

Report of the

TECHNICAL CONSULTATION ON FLAG STATE PERFORMANCE

Rome, 2–6 May 2011, 5–9 March 2012 and 4–8 February 2013



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PREPARATION OF THIS DOCUMENT

This is the final version of the report of the Technical Consultation on Flag State Performance. The Technical Consultation was held 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.

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ABSTRACT

This document contains the report of the Technical Consultation on Flag State Performance. The Consultation was held in three sessions at FAO Headquarters, Rome, from 2–6 May 2011, 5–9 March 2012 and 4–8 February 2013. The Consultation was convened by the Director General of the Food and Agriculture Organization of the United Nations upon the recommendation of twenty-eighth session of the FAO Committee on Fisheries. The Technical Consultation finalized the Voluntary Guidelines for Flag State Performance. The Consultation was funded by the Governments of Canada, New Zealand, Norway and United States of America and by the European Commission.

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OPENING OF THE TECHNICAL CONSULTATION

1. On the recommendation of the Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO) at its twenty-eighth session in 2009, the Director-General of FAO, Mr Jacques Diouf, convened the Technical Consultation on Flag State Performance. The Technical Consultation was held 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.

2. The Consultation was attended by 81 FAO Members and one Associate Member, by Representatives from one specialized agency of the United Nations, and by observers from 11 intergovernmental and international non-governmental organizations. The list of delegates and observers is in Appendix B. The documents that were placed before the Consultation are listed in Appendix C.

3. The Secretary called the Technical Consultation to order and welcomed delegates to FAO and the Consultation.

4. Mr Kevern Cochrane, Director, Fisheries and Aquaculture Resources Use and Conservation Division, FAO Fisheries and Aquaculture Department, on behalf of Mr Árni M. Mathiesen, Assistant Director-General, FAO Fisheries and Aquaculture Department, made an opening statement on behalf of the Director General of FAO. The statement referred, *inter alia*, to the flag States' primary responsibility under international law to exercise effective control over their fishing vessels and ensure compliance with relevant laws and conservation and management measures. However, it was pointed out that there had been increasing concern by the international community that the performance of many flag States in the fulfilment of their international obligations had been inadequate. These States were either unable for capacity reasons, or unwilling, to exercise effective control over their fishing fleets, many of which engaged in illegal, unreported and unregulated (IUU) fishing and related activities in geographic areas beyond the national jurisdiction of the flag State. Consequently the burden to control these fleets had shifted increasingly to others including coastal States, port States and regional fisheries management organizations and arrangements (RFMO/As). This implied the need for these States to develop human resources, compliance tools and up-to-date mechanisms that were costly, especially for developing countries.

5. Mr Cochrane also outlined the process and outcomes of the 2009 Expert Consultation on Flag State Performance. This Consultation considered, and made recommendations on, criteria for assessing the performance of flag States and possible actions against vessels flying the flags of States not meeting the identified criteria. In addition, the role of governments, RFMOs, international institutions and civil society in implementing the criteria and actions for flag State performance, as well as assisting developing countries to meet the criteria, was addressed. The outcomes of the Expert Consultation formed the basis for the work of the Technical Consultation.

6. Mr Cochrane reminded the Technical Consultation that in keeping with existing FAO practice an administrative report would be prepared at the conclusion of the Consultation. He added that it would be factual in content and attached to it would be the guidelines, or whatever document was agreed. COFI would be informed of the outcome of the Consultation. The text of Mr Mathiesen's opening statement is attached as Appendix D.

ELECTION OF THE CHAIRPERSON

7. Dr Johann Augustyn, Chief Director, Fisheries Research and Development, Department of Agriculture, Forestry and Fisheries, Cape Town, South Africa, was elected Chairperson of the Consultation. He expressed his thanks to the Consultation for its confidence in electing him to the position.

ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE TECHNICAL CONSULTATION

8. The Consultation adopted the agenda as given in Appendix A.

ELECTION OF VICE-CHAIRPERSONS AND DESIGNATION OF RAPPORTEUR

9. Dr Dean Swanson (United States of America), Ms Tritaporn Khomapat (Thailand) and Mr Terje Lobach (Norway) were elected First, Second and Third Vice-Chairpersons respectively. Ms Angela Bexten (Canada) was elected Rapporteur.

