

## FishFORCE



### **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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of Foreign Affairs

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## 1. Introduction

The FishFORCE Fisheries Law Enforcement Academy (FishFORCE) was established at the Nelson Mandela University, based in Port Elizabeth (South Africa), with funding from the Norwegian Ministry of Foreign Affairs in 2016. The objectives of the project are 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 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.

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.

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. As it aims to increase investigative skills, where investigations are not the function of fisheries officers, the agencies responsible for such investigations are also 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

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- The training and development of law enforcement officers will contribute to the protection of marine living resources against illegal harvesting, which in turn will make more resources available to small-scale fishers. It could also contribute towards job creation in the formal sector and thus reduce 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

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- 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, women, indigenous peoples and fishers.

## • Goal 8: Decent work and economic growth

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The training of law enforcement officers 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 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.

## • Goal 14: Life below water

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The training of law enforcement officers 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 Illegal, Unreported and Unregulated (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.

The review 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. These 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 the Food and Agricultural Organization's (FAO's) Port State Measures Agreement (PSMA), as these are the only remaining States in Southern Africa that are not.<sup>3</sup>
- Develop regional arrangements for collaboration on port state measures, for instance modelled on relevant elements of the Paris and Tokyo MOU Agreements.<sup>4</sup>

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1 Kolbert, *The sixth extinction: an unnatural history* (2014) 139.

2 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.

3 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 indicates that Tanzania may have ratified as well, though it was not confirmed by FAO at this link as of June 2020.

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

- Make joint plans for the implementation of the PSMA and other relevant international instruments, such as International Labour Organization (ILO) instruments on working conditions on fishing vessels.

Collaborate on training for inspections, including mentoring at work afterwards. Stop Illegal Fishing does this, but it needs to be scaled up. FishFORCE has a clear role in this.

Being aware 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) to implement the PSMA Agreement, with a focus on the following questions:

- What are the requirements for a country to be compliant with the 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 FAO.
- 14 September 2020, virtual meeting with Ms Frances Craigie from Operation Phakisa, Ms Fatima Savel of Department of Environment, Forestry and Fisheries (DEFF) and a representative from the State Security Agency.

The way the Indian Ocean Tuna Commission (IOTC) deals with compliance was also considered, and 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.

## 2. What is the Port State Measures Agreement (PSMA)?

1. The 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.

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

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 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.
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 IOTC adopted Resolution 10/11 on PSM, 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 RFMO, or both, countries have a legal obligation to develop legislation on PSM and to put procedures in place to implement and support the legislation.

### 3. What are the requirements for a country to be PSMA compliant?

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:
  - (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."
  - (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 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.

6 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.

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

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:
  - (1) the examination of pre-arrival information to screen arriving vessels for indications of IUU fishing activity;
  - (2) conducting a thorough PSM inspection; and
  - (3) steps to be taken after the inspection.

15. The following requirements must be implemented in national legislation:

- (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 the list. 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.

- (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.

- (3) Port entry, authorisation or denial. (Article 9)

Once a port State has received the information pursuant to Article 8, together with other information 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)



16. In short, the PSMA therefore stands on three legs: advance request for information, inspection, and communication amongst Parties.
17. 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.
18. The FAO is in the process of setting up a global information system (GIS) that will include inspection reports from countries. These historical reports will serve as a risk assessment tool for countries. The setting up of this GIS is a long process and needs agreement from all member countries.
19. 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.

### **The FV Premier is a great example of successful regional application of PSM.**

By using automatic identification system (AIS), the FV Premier was identified as fishing illegally in Liberian waters. The vessel was then tracked for 15 months by the FISH-I Africa Task Force. Various countries, Mauritius, Kenya, Mozambique, Comoros, Seychelles and Tanzania made use of Port State measures and their inspection capacity to deny the FV Premier port access and landing of its fish. Forged licence documents were identified by cross-checking documents in this instance regional cooperation was very important in that Task Force Countries united in denying port access and licences which meant that the FV Premier was unable to operate in the Western Indian Ocean region.

## **4. Training offered to each country<sup>8</sup>**

20. The FAO delivers technical assistance and capacity development through the following different mechanisms:<sup>9</sup>
21. Technical Cooperation Programmes (TCPs) which aid 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.
22. 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 PSMs and complementary Monitoring, Control and Surveillance (MCS) operations, measures and tools to combat IUU fishing.<sup>10</sup> 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).

