GAP ANALYSIS: COMPARING CCAMLR’s PORT STATE MEASURES WITH THOSE IN THE FAO AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

Submitted by ASOC
Gap Analysis: Comparing CCAMLR’s Port State Measures With Those in the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Abstract

ASOC is submitting for the consideration of the Commission and of the Standing Committee on Implementation and Compliance (SCIC) the preliminary results of research conducted by the Pew Environment Group (PEG) to compare the port State measures established by ten Regional Fisheries Management Organizations (RFMOs) with the port State measures established by the FAO Port State Measures Agreement (PSMA). Preliminary findings of this research indicate that the port State measures of these RFMOs cannot yet compare with the PSMA standards: they are not sufficiently comprehensive to cover all IUU fishing activity; they are not effective enough in deterring the activities of IUU operators; and they do not establish adequate requirements to ensure proper transparency and information sharing among all concerned actors.

CCAMLR, despite having a number of effective port State measures, needs to improve its regime. In particular, it should strengthen its provisions currently applicable to toothfish vessels by prohibiting any form of port use, including services, to any IUU vessel, and extending these provisions to vessels engaged in other fisheries. It is important that CCAMLR aligns its measures with those of the PSMA and encourages its members to expeditiously sign and ratify the agreement, in order to address difficulties of comparability of current port schemes, avoid unnecessary difficulties for complying operators and prevent gaps at the global level.

The document attached presents preliminary findings from this gap analysis for CCAMLR, based on publicly available information up to 31 July 2010. PEG will publish a final report with information on all researched RFMOs in early 2011. PEG and ASOC welcome any information from CCAMLR, its Members and observers, which verifies, supplements or contradicts information presented in this preliminary report.
Gap Analysis: Comparing CCAMLR’s Port State Measures With Those in the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Preliminary Findings

The Pew Environment Group has conducted a gap analysis comparing the port State measures (PSMs) established by 10 Regional Fisheries Management Organizations (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 assesses the extent to which measures adopted by these RFMOs meet the PSMA’s standards, and identifies those aspects which need to be further developed by each RFMO in order that their measures become aligned with the Agreement’s. The newly adopted PSMA represents 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 and specifically in helping to combat illegal, unreported and unregulated (IUU) fishing on the high seas.

This document presents the preliminary findings of this gap analysis for CCAMLR based on information that was publicly available up to 31 July 2010. We invite CCAMLR Contracting Parties (CPs) to assist in refining this analysis by commenting on the information provided and providing additional information where appropriate. The preliminary aim of this exercise is to identify specific gaps in CCAMLR conservation measures in relation to the PSMA, and make clear recommendations to CCAMLR for improvement. The long-term aim is to provide information to States and RFMOs to help eliminate IUU fishing. A full report on this study, with specific conclusions and recommendations for each of the RFMOs analysed, will be released early in 2011.

The Port State Measures Agreement and RFMOs

In November 2009, the FAO adopted the PSMA, providing 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.

The Pew Environment Group strongly supports the earliest possible entry into force of the Agreement and welcomes the fact that 15 States and the European Union have signed it. The PSMA establishes the current international minimum standard on PSMs targeting IUU fishing, which should be followed by States even prior to the Agreement’s official entry into force. In addition to each State’s individual efforts to ratify the Agreement, steps should be taken within the framework of RFMOs to ensure that PSMs adopted in the regional context are adjusted to meet the new international minimum standard. PSMs will only be truly effective in combating IUU fishing if they are enforced in a uniform manner globally.

RFMOs and the PSMA can reinforce each other. Not only are RFMOs essential to the effective implementation of the PSMA in a regional context, but the PSMA, if implemented by a critical number of States, can support the role of RFMOs by improving overall compliance with RFMO conservation and management measures.
Undertaking a gap analysis: what is missing from RFMO rules?

The study conducted by the Pew Environment Group focuses on 10 RFMOs that have adopted regulations, currently in force and published, that include some form of PSM.\(^1\)

In order to compare the measures adopted by each of the reviewed RFMOs with the PSMA’s measures, a review of the Agreement, including its annexes, was conducted and its provisions deconstructed into more than 100 obligations. Subsequently, all potentially relevant RFMO measures were reviewed and those that contain PSMs applicable to fishing or fishing-related activities were compared, obligation by obligation, with the obligations provided by the PSMA. In order to assess the alignment between RFMO measures and those contained in the PSMA, we have taken into account the objective pursued by the PSMA obligation, the effect of each RFMO measure in its regulatory context, and the clarity of the RFMO measures analysed.

