
REPORT ON NORWEGIAN FLAG STATE PERFORMANCE

A self-assessment in accordance with
the FAO Voluntary Guidelines for Flag State Responsibility



ROYAL NORWEGIAN MINISTRY OF
TRADE, INDUSTRY AND FISHERIES

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I General Introduction

Improvement of flag State performance has been a topic on the international agenda for several years. Responsible flag State performance is a key element in the fight against illegal, unregulated and unreported (IUU) fishing.

Norway participated actively in the FAO process leading up to the adoption of the Voluntary Guidelines for Flag State Performance (the FAO Flag State Guidelines) in 2014. These guidelines provide a valuable tool for strengthening compliance by flag States with their international responsibilities regarding flagging, and control of their vessels involved in fishing and fishing related activities.

Pursuant to the FAO Flag State Guidelines, all States are encouraged to have performance assessments, either self-assessments or external ones, conducted periodically. Norway has established a working group of both internal and external experts for undertaking its first comprehensive assessment.

The Working Group was given the following mandate:

The Working Group shall provide a systematic examination of the Performance Assessment Criteria 6 to 38 in the FAO Voluntary Guidelines for flag State Performance. The Working Group shall conduct the assessments in accordance with the Guidelines paragraph 45. The examination shall include:

- *A description of the guidelines*
- *An evaluation of how Norway has implemented the guidelines*
- *References to relevant national legislation*
- *A description of possible deficiencies or areas of improvement, and how this could be done.*

The Working Group comprised five members in total; two from the Ministry of Trade, Industry and Fisheries, two from the Directorate of Fisheries and one external advisor.¹ The Working Group met three times and also worked by correspondence between meetings. In addition, the draft report was subject to consultations between relevant authorities prior to finalization.

It has been noted by the Working Group that several of the criteria in the guidelines address nuances and overlaps of the topics to be assessed. Thus, in this assessment cross-references are made in order to avoid repetitive text. In a few instances, the content of a specific criteria was unclear to the group. However this might be due to the particularities of the Norwegian management system.

¹ Working Group participants: Specialist Director Gunnar Stølsvik and Senior Adviser Ingrid Vikanes from the Ministry of Trade Industry and Fisheries, Specialist Director Terje Løbach and Senior Adviser Hilde Ognedal from the Directorate of Fisheries, and Professor Tore Henriksen, Faculty of Law, the Arctic University of Norway.

The findings of the Working Group are presented in this report, which has been submitted to the Ministry of Trade, Industry and Fisheries for considerations and possible follow-up. The report will also be submitted to the North-East Atlantic Fisheries Commission (NEAFC), which at its 2017 Annual Meeting decided that all Contracting Parties shall carry out self-assessments. The Permanent Committee on Monitoring and Compliance (PECMAC) will coordinate the self-assessments and present a report to the NEAFC Annual Meeting in 2020.

The group finds that Norway has taken multiple actions in order to fulfil its flag State responsibilities, and that in general it has incorporated the relevant binding measures into its domestic legislation and management system. These include relevant provisions of global binding instruments and measures adopted by regional fisheries management organizations (RFMOs) to which Norway is a member.

However, there are lack of clarity and deficiencies in regulations concerning vessels engaged in transshipment, and there are no fisheries specific regulations concerning vessels involved in other fishing related activities such as refueling and resupplying at sea. There are also a few other issues, relatively minor, that should be addressed by Norwegian authorities.

II The International Framework

1. Global Instruments

The key legally binding instrument is the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which provides the framework for all maritime activities, including conservation and utilization of living marine resources. Treaties that in particular relate to fishing include the 2005 UN Fish Stocks Agreement (UNFSA),² the 1993 FAO Compliance Agreement,³ and the 2009 FAO Port State Measures Agreement (PSMA).⁴

In addition, many soft-law instruments have been adopted. Those relevant in this context include the 1995 FAO Code of Conduct on Responsible Fisheries (the Code of Conduct), the 1999 FAO International Plan of Action for the Management of Capacity (IPOA-Capacity), the 1999 FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds), the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU), the 2010 FAO Guidelines on Bycatch Management and Reduction of Discards (the Bycatch Guidelines), the 2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas, the 2017 FAO Guidelines for Catch Documentation Schemes (the CDS Guidelines), as well as the FAO Flag State Guidelines, which form the basis of this review.

² Full title: «Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks»

³ Full title: «Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas»

⁴ Full title: «Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing»

The UN General Assembly annually addresses fisheries issues, among other things calling upon States, individually or through RFMOs, to address specific topics in order to achieve sustainable fisheries. Likewise, several declarations, both ministerial and other, have called for specific actions to address conservation and management of fisheries and the ecosystem in which they take place. While UNCLOS, UNFSA, the Compliance Agreement and the PSMA entail legally binding obligations on their parties, all these other instruments are voluntary. They serve as guidelines and toolboxes for conservation and management of fisheries, including some specific options for States and RFMOs. RFMOs can adopt legally binding measures within their respective areas of competence.

2. Norway's obligations

As a party to UNCLOS, UNFSA, PSMA and the Compliance Agreement, Norway is obliged to implement relevant provisions of those treaties. Articles 91, 92 and 94 of UNCLOS in particular deal with issues related to the role of the flag State, the key provision of UNFSA is Article 18, Article 20 of the PSMA addresses the role of flag States, and sole objective of the Compliance Agreement is promotion of flag State compliance on the high seas. Norway is furthermore bound by decisions made by RFMOs to which Norway is a member. Those are the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the International Commission for the Conservation of Atlantic Tuna (ICCAT), the Northwest Atlantic Fisheries Organization (NAFO), NEAFC and the South East Atlantic Fisheries Organisation (SEAFO). All these RFMOs have adopted control measures which entail a series of obligations on Norway as a flag State.

In 2015, the International Tribunal for The Law of the Sea (ITLOS) delivered an Advisory Opinion (case no 21) on questions raised by The Sub-Regional Fisheries Commission, including questions on obligations of the flag State in cases where IUU fishing takes place within the exclusive economic zone of another State and to what extent the flag State shall be held liable for IUU fishing conducted by vessels sailing under its flag. ITLOS concluded that the flag State is under the "due diligence obligation" to take necessary measures to ensure compliance by vessels flying its flag with the laws and regulations of coastal States related to conservation and management of fisheries resources.

3. Stateless vessels

The phenomenon of stateless fishing vessels operating on the high seas has increased over the last years. Many vessels also illegally claim the right to fly a particular flag, but are actually without nationality as they are not properly registered and not entitled to fly the flag of any State. Taking action against such vessels should be a high priority, because their very statelessness frustrates the primary means to control through flag State jurisdiction. A vessel without nationality operates outside of this form of control. Stateless vessels upon the high seas do not enjoy the legal protection accorded to flagged vessels under international law. As such, they are subject to the extraterritorial jurisdiction of any authority on the scene. Vessels without nationality are thus subject to the jurisdiction of any State that may impose penalties for engaging in IUU fishing. Such actions would in most cases require that national legislation is also applicable to stateless vessels, and it should be noted that the Act of 6 June 2008 no.