8 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>.

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

10 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.

23. The projects help 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 act 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>

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

Country	PSMA Party	National Strategy and Roadmap	In-country Assistance		International Training	
			Policy/ Legislation	MCS/ Enforcement	Legal	Port Inspection
Bahamas	✓	✓	✓	✓		
Cambodia	✓		✓			
Colombia		✓	✓			
Costa Rica	✓	✓			✓	✓
Cuba	✓	✓			✓	
Dominica	✓	✓				
Dominican Republic		✓	✓	✓		
Ecuador	✓	✓	✓		✓	✓
Equatorial Guinea		✓				
FSM					✓	
Gabon	✓	✓				
Ghana	✓	✓	✓		✓	
Guinea	✓	✓	✓	✓		✓
Guyana	✓	✓	✓	✓		
Indonesia	✓	✓	✓	✓	✓	
Jamaica		✓	✓	✓		
Liberia	✓	✓	✓	✓		
Madagascar	✓	✓				✓
Malaysia			✓			
Maldives	✓		✓			
Marshall Islands					✓	
Mauritania	✓					✓
Mozambique*	✓	✓				
Myanmar	✓	✓				
Namibia	✓	✓			✓	

<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.

Palau	✓	✓				
Panama	✓	✓	✓		✓	✓
Papua New Guinea				✓	✓	
Peru	✓	✓	✓	✓	✓	✓
Philippines	✓	✓				
SVG	✓	✓	✓	✓	✓	
São Tome and Principe	✓	✓				
Sierra Leone	✓	✓	✓	✓		
Solomon Islands					✓	
Somalia	✓	✓				
South Africa	✓	✓				
Sri Lanka	✓			✓	✓	
Sudan	✓	✓			✓	
Thailand	✓	✓				
Tonga	✓	✓				
Trinidad and Tobago	✓	✓	✓	✓		
Vanuatu	✓	✓			✓	
<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>

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

25. 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.
26. The following knowledge products, resource and operational material have been either developed or are in the process of being finalised under the Programme:
- (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.
  - (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 organisation 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.
27. Several practical tools/checklists have been developed to enable States and practitioners reviewing national legislative measures concerning port, flag and State responsibilities, to facilitate the development and adoption of national legislation in agreement with international standards and requirements (on-going).

28. A practical guide on the establishment of national seafood traceability systems and procedures to meet the requirements of binding and voluntary international fisheries instruments is being developed. The purpose of the guide would be to provide countries with practical guidance on how to establish the necessary processes and procedures at national level 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.
29. Training/capacity building programmes and related material for national and international trainings/capacity development initiatives, are being developed on, for example, international fisheries law, international fisheries law enforcement, law enforcement, and port State inspections.
30. 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.
31. The Global Record Programme is a global initiative that primarily involves state authorities and Regional Fisheries Management Organizations (RFMOs) in compiling an online comprehensive and updated repository of vessels involved in fishing operations.
32. A fully operational and public Global Record Information System for the Global Record was launched in July 2018. Participation in the initiative has increased steadily, particularly in the FAO Regions of Europe, North America and Latin America and Caribbean. Other FAO Regions, such as Asia, Africa and the Pacific, have also shown increased participation and are expected to continue growing soon. 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 was being rolled out in stages, starting from the second half of 2019. 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.
33. FAO is developing a Global Portal for Capacity Development to combat IUU fishing, the objective of which is to publicise 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 publicised 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.

34. FAO's global database on PSMs (Portlex) has been revised and now includes a new structure, including a data entry template and an improved back end beta version. The new structure includes improved search functionalities and allows for the display of country profiles, including international commitments, participation in RFMOs, RFMO profiles and relevant RFMO information, National Plans of Action – IUU, active lists 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.
35. 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 with relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to the PSMA.
36. At their second meeting, the Parties to the PSMA emphasised that the GIES should be developed closely with relevant Regional Fisheries Bodies and networks, considering 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, which was scheduled to take place in the first half of 2020.
37. Since 2017, the Global PSMA Capacity Development Programme has supported the organisation and conduction of the second 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 meetings 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 all Parties attending the meetings, indicating the importance of such support for ensuring adequate participation of developing States.
38. 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>
39. There is also a PSMA Technical Working Group on Information Exchange (TWG– IE), which is an informal open-ended technical working group created by the 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>
40. The FAO has indicated<sup>15</sup> that under the Programme, technical assistance has been requested by, and has been provided to, South Africa, Namibia, Mozambique and Madagascar, with activities planned for Kenya.

