

COMMITTEE ON ENFORCEMENT (ENFO)**5(c). Review progress on Port State Measures (LoA Recommendation #24)****Port State measures Implementation in NPAFC member countries**

(draft prepared by the Secretariat for 2020 ENFO meeting)

The binding FAO Agreement on *Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (“Port State Measures Agreement,” PSMA) entered into force on June 5, 2016. Ten years before that date, calls were made in the UN system to States to “take all necessary measures ... including the prohibition of vessels from accessing their ports followed by a report to the flag State concerned, when there is clear evidence that they are or have been engaged in or have supported illegal, unreported and unregulated fishing, or when they refuse to give information either on the origin of the catch or on the authorization under which the catch has been made” (UNGA Resolution 61/105). In the same resolution, the U.N. General Assembly encouraged to initiate, as soon as possible, a process to develop a legally binding agreement that was addressed to the States as to the relevant Regional fisheries management organizations (RFMOs). As of May 2020, the Port State Measures Agreement has 66 Parties, including the European Union as a member organization.

At the 2006 Annual Meeting, NPAFC member countries recognized that Port State Control Measures were an important tool to combat IUU fishing. Parties unanimously agreed to implement the port State control measures of the FAO scheme where consistent with national laws. The ENFO Terms of Reference amended in July 2015, after a revision recommended by the Review Panel, included references to port State measures in two items related to information exchange. Finally, in 2016, the decision was made that the PSMA remain on the agenda until all NPAFC Parties ratified the Port State Measures Agreement. Now, four years since the first NPAFC member country ratified the PSMA, four of five member countries are Parties to the PSMA.

Port State measures in Canada

Canada has a strong Port Access Policy, implemented in 2003 through the *Coastal Fisheries Protection Act and Regulations*. The Policy is based on the concept of a ‘closed-port’ approach. Using this policy, the minister of Fisheries and Oceans has the discretion to grant a licence to foreign fishing vessels to enter Canadian waters and ports. However, the vessels are subject to certain limitations set out in the *Coastal Fisheries Protection Act and Regulations*. The minister also has an obligation to close ports to vessels flying the flag of any State that has unsatisfactory fisheries relations with Canada. Amendments to the Coastal Fisheries Protection Regulations (2019) enable the minister to authorize a foreign fishing vessel to enter Canadian fisheries waters for enforcement purposes where the minister is otherwise precluded from doing so under the Regulations.

Under the Regulations, Fisheries and Oceans Canada has the legislative and regulatory mandate to control port entry and use of port services in respect of any vessel that is:

- transporting fish
- equipped or used for fishing
- processing or transporting fish from fishing grounds

Fisheries and Oceans Canada's mandate also supports vessels used or equipped for provisioning, servicing, repairing or maintaining foreign fishing vessels at sea. As a responsible member of various regional fisheries management organizations, Canada supports and encourages collaborative efforts to reduce illegal, unreported and unregulated fishing.

For example, Canada has agreed not to allow entry to vessels on the illegal, unreported and unregulated lists of the Northwest Atlantic Fisheries Organization or the International Commission for the Conservation of Atlantic Tunas, except in exceptional circumstances or for enforcement purposes.

These illegal, unreported and unregulated vessel lists are key tools for combating illegal, unreported and unregulated fishing globally. Arrangements have already been undertaken among several regional fisheries management organizations to share their lists. That way, members can take the necessary action to deny port entry or services to such vessels, thereby making illegal, unreported and unregulated fishing becomes increasingly difficult and expensive.

Canada ratified the Agreement on Port State Measures on June 20, 2019, and the Agreement entered into force in Canada on July 20, 2019. This is the first binding international agreement to specifically target illegal, unreported and unregulated fishing.

<https://www.dfo-mpo.gc.ca/international/isu-iuu-09a-eng.htm>

Port State measures in Japan

Fish is soul food for Japanese citizens, and it is an integral part of Japanese culture as it comprises more than 40% of animal protein consumed each year. Japan is the third largest seafood importer in the world, importing approximately USD 15 billion worth of seafood in 2017. The main suppliers to the Japanese market are China, the United States of America, Chile, Russia, and Thailand, while the top imported products are fresh and frozen tuna, eel, shrimp, crab and salmon. Japan is also the world's largest market for high value species, importing 470,000 tons of tuna every year.

