

# 現代國際漁業秩序中港口國的角色 — 近年國家實踐與發展趨勢 —

## The Role of Port States in the Contemporary International Fisheries Order: Recent State Practices and Development Trends

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### 中文摘要

面對 IUU 捕魚對永續漁業之威脅，國際社會希望藉由拒絕入港、禁止卸載漁獲等港口國措施，有效杜絕相關水產品進入市場，以減損業者之動機。在聯合國糧農組織的主導下通過的《港口國措施協定》於 2016 年生效，但仍有部分漁業國尚未加入，論者擔憂其實際成效有限。因此，本文聚焦協定下相關措施的法律性質，認識港口國角色之實踐現況，以評估今後發展之趨勢。

《港口國措施協定》課予締約方實施措施之義務，同時適用對象並未區隔是否為締約國船舶，擴大了實施管轄之可能性，具有嚇阻及矯正 IUU 捕魚行為之功能，為打擊 IUU 捕魚之里程碑。本文認為今後港口國在打擊 IUU 漁業問題上仍將扮演斷裂 IUU 捕魚產業鏈的重要角色。雖然學說及判例上並不認為港口國管轄毫無限制，但在實踐上較為積極，至少在港內檢查上，無論船旗國同意與否，港口國傾向實施檢查。

關於在採取相關措施上需進一步留意的問題：（1）區域漁業管理組織及檢查實施國應考慮適度保障船舶方的賠償請求權，不但有助船舶方事後求償，亦可維護港口國措施的正當性；（2）國際貿易法上之規則（特別是不歧視原則的具體適用）是否會對港口國措施產生限制，有待日後發展，而貿易爭端解決將是未來 IUU 捕魚相關爭端發生的主要場域。

**關鍵詞：** IUU 捕魚、港內檢查、不歧視原則、聯合國糧農組織、港口國措施

## Abstract

In the face of illegal, unreported and unregulated fishing (IUU fishing), measures such as refusal of entry to port, prohibition of land have been adopted by the international community, with the aim of discouraging IUU fishing activities by excluding them from the domestic market. Under the aegis of the Food and Agriculture Organization (FAO), the Port State Measures Agreement (PSMA) entered into force in 2016. However, as some fishing States have yet to ratify the Agreement, concerns have been raised over its limited practical effects. Therefore, this article focuses on the legal nature of measures prescribed under the PSMA, understanding the role of port states through current practice, and tries to explore the forefront of legal development of combatting IUU fishing.

The PSMA imposes obligations on States parties to take port State measures irrespective of the flag of vessels concerned. This could enlarge the scope of exercising jurisdiction, having the effect of deterring and redressing IUU fishing. The agreement on PSMA is a milestone. It is argued in this article that port States still play an important role in breaking the supply chain of IUU fishing. Although legal doctrines and precedents generally consider port State jurisdiction should not be unlimited, on the other hand, as observed from positive practice, at least with respect to in-port inspection, port States tend to exercise jurisdiction regardless of consent from the flag state.

There are a few points worth noting in relation to port State measures: first, the regional fisheries management organizations and the inspecting States should, to the extent appropriate, safeguard the vessels' entitlement to compensation. This would not only facilitate their access to judicial remedies but would also enhance the legitimacy of measures taken. It remains to be seen to what extent will rules of international trade law (esp. non-discrimination principle) restrict the scope of port State measures, while matters over IUU fishing and related issues could be primarily solved in the form of trade dispute settlement.

**Keywords:** FAO, In-Port Inspection, IUU Fishing, Non-discrimination Principle, Port State Measures