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12 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.

13 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).

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

15 Email correspondence from Ms Kristin von Kistowski on 16 August 2020.

41. 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.
42. Other capacity development projects related to the implementation of PSM 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.

43. The FAO has 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 explains the broader context of PSM. It is recommended that all countries that are in the process of developing national legislation should consult this template.
44. The FAO has 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.
45. This portal will provide an overview of all capacity development that has occurred in an attempt not to duplicate efforts.

## 5. How does the Indian Ocean Tuna Commission (IOTC) monitor compliance?

46. The IOTC response indicates the following:

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

<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>.

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

47. 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.
48. Below is an elaboration on how the IOTC responds to compliance:
- (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.
  - (2) 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.
  - (3) Resolution 16/11 forms part of several Conservation and Management Measures (CMMs) adopted by the IOTC.
  - (4) IOTC Resolutions are binding on the Commission's members (unless there is a specific objection on the part of a member State).
  - (5) 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.
  - (6) Note, unlike resolutions, recommendations are not binding and rely on voluntary implementation.
  - (7) A Compliance Committee (CoC), formed in 2003, reviews member States' compliance with all CMMs and meets annually.
  - (8) 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).

## 6. What does compliance mean in terms of Resolution 16/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU Fishing)?

49. The objective of this Resolution is to prevent, deter and eliminate IUU fishing through the implementation of effective PSM 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.
50. The main flag State 's responsibility is to ensure that vessels do not engage in IUU fishing.
51. Compliance monitoring is done by means of a questionnaire which is circulated by the Secretariat.<sup>19</sup>
52. The flag State must respond to this questionnaire on an annual basis.

<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.

53. Resolutions contain reporting requirements that CPCs must honour.
54. The CoC must review the compliance monitoring information and resulting reports prepared by the Secretariat and make recommendations to the IOTC.
55. The IOTC Compliance Report<sup>20</sup> requires the following information from countries regarding port inspection as per Resolution 16/11:

(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. Each CPC shall provide a list of its designated ports to the IOTC Secretariat by 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.

(2) Designated competent authority.

(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 a 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.

(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.

<sup>20</sup> Reports 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).



- 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.
- (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).
- (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).
- (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 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, transhipping, 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.

56. 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).

57. 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.

58. Compliance on a country-by-country basis:

(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.

(2) South Africa, IOTC-2019-CoC16–CR25:

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

(3) Namibia:

- no report available.

(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.

(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.

(6) Kenya, IOTC-2019-CoC16–CR12:

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

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

(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.

(8) Madagascar, IOTC-2019-CoC16–CR14:

- compliant on all Resolution 16/11 requirements.

## 7. What training is offered to each country?

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

(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 Cooperating Contracting Parties (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 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 of the IOTC to implement the IOTC Resolutions related to PSM. Four manuals have been produced to assist users. They are essential documentation, needed to properly use the e-PSM application.

60. 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](#)); and
- IOTC CMMs Manual B – Implementation of IOTC CMMs – Entailing Reporting Obligations (Download [High definition](#) or [Low definition](#)).

61. Capacity building activities undertaken include:

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

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

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

(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 (CMMs) adopted by the IOTC.
- It presents activities that 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.

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

(1) 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 Conservation and Management Measures (CMMs) adopted by the Commission.

(2) 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, to enhance the implementation of and compliance with IOTC Resolutions.

(3) 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 was provided to CPCs that benefitted from the initial legal assistance. Malaysia made a request for legal assistance in March 2019.