As Japan's Prime Minister Abe stated, in order to eliminate IUU fishing activities, it is important to prevent the circulation of illicitly sourced seafood. The national legislature, Japanese Diet approved acceding to the PSMA on May 10, and the agreement entered into force in respect to Japan on June 18, 2017. Japan ratified the PSMA as a means to implement its Sustainable Development Goals (SDG), in which Japan is striving to be a global leader. Following the SDG adoption at the 2015 UN Summit, Japan established the SDGs Promotion Headquarters to ensure a whole-of-government approach to implementing its goals in a comprehensive and effective manner. Japan gradually took measures and actions to tackle IUU fishing by strengthening international cooperation in this field. Japan initiated the establishment of NPFC, the first organization to regulate bottom trawl fishing in the North Pacific Ocean through development of interim measures for the conservation of vulnerable marine ecosystems. In 2017, Japan proposed to establish the Port State Measures Working Group in WCPFC.

Japan promoted accedence to the PSMA to many States of the Central and South Pacific region by financially supporting activities of the Southeast Asian Fisheries Development Center (SEAFDEC). SEAFDEC organized several experts' meetings on Regional Cooperation to Support the Implementation of Port State Measures in the Southeast Asian Region, other consultation meetings, workshops, and training courses. SEAFDEC delivered comprehensive recommendations on port State measures operational implications, boarding and inspection

procedures, pre-inspection training and planning, documents to review and subjects to examine, necessary measuring and calculations, identifying violations and collection of evidence.

Japan actively supports implementation of the FAO Voluntary Guidelines for Catch Documentation Schemes (CDS), which is an effective tool to prevent products derived from IUU fishing from entering the supply chain. The Japanese government established the Law of Special Measures for Strengthening Conservation and Management of Tuna Resources. The Fisheries Agency of Japan has been discussing the need to have some form of unilateral Catch Documentation Scheme taking into account the EU CCS (catch certificates) or the U.S. Seafood Import Monitoring Program (SIMP).

<http://www.iuuwatch.eu/wp-content/uploads/2020/01/CDS-Study-WEB.pdf>

Port State measures in the Republic of Korea

Korea imported about 70% of fish and seafood consumed to satisfy the population's food needs (1.4 million metric tonnes (mt) from over 100 countries worldwide in 2016). Considering crab import, the country ranked as one of the three leading global importers in 2016. Korean seaports are secure from harsh weather conditions, closely located to major Asian seafood markets and accessible to fishing vessels from the most productive fishing grounds in the western North Pacific Ocean. It is therefore not surprising that an intensive struggle against IUU fishing products delivery was launched. The Republic of Korea acceded to the PSMA earlier than other NPAFC member countries—on January 14, 2016.

Korea developed and submitted to FAO its first National Plan of Action to Prevent, Deter and Eliminate IUU Fishing (NPOA-IUU) in February 2005. In 2007, the Republic of Korea legislated the Distant Water Fisheries Development Act (DWFDA) to strengthen distant water fisheries management, curb IUU fishing, and improve traceability of catches and fisheries products imported to the domestic seafood market. According to Article 7 of DWFDA, the Minister of Ocean and Fisheries may restrict mooring of a ship or its entry into and departure from a port in several cases, including listing of a ship on the IUU vessel list by an international fisheries organization or a coastal State, and if there is sufficient evidence to suspect that any ship is involved in IUU activities. Article 14 (Port State Control Inspections) authorizes inspectors to investigate delivered seafood products and to document presumed IUU fishing activities. Correspondent enforcement regulation and inspection procedures were established in accordance to the DWFDA.

The Korean NPOA-IUU plan was adopted by the Ministry of Oceans and Fisheries in August 2014. The third revision of the NPOA contains, among others, strengthening the level of sanctions against IUU fishers; mandatory installation of Vessel Monitoring Systems on all Korean fishing vessels operating in distant waters; enhancing Monitoring, Control and Surveillance (MCS) through the port state inspection scheme with broader application and coverage; rebuilding the internal/external governance for the fight against IUU fishing; and strengthening the cooperation with coastal developing states.

