



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
Nations

Organisation  
des  
Nations  
Unies  
pour  
l'alimentation  
et  
l'agriculture

Продовольственная и  
сельскохозяйственная  
организация  
Объединенных  
Наций

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

## TECHNICAL CONSULTATION ON FLAG STATE PERFORMANCE

Rome, Italy, 2 – 6 May 2011

### DRAFT CRITERIA FOR ASSESSING FLAG STATE PERFORMANCE AND POSSIBLE ACTIONS AGAINST VESSELS FLYING THE FLAGS OF STATES NOT MEETING SUCH CRITERIA

The information and draft Guidelines in this paper provide an elaboration of the outcomes of the Expert Consultation on Flag State Performance in relation to some elements of the draft Behavioural Criteria developed by the Consultation. The views and considerations of the experts were taken into account as well as a range of international instruments and regional and national measures, laws and practice.

Although the issues in this document have generally been under review and development over a significant period of time, they are presented in a new context that has the potential to be used for strengthening the performance of flag States and the effectiveness of their jurisdiction and control over their fishing vessels.

## INTRODUCTION

1. The Expert Consultation on Flag State Performance, held in Rome from 23 to 26 June 2009, considered that a framework for review by a Technical Consultation, reflecting the outcomes of the Expert Consultation, should include the elements of Appendix F of the report.<sup>1</sup> They were:

- Draft Criteria for flag State performance:
  - (a) Regulatory Criteria
  - (b) Behavioural Criteria
- Processes for conducting assessment:
  - (a) Self-assessment
  - (b) International and multilateral assessment
- Post-assessment actions
- Assistance to developing countries to improve their performance as flag States

2. The Expert Consultation recognized that, to a great extent, the draft Criteria for flag State performance were framed in general terms and detailed references for more effective understanding and implementation would be needed. In this regard, it agreed that further work was pending, as indicated in the report, in order to elaborate the draft Criteria prior to consideration by a Technical Consultation.

3. A preliminary review of work pending in relation to the draft Regulatory Criteria was undertaken by FAO prior to the publication of the report and explanatory notes were provided. However, the work identified as pending in relation to the draft Behavioural Criteria required greater elaboration and is addressed in this document. The draft Behavioural Criteria were grouped under three areas: international; national vessel registries and records; and national fisheries management regime.

4. The Expert Consultation identified elements of the following matters as pending in relation to the national fisheries management regime:<sup>2</sup>

- implementation of a regime for authorizing fishing activities;
- implementation of a control regime; and
- sanctions that are effective, timely and implemented.

5. Concerning the implementation of a regime for authorizing fishing activities, the Expert Consultation called for criteria, guidelines or a checklist to define the vessel's ability to comply with the terms and conditions of a fishing authorization, and what constitutes the effective exercise of jurisdiction and control.

6. For the other matters, an elaboration of a control regime and a proposal on judicial and administrative processes were requested. They are all addressed below.

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<sup>1</sup> FAO. Expert Consultation on Flag State Performance. Rome, 23–26 June 2009. *FAO Fisheries and Aquaculture Report*. No. 918. Rome, FAO. 2009. 94p.

<sup>2</sup> Appendix F.1, Part II, paragraphs 32, 33 and 35 of the report.

## IMPLEMENTATION OF A REGIME FOR AUTHORIZING FISHING ACTIVITIES

7. The draft Behavioural Criteria shown in Appendix F, paragraph 32 of the report of the Expert Consultation addressed the implementation of a regime for authorizing fishing activities under a national fisheries management regime (Figure 1). In this context, the Expert Consultation called for the definition of both the vessel's ability to comply and the effective exercise of jurisdiction and control by the flag State.

**Figure 1: Regime for authorizing fishing activities under a national fisheries management regime**

32. Is a regime for authorizing fishing activities (e.g. licensing) [effectively] implemented, including the following?
- Is a fishing authorization issued only where the flag State:
    - *verifies the vessel's ability to comply* with the terms and conditions of the fishing authorization;
    - is satisfied that it can *effectively exercise its jurisdiction and control* over the vessel to ensure compliance with applicable conservation and management measures; and
    - is satisfied that the holder of the authorization remains within reach of its enforcement jurisdiction?
  - Is ongoing verification of the conditions for the granting of the authorization implemented by the flag state, where required (e.g. assessment of potential impacts of bottom contact fishing on vulnerable marine ecosystems)?

8. The Expert Consultation suggested that each definition would need to address a wide range of circumstances, and therefore should be broad enough to apply to different circumstances such as through use of criteria, guidelines or a checklist.