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

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

- 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 2 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>c</sup>	1 <sup>c</sup>	0	24 <sup>m</sup> 19 <sup>c</sup>	112 <sup>m</sup> 5 <sup>c</sup>	33 <sup>c</sup>	4 <sup>m</sup>	6 <sup>m</sup> 2 <sup>c</sup>	7 <sup>m</sup> 12 <sup>c</sup>	10 <sup>m</sup> 33 <sup>c</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>c</sup>	0	6	15 <sup>c</sup>	123 <sup>m</sup>	33 <sup>c</sup>	16 <sup>m</sup>	89 <sup>c</sup>	33 <sup>c</sup>	67 <sup>c</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>c</sup>	10	4	10 <sup>c</sup>	184 <sup>m</sup>	33 <sup>c</sup>	0	90 <sup>c</sup>	36 <sup>c</sup>	95 <sup>c</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; c = submission of PIR through e-PSM application.

 Year first inspection report submitted to the Secretariat

LAN=Landing; TRX=Transhipment

MUS=Mauritius; MYS=Malaysia; KEN=Kenya; MOZ=Mozambique; SYC=Seychelles;

MDG=Madagascar; TZA=Tanzania; THA=Thailand; LKA=Sri Lanka; ZAF=South Africa

**Table 2.<sup>25</sup> Port Inspection Reports (PIR) transmitted to the IOTC Secretariat from 2015 to 2018 by port State CPCs**

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

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

## 8. What are some of the most important elements to ensure national implementation of the PSMA?

64. It is important not to confuse 'compliance' with 'implementation'.
65. As referred to earlier, compliance is the duties that a signatory State has towards the FAO.
66. For the purposes of this report 'implementation' looks at what a country must do, in addition to compliance, at national level to give full effect to the PSMA.
67. While there are numerous actions to take, for example, appointment of extra personnel, capacity building and training, investment in new technology, establishment of partnerships, there are three fundamental steps to take – the development of national legislation, coordination and cooperation among various national agencies, and information-sharing. Often these three steps are also cited as common challenges faced by countries. For this reason, they are discussed in more detail below.

### Legal frameworks: Development of national legislation

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68. It has already been outlined, that countries party to the PSMA, or any other international legal instrument, have a legal duty to incorporate their international obligations by means of national legislation.
69. The general objectives of port state measures are to determine whether there is a risk in allowing a vessel to enter port and to determine if there is evidence of IUU fishing, either in an area within national jurisdiction or beyond.
70. Parties must also ensure that qualified inspectors undertake a sufficient level of inspections that meets minimum standards set out in the PSMA.
71. Without legislation in place, countries cannot take appropriate action towards a vessel and its master and crew and it cannot enforce the sanctions required in the PSMA. Countries cannot:<sup>26</sup>
  - (1) enforce the agreed minimum standards for information provision and verification;
  - (2) prevent vessels from entering and using ports for a range of reasons, including the offloading of fish caught or transhipped in IUU operations;
  - (3) take necessary legal or administrative action; and
  - (4) develop procedures or interagency cooperation.
72. One of the first steps during the drafting process of national legislation is to determine whether there is existing national legislation capable of amendment, or whether completely new legislation is required.
73. It is also important to determine whether the country wishes to develop legislation solely for implementation

<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.

of the PSMA, or also to cover obligations under other international or regional treaties, for instance obligations under the IOTC.

74. If a country has chosen not to draft new legislation dedicated to the implementation of the PSMA, it can also amend existing relevant fisheries legislation to include the legal requirements.
75. Another important consideration is the legal tradition of the country, e.g. common law or civil law, and the mode of incorporation of treaties into national law.
76. The Common Oceans Areas Beyond National Jurisdiction (ABNJ) Tuna Project has developed a legislative template which can be customised to different legal systems and it addresses the core provisions of the PSMA.<sup>27</sup>
77. This legislative template also includes provisions on the powers and authorities of enforcement officers, evidentiary rules, and a basis for legally or administratively proceeding against vessel operators and persons that assist vessels to use port where it has been denied.
78. This template is an ideal starting point in the drafting of national legislation.

### **Institutional arrangements: Coordination and cooperation among various national agencies**

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79. The PSMA necessitates the coordination of fisheries PSM with a broader system of port State control.<sup>28</sup>
80. This requires interagency cooperation at national level, which is often absent. This could result in important information and notifications not being passed on between port authorities and fisheries authorities.
81. It has also been noted that one of the most important roles of interagency cooperation for PSM is to identify port entry and inspection responsibilities of the various national agencies, as well as information-sharing.
82. Various national agencies are either directly or indirectly involved with a country's administration and implementation of port activities.
83. The lack of coordination and cooperation among these various agencies are often cited as one of the constraints to the effective implementation of PSMA.
84. Interagency cooperation at national level is necessary for the coordination of fisheries-related Port State Measures called for by the PSMA
85. 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.

