

# PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING (IUU FISHING)

**A report on the requirements and country readiness  
to be compliant with the PSMA**

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## INTRODUCTION

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The FishFORCE Fisheries Law Enforcement Academy (FishFORCE) was established in 2016 in order to improve the knowledge and skills of fisheries control officers/inspectors, to promote the prioritisation of fisheries crime and intelligence-led investigations and to improve prosecutions of fisheries crime in Africa and globally.

Although fisheries crime law enforcement requires traditional policing methods and tools, these must be adapted to address the specific circumstances affecting the fisheries sector. This involves a transdisciplinary approach, which includes aspects of law, criminology, police science, fisheries management, and conservation.

FishFORCE is a collaborative project between Nelson Mandela University, based in Port Elizabeth (South Africa), and the Norwegian Ministry of Foreign Affairs. It developed out of discussions with, and the receipt of assistance from, the Norwegian Fisheries Department. The initial project proposal was developed with the support of PescaDOLUS. An agreement between Nelson Mandela University and the Norwegian Ministry of Foreign Affairs was entered into on 6 June 2016 to give effect to this project.

FishFORCE's overall goals are:

- To facilitate research and innovation in the field of fisheries crime law enforcement;
- To promote the sustainable utilisation of marine living resources;
- To contribute to poverty reduction through the training of law enforcement officers; and
- To advance economic development by increasing the capacity of selected countries to investigate and prosecute fisheries crime

In order to achieve these goals, FishFORCE aims to increase the skills of fisheries law enforcement officers (LEOs) in selected developing countries so that they can effectively fulfil their legislative mandate and contribute to the successful prosecution of fisheries law offences. Although it also aims to increase investigative skills and where investigations are not the function of fisheries officers, the agencies responsible for such investigations are targeted for training.

FishFORCE's aims are also in line with the United Nation's Sustainable Development Goals (SDGs), to be achieved by 2030, which seek to promote a better world for all by tackling issues such as "poverty, inequality, climate, environmental degradation, prosperity, and peace and justice". FishFORCE primarily aids in the fulfilment of the following SDGs by addressing specific targets:

- Goal 1: No Poverty

The training and development of FCOs and other relevant law enforcement agencies will contribute to the protection of marine living resources against illegal harvesting, which in turn would make more resources available to small scale fishers. It could also contribute towards job creation in the formal sector and thus reduces poverty. The reduction of organised criminal activities in the marine environment will also promote equal rights to economic resources, including natural resources.

- Goal 2: Zero hunger

Fisheries crime threatens the sustainable use of marine living resources, particularly for those communities who rely on the ocean for sustenance. Reducing fisheries crime and bettering fisheries regulation will improve the sustainable harvest of marine living resources and thereby reduce hunger. It will also increase the productivity and incomes of small-scale food producers, in particular women, indigenous peoples and fishers.

- Goal 8: Decent work and economic growth

The training of FCOs and other LEOs will reduce organised criminal activities (where those at the pinnacle of organisations benefit most) and assist in achieving higher levels of economic activity and productivity through a focus on high-value added and labour intensity. It also allows for those in coastal communities, particularly those who have succumbed to illicit poaching syndicates, to find decent work and aid in the upliftment of the community as a whole.

- Goal 14: Life below water

The training of LEOs allows for the protection and sustainable use of marine living resources, reducing the environmental impact of poaching. Target 14.3 aims to minimise and address the impacts of ocean acidification, which is a huge threat to coral reefs.

Acidification is, however, not the only threat to corals. Other perils include overfishing, which promotes the growth of algae that compete with corals and dynamite fishing.<sup>1</sup>

A mid-term review of the FishFORCE project<sup>2</sup> found that it is important to underline that the major responsibility for curbing IUU-fishing and fisheries crime lies with the governments in the region. They should develop proactive policies that reduce the need for enforcement. It also found that, within enforcement, states should prioritise regional port state measures and monitoring and surveillance supported by intelligence that can guide the use of limited enforcement resources.

It was also reported that the use of South African ports by distant water fleets who are engaged in IUU fishing points to the need for stronger implementation of port state measures. Port state measures should be a priority as inspections in port, undertaken as multi-agency efforts, are key for addressing illicit activities in fishing in a cost-efficient manner. The number of port inspections and their effectiveness are too low in the region. The best results will be achieved if many states collaborate. According to the report, States could:

- Campaign for Angola, Tanzania and Comores to become parties to FAO's Port State Measures Agreement as these are the only remaining states in Southern Africa that are not.<sup>3</sup>
- Develop regional arrangements for collaboration on port states measures, for instance modelled on relevant elements of the Paris and Tokyo MOU agreements.<sup>4</sup>
- Make joint plans for implementation of the Port State Measures Agreement and other relevant international instruments, such as ILO instruments on working conditions on fishing vessels.
- Collaborate on training for inspections, including mentoring at work afterwards. Stop Illegal Fishing does, but it needs to be scaled up. FishFORCE has a clear role in this.

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<sup>1</sup> Kolbert *The sixth extinction: an unnatural history* (2014) 139.

<sup>2</sup> Training the front-line officers for better combat of fisheries crime. A mid-term review of the FishFORCE project at Nelson Mandela University, South Africa. Norwegian College of Fishery Science, University of Tromsø, June 2020.

<sup>3</sup> According to <http://www.fao.org/port-state-measures/background/parties-psma/en/>, Namibia, South Africa, Mozambique, Kenya, Somalia, Madagascar, Mauritius and Seychelles are state parties. A press report indicate than Tanzania may have ratified as well, though it was not confirmed by FAO at this link as of June 2020.

<sup>4</sup> See <https://www.parismou.org/> and <http://www.tokyo-mou.org/>

Being aware of the fact that various training interventions have been offered by a number of organisations, and to ensure that the correct people (target audience) are trained in the implementation of the PSMA, FishFORCE elected to prepare a report on the readiness of countries (South Africa, Namibia, Mozambique, Tanzania, Kenya, Seychelles, Madagascar, Mauritius) on the implementation of the Port States Measures Agreement, with a focus on the following questions:

- What are the requirements for a country to be compliant with the Port State Measures Agreement (PSMA)?
- What training has been offered to which country?
- What are the gaps and what should be done to get the countries up to speed?