DRAFT CRITERIA FOR ASSESSING FLAG STATE PERFORMANCE

10. Following informal requests from several delegations, the Chair invited the Secretary to outline the documentation that had been prepared for the Technical Consultation. In doing so he noted that the report of the Expert Consultation on Flag State Performance was available together with two other documents. Document TC-FSP/2011/3 entitled “Draft Criteria for flag State performance” was Appendix F from the report of the Expert Consultation including reference to a number of specific provisions in existing international fisheries instruments. The Secretary explained that this information had been added by the Secretariat at the request of the experts.

11. The Secretary advised the Technical Consultation that the Expert Consultation on Flag State Performance had completed its work on 26 June 2009. He pointed out that in paragraph 66 of the report, the Expert Consultation had noted that further elaboration of elements of the framework for criteria for flag State performance, including relevant appendices, would be required prior to the Technical Consultation through convening of technical working groups, contracting consultants or holding an additional Expert Consultation. The Secretariat opted to contract a consultant to complete the work of the Expert Consultation on Flag State Performance.

12. In addition, document TC-FSP/2011/2 entitled “Draft Criteria for assessing flag State performance and possible actions against vessels flying the flags of States not meeting such Criteria” was elaborated by the Secretariat at the request of the Expert Consultation. This document referred specifically to paragraphs 32, 33 and 35 in document TC-FSP/2011/3 and provided an elaboration of criteria in five appendices.

13. For clarification, the Technical Consultation examined the COFI mandate for the Expert Consultation on Flag State Performance (FAO headquarters, Rome, 23-26 June 2009) as contained in paragraph 71 of the report of COFI 27 (2007). In addition the Consultation considered the mandate for the Technical Consultation in paragraph 70 of the report of COFI 28 (2009) where it stated, *inter alia*, “the Committee agreed that this meeting (the Expert Consultation) should be followed by a Technical Consultation on “Flag State Performance.”

At COFI 29 (2011) in paragraph 34 of the session's report, it was stated that "Considering that compliance by flag States with their duties under international law is an essential factor in achieving sustainable fisheries and combating IUU fishing, the Committee welcomed the arrangements made to convene the FAO Technical Consultation on Flag State Performance in May 2011".

14. The Chairperson, noting the practice adopted by the Technical Consultation to draft a Legally-binding Instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, advised the Technical Consultation that at the conclusion of the session on 6 May 2011, if the Consultation's work was not completed, the text of the outcome of the Consultation would become a Chairperson's draft text and would be placed on the FAO Website as such. In this way the text would be a "living document" subject to impartial review and amendment as the Consultation considered appropriate, but under the Chairperson's responsibility until it was finalized.

15. As indicated in the opening statement by the Assistant Director-General of the FAO Fisheries and Aquaculture Department, in keeping with FAO practice, the report of the Technical Consultation would be adopted at the conclusion of the Consultation. However the Technical Consultation agreed that for each session of the Technical Consultation there would be a Chairperson's interim report in English made available at the conclusion of each session. A more elaborate report would be provided by the Chairperson following each session. These reports would be translated and placed on the FAO Website.

16. The Technical Consultation was informed that in keeping with past practice, submissions from Members would be posted on the FAO Website in their original languages. Consideration could be given to the translation of some papers depending on availability of extrabudgetary funds. Information related to the posting of documents on the Web would be made available on the Website. The address of the Website is www.fao.org/fishery/nems/40262/en.

17. Following these explanations and clarifications, the Chairperson invited delegates to make opening statements. There was a rich and wide-ranging exchange of views relating to issues that should be addressed in the Consultation and strong agreement that the flag State had a fundamental role to play in combating IUU fishing. The Technical Consultation acknowledged that this position was reflected already in a number of international fisheries instruments and that the relevant provisions of these instruments should be drawn upon in the current exercise rather than drafting new provisions relating to flag State responsibilities. It was underscored that the Consultation would not engage in drafting new norms or international law, or creating new obligations.

18. To provide structure and coherence to the debate and as a means of making progress, the Technical Consultation agreed to organize its discussion under the following headings:

- statement of purpose and principles – why the guidelines are important, what they will achieve (preamble, introduction), purpose of criteria;
- scope of application of the criteria (geography, vessels);
- performance assessment criteria;
- procedure for carrying out assessments;
- measures and incentives to encourage compliance by flag States; and

- cooperation with and assistance to developing countries with a view to capacity development.

19. At the start of the first resumed session in March 2012, the Assistant Director-General for Fisheries and Aquaculture, Mr Mathiesen, made a statement noting that disappointing progress had been made at the first session of the Technical Consultation. He outlined intersessional initiatives that had been undertaken both by FAO and some Members. Mr Mathiesen encouraged Members to make good progress at the meeting so that a positive recommendation could be made to the thirtieth session of COFI. His statement is in Appendix E.