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<sup>27</sup> Available at: <http://www.fao.org/in-action/commonoceans/news/detail-events/en/c/891618/>

<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 75.

86. Other important agencies to include are the:

- (1) port authorities;
- (2) maritime authorities;
- (3) transport authorities;
- (4) customs;
- (5) port health;
- (6) immigration;
- (7) police; and
- (8) navy/coast guard.

87. 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>29</sup>

88. At the national level, the most relevant aspects relate to the policy, legal, institutional, and human resources and operational framework, and at the international/regional level cooperation between the port State, the flag State and the coastal State and other tuna Regional Fisheries Management Organisations (RFMOs) is needed.<sup>30</sup>

89. As seen, the ideal instrument for this is a letter of agreement or MOU which should set out in clear terms both a process and framework for notification, consultation and coordination among State agencies, and stating the measures to be taken concerning vessels currently in port or those seeking to enter. This instrument should also stipulate the necessary requirements for information-gathering and sharing, as well as for inspection and enforcement.

90. An important factor to bear in mind is that the IOTC resolution 16/11 requirements are almost identical to the PSMA, which means best practices are the same.

91. The 2015 IOTC guideline on PSM on best practices for interagency cooperation at national level and regional cooperation suggest that the MOU:<sup>31</sup>

- (1) strengthen working relationships between the national fisheries authority and relevant agencies (to exercise effective PSM over foreign fishing vessels); and
- (2) strengthen combined efforts of agencies to effectively implement national laws and international obligations (to combat IUU fishing and fishing related activities).

92. The guidelines further suggest that the MOU:

- (1) ensure the fisheries authority has overall lead responsibility (for measures involving fisheries and fisheries related activities taking place in ports);

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

30 IOTC-2013-CoC10-09 [E].

31 Available at: <https://www.iotc.org/documents/guidelines-best-practices-interagency-regional-cooperation>.



- (2) specify the roles of all agencies in terms of the IOTC Resolution;
  - (3) describe the decision-making authority and process; and
  - (4) describe communications requirements, including focal points, contacts and databases.
93. It is evident that successful implementation of the PSMA as well as the IOTC Resolution depends on harmonisation of minimum standards and interagency cooperation at national level.

## Information-sharing and exchange

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94. It has been highlighted that one of the key elements of the PSMA is the “transmittal, electronic exchange and publication of information”.<sup>32</sup>
95. An example of information exchange in practice is FISH-i-Africa initiated in 2012 by Stop Illegal Fishing (SIF).
96. FISH-i-Africa is a partnership between Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia and Tanzania.
97. FISH-i-Africa brings together national enforcement authorities, regional organisations and international technical and legal experts to combat IUU in the Western Indian Ocean through regional cooperation and information-sharing.
98. In June 2018, the FISH-i-Africa Task Force met in Mozambique to further develop plans to strengthen regional cooperation to stop illegal fishing. Members of the Task Force also discussed ongoing investigations during this meeting.<sup>33</sup>
99. A Regional Monitoring, Control and Surveillance Coordination Centre (RMCSCC) of the Southern African Development Community (SADC) will be established in KaTembe, Maputo and will be hosted by Mozambique.
100. The establishment of the RMCSCC will contribute immensely to regional integration and collaboration.
101. The Task Force members also advanced their plans for VIGILANCE, FISH-i-Africa’s vessel validation process that will identify false information and forged documents.
102. The FishFORCE Academy has been identified as a Centre of Excellence for the provision of training for the RMCSCC.

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32 Swan, J in Verification and Implementation – A Collection of Analysis on International Agreements for Security and Development (2019) Chapter 5 at p 85.

33 See <https://stopillegalfishing.com/news-articles/fish-i-africa-meet-to-develop-a-unified-response-to-illegal-fishing-in-the-western-indian-ocean/>.