To address these questions, the text of the PSMA was analysed, the following documents were consulted, and personal and telephonic interviews were conducted:

- The Report of the Second Meeting of the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing Santiago, Chile, 3 – 6 June 2019.<sup>5</sup>
- 18 June 2020, personal interview with Mr Chris Heinecken of CapFish.
- 20 August 2020, telephonic interview with Mr Chris Heinecken of CapFish.
- 3 September 2020, telephonic interview with Ms Kristin von Kistowski from the Food and Agricultural Organisation (FAO).
- 14 September 2020, virtual meeting with Ms Frances Craigie from Operation Phakisa, Ms Fatima Savell of DEFF and a representative from the State Security Agency.

The manner in which the Indian Ocean Tuna Commission (IOTC) deals with compliance was also considered, and in doing so the responses from the IOTC to e-mails were reviewed and analysed. The attachments and the links included in the IOTC response, as well as documents and resources from the IOTC website were also consulted.

Each question is now dealt with under a separate heading on a question/answer basis.

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<sup>5</sup> Available at <http://www.fao.org/3/ca5757en/CA5757EN.pdf>.

## What is the PSMA?

1. The Agreement on Port State Measures (PSMA) entered into force in June 2016. It is the first binding international agreement which specifically targets Illegal, Unreported and Unregulated (IUU) fishing.
2. The objective of the PSMA is to prevent, deter and eliminate IUU fishing by preventing vessels engaged in IUU fishing from using ports and landing their catches.
3. The PSMA applies to fishing and fisheries related activities,<sup>6</sup> including transshipment in areas within and beyond national jurisdiction and to vessels used for fishing or fishing related activities.<sup>7</sup>
4. The PSMA has a minimum set of standards which applies to fishing vessels wanting to enter into a designated port of a State which is different to their flag State.
5. These minimum set of standards regulate a sequence of events; a vessel requesting entry into a port, the actual entry into port, inspections and follow-up actions by the port State.
6. Under certain circumstances, States are entitled to deny a vessel entry into port and the use thereof without inspection.
7. The PSMA also identifies the role of flag States and assistance to developing States.

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<sup>6</sup> Article 1(d): 'fishing related activities' means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea.

<sup>7</sup> Swan, J in Verification and Implementation – A Collection of Analysis on International Agreements for Security and Development (2019) Chapter 5.

8. Regional Fisheries Management Organisations (RFMOs) have also adopted legally binding Port State Measures (PSM) as Conservation and Management Measures (CMMs).
  9. In 2010 the Indian Ocean Tuna Commission (IOTC) adopted Resolution 10/11 on Port State Measures, which is very similar to the PSMA. Resolution 10/11 is superseded by Resolution 16/11 of 2016 and is often referred to as the PSMR. The PSMR regulates tuna and tuna-like fisheries.
  10. As a Party to either the PSMA or a member of a particular RFMO, or both, countries have a legal obligation to develop legislation on Port State Measures and to put procedures in place to implement and support the legislation.
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## What are the requirements for a country to be PSMA compliant?

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11. It is important to note that “compliance” is rooted in various international agreements and Parties must fulfil their duties under international law – for example:
  - 11.1. 1995 FAO Compliance Agreement (Article 3.1a): “Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.”
  - 11.2. The term “compliance” therefore is much wider than the IOTC requirements and all compliance obligations stemming from relevant international legal frameworks must always be considered by Parties.
12. For the purpose of this report, compliance is considered in terms of the PSMA. The report also looks at how the IOTC deals with compliance in terms of the PSMR.
13. Parties to the PSMA must implement the minimum standards of the PSMA in their national legislation and these provisions must be applied to foreign vessels seeking entry into their ports or while they are in their ports, in other words – Port State Control Measures.
14. These operational requirements of the PSMA may already be general practice in certain countries and include:
  - 14.1. the examination of pre-arrival information to screen arriving vessels for indications of IUU fishing activity;
  - 14.2. conducting a thorough Port State Measures inspection; and
  - 14.3. steps to be taken after the inspection.
15. The following requirements must be implemented in national legislation.

15.1. Designation of ports. (Article 7)

Parties shall designate and publicise the ports to which vessels may request entry in terms of the PSMA. Parties must provide a list of designated ports to the FAO who will then publish these lists. Parties must also, to the greatest extent possible, ensure that these designated ports have the capacity to conduct inspections in terms of the PSMA. This designation should be done by way of a legal mechanisms, for instance a Ministerial Notice.

15.2. Advance request for port entry. (Article 8)

Parties must require, as a minimum standard, that the required information that is requested in the Annex of the PSMA is provided before granting entry to a vessel in its port. This must be done well in advance to allow for sufficient examination of the information. The responsibility for receiving the request for port entry and the required information should be designated to a competent authority.

15.3. Port entry, authorisation or denial. (Article 9).

Once a port State has received the information pursuant to Article 8, together with other information, as it may need to determine if a vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each Party shall decide whether to authorise or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

- In the case of authorisation of entry, the master of the vessel or the vessel's representative shall be required to present the authorisation for entry to the competent authorities of the Party upon the vessel's arrival at port. (Article 9.1)
- In the case of denial of entry, each Party shall communicate its decision taken, pursuant to paragraph 1 of Article 8, to the flag State of the vessel and, as appropriate and to the extent possible, to relevant coastal States, Regional Fisheries

Management Organisations (RFMOs) and other international organisations. (Article 9.2)

- 15.4. In short, the PSMA therefore stands on three legs: advance request for information, inspection, and communication amongst Parties.
16. It should be noted that it is not the role of the FAO to assess compliance but for the countries to sanction those countries that are non-compliant.
17. The FAO is in the process of setting up a global information system that will include inspections reports from countries. These historical reports will serve as a risk assessment tool for countries. The setting up of this global information system is a long process and needs agreement from all member countries.

