

## FFA PSM Consultancy

# TASK #3

### Port State Measures and Market Access Requirements



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**Client:**



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## 1 Present “Non IUU” Market Access Landscape

Market Access requirements for exporting countries operate mostly based on two “technical” regulatory sets; one relates to “fish as food” (aka. Health Certificates) and is governed by seafood safety requirements, the other one relates to “fish as a legally caught resource” (aka Catch / IUU Certificates). For many markets there is also a trade related certification (aka. Certificate of Origin), which relates to customs and tariffs requirements for international trade.

For the purposes of this report we will focus on requirements related to “fish as a legally caught resource”.

## 2 Unilateral Schemes

Presently there are two unilateral schemes<sup>1</sup> that apply to international trade in the FFA membership: the European Union Catch Certification Scheme (EU CCS) and the United States Seafood Import Monitoring Programme (US SIMP).

The fact that two of the world’s largest seafood markets have moved towards substantially different designs for unilateral trade measures to address the same problem indicates that there is a real risk of a proliferation of non-harmonised unilateral trade instruments to combat IUU fishing.

For fishers and supply chain actors that currently, or may seek to in the future, sell to or process catch for both the EU and the US, the costs of complying with two different systems are likely to be considerable. In addition to the immediate costs of developing and operating different systems, the lack of coherence between them could lead to fisheries trade being diverted between the two, or to less demanding third markets.

An explanation of the requirements and characteristics of these two unilateral schemes is included in the following sections.

### 2.1 European Union

The foundation of the EU scheme is an obligation of compliance to EU sanitary requirements, and thus an expectation that the exporting country prove that it operates a control structure applicable to its seafood exports that are equivalent to those existing in an EU member country. Hence, operationally a non-EU country needs to be “authorised” by the European Commission (EC) and added to a positive list of countries from a seafood safety perspective, before it can attest to the legality of the catch compromising those exports.

Presently only four countries in the FFA’s Pacific Island membership are authorised to access the EU market for fishery products: PNG, Solomon Islands, Fiji and Kiribati. In any case we will analyse the requirements for the market independently of the country’s EC authorization status.

#### 2.1.1 Modus operandi of the CCS

The EU IUU Regulation consists of a law (EC 1005/2008) passed in 2008, and an implementing regulation (EC 1010/2009) adopted in 2009. Both texts define a new legal EU regime to bar products derived from IUU fishing from entering the EU market. In its preamble, EC 1005/2008 states that this initiative is meant to respond to the tenets of the IPOA-IUU. The regulation consists of a Catch Documentation Scheme (CDS) requirement for all imports of marine fish into the EU and a separate, but related, rule involving the possible restriction of fisheries imports from countries identified as having unsatisfactory control of IUU fishing by their flag vessels, the so called “yellow and red cards”.

The EU IUU Regulation’s CCS covers wild caught marine harvests—with some exceptions, such as

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<sup>1</sup> Unilateral schemes refer to those that a nation imposes without regard to others. They are unilateral because other nations have no choice in the matter.

molluscs—which are landed or imported into the EU, and which have originated from non-EU flag vessels. All products must be certified to be of legal origin, regardless of whether they are sourced from fisheries known to be affected by major IUU problems or not.

The regulation requires flag states to issue catch certificates (CCs) for catch harvested by their vessels that is to be exported to the EU. Flag states must notify a competent authority (CA) validating catch certificates to the EC, which is formally approved or rejected. Only countries with a formally approved competent authority may export to the EU.

When foreign catch is imported by a processing state for re-export to the EU, a processing statement must be issued at the time of exportation, linking the source products and foreign catch certificate(s) with the end products in the consignment. Since 1 January 2010, either a catch certificate (the direct importation scenario) or a processing statement, with attached catch certificates (the indirect importation scenario) must accompany each consignment of wild captured marine fish to be imported into the EU.

Vessels flying an EU flag are also covered by the scheme if they land catch outside the EU and the products, processed or un-processed, later enter the EU market. EU vessels landing product directly into EU ports are not normally required to produce a catch certificate, unless the product is to be exported to a third country outside the EU, for example for processing, and re-importation into the EU. The processing statement is not required when catch from EU-flagged vessels is landed and processed in EU countries.