## 9. What is the overall status of country readiness to be compliant with the PSMA?

### South Africa

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103. South Africa acceded to the PSMA on 6 February 2016 and benefitted from various training activities.
104. In July 2018, the FAO facilitated a National Workshop in South Africa to work towards a National Strategy and Action Plan.<sup>34</sup>
105. The primary fisheries law instrument in South Africa is the Marine Living Resources Act (MLRA) of 1998 and its regulations, read together with the National Environmental Management Act of 1998.
106. Together these legislative instruments are the primary basis for administrative and/or criminal enforcement and penalties for fisheries offences.
107. The IOTC has undertaken a detailed review of South Africa's fisheries and related national legislation to ensure that South Africa's legal framework could sufficiently implement the measures adopted by the IOTC, and a report has been submitted to the authorities.<sup>35</sup>
108. While South Africa currently does not have supporting legislation in place to implement the PSMA, and there are no current plans to develop such legislation, it has been noted that the MLRA is being reviewed.<sup>36</sup>
109. South Africa indicated that it does not have sufficient resources, both human and financial, to support the implementation of the PSMA.
110. The recruitment and training of additional personnel is therefore of utmost importance to ensure that the necessary steps to fully implement the PSMA are put in place.
111. Specific training needs identified by South Africa include:<sup>37</sup>
- (1) defining the various elements of the PSMA;
  - (2) effective implementation;
  - (3) how to achieve cooperation from international organisations involved in the PSMA; and
  - (4) clearly defining roles and responsibilities of the various role players.

### Namibia

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112. Namibia acceded to the PSMA on 18 July 2017.
113. Namibia has a very effective MCS system in place.<sup>38</sup> The powers of fisheries inspectors regarding stopping

34 Southwest Indian Ocean Fisheries Commission Ninth Working Party on Collaboration and Cooperation in Tuna Fisheries Maldives, 29 September 2019 Update on the ratification of the FAO PSMA by SWIOFC member countries. Available at: <http://www.fao.org/3/ca6310en/ca6310en.pdf>.

35 See IOTC-2017-CoC14-IR25[E]-South Africa.

36 Email correspondence dated 19 January 2021 between the author and Ms Fatima Savel Department of Environment, Fisheries and Forestry.

37 Email correspondence dated 19 January 2021 between the author and official of the Department of Environment, Fisheries and Forestry.

38 See <https://www.atlafco.org/fr/files/actualites/Namibia.pdf> for more information.

and boarding vessels, as well as search and inspection, seizure and arrest is specified in their Marine Resources Act of 2000.

114. Namibia's first National Plan of Action to combat IUU was drafted in 2007.
115. Since then, Namibia has benefitted from various workshops and on 28 May–1 June 2018 a workshop was held in Swakopmund, Namibia, between national agencies and the FAO to review Namibia's implementation of the PSMA and complementary instruments to combat IUU fishing.<sup>39</sup>
116. This review contributed towards the development of a strategy aimed at improving Namibia's readiness to implement the PSMA.
117. Namibia receives full government support and assistance, and close cooperation exists between the Ministry of Fisheries and the Namibian Ports Authority (NAMPORT), and several vessels have already been denied entry into port.
118. Established communication and reporting structures are in place and are well adhered to.
119. On 2 March 2018, the FAO and Namibia's Ministry of Fisheries and Marine Resources signed an agreement for Namibia to receive assistance to further enhance capacity to implement the PSMA.<sup>40</sup>

## Mozambique

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120. Mozambique ratified the PSMA on 19 August 2014.
121. In March 2017, the FAO facilitated a National Workshop in Mozambique to work towards a National Strategy and Action Plan.
122. In June 2019, the FAO and Stop Illegal Fishing, organised a meeting to update and validate Mozambique's National Strategy and Action Plan.
123. In 2019, another workshop, organised by is Stop Illegal Fishing (SIF) and the Ministry of Sea, Inland Waters and Fisheries, was held in Mozambique to update and validate the National Strategy and Action Plan.<sup>41</sup>
124. This workshop was attended by representatives of the Directorate on Operations under the Mozambican Ministry of the Sea, Inland Waters and Fisheries, both from the main office in Maputo and from the fisheries ports of Beira and Nacala.
125. Representatives of the Marine Police, the Navy, the National Marine Institute (INAMAR), revenue authority and port of Maputo also participated in the workshop.<sup>42</sup>

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39 See <http://www.fao.org/port-State-measures/news-events/detail/en/c/1137769/>.

