

Port State Measures in Iceland

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ABSTRACT

Iceland has been carrying out Port State Measures for several years in the context of NEAFC and NAFO. Recently Iceland went through the process of ratifying the FAO Port State Measures Agreement which led to some changes in the Act on Fishing and Processing by Foreign Vessels in the Exclusive Economic Zone of Iceland (Port State Measures). The Port State Measures introduced by NEAFC in 2007 had a remarkable effect. IUU fishing in the North East Atlantic was terminated as vessels which had been put on the IUU list were unable to land their catches or get any services in ports of the NEAFC and NAFO Contracting Parties.

INTRODUCTION

Iceland is one of the FAO Member States that has recently ratified the FAO Port State Measures Agreement of 2009 (FAO PSMA). The North East Atlantic Fisheries Commission (NEAFC) is the Regional Fisheries Management Organisation (RFMO) in the North East Atlantic. Iceland as a Contracting Party to NEAFC, as well as NAFO, the Northwest Atlantic Fisheries Organization, has taken part in the development of the Port State Control Schemes of those RFMOs and later in aligning their schemes with the FAO Port State Measures Agreement.

This paper, which has been prepared by government experts in Iceland by request of the Director General of the FAO, Graciano Da Silva, describes the process of ratification and implementation of the FAO PSMA in Iceland. It also describes, as necessary, the NEAFC Port State Control Regime and its development and alignment with the FAO PSMA. The Port State Control procedures applied in Iceland are explained at the end of this paper with the help of flow diagrams.

BACKGROUND

Iceland played an active role in the negotiations leading up to the FAO Port State Measures, became an early signatory to the agreement and has recently ratified it. Iceland is therefore pleased to share its experiences in this regard with other countries.

Iceland is a strong advocate for free trade in fish and fisheries products. Accordingly, there are few restrictions on international trade in the Icelandic legal order. Foreign vessels have, for a long time been able to land, tranship or sell their catch in Icelandic ports, and obtain any and all services required for operating the vessel. This has however not applied to foreign vessels fishing or processing catch from a commercial fish stock of a common interest caught both within and outside of the Icelandic Exclusive Economic Zone if the flag State of the vessels has not negotiated an agreement with Iceland on common management of the stock.¹ This unilateral measure by Iceland should not be confused with the adoption of the Port State Measure Schemes, described in this paper.

¹ Ref. Art. 3. of the Act. on Fishing and Processing by Foreign Vessels in Iceland's Exclusive Fishing Zone, No 22/1998. The Minister for fisheries may derogate from this provision under exceptional conditions and it does not prejudice the right of foreign vessels to call at a port to obtain assistance in an emergency, or to seek shelter offshore.

NEAFC PORT STATE MEASURES

THE NEAFC PORT STATE CONTROL OF 2007

The NEAFC Port State Measures, referred to as Port State Control, were established in May 2007. These measures were based on the “2005 FAO MODEL SCHEME ON PORT STATE MEASURES TO COMBAT ILLEGAL, UNREPORTED AND UNREGULATED FISHING” and intended to eliminate IUU fishing in the NEAFC Convention Area.

In the beginning the Scope was limited to frozen products. There had been ongoing IUU fishing in the area and it was common that frozen products were transhipped at sea and brought to ports by reefer vessels making it difficult for the authorities to find out whether the fish or fish products were legally taken.

These measures, together with strengthening of other measures in the NEAFC Scheme of Control and Enforcement, resulted in an immediate and full elimination of IUU activities in the area. That status has been sustained since then through active and close cooperation by the NEAFC member states.

The main elements of the NEAFC 2007 Port State Control are 1) the duty of Prior Notifications of Entry into Port, 2) the list of Designated Ports, where landings or transhipment may take place, and, 3) the mandatory Flag State verification where the Flag State must confirm that;

- a. the fishing vessels declared to have caught the fish had sufficient quota for the species declared;
- b. the quantities of fish on board have been duly reported and taken into account for the calculation of any catch or effort limitations that may be applicable;
- c. the fishing vessels declared to have caught the fish had authorisation to fish in the areas declared;
- d. the presence of the vessel in the area of catch declared has been verified according to VMS data.

If any of the items above cannot be confirmed by the Flag State the landing or transhipment shall be denied by the Port State.