*The case of the FV Premier which included many countries in West and East Africa is a very good example of PSM working in practise when used actively regionally (attached). The information was supplied by Mr Per-Erik Bergh, CEO of Fish-i-Africa.*

## Training offered to each country<sup>8</sup>

The FAO delivers technical assistance and capacity development through three different mechanisms:<sup>9</sup>

18. **Technical Cooperation Programmes (TCPs)** which provide assistance in support of activities to ensure adoption and implementation of the PSMA as well as activities related to the wider context of addressing IUU fishing. The TCPs have supported 37 countries since 2015.
19. **FAO's Global Capacity Development Programme** which supports the implementation of the PSMA and other complementary international agreements, instruments and regional mechanisms to combat IUU fishing. This programme started in 2017 and all projects aim to improve countries' capacity to effectively implement Port State Measures (PSMs) and complementary Monitoring, Control and Surveillance (MCS) operations, measures and tools to combat IUU fishing.<sup>10</sup>
  - 19.1. The programme implements different programme elements in each country depending on a country's state of advancement in the adoption and implementation of PSMA provisions. It comprises of 11 projects with funding amounting to approximately 17 USD million from the EU, Iceland, Norway, the Republic of Korea, Spain, Sweden, and the United States of America (USA).

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<sup>8</sup> Additional information and documents are available at:  
 PSMA Website: <http://www.fao.org/port-state-measures/en/>  
 IUU Fishing Website: <http://www.fao.org/iuu-fishing/en/>  
 Global Record Website: <http://www.fao.org/global-record/en/>  
 Database on PSMs: <http://www.fao.org/fishery/psm/collection/en/>

<sup>9</sup> <http://www.fao.org/port-state-measures/capacity-development/overview/en/>

<sup>10</sup> These include: conservation and management measures adopted by relevant RFMOs, the FAO Voluntary Guidelines for Flag State Performance, the International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the United Nations Fish Stocks Agreement, other bilateral agreements, market access measures, including the FAO Voluntary Guidelines for Catch Documentation Schemes.

19.2. The projects provide assistance with:

- strengthening national policy and legislative frameworks;
- formulating and/or revising relevant fisheries policies, laws and by-laws;
- strengthening MCS compliance and enforcement institutions and systems;
- capacity development to improve both flag State responsibilities as well as port State control functions;
- performing inspections in port and to take action more effectively against persons and entities engaged in IUU fishing; and
- where appropriate, implementing market access measures, for example catch documentation and traceability schemes.<sup>11</sup>

The following capacity development table on FAO's Global PSMA Capacity Development Programme was provided by the FAO (April 2020)

**Table 1. National level PSMA-related capacity development support (2016-2020)**

Country	PSMA Party	National Strategy and Roadmap	In-country Assistance		International Training	
			Policy/ Legislation	MCS/ Enforcement	Legal	Port Inspection
Bahamas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Cambodia	<input type="checkbox"/>		<input type="checkbox"/>			
Colombia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Costa Rica	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Cuba	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
Dominica	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Dominican Republic		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Ecuador	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Equatorial Guinea		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FSM			<input type="checkbox"/>		<input type="checkbox"/>	
Gabon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Ghana	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
Guinea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

<sup>11</sup> Swan, J in Verification and Implementation – A Collection of Analysis on International Agreements for Security and Development (2019) Chapter 5 at p 110.

Guyana	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Indonesia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Jamaica		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Liberia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Madagascar	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Malaysia			<input type="checkbox"/>			
Maldives	<input type="checkbox"/>					
Marshall Islands			<input type="checkbox"/>		<input type="checkbox"/>	
Mauritania	<input type="checkbox"/>		<input type="checkbox"/>			<input type="checkbox"/>
Mozambique*	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Myanmar	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Namibia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Palau	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Panama	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Papua New Guinea			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Peru	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Philippines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
SVG	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
São Tome and Principe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Sierra Leone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Solomon Islands			<input type="checkbox"/>		<input type="checkbox"/>	
Somalia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
South Africa	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Sri Lanka	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sudan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
Thailand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Tonga	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Trinidad and Tobago	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Vanuatu	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
<b>Total Parties</b>	<b>33</b>	<b>29</b>	<b>14</b>	<b>10</b>	<b>12</b>	<b>7</b>
<b>Total non-Parties</b>	<b>9</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>0</b>
<b>TOTAL</b>	<b>42</b>	<b>33</b>	<b>18</b>	<b>13</b>	<b>16</b>	<b>7</b>

20. A legal review is currently being conducted in Mozambique under the Global PSMA Capacity Development Programme and a capacity development project, including work in Kenya, is to commence soon.

21. The following knowledge products, resource and operational material have been either developed or are in the process of being finalised under the Programme:

21.1. Technical Guidelines on Methodologies and Indicators for the Estimation of the Magnitude and Impact of IUU fishing (Volume 2 – Guiding Principles and Approaches). The framework of ‘best practices’ set out in these guidelines will serve as a useful frame of reference for

all involved in undertaking, commissioning or evaluating IUU estimation studies.

- 21.2. MCS Toolbox - Fisheries Control and Enforcement (to be published). The MCS Toolbox aims to provide a complete overview of the different aspects of fisheries monitoring, control and enforcement. It reviews and discusses both the competences and responsibilities of States for fisheries control and enforcement, the organization and use of MCS assets as well as the tools, mechanisms, programmes, technologies, methodologies and other solutions currently available to fisheries enforcement authorities. The document also describes procedures and practices for investigation and sanctioning of infringements and provides some considerations concerning the evaluation of the effectiveness of national legal and administrative frameworks.
- 21.3. A number of practical tools/checklists to enable States and practitioners reviewing national legislative measures concerning port, flag, port, and market State responsibilities to facilitate the development and adoption of national legislation in agreement with international standards and requirements (on-going).
- 21.4. A practical guide on the establishment of national seafood traceability systems and procedures to meet the requirements of binding and voluntary international fisheries instruments (to be developed in 2020). The purpose of the guide would be to provide countries practical guidance on how to establish the necessary processes and procedures at national level in order to, firstly, be able to verify the legality of their catches and landings within their ports, and secondly, be able to track the chain of custody of these legally caught fisheries products up to point of export or final sale.
- 21.5. Training/ capacity building programmes and related material for national and international trainings/ capacity development initiatives, including on: international fisheries law, international fisheries law enforcement, law enforcement, and port State inspections.