40 See <http://www.fao.org/iuu-fishing/news-events/detail/en/c/1113148/>.

41 See <http://www.fao.org/iuu-fishing/news-events/detail/en/c/1202090/>.

42 Southwest Indian Ocean Fisheries Commission Ninth Working Party on Collaboration and Cooperation in Tuna Fisheries Maldives, 29 September 2019 Update on the ratification of the FAO PSMA by SWIOFC member countries. Available at: <http://www.fao.org/3/ca6310en/ca6310en.pdf>.

126. Mozambique has benefitted from various training and workshops, including a gap analysis undertaken by the FAO, which culminated in an Action Plan.

127. The COVID-19 pandemic halted various suggestions made in the Action Plan.

128. On 1 September 2020, The Ministry of Sea, Inland Waters and Fisheries (MIMAIP) approved the revised Fisheries Maritime Regulation (REPMAR), which has been under consideration for five years.

129. This landmark fisheries Regulation also domesticates the PSMA and it includes measures on PSMA implementation.

130. Mozambique has noted two main challenges to successfully implementing the PSMA:<sup>43</sup>

(1) There is an urgent need for extra personnel to assist with PSMA implementation, and fisheries law enforcement in general. Without the human capacity, law enforcement cannot take place. Once appointed, the extra personnel need to undergo the necessary training.

(2) There is weak collaboration between agencies and better interagency cooperation is needed – there is a need for various agencies to enter into MOUs. Currently there are a few draft MOUs in place.

131. It was also recommended that personnel receive training on intelligence analysis to better interpret the findings from investigations.

132. The GIZ's Global Programme Sustainable Fisheries and Aquaculture has a 3-year project in Ghana, Mozambique and Madagascar, with the objective to assist these countries with the implementation of multi-agency PSM to stop illegally caught fish, and illegal fishing vessels and illegal operators entering their ports and operating in their waters.

133. The lead executing agency is SIF, a non-governmental organisation.

134. The implementing partner is the Ministry of Sea, Inland Waters and Fisheries.

135. The target groups are fisheries inspectors, national agencies involved in port controls and the inspections of fishing vessels, and coastal communities reliant on fish for both income and food.

136. Activities undertaken as part of this project include:<sup>44</sup>

- (1) building the capacity of authorities and inspectors;
- (2) building trust between different agencies;
- (3) developing standard procedures and tools;
- (4) connecting ports around Africa;
- (5) supporting legal and policy change; and
- (6) creating awareness.

<sup>43</sup> Telephonic interview between author and Mozambique government official on 19 January 2021.

<sup>44</sup> See <https://www.giz.de/en/downloads/Project%20Information%20Stop%20Illegal%20Fishing.pdf>.

137. Standard operating procedures (SOPs) were developed by SIF for the processes of “check, inspect and act” – the three most distinct processes to recognise and take action against illegal fishing.
138. This was done through officer mentoring and meetings of interagency groups to deliberate on both current and best practices.
139. In August 2019, Mozambique seized the entire catch from a Chinese flagged trawler in Mozambique territorial waters. This was done by the successful use of pre-inspection checking procedures followed by a targeted inspection and analysis of on-board tracking systems that confirmed the suspect illegal fishing activity.

## Tanzania

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140. Tanzania is in the final stages of ratifying the PSMA with all preparatory processes completed.
141. In 2018, Tanzania partnered with Sea Shepherd Global and FISH-iAfrica on ‘Operation Jodari’ to fight IUU fishing in Tanzania’s Exclusive Economic Zone. Sea Shepherd’s patrol vessel, the Ocean Warrior, provided a platform for inspections at sea of fishing vessels. Operation Jodari resulted in the arrest of both industrial fishing vessels and dows smuggling fish and illegal timber.