ALIGNING THE NEAFC PSC WITH THE FAO PSMA

As the FAO Port State Measures Agreement was finalised in 2009, NEAFC started a process in order to align its Port State Control Scheme with the FAO PSMA. NEAFC established a group of legal and control experts to compare the NEAFC Scheme of Control and Enforcement with the FAO PSMA. This led to the extension of the Scope of the NEAFC measures, which were made applicable to “the use of ports of Contracting Parties by fishing vessels with catch on board of fisheries resources that have been caught in the Convention Area by foreign fishing vessels and that have not been previously landed or transhipped at a port”. A number of Articles and

Annexes were also amended or added to the scheme and new thresholds for inspection levels established.

The goal of this reform was to fulfil all the minimum requirements of the FAO PSMA and at the same time keep in place the elements which are considered to exceed the minimum requirements of the FAO agreement. The amended Scheme came into force on the 1st of July 2015.

NEAFC ELECTRONIC PORT STATE CONTROL

In the beginning the NEAFC Port State Control system was manually operated. The captain of a fishing vessel, or other responsible agent, filled out a paper form for the required advance notification which was sent by fax to the Port State authorities which forwarded it to the Flag State and the NEAFC Secretariat in London. The Flag State filled out its part and sent it back to the Port State which then either authorised or denied the landing or transshipment. All notifications were posted on the NEAFC website. In 2010 it was decided to move over to an electronic system which is now fully operational. The process for the system, both the electronic version and the manual one, is shown in the flowcharts presented below.

In the electronic system, either the master of the fishing vessel or his representative fills in the required information for the “Prior Notification of Entry into Port”. This is done on-line at the NEAFC PSC website <www.neafc.org>. Relevant authorities are notified by e-mail and all parties involved must log into the system to process their part and finally an e-mail is transmitted to the fishing vessel or its representative with either an authorisation or denial.

RATIFICATION OF THE FAO PSMA

Before ratifying the FAO PSMA it was necessary to make changes in the relevant Icelandic legislation in order to secure sufficient legal basis for the application and enforcement of the minimum standards for Port State Measures established in the FAO PSMA.

VERIFICATION OF RELEVANT LEGISLATION

In the beginning a small group of experts on legal issues and control measures was established. The group was led by a legal advisor from the department of fisheries and aquaculture in the Ministry of Industries and Innovation. Other experts came from the office of infrastructure at the Ministry of the Interior (responsible for shipping), the Icelandic Coast Guard and the Directorate of Fisheries. The group was tasked with preparing the ratification of the FAO PSMA and started its work by closely comparing the requirements of the FAO PSMA with the relevant legislation.

Due to the requirements of the NEAFC and NAFO Port State Control Schemes there already existed provisions in the relevant legislation, the Act on Fishing and Processing by Foreign Vessels in Iceland’s Exclusive Fishing Zone, No. 22/1998, that fulfilled most of the minimum standards of the FAO PSMA. In order to structure the work, a comparison table was created, where individual Articles in the FAO PSMA

were listed and a note made of whether it was necessary to make changes to corresponding Articles of the legal Act.

This led to identification of several issues that had to be addressed and some Articles that needed modification. When considered necessary, for clarification on individual articles, use was made of information material available on the website of the Fisheries and Aquaculture Department of the FAO.²

LEGISLATIVE PROPOSAL

There were two legislative proposals put to Althingi, the Icelandic Parliament, by the government. A proposal for a parliamentary resolution by the Minister of Foreign Affairs to ratify the FAO PSMA and a bill of legislation by the Minister of Fisheries to amend the existing legislation.

The proposal for a parliamentary resolution for ratification of the agreement included detailed comments and explanations as well as the whole FAO PSMA including its Annexes translated into the Icelandic language. Furthermore, it was stated that in parallel to this proposal the Minister of Fisheries and Agriculture would submit a bill of legislation to amend the Act no. 22/1998, on Fishing and Processing by Foreign Vessels in the Exclusive Economic Zone of Iceland (Port State Measures), which would ensure that the necessary legislative amendments were made in order for Iceland to be able to ratify and apply the FAO PSMA.

The bill of legislation to amend Act No. 22/1998 included amendments to a few Articles in the Act as proposed by the aforementioned Working Group. A detailed explanation on the meaning of individual articles was accompanied by the bill, as well as an impact assessment.