20. The resumed session continued its discussion under agenda item 5: draft criteria for assessing flag State performance, merging the sections listed in paragraph 18 of this report and the text proposed for the Technical Consultation by the 2009 Expert Consultation on Flag State Performance.

21. The thirtieth session of COFI noted the need for further progress with the negotiation of the Criteria and requested the convening of the second resumed session of the Technical Consultation to make efforts to reach consensus.

22. The second resumed session focused on issues related to geographical scope, cooperation between flag States and coastal States, procedure for carrying out assessments, and encouragement of compliance and deterrence of non-compliance by flag States. The correlated text was reviewed and negotiated, with consensus being reached on all the text by the end of the session.

23. In the discussion on paragraph 42, a concern was raised by the delegate of Angola that the paragraph might give rise to a situation of double jeopardy thus prohibiting the coastal State from imposing a sanction in relation to a violation for which a sanction had already been imposed by the flag State. The Secretariat clarified that paragraph 42 does not create a concern as:

- the flag State and the coastal State would apply their respective laws to impose sanctions for violations;
- the elements constituting a violation would normally be different under coastal State and flag State laws thus creating different violations; and
- the national law ultimately determines whether national courts should sanction violations which may appear to have been sanctioned in foreign jurisdictions.

Consequently coastal States can impose sanctions for violations of its laws both prior to or after the flag State has imposed a sanction with respect to a violation that may originate from the same set of facts.

24. In the discussion on paragraph 13, it was noted that the processes for vessel registration and the authorization for fishing may be separate for some flag States and that assessments conducted under these Guidelines should consider whether these processes collectively satisfied the criteria.

25. Considering that the instrument is voluntary in nature, it was agreed that the title of the instrument should read “Voluntary Guidelines for Flag State Performance”.

26. The text of the Voluntary Guidelines for Flag State Performance, as agreed by the Technical Consultation, is in Appendix F. The Secretariat was requested by the Technical Consultation to review the text to ensure internal language and legal consistency, to reorganize the paragraphs under appropriate titles and subtitles and to edit the numbering format as required, prior to submitting the Guidelines to COFI for its consideration in June 2014.

OTHER MATTERS

27. The delegate of Norway informed the Technical Consultation about a newly published study by the United Nations Office on Drugs and Crime on transnational organized crime in the fishing industry. This study found that human trafficking, especially of men and children, on board fishing vessels was linked to illegal fishing. Norway requested that FAO should take account of such criminal activity when addressing IUU fishing and flag State responsibility.

28. The European Union understands that the adoption of this instrument is without prejudice to actions and procedures foreseen under domestic legislation aiming to identify non-cooperating flag States in the fight against IUU fishing.

ADOPTION OF THE REPORT

29. The report of the Technical Consultation was adopted on 8 February 2013 at 14.45 hours.

Agenda

1. Opening of the Technical Consultation
2. Election of the Chairperson
3. Adoption of the Agenda and arrangements for the Technical Consultation
4. Election of Vice-Chairpersons and designation of Rapporteur
5. Draft Criteria for assessing flag State performance and possible actions against vessels flying the flags of States not meeting such Criteria:
 - Draft Criteria for flag State performance;
 - Assessing flag State performance and possible actions with respect to vessels flying the flags of States not meeting the Criteria for flag State performance, and
 - Assistance to developing countries to improve their performance as flag States
6. Other matters
7. Adoption of the report

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List of documents

TC-FSP/2011/1	Agenda and Timetable
TC-FSP/2011/2	Draft Criteria for assessing flag State performance and possible actions against vessels flying the flags of States not meeting such Criteria
TC-FSP/2011/3	Draft Criteria for flag State performance (Appendix F from the Report of the Expert Consultation on Flag State Performance. Rome, 23–26 June 2009)
TC-FSP/2011/Inf.1/Rev.1	List of documents
TC-FSP/2011/Inf.2	List of participants
TC-FSP/2011/Inf.3	Statement by the Assistant Director-General for Fisheries and Aquaculture
TC-FSP/2011/Inf.4	Report of the Expert Consultation on Flag State Performance. Rome, 23–26 June 2009
TC-FSP/2011/Inf.5	Statement of Competence and Voting Rights Submitted by the European Community (EC) and its Members States

Opening statement at the first session of the Technical Consultation
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Good morning, ladies and gentlemen:

On behalf of the FAO's Director-General, Jacques Diouf, it gives me much pleasure to welcome you to FAO for this Technical Consultation.

