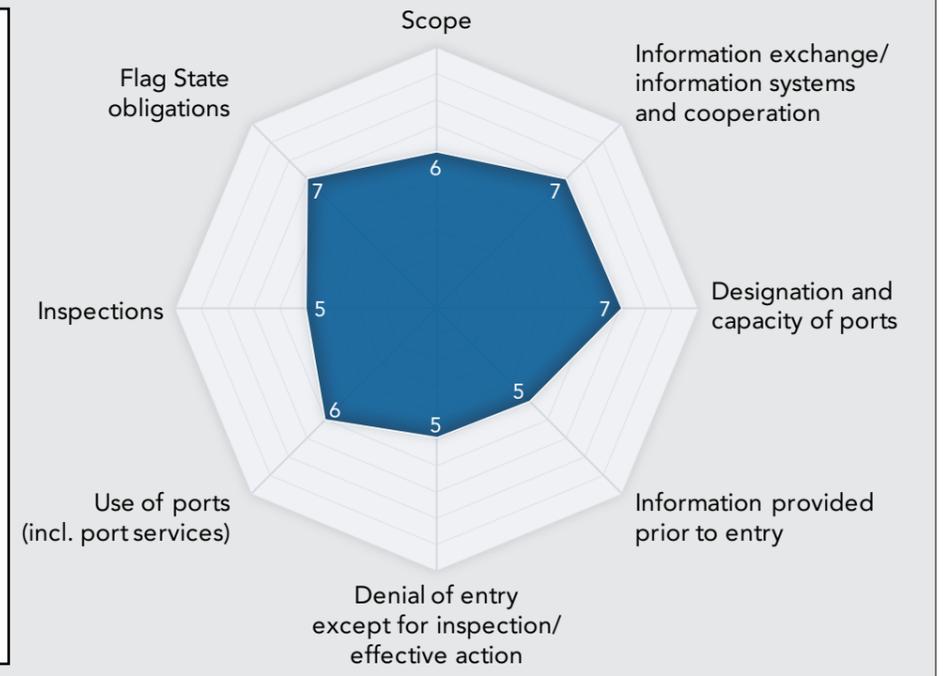
⁶¹ Rec. 09-10: 9.

⁶² Arts. 9.6 and 11 of the PSMA.

Fig.4. ICCAT

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



Flag States

Art. 20 of the PSMA includes a set of specific flag State duties to facilitate the implementation of PSMs and complement them with follow-up actions, especially after an inspection report indicating that the vessel was involved in IUU fishing. Under ICCAT, CPCs are generally to "investigate and follow-up on an alleged violation by a vessel and report the results of such investigation, as well as the actions taken whenever that violation has been confirmed"⁷². In addition, ICCAT's port inspection scheme requires CPs to consider and act upon reports of apparent violations by foreign inspectors on a similar basis to how they consider and act upon the reports of national inspectors⁷³. Although these provisions establish similar obligations to those established by the PSMA, some of the other flag State duties found in the Agreement are not covered by ICCAT, such as the need to request the port State to inspect its vessels or take other measures if the flag State has clear grounds to believe that the vessel has engaged in IUU fishing.

Recommendations to strengthen ICCAT's PSMs

In order to bring its PSMs closer to the PSMA standard, ICCAT should take the following steps.

- Systematise all PSMs applicable in ICCAT ports to facilitate the identification of the applicable measure under each circumstance.
- Adopt the PSMA's definition of fishing, fishing-related activities and vessel for all of ICCAT's PSMs.
- Establish clear duties to notify relevant States, RFMOs and relevant international organizations about the different decisions and actions taken by port States as required by the PSMA
- Extend the requirement to designate and publicise

⁷² Rec. 03-12: 1 f).

⁷³ Rec. 97-10: 4.

ports of landing and transshipment of BFT to all port visits by vessels carrying any species.