The EU CCS is a paper-based system and operates in the absence of a central certificate registry. This means that EU authorities, whether central or national, or any other competent authorities worldwide complying with the system, do not know how many certificates are in circulation and what products they cover—nor do private sector supply-chain actors acquiring and dispatching products under given certificates.

The authenticity of any certificate can only be ascertained through a lengthy process involving direct communication and feedback requests from the authorities that issued the original—a process, which falls under what the EU IUU Regulation refers to as “mutual assistance.”

Any such action by EU border authorities implies delays and demurrage costs to operators, regardless of the legal or illegal nature of consignments. It is not known how many consignments covered by how many certificates have entered the EU since the scheme came into force, or how many times any specific certificate has been used to import fisheries products into the EU market.

### *2.1.2 Role of Fisheries Administrations*

The EU CCS relies on the cardinal principle of flag state validation, placing no formal emphasis on the role of coastal states, and a minimal role to be played by port, processing, and trading states. For example, the date and place of landing are not indicated on the catch certificate and port state authorities are not required to check, validate, or counter-validate catch certificates attached to catch that moves through their ports. This partly weakens the potential strength of it, since these systems were conceived as a means to overcome the ineffectiveness of control regimes limited to flag state enforcement, and to tap the potential of port and market state jurisdictions and controls within a single, largely self-regulating and self-enforcing system.

To date, the EC has not provided effective guidance on how catch certificates ought to be completed when consignments are derived from more than one domestic landing or mixed domestic and foreign landings, hinting at important regulatory voids in the regulation.

Article 51.2 of the regulation on mutual assistance refers to the establishment of an automated information system, called the “IUU fishing information system,” designed “to assist competent authorities in preventing, investigating and prosecuting IUU fishing.” In 2015 the EC announced its intention to develop this IUU fishing information system in the form of a computer database, the main function of which, judging from descriptions released so far, appears to be to digitally record the entry of certificates and processing statements into the EU. In theory, such a database could enable competent

authorities of EU member states to detect over-usage of particular certificates. However, the system would not provide any further evidence as to which importer has knowingly or unknowingly been involved in importing products covered by fraudulent certificates, and where in the supply chain document fraud has been committed. Nor would a system limited to registering certificates on imports into the EU address the circulation of non-recorded and non-secured paper copies of certificates along global supply chains. Therefore, it is not clear that the database, as currently outlined, will solve the fundamental problems in the EU CCS, nor effectively implement Article 51.2, whose aim appears to be the development of a system that would enable all competent authorities—including those in third countries—to confidently operate the scheme and to eliminate fraud.

Despite its weaknesses, the EU IUU Regulation does provide some useful elements of good practice. Equivalence is provided under the scheme for existing RFMO CDS, meaning that any products covered by RFMO certificates imported into the EU are exempted from the requirement to provide EU catch certificates. This is an important first degree of coherence between unilateral and multilateral schemes. The EU system also allows for the recognition of equivalent national systems. A number of developed countries, such as Norway, Canada, and New Zealand, have developed “national CDS” systems to respond to the requirements of the EU CDS, and have been formally approved by the EC; these systems are considered to provide the same degree of assurance.

### 2.1.3 *The designation of the CA in the third countries*

According to Article 20 of the EU IUU Regulation, third countries should nominate their CA by providing a Flag State notification (see Annex III of EU IUU Regulation).

In the run-up to the implementation of the EU IUU Regulation and in its first months, the EC (DG MARE) largely accepted the nominations of CAs from third countries without questioning whether these were indeed the most appropriate authorities. In some countries, the authority nominated has been the CA nominated to validate the Health Certificate under the hygiene regulation. This arises from confusion in the terminology applied by the EC, because the CA under the hygiene regulations were in some cases assumed by third countries to be the same CA under the EU IUU Regulation.

Indeed, when the EU IUU Regulation entered into force, some countries did not understand the purpose of the CC or see the difference between the CC and the Health Certificate.