### ***THE VESSEL'S ABILITY TO COMPLY WITH THE TERMS AND CONDITIONS OF A FISHING AUTHORIZATION***

9. The Expert Consultation recognized that the circumstances under which a vessel has the ability to comply with the terms and conditions of a fishing authorization may vary, for example with different licensing conditions, vessels and fisheries.

10. Draft Guidelines for use in assessing the vessel's ability to comply with the terms and conditions of a fishing authorization are in Appendix 1. They set out regulatory and administrative, and behavioural criteria to assist in verification of a vessel's ability to comply with the terms and conditions of an authorization to fish. The regulatory and administrative criteria address the registration process, the fishing authorization process and the operational potential for compliance.

11. Concerning the registration process, the objective is to ensure that there are linkages between the fisheries and registration authorities so that indications of past non-compliance, false or misleading information on a registration application and "flag-hopping" can be detected at an early stage.

12. Similarly, for the fishing authorization (e.g. licensing) process the application process and information submitted could indicate an inability to comply, as would any record of non-compliance under certain circumstances. The avenues of legal responsibility and recourse against the vessel must be clear, such as having an agent or operator in the jurisdiction of the flag State.

13. Prior to the grant and issuance of an authorization, the operational potential for compliance could also indicate the vessel's ability to comply. For example, submission of a fishing plan and agreement to comply with observer requirements show a positive attitude, and

adequate technical and human capacity would be essential for compliance with all reporting and technical requirements. The vessel must also have the necessary equipment on board, such as vessel monitoring system (VMS) and navigational equipment, and fishing systems that are specific to the authorized fisheries. Illegal equipment or gear must not be on board.

14. The behavioural aspect would relate to any outstanding processes pursuant to previous non-compliance by the vessel or any of its operators.

### ***THE EFFECTIVE EXERCISE OF JURISDICTION AND CONTROL OVER A VESSEL BY THE FLAG STATE***

15. The Consultation recognized that the effective exercise of jurisdiction and control over a vessel by the flag State may vary under different conditions, and that a broad mechanism would be useful in establishing effective control.

16. Draft Guidelines for the effective exercise of jurisdiction and control over fishing vessels are in Appendix 2. They are central to the primary responsibility of the flag State and are based on a broad range of international fisheries instruments.<sup>3</sup> They address the following aspects of jurisdiction and control that can form a basis for the assessment of effectiveness: regulatory and administrative (registration and authorization of a fishing vessel, legislation and the record of fishing vessels), operational (monitoring, control and surveillance [MCS] - national systems and requirements and international cooperation) and institutional arrangements and human capacity.

17. The draft Guidelines are consistent, but overlap to some extent with other draft Criteria developed by the Expert Consultation, including the Behavioural Criteria relating to the national vessel registries and records. This approach underscores the complementarity of the various draft Criteria.

### ***IMPLEMENTATION OF A CONTROL REGIME***

18. The draft Behavioural Criteria shown in Appendix F, paragraph 33 of the Report of the Expert Consultation address the implementation of a control regime under a national fisheries management regime as shown in Figure 2. In this context, the Expert Consultation called for the elaboration of all three points: the maintenance of a current fishing vessel record; the collection, processing and verification of fisheries data; and the availability of effective means of control.

**Figure 2: Implementation of a control regime**

- |     |   |
|-----|---|
| 33. | <p>Is a control regime implemented, that includes the following?</p> <ul style="list-style-type: none"> <li>• is a current fishing vessel record maintained through regular, timely updates?</li> <li>• is fisheries data collected, processed and verified in a timely manner?</li> <li>• are there effective means of control available?</li> </ul> |
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19. The elaboration of these matters appears below.

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<sup>3</sup> The papers prepared for the Expert Consultation and the following instruments were drawn upon in forming the draft Guidelines: The 1982 United Nations Convention on the Law of the Sea, Articles 63, 64, 87, 91, 94, 217; the 1993 FAO Compliance Agreement, Articles III, IV and VI; the 1995 United Nations Fish Stocks Agreement, Articles 17, 18, 19 and 23; the FAO 1995 Code of Conduct for Responsible Fisheries, Articles 6.11 and 8.2; the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, paragraphs 34 to 50; the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Articles 9.3 and 20; Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, Articles 6.2, 7.1 and 20.

### **Maintenance of a current fishing vessel record through regular, timely updates**

20. Draft Guidelines relating to the maintenance of a current fishing vessel record through regular, timely updates are in Appendix 3. They focus on the establishment of procedures for such updates as well as the type of information that would need to be updated to ensure effective control of fishing vessels. Another important consideration is the establishment of communications with regional and international bodies to exchange information and facilitate timely updates.

