

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.