VOLUNTARY GUIDELINES FOR FLAG STATE PERFORMANCE
- A NEW TOOL AGAINST IUU FISHING

THE FOURTH GLOBAL FISHERIES ENFORCEMENT TRAINING WORKSHOP
SAN JOSE, COSTA RICA

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OVERVIEW

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- DEVELOPMENTS LEADING UP TO THE TECHNICAL CONSULTATION
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WHY THE NEED FOR GUIDELINES ON FSP?

- Under international law, flag States have the primary responsibility to exercise effective control over their fishing vessels and ensure compliance with relevant laws and conservation and management measures.

- Performance of many flag States inadequate - unable or unwilling to exercise effective control over their fishing fleets, many of which engage in IUU fishing activities in areas beyond the national jurisdiction of the flag State.

- As a result, the burden to control such fleets is shifted to other States, including coastal States, port States and members of RFMOs (human resources, compliance tools, mechanisms for legal, administrative, trade and other appropriate actions to combat IUU fishing activities by vessels flying flags of “non-compliance”)

- FAO Members addressed issues relating to irresponsible flag States at the 27th session of COFI in 2007. The need to develop criteria for assessing the performance of flag States and to examine possible actions against vessels flying the flags of States not meeting such criteria was identified.
DEVELOPMENTS LEADING UP TO THE TECHNICAL CONSULTATION

- **Expert Consultation** proposed by COFI 27 and, subject to the availability of funds, FAO was requested to further consider this possibility.

- COFI 28 in 2009 reconfirmed the call for the Expert Consultation and agreed that this meeting should be followed by a **Technical Consultation**, i.e. an FAO Forum for intergovernmental meeting.

- In the meantime, an **Expert Workshop**, “Flag State Responsibilities: Assessing Performance and Taking Action” was held in Vancouver, Canada in March 2008.

- Resulting **Report and Guidance Document** served as useful background to discussions at the Expert and Technical Consultation meetings that followed.
DEVELOPMENTS LEADING UP TO THE TECHNICAL CONSULTATION

The Expert Consultation considered papers prepared by the experts and commentaries on them and made recommendations on:

- criteria for assessing the performance of flag States;
- possible actions against vessels flying the flags of States not meeting the criteria identified;
- roles of national governments, RFMOs, international institutions, international instruments and civil society in implementing the criteria and actions for flag State performance, and
- assistance to developing countries to assist them in meeting the criteria, taking actions and fulfilling their respective roles, as appropriate.
A Technical Consultation is a political process in which the often competing and/or opposing international interests of participating governments have to be reconciled through negotiation of actual text.

The views and opinions of experts are not always shared by their governments. Historical views, allegiances, and sensitivities, as in all international negotiations, play a role in such processes.

In negotiating the text, some countries wanted the Guidelines to be tough and prescriptive, while others wanted more room for national control and interpretation and were sensitive about ensuring sovereignty and national jurisdiction at all times over proposed processes. In this regard, the issue of how and by whom sanctions could be imposed were controversial.

A particularly sensitive issue was that of geographical application of the guidelines – should they apply to high seas only or universally?

If universal, the criteria would need to have characteristics that allow them to be geographically applicable across boundaries, in coastal waters and in the high seas.
THE NEGOTIATION PROCESS AND ISSUES

- **Institutional applicability** - should be applicable by National governments and RFMOs?

- **Legal support** - They must be supported by adequate national, and international legal frameworks

- The original draft document, prepared by the Expert Consultation, was entitled: “Draft Criteria for Flag State Performance”

- Three full sessions, held over three years at the FAO headquarters in Rome were required to get consensus on the wording of agreed “Voluntary Guidelines for Flag State Performance”

- Wording change in the title perhaps sensible, but indicates that this ultimately had to be a consensus document.
WHAT’S IN THE GUIDELINES?

Full text available at:  www.gfetw.org

- Statement of Purpose and Principles (Par 1-2)
- Scope of Application (Par 3-5)
  - Geographical
  - Vessels
- Performance assessment criteria: Measures (Par 6-22)
- Performance assessment criteria: Actions (Par 23-38)
- Cooperation between flag States and coastal States (Par 39-43)
- Procedure for carrying out assessment (Par 44-46)
- Encouraging compliance and deterring non-compliance by flag States (Par 47)
- Cooperation with and assistance to developing States with a view to capacity development (Par 48-55)
- Role of FAO (Par 56-58)
WHAT’S IN THE GUIDELINES?

Statement of Purpose and Principles (Par 1-2)

Objective: To prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing and fishing related activities 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.
WHAT’S IN THE GUIDELINES?

