

THE VOLUNTARY GUIDELINES FOR FLAG STATE PERFORMANCE

1. On the recommendation of the Committee on Fisheries (COFI) at its Twenty-eighth session in 2009, FAO convened the Technical Consultation on Flag State Performance at FAO Headquarters, Rome, Italy, from 2 to 6 May 2011, and resumed from 5 to 9 March 2012 and from 4 to 8 February 2013. The Consultation was funded by the Governments of Canada, New Zealand, Norway and United States of America and by the European Commission. The report of the Technical Consultation is available as COFI/2014/Inf. 16.
2. The Technical Consultation, adopted “Voluntary Guidelines for Flag State Performance” to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the effective implementation of flag State responsibilities. The agreed Guidelines are wide-ranging and address the purpose and principles, the scope of application, performance assessment criteria, cooperation between flag States and coastal States, a procedure for carrying out an assessment, encouraging compliance and deterring non-compliance by flag States, cooperation with and assistance to developing States with a view to capacity development, as well as the role of FAO. They are expected to provide a valuable tool for strengthening compliance by flag States with their international duties and obligations regarding the flagging and control of fishing vessels.
3. Pursuant to paragraph 26 of the Report of the Technical Consultation on Flag State Performance, the Secretariat has reviewed the text of the Guidelines to ensure internal language and legal consistency, reorganize the paragraphs under appropriate titles and subtitles and edit the numbering format as required, prior to submitting the Guidelines to COFI for its endorsement in June 2014. The review of the text including for language and legal consistency, the new structure of the Guidelines and the presentation of the assessment criteria entail no substantive changes to the text which was agreed to by the Technical Consultation.

Specifically, the Secretariat has done the following:

merged the various assessment criteria into five separate sub-sections under the main heading (see new structure in Appendix I), as the suggested structuring of the performance assessment criteria under the headings “measures” and “actions” proved unsuccessful;

rearranged the paragraphs of the criteria under proposed subheadings;

ensured consistency of terms. For example the terms “fishing and fishing related activities” has been inserted to replace the terms “fishing”, “fishing activities” and “fishing operations” where it was implicit that, based on the assessment of previous usage, the term “fishing and fishing related activities” was intended to be used in order to cover the full range of activities implied by this term. Other examples are that the term “to fish” has been replaced with “engaging in fishing and fishing related activities”, “entitled to fly” has been replaced with “flying its flag” and “developing State” was used consistently instead of “developing flag State”;

deleted the phrase “in support of such fishing” where it had been inserted after 89 0 TD.0007 Tc.0007 Tw[plac

instrument of ratification, accession, approval or acceptance, bringing the total number of Parties to the Agreement to 10¹ (as at 26 March 2014). The Agreement shall enter into force 30 days after the date of deposit with the Director-General of FAO of the twenty-fifth instrument of ratification, accession, approval or acceptance. It is worth recalling that, at the thirtieth session of COFI, 26 Members had indicated that they had their domestic processes in train to become party to the Agreement.

6. In November 2011, FAO convened an informal open-ended technical meeting to review draft terms of reference (TORs) for the ad hoc working group which would be responsible for the management of the funding mechanism, to be established under Article 21 of the Agreement when it comes into force, to enhance the capacity of developing States Parties to implement the Agreement. These TORs were endorsed by COFI at its thirtieth session in 2012.

7. In July 2012, COFI appreciated FAO's efforts in initiating a series of regional capacity-development workshops to prepare for the entry into force of the Agreement. In response, FAO

awareness-raising. In Phase 1, carrying out the system

APPENDIX I

Comparison between the agreed and new structure of the Voluntary Guidelines for Flag State Performance

PREVIOUS STRUCTURE	NEW STRUCTURE
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APPENDIX II

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, excluding fishing for subsistence.

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13. The flag State effectively implements conservation and management measures, including the following:

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agency, the flag State ensures that sufficient cooperation and information sharing exists between the agencies responsible for those functions.

20. The flag State refuses registration of vessels that already hold a registration from another State, except in the case of a temporary parallel registration.

21. The flag State makes registry data available to relevant internal government users.

22. The flag State makes registry data publicly available and easily accessible subject to any applicable confidentiality requirements.

23. The flag State takes all practicable steps, including the denial to a vessel of the entitlement to fly that State's flag, to prevent flag hopping.