We are aware that flag States have the primary responsibility under international law to exercise effective control over their fishing vessels and ensure compliance with relevant laws and conservation and management measures. However, over the past decade at least it has been of increasing concern to the international community that the performance of many flag States in the fulfillment of their international obligations has been inadequate. These States are either unable or unwilling to exercise effective control over their fishing fleets, many of which engage in illegal, unreported and unregulated (IUU) fishing and related activities in areas beyond the national jurisdiction of the flag State: that is in the high seas or in areas under the sovereignty or jurisdiction of other States.

As a result of this situation, the burden to control these fleets has been shifted increasingly to others including coastal States, port States and members of regional fisheries management organizations or arrangements (RFMO/As). This implies the need for these States to develop human resources, compliance tools and up-to-date mechanisms for all actions that must be taken as a consequence of this situation and especially to combat the IUU fishing and related activities by vessels flying flags of "non-compliance". This shift in burden, which is quite costly, has important implications for developing countries.

In 2007 at the twenty-seventh session of the FAO Committee on Fisheries (COFI) a number of Members spoke about irresponsible flag States. Many Members suggested the need to develop criteria for assessing the performance of flag States as well as to examine possible actions against vessels flying the flags of States not meeting such criteria. As an initial step to address the issue, the convening of an Expert Consultation was proposed.

The Governments of Canada and Iceland, with FAO technical support, first convened an Expert Workshop on Flag State Responsibilities in Canada in March 2008. This Workshop was intended to provide input to the FAO Expert Consultation. It addressed key issues such as criteria to assess the performance of flag State responsibilities, instruments and mechanisms to ensure commitment and implementation of the criteria, compliance mechanisms, possible actions against vessels in the event of non-compliance, and avenues for assistance to developing countries in meeting commitments under the criteria.

The twenty-eighth session of COFI in 2009, considering again the issue of flag State performance took note of the preparatory work in the Workshop. COFI agreed that an Expert Consultation on the development of flag State performance criteria should be convened, to be followed by a Technical Consultation.

The Expert Consultation on Flag State Performance was held in Rome in June 2009. It was highly successful. The experts considered, and made recommendations on, criteria for assessing the performance of flag States; possible actions against vessels flying the flags of States not meeting the criteria identified; the role of national governments, regional fisheries management organizations, international institutions, international instruments and civil society in implementing the criteria and actions for flag State performance, and assistance to developing countries to assist them in meeting the criteria, taking actions and fulfilling their respective roles as appropriate.

The Expert Consultation recommended that international guidelines on criteria for assessing the performance of flag States and possible actions against vessels flying the flags of States not meeting such criteria be developed. An assessment process would be an important part of such guidelines. Noting the basis provided by international law for such assessments, the Expert Consultation agreed on the need for two processes: one for self-assessment and another for international or multilateral assessment. The latter assessment should be undertaken in a spirit of international cooperation, consistent with the 1982 United Nations Convention on the Law of the Sea. The Consultation further agreed upon draft criteria for flag State performance, processes for conducting assessments, post-assessment actions and assistance to developing countries to improve their performance as flag States.

At the twenty-ninth session of COFI in February of this year, the Committee welcomed the FAO arrangements that had been made to convene the Technical Consultation. Most recently, these sentiments were echoed by a number of Members at the one hundredth and forty-first session of the FAO Council in April 2011.

In keeping with existing practice I would like to advise the meeting that an administrative report will be prepared at the conclusion of the Consultation. It will be factual in content and attached to it will be the guidelines, or whatever document is agreed. The thirtieth COFI session in July 2012 will be informed of the outcome of the Consultation. I am confident that the Committee will take considerable interest in the meeting's deliberations and report.

In conclusion I hope you will have robust and fruitful discussions over the next five days. If my colleagues or I can be of assistance during the Consultation please do not hesitate to contact us.

Thank you very much.

Opening statement at the resumed session of the Technical Consultation
by
Árni M. Mathiesen
Assistant Director-General
Fisheries and Aquaculture Department
FAO

Good morning ladies and gentlemen:

Following the warm welcome from the Chairperson of the Technical Consultation on Flag State Performance, Dr Johann Augustyn, it is my pleasure also to welcome you to FAO and the resumed session of the meeting. I look forward to interacting with you over the coming week as we move forward with the heavy agenda of work before us.