- Adopt a measure requiring that all vessels provide advance information before calling into a port, regardless of their purpose for calling into port and the species they carry. Make sure that at a minimum, vessels are required to submit the information in Annex A of the PSMA.
- Adopt a measure(s) requiring denial of entry into port to any vessels for which there is sufficient proof of IUU fishing or fishing-related activities, as required by art. 9 of the PSMA, and not only to IUU-listed vessels. 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.
- Require inspection of all vessels that are suspected of IUU fishing, and not just those carrying BFT or those flagged to NCPs.
- Adapt ICCAT's inspection procedures to PSMA standards, including adopting a mandatory form for port inspection reports that fulfills the requirements of PSMA's Annex C, and develop guidelines for the training of inspectors in accordance with Annex E of the PSMA.
- Enhance the duties for flag States to cooperate in the implementation of port State controls and act upon cases of IUU fishing identified at port inspections, in line with the PSMA.
- Enhance the obligations for flag States to cooperate in the implementation of port State controls and act upon cases of IUU fishing identified at port inspections, in line with the PSMA.

4.4 IOTC

In March 2010, IOTC adopted a new Resolution on PSMs that was modeled on the PSMA. Although this resolution includes most of the substantive obligations of the PSMA, it only applies to ports within the IOTC Area. This limits the effectiveness of its PSMs. In addition, there are several IOTC resolutions that create overlapping port State obligations, making it more difficult to identify which rules apply to each case.

Structure and scope

In 2010, IOTC adopted Resolution (Res.) 10/11 on PSMs. Prior to adopting this resolution, IOTC had other resolutions containing PSMs in place, such as Res. 05/03 on port inspections; Res. 01/03, on establishing a scheme to promote compliance by Non-Contracting Party (NCP) vessels; and Res. 09/03, on establishing IOTC's IUU vessel list. These earlier resolutions are still in force and some elements of their contents overlap with Res. 10/11. This creates some confusion about the scope of certain provisions. For example, although most of the PSMs in these resolutions create duties for Members and Cooperating NCPs (referred to collectively as CPCs), Res. 01/03 establishes port State duties for Contracting Parties (CPs) only. It is not always clear, therefore, which port States are subject to which specific requirements.

Res. 10/11 applies to categories of vessels that are very similar to those covered by the PSMA⁷⁴. The IOTC is even a little more inclusive as its resolution does not exclude chartered vessels, which the PSMA does. Definitions of vessel, fishing and fishing-related activities mirror those of the PSMA.

74 Res. 10/11. As per paragraph 20, it entered into force on 1 March 2011.



However, Res. 10/11 includes a restriction in relation to its geographical coverage, and this limits its scope. The resolution only applies to ports of CPCs "within the IOTC Area of competence" and, while it is stated that the CPCs situated outside the IOTC Area of competence "shall endeavour to apply this resolution", they have no legal obligation to do so⁷⁵. This restriction significantly limits the effectiveness of the PSMs.

Cooperation and information sharing

Res. 10/11 on PSMs creates obligations to notify relevant States, international organisations and interested parties of actions taken at port that are similar to those of the PSMA. In some aspects, IOTC's resolution goes further than the PSMA. For instance, IOTC establishes a specific deadline by when CPCs must transmit inspection reports to relevant States and RFMOs; it also adds the flag State of any vessel that transshipped catch to the inspected vessel as recipient of such report⁷⁶.

The IOTC's Res. 10/11 includes provisions similar to the PSMA's that require CPCs, where possible, to establish communication mechanisms that allow for direct exchange of information, including the use of websites⁷⁷. Specifically, IOTC requires CPCs to transmit inspection reports electronically to relevant States and RFMOs and to post them on the IOTC website⁷⁸. IOTC's IUU vessel list is also posted on IOTC's website, as is the list of designated ports of entry (see below). In addition, the Secretary has a mandate to transmit the IUU vessel list to other RFMOs to ensure enhanced cooperation in preventing, deterring and eliminating IUU fishing⁷⁹. The IOTC website also posts its record of active vessels fishing for swordfish and tunas in the IOTC Area, and the authorised record of carrier vessels authorised to receive at-sea transshipments from large-scale tuna longline fishing vessels (LSTLFVs)⁸⁰. In addition, Res. 05/03 requires that each year CPCs electronically submit to the Secretariat the list of foreign fishing vessels that have landed tuna and tuna-like species caught in the IOTC Area in their (the CPCs') ports. This list is also required to include catch composition by weight and species landed⁸¹. However, IOTC does not require the designation of an authority that acts as a contact point for the exchange of information for the implementation of PSMs, as is required by the PSMA⁸².