### **Collection, processing and verification of data in a timely manner<sup>4</sup>**

21. The first task in the collection, processing and verification of data in a timely manner is to identify the data required for assessing compliance. Such data requirements are generally found in international instruments, agreements or international conservation and management measures and may differ from that required for other purposes.

22. Noting the inventory of measures adopted by regional fisheries management organizations (RFMOs) to address flag State duties for fishing vessels in Table 3, Appendix E.4 of the Report of the Expert Consultation, as well as the objective of analysing the behaviour of the flag State's fleet, a reasonable starting point of an analysis of the data requirements is to consider the applicable instruments or measures.

23. The data processing system is important in analysing data requirements. It must meet the requirements of the relevant measures both formally and in national regulations to ensure that the data are accepted as the basis for legal action.

24. The data requirements associated with international conservation and management measures, as well as those under national legislation, would need to follow a logical line:

- define the management measures required for good flag State performance;
- derive the data requirements associated with such measures (data types and frequency);
- identify the data collection methods;
- identify the data verification methods (e.g. at-sea observers and boarding and inspection, port inspection, catch certification);
- analyse the data processing required for proper control (data presentation);
- analyse the transparency in data processing; and
- consider the data system in a legal context (legal verification) - will it stand up in subsequent judicial or administrative processes.

25. An example of a table that would substantially address these considerations for each conservation and management measure is in Figure 3.

**Figure 3: Data considerations for conservation and management measures**

REGULATORY MEASURE		DATA TYPE	FREQUENCY	TRANSPARENCY
	Collection			
	Processing			
	Verification			

<sup>4</sup> The advice of Mr Hans Lassen, Head of Advisory Services, International Council for the Exploration of the Sea (ICES), on the elaboration of this area is gratefully acknowledged.

26. Some examples of areas for analysis include those relating to prior assessment of a vessel's capacity to comply with the applicable measures, MCS requirements (e.g., VMS, reports of inspections), fishery-related data to be reported by vessels (e.g., catch, effort, bycatch, discards) and data on transshipments.

27. The timelines for the collection, processing and verification of data should be determined by reference to the circumstances of the fisheries, and any requirements at national regional or international level.

#### **Availability of effective means of control of fishing vessels**

28. A suite of actions and measures underpinning effective flag State control is elaborated in Appendix 2, and an assessment of the availability of effective means of control is closely linked to these actions. The need for appropriate institutional arrangements and human capacity was noted, but not as a focal issue in that context.

29. However, they are fundamental considerations in addressing the *availability* of effective means of control. Where a State assesses that it has insufficient institutional or human capacity or resources to support such capacity, prioritization would need to be given to establishing the necessary means for the effective means of control of its vessels.

30. Guidelines for assessing the availability of effective means of control of fishing vessels are in Appendix 4, and are based on the actions and measures that form the foundation of effective flag State control as elaborated in Appendix 2.

#### ***PROPOSED JUDICIAL/ADMINISTRATIVE PROCESSES FOR CASES***

31. The Expert Consultation included in Behaviour Criteria reference to sanctions that are effective, timely and implemented in the context shown in Figure 4.

32. National legal and administrative processes for addressing fisheries-related violations should be in place to support the timely and effective disposition of cases. This would lead to strengthened compliance and deterrence and, where relevant, allow for fines, compensation and other penalties to be paid in a timely manner.

**Figure 4: Sanctions that are effective, timely and implemented**

35. Are sanctions effective, timely and implemented, including the following?
- Are sanctions applied in proportion to the seriousness of the violation and 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?
  - Does the flag State promote knowledge and understanding of MCS issues within national judicial and administrative systems?
  - *Does the flag State have in place judicial and/or administrative processes capable of meeting these criteria, to the extent possible, in a timely and effective manner?*
  - Is the flag State capable of ensuring that sanctions are complied with, including where appropriate preventing the vessel from fishing until sanctions are satisfied?
  - Does the flag State respond in a timely fashion to requests from other States or RFMOs to take measures in respect of its flag vessels?

33. Development of general guidelines or proposals for judicial or administrative processes in fisheries cases would need to address four major considerations. First, depending on the legal system and relevant laws of each State, matters could be submitted to a criminal law, civil law or administrative process, or a combination of these. The processes for each system would vary, so the framework should be suitably general.

34. Second, although the processes and the substance of the laws are two different matters, the latter is often needed to define the former. For example, a process to bring a case to court involving a violation of international conservation and management measures in areas beyond national jurisdiction should be underpinned by laws governing areas such as boarding and inspection by cooperating non-national authorities and admissibility of their evidence into court. Some laws or provisions of the law on fisheries relating to the legal process - distinct from those relating to fisheries management and offences - should therefore be considered. They should be applicable to the activities of national vessels in areas beyond national jurisdiction.

