# Guidelines for implementing port State Measures: national policy, legal and institutional aspects

Regional Training on PSM Implementation in Southeast Asia SEAFDEC

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## **INTRODUCTION**

#### **POLICY**

- Setting fisheries PSM as a minimum standard
- Integration with and development of relevant policies, plans or strategies (e.g. NPOA-IUU, MCS strategy or plan)

#### **LEGAL**

 Conformity and strong linkages between national laws, regulations, and practices and the Agreement

#### **INSTITUTIONAL**

- Capacity and cooperation
- Cost-Benefit Analysis

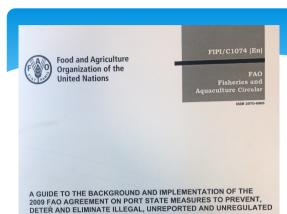


# Guidelines/checklists for implementing port State Measures: policy, legal, institutional

### **FIRST STEPS**

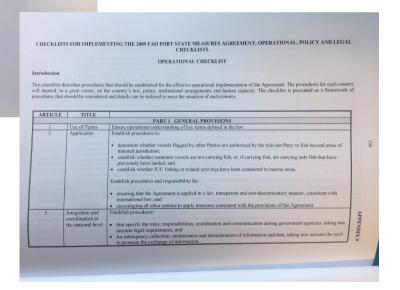
Identify gaps and constraints in:

- POLICY; do relevant policies, plans and strategies exist?
- LAW; do they underpin PSM?
- INSTITUTIONS; adequate mandates, interagency cooperation?
- OPERATIONS; sufficient trained personnel and operating procedures
- INFORMATION; required, collected, integrated into data bases and exchanged?
- CAPACITY DEVELOPMENT; are there long-term programs, is assistance available?



### **FIRST STEPS**

- Use guidelines/checklists to identify steps that need to be taken
- Develop a strategy for the implementation of the PSMA



#### WHAT IS A POLICY?

- A principle or rule to guide decisions and achieve rational outcomes
- A set of actions carried out by public or private entities, somehow related to a collective problem

A policy should drive the development and implementation:

- ■a principle or rule to prioritize activities and to achieve rational outcomes; and
- ■a framework for the development and adoption of relevant laws, institutions and procedures.

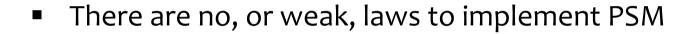
# INITIAL REGIONAL CONSIDERATIONS

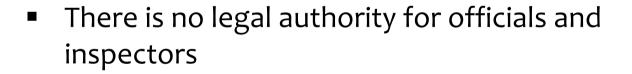
- Cost/benefit to the region
- Agree on process, priorities, institutions for development and implementation
- Agree on scope; e.g. considerations of PSMA or other minimum standards
  - applicability
  - adequacy of standards
  - different measures need

# INITIAL NATIONAL CONSIDERATIONS

- National legislation and procedures
- Integration/coordination
- Discharging the role as a flag State
- Identify priority needs for assistance, training and cooperation

#### **POSSIBLE CONSTRAINTS**

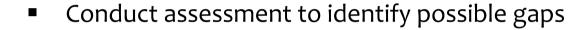




The penalties are low



#### **INITIAL CONSIDERATIONS**



- Consider whether to implement minimum standards in PSMA or more stringent standards
- Consider whether to proceed by law or regulations or both



#### **BASIC FRAMEWORK**



- Definitions
- Designated port(s)
- Requirements for port entry
- Denial of port entry
- Denial of port use after entry
- Inspection procedures and results
- Transmittal of inspection results

#### **DEFINITIONS**

- Are they consistent with the PSMA? (e.g. «vessel», «fishing related activities»)
- International Plan of Action to Prevent, Deter and Eliminate Ilegal,
   Unreported and Unregulated Fishing (e.g. Definition of IUU fishing)



### **DESIGNATION OF PORTS**

 Power to designate ports that may be used by foreign vessels

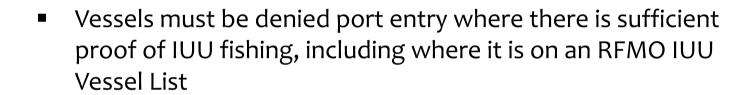


# REQUIREMENTS FOR PORT ENTRY/USE

- Vessels must be obliged to request entry and provide required information
- Country must issue written authorization
- Vessel (or agent) must be obliged to present authorization upon arrival



#### **DENIAL OF PORT ENTRY**





 However, entry may be authorized exclusively for inspection and other actions as effective as denial of port entry

# DENIAL OF USE OF PORT AFTER ENTRY

(no inspection required)





- No confirmation from the flag State, if requested
- Reasonable grounds to believe IUU fishing, unless rebutted by the vessel



# DENIAL OF USE OF PORT AFTER ENTRY

(following an inspection)



 Reasonable grounds to believe IUU fishing has taken place

# INSPECTION PROCEDURES AND RESULTS

Procedures to be followed for inspection, report of results to be provided

# TRANSMITTAL OF INSPECTION RESULTS

 Transmittal of inspection results to flag State, coastal States, national State of master, RFMOs



#### **Penalties**

- For illegal use of port by vessel
- For assisting in the use of port by suppliers etc., where use has been denied

### Role as flag State

■ Implement requirements as appropriate — e.g. require operators to cooperate with port inspectors in other countries



# Integration and coordination

- Cross-authorization of officers for fisheries enforcement
- MOUs, other arrangements between governmental agencies
- Protocols for information exchange



### **General**

- Appointment, responsibilities of enforcement officers and inspectors
- Functions of inspectors for purposes of enforcement
- Duties of master, crew
- Information given to be true, complete and correct



#### **General**

- Presumption that fish on board has been caught as a result of IUU fishing where information submitted prior to entry is false, misleading or incorrect
- Agents to be responsible for facilitating offences, or having a conflict of interest
- Include a general mechanism for implementing binding measures of RFMOs



### **Institutional Constraints**

- No clear mandate
- Insufficient capacity
- Poor inter-agency cooperation
- Poor information, communication mechanisms
- Financial needs



# Interagency cooperation

Cooperation and responsibilities between agencies to be formalized, so there is no question about who has the authority for, e.g.:

- Decision making
- Inspections
- Designated compliance and enforcement activities
- Legal decisions



# **Communication and information exchange**

A strategy on communication and information exchange to ensure that officials or inspectors can swiftly access information such as:

- Requirements of flag States and coastal States for authorizations for fishing or related activities
- RFMO conservation and management measures
- Lists of contacts/network of other States, RFMOs, FAO
- Vessel information, including IUU Vessel Lists



### **Cost/benefit for institutions - factors**

- The cost of operations for port State measures
- The value of fines and penalties for IUU fishing
- The value of sustainability of the resource
- The loss of revenue for denial of use of port