75 Res. 10/11: 20.

76 Res. 10/11: 4 c), 5.1, 6.1, 7.1, 7.3, 9.3, 9.5, 13.1 a), b) and c), 13.2, 15.1 a), 16.1, 16.2, 17.5, Annex 4, and in particular, 13.1. See also Res. 01/03: 5.

77 Art. 16.1 and Annex D of the PSMA; Res. 10/11: Annex 4.

78 Res. 10/11: 13.1 and 13.2.

79 Res. 09/03: 14, and Res. 10/11: 5.

80 Res. 08/02: 8 and 10/08: 3.

81 Res. 05/03: 8.

82 Res. 10/11: 16.3.

Designation and capacity of ports

The PSMA requires its Parties to designate and publicise ports to which foreign vessels may request entry. IOTC has adopted this requirement and instructs the Secretariat to establish a register of all designated ports, which is to be published on the IOTC website. In addition, like the PSMA, IOTC requires CPCs to ensure that such ports have sufficient capacity to conduct inspections⁸³.

Prior-to-entry information

According to art. 8 of the PSMA, Parties shall require vessels to provide a minimum set of information (described in Annex A) prior to entry into port, allowing sufficient time for the port State to examine this information. Under the IOTC resolutions, CPCs shall require information to be provided at least 24 hours before entering port, or immediately after the end of fishing operations if time to port is less than 24 hours. In any case, IOTC rules indicate that the port State must have enough time to examine the information. The information that IOTC CPCs shall require from vessels prior to entering port is identical to Annex A of the PSMA⁸⁴.

Denial of entry

One of the central provisions of the PSMA is the requirement to deny entry into port to IUU fishing and support vessels, except for the purposes of inspection and the taking of other actions against these vessels. Under the PSMA, such actions need to be as effective as denial of entry in deterring IUU fishing⁸⁵. IOTC has incorporated the PSMA's provisions on port entry in their entirety. In Res. 10/11, the IOTC states that its CPCs shall forbid entry into their ports to all vessels on any IUU vessel list established by a relevant RFMO, not just to vessels on its own list⁸⁶. However, an analysis of other IOTC resolutions on IUU fishing reveals inconsistencies. Res. 09/03, on establishing IOTC's IUU vessel list, does not forbid port entry to IUU-listed vessels. In addition, Res. 01/03, on establishing a scheme to promote compliance by NCP vessels, requires CPs (but not CPCs) to inspect NCP vessels suspected of having conducted IUU fishing in the IOTC Area when such vessels "enter their ports voluntarily". Such inconsistencies mean there may be confusion over what action is required⁸⁷.

In addition, other IOTC provisions deny port use to vessels in certain predetermined cases that are indicative of IUU fishing, but entry into port is not specifically

83 Res. 10/11: 5.

84 Res. 10/11: 6 and Annex 1.

85 Arts. 9.4 and 9.5 of the PSMA.

86 Res. 10/11: 7.

87 Res. 09/03: 13 b) and e). Res. 01/03: 3.

prohibited as in the PSMA⁸⁸. This may also bring confusion to the application of relevant rules.

Port use

The PSMA is very clear about the need to deny any use of ports, including access to port services of any kind, to vessels involved in IUU fishing and fishing-related activities⁸⁹. IOTC Res. 10/11 on PSMs adopts the PSMA's provisions denying use of ports to vessels involved in IUU fishing and fishing-related activities in their entirety⁹⁰. However, according to Res. 09/03 on IOTC's IUU vessel list, "IUU vessels that enter ports voluntarily are not authorised to land, transship, refuel, resupply, or engage in other commercial transactions"⁹¹. Although this provision is quite inclusive, it is not totally clear whether maintenance and drydocking operations are also to be refused to such vessels, as mandated by the PSMA and Res. 10/11. This may create some confusion when interpreting and applying the rules.

In addition, other IOTC resolutions prohibit landings and transshipments in certain cases where fishing has taken place in contravention of IOTC resolutions. As these fishing activities constitute IUU fishing, the requirement to refuse other port services, as set out in Res. 10/11, would also apply to the above mentioned activities. As a result, different provisions regulate similar situations, each of them setting a different standard, and this creates confusion⁹².