35. Third, if an administrative process is established by law, it should be sufficiently transparent to ensure fair and timely determinations, and it should be linked to the judicial process in the event of default.

36. Fourth, the process should take into account the possibility that the flag State should or would request another State to take judicial or administrative measures against its vessel. In such a case, could a judgment or determination taken in the other State be followed by sanctions in the flag State, such as revocation of the authorization to fish, and if so would any prior judicial or administrative processes need to be invoked?

37. A draft framework of underlying legal considerations, as well as those for judicial and administrative processes is set out in Appendix 5. It applies to “nationals”, which include persons and vessels that are beyond areas under national jurisdiction.

#### **SUGGESTED ACTION BY THE TECHNICAL CONSULTATION**

38. The Technical Consultation is invited to:

- review the Criteria for assessing flag State performance and possible actions against vessels flying the flags of States not meeting such Criteria, and
- agree on a set of Criteria.

**APPENDIX 1****PRIOR VERIFICATION OF A VESSEL'S ABILITY TO COMPLY  
WITH THE TERMS AND CONDITIONS OF AN AUTHORIZATION TO FISH  
IN AREAS BEYOND NATIONAL JURISDICTION**

Is a regime for authorizing fishing activities [effectively] implemented, including: is a fishing authorization issued only where the flag State verifies the vessel's ability to comply with the terms and conditions of the fishing authorization?

**Regulatory and administrative***Registration process*

1. Are there appropriate links between the authorities responsible for the operation of the vessel registers and those responsible for issuing authorizations to fish and keeping records of fishing vessels, and where such functions are not undertaken by one agency, is there sufficient cooperation and information sharing between the agencies responsible for those functions?
2. Has there been compliance with relevant requirements of the registration of the fishing vessel, and is there any indication that a vessel may be unable to comply with the terms and conditions of an authorization?
3. In particular, is there indication in relation to a vessel of a history of previous owners, flags and dates of change, and of "flag-hopping"?

*Authorization process*

4. Was the application for an authorization to fish completed as required, and all information verified as true, complete and correct?
5. Are the owners, beneficial owners and/or operators of the fishing vessel located in the jurisdiction of the flag State, or, if not, are they adequately represented by an agent? Do the laws of the flag State hold the beneficial owners and agent accountable, particularly if they are nationals of the country issuing the licence?
6. Has there been full compliance with any requirements relating to record keeping and submission of reports under any relevant prior authorization?
7. If the vessel has a history of non-compliance and the ownership of the vessel has subsequently changed, has the new owner provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel?
8. If the vessel has a history of non-compliance, is there a mechanism for the payment of a performance bond before a license is issued?
9. Are the license or authorization fees, performance bond or other form of payment made in advance as may be required?

*Operational potential for compliance*

10. Has the vessel complied with any relevant requirements to submit a fishing plan?
11. Does the vessel agree to comply with requirements for observers?
12. Does the vessel have the technical and human capacity to continuously comply with all reporting requirements?
13. Are required reporting mechanisms (e.g. VMS) onboard and functional?
14. Are the communication, navigational and safety equipment and vessel markings in conformity with national and international requirements?
15. Are the fishing systems, gear and equipment on board in conformity with relevant requirements for the authorized fisheries?
16. Is there any illegal gear or equipment on board?

**Behavioural**

17. Do the owners, beneficial owners, operators and/or master of the vessel, or the vessel itself, have any history of non-compliance, including in the waters of other coastal States or in areas of competence of RFMOs, that has not been resolved judicially, administratively or otherwise?

### THE “EFFECTIVE EXERCISE OF JURISDICTION AND CONTROL” BY A FLAG STATE

Is a fishing authorization issued only where the flag State is satisfied that it can effectively exercise its jurisdiction and control over the vessel to ensure compliance with applicable conservation and management measures?