However, in most countries the nominated CA is with the Fisheries Authority which, while generally competent about IUU fishing and Monitoring and Control and Surveillance (MCS) measures, may not be familiar with the complexities of certification.

According to the wording of the EU IUU Regulation it would seem that the acceptance of the notification is automatic and cannot be refused if the information requested in Article 20 is provided. It is not very clear on which grounds the EC is currently basing the acceptance or not of the notification. DG MARE has conducted various missions to a number of countries (sometimes more than once to the same country), while other countries have not been visited.

Explicit mention is made of signature of Catch Certificates in Article 20. Article 20 makes no mention of CAs for signing Annex IV Processing Statements nor of the CAs in States that are processing products and are not Flag States. There is provision in the Processing Statement (Annex IV to the EU IUU Regulation) for endorsement by the Competent Authority, but there is no indication as to which authority this should be. One might presume, from the fact that the Health Certificate number and date are requested on the form, that this CA is the one nominated under the Health Regulations. Similarly, there is no indication in the EU IUU Regulation or its implementing rules on which CA should be authorising transshipments within a port area and validating section 7 of the regular Catch Certificate.

The original handbook (*a largely obsolete document*) indicates that these authorities have to be notified to the EC, but the point still stands that there is no provision for this CA in the Regulation itself and there is no provision for the approval or publication of the authorities approved for transshipments. At present transshipments are authorised by authorities in third countries that have not had their CA notification

published by the EC but have been informally allowed to sign.

#### 2.1.4 Role of PSM

The EU CCS involves Port states only in one section (Section 7) of the certificate template, and this is an issue that affects various FFA members (mainly RMI, FSM, Tuvalu, Kiribati, SI and PNG).

Section 7 is complex and somewhat confusing. It requires “date” and “port of landing” while transshipment is actually defined as occurring between two vessels, hence no actual landing is resultant. Landing is bringing the fish on to land (even if not defined in the EU legislation). The term “port area” is also not defined but the general view on this is that it refers to being around a “port” where an anchored vessel is approached by another one to transship. However, no official explanation has been given to date.

While not clearly explained in the regulations or manuals, section 7 is the only part of the CC that requires the signature from the Port State instead of the Flag State. So, vessels flagged in Country “A” transship at a port in Country “B”. Country “A” is responsible for the validation of the CC but Country “B” is responsible for authorizing the transshipment.

The transshipment can occur before the CC certificates are raised and validated, because in many cases there still no confirmed buyer for the fish or because the fish has not been landed or processed at destination which may or may not be the Flag State.

This is a difficulty for the Port State, as if they were to sign Section 7 at the time of the transshipment, they’ll sign an “empty” CC, with information provided by the captain or agent, unless the Flag State is really “onto it” and able to provide a validated CC based on reliable estimates provided by the captain via the logbook and/or observers, prior the transshipment (there is no evidence of this ever being the case).

DG MARE in one of its notes<sup>2</sup> proposes that the Port State signs the non-validated CC, however this can be seen as not showing sufficient due diligence by the Port State CA.

Alternatively, they need to keep the records of the transshipment authorization on file, until such a time as the processors of the fish that was transshipped request the CC from the Flag State who can then issue the CC which can then go to the Port State for section 7 signature.

Good Port State practices provide, in principle, for the needs of this section. In particular, in terms of information management capacity in the FFA membership, data sharing and the recommended PSM improvements of these reports.

#### 2.1.5 Required data fields in the EU Catch Certificate

Area	Specific data field
Authority	Document number:
	Validating authority:
	Name:
	Address
	Fax number:
	Telephone number:
	Fishing Vessel
	Flag:

<sup>2</sup> [http://ec.europa.eu/fisheries/cfp/illegal\\_fishing/info/transshipment\\_requirement\\_en.pdf](http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/transshipment_requirement_en.pdf)