Inspections

Like the PSMA, Res. 10/11 establishes a minimum level of annual inspections, which IOTC sets at 5 percent⁹³. Res. 10/11, unlike the PSMA, has not established specific priorities for vessel inspections, although there is a general provision in Res. 05/03 that states that priority should be given to the inspection of vessels from NCPs⁹⁴.

With regard to IUU fishing vessels, as mentioned above under 'Structure and scope', Res. 01/03 requires CPs (but not CPCs) to inspect NCP vessels suspected of having conducted IUU fishing in the IOTC Area when such vessels enter their ports voluntarily⁹⁵. In addition, Res. 10/11 includes a provision that mirrors art. 9.5 of

88 Rec. IOTC/2008/1: 15, 17.

89 Arts. 9.6 and 11 of the PSMA

90 Arts. 9.6 and 11 of the PSMA; Res. 10/11: 9.

91 Res. 09/03: 13 b).

92 Res. 99/02: 2 (on Flag of Convenience longline vessels); Res. 01/03: 3 and 4 (on compliance by NCP vessels); Res. 05/03: 4 (on Inspections in port); Res. 05/05: 6 (on sharks); Res. 07/02: 1 and 7 (on the record of authorized vessels); Res. 09/03: 13 b), and e) (on the IUU vessel list); Res. 10/01: 6 (on tropical tunas).

93 Res. 10/11: 10.1; art. 12 of the PSMA.

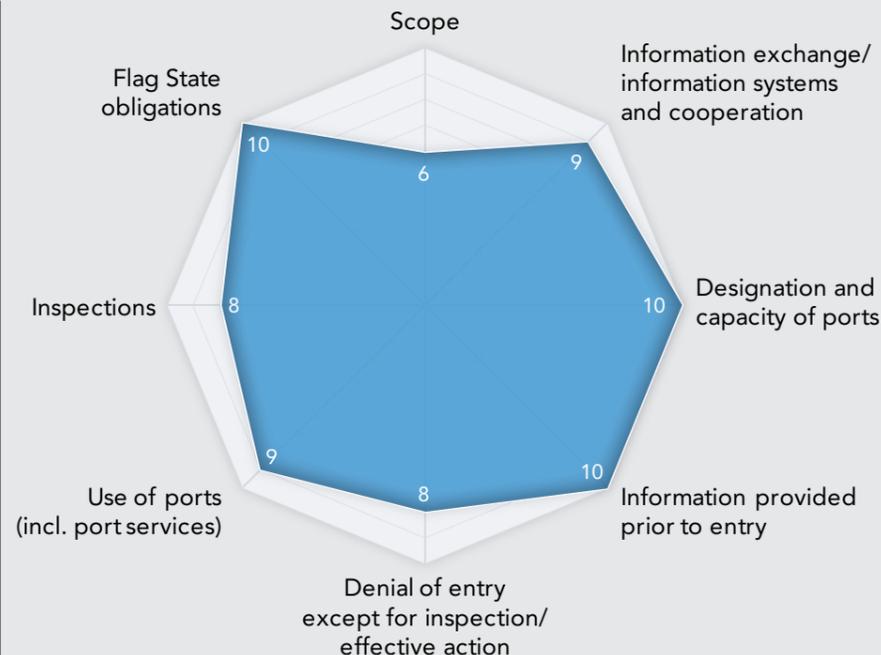
94 Res. 05/03: 7.

95 Res. 01/03: 3, in relation to 1 and 2.

Fig.5. IOTC

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



the PSMA, which states that when there is sufficient proof that a vessel has engaged in IUU fishing (such as its inclusion on an IUU vessel list by an RFMO), it shall only be allowed in port for inspection and enforcement purposes⁹⁶. The latter rule applies to ports of CPCs located within the IOTC Area and not just to CPs, as Res. 01/03 does. However, Res. 09/03, relating to IOTC's IUU vessel list, does not create any requirement to inspect IUU-listed vessels, and this may lead to confusion as to whether there is an obligation to inspect such vessels.

In the context of its Bigeye Tuna Statistical Document Program, IOTC has adopted provisions requiring customs or other appropriate officials to inspect "all import documentation"; these provisions include the facility to inspect the content of each shipment to verify the information⁹⁷. In addition, IOTC recommends (but does not require) that CPCs conduct port inspections of transshipments by authorised fishing vessels⁹⁸.