#### Regulatory and administrative

##### *Registration and authorization of a fishing vessel*

1. Does the registration process require or allow the flag State to ensure, before it registers a fishing vessel, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing? In particular, is the following information required on the application for registration or authorization to fish in relation to the proposed activities of the vessel and used as a basis for the decision whether to grant registration or a fishing authorization to the vessel?
  - (a) all previous States in which the vessel has been registered, including under any other names; OR a complete history of the vessel's flags, names and owners, if any;
  - (b) whether the vessel has a history of IUU fishing in contravention of international conservation and management measures or the laws and regulations of any coastal State;
  - (c) particulars/specifications of the vessel, including State of registration, flag State registration number, radio call sign, all electronic equipment (including VMS), gear systems and gear, processing capacity and capability, and freezer capacity and capability;
  - (d) name of registered owner and, where applicable, agent;
  - (e) particulars of the vessel operator(s) (the person or persons who have lawful possession and control of the vessel including owner(s) and those party to a lease, sublease, charter, subcharter or other, vessel master and fishing master);
  - (f) particulars of the beneficial owner;
  - (g) particulars of any mortgagees and caveators;
  - (h) a history of ownership since original registration;
  - (i) for chartered vessels, name(s) of any charterer in addition to other required information;
  - (j) registration of other people who will be using the vessel, except for foreign owned or operated vessels and foreign users;
  - (k) designation of an authorised agent if the owner or operator is a non national and/or a non resident;
  - (l) particulars of fishing operations, including the-
    - i intended area of fishing;
    - ii particular type and means of fishing;
    - iii species targeted;
    - iv quantity of fish to be taken.
2. Are there requirements for re-registration upon sale of the vessel if the new owner is a non-national?

3. Is the following information sought from the national authorities responsible for fisheries and taken into account in deciding whether to grant registration:
  - (a) whether the vessel has been involved in IUU fishing;
  - (b) whether the fisheries authorities are prepared to authorize the vessel to fish within or beyond areas of national jurisdiction?

### *Legislation*

4. Is there national legislation that establishes jurisdiction over each vessel flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship, and is applicable both within and beyond areas under national jurisdiction?
5. Is there national legislation concerning the grant, issuance and terms and conditions of an authorization and prohibiting vessels that are unauthorized or, where authorization has been made on the basis of misleading or false information submitted on behalf of a vessel, irregularly authorized vessels from fishing?
6. Does national legislation provide for denial of the grant of registration and issuance of an authorization to a vessel over which effective control cannot be exercised, having regard to international, regional, sub-regional or bilateral agreements and standards and the criteria in these guidelines?
7. Does national legislation prohibit the authorization of any fishing vessel previously registered in the territory of another State that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that:
  - (a) any period of suspension by another State of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and
  - (b) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another State within the last three years,

except where the ownership of the fishing 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 fishing vessel?

8. Does national legislation provide for the suspension of an authorization when there are reasonable grounds to believe that there has been non-compliance?
9. Does national legislation ensure that each fishing vessel is in the charge of a master and officers who possess appropriate qualifications and the crew is appropriate in qualification and numbers for the type of the vessel, fishing activities and operational safety?
10. Does national legislation specifically require a fishing vessel and its operator(s) to hold a valid and applicable authorization for fishing activities outside the areas of national jurisdiction of the State concerned, and to comply with the existing international conservation and management measures as well as with the laws and regulations of coastal States that are included in an authorization to fish?
11. Does national legislation generally prohibit vessels authorized to fish outside the areas of national jurisdiction of the State concerned from contravening or undermining international conservation and management measures and violating the laws and regulations of coastal States that are not included in an authorization to fish?
12. Is there legislation requiring all chartering arrangements to be fully transparent, including requiring fishing vessels operated by non-nationals under charter arrangements in areas outside national jurisdiction to be under flag State jurisdiction?
13. Does national legislation authorize MCS activities in areas outside the national jurisdiction of the flag State concerned, including as appropriate the authorization of specified non-nationals

to carry out MCS activities in respect of national vessels where cooperative arrangements have been established?

14. Are penalties of sufficient gravity to be effective in deterrence and to deprive the offenders of the benefits accruing from any IUU fishing, and do they include for serious offences withdrawal or suspension of the vessel's authorization to fish and of the masters' and as applicable other officers' authorization to serve in such capacities?

*Record of fishing vessels*

15. Is a record of fishing vessels maintained by the flag State and kept up to date containing the names and particulars of all fishing vessels flying its flag that are actively fishing? In particular, is this record electronic and can data be exchanged in compliance with applicable obligations or practices and does it include the following minimum information?
- (a) name of fishing vessel, registration number, previous names (if any), IMO number (if any) and port of registry;
  - (b) previous flag (if any);
  - (c) International Radio Call Sign (where required);
  - (d) other unique vessel identifier (if any);
  - (e) name and address of owner or owners;
  - (f) where and when built and shipbuilder;
  - (g) type of vessel;
  - (h) length overall (LOA), and as appropriate length between perpendiculars (LBP), and registered length;
  - (i) name and address of operator (manager) or operators (managers) (if any);
  - (j) type of fishing method or methods;
  - (k) moulded depth;
  - (l) beam;
  - (m) Gross Tonnage or Gross Registered Tonnage;
  - (n) power of main engine or engines in kilowatts;
  - (o) the previous names, if any;
  - (p) name, address and nationality of the natural or legal person in whose name the vessel is registered;
  - (q) name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;
  - (r) name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel;
  - (s) 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
  - (t) 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. Is access to information on the record of vessels authorized to fish on the high seas granted to all interested States?
17. Is there a record of vessels that have been subject to administrative, judicial or other processes for violations of fisheries or other relevant laws and regulations or of international conservation and management measures? If so, are relevant details kept and made available such as the charge, date and outcomes?