- 21.6. Programme activities concerning global information systems in support of the implementation of the PSMA include:
- further development and implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (Global Record);
  - a PSMA global capacity development portal;
  - the revision of FAO's global database on PSMs (Portlex), and;
  - a global information exchange system (GIES) for the transmittal, electronic exchange and publication of information.
22. The Global Record Programme is a global initiative that primarily involves States authorities and Regional Fisheries Management Organizations (RFMOs) in compiling an online comprehensive and updated repository of vessels involved in fishing operations.
23. A fully operational and public Global Record Information System for the Global Record was launched in July 2018. Since, participation in the initiative has increased steadily, particularly in the FAO Regions of Europe, North America and Latin America & Caribbean. Other FAO Regions such as Asia, Africa and the Pacific, have also shown increased participation and are expected to continue growing in the near future. To date, 60 FAO Members are participating in the Global Record, including a total of 10,745 vessels of all sizes both below and above 100 Gross Tonnage, accounting for almost half of the total eligible fleet (fleet possessing the International Maritime Organization (IMO) number). The Global Record Information System software is currently undergoing refactoring. A new, updated version will be rolled out in stages, starting from the second half of 2019. Particular attention is being given to the Information System's usability and the presentation of data to increase interest and awareness in users and the public in general. The implementation of automatic data exchange mechanisms - FLUX Transportation Layer (FLUX-TL) - is yet to begin, pending the release of the Open Source version.

24. FAO is developing a Global Portal for Capacity Development to combat IUU fishing, the objective of which is to publicize all relevant initiatives in a timely manner, and to promote synergies, complementarities and exchanges among relevant programmes, projects, and institutions, whilst avoiding overlap and duplication of interventions. A technical and graphical analysis to define the information technology requirements for the design, development and launch of the Portal has been undertaken. The analysis has also explored the type of content that should be publicized through the Portal, the roles and responsibilities for data input by various actors, and the steps to be taken by users who will be inputting data. The Second Meeting of the Parties to the PSMA (Santiago, Chile, 3-6 June 2019) welcomed the proposed design and content of the Portal and encouraged FAO to continue its development, with an anticipated launch early 2020.
25. FAO's global database on PSMs (Portlex) has been revised and now includes a new structure, including a data entry template and an improved backend beta version. The online launch is planned for early 2020. The new structure includes improved search functionalities and allows displaying country profiles, including international commitments, participation to RFMOs, National Plans of Action - IUU, active list of most relevant legislation linking to FAOLEX<sup>12</sup> records, and records on specific national legal provisions implementing PSMs. Presently there are 116 country profiles. The new structure also include RFMOs profiles and relevant RFMO information.
26. The transmittal, electronic exchange and publication of information are key components of the PSMA and essential for meeting its objective. Article 16 of the PSMA stipulates that the Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by FAO, in conjunction

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<sup>12</sup> FAOLEX is a comprehensive and up-to-date legislative and policy database, one of the world's largest electronic collection of national laws, regulations and policies on food, agriculture and natural resources management. Users of FAOLEX have direct access to the abstracts and indexing information about each text, as well as to the full text of the legislation and policies contained in the database.

with relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to the Agreement.

27. At their 2nd Meeting, the Parties to the PSMA emphasised that the GIES should be developed closely with relevant Regional Fisheries Bodies and networks, taking into account existing national and regional PSMs systems, the requirements of developing State Parties, as well as business continuity, recovery and confidentiality requirements. The Parties also recognised that the GIES should have a direct linkage to the Global Record, and provided guidance on the design and development of the System, requesting FAO to develop a prototype of the System by the third meeting of the PSMA TWG-IE, scheduled to take place in the first half of 2020.
28. Since 2017, the Programme has supported the organization and conduction of the 2nd Meeting of the Parties; two meetings of the Part 6 Working Group (2018 and 2019); two meetings of the TWG-IE (2018 and 2019), and; three meeting of the Global Record Informal Open-Ended Technical and Advisory Working Group (GRWG, 2017, 2018, 2019). Participation in the Meeting of the Parties, meetings of the Part 6 Working Group, and meetings of the TWG-IE sponsored by the Programme represent more than 70% of developing PSMA Parties attending the meetings, and 70% of the all Parties attending the meetings, indicating the importance of such support for ensuring adequate participation of developing States.
29. A **PSMA Assistance Fund** has been established as one component of assistance that is provided within the framework of Part 6 of the PSMA. Parties can access support through this fund and it supplements other sources of assistance.<sup>13</sup>

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<sup>13</sup> Draft Terms of Reference available at: [http://www.fao.org/fi/static-media/MeetingDocuments/PSMA/AdHocWG/Terms\\_Reference.pdf](http://www.fao.org/fi/static-media/MeetingDocuments/PSMA/AdHocWG/Terms_Reference.pdf)

30. There is also a PSMA Technical Working Group on Information Exchange (TWG – IE), which is an informal open-ended technical working group created by Parties to provide guidance on elaborating information exchange mechanisms and other technical matters. The TWG – IE had its first meeting in 2018.<sup>14</sup>
31. The FAO indicated<sup>15</sup> that under the FAO Global PSMA Capacity Development Programme, technical assistance has been requested by, and has been provided to, South Africa, Namibia, Mozambique and Madagascar, with activities planned for Kenya.
32. The FAO further indicated that these activities are to support the countries in the effective implementation of the PSMA, complementary international instruments and regional mechanisms to combat IUU fishing.
33. Other capacity development projects related to the implementation of Port State Measures in the region are also taking place, one such example is training undertaken by CapFish, based in Cape Town. Selection for training is typically done by means of the country nominating attendees for the training. Countries are asked to submit names of proposed attendees together with details of previous training received to avoid a situation where the same officials attend the same training.<sup>16</sup> Attendees range from harbour masters to chief compliance officers and it is important to ensure that the senior decision-makers attend training.
34. The FAO also commissioned a report<sup>17</sup> that provides a generic legislative template to be used by countries during the process of developing national legislation. This document is extremely useful and also explains the broader

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<sup>14</sup> The meeting report is available at <http://www.fao.org/3/CA0287EN/ca0287en.pdf>

<sup>15</sup> Email correspondence from Ms Kristin Von Kistowski on 16 August 2020.

<sup>16</sup> Telephonic conversation with Mr Chris Heinecken of CapFish on 20 August 2020.

<sup>17</sup> Swan, J (2016) Implementation of Port State Measures Legislative Template Framework for Procedures Role of Regional Fisheries Management Organizations. Rome, FAO available at <http://www.fao.org/3/a-i5801e.pdf>.

context of Port State Measures. It is recommended that all countries that are in the process of developing national legislation should consult this template.