	Call sign:
	IMO/Lloyd's number
	Registration number
	Home port:
	Inmarsat number:
	Telefax number:
	Telephone number:
	E-mail address:
Licensing	Fishing license number
	Valid to:
	References of applicable conservation and management measures:
Catch	Description of product:
	Type of processing authorized on board:
	Species:
	Product code:
	Catch area(s)
	Catch dates
	Estimated live weight (kg):
	Estimated weight to be landed (kg):
	Verified weight landed (kg) where appropriate:
Skipper	Name of master of fishing vessel or Representative
	Signature:
	Seal:
Transshipment at sea	
Donor	<i>Name of Master of Fishing Vessel</i>
	Signature:
	Date:
events	Date
	Area
	Position

	Estimated Weight (kg)
receivers	Master of receiving vessel:
	Signature:
	Vessel Name:
	Call Sign:
	MO/Lloyds number
Transshipment authorization port area:	Name of officer
	Authority:
	Signature:
	Address:
	Telephone number:
	Port
	Date
	Seal: (Stamp
Exporter	Name of exporter:
	Address of exporter:
	Signature:
	Date
	Seal
Flag State authority validation:	Name
	Title
	Signatory
	Date
	Seal: (Stamp)
Importer Declaration:	Name of importer:
	Address of importer:
	Signature:
	Date



	Seal
	Product CN code:
Import control:	Authority
	Place:
	Importation authorised:
	Importation suspended
	Verification requested –date:
Customs declaration: (if issued)	Number:
	Date:
	Place:
Transport Details	Country of exportation:
	Port/airport/other place of departure:
	Vessel name and flag:
	number/airway bill number:
	Container number (s):

## **2.2 United State of America**

The Lacey Act of 1900 covers products of IUU fishing imported into the US. Specific fisheries cases with an international dimension have been prosecuted successfully under the Act in the past, leading to the sanctioning of individuals for offences involving trade in seafood that was illegally obtained at source.

US legislation touching on the subject matter of IUU fishing, identification, and Trade Related Economic Measures (TREM) is complex and spread across many acts. The most important for our purposes are: the High Seas Driftnet Fishing Moratorium Protection Act (the Moratorium Protection Act) (16 USC 1826d–k), which establishes a process for identification and certification of nations for IUU fishing, bycatch of protected living marine resources, and unsustainable shark fishing; and the Magnuson-Stevens Fishery Conservation and Management Reauthorisation Act of 2006 (MSRA), which amended the Moratorium Protection Act.

This section will focus on the recent heightened activity directed specifically at combatting IUU fishing through market-related measures, in particular the biennial reports by the National Oceanic and Atmospheric Administration (NOAA) to Congress, filed under the provisions of the MSRA, and a regulation under development to track and certify the legal source of imports of certain fish species “at risk” from IUU fishing.

In June 2014, the Office of the President of the USA released a Memorandum (The White House (2014) entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” The document established, inter alia, a Presidential Task Force on Combating IUU Fishing and Seafood Fraud.

By mid-December of the same year, the Task Force submitted “recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasises areas of greatest need” in a document called the Action Plan for

Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force 2014).

The recommendations span a wide array of domains relevant to the combatting of IUU fishing, including PSMs, free trade agreements, and bilateral customs cooperation. Recommendations 14 and 15 provide for a “traceability program,” which encapsulates the plan for the creation of the US’s unilateral CDS.

An implementation plan published in March 2015 established the objective of the US being “a world leader in fighting IUU fishing,” and included an outline of the proposed Traceability Program (Task Force 2015). The objective of this program is to “prevent the entry of illegal goods, including illegally harvested or produced seafood, into U.S. commerce” and that would be “consistent with U.S. international legal obligations, including U.S. obligations under the World Trade Organization.”

A proposed rule outlining the design of a “Seafood Import Monitoring Program” was published in the US Federal Register (Vol. 81, No. 24) on 5 February 2016. The US SIMP programme entered in force on the 1 January 2018

The legal basis of the Seafood Import Monitoring Program is section 307(1)(Q) of the Magnuson-Stevens Fishery Conservation and Management Act, which makes it “unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or binding conservation measure to which the United States is a party.” The rule sets out to establish filing and recordkeeping procedures relating to the importation of certain fish and fish products.