## Operational

### *Monitoring, control and surveillance – national systems and requirements*

18. Are there systems established for determining the position of vessels and catches of targeted and non-targeted species, including mechanisms that provide timely, complete and accurate information on fishing activities appropriate for the fishery, such as VMS and/or reporting requirements that require the following information as a minimum.
  - (a) vessel identification (radio call sign, port, number of registry, IMO number and unique vessel identifier);
  - (b) vessel position;
  - (c) vessel course;
  - (d) fishing effort (fishing location, date and time of place fished);
  - (e) catch composition (target and non target species by nominal weight (live weight equivalent of landings);
  - (f) zone entry/exit (including closed areas entry/exit) notifications;
  - (g) port entry notifications.
19. Is there mandatory maintenance of logbooks and other records?
20. Are mechanisms established to verify the accuracy of reported data, for example observer programmes and inspection schemes?
21. Are vessels and fishing gear required to be marked appropriately?
22. Are the vessel operators informed of relevant international conservation and management measures?
23. Are there adequate in-port inspections and at-sea patrols as appropriate, or cooperation with other States for such MCS mechanisms including through RFMO port inspection and boarding and inspection schemes?
24. Are there adequate procedures to ensure that violations will be referred to the appropriate administrative or judicial system in a prompt and effective manner, and that all evidentiary requirements have been met to the fullest extent possible?

### *Monitoring, control and surveillance – international cooperation*

25. Are investigations of vessels immediately and fully undertaken by the flag State when requested by an RFMO or other State in respect of any alleged violation of international law on the high seas, or where, following port State inspection, there are clear grounds to believe that a vessel entitled to fly the national flag has engaged in IUU fishing or fishing related activities in support of such fishing? Upon sufficient evidence, is enforcement action taken without delay in accordance with relevant laws and regulations, irrespective of where the violation occurred?
26. Are there regular communications and timely and accessible exchange of information with coastal States, RFMOs and FAO as appropriate or as may be required under regional or international agreements or arrangements, including on information, data and MCS and enforcement activities?
27. Is there a mechanism that can confirm within a reasonable period of time, as appropriate, on the request of the port State, that the fish on board the fishing vessel was taken in accordance with applicable requirements established in the relevant laws and regulations or international conservation and management measures?

28. Where there are clear grounds to suspect that a vessel entitled to fly the national flag has engaged in IUU fishing or fishing related activities in support of such fishing, is there a procedure and mechanism for the concerned flag State to request another State, as appropriate, to inspect its vessel or take measures consistent with a relevant agreement?
29. Are vessels entitled to fly the national flag encouraged to land, tranship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with a relevant agreement?
30. Are international market-related measures implemented as appropriate, including catch documentation schemes and trade monitoring?
31. Are fair, transparent and non-discriminatory procedures established, including through RFMOs and FAO, for identifying any State that may not be acting in accordance with, or in a manner consistent with, a relevant agreement?
32. Are there adequate procedures to initiate transparent agreed international sanctions in a prompt and effective manner, and that all evidentiary requirements have been met to the fullest extent possible?

### **Institutional arrangements and human capacity**

33. If there are constraints in implementing any of the guidelines to determine whether compliance can be ensured, in terms of institutional arrangements or human capacity or for other reasons, has a process been established to identify and overcome these constraints as appropriate?

#### *Registration process*

- Are there appropriate institutional linkages mechanisms in place between the authorities responsible for the operation of the vessel registers and those responsible for issuing authorizations to fish and keeping records of fishing vessels, and where such functions are not undertaken by one agency, is there sufficient cooperative or consultative channels or process in place between the agencies responsible for those functions?
- Are there established mechanisms for checking and verifying vessel history including previous flags, dates of change and indications of “flag-hopping”?

#### *Authorization process*

- Is there a clear authority established or designated to receive applications for an authorization to fish including fishing beyond national jurisdiction?
- Are there established systems for checking and verifying vessel owners(s) and/or operators of fishing vessels?
- Is there an established system to check and verify evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel in the case of vessels with a history of non compliance?;
- Is there a mechanism of collecting, receiving and managing authorization fees, performance bond or other form of payment made in advance as may be required?