## Seychelles

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142. Seychelles acceded to the PSMA on 19 June 2013.
143. The biggest gap is capacity for enforcement and monitoring.
144. There is more awareness on how to approach IUU fishing but often at national level application is still fragmented.
145. Seychelles continue to receive ongoing legal assistance, which consists of support for the drafting and/or amendment of its fisheries legislation, including the following:<sup>45</sup>
- (1) Fisheries Act (subsidiary legislation);
  - (2) 2010 Regulations (vessels, licensing, gear, protected areas);
  - (3) Fisheries Amendment Regulations, 2007 (amending 1987 Regulations);
  - (4) Fisheries (Shark Finning) Regulations, 2006;
  - (5) Fisheries Regulations, 1987 (1991 edition); and
  - (6) PSM Regulation, with the aim of implementing IOTC Resolutions and strengthening relevant regulations.

## Madagascar

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146. Madagascar acceded to the PSMA on 27 March 2017 and has received training of agents and officers.
147. In November 2018, the FAO facilitated a National Workshop in Madagascar to work towards a National Strategy and Action Plan.<sup>46</sup>

<sup>45</sup> Summary Report on Compliance Support Activities, Prepared by IOTC Secretariat, 30 May 2019 (IOTC-2019-CoC16-11 [E]) at p3.

<sup>46</sup> Southwest Indian Ocean Fisheries Commission Ninth Working Party on Collaboration and Cooperation in Tuna Fisheries Maldives, 29 September 2019 Update on the ratification of the FAO PSMA by SWIOFC member countries. Available at: <http://www.fao.org/3/ca6310en/ca6310en.pdf>.

148. Together with Ghana and Mozambique, Madagascar also benefits from the 3-year project of GIZ's Global Programme Sustainable Fisheries and Aquaculture.

149. The implementing partner in Madagascar is the Ministry of Marine Resources and Fisheries.

150. The target groups are fisheries inspectors, national agencies involved in port controls and the inspections of fishing vessels, and coastal communities reliant on fish for both income and food.

151. Madagascar also receive ongoing legal assistance from the FAO, which involves support for the drafting of a Ministerial Order on tuna fishing.<sup>47</sup>

152. The aim of this Ministerial Order is to implement IOTC Resolutions and strengthen relevant regulations.

## **Mauritius**

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153. Mauritius acceded to the PSMA on 31 August 2015.

154. The main fisheries legislation is the Fisheries and Marine Resources Act of 2007 which provides for the monitoring, control and surveillance of fishing activities.

155. The Fisheries and Marine Resources Act also enforces international fisheries conservation and management measures.

## **Kenya**

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156. Kenya ratified the PSMA on 23 August 2017 and benefitted from the training of agents and officers.

157. In 2018, Kenya launched a new Coast Guard Service to fight IUU.

## **10. Conclusion:**

158. The level of preparedness at the country level is a snapshot in time, and it is an ever-evolving situation.

159. Countries, party to any international agreement, are legally bound to implement their international obligations by means of national legislation.

160. Countries require political, legal, institutional, human resources and operational frameworks to be in place.

161. One of the major hurdles towards implementation is developing legislation to implement the PSMA and other relevant RFMO CMMS.

162. 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 enforced nationally.

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<sup>47</sup> Summary Report on Compliance Support Activities, Prepared by IOTC Secretariat, 30 May 2019 (IOTC-2019-CoC16-11 [E]) at p3.

163. However, the entry into force of the PSMA has created momentum that enables capacity development work in various countries.
164. 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.
165. 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.
166. Without legislation in place, countries cannot enforce the sanctions required in the Agreement. Countries cannot:<sup>48</sup>
- (1) enforce the agreed minimum standards for information provision and verification;
  - (2) prevent vessels from entering and using ports for a range of reasons, including the offloading of fish caught or transhipped in IUU operations;
  - (3) take necessary legal or administrative action; and
  - (4) develop procedures for interagency cooperation.
167. 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 PSM.
168. It is important that all relevant provisions are implemented.
169. Often a lack of human capacity or expertise is one of the biggest challenges to legislative implementation.<sup>49</sup>
170. Interagency cooperation at national level is necessary for the coordination of fisheries related PSM called for by the PSMA.
171. 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.
172. 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>50</sup>
173. 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>51</sup>

FishFORCE's commitment to the proper implementation of the PSMA is illustrated by the relevant part of a recent publication.<sup>52</sup>

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

49 Swan, J (2016) Implementation of Port State Measures Legislative Template Framework for Procedures Role of Regional Fisheries Management Organizations, FAO.

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

51 IOTC-2013-CoC10-09 [E].

52 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.**

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