

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

Regional Training on PSM Implementation in Southeast Asia

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Philippe Cacaud
FAO Consultant



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



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?



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A GUIDE TO THE BACKGROUND AND IMPLEMENTATION OF THE
2009 FAO AGREEMENT ON PORT STATE MEASURES TO PREVENT,
DETERMINE AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED
FISHING

FIRST STEPS

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

CHECKLISTS FOR IMPLEMENTING THE 2009 FAO PORT STATE MEASURES AGREEMENT: OPERATIONAL, POLICY AND LEGAL CHECKLISTS

OPERATIONAL CHECKLIST

Introduction

This checklist describes procedures that should be established for the effective operational implementation of the Agreement. The procedures for each country will depend, to a great extent, on the country's law, policy, institutional arrangements and human capacity. The checklist is presented as a framework of procedures that should be considered and details can be tailored to meet the situation of each country.

ARTICLE	TITLE	
PART 1 GENERAL PROVISIONS		
1	Use of Terms	Ensure operational understanding of key terms defined in the law.
3	Application	Establish procedures to: <ul style="list-style-type: none">• determine whether vessels flagged by other Parties are authorized by the relevant Party to fish beyond areas of national jurisdiction;• establish whether container vessels are not carrying fish, or, if carrying fish, are carrying only fish that have previously been landed, and• establish whether IUU fishing or related activities have been conducted in marine areas. Establish procedures and responsibility for: <ul style="list-style-type: none">• ensuring that the Agreement is applied in a fair, transparent and non-discriminatory manner, consistent with international law; and• encouraging all other entities to apply measures consistent with the provisions of the Agreement.
5	Integration and coordination at the national level	Establish procedures: <ul style="list-style-type: none">• that specify the roles, responsibilities, coordination and communication among government agencies, taking into account legal requirements; and• for interagency collection, maintenance and dissemination of information and data, taking into account the need to promote the exchange of information.

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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

- There are no, or weak, laws to implement PSM
- There is no legal authority for officials and inspectors
- The penalties are low



INITIAL CONSIDERATIONS

- Conduct assessment to identify possible gaps
- 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 Illegal, 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

- Vessels must be denied port entry where there is sufficient proof of IUU fishing, including where it is on an RFMO IUU Vessel List
- 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 authorization by flag State and/or coastal state
- Clear evidence of violations within waters of a coastal State
- 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

Thank you for your attention