The root cause of IUU fishing is the lack of effective control exercised by flag States over their fishing vessels in accordance with international law. This point was recognized, and emphasized, more than a decade ago when FAO Members commenced negotiating the International Plan of Action on Illegal, Unreported and Unregulated Fishing. Despite having made excellent progress on many fronts against IUU fishing the international community is still grappling with the flag State issue. We need a new tool, to complement the other tools that have been developed, to prevent, deter and eliminate IUU fishing in an efficient and cost-effective manner.

The first session of the Technical Consultation on Flag State Performance in May 2011 was disappointing. It is not easy to pinpoint why there was such a marked lack of progress, but I am sure we can all agree that this was the case. After much thought and consultation I more-or-less formed the view that despite having been addressed at the last three COFI sessions, and despite having a firm mandate to proceed with negotiations, there might be a lack of will to proceed.

As a consequence of this position, I consulted in haste following the first session in July 2011 with the chairpersons of the Group of 77 and the Organization for Economic Cooperation and Development. Encouragingly, I was assured by both chairpersons that their respective memberships wished that the Technical Consultation proceed with a view to achieve a tangible outcome.

In the inter-sessional period I have had the opportunity to consult with FAO Members concerning the Technical Consultation. I am also aware that Members have been consulting among themselves. Through this dialogue I am hopeful that differences and positions on key issues may have been narrowed. In addition, some Members have prepared documents for dissemination. Some of them have been distributed independently by Members themselves but all of them are available for downloading on the FAO Fisheries and Aquaculture Department's meetings website.

Turning to the resumed session of the Technical Consultation it is my sense that there is a desire among Members to achieve results. I have been informed that there may be a degree of frustration with the draft text and the structure of the document that is before the meeting. If this is the case I would encourage Members to assist the Chairperson with proposals for re-drafting and restructuring the text. Remember that the document is a draft. It can be amended

and even discarded if that is the will of the Technical Consultation. I stress that everything is negotiable and the outcome of the meeting has yet to be determined by Members.

COFI is just around the corner. The Committee and the international community are waiting to see the outcome of the Technical Consultation. I am sure they want concrete results and progress. It is my fervent desire that the meeting will deliver both good progress and reasonable results, thus enabling COFI and the global community to express its satisfaction with the outcomes that have been realized.

On a less positive note I believe it is not premature to consider the possibility that satisfactory progress is not made at this session. If this is the case I would encourage Members to think about future options to be incorporated into a recommendation for the upcoming COFI session, including continuation of the technical consultation or to defer further work on the flag State performance. However, I hope that there will be reason for COFI to agree that the work be continued.

I would like to acknowledge the donors that have funded the various activities leading to this session of the Technical Consultation. Despite a wide call for funds, it has not been easy to secure the necessary funding this time. I would like to express my thanks to the European Union and the Governments of Canada, New Zealand, Norway, and the United States of America for their financial contributions. As you know the Technical Consultation is funded entirely from extra-budgetary sources. Without this support it would not have been possible to proceed with the meeting.

Ladies and gentlemen, we all have a lot riding on the outcome of the Technical Consultation. We need to intensify international efforts, including through FAO, to combat IUU fishing. It has been identified consistently in international fora as being one of the major problems undermining long-term sustainability in fisheries. Therefore, I urge all Members to focus on the key issues, to show flexibility where that is possible, and to achieve results. This is the challenge before us at this session. We must ensure that IUU fishers no longer have free rein to exploit fisheries around the world, especially those fisheries in developing countries where communities are heavily dependent on them for food and livelihoods.

Let me assure you that I am available for consultation during the Technical Consultation. I will follow progress with keen interest, mindful that we have a heavy weight on our shoulders and the need to move ahead to fulfill the COFI mandate.

Finally, I wish to emphasize that the scope, approach, and the results of this Technical Consultation must be determined by Members. The decisions taken to proceed with this work were agreed by Members at recent COFI sessions. The Secretariat stands ready to assist in facilitating and achieving the outcomes that Members want. However, the key decisions that must be made that will shape the process and results of the meeting cannot be made by the Secretariat.

Thank you ladies and gentlemen for your attention.