### 2.2.1 *Modus operandi of the SIMP*

Under the scheme, the National Marine Fisheries Service require importers to be holders of an annually renewable International Fisheries Trade Permit and specific data and information for defined fish and fish products has to be filed and retained as a condition of import. The additional data requirements apply only to imports of “at-risk” species, and derived products thereof, which are identified by HS codes.

Importantly, the programme actively seeks to integrate the new reporting requirements with existing electronic infrastructure, and the rule also establishes how duplication with other existing programmes should be avoided. For instance, it is proposed that information to be filed under the scheme be collected at the time of importation, making use of an electronic single window consistent with existing systems.

The Seafood Import Monitoring Program does not develop a dedicated documentation scheme, the centrepiece of all other existing CDS in existence. Instead, it requires importers to collect information on source fishing vessels, fishing licences, areas of operation, date and place of landing, and first buyers, etc. on the basis of existing information, and to log this information at the time of importation.

The validation or counter-validation of industry-generated information by designated competent authorities along the supply chain is not required, as is currently the case in varying forms in all other existing schemes.

No recording of data would be required as products pass through the supply chain from harvest towards the US market. Existing documents, such as landing reports, catch certificates, or port inspection reports may be used by importers to establish the validity of vessel identity, trip, and landings data submitted by them into the International Trade Documentation System (ITDS).

Information regarding the movement of fish between the point of landing and its entry into the US market would not be recorded within the system but has to be collected by the importer on the basis of documents and records that are normally issued along supply chains, and such records would have to be kept by importers for five years at their place of business.

However, it is highly unlikely that an importer could be given a transparent insight into where the products he/she is importing have been channelled through in longer and more complex supply chains as supply chain relationships (suppliers/clients) and pricing are the most sensitive and highly protected types of information in seafood trade. Verifiable traceability between the presumed source fishing vessels

indicated at importation, and the fisheries products being imported, is unlikely to be achieved in the absence of a dedicated documentation system which links and records product flows each step along the supply chain (with applicable data confidentiality rules). The critical process of monitoring mass balance at individual supply chain stops, enabling the detection of fish laundering, would also be difficult to achieve under the system as it is currently presented.

The list of “at-risk” species that will fall under the remit of the scheme under the programme’s initial phase was refined and republished through the proposed rule in February 2016.

The list includes species that can naturally fall both under the management mandate of RFMOs, and/or under the management mandate of individual countries. Species covered by existing RFMO CDS systems are listed, specifically the entire Pacific fished tunas (albacore tuna, bluefin tuna, bigeye tuna, skipjack tuna, and yellowfin tuna). Bluefin tuna had not been covered in the earlier published version of the rule (Federal Register 2015), and had been classified as “not at-risk” owing to the multilateral mechanisms already in place—echoing practice under the EU CDS. It is now included “in order to establish consistent treatment of tuna species, and avoid possible concerns that one species of tuna may be treated less favourably than others.” (Federal Register 2016).

It is anticipated, however, that “compliance with the entry data collection requirements of these schemes would, for the most part, meet the data reporting and recordkeeping requirements of the traceability program proposed here”. This means that an RFMO CDS duly complied with would provide an importer with all data needed to fulfil the needs of the Seafood Import Monitoring Program. In as far as the system allows for a degree of mutual recognition of RFMO CDS, the US system follows a similar approach to the EU with regard to mutual recognition.

### 2.2.2 Role of the flag and coastal state Fisheries Administrations

Critically, industry-generated information by designated competent authorities along the supply chain would not be required, as is currently the case in varying forms in all existing other schemes.

### 2.2.3 Role of PSM

While the US SIMP does not foresee, per se, a specific role for Ports states administrations, good PSM processes are needed to potentially verify an unloading (*yes, it was authorised to happen at this location*) or deny it (*no, it did not happen*).