Statement of Purpose and Principles (Par 1-2)

Re-iterates Flag State responsibilities 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 its jurisdiction and control over vessels flying its flag;
- 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;
- ensure the conservation and sustainable use of living marine resources;
- take effective action against non-compliance by vessels flying its flag;
- discharge its duty to cooperate in accordance with international law;
- exchange information and coordinate activities among relevant national agencies;
- exchange information with other States and give mutual legal assistance in investigation and judicial proceedings, as required by their respective international obligations; and
- 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 - Geographic

- 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 (flag State ensures vessels do not conduct unauthorised fishing in other States’ jurisdiction) and 39 to 43 (co-operation between flag and other States).

- 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.
WHAT’S IN THE GUIDELINES?

Scope of Application – Vessels

- 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, transhipping 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.

- 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.
WHAT’S IN THE GUIDELINES?

Measures and Actions – the meat of it.

Performance Assessment Criteria - Measures

- acceptance of applicable international laws
- active prevention of IUU fishing
- management of input & output controls
- co-operation among flag and coastal states
- minimum information requirements
- registration procedures, maintenance of records
- institutional, legal, technical foundation/framework for fisheries management
- regulations for conservation and management measures
- control and enforcement regimes
WHAT’S IN THE GUIDELINES?

Performance Assessment Criteria - Actions

- contribution to the functioning of RFMOs,
- joint control and enforcement efforts,
- actions against IUU vessels, including own flagged vessels,
- updating of national vessel registries and records, verification of vessel records and history, refusal of registration to vessels that already hold a registration from another State (Note: This could also be strengthened by participation in the FAO’s Global Record of fishing vessels project).
- cooperation with other States by exchanging information, making registry data available to relevant internal government users as well as publicly
WHAT’S IN THE GUIDELINES?

**Actions** (cont’d)

- prevention of flag hopping,
- settlement of sanctions before deregistration, effective implementation of conservation and management measures, licensing conditions, investigation of violations and implementation of sanctions
- Resolving of disputes across jurisdictions
WHAT’S IN THE GUIDELINES?

Cooperation between flag States and coastal States

- Respective roles and responsibilities while in the national jurisdiction of the coastal State
- Sustainability of living marine resources within the jurisdiction of the coastal State
- Flag State sanctions on vessels flying its flag that have violated its legislation related to fishing activities in maritime areas under coastal State jurisdiction.
- Exchanging all relevant information regarding the activities of the flag state vessels in maritime areas of coastal States.
WHAT’S IN THE GUIDELINES?

Procedure for Assessments

Self-assessments:

- **transparent** process including competent authorities and internal consultations;
- make the results **publicly** available;
- consider the participation of an assessor/ international organization;
- consider **international mechanisms** for self-assessment (including assistance);
- **validation** process
- possible linkages with **multilateral assessment**, including the need for global consistency among self-assessments.

External assessments:

- competent **multilateral body or other State(s)** to conduct the assessment.
- **apply** these Guidelines & the result of RFMO/A flag State assessment;
- ensure there is due regard for **transparency and international law**.
WHAT’S IN THE GUIDELINES?

Encouraging compliance and deterring non-compliance by flag States

Measures taken in light of the results of an assessment may include:

- **corrective actions** as appropriate taken by the flag State;
- **cooperative actions** by the flag State and other interested States, including through RFMOs as appropriate, such as:
  - engaging in consultations;
  - offering assistance and capacity development;
  - sharing information on the conclusions of the assessment and follow-up actions with other interested States and RFMO/As
  - engaging in available dispute resolution mechanisms
- measures as set out in the IPOA-IUU and the 1995 FAO Code of Conduct for Responsible Fisheries & other relevant international instruments
WHAT’S IN THE GUIDELINES?

Cooperation with and assistance to developing States for capacity development

- Recognition for special requirements of developing States & assistance to:
  - develop adequate legal and regulatory framework;
  - strengthen institutional organization and infrastructure needed to ensure adequate control over vessels;
  - develop, implement and improve practical and effective MCS;
  - build institutional and human resource capacity to process and analyse scientific & other data;
  - participate in international organizations that promote flag State performance.

- Assessment & assistance to implement these Guidelines.

- Support to developing States to participate in high seas fisheries,

- Funding mechanisms to assist developing States to implement these Guidelines:
  - enhancing flag State performance;
  - developing and enhancing capacity relevant to flag State performance, including technical assistance.

- Ad hoc working group on the establishment of funding mechanisms.
POSSIBLE IMPACTS AND IMPLICATIONS OF THE GUIDELINES

- The agenda for the development of the Guidelines was “broad and challenging” (Namura, 2009), and involved the important task of elaborating new standards and measures that could eventually become part of “soft” or “hard” international law.

- The main task was to identify strong and sensible ways forward that would help combat IUU fishing in a concrete and realistic manner.

- This was achieved by the member parties that participated in the TC, even though the Guidelines are voluntary.

- The real challenge – implementation by member parties.

- Potential to combat IUU is great if taken seriously.

- Ultimately could be implemented more specifically in international law.
THANK YOU FOR LISTENING!

THANKS TO MCS NETWORK
FOR THE OPPORTUNITY!