24. The flag State settles pending sanctions against a vessel before it deregisters the vessel, where applicable.

25. The flag State maintains a record of vessels refe

- (ii) the areas, scope and duration of the authorization to engage in fishing and fishing related activities;
- (iii) the species, fishing gear authorized, and where appropriate, other applicable management measures; and
- (iv) relevant conditions under which an authorization is issued that may, where required, include those in paragraph 47 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing (the "IPOA-IUU"), as shown in Annex 1.

30. The flag State effectively implements a regime for authorizing fishing and fishing related activities (e.g. licensing), including issuing an authorization only where it is satisfied that:

- (a) the vessel has the ability to comply with the terms and conditions of the authorization;
- (b) it can effectively exercise its jurisdiction and control over the vessel to ensure compliance with applicable conservation and management measures; and
- (c) it can effectively exercise its enforcement jurisdiction and authority over the holder of the authorization.

Monitoring, control, surveillance and enforcement

31. The flag State implements a control regime over vessels flying its flag that includes, as a minimum:

- (a) legal authority to take control of the vessels (e.g. denial of sailing, recall to port);
- (b) establishment and maintenance of an up-to-date record of vessels;
- (c) monitoring tools, such as vessel monitoring systems, logbooks/documentation, and observers;
- (d) mandatory requirements regarding fisheries-related data that must be recorded and reported in a timely manner by the vessels (e.g. catches, effort, bycatches and discards, landings and transshipments); and
- (e) an inspection regime, including at sea and at port.

32. The flag State has in place an enforcement regime, which includes, as a minimum:

- (a) capacity to detect and take enforcement action with respect to violations;
- (b) authority and capacity to conduct timely investigations of violations, including the establishment of a system for the reporting and investigation of violations.

33. The flag State undertakes comprehensive and effective monitoring, control and surveillance (MCS) of fishing and fishing related activities, including, to the extent possible, measures and actions described in paragraph 24 of the IPOA-IUU, as shown in Annex 2.
34. The flag State contributes to joint MCS and enforcement efforts, where applicable.
35. The flag State takes action in respect of vessels flying its flag and identified as participating in IUU fishing or fishing related activities in support of such fishing.
36. Where the flag State implements an enforcement regime, the evidence regarding violations is diligently gathered and treated, including making available to enforcement authorities of other States and, if applicable, to RFMO/As evidence relating to alleged violations to the extent permitted by domestic law. Violations are investigated and procedures for sanctions initiated in accordance with domestic laws, regulations, policies and practices in a timely manner.
37. Where the flag State implements an enforcement regime and where enforcement actions by flag States are adopted by an RFMO/A, such States ensure that adequate and timely mechanisms to resolve disputes in respect of those actions exist within relevant RFMO/As.
38. The flag State implements effective and timely sanctions, that include the following:
- (a) sanctions are applied in proportion to the seriousness of the violation and are adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and deprive offenders of benefits accruing from their illegal activities;
 - (b) the flag State promotes knowledge and understanding of MCS issues within national judicial and administrative systems;
 - (c) the flag State has in place judicial and/or administrative processes capable of meeting these Guidelines, to the extent possible, in a timely and effective manner;
 - (d) the flag State is capable of ensuring that sanctions are complied with including, where appropriate, preventing the vessel from engaging in IUU fishing or fishing related activities in support of such fishing until sanctions are complied with; and
 - (e) the flag State responds in a timely manner to requests from other States or, if applicable, RFMO/As to take measures in respect of vessels flying its flag.

Cooperation between flag States and coastal States

39. Where a coastal State decides to engage in a fisheries access agreement with a flag State, the flag State should

43. The flag State, in accordance with its legislation and its international obligations, should cooperate with a coastal State, by exchanging all relevant information regarding the activities of the vessels flying its flag with respect to fishing and fishing related activities by such vessels in maritime areas under the jurisdiction of such coastal State.