### 2.2.4 Required data fields of the US SIMP

Data Element	Mandatory/ Optional	Format/Code for NMFS
Catch Document Identifier	Optional	Free form text
Wild Harvest	Mandatory	WC
Flag State of vessel	Mandatory	2 alpha ISO country code.
Name of Harvesting Vessel	Mandatory	Free form text
Unique Vessel Identifier (registration, documentation, or license number)	Optional	Free form text
Catch Area	Mandatory	FAO fishing area with an additional note regarding within or beyond the EEZ of a Coastal State
Fishing Gear	Mandatory	FAO Gear Codes
Company Name of Landing Recipient, Processor or Buying Entity and Contact Information	Mandatory	Free form text
Facility or Vessel Landed/Delivered To	Mandatory	Free form text. In the case of transshipment vessels, the vessel

		name and identifier (IMO #, flag state registration #) should be provided.
Harvest Date	Mandatory	Date format. Harvest date to be reported for wild capture fisheries is the date of landing/offloading at the end of a fishing trip, or the date of transshipment at-sea or in-port.
Landing Port or Delivery Location	Mandatory	Free form text
Species Name and ASFIS Code	Mandatory	ASFIS 2 alpha coding
Total Weight of Product at Landing	Mandatory	numeric value and the reporting unit
Product Form at Landing	Mandatory	standard set of codes will be developed (e.g., round = RND; headed and gutted = H&G; gilled and gutted = G&G; other forms = OTH).

On the receiving side, the importer is required to be a registered as an Importer of record (in the US)

The requirements are

1. Name, affiliation and contact information
2. NOAA issued IFTP number
3. Importer of record is responsible for keeping records regarding the chain of custody detailed above
4. Information on any transshipment of product (declarations by harvesting/ carrier vessels, bills of landing)
5. Records on processing, reprocessing, and comingling of product.

### 2.3 Side to side comparison in between the EU CCS and US SIMP data fields

A comparison of the data requirements of both market access requirements follow, with the following coding:

EU Exclusives	X Necessary
US Exclusive	* Optional

It becomes self-evident that data fields have very limited complementarity, and therefore are of limited use at present as an integrated approach.

Area	Element	EU	USA
Authority	Document number:	X	
	Validating authority:	X	
	Name:	X	
	Address	X	
	Fax number:	X	
	Telephone number:	X	

Fishing Vessel	Fishing vessel name:	X	X
	Flag:	X	X
	Call sign:	X	X
	IMO/Lloyd's number	X	*
	Registration number	X	*
	Home port:	X	
	Inmarsat number:	X	
	Telefax number:	X	
	Telephone number:	X	
	E-mail address:	X	
Licensing	Fishing license number	X	*
	Valid to:	X	*
	References of applicable conservation and management measures:	X	*
Catch	Description of product:	X	
	Type of processing authorized on board:	X	
	Species:	X	X
	Product code:	X	
	Catch area(s)	X	X
	Catch dates	X	X
	Estimated live weight (kg):	X	
	Estimated weight to be landed (kg):	X	X
	Verified weight landed (kg) where appropriate:	X	
	Product form at landing		X
Fishing gear	Type		X
Skipper	Name of master of fishing vessel or Representative	X	
	Signature:	X	
	Seal:	X	
Transshipment at sea	<i>Name of Master of Fishing Vessel</i>	X	
	<i>Donor Vessel</i>		
Events	Signature:	X	
	Date:	X	
	Date	X	
	Area	X	
Receiving Vessel/s	Position	X	
	Estimated Weight (kg)	X	
	Master of receiving vessel:	X	
	Signature:	X	

	Vessel Name:	X	X
	Call Sign:	X	X
	MO/Lloyds number	X	X
Transshipment authorization port area:	Name	X	
	Authority:	X	
	Signature:	X	
	Address:	X	
	Telephone number:	X	
	Port	X	
	Date	X	
	Seal: (Stamp)		
Landing port	Landing port		X
1st Buying Entity	Company Name of Landing Recipient,		X
	Facility or Vessel Landed/Delivered To		X
Exporter	Name of exporter:	X	
	Address of exporter:	X	
	Signature:	X	
	Date	X	
	Seal	X	
Flag State authority validation:	Name	X	
	Title	X	
	Signatory	X	
	Date	X	
	Seal: (Stamp)	X	
Importer Declaration:	Name of importer:	X	X
	Address of importer:	X	X
	Signature:	X	
	Date	X	
	Seal	X	
	Product CN code:	X	
	Official importer registration		X
Import control:	Authority	X	
	Place:	X	
	Importation authorised:	X	
	Importation suspended	X	