From the analysis above, we can see that IOTC's PSMs, when considered in their entirety, create similar requirements to the PSMA's on inspecting IUU fishing vessels. However, these are contained in different resolutions that overlap in their scope of application, which makes it difficult to identify which requirement to inspect would apply in each case, and whether it would apply to CPs alone or to CPCs as well.

IOTC's standards for inspection procedures mirror the PSMA's and they are even more detailed in some

respects⁹⁹. IOTC's pro forma for inspection reports mirrors the PSMA's¹⁰⁰. IOTC has also adopted the PSMA guidelines for training of port inspectors¹⁰¹.

Flag States

IOTC has adopted all the PSMA's provisions on the role of flag States in cooperating with port States in the implementation of PSMs, and on flag States taking follow-up actions when an inspection report indicates that IUU fishing has occurred.

Recommendations to strengthen IOTC's PSMs

In order to bring its PSMs closer to the PSMA standard, IOTC should take the following steps.

- Extend the geographical scope of IOTC's PSMs so they apply to ports of all CPCs.
- Require CPCs to designate an authority to act as a contact point for the exchange of information on the implementation of relevant PSMs.
- Ensure consistency between all IOTC resolutions that contain PSMs, particularly those applicable to IUU fishing vessels and support vessels. All applicable PSMs should clearly prohibit port entry to such vessels unless they are allowed in for the purposes of inspection and taking effective action; they should also establish that all port services are to be refused to these vessels when in port.
- Ensure that all IOTC resolutions that contain PSMs create obligations for CPCs and not for CPs only.

⁹⁹ For example, IOTC requires inspections to include a cross-check between quantities by species recorded in the prior notice of landing and those landed or transhipped. Once landing or transhipment is completed, the inspector shall verify and note quantities by species remaining on board. Res. 10/11: 10.2. See also Res. 10/11: 10.3, 10.4 and Annex 2; and art. 13 and Annex B of the PSMA.

¹⁰⁰ There are typing mistakes in IOTC's proforma for inspection, in items 10, 20 and 21. See Res. 10/11: Annex 3, as well as Annex C of the PSMA.

¹⁰¹ Res. 10/11: 14 and Annex 5, art. 17 and Annex E of the PSMA.

4.5 WCPFC

WCPFC should develop standards for conducting inspections and require port States to inspect vessels even if they are not IUU listed; require vessels to provide information prior to entry into ports; and mandate States to notify relevant parties of all actions taken at port.

Structure and scope

According to art. 27 of the WCPFC Convention¹⁰²: "a port State has the right and the duty to take measures to promote the effectiveness of subregional, regional and global conservation and management measures". However, there is no specific CMM on port State controls. Thus far, the Commission has adopted a number of CMMs containing some PSMs that regulate specific situations¹⁰³, but a comprehensive and systematic approach to PSMs is lacking.

With one exception, WCPFC does not exclude domestic vessels from the application of PSMs, although the PSMA does¹⁰⁴. WCPFC's PSMs apply to carrier and support vessels, even if its definition of fishing does not include some of the fishing-related activities mentioned by the PSMA, thus setting a more limited standard than the Agreement¹⁰⁵.

Cooperation and information sharing

WCPFC has developed several provisions on the need to cooperate with the FAO, other RFMOs and, in particular, IATTC, including cooperation on monitoring, control and surveillance measures¹⁰⁶. There is also a partial recognition of IUU vessel lists adopted by other RFMOs, since vessels listed by any RFMO will be removed from the WCPFC register of authorised carrier vessels¹⁰⁷. 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 objectives¹⁰⁸.

¹⁰² Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed on 4 September 2000 in Honolulu, USA. The Convention entered into force on 19 June 2004.

¹⁰³ CMM 2009-01, "Record of Fishing Vessels and Authorization to Fish"; CMM 2009-04, "Conservation and Management of Sharks"; CMM 2009-06, "Conservation and Management Measure on Regulation of Transshipment"; CMM 2008-01, "Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean"; CMM 2007-03, "Conservation and Management Measure to Establish a List of Vessels presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO".

¹⁰⁴ CMM 2009-01: 20.

¹⁰⁵ WCPFC omits landing, packaging, processing and transporting fish. Art. 1 d) of the WCPFC Convention and art.1 d) of the PSMA.