THE RATIFICATION PROCESS BY PARLIAMENT COMMITTEES

THE FOREIGN AFFAIRS COMMITTEE

The Committee of Foreign Affairs took the proposal for the parliamentary resolution for consideration as provided for in the procedural rules of the parliament. In its opinion the Committee stated that Iceland had a long standing experience in applying Port State Measures in order to “Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing”. Iceland had been on the forefront of responsible Coastal States, together with other nations around the North Atlantic Ocean and therefore it was important to strengthen international cooperation on these issues. The ratification should therefore not be expected to entail major changes in administration or heavy cost. The proposal was approved unanimously

² See especially: Doulman, David J. and Swan, Judith: "A guide to the background and implementation of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing". FAO Fisheries and Aquaculture Circular. No. 1074

by the Parliament, as recommended by the Committee, which gave the minister of foreign affairs authority to ratify the agreement on behalf of Iceland.³

INDUSTRIAL AFFAIRS COMMITTEE

The Industrial Affairs Committee, which is responsible for fisheries, took the bill of legislation to amend Act No. 22/1998 under consideration. The Committee invited a number of institutions and stakeholder organisations to comment on the bill and held meetings with representatives of these as well as representatives from the Ministry of Industries and Innovation.

The Federation of Ports made a few comments to the bill of legislation, stressing the need for a clear procedure for denial of Port Services. These comments prompted the ministry to hold a meeting with representatives of the ports to discuss and clarify these issues. The Coast Guard also made some minor comments on the bill of legislation, one of which was to suggest that foreign fishing vessels and processing vessels be obliged to always fly their flag while inside the Icelandic EEZ.

The Industrial Affairs Committee submitted a Committee Report with a proposal for adoption of the bill of legislation with few minor modifications; including those suggested by the Coast Guard.

THE LEGISLATION.

The legal Act to amend Act no. 22/1998 to implement the PSM Agreement was passed by Althingi on the 7th of July 2015.⁴ In accordance with Icelandic legal principles, provisions for access to port, inspections, etc. need to be included in primary legislation (legal Acts). On the other hand much of the detail is left to regulations. One of the reasons for that is the necessary possibility of flexibility due to regional measures, such as those adopted by NEAFC and NAFO.

The legal Act stipulates that all foreign vessels intending to call at a port in Iceland must notify the Icelandic Coast Guard. The notification shall include information on the catch on board, the fishing activities, what services it requires and where it wants to dock.⁵ This information is subsequently approved (if everything is in order) by the flag State of the vessel and the Coast Guard. Vessels which are on IUU lists of RFMO's are not allowed to enter ports except in emergencies and the same applies if sufficient information is not received from the flag State of the vessel. If however such vessel comes to port, it is prohibited to dispose of the catch and the Directorate of Fisheries may place it under seal. The catch can be confiscated when the vessel is instructed to leave the port. These measures also apply to vessels that have taken part in fishing related activities, such as transporting catch or providing services.

³ The instrument of ratification by the government of Iceland has been deposited at the FAO.

⁴ Act No. 38/2015 to amend Act No. 22/1998, on Fishing and Processing by Foreign Vessels in the Exclusive Economic Zone of Iceland,

⁵ For purposes of port supervision, a number of ports in Iceland have been notified and approved for NEAFC and NAFO control.

In the legal Act the Minister for Industries is given authority to prescribe further instruction for implementation of the Act and individual International Agreements or bilateral agreements relating to, among other things, provisions on Port State Measures. This includes instructions on reporting to authorities, remote surveillance and the obligation to enter and exit the Icelandic EEZ on specific control points. A regulation is in force on these issues, which describes the procedures presented in the next chapter.

PORT STATE CONTROL PROCEDURES IN ICELAND

THE MINISTRY OF INDUSTRIES AND INNOVATION

The Ministry of Industries and Innovation has the overall responsibility for Port State Measures in Iceland and represents Iceland in international organisations for fisheries related matters.

Two governmental agencies in Iceland, the Icelandic Coast Guard and the Directorate of Fisheries are given the responsibility to operate and maintain the system for Port State Measures.