*Operational potential for compliance*

34. Is there a system to check, verify or evaluate as appropriate vessel operational requirements including fishing plans, requirements for observers, vessel's technical and human capacity to continuously comply with reporting requirements, VMS, communication and navigational equipment, vessel markings, fishing systems, gear and equipment and illegal gear or equipment on board?
35. Is there a system to exchange relevant information with other States and with organizations as may be required pursuant to agreements or arrangements?

**APPENDIX 3****MAINTENANCE OF A CURRENT FISHING VESSEL RECORD THROUGH  
REGULAR, TIMELY UPDATES**

1. Is a fishing vessel record established and maintained, that contains the information on licensed or authorized national fishing vessels indicated in Appendix 2, paragraph 14?
2. Have procedures been established that ensure updates to the fishing vessel record at the following times?
  - (a) the registration of the fishing vessel;
  - (b) the grant of a licence or authorization;
  - (c) any change to the operators of the fishing vessel, by ownership, beneficial ownership, charter arrangement, lease or other;
  - (d) any other change in the information on the license or authorization application;
  - (e) any material change in the vessel or its activities, including its conversion to undertake fishing activities different from those that were licensed/authorized or to be used for a purpose other than fishing;
  - (f) the loss of the vessel;
  - (g) the prosecution or other sanctions against the vessel, its owners, operators, charterers and crew members;
  - (h) the suspension, revocation or termination of a licence or authorization;
  - (i) the registration of the vessel in another State; and
  - (j) the termination of registration of the fishing vessel.
3. Have communications been established with regional and international bodies to exchange information appearing on the record and facilitate timely updates?

**APPENDIX 4****AVAILABILITY OF EFFECTIVE MEANS OF CONTROL OF FISHING VESSELS**

1. Is there a system of vessel registration that ensures each application for registration is favourably assessed in a transparent process and in cooperation with fisheries authorities for the following?
  - (a) completeness and accuracy;
  - (b) compliance with national policy, laws and regulations; and
  - (c) whether a fishing authorization will be considered.
2. Is there a transparent and effective process for granting and issuing authorizations to fish?
3. Is there institutional and human capacity to receive and analyse data from fishing activities?
4. Is there legislation that includes requirements for the following?
  - (a) adopting/implementing conservation and management measures;
  - (b) authorization to fish;
  - (c) reporting;
  - (d) real-time monitoring of the vessel's activities;
  - (e) empowering relevant MCS activities, and requiring persons to cooperate and comply with the activities; and
  - (f) sanctions, including suspension or revocation of authorizations to fish.
5. Are there adequate MCS mechanisms available, including port inspections and reporting systems, and human resources for implementation?
6. Are mechanisms for bilateral, regional and/or international cooperation in place, including through RFMOs and the adoption of international market-related measures?

## JUDICIAL AND ADMINISTRATIVE PROCESSES FOR ENFORCEMENT

### General - Legal basis for judicial and administrative processes

It is fundamental for judicial and administrative processes for enforcement cases to be underpinned by a legal basis. This section provides a framework for such a legal basis generally applicable to the judicial process, but also relevant to the administrative process as appropriate.

It suggests that consideration should be given to whether there is a legal basis for the specified matters, applicable as appropriate within and beyond areas under national jurisdiction.

1. Does national law require conditions to be met in order to initiate legal or administrative process against a national?
2. Does national law identify fisheries violations by nationals outside areas of national jurisdiction?
3. Is the authority for the MCS activities of authorized officers or inspectors clearly stated, and does it extend as appropriate to nationals and non-nationals operating in accordance with an agreement with other State(s) and/or through an RFMO?
4. Do non-national authorized officers or inspectors have standing in a national court for purposes of providing evidence?
5. Does the law specify which court has jurisdiction over nationals outside areas under national jurisdiction, and does it set out clear and transparent administrative procedures as an option for the determination of cases in well defined circumstances?
6. Does the law address admissibility of evidence, including that tendered by non-national officers or inspectors acting under an agreement with other State(s) or an RFMO or in other appropriate circumstances?
7. Does national law prohibit the destruction of evidence?
8. Are there procedures for the efficient and cost-effective introduction of evidence in relation to specified matters, based on best practices of States? Such evidence may be contained in certificates containing sworn statements by authorized personnel relating to matters such as the position of a vessel at a given time or whether a valid authorization was held at the relevant time. The evidence would serve as prima facie evidence, and the person charged would have an opportunity for rebuttal. However if the person charged opts not to rebut the evidence, the certificate would facilitate the judicial process by providing a means for the introduction of evidence in a transparent manner without requiring the presence of the inspector or authorized officer.
9. Does the law provide for reversal of the burden of proof in certain circumstances, based on best practices of States?
10. Does the law provide for the disposition of seized and forfeited items in general, and of those that were involved in a violation beyond areas under national jurisdiction?
11. Does national law provide for a wide range of fines, penalties, forfeitures and sanctions in proportion to the seriousness of the violation and of deterrent effect, including revocation of fishing authorization, quotas or other, and as appropriate for compensation for damages caused and reimbursement of any financial aid received for fishing activities where relevant?
12. Does national law or policy call for the flag State to request and/or cooperate with another State in initiating a judicial or administrative process in that other State in respect of a national vessel of the flag State where there are reasonable grounds to believe that a violation

of international conservation and management measures or other applicable laws or measures has taken place?