35. The FAO indicated<sup>18</sup> that they are in the process of setting up a capacity development portal, funded by the European Union, to be launched by the end of the year. This portal will provide an overview of all capacity development that has occurred in an attempt not to duplicate efforts.

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<sup>18</sup> Telephonic conversation with Ms Kriston von Kistowski of the FAO on 3 September 2020

## How does the IOTC monitor compliance?

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36. The IOTC response indicated the following:

- 36.1. IOTC monitors compliance with some of the requirements of the PSM Resolution (PSMR) 16/11.
- 36.2. PSMR entered into force on 1 March 2011.
- 36.3. This is a mirror of the FAO PSMA, but is placed in the context of IOTC fisheries.
- 36.4. The IOTC Resolution has more detail pertaining to operational matters (for example, advance requests for port entry and levels and priorities for inspection and transmittal of inspection results). It has set out the role of the Secretariat and its duties.
- 36.5. Compliance reports of the last session of the Compliance Committee are accessible at <https://www.iotc.org/meetings/16th-session-compliance-committee>.

37. The PSMR was amended in 2016 to incorporate electronic reporting by vessels as well as a web-based information system; and the e-PSM application was introduced for a three-year trial period.

38. Below is an elaboration on how the IOTC responds to compliance:

- 38.1. In the context of IOTC, fisheries, compliance is monitored by IOTC with "some of" the requirements of Resolution 16/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IOTC PSMR) which supersedes IOTC Resolution 10/11 on PSMR.
- 38.2. Resolution 16/11 is largely a reproduction of the PSMA, but in the context of IOTC fisheries.
- 38.3. The fisheries administrations of the coastal Contracting Party or cooperating Non-Contracting Party (CPC) of the IOTC, where foreign

fishing vessels offload tuna and tuna like species, are responsible for the implementation of Resolution 16/11.

- 38.4. Resolution 16/11 forms part of a number of Conservation and Management Measures (CMMs) adopted by the IOTC .
- 38.5. IOTC Resolutions are binding on the Commission's members (unless there is a specific objection on the part of a member State).
- 38.6. Member States are required to ensure that action is taken under their respective national legislation to effect binding resolutions and to impose adequate penalties for violations thereof.
- 38.7. Note, unlike resolutions, recommendations are not binding and rely on voluntary implementation.
- 38.8. A Compliance Committee (CoC), formed in 2003, reviews member States' compliance with all CMMs and meets annually.
- 38.9. Meeting pages of past CoC are available at:  
[https://www.iotc.org/meetings/search?s=&field\\_meeting\\_tid\\_i18n=110&field\\_meeting\\_year\\_tid=All](https://www.iotc.org/meetings/search?s=&field_meeting_tid_i18n=110&field_meeting_year_tid=All).

## Compliance in terms of Resolution 16/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU Fishing)

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39. The objective of this Resolution is to prevent, deter and eliminate IUU fishing through the implementation of effective Port State Measures to control the harvest of fish caught in the IOTC area, and thereby to ensure the long-term conservation and sustainable use of these resources and marine ecosystems.
40. The main flag State's responsibility is to ensure that vessels do not engage in IUU fishing.
41. Compliance monitoring is done by means of a questionnaire which is circulated by the Secretariat.<sup>19</sup>
42. This questionnaire has to be responded to on an annual basis.
43. Resolutions contain reporting requirements, which CPCs must honour.
44. The CoC must review the compliance monitoring information and resulting reports prepared by the Secretariat, and to make recommendations to the Commission.
45. The IOTC Compliance Report<sup>20</sup> requires the following information from countries regarding port inspection as per Resolution 16/11:
- 45.1. **List of designated ports**
- Point 5.1 – Each CPC shall designate and publicise the ports to which vessels may request entry pursuant to this Resolution.

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<sup>19</sup> IOTC. 2018. Implementation of IOTC Conservation and Management Measures – Part A: Understanding IOTC and the International Fisheries Management Framework. Seychelles, FAO. 80 pp at 34.

<sup>20</sup> Reports are available at [https://www.iotc.org/meetings/search?s=&field\\_meeting\\_tid\\_i18n=110&field\\_meeting\\_year\\_tid=A](https://www.iotc.org/meetings/search?s=&field_meeting_tid_i18n=110&field_meeting_year_tid=A)

Each CPC shall provide a list of its designated ports to the IOTC Secretariat before 31 December 2010, which shall give it due publicity on the IOTC website.

- Point 5.2 – Each CPC shall, to the greatest extent possible, ensure that every port designated and publicised in accordance with point 5.1 has sufficient capacity to conduct inspections pursuant to this Resolution.

45.2. **Designated competent authority**

45.3. **Prior notification periods** (Advance request for port entry)

- Point 6.1 – Each CPC shall require the information requested in Annex I to be provided before granting entry to a vessel to its port.
- Point 6.2. – Each CPC shall require the information referred to in point 6.1 to be provided at least 24 hours before entering into port or immediately after the end of the fishing operations if the time distance to the port is less than 24 hours. For the latter, the port State must have enough time to examine the abovementioned information

45.4. **Inspection report**

- Point 12 (Results of inspections) – Each CPC shall, as a minimum standard, include the information set out in Annex III in the written report of the results of each inspection.
- Point 13 (Transmittal of inspection results) – 13.1: The port State CPC shall, within three full working days of the completion of the inspection, transmit by electronic means a copy of the inspection report and, upon request, an original or a certified copy thereof, to the master of the inspected vessel, to the flag State, to the IOTC Secretariat and, as appropriate, to:
  - a) the flag State of any vessel that transhipped catch to the inspected vessel;
  - b) the relevant CPCs and States, including those States for which there is evidence through inspection

that the vessel has engaged in IUU fishing, or fishing related activities in support of such fishing, within waters under their national jurisdiction; and

c) the State of which the vessel's master is a national.

- Note that in terms of point 13.2, the IOTC Secretariat shall without delay transmit the inspection reports to the relevant regional fisheries management organisations, and post the inspection report on the IOTC website.

45.5. **At least 5% inspection of LAN (landings) or TRX (transhipments)**

- Point 10.1 – Each CPC shall carry out inspections of at least 5% of landings or transhipments in its ports during each reporting year. Note that Resolution 16/11 includes other additional points regarding inspections and follow up actions (Part 4 of Resolution 16/11).