	Verification requested –date:	X	
Customs declaration: (if issue)	Number:	X	
	Date:	X	
	Place:	X	
Transport Details	Country of exportation:	X	
	Port/airport/other place of departure:	X	
	Vessel name and flag:	X	
	number/airway bill number:	X	
	Container number (s):	X	

## 2.4 Rest of the world

Other than EU and US, no other country presently has a unilateral market access requirement for importing seafood products.

Some specific issues have arisen in some countries, yet none of these issues are prescribed as a formal market access requirement. In the case of direct landing in countries that are signatories of PSMA, vessels arriving would be required to comply with the country specific PSMA requirements of that State.

### 2.4.1 Japan

In 2012 Japan signed a joint statement with the EU<sup>3</sup> confirming they will not import IUU fish and committing to cooperating to eliminate IUU fishing, but no specific measures have been implemented nationally on imported products so far. No form of fisheries certificate is required to access the Japanese market.

Japan are a signatory of PSMA, so PSMA requirements apply to all vessels landing in Japanese ports.

### 2.4.2 China

There is no formal, consistent or legal catch certification scheme currently operating for fish entering the Chinese market. Chinese companies and their agents often present ‘bogus’ EU type certificates for PICs Officers to sign (FSM in particular), but these are submitted without any legal foundation. Chinese agents sometimes also require a catch certificate from PIC Officers, but these requests are made without providing any legal basis for the request. What appears to be occurring is that agents are merely seeking a piece of paper that says that the “fish is legal”<sup>4</sup>, regardless of the robustness, or lack thereof, of this certification. This has resulted in the production of a series of attestations of catch certification that some FFA members have provided, but these certificates do not have any formal or legal foundation.

China is not a signatory of PSMA, so there are no standardised requirements that apply to vessels landing in Chinese ports.

### 2.4.3 Taiwan

There have not been any specific requirements for any shipments of fish that are to be imported to the Taiwan. Due to their current political status, Taiwan cannot be a signatory to the PSMA.

### 2.4.4 Thailand

Thailand, since its “Yellow Card”, has been relying largely on the EU CCS for their imports. And while sporadic requests for some form of “legally caught certificate” seem to appear, these are not legally

<sup>3</sup> [https://ec.europa.eu/fisheries/fisheries-european-union-and-japan-join-forces-against-illegal-fishing\\_en](https://ec.europa.eu/fisheries/fisheries-european-union-and-japan-join-forces-against-illegal-fishing_en)

<sup>4</sup> *Majuro vessels agent. Pers Comm*

required by Thai legislation, outside of those shipments being processed for the EU market. However, Thailand have expressed a desire (with EU encouragement) to develop a Thailand CDS and are in the very early stages of exploring this option.

As a signatory to PSMA, FV or Carriers transporting fish in to Thailand ports, that have not been previously landed (i.e. transhipped in port or at sea), will be required to submit to checks and controls consistent with the PSMA protocol:

- Entry through Designated Ports
- Prior notification or advance request to enter port
- Port entry and Port Use authorization
- Inspection (previously this has been 100% of PSM landings, but they are moving to a risk based system).

#### 2.4.5 *Vietnam*

Vietnam (also motivated by their Yellow card) is following Thailand's example in terms of enforcing the requirements of the EU CCS, but currently have no systems of their own.

As a recent signatory of PSMA, FV or Carriers transporting that have not been previously landed (i.e. transhipped in port or at sea) will be submitted to checks and controls consistent with the PSMA requirements.

#### 2.4.6 *Australia and NZ*

Australia and NZ do not have any specific requirements in relation to IUU certification or requirements for importing fish or fishery products, outside of complying with import health standards.

As signatories of PSMA, FV or Carriers transporting fish or fisheries products that have not been previously landed (i.e. transhipped in port or at sea) will be submitted to checks and controls consistent with the PSMA protocol.