After the new Korean NPOA-IUU plan revision was adopted, all vessels seeking to enter Korean ports carrying fish caught in waters outside Korea's jurisdiction are required to submit a prior notification. Detailed information on the vessel and fish/fisheries products on board should be provided to the Korean National Fishery Products Quality Management Service. The inspection authorities examine received information and check if the vessel has engaged in IUU fishing before determining the approval or denial of port entry. In this process, all relevant information—fishing authorizations, transshipment certificates, VMS records, logbooks, fishing gear,

equipment, documents, and fish/fisheries products on board—could be examined. If an IUU allegation on a foreign fishing vessel is confirmed as a result of the examination or through other means, the vessel is not allowed to enter or land their consignments in a Korean port. The flag State of the pertinent vessel and relevant RFMOs will be informed on results of inspection.

If a Korean vessel is detected partaking in IUU activities, the vessel would be detained in port for legal proceedings in accordance with national laws. Korea's national legislation was also amended to include stricter controls on nationals who engage in IUU fishing outside State jurisdiction, including having an ownership or managing a foreign vessel engaged in IUU fishing; employment as the master or crew member of a foreign vessel engaged in IUU fishing; or knowingly importing IUU fish or fisheries products from other states.

[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI\(2017\)16/FIN/AL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI(2017)16/FIN/AL&docLanguage=En)

Port State measures in the United States

The United States ratified the PSMA on February 26, 2016, after the United States had passed its implementing legislation, the Illegal, Unreported, and Unregulated (IUU) Fishing Enforcement Act of 2015.

Many of the operational requirements of the Agreement have been general practice for the United States, with only modest adjustments needed to existing procedures. For example, under other existing U.S. law, all foreign-flagged vessels must provide an advance notice of arrival to the U.S. Coast Guard prior to entering a U.S. port. NOAA has worked closely with the Coast Guard to enhance existing communications and information-sharing mechanisms that allow NOAA Office of Law Enforcement (OLE) to screen foreign-flagged fishing or fishing-related vessels for port entry or denial in accordance with both the Port State Measures Agreement and the U.S. Port State Measures Act. This screening process allows to review, in advance of arrival, basic vessel information such as flag State, catch on board, fishing authorizations/permits, recent fishing activity, and other pertinent information. Using the same information, the U.S. will use this process simultaneously to prioritize and identify a cause for inspections.

The standards for vessel inspections outlined in the Agreement have long been the standard operating procedures for the OLE when conducting thorough vessel inspections. The primary adjustments exist in the screening and administration of landings. Over the course of 2019, the OLE received close to 900 prior notices of arrivals from foreign-flagged vessels subject to the PSMA seeking entry into U.S. ports. These requests came from approximately 280 individual vessels, many of which made multiple return trips. Acting on information provided in advanced arrival notices, OLE officers are able to identify incoming vessels of interest and prioritize these for inspection. OLE officers have also implemented the use of the Agreement's required inspection form. In addition, inspection results are now shared with the vessel's flag State for appropriate follow-up actions (if any are required) and, when appropriate, to coastal States, regional fishery management councils, as well as other organizations to report infractions of conservation measures or other evidence of illegal, unreported, or unregulated fishing. This information sharing enhances the United States' ability to combat IUU fishing in cooperation with global partners.

The United States supports the successful international implementation of the Agreement, and in response, OLE developed an international training program for providing technical assistance to global partners. This training focuses on the operational requirements of the Port State Measures Agreement, such as the examination of pre-arrival information to screen arriving vessels for

indications of IUU fishing activity, the requirements of conducting a thorough port State measures inspection, and steps to be taken after the inspection. The training modules also cover all items listed in Annex E of the Agreement—Guidelines for the Training of Inspectors (e.g., relevant regional fisheries management organizations’ conservation and management measures, evidence, investigative tools, information analysis, vessel monitoring systems, and vessel, gear, and fish identification).