To facilitate communicating the results of this research, we have systematised our conclusions under a number of PSM categories. These categories correspond closely to the main parts of the PSMA: scope; cooperation and information-sharing; port-designation and prior-to-entry information; denial of entry and port use; inspections; and the role of the flag State. To illustrate the alignment between RFMO measures and the PSMA’s, we have allocated a grade from 0 to 10 showing our assessment of the degree of conformity on each measure. See Figure 1 for a representation of preliminary results for CCAMLR. 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.

The study shows that RFMO measures are rarely an exact match of a PSMA provision. However, a comparison of the measures in place in the different regimes enables both general and specific conclusions about the current state of development of PSMs at the regional level. We are aware that RFMOs have their own particularities, and face challenges that make their regulatory systems, including PSMs, different from each other. However, in analysing PSMs developed by 10 different RFMOs, we have tried to keep our analysis as objective as possible, focusing on the degree of conformity of such rules with the PSMA. It is undeniable that IUU fishing on the high seas is a common challenge for all RFMOs. The more the RFMOs apply a common standard on PSMs, the better they will be able to face this challenge. The comparison conducted under this analysis indicates the principal steps that RFMOs should take if they are to reach the international minimum standard provided by the PSMA.

Preliminary findings of this research indicate that the PSMs of most RFMOs have not yet reached the standard contained in the PSMA. Most importantly, RFMOs have not comprehensively covered all IUU fishing activity, their PSMs are not sufficiently effective in deterring the IUU operators, and their requirements on transparency and information sharing are inadequate. In general, the study finds that there are several aspects of port State controls that are especially under-regulated through RFMO regimes, such as the denial of port entry, refusal of port services, and minimum standards for inspections. Full implementation of the PSMA by States and RFMOs will significantly increase the feasibility of truly combating IUU fishing.

Preliminary Findings on CCAMLR’s PSMs and their alignment with the PSMA

Structure and scope. The PSMA applies to all foreign vessels calling into or present in ports of Parties to the Agreement, with some exceptions (art. 3). CCAMLR does not exempt domestic vessels from its PSMs. However, these measures follow an ad hoc approach. For instance, its most comprehensive PSM applies to toothfish vessels only. Other PSMs apply exclusively to IUU-listed vessels or to Non-Contracting Party (NCP) vessels that have been sighted fishing in the Convention Area.\(^2\) CCAMLR does not provide a comprehensive definition of ‘fishing vessel’ (i.e. one independent of the species harvested by the vessel), so it is not clear which would be subject to the application of PSMs.\(^3\)

---

\(^{1}\) 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 (ICAT); 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).


\(^{3}\) The only definition of ‘fishing vessel’ is in a footnote in CM 10-03 (2009) (hereinafter CM 10-03) and is applicable to toothfish vessels only. This definition includes vessels used for “fishing-related activities”, however a definition of such activities is missing.
CCAMLR has not developed a uniform definition of ‘fishing’, ‘fishing-related activities’ and ‘IUU fishing’, in contrast to art. 1 of the PSMA. 4 CCAMLR’s description of the situations that would trigger the inclusion of a vessel on CCAMLR’s IUU vessel lists, and its description of IUU fishing generally, 5 are less comprehensive than paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), referenced by art. 1 e) of the PSMA.

Information exchange/information systems and cooperation. CCAMLR requires the Executive Secretary to place CCAMLR’s IUU vessel lists onto the public section of the CCAMLR website, and to communicate these lists to the FAO, other RFMOs and cooperating NCPs.6 These obligations are consistent with the PSMA provisions requiring communication mechanisms that allow for direct electronic exchange of information (art. 16 and Annex D). The Catch Documentation Scheme (CDS) for toothfish also requires direct electronic exchange of information on landings and transshipments of toothfish.7