Voluntary Guidelines for flag State performance

Statement of purpose and principles

1. These Guidelines for Flag State Performance are voluntary. However, certain elements are based on relevant rules of international law, including those reflected in the 1982 United Nations Convention on the Law of the Sea. The objective of these Guidelines is to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing and the fishing related activities in support of such fishing referred to in paragraph 4 through the effective implementation of flag State responsibilities and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

2. In its exercise of effective flag State responsibility, the flag State should:
 - (a) act in accordance with international law with respect to flag State duties;
 - (b) respect national sovereignty and coastal State rights;
 - (c) prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing;
 - (d) effectively exercise its jurisdiction and control over vessels flying its flag;
 - (e) take measures to ensure that persons subject to its jurisdiction, including owners and operators of vessels flying its flags, do not support or engage in IUU fishing and fishing related activities in support of such fishing;
 - (f) ensure the conservation and sustainable use of living marine resources;
 - (g) take effective action against non-compliance by vessels flying its flag;
 - (h) discharge its duty to cooperate in accordance with international law;
 - (i) exchange information and coordinate activities among relevant national agencies;
 - (j) exchange information with other States and give mutual legal assistance in investigation and judicial proceedings, as required by their respective international obligations; and
 - (k) recognize the special interests of developing States, in particular the least developed among them and small island developing States, and to cooperate to enhance their abilities as flag States including through capacity development.

Scope of application

Geographical

3. These Guidelines apply to fishing and fishing related activities in maritime areas beyond national jurisdiction. They might also apply to fishing and fishing related activities within the national jurisdiction of the flag State, or of a coastal State, upon their respective consent, without prejudice to paragraphs 8 and 39 to 43.

Where a vessel operates in maritime areas under the jurisdiction of a State other than the flag State the application of these Guidelines is subject to the sovereign rights of the coastal State.

Vessels

4. These Guidelines apply to any ship, boat or other type of vessel used, equipped to be used or designed to be used for fishing or fishing related activities, defined, for the purposes of these Guidelines, as any operation in support of, or in preparation for, fishing, including the

landing, 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.

5. Where a coastal State authorizes any vessel chartered by its nationals to fish exclusively in areas subject to its national jurisdiction and under its control, such vessels should be subject to measures by the coastal State that are as effective as measures applied in relation to vessels entitled to fly its flag while in waters of the coastal State.

Performance assessment criteria - Measures

6. The flag State has incorporated the flag State principles and rules that are binding on it in accordance with international law into its domestic laws, regulations, policies and/or practices.

7. The flag State has taken such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures or the flag State accepts and implements the conservation and management measures adopted by a relevant regional fisheries management organization or arrangement (RFMO/A).

8. The flag State ensures that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States.

9. The flag State supports cooperation among flag States on managing capacity and fishing effort, catch limits and output controls.

10. The flag State follows minimum information requirements, such as:

- (a) the vessel data meets the requirements of the FAO Standard Specifications and Guidelines for Marking and Identification of Fishing Vessels and relevant requirements of the International Maritime Organization;
- (b) information on owner/operators identifies effective beneficial owners/operators;
- (c) information on the history of the vessel identifies prior flag/name changes; and
- (d) information on the vessel.

11. The flag State follows registration procedures, which include:

- (a) verification of vessel history;
- (b) grounds for refusal of registration of the vessel, including, to the extent possible, that it is on an IUU fishing vessel list or record, or is registered in two or more States;
- (c) de-registration procedures;
- (d) notification of changes and/or regular update requirements; and
- (e) coordination of registration among relevant agencies (e.g. fisheries, merchant marine) and with prior flag States to determine whether there are pending investigations or sanctions that may provide a motive for flag hopping, that is to say, the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions which have been adopted at a national, regional or global level or of facilitating non-compliance with such measures or provisions.

12. The flag State's registration procedures are accessible and transparent.
13. The flag State avoids registration of vessels with a history of non-compliance as appropriate, except where:
 - (a) the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel; or
 - (b) having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing or fishing related activities in support of such fishing.
14. The flag State conducts the functions of registration of a vessel and issuing of an authorization to fish in a coordinated manner that ensures each gives appropriate consideration to the other, and appropriate links exist between the operation of the vessel registers and the records of fishing vessels. Where such functions are not undertaken by one agency, the flag State ensures sufficient cooperation and information sharing exists between the agencies responsible for those functions.
15. The flag State maintains a record of fishing vessels entitled to fly its flag, and includes, for vessels authorized to fish on the high seas, all the information set out in paragraphs 1 and 2 of Article VI of the 1993 FAO Compliance Agreement, and may also include, *inter alia*:
 - (a) the previous names, if any and if known;
 - (b) name, address and nationality of the natural or legal person in whose name the vessel is registered;
 - (c) name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;
 - (d) name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel;
 - (e) name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and
 - (f) vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel.
16. The flag State requires records to be kept in accordance with relevant subregional, regional and international standards and requirements.
17. The flag State has established an institutional, legal, technical foundation/framework for fisheries management (such as that referred to in Article 7.1 of the 1995 FAO Code of Conduct for Responsible Fisheries), that should include, at a minimum:
 - (a) a government agency or statutory authority or statutory oversight of an agency or a body with a clear mandate and accountability for the results of fisheries management policy;
 - (b) an agency or authority to issue regulations and ensure control and enforcement;