<https://www.fisheries.noaa.gov/enforcement/frequent-questions-implementing-port-state-measures-agreement>

Port State measures in the Russian Federation

The Russian Federation signed the Port State Measures Agreement on April 29, 2010. A decisive step in combating illegal seafood trafficking was made with the governmental decision of 2008 to obligate fishing vessels to deliver all fishery catches to Russian ports for their legalization under State control. These governmental decrees, amended in 2010 and 2013, turned Russian marine ports into a place of ceaseless struggle with “fishing piracy” as Russian media often calls the IUU fishing. Correspondingly, the port State measures has immediately assumed a great degree of importance.

In 2013, in accordance with the “*Development of the Fisheries Industry*” federal program, a Russian NPOA-IUU, was prepared and approved by Government Decree No. 2534-p of December 25, 2013. Among other things, the plan provides for strengthening the control over fisheries supply chain, international cooperation in combating IUU fishing, establishing a traceability system for monitoring seafood and seafood products from the producer to the end consumer. Plan implementation includes developing operational and preventive measures to combat and curb IUU fishing, and enabling stricter measures, such as administrative fines and criminal sanctions, to violators of conservation laws. Separate items propose the introduction of electronic fishery logbook to be used by commercial fishers and electronic signature to be used by masters of fishing vessels.

In 2015, the Russian Government adopted the list of actions for the implementation of NPOA-IUU until 2020. The listed measures are aimed at strengthening the flag State measures and monitoring of the Russian fishing fleet activities including: boosting of international cooperation in the prevention, criminal prosecution and sanctions against IUU fishing; facilitating the processes of issuing and obtaining fishing permits; improving of quality of statistical information on the fishing industry operations; and modernizing a traceability system for fish and fishery products exported from Russia and imported into it. As a result, the number of violations of environmental protection legislation is expected to decrease by 37.9% until 2020 while seafood traceability system will cover 89% of exported/imported volume.

Russia closely cooperates with FAO, and the FAO Liaison Office with the Russian Federation advises and assists in the development and implementation of FAO policies. At the 2018 annual FAO webinar in Moscow, the Port State Measures Agreement implementation was discussed by FAO’s Senior Fisheries Officer Matthew Camilleri and officials of the Russian Ministry on Agriculture responsible for fisheries matters. Russia informed FAO that the traceability monitoring system for fish and fishery products works satisfactorily with the major focus on crab and crab product exports. Increase of sanctions and penalties for IUU fishing remains under the constant

attention of the State. While the port State measures are no panacea for comprehensive elimination of IUU fishing, it is a very important tool in combating it, and the Russian Federation is just a step away from PSMA ratification.

The draft Federal Law "*On Ratification of the Port State Measures Agreement for the Prevention, Deterrence and Elimination of Illegal, Unreported and Unregulated Fishing*" with an explanatory note was introduced by the Ministry of Agriculture of Russia on June 14, 2017. According to the draft data sheet, public discussions and independent anti-corruption examination are currently held regarding the text of the draft regulatory legal act.

Concluding remarks

IUU fishing is a major problem in capture fisheries and poses a serious threat to the effective conservation and management of many fish stocks. The implementation of the PSMA should incur a number of benefits listed on the FAO website. The most important is that PSMA implementation has a positive influence on fisheries conservation and management by contributing to more accurate and comprehensive data collection, enhancing vessel reporting to national administrations and RFMOs, permitting assessments concerning the extent to which vessels have complied with operational authorizations and licenses to fish, promoting regional fisheries cooperation and harmonization among coastal States and RFMO members, and facilitating the more rigorous implementation of international labour, safety and pollution standards on vessels.

Under PSMA, fish caught from IUU fishing activities will be prevented from reaching national and international markets. By making it more difficult to market fish through the application of port State measures, the economic incentive to engage in IUU fishing is reduced. To make the PSMA implementation successful, the distant water fishing nations should join and implement other treaties developed and supported by UN FAO: flag State responsibilities under the UN Convention on the Law of the Sea to regulate domestically flagged fishing vessels in the areas beyond their national jurisdiction and in foreign exclusive economic zones, market states responsibilities to create economic disincentives for IUU fishing and using market tools to detect illegal seafood moving along the supply chain, including the FAO Voluntary Guidelines for Catch Documentation Schemes, and coastal States obligations to regulate vessels in the domestic exclusive economic zone. After all NPAFC member countries become Parties to the PSMA, ENFO could consider the next steps to promote combating IUU fishing including mentioned treaties and tools.