Procedure for carrying out assessments

44. All flag States are encouraged to have performance assessments conducted periodically.
45. Where the flag State undertakes self-assessment it is encouraged to:
- (a) do so through a transparent process including competent authorities and internal consultations;
 - (b) make the results publicly available;
 - (c) consider the participation of an assessor, possibly in cooperation with an international organization;
 - (d) consider international mechanisms for self-assessment, including assistance;
 - (e) develop a validation process; and
 - (f) consider possible linkages with multilateral assessment, including the need for global consistency among self-assessments.
46. Where a flag State decides to undertake an external assessment it is encouraged to invite a competent multilateral body or, if so desired by the flag State, another State or States to conduct the assessment. Such an external assessment should:
- (a) apply these Guidelines and, if applicable, the result of RFMO/As flag State assessment; and
 - (b) ensure there is due regard for transparency and international law.

Encouraging compliance and deterring non-compliance by flag States

47. Measures taken in light of the results of an assessment may include:
- (a) corrective actions, as appropriate, taken by the flag State;
 - (b) cooperative actions by the flag State and other interested States, including through RFMO/As, as appropriate, such as:
 - (i) engaging in consultations;
 - (ii) offering assistance and capacity development;
 - (iii) sharing information on the conclusions of the assessment and follow-up actions with other interested States and, if applicable, RFMO/As; and
 - (iv) engaging in available dispute resolution mechanisms, as applicable;
 - (c) measures as set out in the IPOA-IUU and the Code as well as other relevant international instruments, as applicable.

Cooperation with and assistance to developing States with a view to capacity development

48. Providing assistance to developing States to help them improve their performance as flag States is in the mutual interest of all States.
49. States should give full recognition to the special requirements of developing States in relation to improving flag State performance consistent with these Guidelines. States may, either directly or

through international organizations, including RFMO/As, provide assistance to developing States in order for them to enhance their ability to:

- (a) develop an adequate legal and regulatory framework;
- (b) strengthen institutional organization and infrastructure needed to ensure adequate control of vessels flying their flag;
- (c) develop, implement and improve practical and effective MCS;
- (d) build institutional and human resource capacity to process and analyse scientific and other data,

ANNEX 1

Conditions of authorizations**Paragraph 29(c)(iv)****(IPOA–IUU, paragraph 47)**

Conditions under which an authorization is issued may include, as appropriate:

1. vessel monitoring systems;
2. catch reporting conditions, such as:
 - 2.1 time series of catch and effort statistics by vessel;
 - 2.2 total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery period (nominal weight is defined as the live weight equivalent of the catch);
 - 2.3 discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;
 - 2.4 effort statistics appropriate to each fishing method, and
 - 2.5 fishing location, date and time fished and other statistics on fishing operations.
3. reporting and other conditions for transshipping, where transshipping is permitted;
4. observer coverage;
5. maintenance of fishing and related logbooks;
6. navigational equipment to ensure compliance with boundaries and in relation to restricted areas;
7. compliance with applicable international conventions and national laws and regulations in relation to maritime safety, protection of the marine environment, and conservation and management measures or provisions adopted at a national, regional or global level;
8. marking of its fishing vessels in accordance with internationally recognized standards, such as marking of ird SpecirfVh

ANNEX 2

Monitoring, control and surveillance**Paragraph 33****(IPOA–IUU, paragraph 24)**

Comprehensive and effective monitoring, control and surveillance (MCS) of fishing may be undertaken from its commencement, through the point of landing, to final destination, including, as appropriate, by:

1. developing and implementing schemes for access to waters and resources, including authorization schemes for vessels;
2. maintaining records of all vessels and their current owners and operators authorized to undertake fishing subject to their jurisdiction;
3. implementing, where appropriate, a vessel monitoring system (VMS), in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS on board;
4. implementing, where appropriate, observer programmes in accordance with relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry observers on board;
5. providing training and education to all persons involved in MCS operations;
6. planning, funding and undertaking MCS operations in a manner that will maximize their ability to prevent, deter and eliminate IUU fishing;
7. promoting industry knowledge and understanding of the need for, and their cooperative participation in, MCS activities to prevent, deter and eliminate IUU fishing;
8. promoting knowledge and understanding of MCS issues within national judicial systems;
9. establishing and maintaining systems for the acquisition, storage and dissemination of MCS data, taking into account applicable confidentiality requirements; and
10. ensuring effective implementation of national and, where appropriate, internationally agreed boarding and inspection regimes consistent with international law, recognizing the rights and obligations of masters and of inspection officers, and noting that such regimes are provided for in certain international agreements, such as the 1995 UN Fish Stocks Agreement, and only apply to the parties to those agreements.