Chapter Seven

Port State Measures

7.1 The Importance of Port States in Addressing IUU Fishing

Fishing vessels seek port access for many reasons, including refuelling, reprovisioning, landing catch, transshipment of fish, effecting repairs, and in emergencies. In recognition of the significance of port access for fishing vessels, port State control is now considered one of the most important tools to prevent, deter and eliminate IUU fishing. The growing importance of port State measures in the global fight against IUU fishing also stems from the failure by flag States to exercise effective control and jurisdiction over vessels flying their flags. Since not all flag States are capable or willing to discharge their flag State duties to combat IUU fishing, the adoption and implementation of port State measures addresses this shortcoming to a certain extent.

As provided in Chapter 3, international law provides for the exclusive jurisdiction of States over their ports and the discretion to determine conditions for entry by foreign vessels. Therefore it follows that a port State can adopt measures that would supplement the prescriptive and enforcement actions taken by both flag States against their own vessels and coastal States against fishing vessels that fish illegally in their waters. In this respect, port State measures would ensure that IUU vessels which escape detection by flag and coastal States and enter or are about to enter ports are made accountable for their actions and reported to the concerned States. The application of port State measures also limits the extent to which some port States provide shelter to vessels engaged in IUU fishing by allowing the transit of fish derived from IUU fishing.

A port State can play a critical role in preventing IUU caught fish from entering the market and international trade, hence reducing the financial incentives that may be gained from such activities. Port State control can also act as a disincentive to IUU operators by increasing the cost of their operations, for example by forcing them to call into more remote ports with less stringent port State measures. Port State measures are therefore effective means to make the movement of IUU fish from the shore to the consumer more difficult.

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IUU fishing is not only caused by ineffective flag State control and inadequate coastal State enforcement. A major gap that contributes to the proliferation of IUU fishing is the existence of “ports of convenience”. In the maritime world, “ports of convenience” is a term used to describe ports and terminals around the world which apply substandard shipping and labour standards. In the fisheries context, “ports of convenience” also refer to ports where authorities have no established rules and procedures to ensure that only legally caught fish are landed or transshipped in their ports. Such ports often conduct inadequate inspection of fishing vessels, gears, and fish catch, or provide little to no investigation into the origin of the fish, compliance with fisheries regulations, and the authenticity of relevant documents. Ports of convenience provide easy avenue for the laundering of fish and are deemed to “undermine, frustrate and neutralise efforts to prevent, deter and eliminate IUU fishing”.

An associated issue is the lack of capacity of most port States, particularly in developing States, to conduct adequate port inspection and take enforcement action against IUU vessels. The general lack of port State mechanisms and capabilities to monitor the activities of fishing vessels that land or transship their fish, create opportunities for vessels conducting IUU fishing to take advantage of ports with more lenient regulations or those with inadequate capacities to monitor fishing activities.

The IMO process has addressed the lack of effective flag State control and inadequate domestic procedures for port inspection through the establishment of regional port State control regimes, starting from the Paris Memorandum of Understanding on Port State Control adopted in 1982. Regional port State control mechanisms involve the exchange of information and harmonisation of port measures and are considered the basis for preventing substandard shipping, improving safety of shipping, and preventing and controlling marine pollution. On the basis of these regional mechanisms, IMO has developed a

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3 An example of a port of convenience reported by the Environmental Justice Foundation (EJF) as providing services to IUU fleets operating off the coast of West Africa is Las Palmas de Gran Canaria in Spain. This port is also known as a gateway through which illegally caught fish can enter the EU market without proper inspection as to its origin. See EJF Website, Las Palmas: Port of Convenience and Gateway to Europe, www.ejf.org. Accessed on 20 November 2008.


5 The existing port State control MOUs are: Europe and the north Atlantic (Paris MOU); Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); the Indian Ocean (Indian Ocean MOU); and the Arab States of the Gulf (GCC MoU (Riyadh MoU)). See also Terje Lobach, Port State Control of Foreign Fishing Vessels, FAO Fisheries Circular No 987 (Rome: FAO, 2003), at 2.