### **3 Multilateral schemes**

Nine out of 17 RFMOs including ICCAT, IOTC, IATTC and CCSBT, have adopted resolutions allowing their members to impose TREMs upon states identified as failing to meet their obligations under international fisheries law.

There is no catch documentation scheme that has been adopted and implemented in IATTC; the IATTC Bigeye Statistical Documentation Program (Resolution C-03-01) is the only related measure.

While some RFMOs, such as IATTC-adopted resolutions targeting both non-compliant IATTC members and non-members as potential targets for TREMs, most RFMOs limited the application of these instruments to non-members.

Apart from Kiribati and Vanuatu flagged vessels operating in IATTC waters, none of the present multilateral schemes apply to FFA Member countries. However, when FFA members charter vessels from member countries of IATTC, they take on the responsibility of signing the statistical document even if they are neither members or cooperation nonparties to IATTC.

Kiribati is also in a unique position as its Kiritimati transshipment port serves not only the WCPFC vessels transshipping to carriers with final destination in Bangkok and Vietnam, but also to a number of IATTC (to which Kiribati is full member) vessels, with carriers destined to Manta in Ecuador.

### **4 Conclusions**

For any form of Market Access requirement with regards catch legality, port States measures will always play a vital role by providing additional verification and ensuring flag States are more accountable for the monitoring of their flagged vessels.



The level of risk of illegally sourced fish entering the land-based supply chain, is largely based on the quality of port state monitoring, the work of the port-based fisheries officers in monitoring fisheries transactions in their ports and the data capture and management capacity to record the events in a way that can be queried if needed.

At present, only the EU and US markets have a unilateral market access requirement for importing products. However, some specific issues have arisen in specific countries, but none of these States has a prescribed formal market access requirement. In the case of direct landing in countries that are signatories of PSMA, vessels arriving would be submitted to that country-specific PSMA requirements.

The sphere of market access requirements is a constantly moving and developing field and, as always, it is better to be prepared so that States can adapt when a new system is implemented. In these circumstances it is preferable to be in a position of merely having to adapt presently obtained information to comply with new requirements, instead of having to create an entire new system.

Most data required (and that potentially may be required) by the importing markets is presently collected through various systems and initiatives among the FFA membership, but it is generally not integrated and available in a coherent format. Furthermore, it has been developed somewhat reactively to fulfil market access and not as a PSM best practice. Consequently, there is a substantial gap between the quality and management of the required data, both between countries with the same EU market access requirements, and also between the EU authorised countries and the rest.

While operationally PSM measures can be improved with capacity building and surveillance type technologies, information management systems are a key element and are often largely undervalued and underfunded in the region. Robust IMS needs to be in line with “best practice” data and information management processes, utilising adaptable technology that provides the ability to update the system as processes develop. They should also contain the in-built capacity for electronic exchange of information on a national and regional basis involving partner agencies, the fishing industry itself and the markets requiring official attestations. Compatible data standards between port and market States are also an important aspect of IMS development to ensure the efficient exchange of information.

Unfortunately, in many FFA member states, these systems are poorly implemented and outdated, are not designed to be particularly user friendly, or they are built with a very basic level of functionality. The ability of a region or nation to successfully implement and manage PSM and certification is often inhibited by a complete lack of these systems or through the use of underperforming software.

Well-designed IMS provides the ideal environment for collecting, sharing and managing PSM (and overall fisheries) data. Functions that support this type of environment are:

- Good data validation processes: It is essential to have the processes and steps in place to ensure that any data that is entered into the system is correct and in the right format.
- Data collection methods suit the needs of its users: Having a method that suits the requirements of its intended users is key in ensuring data obligations are met and maintained long term.
- Reporting functions: Having easy to use and optimised reporting functionality is essential for gaining the most value from the data. Under an effective system, certifications become a matter of outputs under an established reporting function that can be customised for each market.

The benefits of having a system that’s built with the needs of collecting and managing PSM data at its core is invaluable in the benefits it can provide.

The statement, ‘you can’t manage what you don’t know’ is more prevalent than ever when it comes to certifications related to PSM.

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