The PSMA includes detailed obligations for port States to notify relevant parties of the different actions taken in implementing the Agreement. CCAMLR Conservation Measures (CMs) include various obligations to notify, but this is done in a non-systematic manner. For certain CMs, it is difficult at times to determine exactly which obligation to notify applies in which case, often because there are several cross-references between provisions in the CMs. For example, obligations to notify in CM 10-07 seem to apply not only to NCP vessels that have been sighted engaging in fishing activities in the Convention Area but also to vessels that have been denied port access in accordance with CM 10-03. However, CM 10-03 also has its own notification requirements, which may overlap with those of CM 10-07. These cross-references make it difficult to understand the precise effect of each provision.8

Unfortunately, although the obligations to notify relevant parties come generally quite close to the PSMA’s provisions, it is unclear whether they apply to the same situations as the PSMA’s, in particular because of the scattering of these obligations among different CMs.

Designation and capacity of ports. CCAMLR does not include any obligation for port States to designate ports for entry of vessels, nor to ensure that ports of CPs 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, allowing sufficient time to allow the port State to examine the information. CCAMLR requires prior-to-entry information, including most elements of Annex A of the PSMA and some additional elements, but for toothfish vessels only9.

Denial of entry. One of the central provisions of the PSMA is the obligation to deny entry into port to IUU vessels except for the purposes of inspecting and taking effective action against these vessels. CCAMLR meets the PSMA standard with regard to vessels included on CCAMLR’s NCP and CP IUU vessel lists.10 Comparable measures apply to toothfish vessels, which must confirm that they have complied with CCAMLR CM before entry into port is authorized.11 CCAMLR requires that the port State shall carry out mandatory inspections of all toothfish vessels once in port and prohibit landing and transshipment when inspection reveals that IUU fishing has occurred.12 In addition, CPs may also confiscate toothfish catches that do not comply with the requirements of the Catch Documentation Scheme (CDS).13

With regards to NCP vessels sighted fishing in the CCAMLR Area, CPs are required to inspect them but there is no obligation to deny port entry to these vessels or take alternative enforcement action.14

---

4 CMs on IUU vessel lists generally refer to “fishing activities”, although the description of IUU fishing in both measures includes transshipping, support and resupply. CM 10-06:5 (v); CM 10-07:9 (iii).
5 CM 10-03:3.
6 CM 10-06:19 and 20; CM 10-07:23 and 24.
7 CM 10-05 (2009) (hereinafter CM 10-05), Annex 10-05/A.
8 See also CM 10-07: 4-7; CM 10-03:3 and 4. It is unclear whether these obligations apply to actions taken in respect of vessels on CCAMLR’s IUU vessel lists, especially those on the CP IUU vessel list that are not toothfish vessels.
9 Vessel operator; ships agent while in port; beneficial owner; fishing gear used; and declarations of IUU fishing and compliance. CM 10-03: Annex A.
10 CM 10-06:18 (iv); CM 10-07:22 (iii).
11 CM 10-03:2.
12 CM 10-05:19 and 20.
13 CM 10-03:1,2 and 3; CM 10-05: 18 and 20.
14 CM 10-07:5.
Port use. CCAMLR requires CPs to deny support to IUU-listed vessels that have been allowed entry into port, although only “where possible”. This expression significantly weakens the obligation to deny port services, compared with the PSMA. CPs are also to refuse landings or transshipments from these vessels, but only if “the origin of the catch cannot be adequately verified”. This represents a less stringent standard than the PSMA’s, which considers that inclusion on an IUU vessel list is sufficient proof of IUU fishing and simply prohibits any kind of port use to such vessels (art. 9.6).

Regarding non-IUU listed vessels, CCAMLR only prohibits landing and transshipment from toothfish vessels that have fished in contravention of CCAMLR CMs, and from NCP vessels that have been sighted engaging in fishing activities in the Convention Area. Neither of these measures requires denial of port services other than landing and transshipment, thus setting a weaker standard than the PSMA.

Inspections. CCAMLR’s CMs establish a number of obligations to inspect vessels that are consistent with the PSMA’s priorities for inspection. It is mandatory that CPs inspect all vessels carrying toothfish that enter their ports.

Regarding standards for inspections, the PSMA contains very specific requirements for inspection procedures and the inspection report. The only CCAMLR CM to include requirements for both procedures and reporting applies to toothfish vessels only. However, there is a specific provision for NCP vessels sighted fishing in the CCAMLR Area, which indicates that these vessels shall be inspected following the same procedures as inspections of toothfish vessels. With regard to IUU-listed vessels, CCAMLR CMs establish that inspections of these vessels shall be conducted “in accordance with relevant CMs.” It is not clear whether this refers to the inspection procedures of CM 10-03 for toothfish.

CCAMLR has a System of Inspection (SOI) designed for inspections at sea that develops inspection procedures, among other aspects. Port inspections of toothfish vessels should be guided by “relevant provisions” of the SOI. However, it is not clear precisely which aspects of the SOI apply to inspections at port.

CCAMLR’s pro forma for port inspection reports for toothfish vessels is quite comprehensive. However, as explained above, it is not clear whether this pro forma is required for all inspections conducted in CCAMLR ports. With regards to the training of port inspectors, which is required by the PSMA, CCAMLR has not developed any guidelines on the matter.

Flag State. Art. 20 of the PSMA includes a set of flag State obligations to facilitate the implementation of PSMs, including follow-up actions after an inspection report revealing IUU fishing. CCAMLR has developed some provisions requiring cooperation between flag States and port States in relation to toothfish vessels, but these fall short of the PSMA standard. In addition, there is no clear indication that the flag State is to investigate and take enforcement action in all cases where a port inspection report reveals a violation of CCAMLR CMs. While the CM on NCP IUU-listed vessels establishes clear obligations for the flag State to take action against a NCP vessel that has been sighted fishing in the CCAMLR Area, it is not clear whether this provision also applies to other cases, such as NCP IUU-listed vessels.

Ten steps to CCAMLR compliance with the PSMA

1. Adapt CCAMLR’s port State control scheme to the structure of the PSMA to facilitate harmonisation of PSMs at a global level.

2. Establish a minimum set of PSMs, aligned with those in the PSMA, that are applicable to all vessels entering or in CCAMLR CP ports.

---

15 CMs 10-06:18 (v) b; CM 10-07: 22 (iv) b.
16 CM 10-03:3; CM 10-07:4 and 5.
17 See arts. 12.2 and 12.3 PSMA; CM 10-03:1; CM 10-07: 4, 5 and 22 (iii); CM 10-06: 18 (iv).
18 CM 10-07:5.
19 CM 10-06: 18 (iv); CM 10-07: 22 (iii).
20 CM 10-03:2.
21 i.e. CM 10-03:3, which requires the port State to cooperate with the flag State “in taking such appropriate action as is required to investigate the alleged infringement”.
22 CM 10-07:7 requires CCAMLR’s Executive Secretary to request the flag State to take measures to ensure that the vessel desists from any activities that undermine the effectiveness of CCAMLR CMs.
3. Adopt uniform definitions of ‘vessel’, ‘IUU fishing’, ‘fishing’ and ‘fishing-related activities’ that are applicable to all CCAMLR measures related to compliance. These definitions should be at least as comprehensive as the PSMA’s.

4. Establish clear rules to notify relevant parties of all actions taken by port States in respect of vessels, as required by the PSMA. Systematise these rules so that they are easy to identify.

5. Adopt a measure requiring CCAMLR CPs to designate and publicise ports of entry, and ensure that these ports have the capacity to conduct inspections.

6. Adopt a measure requiring that all vessels provide advance information before calling into a port (as established by CM 10-03), not just vessels carrying toothfish.

7. Require CCAMLR CPs to deny port entry to non-IUU-listed vessels carrying any species covered by CCAMLR if there is sufficient proof of IUU fishing, as required by arts. 9.4 and 9.5 of the PSMA. Clearly establish that such vessels should only be allowed port entry for the purposes of inspection and effective action.

8. Establish a general and unconditional prohibition of landings or transshipments for all vessels included in CCAMLR’s IUU vessel lists. Make sure that for other cases of IUU fishing, all kinds of non-emergency port services are denied to IUU fishing vessels.

9. Establish a uniform scheme for port inspection procedures that applies to all inspections at CP ports, following the requirements of the PSMA. Develop guidelines for the training of port inspectors in accordance with arts. 17 and Annex E of the PSMA.

10. Establish clear obligations 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 the PSMA.