- (c) internal organization for inter-departmental coordination, in particular coordination between fisheries authorities and vessel registry authorities; and
- (d) infrastructure for scientific advice.

18. The flag State has adopted laws, regulations or other arrangements implementing conservation and management measures, which should include, at a minimum:

- (a) principles, rules and standards contained in relevant international instruments as applicable and the provisions of paragraph 2 of these Guidelines, as well as any applicable RFMO/A conservation and management measures;
- (b) a national framework, such as national plans or programmes, to manage capacity and fishing effort, catch limits and output control and to combat IUU fishing; and
- (c) regulation of transshipment.

19. The flag State has in place a regime for authorizing fishing activities (e.g. licensing), which ensures that no vessel is allowed to fish unless so authorized in a manner consistent with international law and with the sustainability of the relevant stocks, including:

- (a) appropriate scope for authorization of fishing and fishing-related activities, including conditions for the protection of marine ecosystems;
- (b) prior assessment of a vessel's history of compliance and ability to comply with applicable measures; and
- (c) minimum information requirements in the authorization that allow identification of accountable persons, areas and species, including:
 - (i) the name of the vessel, and, where appropriate, the natural or legal person authorized to fish;
 - (ii) the areas, scope and duration of the authorization to fish;
 - (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 IUU fishing (IPOA-IUU), as shown in Annex 1.

20. 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 fishing vessels record;
- (c) implementation of monitoring tools, such as vessel monitoring systems (VMS), logbooks/documentation, and observers;
- (d) mandatory requirements regarding fisheries-related data that must be recorded and/or 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 (including landing controls).

21. 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 the identity of the violator(s) and the nature of the violation(s);
- (c) an appropriate system for the acquisition, collection, preservation and maintenance of the integrity of evidence;
- (d) a system of sanctions proportionate to the seriousness of the violation and adequate in severity to be effective in securing compliance and to discourage violations, and deprive offenders of benefits accruing from their illegal activities;
- (e) cooperation and mutual legal assistance, including as appropriate information sharing/reporting arrangements with other States, international organizations and RFMO/As relating to enforcement, including the timeliness of action following requests for assistance; and
- (f) prohibition of high seas fishing operations by a vessel flying its flag where such vessel has been involved in the commission of a serious violation of relevant subregional or regional conservation and management measures applicable to the high seas, until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with in accordance with its laws.

22. The flag State undertakes comprehensive and effective monitoring, control and surveillance (MCS) of fishing, including, to the extent possible, measures and actions described in paragraph 24 of the IPOA-IUU, as shown in Annex 2.

Performance assessment criteria - Actions

23. The flag State effectively contributes to the functioning of the RFMO/A in which it participates (i.e. the flag State implements its duties as a contracting party or as a cooperating non-party, including reporting requirements on fishing activities and through compliance by its vessels).

24. The flag State contributes to joint control and enforcement efforts where applicable.

25. 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.

26. The flag State regularly updates national vessel registries and records.

27. The flag State effectively carries out, prior to registration, verification of vessel records and, where applicable, history.

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

29. The flag State cooperates with other States by exchanging information on flagging and deregistering or suspending the registration of vessels, both as part of the procedure to verify a vessel's record and, where applicable, history for purposes of registration and deregistration.

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

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

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

33. Pending sanctions against a vessel are settled before a flag State deregisters it where applicable.

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

- (a) the flag State ensures that the obligations incumbent upon the fishing vessel owners, operators and crews are clearly accessible and communicated to them;
- (b) the flag State provides guidance to the fishing sector to meet these obligations; and
- (c) the flag State effectively manages the fisheries activities of the vessels flying its flag in a manner that ensures the conservation and sustainable use of living marine resources.

