

Chairperson's Report on the First Session of the Technical Consultation on Flag State Performance

Rome, Italy, 2-6 May 2011

1. The Technical Consultation on Flag State Performance commenced its work on 2 May 2011 and adjourned on 6 May 2011. The list of participants for the session was distributed to delegates at the Consultation.
2. 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. Mr 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.
3. The Technical Consultation reviewed 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."
4. The purpose of the Technical Consultation is to draft criteria for flag State performance for submission to COFI, which includes, as stated in the Agenda item 5:
 - Draft Criteria for flag State performance;
 - Assessing flag State performance and possible actions in accordance with international law to encourage compliance; and
 - Assistance to developing countries to improve their performance as flag States.
5. The Technical Consultation adopted the agenda in Appendix A.
6. 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 will 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.
7. The Chairman's Draft Text, as at the conclusion of the first session, is recorded in Appendix B. This will form the basis for further sessions of the Consultation.
8. The Technical Consultation was informed, in keeping with FAO practice, that 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 <http://www.fao.org/fishery/nems/39660/en>.

9. With respect to next steps for the Technical Consultation, there was consensus that the Consultation, subject to the availability of extrabudgetary funding, should resume in January or February 2012. Dates for the resumed session would be set after consultation with FAO Members.

Johann Augustyn
FAO Rome
9 May 2011

Agenda

1. Opening of the Session
2. Election of the Chairperson
3. Adoption of the Agenda and arrangements for the Technical Consultation
4. Election of the Vice-Chairperson and designation of the Rapporteur
5. Draft Criteria for assessing flag State performance:
 - Draft Criteria for flag State performance;
 - Assessing flag State performance and possible actions in accordance with international law to encourage compliance; and
 - Assistance to developing countries to improve their performance as flag States.
6. Any other matters
7. Adoption of the Report

APPENDIX B**DRAFT CRITERIA FOR FLAG STATE PERFORMANCE****Purpose of the Criteria for Flag State Performance**

The purpose of the draft Criteria for Flag State Performance is to enhance international fisheries [behaviour and cooperation] [governance], including the prevention, deterrence and elimination of illegal, unreported and unregulated fishing and related activities (IUU fishing). They are based largely on flag State responsibilities set out in existing international instruments, and [may provide a basis for agreed processes for assessment and action] [take a pragmatic approach that focuses on the degree to which flag States implement their responsibilities and the outcomes of that implementation].

Principles Governing Behaviour of a Responsible Flag State

[These [criteria] [principles] [are derived from] [include] elements taken from a number of instruments. Underpinning all of them is the principle] [Recognizing] that responsible flag State performance is a critical component [in the global effort] [of international consensus] to prevent, deter and eliminate IUU fishing. [To this end, responsible flag States:]

[Recognizing that responsible flag State performance is a critical component [in the global effort] [of international consensus] to prevent, deter and eliminate IUU fishing, States commit to discharge their responsibility as a flag State in conformity with international law taking into account applicable international rules and standards including those established through the IMO as well as other international instruments including by:]

[The flag State commits to implement the flag State provisions in all relevant international fisheries instruments to which it is party. In its exercise of effective flag State responsibility, the flag State should:]

[States commit to:]

- act in accordance with international law with respect to flag State duties;
- respect national sovereignty and coastal State rights;
- prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing;
- effectively exercise their jurisdiction and control over vessels flying their flag;
- take measures to ensure that persons subject to their jurisdiction, including owners and operators of vessels flying their flags, do not support or engage in IUU fishing and fishing related activities in support of such fishing;
- ensure the conservation and sustainable use of living marine resources;
- take effective action against non-compliance by vessels flying their flag;
- discharge their duty to cooperate in accordance with international law;
- exchange information and coordinate activities among relevant national agencies

- [exchange information between relevant competent authorities and States and give mutual legal assistance in investigation and judicial proceedings, as required by their respective international obligations];
- 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 building.

PART I

BEHAVIOURAL CRITERIA

International

1. Does the State effectively contribute to the functioning of the RFMO in which it participates (i.e. does the State implement its duties as a contracting party or as a cooperating non-party, including reporting requirements on fishing activities and through compliance by its vessels)?
2. [Does [the] [such] State contribute to joint control and enforcement efforts [on a voluntary basis] where applicable [required], or on a voluntary basis as appropriate?]
[Does the State [where] [as] applicable give effect to its duty to cooperate under international law, including [through joint] [in respect of] control, [investigations,] and enforcement activities, including cooperation with coastal and port States?]
3. Does [the] [such] State take action in respect of vessels flying its flag and duly identified as participating in IUU fishing activities?

National vessel registries and records

4. Are the national vessel registries and records regularly updated?
5. Is verification of vessel records and[, where applicable,] history effectively carried out prior to registration?
6. Are vessels with multiple registrations refused registration?
7. Is registration of vessels with a history of non-compliance avoided except where:
 - 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
 - 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?

8. Does the State cooperate 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 [history]/record [and, where applicable, history] for registration and deregistration?
9. Is registry data available to relevant internal government users?
10. Is registry data publicly available and easily accessible in a manner consistent with any applicable confidentiality requirements?
11. Are all practicable steps taken, including denial to a vessel of the entitlement to fly that State's flag, to prevent "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 adopted at a national, regional or global level or of facilitating non-compliance with such measures or provisions?
12. Are any pending sanctions against a vessel settled before a State deregisters it?

[National fisheries management regime] [International (continued)]

13. Are conservation and management measures [effectively] implemented, including the following?
- Does the flag State ensure that the obligations incumbent upon the fishing vessel owners, operators and crews are clearly accessible and communicated to them?
 - Does the flag State provide guidance to the fishing sector to meet these obligations?
 - Does the flag State effectively manage the fisheries activities of the vessels flying its flag in a manner that ensures the conservation and sustainable use of living marine resources[.] [[in the high seas.] [and in accordance with the applicable measures adopted by [coastal States and] RFMOs?]]
14. 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] [is satisfied about] [controls] [confirms] 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 it can effectively exercise its enforcement jurisdiction and authority over the holder of the authorization[.] [remains within [the limit established by its authorization] [reach of its enforcement jurisdiction]]?

- [Is ongoing [assessment] [verification] of the conditions for the granting of the authorization implemented by the flag State, where required?]

15. [Is a control regime implemented, that includes the following?

- Is a current fishing vessel record maintained through regular, timely updates?
- Is fisheries data collected, processed and verified in a timely manner?
- Are there effective means of control available?]

PART II

REGULATORY CRITERIA

International

- [The flag State commits to implement the flag State provisions in all relevant international fisheries instruments to which it is party.]