THE ICELANDIC COAST GUARD

The Coast Guard is the main recipient for the Prior Notifications for Entry into Port. The task is performed in the Coast Guards operations centre. The centre is a combined Maritime Traffic Service (MTS), Joint Rescue Coordination Centre (JRCC), Fisheries Monitoring Centre (FMC) and the Operations Centre. In addition to having access to all notifications required by Iceland, fisheries related as well as for border control, the centre monitors all vessel movements around Iceland by receiving tracking information from LRIT, AIS and VMS. The centre is open and manned 24/7 every day of the year.

The main tasks for the Coast Guard in the context of Port State Measures are the following;

- For foreign vessels intending to land or tranship catches in Iceland;
 - Reception of the Prior Notification of Entry into Port
 - Verification of the Flag State response
 - Authorisation or denial of entry into port

- For Icelandic vessels intending to land catches in a foreign port;
 - Verification and confirmation of information provided in the Prior Notification of Entry into Port

THE DIRECTORATE OF FISHERIES

The Directorate of Fisheries receives a copy of all notifications in the Port State Measures system and is the agency responsible for inspection of landings and transhipments. Furthermore, the Directorate is in fact the authority which is in a position to verify most of the information provided in Prior Notifications from Icelandic vessels if they intend to land their catches in a foreign port. Consequently there is a close cooperation between the Coast Guard and the Directorate

throughout the process. In selecting vessels to be inspected, the Directorate applies a risk based approach in line with the FAO PSMA. Special inspection reports are made which are posted on the website of the relevant RFMO, NEAFC or NAFO.

RISK BASED MANAGEMENT OF INSPECTIONS

The vast majority of entries into ports in Iceland by foreign fishing vessels are vessels arriving from the NEAFC Convention area and few from the NAFO Regulatory Area. Consequently the measures applied are those required by these two RFMOs. In the NEAFC Scheme of Control and Enforcement each Contracting Party is obliged to carry out inspections of “at least 5% of all landings or transshipments of fresh fish and at least 7.5% of frozen fish in its ports during each reporting year”, on the basis of risk management.⁶ There is however a requirement for 100 % inspection of fishing vessels from flag States that are not Contracting Parties to either of these two⁷. The reason why is that the Contracting Parties have access to information regarding the activity of Contracting Party vessels but not for non-Contracting Party vessels.

As required by Article 5 of the FAO PSMA, Parties shall to the greatest extent possible integrate or coordinate fisheries related port State measures with broader system of port State control as well as integrate these measures with other measures regarding IUU fishing. That is exactly what is done in Iceland, as the Coast Guard is a single point of contact for all maritime related notifications. This further secure that vessels which are notifying their entry into port for purposes other than fishing related activity but have for any reason been listed on recognised IUU list, either preliminary- or confirmed lists will be detected and either denied port services and/or inspected.

As a general guidance for risk based management of inspections the following guidelines from the NEAFC Scheme of Control and Enforcement are applied⁸. The following are the main indicators used as the to identify landings or transshipments that may be of higher risk;

- Catches taken by a non-Contracting Party vessel;
- Frozen catches ;
- Catches of a large volume;
- Catches previously transhipped at sea;
- Catches taken outside the waters under the jurisdiction of Contracting Parties, i.e. in the Regulatory Area;
- Catches taken both inside and outside the Convention Area;
- Catches of high value species;
- Catches from fisheries resources where there are particularly limited fishing opportunities;

⁶ Ref. Article 20 and 25 of the NEAFC Scheme of Control and Enforcement. Annex XVII of the Scheme lays out general guidelines for risk management in relation to port state control.

⁷ Ref. Article 40 of the NEAFC Scheme of Control and Enforcement

⁸ Ref. Annex XVII of the Scheme lays out general guidelines for risk management in relation to Port State Control.

- Number of inspections previously carried out and number of detected infringements for a vessel and/or operator.

INSPECTION PROCEDURES

Inspection procedures are based on the requirements of NEAFC which is identical to Annex B “Port State inspection procedures” of the FAO PSMA.

CONCLUDING REMARKS

Our conclusion is that a thorough comparison of existing legislation and the requirements of the FAO PSMA are of utmost importance in order to secure and verify that there exists sufficient legal basis in the domestic legislation to apply and enforce the provisions found in the FAO PSMA.

In our experience the FAO PSMA is a cost effective tool to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. In that context we point at the Port State Measures adopted by the North East Atlantic Fisheries Commission (NEAFC) in May 2007. The measures, together with other strengthened measures in the NEAFC Scheme of Control and Enforcement, led to an immediate termination of IUU fishing in the North East Atlantic as fishing vessels that had been put on the IUU lists were unable to land their catches or get any services in ports of the NEAFC or NAFO Contracting Parties.