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

- (a) the vessel has the ability to comply with the terms and conditions of the fishing 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.

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/or practices in a timely manner.

37. Where the flag State implements an enforcement regime, where actions that may lead to enforcement by flag States are adopted by an RFMO/A, such States ensures that adequate and timely mechanisms to resolve disputes in respect of those actions exist within the relevant RFMO/A.

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 criteria, 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 fishing or undertaking fishing related activities in support of such fishing until sanctions are satisfied; 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 cooperate with the coastal State to agree on how to implement their respective roles and responsibilities under that agreement in advance of any fishing activities by flag State vessels while in the national jurisdiction of the coastal State pursuant to paragraph 3.

40. The flag State should only enter into fisheries access agreements with a coastal State when both are satisfied that such activities will not undermine the sustainability of living marine resources within the jurisdiction of the coastal State. The flag State should also be ready to cooperate with the coastal State in that regard.

41. The flag State should only allow vessels flying its flag to acquire or utilize fishing authorizations outside of agreements referred to in paragraph 40 for activities in the maritime areas under the jurisdiction of a coastal State when both are satisfied that such activities will not undermine the sustainability of living marine resources of that coastal State, taking into account the best scientific evidence available and the precautionary approach.

42. Pursuant to paragraphs 6 and 8, the flag State should, in accordance with its international obligations, impose sanctions, notwithstanding those that may be applied by a coastal State under its own laws and jurisdiction, on vessels flying its flag that have violated its legislation related to fishing activities in maritime areas under coastal State jurisdiction.

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 operations by such vessels in maritime areas of such coastal State.

Procedure for carrying out assessment

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(s) 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 RFMOs 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 1995 FAO Code of Conduct for Responsible Fisheries 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, and make it available to relevant users, including relevant RFMO/As; and
- (e) participate in international organizations that promote flag State performance.

50. States should give due regard to the special requirements of developing flag States, in particular the least-developed among them and small island developing States, to ensure that they have the ability to implement these Guidelines.

51. States and RFMO/As should enhance the ability of developing States to participate in high seas fisheries, including access to such fisheries.

52. States may, either directly or through FAO, assess the special requirements of developing States to implement these Guidelines.

53. States may cooperate to establish appropriate funding mechanisms to assist developing States to implement these Guidelines. These mechanisms may be directed specifically towards, *inter alia*:

- (a) enhancing flag State performance;
- (b) developing and enhancing capacity relevant to flag State performance, including for MCS and for training, at the national and regional levels, for MCS and administrative and legal personnel involved in enforcement; and
- (c) MCS activities relevant to flag State performance, including access to technology and equipment.

54. Cooperation with and among developing States for the purposes set out in these Guidelines may include the provision of technical and financial assistance, including South-South cooperation.

55. States may establish an *ad hoc* working group to periodically report and make recommendations on the establishment of funding mechanisms.

Role of FAO

56. States should report to FAO on progress with the implementation of these Guidelines and on the outcome of performance assessments conducted, whether self-assessments or external assessments, as part of their biennial reporting to FAO on the 1995 FAO Code of Conduct for Responsible Fisheries. These reports should be published by FAO in a timely manner.

57. FAO should consider providing specific in-country technical assistance to States that request assistance for purposes set out in paragraphs 49 and 53.

58. FAO will, as and to the extent directed by its Conference, collect relevant information on the global implementation of flag State performance assessment criteria and report this information, as requested, to the FAO Committee on Fisheries.

Conditions of authorizations
Paragraph 19(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 the FAO Standard Specification and Guidelines for the Marking and Identification of Fishing Vessels. Vessels' fishing gear should similarly be marked in accordance with internationally recognized standards;
9. where appropriate, compliance with other aspects of fisheries arrangements applicable to the flag State, and
10. the vessel having a unique, internationally recognized identification number, wherever possible, that enables it to be identified regardless of changes in registration or name over time.

Monitoring, control and surveillance
Paragraph 22
(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.

This document contains the report of the Technical Consultation on Flag State Performance. The Consultation was held in three sessions at FAO Headquarters, Rome, from 2–6 May 2011, 5–9 March 2012 and 4–8 February 2013. The Consultation was convened by the Director General of the Food and Agriculture Organization of the United Nations upon the recommendation of twenty-eighth session of the FAO Committee on Fisheries. The Technical Consultation finalized the Voluntary Guidelines for Flag State Performance. The Consultation was funded by the Governments of Canada, New Zealand, Norway and United States of America and by the European Commission.

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