¹⁰⁶ Arts. 22.3 and 22.4 of the WCPFC Convention. See also CMM 2009-01: 22.

¹⁰⁷ CMM 2009-01: 37.

¹⁰⁸ Art. 6.1 of the PSMA

Information pertinent to WCPFC's lists of authorised vessels is to be transmitted electronically. These lists and WCPFC's IUU vessel lists are available online at WCPFC's website¹⁰⁹. These obligations are consistent with the PSMA provisions that require port States to establish communication mechanisms that allow for direct electronic exchange of information¹¹⁰.

However, WCPFC does not establish duties to notify relevant parties of actions taken at port, such as denial of port use, or the results of port inspection¹¹¹. These notification requirements are essential for the effectiveness of PSMs and have been developed in detail by the PSMA.

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 inspections. Under WCPFC rules, a Member "may" notify the Executive Director of its designated ports for transshipments. The Executive Director will periodically circulate the list of designated ports to all Members¹¹². However, there are no provisions requiring Members to use designated ports for transshipments. Furthermore, there is no regulation of designation of ports for uses other than transshipment, or to ensure that ports of WCPFC Members have the required capacity to conduct inspections.

Prior-to-entry information

According to the PSMA, port States shall require vessels to provide a minimum set of information (described in Annex A) prior to entry, with sufficient time to allow for port State authorities to examine the information. WCPFC does not have any requirements to provide information prior to entry.

Denial of entry

One of the central obligations of the PSMA is the denial of entry into port to IUU fishing and support vessels, except for the purposes of inspecting and taking other actions against these vessels; these actions need to be as effective as denial of entry in deterring IUU fishing¹¹³. WCPFC's CMMs do not require Members to deny entry to IUU fishing vessels. However, in the case of IUU-listed vessels, CMMs require Members to inspect all such vessels and to not authorise them to land, transship, refuel or resupply. Since WCPFC does not require Members to take other actions against these

¹⁰⁹ CMM 2007-03: 23 and CMM 2009-01: 13.

¹¹⁰ Mainly art.16 and Annex D.

¹¹¹ Arts. 11.3 and 15 of the PSMA.

¹¹² Art. 7 of the PSMA; art. 29.1 of the WCPFC Convention; CMM 2009-06: 5.

¹¹³ Arts. 9.4 and 9.5 of the PSMA.

WCPFC

vessels, and does not prohibit other port services such as repairing and drydocking, this provision sets a slightly lower standard than the PSMA's in relation to IUU-listed vessels. In addition, WCPFC does not apply any port restrictions to other, non-listed IUU vessels, contrary to what is required by the Agreement¹¹⁴.

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. Under WCPFC measures, Members shall not allow IUU-listed vessels to land, transship, refuel or resupply, but there is no reference to denying other port services included in the PSMA, such as maintenance or drydocking¹¹⁵.

In addition to its measures against IUU-listed vessels, WCPFC prohibits landings and transshipments from vessels not included on the WCPFC's lists of authorised vessels¹¹⁶, and from vessels that do not have the required licence from a coastal State¹¹⁷. There are also species-specific prohibitions of landings and transshipments¹¹⁸. These measures fall short of the PSMA standard since they do not prohibit other port services, which the PSMA does.

114 CMM 2007-03: 22 b).

115 Arts. 9.6 and 11.1 of the PSMA also prohibit packaging, processing, maintenance and drydocking to these vessels.

116 WCPFC has a Record of Fishing Vessels, and an Interim Register of Non-Member Carrier and Bunker Vessels, authorised to fish and operate in the WCPFC Convention Area beyond national jurisdictions. CMM 2009-01.

117 CMM 2009-01: 4 c), 16 and 17.

118 These prohibitions apply to shark fins (CMM 2009-04: 9) and tuna products (CMM 2008-01: 42).

Inspections

Under WCPFC rules, Members are only required to inspect IUU-listed vessels, thus covering a very limited category of vessels when compared with the PSMA. In addition, WCPFC has not developed rules about how inspections should be conducted. Although Annex III of the WCPFC Convention gives some guidance on conducting transshipment inspections, including transshipment in port¹¹⁹, WCPFC has not yet adopted any measure requiring Members to inspect vessels transshipping in port nor procedures for fulfilling inspection reports. Finally, WCPFC has not developed any guidelines on the training of port inspectors, as required by the PSMA¹²⁰.