Finally, we would like to encourage all concerned to ratify the FAO Port State Measures Agreement. If applied as aimed for, the agreement can perhaps become the largest step taken forward in the combat against IUU Fishing.

FLOW CHART FOR NEAFC ELECTRONIC PORT STATE CONTROL

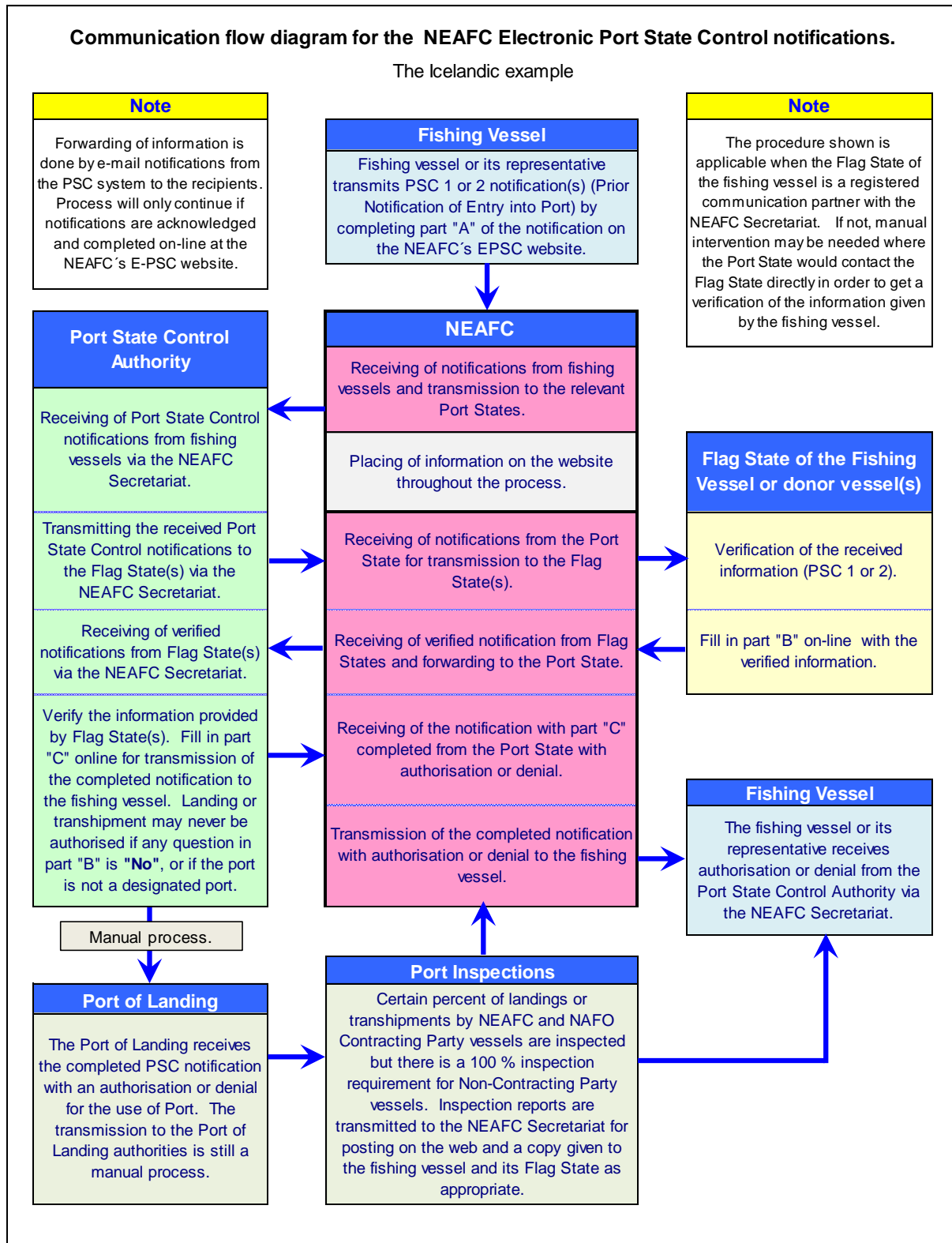


FIGURE 1 COMMUNICATION FLOW DIAGRAM IN THE ELECTRONIC SYSTEM

FLOW CHART FOR MANUAL PORT STATE CONTROL NOTIFICATIONS

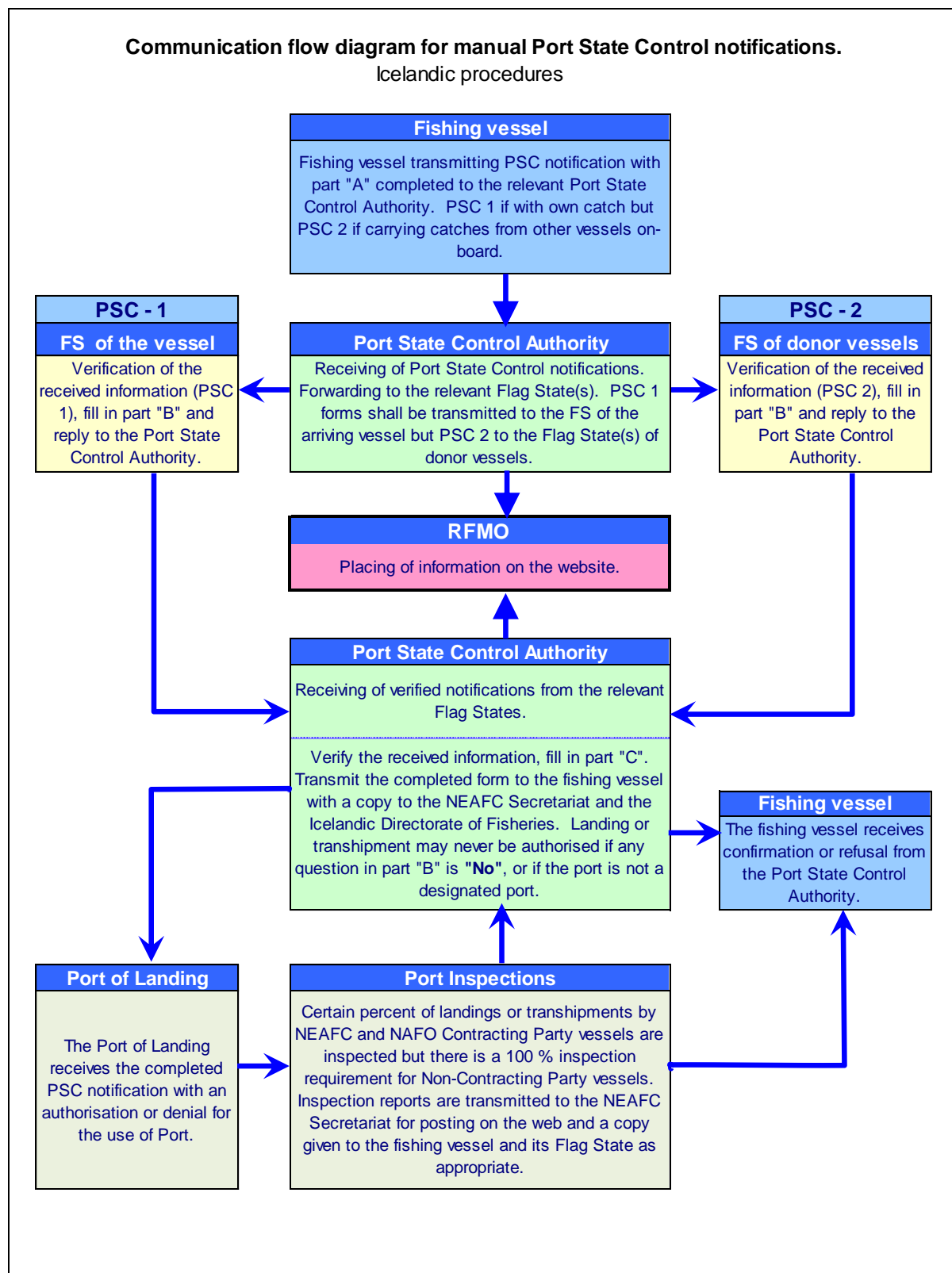


FIGURE 2 COMMUNICATION FLOW DIAGRAM FOR MANUAL NOTIFICATIONS