45.6. **Denial of entry in port**

- Point 7.3 – In the case of denial of entry, each CPC shall communicate its decision taken pursuant to point 7.1, to the flag State of the vessel and, as appropriate and to the extent possible, to relevant coastal States and the IOTC Secretariat. The IOTC Secretariat may, if deemed appropriate to combat IUU fishing at a global level, communicate this decision to Secretariats of other Regional Fisheries Management Organisations (RFMOs).

45.7. **Other relevant points regarding port entry, authorisation or denial to bear in mind:**

- Point 7.1 – After receiving the relevant information required pursuant to section 6, as well as such other information as it may require to determine whether the vessel requesting entry into its

port has engaged in IUU fishing or fishing related activities in support of such fishing, each CPC shall decide whether to authorise or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

- Point 7.2 – In the case of authorisation of entry, the master of the vessel or the vessel's representative shall be required to present the authorisation for entry to the competent authorities of the CPC upon the vessel's arrival at port.
- Point 7.4 – Without prejudice to point 7.1, when a CPC has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a RFMO in accordance with the rules and procedures of such organisation and in conformity with international law, the CPC shall deny that vessel entry into its ports.
- Point 7.5 – Notwithstanding points 7.3 and 7.4, a CPC may allow entry into its ports of a vessel referred to in those points exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.
- Point 7.6 – Where a vessel referred to in points 7.4 or 7.5 is in port for any reason, a CPC shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish, and for other port services including, inter alia, refuelling and resupplying, maintenance and drydocking. Points 9.2 and 9.3 of

section 9 apply mutatis mutandis in such cases. Denial of such use of ports shall be in conformity with international law.

46. Having reviewed the 2019 Compliance Report,<sup>21</sup> the IOTC Conservation and Management Measures, for the various countries, the Chair of the Compliance Committee identified significant non-compliance issues for discussion during the CoC16 held in 2019 (Hyderabad, India 9–11 and 13 June 2019.)

47. The Compliance Report requires the following information:

- list of designated reports;
- designated competent authority;
- prior notification periods;
- inspection report;
- Lan/Trx; and
- denial of entry in port.

48. Compliance on a country by country basis:

48.1. Mauritius:

- has not implemented the requirement of at least 5% inspection of LAN or TRX, as required by Resolution 16/11; and
- has not provided all inspection reports, as required by Resolution 16/11.

48.2. South Africa, IOTC-2019-CoC16–CR25:

- has not provided all inspection reports, as required by Resolution 16/11.

48.3. Namibia:

- no report available.

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<sup>21</sup> Report available at <https://www.iotc.org/documents/report-16th-session-compliance-committee>.

48.4. Mozambique, IOTC-2019-CoC16-CR18:

- has not fully implemented the requirement of inspection reports, as required by Resolution 16/11; and
- has not fully implemented the requirement of at least 5% inspection of landing/transshipment, as required by Resolution 16/11.

48.5. Tanzania, IOTC-2019-CoC16-CR28:

- has not fully implemented the requirement of inspection reports, as required by Resolution 16/11; and
- has not fully implemented the requirement of at least 5% inspection of landing/transshipment, as required by Resolution 16/11.

48.6. Kenya, IOTC-2019-CoC16-CR12:

- has submitted a list of designated ports, competent authority and prior notification period submitted to the IOTC Secretariat in 2014.

48.7. Seychelles, IOTC-2019-CoC16-CR22:

- has not fully implemented the requirement of inspection reports, as required by Resolution 16/11; and
- has not fully implemented the requirement of at least 5% inspection of landing/transshipment, as required by Resolution 16/11.

48.8. Madagascar, IOTC-2019-CoC16-CR14:

- compliant on all Resolution 16/11 requirements.

## Training offered to each country

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49. Information on all capacity building activities undertaken by IOTC is available on the IOTC website:<sup>22</sup>

49.1. The following resources are provided on the website:

- Materials that have been designed by IOTC specifically for PSM training in the IOTC Region.
- Model PSM Regulations to assist CPCs to transpose the Resolution 16/11 into domestic legislation.
- A model MoU on interagency cooperation and guidelines on best practices for interagency and regional cooperation has been developed to assist CPCs to strengthen cooperation among national agencies implementing PSM at national level.
- e-PSM application: three independent modules, the e-PSM application has been designed and developed to facilitate and assist the Contracting Parties and Cooperating Non-Contracting Parties (CPCs) of the IOTC to implement the IOTC Resolutions related to Port State Measures (PSM). Four manuals have been produced to assist users. They are essential documentation, needed to properly use the e-PSM application.

49.2. The following training manuals are available for download:

- IOTC CMMs Manual A – Understanding IOTC and the International Fisheries Management Framework (Download [High definition](#) or [Low definition](#)).
- IOTC CMMs Manual B – Implementation of IOTC CMMs – Entailing Reporting Obligations (Download [High definition](#) or [Low definition](#)).

49.3. Capacity building activities undertaken include:

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<sup>22</sup> See <https://www.iotc.org/compliance/port-state-measures>; and <https://www.iotc.org/compliance/capacity-building-compliance>.

- Compliance Support Missions (undertaken in, inter alia, Mauritius, Seychelles, South Africa, Kenya, Mozambique, Tanzania, and Madagascar).
- Regional workshops (held in Mauritius).

50. IOTC provided the following two reports which present the status of implementation of the Resolution on PSM, as presented at the COC16 in 2019:

50.1. **Summary Report on Compliance Support Activities, Prepared by IOTC Secretariat, 30 May, 2019 (IOTC-2019-CoC16-11 [E])**

- This document provides a summary of the activities undertaken by the IOTC Secretariat in support of implementation of Conservation and Management Measures adopted by the IOTC.
- Activities are related to administrative and operational aspects of the implementation of Resolution 16/11.
- Training and training package – see IOTC-2013-CoC10-09.<sup>23</sup>
- Implementation of the IOTC Port State Measures Resolution (16/11) – training activities are related to the administrative and operational aspects of the implementation of Resolution 16/11.
- The methodology also includes follow-up missions to provide support to the implementation of Resolution 16/11, and to assess the progress of its implementation.

51. Legal assistance to CPCs to transpose IOTC obligations into binding national legal instruments:

- Article X of the IOTC Agreement focuses on the implementation of the decisions of the Commission. In practice, the members have the obligation to transpose, into their national law, relevant

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<sup>23</sup> The PSM training package is available for download at <http://www.iotc.org/compliance/port-state-measures>.

Conservation and Management Measures adopted by the Commission.

- Since 2015, 11 CPCs (Comoros, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Seychelles, Somalia, South Africa, Tanzania and Yemen) have been assisted to transpose the relevant obligations of IOTC Resolutions into their national legislation, in order to enhance the implementation and compliance to IOTC Resolutions.
- Follow up legal assistance has been provided during the intersessional period for two CPCs – Madagascar and Seychelles:
  - Madagascar: The legal assistance, which is ongoing, consists of supporting the drafting of a Ministerial Order on tuna fishing, with the aim of implementing IOTC Resolutions and strengthening relevant regulations.
  - Seychelles: The legal assistance, which is ongoing, consists of supporting the drafting/amendment of the fisheries legislation, including the Fisheries Act (subsidiary legislation); 2010 Regulations (vessels, licensing, gear, protected areas); the Fisheries Amendment Regulations 2007 (amending 1987 Regulations); the Fisheries (Shark Finning) Regulations, 2006; the Fisheries Regulations 1987 (1991 edition), and a PSM Regulation, with the aim of implementing IOTC Resolutions and strengthening relevant Regulations.
  - In 2019/20, legal assistance shall be provided to CPCs that have benefitted from the initial legal assistance. Malaysia made a request for legal assistance in March 2019.

51.1. **Summary Report on the Level of Compliance, Prepared by IOTC Secretariat, 31 May, 2019 (IOTC-2019-CoC16-03 [E])**

- Nineteen CPCs with ports situated in the IOTC area have provided information on their designated ports, competent authorities and the notification period required by foreign vessels to request entry into the CPC's port(s).<sup>24</sup>
- Ten port State CPCs are providing information on inspections conducted on foreign vessels and are submitting Port Inspection Reports (PIR), in line with the requirement of paragraph 13 of Resolution 16/11 (see Table below).
- Four port State CPCs, (Madagascar, Seychelles, Thailand, Sri Lanka and South Africa) have submitted PIR with forms related to the monitoring/inspection of landings/transhipments.

	Port State CPC	MUS	MYS	KEN	MOZ	SYC	MDG	TZA	THA	LKA	ZAF	
<b>2015</b>	Nb of calls in ports	387	0	5	18	210	34	5	148	41	98	
	Nb of vessel inspected	36	0	5	18	210	34	5	148	23	55	
	Nb LAN/TRX inspected	1	0	0	0	2	0	0	0	8	27	
	Nb PIR received	39	0	5	18	242	34	5	0	23	55	
	Nb monitoring forms received	1	0	0	N/A	0	0	N/A	0	0	27	
<b>2016</b>	Nb of calls in port	734	2	N/I	24	327	26	8	63	50	526	
	Nb of vessel inspected	716	2	N/I	24	324	26	8	63	15	35	
	Nb LAN/TRX inspected	4	1	N/I	0	3	2	0	63	0	35	
	Nb PIR received	6 <sup>m</sup> 48 <sup>e</sup>	1 <sup>e</sup>	0	24 <sup>m</sup> 19 <sup>e</sup>	112 <sup>m</sup> 5 <sup>e</sup>	33 <sup>e</sup>	4 <sup>m</sup>	6 <sup>m</sup> 2 <sup>e</sup>	7 <sup>m</sup> 12 <sup>e</sup>	10 <sup>m</sup> 33 <sup>e</sup>	
	Nb monitoring forms received	0	0	0	N/A	0	0	N/A	0	0	10	
<b>2017</b>	Nb of calls in port	884	12	6	17	618	42	0	145	54	574	
	Nb of vessel inspected	690	12	6	15	198	47	24	144	32	65	
	Nb LAN/TRX inspected	40	3	0	4	0	3	0	108	26	65	
	Nb PIR received	600 <sup>e</sup>	0	6	15 <sup>e</sup>	123 <sup>m</sup>	33 <sup>e</sup>	16 <sup>m</sup>	89 <sup>e</sup>	33 <sup>e</sup>	67 <sup>e</sup>	
	Nb monitoring forms received	18	0	0	0	0	4	0	108	26	37	
<b>2018</b>	Nb of calls in port	809	22	7	14	N/I	17	0	89	105	639	
	Nb of vessel inspected	737	10	7	14	226	17	0	89	39	106	
	Nb LAN/TRX inspected	8	0	0	0	6	3	0	54	27	106	
	<b>EPSM</b>											
	Nb of calls in port	809	22	7	84	432	17	0	89	105	639	
	Nb PIR received	637 <sup>e</sup>	10	4	10 <sup>e</sup>	184 <sup>m</sup>	33 <sup>e</sup>	0	90 <sup>e</sup>	36 <sup>e</sup>	95 <sup>e</sup>	
Nb monitoring forms received	0	0	N/A	0	5	3	N/A	54	20	83		

N/A = no offloading in KEN, TZA and MOZ ports for the concerned years ; N/I =no information provided by the CPC.

Nb of calls in port, Nb of vessel inspected, Nb LAN/TRX inspected are numbers declared by the CPC in the Compliance Questionnaire.

m = submission of PIR hard copy/email; e = submission of PIR through e-PSM application.

 Year first inspection report submitted to the Secretariat

<sup>24</sup> Available at <https://www.iotc.org/compliance/port-state-measures>.

**Table 1:<sup>25</sup> Port Inspection Reports (PIR) transmitted to the IOTC Secretariat in 2015 to 2018 by port State CPCs**

**LAN=Landing; TRX= Transshipment**

**MUS =Mauritius; MYS = Malaysia; KEN = Kenya; MOZ= Mozambique; SYC = Seychelles;  
MDG = Madagascar; TZA = Tanzania; THA = Thailand; LKA = Sri Lanka; ZAF = South Africa**

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<sup>25</sup> Source: Summary Report on the Level of Compliance, Prepared by IOTC Secretariat, 31 May, 2019 (IOTC-2019-CoC16-03 [E])

## Conclusion: What are the gaps and what should be done to get the countries up to speed?

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52. The level of preparedness at the country level is a snapshot in time, and it is an ever-evolving situation.
53. Countries, party to any international agreement, are legally bound to implement their international obligations by means of national legislation.
54. Countries require political, legal, institutional, human resources and operational frameworks to be in place.
55. One of the major hurdles towards implementation is developing legislation to implement the PSMA and other relevant RFMO CMMS.
56. In an ideal world all countries would have the necessary legal frameworks in place prior to signature of international agreements. However in many instances this is not the case, consequently international obligations cannot be met and enforce nationally.
57. However, the entry into force of the PSMA has created momentum that enables capacity development work in various countries.
58. The first step, to capacity development work, is to undertake a national gap assessment by all national agencies and complementary instruments, and from there develop a national strategy. The FAO assists countries with this process but the findings cannot be shared.
59. It should also be noted that most countries are members of the IOTC resolution which requires national frameworks to be in place. Often this provides countries with a basis to work from.

60. Without legislation in place, countries cannot enforce the sanctions required in the Agreement. In particular, countries cannot:<sup>26</sup>
- 60.1. enforce the agreed minimum standards for information provision and verification;
  - 60.2. prevent vessels from entering and using ports for a range of reasons, including the offloading of fish caught or transhipped in IUU operations;
  - 60.3. take necessary legal or administrative action; and
  - 60.4. develop procedures or interagency cooperation.
61. While countries often have certain legislation in place, it often does not contain the range of minimum standards required and follows a piecemeal approach to Port State Measures.
62. It is important that all relevant provisions are implemented.
63. Often a lack of human capacity or expertise is one of the biggest challenges to legislative implementation.<sup>27</sup>
64. Interagency cooperation at national level is necessary for the coordination of fisheries related Port State Measures called for by the PSMA.
65. For effective implementation it would be ideal if national fisheries agencies take the lead, however often fisheries agencies are unaware of developments at the port state level.
66. Other important agencies to include are the:
- 66.1. Port authorities
  - 66.2. Maritime authorities
  - 66.3. Customs

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<sup>26</sup> Swan, J in Verification and Implementation – A Collection of Analysis on International Agreements for Security and Development (2019) Chapter 5 at p 95.

<sup>27</sup> Swan, J (2016) Implementation of Port State Measures Legislative Template Framework for Procedures Role of Regional Fisheries Management Organizations, FAO.

- 66.4. Port health
- 66.5. Immigration
- 66.6. Police
- 66.7. Navy/ Coast guard

67. A lack of such cooperation can for example be the reason why fisheries or environmental authorities are not notified by port authorities when vessels enter a port, or why information which indicates IUU fishing activities might not be given to customs, immigration or law enforcement agencies.<sup>28</sup>
68. At the national level, the most relevant aspects relate to the policy, legal, institutional, human resources and operational framework, and at the international/regional level the Resolution calls for cooperation between the port State, the flag State and the coastal State and other tuna RFMOs.<sup>29</sup>

FishFORCE's commitment to the proper implementation of the PSMA is illustrated by the relevant part of a recent publication.<sup>30</sup>

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<sup>28</sup> Swan, J in Verification and Implementation – A collection of Analysis on International Agreements for Security and Development (2019) Chapter 5 at p 95.

<sup>29</sup> IOTC-2013-CoC10-09 [E].

<sup>30</sup> Business Day, 16 October 2020.

# RESEARCH, ADVOCACY AND INTERNATIONAL COLLABORATION

FishFORCE undertakes several research projects around improving law enforcement



The Nelson Mandela Bay harbour, along with the nearby Coega deep-water harbour, will play a key role in growing the country's blue economy.

**F**ishFORCE conducts multidisciplinary research projects that include law enforcement gap analysis and evaluation, and which focus on the development of national and international law and policies.

Research projects for 2020/21 include:

- The theory of profit maximisation and crime as opposed to detection prior to poaching.
- An evaluation of SA fisheries legislation.
- The movement of Illegal, Unreported and Unregulated (IUU) fishing from west to east Africa.
- The tension between recreational and subsistence fisheries regimes.
- The possible impact of the European Union's IUU regulations as opposed to the obligations and performance of the South African government.

Memorandums of Understanding (MoUs) have been signed between Nelson Mandela University and Eduardo Mondlane University in Mozambique, the University of Dar es Salaam in Tanzania, the University of Nairobi and the Seychelles Fishing Authority. Additional MoUs will be signed with the Indian Ocean Tuna Commission, the University of Seychelles, the University of Mauritius and the Fisheries

Observer Agency in Namibia in 2020. In terms of these MoUs, the universities replicate the work of FishFORCE in their countries, while Nelson Mandela University administers interagency and cross-border training.

FishFORCE has working relations with a number of international stakeholders such as the Law Enforcement Training Network of the United Nations Office on Drugs and Crime, Fish-i-Africa, and organisations, universities and state bodies in the Southern African Development Community, Indian Ocean Island States, Norway, the UK, Canada, Australia and Indonesia. FishFORCE has been funded by the Norwegian government since 2016 and enjoys a strong working relationship with this fellow ocean nation.

#### FIRST BINDING INTERNATIONAL

The UN-driven Port States Measures Agreement (PSMA) became enforceable in June 2016 as the first binding international agreement that specifically targets IUU fishing. The majority of

coastal states globally have adopted it, but the next step is to ensure they are equipped to implement it on the ground, otherwise it is just a paper exercise.

FishFORCE, in partnership with Operation Phakisa, is assisting South Africa and other coastal states in understanding and practically applying this international law, which gives any coastal country the right to report any vessel involved in IUU fishing, to prevent it from entering the port and landing their catches, and to detain it if it enters their port irrespective of whether the vessel was fishing illegally in that country's waters. The PSMA also applies to transshipment of catches in areas within and beyond national jurisdiction, which is a major activity in fisheries crime.

Training is essential and FishFORCE will be training the harbour masters, chief customs officials and fisheries inspectors in Durban and Cape Town – South Africa's designated harbours for the PSMA. ■

**GIVEN THAT INITIATIVE FIVE OF OPERATION PHAKISA IS A PROMINENT GOVERNMENT INITIATIVE, IT ASSISTS IN ENSURING THAT THE APPROPRIATE PEOPLE ATTEND THE PSMA COURSE.**

IMAGES: CAROL ANNE WICKSTEADT.COM