Flag States

Art. 20 of the PSMA includes a set of flag State duties designed to facilitate the implementation of PSMs. The Agreement also requires flag States to take action against a vessel when an inspection report indicates that the vessel was involved in IUU fishing. The WCPFC Convention includes provisions requiring flag States to fully investigate any alleged violation by fishing vessels flying its flag, upon reception of relevant information, and to take action against such vessels¹²¹. Although these obligations are prescriptive, they do not make any reference to port inspections. Since there is no obligation under WCPFC to transmit port inspection reports to the flag State, these flag State obligations are

119 Art. 4.2 and Annex II of the Convention.

120 Art. 17 and Annex E of the PSMA.

121 Art. 25 of the WCPFC Convention.

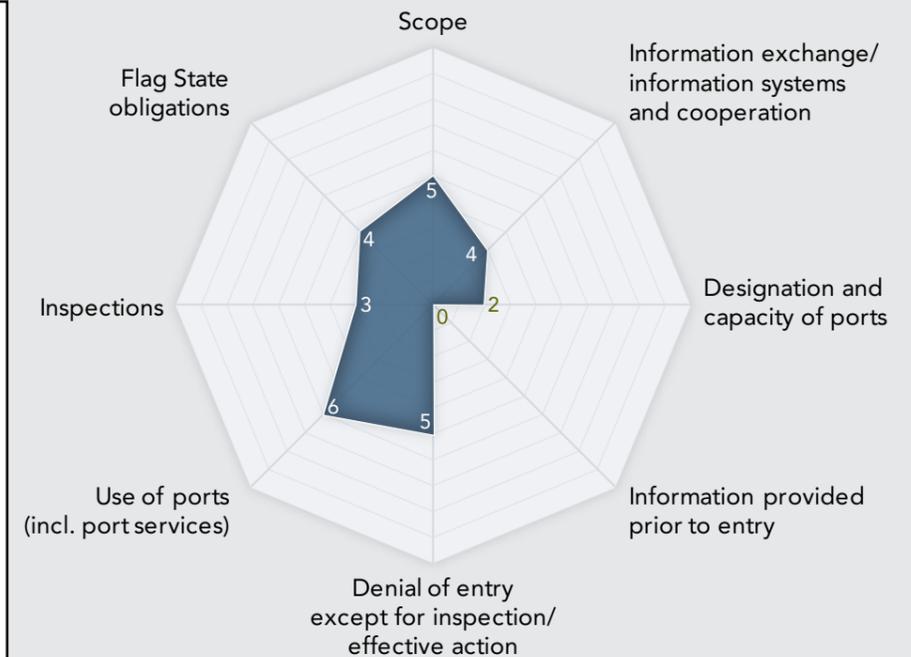


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Fig.6. WCPFC

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



not likely to be realised under WCPFC rules in the same way as is required by the PSMA.

Recommendations to strengthen WCPFC's PSMs

In order to bring its PSMs closer to the PSMA standard, WCPFC should take the following steps.

- Adopt a systematic and comprehensive scheme of PSMs that are applicable at least 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 duties to notify relevant States, RFMOs and relevant international organisations about all the different port State actions 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 capacity to conduct 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 a minimum, vessels are required to submit the information in Annex A of the PSMA.

- Adopt a measure(s) 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 comprehensive and effective 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 on the 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.

Acronyms defined

ACRONYM	FULL NAME
BFT	bluefin tuna
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDS	catch documentation scheme
CMM	conservation and management measure
CP	Contracting Party
CPC	For IOTC, this refers to a Member and Cooperating Non-Contracting Party; for ICCAT, it refers to a Contracting Party and Cooperating Non-Contracting Party
FAO	Food and Agriculture Organization of the United Nations
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, unreported, and unregulated (fishing)
LSFVs	large-scale fishing vessels (in reference to ICCAT rules)
LSTLFVs	large-scale tuna longline fishing vessels (in reference to IATTC and IOTC rules)
LSTVs	large-scale tuna vessels (in reference to ICCAT rules)
NCP	Non-Contracting Party
PSM	port State measure
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
RFMO	Regional Fisheries Management Organisation
SBT	southern bluefin tuna
VMS	vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission