

PORT STATE MEASURES: A WAY FORWARD

Introduction

1. At the 13th Annual Meeting of the Extended Commission, CCSBT Members, Cooperating Non Members and Observers recognized the critical importance of adopting and fully implementing an integrated package of compliance measures which would ensure the elimination of unreported catch and provide accurate data as a basis for proper stock assessments.
2. While three measures were adopted, namely, a catch documentation scheme (CDS), a vessel monitoring system (VMS), and regulation of transshipments by large scale fishing vessels, other important measures that form part of the total monitoring, control and surveillance (MCS) package, were unable to be addressed due to time constraints. Those unaddressed measures included an independent observer program, port state measures, boarding and inspection and a vessel register.
3. The purpose of this paper is to introduce and facilitate discussion on the implementation of port state measures (PSM) in the CCSBT at the 14th session of the CCSBT.

Port State Measures – A Brief Background

4. Port State control has a well established record in merchant shipping, where regimes are generally aimed at ensuring mandatory inspection of vessels as they enter ports. These regimes are tied to internationally agreed rules and standards for shipping, especially those developed through the International Maritime Organization (IMO) and the International Labour Organization (ILO).
5. Increased interest in the positive use of port State jurisdiction in the context of fishing has developed as it is seen as an effective weapon against illegal, unreported and unregulated (IUU) fishing operations. The wide discretion of States to exercise jurisdiction over vessels voluntarily present in their ports is recognized in article 23 of the UN Fish Stocks Agreement (UNFSA). Article 23 acknowledges that a port State “has the right and the duty” to take non-discriminatory measures in order to “promote effectiveness of sub-regional, regional and global conservation and management measures”. Although there is doubt as to whether this provision extends current international law, it is the first time that a global agreement has made reference to the existence of a positive duty on port States to act.
6. Active use of port State control, as a principle for the effective conservation and management of fish stocks, is reflected in the FAO’s International Plan of Action on IUU Fishing (IPOA-IUU) and increasingly in State practice. It is against this background that in 2004, agreement was reached within FAO on a non binding international instrument (FAO Port State Model Scheme) describing minimum port state measures that should be applied either through adoption of regional memoranda of understanding through RFMO’s, or at the level of individual port states.

The FAO Model Scheme

7. The FAO Model Scheme recommends that States designate ports for access to foreign vessels that are “adequately prepared for inspections”, and require vessels to provide prior notice of port access, which should include minimum information in order to facilitate inspections (e.g. vessel identification, fishing license, vessel monitoring systems, information on catch and fishing trip). It also sets out standards for port inspections, which include communication with the flag State and the sharing of port inspection information among States¹.
8. The UN General Assembly in its Fisheries resolutions of 2005 (resolution 60/31) and 2006 (resolution 61/35), urged states to cooperate at regional levels to apply the FAO Model Scheme. Furthermore the momentum for developing legally binding instruments on port State measures has intensified with the Twenty – Seventh Session of the FAO Committee on Fisheries (COFI) agreeing to develop such an instrument through consultation with an Expert Consultation (scheduled for September 2007) and a Technical Consultation (scheduled for the first half of 2008). The text of the agreement will be presented to the Twenty Eighth COFI session in 2009.
9. To date port State regimes for fishing vessels have been developed by a number of RFMOs using the FAO Model Scheme as a platform, for example, the South East Atlantic Fisheries Organization (SEAFO) and the North East Atlantic Fisheries Commission (NEAFC) have approved harmonized port state schemes.

The Western and Central Pacific Region

10. The Technical and Compliance Committee of the WCPFC, noted the resolutions of UNGA and it is hoped that the process used to develop agreement through COFI will usefully inform WCPFC as it considers how to apply the FAO model Scheme (WCPFC– TCC3- 2007/WP).
11. To date WCPFC has developed, based on information provided by its members, a gap analysis of existing port control requirements against key operational provisions of the FAO Model Scheme². This analysis has provided four key areas relevant to the development of harmonized port State standards. Those four areas are:
 - a. Transparent and easily recognizable information about designated ports of access and conditions of access;
 - b. Transparent procedures for the preparation or port inspections and port inspection reports;
 - c. Framework for exchange of port inspection information among CCMs; and

¹ The full text of the FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing is available at ftp://ftp.fao.org/FI/DOCUMENT/tc-psm/port_state_biblio.pdf

² The gaps analysis had been completed by 19 CCM's as at 31 May 2007. They were Australia, Canada, Cook Islands, Federated States of Micronesia, Fiji, Japan, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, United States of America and Vanuatu.

- d. Specific requirements tailored to verifying compliance with conservation and management measures of RFMO's and detecting IUU fishing.
12. At this stage the WCPFC has compiled a draft harmonized port State standards document for that Commissions consideration at the third annual meeting of the TCC in October 2007.

Discussion Points

13. Given the momentum for development of harmonized port state minimum standards in many regions, and in particular the progress in the Western and Central Pacific Region, for which it is noted that all members of CCSBT are also members of the WCPFC, it is timely to introduce discussions on port State measures in the CCSBT.
14. The Extended Commission of the CCSBT has directed the Compliance Committee to develop an integrated package of MCS measures for their earliest adoption and implementation. The rationale for this package is the fact that no single measure can contribute to the CCSBT achieving its objectives, it must rely on a suite of interdependent measures. Port State measures are a critical mechanism that will, amongst other things, be needed to support an effective Catch Documentation Scheme, the Transshipment Monitoring regime and the IUU Register.
15. In considering harmonized port State measures, Members and Co-operating Non-Members should give thought to:
 - Defining the IUU problems for CCSBT – Consider what the existing and potential IUU practices and/or threats are for the CCSBT's conservation and management measures.
 - Developing an integrated MCS approach in the CCSBT – consider how PSM complements other MCS measures, in particular the Catch Documentation Scheme (CDS), current reporting and information exchange protocols and practices, transshipments and landings.
 - Given that the FAO Model Scheme is a base line of minimum standards for any PSM regime, the CCSBT should consider whether those standards are adequate having regard to any peculiarities of the SBT fishery.
 - Consider what, if any, connections with WCPFC, can be made given the development of PSM concepts in that forum.
 - To the degree possible given the different timeframes, consider the outcomes of the Expert Consultation held in September 2007.

The way forward

16. The CC is invited to note that the UN General Assembly has urged States to cooperate in particular through regional and sub regional fisheries management organizations and arrangements to adopt all necessary port State measures, consistent with international law taking into account article 23 of UNFSA, particularly those minimum standards identified in the FAO Model Scheme, in order to combat illegal, unreported and unregulated fishing.
17. The CC is invited to note that Port State measures are a critical mechanism that will, amongst other things, be needed to support an effective Catch Documentation Scheme, the Transshipment Monitoring regime and the IUU Register, and is an essential element of an integrated package of MCS measures.
18. The CC is invited to promote discussion on the specific elements of PSM that may be useful for CCSBT.
19. Following discussions the CC is invited to endorse New Zealand's proposal to develop a draft PSM resolution for consideration and comment at CC3 and adoption at CCSBT15.