13. Does national law recognize any judgment or administrative determination made in another State in relation to a national vessel or person? If so, are there related provisions to facilitate restitution and/or extradition and guard against double jeopardy, and to impose appropriate sanctions such as revocation of the authorization and cancellation of quotas or other rights?

#### **Cooperation among authorities, collection, etc. of evidence and information to support the judicial and administrative processes**

14. Is there sufficient coordination between fisheries managers, legal authorities, licensing authorities, national inspection or enforcement authorities and as appropriate other States, RFMOs and inspection or enforcement authorities to ensure the prompt consideration and disposition of all relevant evidence and the laying of appropriate charges?
15. Has all relevant evidence been collected, preserved, inventoried and as appropriate analysed, stored or sold, has the chain of custody been maintained and has information been validated as appropriate?

#### **Administrative process**

16. Does national law provide for an administrative process for the determination of fisheries violations, and if so, are the following areas addressed and clear procedures provided?
  - (a) decision by the relevant authorities that the case may be subject to an administrative process;
  - (b) appropriate notification to the violator and specificity of the charges;
  - (c) election by the alleged violator for the case to be subject to an administrative process;
  - (d) timelines for initiating administrative process and for determining cases;
  - (e) decisionmaker(s) (e.g. a panel);
  - (f) transparent decisionmaking process that may include hearings and evidence but does not provide a right of appeal from the administrative determination;
  - (g) procedures for and consequences of admission to the violation;
  - (h) prohibition of fishing and fishing-related activities during the administrative process;
  - (i) disposition of seized items;
  - (j) fines, penalties, forfeitures and sanctions in proportion to the seriousness of the violation and of deterrent effect, including revocation of fishing authorization, quotas or other;
  - (k) compensation for damages caused by the violator and reimbursement of any financial aid received for fishing activities where relevant;
  - (l) recovery of unpaid fines or penalties;
  - (m) procedure in case of default or failure to complete the process;
  - (n) resort to judicial process where there is non-compliance with the administrative process or failure to satisfy a determination; and
  - (o) prohibition against subjecting a person to judicial proceedings and administrative proceedings based on the same facts.
17. Are the institutional arrangements and human capacity adequate to ensure a timely and effective disposition of cases through the administrative process?

## **Judicial process**

Unlike administrative processes established specifically for fisheries offences, judicial processes are subject to broader laws that regulate the process for all offences. They could be either criminal or civil cases, which each have varying standards and processes. In addition, there are variations between national legal systems, such as that of common law and civil law systems.

Standard constraints in the judicial process common to all cases, include a backlog of work, requiring a long waiting time before a case is heard, and the possibility that the judiciary do not have a deep knowledge of the subject matter concerning the type of case at hand.

Any fisheries-specific element in the judicial process would therefore need to be underpinned by fisheries-related laws and, where possible, a policy or process that promotes capacity and knowledge of the judiciary to address fisheries offences.

Therefore, appropriate judicial processes would be a matter for each State to consider, based on their systems and broader processes. However, the following draft guidelines may be useful in structuring such a process, particularly with regard to fisheries-related violations by national vessels that occurred beyond areas under national jurisdiction.

1. Is the judicial process capable of hearing and deciding fisheries-related cases in a timely and effective manner?
2. Is the legal basis clear and sufficient for cases involving fisheries violations by national vessels outside areas of national jurisdiction to be heard in a timely and effective manner, either by national judicial process or by cooperating with the judicial process of another State, noting the matters addressed in paragraphs 1 to 13 above and including matters relating to:
  - (a) the authority to hear cases relating to violations beyond areas of national jurisdiction;
  - (b) the authority of national and non-national enforcement officers or inspectors, and their standing before the Court;
  - (c) evidentiary matters;
  - (d) disposition of seized items
  - (e) fines and other penalties;
  - (f) coordination with judicial processes in other States.
3. Is the judiciary generally cognizant of the relevant international instruments and standards, as well as the national law, and the consequences of violation of laws and measures outside areas under national jurisdiction by national vessels?