

NON PAPER

EU views for the FAO Technical Consultation on Flag State Performance

Rome, 5-9 March 2012

Criteria

- Implementation of international rules: A State membership to international instruments such as UNCLOS, UNFSA or the FAO Compliance Agreement should be considered as a criterion to assess flag State performance. However, as a number of countries are not signatories or have not ratified these instruments, States commitment to implement the flag State provisions contained in the relevant international instruments should be considered a performance criterion. The implementation and enforcement of the measures adopted by RFMOs and a loyal cooperation with them are also relevant criteria.
- Existence of National legal framework: The existence of a domestic legislation, including, specific regulation about the requirements to register fishing vessels and the management of national vessel registries and records, system of fisheries authorizations, measures addressing effectively IUU fishing; are, as well, crucial pillars to assess the flag state performance.
- Effectiveness of the National Legal Framework: Effectiveness of the flag state system of monitoring, control and surveillance of its fishing fleet and their catches as well as the measures adopted to sanction vessels conducting IUU fishing. For example: existence of a national regulation dedicated to the control of fishing activities; effective and adequate control scheme, with sufficient dedicated means; effective satellite fishing monitoring systems into place for long distance fleet.

Assessment

- Assessment could be done in principle by the flag State it-self (self-assessment), by another State, by an international organisation (a RFMO, or a multilateral body), or by any other entity other than the flag State. External assessment (done by an entity other than the flag State) should be based on cooperation with the flag State and with due regard for international law.

Actions

- Post-assessment actions should be aimed at improving the performance of flag States.
- Proportional and non-discriminatory market-related measures and port State measures should be considered amongst others.
- If action is necessary by other States or entities, consultation with flag States and diplomatic demarches, should be considered previously to the adoption of such actions. Actions against States assessed as not having met the performance criteria should take into consideration the results of such consultations.

Scope

The scope of this exercise should be an ambitious one and cover all the range of possibilities where IUU fishing may occur. The behaviour of flag States regarding fishing operations of their own vessels in their own EEZs could have an impact on the sustainability of fisheries of straddling, migratory and trans-boundary stocks and therefore, the international guidelines should also cover these activities.

Assistance to developing countries

- As a further incentive to improve their performance as flag States, States and relevant international bodies should seek to reinforce the ability of developing countries to participate in high seas fisheries, including access to such fisheries, on the basis of their right to fish responsibly and sustainably there.

EU preliminary answers to questions raised by the Canadian Issues brief

1) Organization of the criteria:

- Should the behavioural and regulatory criteria be combined?

As long as all the relevant criteria are considered, some sort of classification could be envisaged.

- Is it logical and/or desirable to separate the behavioural criteria and regulatory criteria even though this might create perceived duplication?

There can be an added value in using the classification "regulatory/behavioural". Duplication must of course be avoided.

- Might the criteria differ depending on the assessment process?

The criteria should be as much objective as possible and, therefore, should not depend on the process.

2) Procedural aspects of assessments (whether self-assessments or international/multilateral assessments):

- What governments or organizations should undertake assessments?

Assessment could be done by the flag State itself (self-assessment) or by other entity (external assessment).

External assessment could be done by:

a. Another State with the previous consent of the flag State involved. However, if the flag State refuses to accept any evaluation or dialogue in order to seek cooperation in this framework, it could be identified as a non-compliance flag State.

b. An international organization (a RFMO or a multilateral body).

- What might the elements of an assessment process be?

External assessment should be done in cooperation with the flag State and with due regard for international law. Independent of who does the assess, the main steps during the process of assessing should be: detection of the 'presumed' non compliance flag State; evaluation of that country by the application of the agreed criteria (through the application of a questionnaire and investigation rules); dialogue process; identification as non-compliance flag State.

- Might the purpose of the assessment process influence the range of criteria to be considered?

The purpose of the assessment should be, without any kind of discrimination amongst flag States, to allow for the adoption of appropriate actions aimed at improving the performance of flag States. Although the actions chosen may largely vary following the assessment, the purpose should always be the same.

3) Possible actions to encourage compliance

- Who can take action to ensure compliance?

Other States (when and as provided by their national law) or intergovernmental bodies.

- Does authority to take action already exist under international law, or must it be validated or created?

To create a new international authority to take action does not seem realistic, at this early stage.

Action should be taken by other States or existing international organizations (a RFMO or a multilateral body), trying to seek the cooperation and the political dialogue with flag State on the process. However, as we mentioned, , if the flag State refuses to accept any evaluation or dialogue in order to seek cooperation in this framework, it could be identified as a non-compliance flag State.

4) Overall structure of the document

- Should the various elements (criteria, assessment processes, actions) be contained in a single document? Or separate documents?

A single document would be preferable.

5) Assistance to developing countries to improve flag State performance

- What type of assessment would best help developing countries identify areas of priority for capacity building?

Self-assessment with the support of another State or International Organization